



ADDENDUM 1
February 7, 2019

RFP AP 31-19

Non-Exclusive Master Concession Food, Beverage, and Retail Agreement at the Destin-Fort Walton Beach
Airport (VPS)

This addendum is to provide various documents including specifications, requirements, inspections and other documents.

- The opening date for this RFP remains March 7, 2019 at 3:00 PM CST.
- The following pages are hereby incorporated into the project contract documents, plans and specifications.
- To avoid any confusion, ONLY the following documents should be used in the preparation of your bid submittal.
- Please disregard the original RFP. The attached document includes all sections necessary for bidding of the project and subsequent contract.



REQUEST FOR PROPOSALS (“RFP”) & RESPONDENT’S ACKNOWLEDGEMENT

RFP TITLE: Non-Exclusive Master Concession Food, Beverage, and Retail Agreement at the Destin-Fort Walton Beach Airport (VPS)

RFP NUMBER:

RFP AP 31-19

<u>ISSUE DATE:</u>	January 28, 2019	8:00 A.M. CST
<u>MANDATORY PRE-PROPOSAL MEETING:</u>	February 14, 2019	10:00 A.M. CST
<u>LAST DAY FOR QUESTIONS:</u>	February 21, 2019	3:00 P.M. CST
<u>RESPONSES TO QUESTIONS:</u>	February 28, 2019 (no later than)	3:00 P.M. CST
<u>RFP OPENING DATE & TIME:</u>	March 7, 2019	3:00 P.M. CST
<u>PRESENTATIONS BY FINALISTS</u>	March 26, 2019 (starting at)	9:00 A.M. CDT
<u>CONTRACT COMMENCEMENT</u>	June 7, 2019	

NOTE: PROPOSALS RECEIVED AFTER THE PROPOSAL OPENING DATE & TIME WILL NOT BE CONSIDERED.

Okaloosa County, Florida solicits interested parties to submit a proposal on the above referenced Non-Exclusive Master Concession Contract at the Destin-Fort Walton Beach Airport (VPS). All terms, specifications and conditions set forth in this RFP must be incorporated into your response. A proposal will not be accepted unless all conditions have been met. All proposals must have an authorized signature in the space provided below. All envelopes containing sealed proposals must reference the “RFP Title,” “RFP Number,” and the “RFP Due Date & Time.” Okaloosa County is not responsible for lost or late delivery of proposals by the U.S. Postal Service or other delivery services used by the Respondent. Neither faxed nor electronically submitted proposals will be accepted. Proposals may not be withdrawn for a period of ninety (90) days after the proposal opening unless otherwise specified.

RESPONDENT ACKNOWLEDGEMENT FORM BELOW MUST BE COMPLETED, SIGNED, AND RETURNED AS PART OF YOUR PROPOSAL. PROPOSALS WILL NOT BE ACCEPTED WITHOUT THIS FORM, SIGNED BY AN AUTHORIZED AGENT OF THE RESPONDENT.

COMPANY NAME _____
MAILING ADDRESS _____
CITY, STATE, ZIP _____
FEDERAL EMPLOYER’S IDENTIFICATION NUMBER (FEIN): _____
TELEPHONE NUMBER: _____ EXT: _____ FAX: _____
EMAIL: _____

I CERTIFY THAT THIS PROPOSAL IS MADE WITHOUT PRIOR UNDERSTANDING, AGREEMENT, OR CONNECTION WITH ANY OTHER RESPONDENT SUBMITTING A PROPOSAL FOR THE SAME MATERIALS, SUPPLIES, EQUIPMENT OR SERVICES, AND IS IN ALL

RESPECTS FAIR AND WITHOUT COLLUSION OR FRAUD. I AGREE TO ABIDE BY ALL TERMS AND CONDITIONS OF THIS PROPOSAL AND CERTIFY THAT I AM AUTHORIZED TO SIGN THIS PROPOSAL FOR THE RESPONDENT.

AUTHORIZED SIGNATURE: _____ TYPED OR PRINTED NAME _____

TITLE: _____ DATE _____

Rev: September 22, 2015

NOTICE TO RESPONDENTS
RFP AP 31-19

Notice is hereby given that the Board of County Commissioners of Okaloosa County, FL, will accept sealed proposals until **3:00 p.m. (CST) March 7, 2019**, for **The Non-Exclusive Master Concession Food, Beverage, and Retail Agreement at the Destin-Fort Walton Beach Airport (VPS)**

Interested Respondents desiring consideration shall provide one (1) original and one (1) thumb drive of their Request for Proposals (RFP) response with the Respondent's proposal. Submissions shall be portrait orientation, unbound, and 8 ½" x 11" where practical. Font shall be 12 point and Respondents are limited to forty (40) pages, excluding the required forms.

All originals must have original signatures in blue ink.

Proposal documents are available for download by accessing the Okaloosa County website at <http://www.co.okaloosa.fl.us/purchasing/home> then accessing the link "View Current Solicitations" or by accessing the Florida Purchasing Group website at <https://www.bidnetdirect.com/florida>

A mandatory pre-proposal meeting will be held at 10:00 a.m. (CST), February 14, 2019 at Destin- Ft. Walton Beach Airport in the Airport Conference Room on the second floor of the Terminal. Respondents must have a representative present in order to be compliant with the RFP. No call-in provisions will be available.

Submittals must be delivered to the Okaloosa County Purchasing Department at the address listed below no later than **3:00 p.m. (CST) March 7, 2019** in order to be considered. All proposals received after the stated time and date will be returned unopened and will not be considered. All submittals must be in sealed envelopes reflecting on the outside thereof **"Non-Exclusive Master Concession Food, Beverage, and Retail Agreement at the Destin-Fort Walton Beach Airport (VPS)"**. Failure to clearly mark the outside of the envelope as set forth herein shall result in the submittal not being considered.

The County reserves the right to award to the firm submitting a responsive proposal with a resulting negotiated agreement that is most advantageous and in the best interest of Okaloosa County, and to waive any irregularity or technicality in proposals received. Okaloosa County shall be the sole judge of the resulting negotiated agreement that is in its best interest and its decision will be final.

NOTE: Crestview, FL is not a next day guaranteed delivery location by most delivery services. Respondents using mail or delivery service assume all risk of late or non-delivery.

All submittals should be addressed as follows:

Non-Exclusive Master Concession Food, Beverage, and Retail Agreement at the Destin-Fort Walton Beach Airport (VPS)
RFP AP 31-19

Okaloosa County Purchasing Department
5479A Old Bethel Road
Crestview, FL 32536

Jeffrey Hyde
Purchasing Manager

Date

OKALOOSA COUNTY
BOARD OF COUNTY COMMISSIONERS

Charles K. Windes, Jr.
Chairman

SECTION A: PROGRAM OUTLINE

PROPOSAL #: RFP AP 31-19

PROPOSAL ITEM: Non-Exclusive Master Concession Food, Beverage, and Retail Agreement at the Destin-Fort Walton Beach Airport (VPS)

I. INTRODUCTION

The Destin-Ft. Walton Beach Airport (“VPS”) is a commercial airport serving the needs of the Florida panhandle region. The current Master Food, Beverage, and Retail contract expires June 6, 2019 and the County is soliciting interest from qualified parties to submit proposals for the new Agreement.

VPS has become a major origin and destination market for the region and desires to provide a food, beverage, and retail experience similar to hub airports. To do that, the County desires to have the successful Respondent create an environment that blends the local flavor of the area with nationally recognized names and products. This should include locally familiar products coupled with national brands consumers know and trust.

Proposers are encouraged to identify in their proposals how they intend to accomplish this concept and specifically what brands are being proposed. Proposers shall provide color renderings or pictures for other installations the Respondent has for the proposed concept or plans and renderings to develop in the Premises. Proposers shall identify any proposed themes to accent the local flavor. The County reserves the right to accept, reject, or modify the proposed theme for the selected Proposer. The desire of the County is to create a vibrant and appealing environment through the use of customer friendly finishes, high customer service features such as electrical outlets for charging, and comfortable seating.

VPS is located on Eglin Air Force Base and shares the runway system with the Air Force. The Airport is owned and managed by Okaloosa County, Florida. VPS currently is served by Allegiant Airlines American Airlines, Delta Air Lines, and United Airlines. All airlines have experienced growth in the past few years to the point where annual enplanements have reached approximately 750,000 with continued growth expected. A summary of the historical enplanement and sales levels will be provided at the mandatory pre-proposal meeting.

The terminal consists of two (2) ground floor gates (Concourse A) with passenger loading bridges and six (6) aircraft parking positions served by five (5) passenger loading bridges on the second level (Concourse B). The Concession Service Areas (“CSA”) locations included in this RFP consist of the following:

1. The landside retail space with limited snacks across from the checkpoint.
2. The Concourse A retail and light snack space located on the ground floor in concourse A.
3. The upper level space in concourse B at the top of the escalator back toward the overlook space above the escalator (new space being dedicated to the concession space).

4. The current sandwich shop, bar, and seating area to the east of the escalator prior to the gates.
5. The current retail space adjacent to gates B1 and B2.
6. The retail and space at the end of concourse B that includes a “grab and go” component.

An exhibit detailing the footprints of the respective sites will be distributed at the pre-proposal meeting. The revenue producing spaces outlined above will be provided to the Respondent as part of the contract at no additional cost.

The office/storage space (628 SF) on Concourse A will be rentable to the Respondent at the annual terminal rental rate. For fiscal year 2019, the rate is \$96.12 per square foot. In addition, there is an additional up to 700 SF of non-conditioned storage space available in the cargo building that can be made available for rent at 50% the terminal rental rate.

There is currently one other concession operator offering food and beverage services at VPS. The second concession consists of a full-service restaurant and bar both pre and post security and a food and beverage kiosk on Concourse B that includes a “grab and go” component. The other concessionaire does hold a liquor license for the operation.

Sales volumes for the last three years from the existing Food, Beverage, and Retail contract sales are:

2016 - \$1,951,268
2017 - \$2,498,640
2018 - \$2,943,995

II. SPECIFICATIONS

A. Overview

The Respondent will be a non-exclusive provider of food, beverage, and retail products and services at the Destin-Fort Walton Beach Airport. Respondent shall operate the concessions in a first-class manner and offer products and options available at comparable airports. The Respondent will brand the various operations as identified in the Proposal as agreed to by the County and the brands shall remain in effect for the Base Term of the Agreement and Option Term, if exercised, unless approved in writing in advance by the County.

The County reserves the right to review products, service, and prices quarterly during the term of this Agreement and approve changes. All products and prices will be presented to the County at the commencement of each fiscal year for review, discussion, and approval. If Respondent desires to change concepts, Respondent shall submit the proposed concept to the County with the business case, including a pro forma of the proposed concept versus the concept being replaced. The County may approve or disapprove the request at its sole discretion.

Respondent shall provide quarterly reports with a summary of sales, Market Pricing as defined herein, and customer service responses and meet with the Airports Director or his designee within a reasonable timeframe after submission to review. Respondent shall contract with a

mystery shopping service annually to provide an objective assessment of prices and service and provide the results of the survey to the County within thirty (30) days of receipt.

County will provide the CSA spaces identified at no cost to the Respondent “as is/where is”. Respondent shall be responsible for obtaining all licenses and permits, including the liquor license, and funding and developing the CSA Improvements as contained in the Proposal.

Respondent shall provide all staffing including a manger or designated supervisor during all hours of operation. Respondent shall provide a point of sale system and proper training for all employees authorized to operate the system.

B. Term

1. Base Term: The Base Term of this Agreement shall commence on June 7, 2019 and shall remain in effect for ten (10) years from the commencement date, unless terminated earlier as provided for herein.

2. Option Term: The parties reserve the right to exercise one (1) additional five (5) years Option Term extension, provided that the parties mutually agree to exercise the Option Term no less than one hundred eighty (180) days prior to the end of the Base Term. In order to exercise the Option Term, Respondent must deposit with the County a cashier's check or letter of credit in the amount of one hundred thousand dollars (\$100,000.00) to be used for improvements to the CSA during the Option Term.

3. Holding Over: In the event that the Base Term expires and the Option Term is not exercised or a new agreement has not been executed by the end of the Option Term, then at the sole discretion and upon written consent of the County, this Agreement shall continue in effect on a month-to-month basis under the terms and conditions set forth in this Agreement subject to the adjustment of concession fees to be established at the sole discretion of the County. The consent of the County to continue operating on a month-to-month basis may be terminated upon thirty (30) days' written notice to Respondent.

C. Pricing, Concession Fees, and Minimum Annual Guarantee

1. Pricing: Prices for all food, beverage, and retail products offered shall be at “Market Pricing”. Market pricing shall be defined as prices that are within ten percent (10%) of prices for comparable products available at similar locations in Okaloosa County. Respondent and the County will mutually agree on the benchmark locations to be used for Market Pricing comparisons. Respondents shall also provide a menu and pricing for catering opportunities conducted on the Airport.

2. Concession Fees: The following MINIMUM concession fees shall be payable to the County on Gross Revenues resulting from sales on the Airport or products and/or services originating at the Airport and sold to parties not on the Airport:

- a. Liquor- Sixteen percent (16%)
- b. Food, non-alcoholic beverages- fourteen percent (14%)
- c. Retail- fourteen percent (14%)

- d. Catering- Sixteen percent (16%)
- e. Supplemental Concession Fee-If sales in any category listed above exceed the previous year's sales for that category in any year, there shall be an additional one percent (1%) Concession Fee due and payable applied against the excess amount.

These are the MINIMUM fees required. Respondents must identify what fees, if higher than the MINIMUM Fees, they are willing to pay in their proposal. Fees lower than the stated fees will not be accepted.

The term "Gross Revenues" as used herein shall mean the revenues or sales price of all food, beverages, retail, and any other merchandise and items sold or dispensed by the Respondent on the Airport and the charges made for all services performed by the Respondent, excluding returns where Respondent refunds the sale price to the customer, employee discounted sales, and discounted employee meal specials as identified below. Gross Revenues shall not include state and local sales taxes collected by Respondent from its customers. Respondent will offer an employee discount program of fifteen percent (15%) on retail products and will offer a discounted employee meal program available daily for all airport employees. All reports of Gross Sales are subject to audit by the County. The County reserves the right to audit all financial records related to the reporting of concession fees and the annual MAG as provided in this Agreement.

3. Minimum Annual Guarantee: Respondent shall **pay the greater of** the concession fee as outlined above or a Minimum Annual Guarantee ("MAG"). The MAG for the first year shall be three hundred fifty thousand dollars (\$350,000.00). For each subsequent year through the Base Term and Option Term, if executed, the MAG shall be re-established annually at eight five percent (85%) of the previous years' actual payment to the County. During the Base Term and Option Term, if exercised, under no circumstances shall the MAG be lower than the first year MAG payment made as part of this Agreement.

D. Other Fees and Requirements

1. Security Fee: For use of the security services at the Airport to process products and employees, Respondent shall pay to the County a flat fee of one hundred dollars (\$100.00) per month for the Term of the Agreement.

2. Environmental Monthly Fee: Respondent agrees to pay for its share of the rubbish disposal, recycling, and monitoring, a monthly flat fee of one thousand six hundred dollars (\$1,600.00) due and payable with the monthly reported activity. This flat fee shall escalate at five percent (5%) per year through the Base Term, Option Term, if exercised, and in Holdover until the Agreement is terminated as called for herein.

3. Pest Control Monthly Fee: Respondent agrees to pay a monthly fee for its share of pest control services in the amount of seventy-five dollars (\$75.00). This flat fee shall escalate at five percent (5%) per year through the Base Term, Option Term, if exercised, and in Holdover until the Agreement is terminated as called for herein.

4. Electrical Monthly Consumption Fee: Respondent agrees to pay for its share of the monthly electrical consumption, a flat fee of one thousand dollars (\$1,000.00) due

and payable with the monthly reported activity. This flat fee shall escalate at five percent (5%) per year through the Base Term, Option Term, if exercised, and in Holdover until the Agreement is terminated as called for herein.

5. Base Term Repair and Refurbishment Fund: Because the County is offering a Base Term of ten (10) years and with the wear and tear associated with that length of contract, the County will require the Respondent to establish a Repair and Replacement Fund at the commencement of the third year of the contract in the amount of one hundred thousand dollars (\$100,000.00). The fund will be used at the sole discretion of the County to fund any mutually agreed to major maintenance, replacement, or refurbishment associated with the CSA. The fund will be maintained by the County. If the Respondent desires to make a recommendation to use the fund for any authorized use, Respondent shall provide a written proposal the County to include the nature of the request, the expected benefits (financial and/or customer service), what is being replaced (if applicable), timeline, and the projected cost. The County will review and provide a written response within thirty (30) calendar days upon receipt. If there is a balance remaining at the end of the Base Term, the fund balance will carry forward through the end of the Option Term, if exercised. If the Option Term is not exercised, and remaining balance will remain with the County to be used at the County's sole discretion.

6. Option Term Repair and Refurbishment Fund: An additional Repair and Refurbishment Fund requirement of one hundred thousand dollars (\$100,000.00) is required by the Respondent in order to execute the Option Term. The amount must be deposited with the County prior to the execution of the Option Term. The same process will be followed for using the fund for qualifying projects. If there is a fund balance at the end of the Option Term, the remaining balance shall be retained by the County for its use, at the sole discretion of the County.

7. Fee for Restaurant and Liquor License: Respondent agrees to pay directly to the issuing agency for all fees associated with obtaining a restaurant license and airport liquor license in its name from Okaloosa County and the State of Florida. Respondent shall be responsible for complying with all insurance requirements associated with the liquor license and shall assume all liability for any actions resulting from the serving of alcohol covered by the license and shall further hold the County harmless from any and all actions associated with the license and the serving of alcohol.

8. Fee for Employee Background Checks and Security Badges: Respondent agrees to pay for all costs of required fingerprint based criminal history record checks and other Airport badging related expenses conducted on Respondent's agents and employees.

9. Employee Parking Fee: Respondent agrees to pay the employee parking fee established by the County for tenants as determined at the discretion of the County.

E. Telephone, Internet and Computer

Respondent shall be responsible for providing and installing all telephone, private internet, cable/satellite TV services, computer systems, and point of sale systems necessary for its operation at its sole expense along with any monthly service fees.

F. Utilities

The County agrees to provide such heat, air conditioning, internet infrastructure, telephone infrastructure, water, and sewage from the central collection point as are reasonably necessary for Respondent's operations at no additional cost to Respondent.

G. Security Deposit

Respondent agrees to secure a performance bond or letter of credit or provide a security deposit issued to the County in the amount of fifty percent (50%) of the annual MAG payment, to be updated each year of the Agreement.

H. Respondent's Responsibility

Respondent shall, at its sole risk and expense, be responsible for the purchase and installation of the following:

1. Any and all equipment needed for the operation of a high-quality food, beverage, and retail concessions program in the CSA for the purpose of offering food, snacks, beverage, books, magazines, newspapers, souvenirs and other goods and related products and services to the traveling public, employees, and guests.
2. All grab and go dispensing units and supporting ADA compliant casework to accommodate products and condiments.
3. All dishes and utensils needed for its food, beverage and other related services within the CSA authorized by the Department of Homeland Security.
4. Menu boards over the main order counter and bar area in the CSAs.
5. Point of sale system(s) for food/beverage/retail and other related services at each location.
6. Branded signage at the entrance.
7. Seating and tables for the bar and food service areas. This will include any adjacent seating included and agreed to by the Airports Director.
8. Televisions and cable/satellite service.
9. Hot water heater(s).
10. All equipment and systems to support the bar.
11. All coolers and freezers.
12. Stoves, grills, hoods, and fryers.
13. Sinks and dishwashing equipment.
14. Storage racks and preparation tables.
15. All display units.
16. All counters to include ADA accessibility to conform with all required regulations.

I. County Responsibility

1. Finished ceilings and lighting to include lay in tiles and fluorescent fixtures.
2. Main water connection to the leased Premises sufficient to support the proposed layout at a point that is convenient for efficient distribution.
3. The main sanitary sewer connection to the leased Premises.
4. Electrical service sufficient to support the proposed use to a central location in the leased Premises.

5. Air conditioning service and distribution to the Premises sufficient to maintain the space at the same condition as the surrounding space.
6. Fire protection system for the Premises.

J. Service Standards:

1. Greeting: Respondent shall greet all of its customers in a friendly, prompt, and courteous manner. Telephones shall be answered promptly. Walk-in customers shall be given priority.
2. Food Service and Catering Menu: Respondent shall develop and maintain a food and beverage menu to meet the needs of both the traveling public and persons employed at the Airport. Prices for items on the food service menu shall be at Market Pricing. Respondents must provide in their proposal a complete listing of proposed food products with proposed pricing. Food offerings must include a variety of “grab and go” products as well as a variety of healthy options. Respondent shall use its best efforts to include local alternatives in the alcoholic beverage selections. Respondents shall also include a separate catering menu that identifies food selections and prices that will be offered to airport users for catering events.
3. Food Quality and Display: Respondent shall provide high quality, fresh, and professionally prepared and presented food in all visible display units. Prices will be professionally displayed in such a manner as to be easily visible and understood by potential customers.
4. Merchandising: Respondent shall display attractive merchandising that entices customers to purchase food, beverage and retail products. Respondent shall develop and implement creative and effective merchandising means within the CSA; those means may include, without limitation, merchandise displays, full display cases, promotional displays (for which Airports Director approval must be obtained), and attractive packaging. All signage and merchandising display concepts shall be included in the proposal. Respondent shall use its best efforts to include local alternatives in the merchandising selections.
5. Marketing: Respondent shall develop, implement and maintain a marketing and promotion program that will effectively inform private and commercial aviation service providers and other Airport tenants, persons employed at the Airport, and the general public of the food, beverage, and retail services offered at the Terminal by Respondent. Respondent shall provide daily food specials at discounted prices designed to encourage persons employed at the Airport to utilize the concession. Respondents are encouraged to identify creative promotions that have been successfully implemented at other locations.
6. Service: Respondent shall provide timely, attentive, and friendly service. Food and beverage orders and merchandise requests shall be taken promptly and in a friendly and courteous manner and delivered in reasonable time periods. Processing of payments for food service, beverages, and retail

products shall be prompt. Sales receipts shall be properly itemized and provided to the customer, shall reflect a description of the goods and services purchased, the individual price for each item of goods and services purchased, totals and applicable taxes. All customers shall be thanked for their patronage.

7. Credit Cards: Respondent shall accept traveler's checks and major credit cards for any purchase.
8. Hours of Service: Respondent shall provide all services required under this Agreement three hundred sixty-five (365) days a year with operating hours and staffing levels adequate for both the hourly and seasonal peaks in passenger traffic. The concessions shall be open for service commencing one hour prior to the first scheduled departure and stay open consistently until fifteen minutes prior to the last scheduled departure. The hours of operation for the concessions will be agreed to with the Airports Director. In the event of departure delays, the Respondent will use commercially reasonable efforts to keep the concession open until the last flight departs factoring in the value of customer service and the cost required to keep the concession open.
9. Testing and Inspection: The Respondent shall monitor, test, or inspect Respondent's services at any time through the use of a mystery shopping service at least once per year. Respondent shall provide the results of the test to the County within thirty (30) days following receipt of the report by Respondent. If findings indicate that the Respondent is not in compliance with the terms and conditions of this Agreement, a plan must be submitted in writing with the report and a corrective action plan provided within ten (10) calendar days after submission to the Airports Director.
10. Security Requirements: Respondent shall abide by, and require its agents, contractors, suppliers, and employees to abide by, and be subject to all rules and regulations which are now, or may from time to time, be promulgated by the County or the Airports Director concerning the management, operation, or use of the Airport, and specifically to abide by all provisions of the airport security plan on file in the office of the Airports Director. Respondent must comply with all security requirements of the County, Department of Homeland Security, the Federal Aviation Administration and any other governing agency. Respondent further agrees to provide airport identification badges as required by the County at its sole cost for all of its agents, contractors and employees serving at the Airport, and shall require said agents, contractors and employees to have such badges in their possession at all times while on duty at the Airport.
11. Badging: Respondent shall display the required security identification and access badges at all times while on duty at the Airport.
12. Retail Items: Respondent agrees to display and sell retail products that include local souvenirs, t-shirts, sweatshirts, convenience items, books, magazines, newspapers, toiletries, sundries, snacks, non-alcoholic beverages, over the counter medicines such as aspirin, pain relief medicine, cold & flu medicine, toothpaste, etc., and other retail products commonly found in

airport retail outlets. Respondents must include a listing of proposed products and process in the proposal. Respondents are encouraged to offer local products.

13. Employee Standards: Respondent shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the service standards set forth above. Each employee shall: (1) be clean, neat, and attired in the approved uniform; (2) be free from offensive body odor; (3) be professional, courteous, and friendly to the public; (4) not wear excessive amounts of jewelry, perfume, or cologne; and (5) wear the employee's Airport identification at all times while on duty, showing the names of both the Respondent and the employee, within the guidelines of all local, state and federal laws. Respondent shall discipline and, if necessary, discharge any employee who fails to conform to the foregoing standards while working at the Airport.
14. Sanitation, Hygiene, and Cleanliness: Respondent shall keep the CSA and the surrounding public areas free of debris, trash or soiled cleaning supplies (e.g. rags and buckets) originating from Respondent's operations or customers. Respondent shall ensure that all equipment, walls, floors, counters, tables and other surfaces are cleaned and sanitized frequently, and that employee areas are cleaned daily. Respondent shall keep the CSA free of hazardous conditions, shall keep public areas around the CSA free of hazardous conditions originating from Respondent's operations, and shall notify the County promptly of other hazardous conditions in the Public Areas outside the CSA. Respondent shall monitor areas within and contiguous to the CSA to ensure that they are kept clean and orderly, and that trash is not allowed to accumulate. Respondent shall ensure that all its employees conform to the employee standards set forth above and to personal hygiene and health requirements established by Respondent's policy(ies) and by federal, state, or local laws, rules, regulations and/or ordinances.
15. Garbage: Respondent shall gather, sort, and transport all garbage, refuse, and recyclable materials daily to the central collection point designated by the Airports Director. Respondent shall place all garbage, refuse, and recyclable materials in the appropriate containers at the designated collection point. Respondent is required to maximize its participation in a recycling program.
16. Deliveries: All deliveries shall be scheduled during non-peak aircraft arrival and departure times. The Airports Director may issue schedules of acceptable delivery times, which, upon reasonable notice to Respondent, Airports Director may adjust from time to time, and from which Respondent shall not deviate without Airports Director's prior consent.

K. Maintenance:

Respondent shall at all times and at its sole expense, keep the CSA and all improvements in the CSA, including furnishings, fixtures, and equipment, in a safe, neat, clean and orderly condition and appearance, normal wear and tear excepted. Without limiting the generality of

the foregoing, Respondent shall, at its sole cost and expense, be responsible for performing the following:

1. Janitorial services, providing janitorial supplies, window washing, floor treatment, wall cleaning, rubbish, and trash removal to the central collection point designated by the Airports Director.
2. Replacement of light bulbs in the CSA.
3. Cleaning of stoppages in sinks, plumbing fixtures and drain lines to the first “clean-out” outside the CSA.
4. Cleaning and maintaining grease traps.
5. Cleaning and replacement of filters in exhaust hoods.
6. Cleaning and maintaining the fire suppression system and related components required over the cooking appliances (*e.g.*, grill, fryer), including required periodic inspections.
7. Regularly scheduled maintenance of County-owned equipment and fixtures in conformity with manufacturer’s recommendations. (If necessary to prevent voiding manufacturer’s warranties, such maintenance shall be performed only by certified or authorized technicians.)
8. Maintaining hand fire extinguishers in accordance with applicable safety codes.
9. Supplying, stocking, servicing and maintaining Respondent-owned, -leased or -operated mobile food or beverage carts (including policing the area surrounding the same) at Airports Director approved locations within the Terminal.
10. Cleaning floors and floor coverings in and around the CSA.
11. Maintaining electrical loads within the designed capacity of the CSA’s electrical system. (Prior to making any change in the electrical loading which may exceed such capacity, Respondent shall first obtain Airports Director’s written consent).

L. Repairs

The County shall keep the structural components of the CSA (including the walls and roof), the mechanical systems serving the CSA (*i.e.* main HVAC, plumbing, electrical and natural gas systems), and the County-owned equipment and fixtures in good repair, subject to Respondent's maintenance obligations set forth above. County shall not be required to make any repairs to the CSA, mechanical systems or County-owned equipment or fixtures or any other elements of the CSA unless and until Respondent has notified County in writing of the need for such repairs. County shall have a reasonable period of time following receipt of such notice to commence and complete said repairs. Notwithstanding the foregoing, Respondent shall repair all damage to the CSA and all improvements on the CSA, including furnishings, fixtures, and equipment, caused by the negligence or willful acts or omissions of Respondent, its employees, agents, servants, or licensees. All repairs to the CSA done by or on behalf of Respondent shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original in materials and workmanship, and, except in emergencies requiring immediate response, shall have the prior written approval of the Airports Director. All repairs shall conform to the applicable rules and regulations and building codes prescribed from time to time by federal, state, or County or other jurisdiction having oversight rights for the CSA. The County shall be the sole judge of the quality of the repairs. Respondent expressly waives any and all claims for damages of any kind, including but not limited to loss of profits as a result of the interruption of Respondent's business, resulting from the need for repairs to the CSA, the mechanical systems or County-owned equipment or fixtures, whether such repairs are undertaken by the County or Respondent.

Respondent shall repaint or refinish in the same materials in existence, at its sole cost and expense, high traffic areas of the CSA subject to greater-than-normal wear on a schedule to be specified by Respondent, or as may be directed by the County if Respondent fails to specify a reasonable schedule. Respondent shall repair or replace Respondent's trade fixtures and equipment that become worn, chipped, dented, or gouged. All repainting and refinishing shall have the prior approval of the Airports Director.

M. ACDBE Participation

A goal of 0.95% ACDBE participation is strongly recommended for this Agreement. Respondents shall include in their submission a participation plan and proposed goal that the Respondent will use their best efforts to achieve.

SECTION B: SUBMISSION REQUIREMENTS

I. BACKGROUND, REFERENCES, AND BRANDING

Respondents shall provide a summary of the company's history, and a listing of the number of airports where the Respondent provides the services outlined. The Respondent shall identify contact information for three reference airports, the annual sales volume, the theming and/or brands offered, and contact information (name, phone, and e-mail). Respondent will identify how corporate support will be provided for the implementation and on-going operation, how the general manager will be selected and a detailed implementation plan.

Company information should also detail any branding concepts being proposed, how the theme will be marketed to the airport and local community, and national/regional brands to be offered, and identification of local brands that will be featured.

II. SAMPLE CONTRACT AND EXCEPTIONS

Attached is the Sample Contract that will be used for execution with the successful Respondent. Unless there are modifications that are agreed to at the sole discretion of the Airports Director, the sample form contract represents the final terms and conditions that the Respondents will be expected to adhere to.

Respondents shall include a list of any exceptions to the requirements of the RFP and attachment documents, if any, as well as the sample Agreement, on Form I. Any exceptions that the Proposer takes to any terms and conditions outlined in the RFP or to the terms of the basic contract form shall be outlined in Form I and will be considered in the evaluation of Proposals. If no deviations are identified and Proposer's proposal is accepted by the City, Proposer shall conform to all of the requirements specified therein.

III. PRODUCTS, MENU, AND PRICING

Respondents shall provide a detailed outline and description of all products, food items, alcoholic and non-alcoholic beverages, and a catering menu including proposed pricing. The Airports Director reserves the right to adjust the list with the successful Respondent.

IV. PRO FORMA AND FINANCIAL PROJECTIONS

Respondents must include a comprehensive product and service proposed offering outline as part of their proposal. Based on the offerings proposed, Respondent must submit a projected two (2) year pro forma to include gross sales by category by location and the commensurate calculation of the proposed Concession Fee revenue that will be due the County. The pro forma should be based on an enplanement level of 750,000 for the projected first year. For the second year, the pro forma should include an enplanement level of 800,000. The 800,000 enplanements is not a projection; rather, a consistent benchmark for evaluating the proposals received objectively.

V. RECRUITMENT, STAFFING, TRAINING, AND TRANSITION PLAN

Respondents shall include a detailed description of how they anticipate the recruitment of management and associates to operate the concessions. Information shall include sourcing, training methodologies, and a timeline for staffing. Respondents shall also include a detailed transition plan outlining plans for sourcing and availability of products and display units. Respondents shall provide a timeline for transition and what services and products will be available during the commencement period when the proposed improvements are being completed.

The staffing plan shall also include a detailed outline the staffing levels for each concession by time of day and day of week. Wage ranges for each position shall be identified along with a detail of whether the positions are full time or part time and what benefit package is included. This should be provided for each position category.

Respondents shall outline in detail the initial and recurrent training programs describing the source of the plan (i.e. on-line, other locations, management provided, etc.), how many hours are expected to be considered compliant, and methods for addressing non-compliant employees through training or coaching. This section should also include a detailed process for how customer complaints are handled.

VI. CAPITAL INVESTMENT, THEME, AND BRANDING

Respondents shall provide a listing of all capital equipment proposed by each location with the associated value. In addition, Respondents shall describe in detail the proposed buildout of each space and provide either renderings of the space or photos of other similar spaces that the Respondent operates. The proposal shall also include a proposed signage plan including the themes and/or brands. A summary of the total proposed investment should be included for evaluation purposes.

VII. CONCESSION FEE PERCENTAGES

Respondents shall identify in their proposal the concession fee schedule they are proposing. Under no circumstances, shall the Concession Fee Percentage be less than the percentages outlined in this RFP.

VIII. OPERATIONS, MAINTENANCE, AND REPAIR PLAN

Respondents shall outline in detail the proposed operations, maintenance and repair plan, how the plan is monitored and managed, resources required.

IX. ACDBE PARTICIPATION

Respondents shall identify the ACDBE participation plan and the projected percentage of participation.

X. SELECTION CRITERIA

BUSINESS QUALIFICATIONS, BACKGROUND, MAINTENANCE AND REPAIR PLAN, AND REFERENCES	10	Respondent's successful experience providing food, beverage, and retail programs at similar airports; general experience of company; references; management support; and maintenance and repair plan.
PROPOSED PRO FORMA, CAPITAL INVESTMENT, CONCESSION PERCENTAGE FEE, IMPROVEMENT/REFURBISHMENT PLAN	25	Respondent's pro forma projections including proposed pricing. Level of proposed capital investment and maintenance and repair plan.
MANAGEMENT, RECRUITING, STAFFING, TRAINING; AND TRANSITION PLAN	15	Respondent's ability to effectively provide corporate and local management to oversee operations on a day-to-day basis; recruiting plan; staffing plan; and transition plan.
THEMING AND BRANDING	25	Respondent's theme for the concession; proposed branding;
GENERAL RFP COMPLIANCE	5	Respondent's compliance with respect to all sections of the RFP; the level of exceptions to the Sample Contract; ACDBE plan and participation.
PROPOSED RETAIL AND FOOD PRODUCTS AND PRICING	20	Menu, product line, and proposed pricing.
TOTAL POINTS	100	

XI. SPECIAL INSTRUCTIONS

The selection of a Respondent to provide Food, Beverage, and Retail Services will be based on the following criteria:

- (1) All interested parties shall submit written responses that address each aspect of the categories identified in the sequence presented in the RFP. Each section shall

be clearly identified. Respondents may also include additional material they deem relevant to their selection. A maximum of 40 pages will be allowed excluding the required forms.

- (2) A Review Committee will evaluate the submitted proposals, rank their responsiveness to the Selection Criteria and identify the top-ranked Respondents. The County reserves the right to select a “short list” of the highest ranked Respondents depending on the total number of proposals received.
- (3) The top-ranked Respondents/short list will be required to make a presentation to the evaluation team on March 26, 2019 commencing at 9:00 a.m. CDT in the Airport conference room. Individual times will be allotted to each selected presenter at a later date. Each presentation will be conducted at the Respondent’s expense, including all travel costs. The County will expect the presentations to focus on concepts, build out, equipment, products, services, and pricing. Failure to present, if selected, will cause the proposal to be non-compliant and not eligible for award.
- (4) The Review Committee shall recommend the final, top-ranked Respondent to the Board of County Commissioners for final approval.

NOTE: Failure to provide all the required information, in the required format, may disqualify the vendor from further consideration

SECTION C: GENERAL SERVICES INSURANCE **REQUIREMENTS FOR LEASES**

REVISED: 08/13/2018

I. INSURANCE REQUIREMENTS

1. The lessee shall not occupy said premises until all required insurance has been obtained and the certificate of insurance has been approved by the Okaloosa County Risk Manager or designee.
2. All insurance policies shall be with insurers authorized to do business in the State of Florida.
3. All insurance shall include the interest of all entities named and their respective officials, employees & volunteers of each and all other interests as may be reasonably required by Okaloosa County. The coverage afforded the Additional Insured under this policy shall be primary insurance. If the Additional Insured have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.
4. With the exception of Workers' Compensation insurance, the County shall be shown as an Additional Insured with a Waiver of Subrogation on the Certificate of Insurance.
5. The County shall retain the right to reject all insurance policies that do not meet the requirement of this lease. Further, the County reserves the right to change these insurance requirements with 60-day prior written notice to the Lessee.
6. The County reserves the right at any time to require the Lessee to provide copies of any insurance policies to document the insurance coverage specified in this lease.

II. WORKERS' COMPENSATION INSURANCE

1. The Lessee shall secure and maintain during the life of this Lease Workers' Compensation insurance for all of his employees employed at the site or any site connected with this lease; evidence of insurance shall be furnished to the County.
2. Such insurance shall comply with the Florida Workers' Compensation Law.
3. No class of employee, shall be excluded from the Workers' Compensation insurance coverage. The Workers' Compensation insurance shall also include Employer's Liability coverage.

III. BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident. If the Lessee does not own vehicles, the Lessee shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Policy. Lessee must maintain this insurance coverage throughout the life of this lease.

IV. COMMERCIAL GENERAL LIABILITY INSURANCE

1. The Lessee shall carry Commercial General Liability insurance against all claims for Bodily Injury, Property Damage and Personal and Advertising Injury liability caused by the lessee.
2. Comprehensive Airline Liability Insurance coverage shall be endorsed to include the following:
 - 1.) Premises & Operations Liability
 - 2.) Occurrence Bodily Injury and Property Damage Liability (which shall not exclude (XCU) Explosion, Collapse and Underground Property Damage). Coverage shall be applicable to the operation of all mobile and ground equipment at the Airport.

V. INSURANCE LIMITS OF LIABILITY

The insurance required shall be written for not less than the following, or greater if required by law and shall include Employer's liability with limits as prescribed in this contract:

	<u>LIMIT</u>	
1. Workers' Compensation		
1.) State	Statutory	
2.) Employer's Liability	\$1,000,000	each
accident		
2. Business Automobile	\$5,000,000	each
accident		
(A combined single limit		
3. Airline Liability Insurance	\$200,000,000	each
occurrence		
(A combined single		
limit)		
4. Personal and Advertising Injury	\$1,000,000	each
occurrence		

VI. NOTICE OF CLAIMS OR LITIGATION

The Lessee agrees to report any incident or claim that results from this lease. The County representative shall receive written notice in the form of a detailed written report describing the incident or claim within ten (10) days of the Lessee's knowledge. In the event such incident or claim involves injury and/or property damage to a third party, verbal notification shall be given the same day the Lessee becomes aware of the incident or claim followed by a written detailed report within ten (10) days of verbal notification.

VII. INDEMNIFICATION & HOLD HARMLESS

To the fullest extent permitted by law, Lessee shall indemnify and hold harmless the County, its officers and employees from liabilities, damages, losses, and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or wrongful conduct of the Lessee.

VIII. CERTIFICATE OF INSURANCE

1. Certificates of insurance, evidencing all required coverage must be submitted to and approved by Okaloosa County. The certificate holder(s) shall be as follows: Okaloosa County, 5479A Old Bethel Road, Crestview, Florida, 32536.
2. The lessee shall provide a Certificate of Insurance to the County with a thirty (30) day prior written notice of cancellation; ten (10 days' prior written notice if cancellation is for nonpayment of premium).
3. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the lessee to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the Okaloosa County Purchasing Department at 5479-A Old Bethel Road,
Crestview, FL 32536
4. All certificates shall be subject to Okaloosa County's approval of adequacy of protection and the satisfactory character of the Insurer.
5. In no way will the entities listed as Additional Insured be responsible for, pay for, be damaged by, or limited to coverage required by this schedule due to the existence of a deductible or SIR.

6. GENERAL TERMS

Any type of insurance or increase of limits of liability not described above which, the Lessee required for its own protection or on account of statute shall be its own responsibility and at its own expense.

The carrying of the insurance described shall in no way be interpreted as relieving the Lessee of any responsibility under this lease.

The Lessee hereby waives all rights of subrogation against Okaloosa County and its consultants and other indemnities of the Lessee under all the foregoing policies of insurance.

IX. EXCESS/UMBRELLA INSURANCE

The Lessee shall have the right to meet the liability insurance requirements with the purchase of an EXCESS/UMBRELLS insurance policy. In all instances, the combination of primary and EXCESS/UMBRELLS liability coverage must equal or exceed the minimum liability insurance limits stated in this lease.

SECTION D: GENERAL PROPOSAL CONDITIONS

I. PRE-PROPOSAL ACTIVITY -

Except as provided in this section, Respondents are prohibited from contacting or lobbying the County, County Administrator, Commissioners, County staff, and Selection Committee members, or any other person authorized on behalf of the County related or involved with the solicitation. All inquiries on the scope of work, specifications, additional requirements, attachments, terms and general conditions or instructions, or any issue must be directed in writing, by US mail or email to:

Okaloosa County Purchasing Department
5479A Old Bethel Road
Crestview, FL 32536
Email: dmason@myokaloosa.com
jhyde@myokaloosa.com
(850) 689-5960

All questions or inquiries must be received no later than the last day for questions (reference RFP & Respondent's Acknowledgement form). Any addenda or other modification to the RFP documents will be issued by the County five (5) days prior to the date and time of closing, as a written addenda distributed to all prospective Respondents by posting to the Florida Online Bid System (Florida Purchasing Group) and the Okaloosa County Web Site.

To access the Florida Online Bid System go to: <https://www.bidnetdirect.com/florida> to access the Okaloosa County Web Site go to: <http://www.co.okaloosa.fl.us/purchasing/current-solicitations>.

Such written addenda or modification shall be part of the proposal documents and shall be binding upon each Respondent. Each Respondent is required to acknowledge receipt of any and all addenda in writing and submit with their proposal. No Respondent may rely upon any verbal modification or interpretation.

II. PREPARATION OF PROPOSAL

The proposal form is included with the proposal documents. Additional copies may be obtained from the County. The Respondent shall submit originals and bid forms in accordance with the public notice.

All blanks in the proposal documents shall be completed by printing in ink or by typewriter in both words and numbers with the amounts extended, totaled and the proposal signed. A proposal price shall be indicated for each section, proposal item, alternative, adjustment unit price item, and unit price item listed therein, or the words "No Proposal," "No Change," or "Not Applicable" entered. No changes shall be made to the phraseology of the form or in the items mentioned therein. In case of any discrepancy between the written amount and the numeric figures, the written amount shall govern. Any proposal which contains any omissions, erasures, alterations, additions, irregularities of any kind, or items not called for which shall in any manner fail to conform to the conditions of public notice inviting proposals may be rejected.

A proposal submitted by a corporation shall be executed in the corporate name by the president or a vice president or other corporate officer who has legal authority to sign.

A proposal submitted by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature). The official address of the partnership shall be shown below the signature.

A proposal submitted by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

A proposal submitted by an individual shall show the Respondent's name and official address.

A proposal submitted by a joint venture shall be executed by each joint venture in the manner indicated on the proposal form. The official address of the joint venture must be shown below the signature.

All signatures shall be in blue ink. All names shall be typed or printed below the signature.

The proposal shall contain an acknowledgement of receipt of all Addenda, the numbers of which shall be filled in on the form. The address and telephone # for communications regarding the proposal shall be shown.

If the Respondent is an out-of-state corporation, the proposal shall contain evidence of Respondent's authority and qualification to do business as an out-of-state corporation in the State of Florida.

III. INTEGRITY OF PROPOSAL DOCUMENTS

Respondents shall use the original Proposal documents provided by the Purchasing Department and enter information only in the spaces where a response is requested. Respondents may use an attachment as an addendum to the Proposal documents if sufficient space is not available. Any modifications or alterations to the original proposal documents by the Respondent, whether intentional or otherwise, will constitute grounds for rejection of a proposal. Any such modifications or alterations that a Respondent wishes to propose must be clearly stated in the Respondent's response in the form of an addendum to the original proposal documents.

IV. SUBMITTAL OF PROPOSAL

A proposal shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to proposal and shall be enclosed in an opaque sealed envelope plainly marked with the project title (and, if applicable, the designated portion of the project for which the proposal is submitted), the name and address of the Respondent, and shall be accompanied by the proposal security and other required documents. It is the Respondent's responsibility to assure that its proposal is delivered at the proper time and place. Offers by telegram, facsimile, or telephone will **NOT** be accepted.

Note: Crestview is not a next day delivery site for overnight carriers.

V. MODIFICATION & WITHDRAWAL OF PROPOSAL

A proposal may be modified or withdrawn by an appropriate document duly executed in the manner that a proposal must be executed and delivered to the place where proposals are to be submitted prior to the date and time for the opening of proposals.

If within 24 hours after proposals are opened any Respondent files a duly signed written notice with the County and promptly thereafter demonstrates to the reasonable satisfaction of the County that there was a material substantial mistake in the preparation of its proposal, that Respondent may withdraw its proposal, and the proposal security may be returned. Thereafter, if the work is re-proposal, that Respondent will be disqualified from 1) further purposing on the work, and 2) doing any work on the contract, either as a subcontractor or in any other capacity.

VI. PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

All proposals will remain subject to acceptance or rejection for ninety (90) calendar days after the day of the proposal opening, but the County may, in its sole discretion, release any proposal and return the proposal security prior to the end of this period.

VII. CONDITIONAL & INCOMPLETE PROPOSALS

Okaloosa County specifically reserves the right to reject any conditional proposal and proposals which make it impossible to determine the true amount of the proposal.

VIII. APPLICABLE LAWS & REGULATIONS

All applicable Federal and State laws, County and municipal ordinances, orders, rules and regulations of all authorities having jurisdiction over the project shall apply to the proposal throughout, and they will be deemed to be included in the contract the same as though they were written in full therein.

IX. DISQUALIFICATION OF RESPONDENTS

Any of the following reasons may be considered as sufficient for the disqualification of a Respondent and the rejection of its proposal:

- a. Submission of more than one proposal for the same work from an individual, firm or corporation under the same or different name.
- b. Evidence that the Respondent has a financial interest in the firm of another Respondent for the same work.
- c. Evidence of collusion among Respondents. Participants in such collusion will receive no recognition as Respondents for any future work of the County until such participant has been reinstated as a qualified Respondent.
- d. Uncompleted work which in the judgment of the County might hinder or prevent the prompt completion of additional work if awarded.
- e. Failure to pay or satisfactorily settle all bills due for labor and material on former contracts in force at the time of advertisement of proposals.
- f. Default under previous contract.
- g. Listing of the Respondent by Local, State or Federal Government on its barred/suspended vendor list.

X. AWARD OF CONTRACT

Okaloosa County Review - A selection committee will review all proposals and will participate in the Recommendation to Award.

The contract shall be awarded to the responsible and responsive Respondent whose proposal is determined to be the most advantageous to the County, taking into consideration the price and other criteria set forth in the request for proposals. The County reserves the right to reject any and all proposals or to waive any irregularity or technicality in proposals received. The County shall be the sole judge of the proposal and the resulting negotiated agreement that is in its best interest and its decision shall be final.

Okaloosa County reserves the right to waive any informalities or reject any and all proposals, in whole or part, to utilize any applicable state contracts in lieu of or in addition to this proposal and to accept the proposal that in its judgment will best serve the interest of the County.

Okaloosa County specifically reserves the right to reject any conditional proposals and proposals which make it impossible to determine the true amount of the proposal. Each item must be proposal separately and no attempt is to be made to tie any item or items to any other item or items.

XI. DISCRIMINATION

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a proposal on a contract to provide goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

XII. PUBLIC ENTITY CRIME INFORMATION

Pursuant to Florida Statute 287.133, a Respondent may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

XIII. CONFLICT OF INTEREST

The award hereunder is subject to the provisions of Chapter 112, Florida Statutes. All Respondents must disclose with their proposals the name of any officer, director, or agent who is also a public officer or an employee of the Okaloosa Board of County Commissioners, or any of its agencies. Furthermore, all Respondents must disclose the name of any County officer or employee who owns, directly or indirectly, an interest of five percent (5%) or more in the firm or any of its branches.

Note: For Respondent's convenience, this certification form is enclosed and is made a part of the proposal package.

XIV. REORGANIZATION OR BANKRUPTCY PROCEEDINGS

Proposals will not be considered from Respondents who are currently involved in official financial reorganization or bankruptcy proceedings.

XV. INVESTIGATION OF RESPONDENT

The County may make such investigations, as it deems necessary to determine the stability of the Respondent to perform the work and that there is no conflict of interest

as it relates to the project. The Respondent shall furnish to the Owner any additional information and financial data for this purpose as the County may request.

XVI. CONE OF SILENCE

The Okaloosa County Board of County Commissioners has established a solicitation silence policy (**Cone of Silence**) that prohibits oral and written communication regarding all formal solicitations for goods and services (formal proposals, Request for Proposals, Requests for Qualifications) issued by the Board through the County Purchasing Department. The period commences from the date of advertisement until award of contract.

Note: For Respondent's convenience, this certification form is enclosed and is made a part of the proposal package.

XVII. REVIEW OF PROCUREMENT DOCUMENTS

Per Florida Statute 119.071(1)(b)2. sealed bids, proposals, or replies received by the County pursuant to a competitive solicitation are exempt from public disclosure until such time as the County provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

XVIII. COMPLIANCE WITH FLORIDA STATUTE 119.0701

The Respondent shall comply with all the provisions of section 119.0701, Florida Statutes relating to the public records which requires, among other things, that the Respondent: (a) Keep and maintain public records; (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Respondent upon termination of the contract.

XIX. PROTECTION OF RESIDENT WORKERS –

The Okaloosa County Board of County Commissioners actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verifications, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verifications. The Respondent shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. Okaloosa County reserves the right to request documentation showing compliance with the requirements.

Respondents doing construction business with Okaloosa County are required to use the Federal Government Department of Homeland Security's website and use the E-Verify

Employment Eligibility Verifications System to confirm eligibility of all employees to work in the United States.

XX. AUDIT

If requested, Respondent shall permit the County or an authorized, independent audit agency to inspect all data and records of Respondent relating to its performance and its subcontracts under this contract from the date of the contract through and until three (3) years after the expiration of contract.

XXI. EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION

Respondent shall not discriminate against any employee or an applicant for employment because of race, color, religion, gender, sexual orientation, national origin, age, familial status or handicap.

XXII. NON-COLLUSION

Respondent certifies that it has entered into no agreement to commit a fraudulent, deceitful, unlawful or wrongful act, or any act which may result in an unfair advantage over other Respondents. See Florida Statute 838.22.

XXIII. UNAUTHORIZED ALIENS/PATRIOT'S ACT

The knowing employment by Respondent or its subcontractors of any alien not authorized to work by the immigration laws is prohibited and shall be a default of the contract. In the event that the Respondent is notified or becomes aware of such default, the Respondent shall take steps as are necessary to terminate said employment with 24 hours of notification or actual knowledge that an alien is being employed. Respondent's failure to take such steps as are necessary to terminate the employment of any said alien within 24 hours of notification or actual knowledge that an alien is being employed shall be grounds for immediate termination of the contract. Respondent shall take all commercially reasonable precautions to ensure that it and its subcontractors do not employ persons who are not authorized to work by the immigration laws.

SECTION E: ADDITIONAL REQUIRED DOCUMENTS

THE FOLLOWING DOCUMENTS SHALL BE SUBMITTED WITH THE BID PACKET. FAILURE TO SUBMIT ALL REQUIRED FORMS MIGHT RESULT IN YOUR SUBMITTAL BEING DEEMED NON-RESPONSIVE:

- A. Drug-Free Workplace Certification Form
- B. Conflict of Interest
- C. Federal E-Verify
- D. Cone of Silence
- E. Indemnification and Hold Harmless
- F. Company Data
- G. System of Awards Management
- H. Addendum Acknowledgement
- I. Sample Contract Exceptions
- J. Certification Regarding Lobbying
- K. Governmental Debarment & Suspension

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DRUG-FREE WORKPLACE CERTIFICATION

THE BELOW SIGNED RESPONDENT CERTIFIES that it has implemented a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under quote a copy of the statement specified in subsection 1.
4. In the statement specified in subsection 1, notify the employees that, as a condition of working on the commodities or contractual services that are under quote, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in, drug abuse assistance or rehabilitation program if such is available in employee's community, by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

DATE: _____ SIGNATURE: _____

COMPANY: _____ NAME: _____

(Typed or Printed)

ADDRESS: _____ TITLE: _____

TITLE: _____

TITLE: _____

E-MAIL: _____

PHONE NO.: _____

CONFLICT OF INTEREST DISCLOSURE FORM

For purposes of determining any possible conflict of interest, all Respondents, must disclose if any Okaloosa Board of County Commissioner, employee(s), elected officials(s), or if any of its agencies is also an owner, corporate officer, agency, employee, etc., of their business.

Indicate either “yes” (a county employee, elected official, or agency is also associated with your business), or “no.” If yes, give person(s) name(s) and position(s) with your business.

YES: _____

NO: _____

NAME(S)

POSITION(S)

FIRM NAME: _____

BY (PRINTED): _____

BY (SIGNATURE): _____

TITLE: _____

ADDRESS: _____

PHONE NO.: _____

E-MAIL: _____

DATE: _____

FEDERAL E-VERIFY COMPLIANCE CERTIFICATION

In accordance with Okaloosa County Policy and Executive Order Number 11-116 from the office of the Governor of the State of Florida, Respondent hereby certifies that the U.S. Department of Homeland Security's E-Verify system will be used to verify the employment eligibility of all new employees hired by the Respondent during the contract term, and shall expressly require any subcontractors performing work or providing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Securities E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term; and shall provide documentation such verification to the COUNTY upon request.

As the person authorized to sign this statement, I certify that this company complies/will comply fully with the above requirements.

DATE: _____

SIGNATURE: _____

COMPANY: _____

NAME: _____

ADDRESS: _____

TITLE: _____

E-MAIL: _____

PHONE NO.: _____

CONE OF SILENCE

The Board of County Commissioners have established a solicitation silence policy (**Cone of Silence**) that prohibits oral and written communication regarding all formal solicitations for goods and services (ITB, RFP, ITQ, ITN, and RFQ) or other competitive solicitation between the bidder (or its agents or representatives) or other entity with the potential for a financial interest in the award (or their respective agents or representatives) regarding such competitive solicitation, and any County Commissioner or County employee, selection committee member or other persons authorized to act on behalf of the Board including the County's Architect, Engineer or their sub-consultants, or anyone designated to provide a recommendation to award a particular contract, other than the Purchasing Department Staff.

The period commences from the time of advertisement until contract award.

Any information thought to affect the committee or staff recommendation submitted after bids are due, should be directed to the Purchasing Manager or an appointed representative. It shall be the Purchasing Manager's decision whether to consider this information in the decision process.

Any violation of this policy shall be grounds to disqualify the Respondent from consideration during the selection process.

All Respondents must agree to comply with this policy by signing the following statement and including it with their submittal.

I _____ representing _____
Signature Company Name

On this _____ day of _____ 2019 hereby agree to abide by the County's "**Cone of Silence Clause**" and understand violation of this policy shall result in disqualification of my proposal/submittal.

INDEMNIFICATION AND HOLD HARMLESS

Respondent shall indemnify and hold harmless the County, its officers and employees from liabilities, damages, losses, and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Respondent and other persons employed or utilized by the Respondent in the performance of this Agreement.

Respondent's Company
Name

Authorized Signature – Manual

Physical Address

Authorized Signature – Typed

Mailing Address

Title

Phone Number

FAX Number

Cellular Number

After-Hours Number(s)

Date

Email

COMPANY DATA

Respondent's Company Name: _____

Physical Address & Phone #: _____

Contact Person (Typed-Printed): _____

Phone #: _____

Cell #: _____

Email: _____

Federal ID or SS #: _____

Respondent's License #: _____

Respondent's DUNS #: _____

Fax #: _____

Emergency #'s After Hours,
Weekends & Holidays: _____

SYSTEM FOR AWARD MANAGEMENT (OCT 2016)

(a) Definitions. As used in this provision.

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM) database” means that.

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into the SAM database;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM database.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(3) Company Physical Street Address, City, State, and Zip Code.

(4) Company Mailing Address, City, State and Zip Code (if separate from physical).

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

(10) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) Offerors may obtain information on registration at <https://www.acquisition.gov> .

Offerors SAM information:

Entity Name: _____

Entity Address: _____

Duns Number: _____

CAGE Code: _____

SAMPLE CONTRACT EXCEPTIONS

Respondent shall identify in the space below any provision in the Sample Contract that the Respondent requests that the County consider for amendment. If not noted explicitly in this exceptions section and agreed to at the sole discretion of the Airports Director, no further consideration will be given to altering the Sample Contract with the successful Respondent. Respondents acknowledge that the Respondent agrees in submitting a proposal that the Respondent will execute the Sample Contract in form unless changes are noted and agreed to by the Airports Director.

PROVISION

SUGGESTED CHANGE

LOBBYING - 31 U.S.C. 1352, as amended

APPENDIX A, 44 CFR PART 18--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the

programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [*contractor / consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*contractor / consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards

that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

E-VERIFY

Enrollment and verification requirements.

- (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-
 - a. Enroll. Enroll as a Federal Contractor in the E-Verify Program within thirty (30) calendar days of contract award;
 - b. Verify all new employees. Within ninety (90) calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); and,
 - c. Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within ninety (90) calendar days after date of enrollment or within thirty (30) calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
- (2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of
 - a. All new employees.
 - i. Enrolled ninety (90) calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or
 - b. Enrolled less than ninety (90) calendar days. Within ninety (90) calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the contractor, who are working in the United States, whether or not assigned to the

contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section; or

ii. Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within ninety (90) calendar days after date of contract award or within thirty (30) days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State of local government or the government of a Federally recognized Indian tribe, or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements of (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within one hundred eighty (180) calendar days of-

i. Enrollment in the E-Verify program; or

ii. Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contract information provided in the E-Verify program Memorandum of Understanding (MOU)

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

i. The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor, will be referred to a suspension or debarment official.

ii. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to

suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

iii. Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

- (a) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
- (b) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
- (c) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12. Policy for a Common Identification Standard for Federal Employees and Contractors.

Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph €(appropriately modified for identification of the parties in each subcontract that-

- (1) Is for-(i) Commercial and noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
(ii) Construction;
- (2) Has a value of more than \$3,500; and
- (3) Includes work performed in the United States.

** This is a sample agreement **

LEASE AND CONCESSION AGREEMENT:

FOOD AND BEVERAGE

BETWEEN

OKALOOSA COUNTY, FLORIDA

AND

_____ **(Contractor)**

Effective _____, 2019

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**LEASE AND CONCESSION AGREEMENT FOR FOOD AND BEVERAGE AT THE
DESTIN-FORT WALTON BEACH AIRPORT**

RFP 31-19

**For the Management and Provision of Food, Beverage, and Retail Concession Products and
Services for the Destin-Fort Walton Airport (VPS)**

THIS LEASE AND CONCESSION AGREEMENT (“Agreement”), made and entered into this _____ day of _____, 2019, by and between Okaloosa County, Florida, a political subdivision of the state of Florida, having an address of 1250 N. Eglin Pkwy., Shalimar, FL (the “County”) and, _____, a _____ certified to conduct business in the State of Florida, with its principal office and address of _____ (“Contractor”).

EXHIBITS

The exhibits listed below and attached to this Agreement are incorporated herein by this reference:

- | | |
|-----------|--|
| Exhibit A | Invitation to Bid for Food and Beverage Concessions at the Destin-Fort Walton Beach Airport (“VPS”) and the Contractor’s submittal (the “Proposal”); |
| Exhibit B | Concession Service Area (CSA) |
| Exhibit C | Sample Menu, Products, and Pricing |
| Exhibit D | Contractor provided equipment within CSA |
| Exhibit E | Insurance Requirements |
| Exhibit F | Public Entity Crimes |
| Exhibit G | Monthly Reporting Form |

RECITALS

1. **WHEREAS**, the County is the owner and operator of the Destin-Fort Walton Beach Airport (the “Airport”) located in the Okaloosa County, Florida; and
2. **WHEREAS**, the County has determined that a food and beverage concession at the Airport is important for the proper accommodation of the general public utilizing the Airport; and
3. **WHEREAS**, the food and beverage area inside the terminal comprise the area described in Exhibit B; and
4. **WHEREAS**, pursuant to solicitation ITB AP 31-19, Contractor has submitted the Proposal dated _____, 2019 to the County; and
5. **WHEREAS**, on the basis of the Proposal, the County has selected Contractor for award of this Agreement.

NOW THEREFORE, in recognition and reliance upon the foregoing, and in consideration of the mutual covenants and promises herein contained, and other valuable considerations, the parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1. Definitions.

The following words and phrases shall have the following meaning:

- 1.1.1 “Airport” means the Destin-Fort Walton Beach Airport.
- 1.1.2 “Airport Concession Disadvantaged Business Enterprise” or “ACDBE” has the meaning set forth in Title 49, Part 23 of the Code of Federal Regulations, as now enacted, or hereafter amended or any successor regulation specifically enacted to replace Title 49, Part 23.
- 1.1.3 Airports Director: shall mean the Airports Director or any authorized designee as determined by the Airports Director.
- 1.1.4 “Airport Terminal” and “Terminal” shall mean the passenger terminal building located at 1701 State Rd. 85N, Eglin AFB, FL 32542, as may be modified from time to time at the sole discretion of the County.
- 1.1.5 “Annual Gross Revenues” means the total Gross Revenue of Contractor for each Contract Year.
- 1.1.6 “Concession Service Area (“CSA”)” is the area in the Airport Terminal designated by this Agreement and indicated on Exhibit B, as the location(s) where the business of Contractor may be conducted.
- 1.1.7 “Contract Year” means the twelve (12) month period, beginning on and ending on, and each twelve (12) month period thereafter, until the termination of this Agreement.
- 1.1.8 CSA Improvements: shall mean, collectively, all improvements constructed on and within the CSA by the County and Contractor, including such items as decorations, counters, signage, partitions, wiring, lighting, plumbing fixtures, piping, finished ceilings, ventilation duct work, grills, floor and wall coverings, heaters, cabinets, sinks, counters, and other related improvements.
- 1.1.9 “FAA” means the Federal Aviation Administration.
- 1.1.10 “Force Majeure” means any event or cause beyond the reasonable control of the party otherwise required to take an action or perform hereunder and which is not due to the fault, action, or inaction of such party, including but not limited to, strikes, riots, acts of God, shortages of labor or materials, war, governmental actions or inactions or inability to obtain necessary governmental approvals for actions required hereunder (including, but not

limited to, permits and licenses), or the failure of the other party to perform its obligations hereunder. Either party desiring to rely upon such a cause shall, when the cause arises, give prompt notice thereof to the other party and, when the cause ceases to exist, shall give prompt notice thereof to the other party.

- 1.1.11 "Gross Revenues," and "Gross Revenues of Contractor," means the revenues or sales price of all food, beverages, retail, and any other merchandise and items sold or dispensed by the Contractor on the Airport and the charges made for all services performed by the Contractor, excluding returns where Contractor refunds the sale price to the customer, employee discounted sales, and discounted employee meal specials as identified below. Gross Revenues shall not include state and local sales taxes collected by Contractor from its customers. Contractor will offer an employee discount program of fifteen percent (15%) on retail products and will offer a discounted employee meal program available daily for all airport employees. All reports of Gross Sales are subject to audit by the County. The County reserves the right to audit all financial records related to the reporting of concession fees and the annual MAG as provided in this Agreement.
- 1.1.12 "Leasehold Improvement(s)" or "Improvements" means all structures, furnishings, displays, equipment, trade fixtures, and all other improvements and fixtures that are or become permanently installed or affixed at the Assigned Area, together with all additions, alterations, repairs, and modifications thereto. Any structure, furnishing, display, equipment, trade fixture, fixture, or any other improvement that is nailed, bolted, stapled, or otherwise permanently affixed to any Assigned Area is considered permanently installed or affixed and is included within the definition of Leasehold Improvement. The term "Leasehold Improvements" shall not include "Personality," as defined in Article 1.18 herein.
- 1.1.13 Market Pricing: shall mean prices that are within ten percent (10%) of prices for comparable products available at similar locations in Okaloosa County. Contractor and the Airports Director will mutually agree on the benchmark locations to be used for Market Pricing comparisons.
- 1.1.14 "Minimum Annual Guarantee" means the minimum amount of money that is due annually and payable monthly to Authority from Contractor, as provided in this Agreement.
- 1.1.15 "Monthly Gross Revenues" means the aggregate amount of all Gross Revenues of Contractor during any month.
- 1.1.16 "Percentage Fee" is the aggregate of the amounts that are derived as a percentage of Gross Revenues, as provided in this Agreement.
- 1.1.17 "Privilege Fees" means fees payable to the County by Contractor pursuant to this Agreement.
- 1.1.18 "TSA" means the Transportation Security Administration.

ARTICLE 2
DESIGNATED AREAS AND RELOCATION

Section 2.1 Designation of Assigned Area: The County hereby leases to Contractor and Contractor hereby agrees to lease from the County the following Concession Area(s), which, collectively, is hereinafter called the “Assigned Area(s)” as shown on Exhibit B. The Concession Area(s) include the following:

7. The landside retail space across from the checkpoint.
8. The Concourse A retail space located on the ground floor in concourse A.
9. The upper level space in concourse B for the top of the escalator back to the overlook space above the escalator.
10. The current sandwich shop, bar, and seating area to the east of the escalator prior to the gates.
11. The current retail space adjacent to gates B1 and B3.
12. The retail space at the end of concourse B.

In addition, Contractor shall have the right to use common areas subject to prior approval from the County, such as common corridors, and any other areas associated with the Terminal that are not designated for use by any other Airport tenant or user.

Section 2.2 Relocation Rights: The Director shall have the right to add, substitute, relocate or reclaim portions of the Concession Areas upon reasonable notice to Contractor. Any relocation of Concession Areas will be reasonable in regard to the selection of substitute space that is as near comparable as possible. If such relocation is necessary, the County will not be liable or responsible for an inconvenience or loss by Contractor of work time or business resulting from the relocation provided that County timely undertakes reasonable efforts to prevent or minimize such inconvenience or loss. Except as provided below with respect to the Future Premises, in the event that the Premises are relocated, Contractor will be reimbursed the unamortized investment of the relocated Concession Area to the extent Contractor cannot in the exercise of best efforts recoup its Unamortized Investment by taking steps to recoup the same, including, but not limited to, by (i)

Section 2.3 Access: Subject to Section 3.2 hereof, Contractor has the right of free access, ingress to and egress from the Premises, for Contractor’s employees, agents, guests, patrons and invitees.

Section 2.4 As is Condition: Contractor has leased the Concession Areas after a full and complete examination of the Concession Areas, and has full knowledge of their present uses and non-uses. Contractor accepts the foregoing in the condition or state in which they are now without any representation or warranty, express or implied in fact or by law, and without recourse to the County as to the nature, condition or usability or use to which the Concession Areas may be put. The County shall not be obligated to provide any additional improvements or service of any type, character, or nature (including electrical, conduits, water, sewer, gas, HVAC, cooking exhaust systems or telephone outlets) on or about the Concession Areas other than those expressly provided in this Agreement. Contractor assumes the full and sole responsibility for the condition, operation, repair and maintenance of the Concession Areas.

ARTICLE 3
OPERATION OF CONCESSION

Section 3.1 Non-exclusive specific privileges, uses and rights: This concession is a non-exclusive concession Agreement, and the County shall have the right to negotiate and execute substantially similar arrangements with any other individual, firm, or corporation for engaging in similar activities at the Airport. The County shall not, however, during the Base Term or Option Term, if executed, grant to any other individual, firm or corporation, a similar concession upon terms or conditions materially more favorable than those herein granted Contractor.

The County hereby grants to Contractor the following non-exclusive specific privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants set forth in this Agreement. Contractor shall operate from the Assigned Area(s) depicted on Exhibit B, titled Assigned Area, attached hereto and made a part hereof.

a Contractor shall have the non-exclusive right, privilege and obligation to sell in the Airport Terminal for on-Airport consumption and operate food and beverage services within the Airport Terminal including, but not limited to: seated dining, snack bars and cocktail lounges. All of such sales may only be conducted from the Assigned Area according to the terms and conditions of this Agreement. Contractor shall have no sublicensee, subcontractor or subtenant operators of any food or beverage services provided hereunder, except as set forth in Article 17 or as specifically approved in writing by the County. For those facilities operated directly by Contractor, Contractor shall be the holder of any franchises that are required in connection with any of the food and beverage services provided hereunder. Contractor's ACDBE subcontractors described by Article 22 may be the holder of franchises required in connection with the food or beverages provided by said ACDBE.

b The rights granted herein are non-exclusive and the County may, at any time, grant to other parties (via lease, license, or other types of agreements) the same or similar rights as those granted herein.

c Contractor expressly agrees for itself, its permitted subleases, successors and assigns, to prevent any use of the Assigned Area which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.

Section 3.2 Description of General Privileges, Uses and Rights: In addition to the privileges granted in Article 3.1 of this Agreement, the County hereby grants to Contractor:

a The non-exclusive use of the Public Areas within the Terminal for Contractor, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of the County. County shall have the full right and authority to make all rules and regulations as the County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and

b. For so long as Contractor is not in default hereunder, Contractor shall and may peacefully and quietly have, hold, and enjoy the Assigned Area, solely for the purposes provided hereunder during the Term of this Agreement, and subject to the terms and provisions of this Agreement.

c. The non-exclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Contractor, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder.

d. Nothing herein contained shall be construed to grant Contractor, its employees, contractors, patrons, invitees, suppliers of service, agents or authorized sublessees, if any, the right to use or occupy any space or area at the Airport, improved or unimproved, that is leased or assigned to a third party. The general privileges, uses and rights granted in this Article 3.2 shall be subject to the terms, conditions and covenants set forth in this Agreement.

Section 3.3 Restrictions of Privileges, Uses and Rights: The rights granted hereunder are expressly limited to the operation and management of a food and beverage concession. Contractor covenants and agrees that the Assigned Area(s) shall be used solely for the uses permitted in sections 3.1 and 3.2 above and for no other purposes whatsoever. Contractor acknowledges and agrees that Contractor shall not have the exclusive right to conduct a food and beverage concession at the Airport and the County may arrange with others for similar activities at the Airport. Failure of Contractor to use the Assigned Area for purposes specifically set forth in this Agreement shall constitute a default under this Agreement.

ARTICLE 4

TERM

Section 4.1 Term: This Agreement shall be binding only upon execution of this Agreement by both parties. The term and Contractor's obligations to pay fees hereunder shall commence on June 7, 2019 (hereinafter called the "Commencement Date"). The term of this Agreement shall thereafter continue for a period of ten (10) years until _____, 2029.

Section 4.2 Commencement Date: Contractor's failure to commence operations on the Commencement Date will result in inconvenience to the public and will adversely affect the operation of the Airport. Quantification of the resulting damages is difficult. Contractor therefore agrees to pay the County liquidated damages in accordance with this Section at the rate of five hundred dollars (\$500.00) a day starting on and including the Commencement Date, that Contractor has not yet commenced operations in accordance with this Agreement. The parties agree that the liquidated damages set forth herein are reasonable estimates of the actual damages that would be incurred by the public and the County for breach of the covenant to commence operations on the Commencement Date if such failure to commence was due to the actions or inactions of the Contractor.

Section 4.3 Renewals: Each party shall have the right, but not the obligation to extend the term of this Agreement for one (1) additional five (5) year term, upon a mutually agreed upon and executed amendment in writing to this Agreement (the “Option Term”). For Contractor to exercise this option, Contractor must not be in default under this Agreement.

- a. Each party shall exercise its option to extend the term of this Agreement by providing the other party written notice of such exercise at least one hundred eighty (180) days prior to the expiration of the then current term or any extension thereto.
- b. All other provisions of this Agreement shall apply during any term extension(s).
- c. In order to exercise the Option Term, Contractor must deposit with the County with a cashiers check or letter of credit in the amount of one hundred thousand dollars (\$100,000.00) to be used for improvements to the CSA during the Option Term. Payment or a letter of credit shall be deposited with the County prior to the execution of the Option Term extension.

Section 4.4 Holding Over: In the event that the Base Term expires and the Option Term is not exercised or a new agreement has not been executed by the end of the Option Term, then at the sole discretion and upon written consent of the Airports Director, this Agreement shall continue in effect on a month-to-month basis under the terms and conditions set forth in this Agreement subject to the adjustment of concession fees to be established at the sole discretion of the Airports Director. The consent of the County to continue operating on a month-to-month basis may be terminated upon thirty (30) days’ written notice to Contractor.

ARTICLE 5

CONCESSION PAYMENT AND STATEMENTS

Section 5.1 Concession Fees: The following concession fees shall be payable to the County on Gross Revenues resulting from sales on the Airport or products and/or services originating at the Airport and sold to parties not on the Airport:

- a. Liquor- fifteen percent (16%)
- b. Food, non-alcoholic beverages- fourteen percent (14%)
- c. Retail- fourteen percent (14%)
- d. Security Fee- one quarter of one percent (0.025%)
- e. If sales in any category listed above exceed the previous year’s sales for that category in any month, there shall be an additional one percent (1%) Concession Fee due and payable applied against the excess amount. (Example: If sales from the previous year for a category were \$100,000 and for the current year are \$110,000, there would be a one percent (1%) fee applied against the additional \$10,000).

Section 5.2 Minimum Annual Guarantee: Contractor shall **pay the greater of** the concession fee as outlined above or a Minimum Annual Guarantee (“MAG”). The MAG for the first year shall be three hundred fifty thousand dollars (\$350,000.00). For each subsequent year through the Base Term and Option Term, if executed, the MAG shall be re-established annually at eight five percent (85%) of the previous years’ actual payment to the County. During the Base Term and Option Term, if

exercised, under no circumstances shall the MAG be lower than the first year MAG payment made as part of this Agreement.

The greater of the calculated concession fee or MAG shall be due and payable to the County on a monthly basis. Contractor shall furnish a statement of Gross Revenue as outlined above to the County on or before the tenth (10th) day of each month following the month to which such Gross Revenues relate. Payment shall be due and payable within ten (10) calendar days thereafter.

Section 5.3 Monthly Statements: Contractor shall provide to the County, by the tenth (10th) day of each month, a statement containing the following information as identified in **Exhibit D** with respect to Contractor's operations at the Airport for the immediately preceding month:

- a. Gross Receipts for all food and beverage sales except alcoholic beverages by location
- b. Gross Receipts for alcoholic beverage sales by location
- c. Gross Receipts for all retail sales by location
- d. Gross Receipts for all catering alcoholic sales and ordering unit
- e. Gross Receipts for all food and non-alcoholic catering sales and ordering unit
- f. Gross Receipts for all employee meal specials
- g. Gross Receipts for all discounted employee retail sales by location
- h. Gross Receipts for all catering food and alcohol

The County reserves the right to adjust the standard reporting form from time to time at its sole discretion.

Section 5.4 Late Payment or Statement: If Contractor is delinquent for thirty (30) days or longer in paying any amounts owed to the County under this Agreement, Contractor shall pay to the County a late payment charge assessed on the delinquent amount at the County's then-prevailing rate on delinquent accounts (the rate at the date of execution of the Agreement is one and one-half percent (1½%) per month). The late payment charge shall accrue from the date the delinquent amount was due until paid.

ARTICLE 6 OTHER PAYMENTS AND FEES

Section 6.1 Repair and Refurbishment Fund: Because the County is offering a Base Term of ten (10) years and with the wear and tear associated with that length of contract, the County will require the Contractor to establish a DEDICATED Base Term Repair and Replacement Fund at the commencement of the third year of the contract in the amount of one hundred thousand dollars (\$100,000.00). The fund will be used at the sole discretion of the Airports Director to fund any mutually agreed to major maintenance, replacement, or refurbishment associated with the CSA. The fund will be maintained by the County. If the Contractor desires to make a recommendation to use the fund for any authorized use, Contractor shall provide a written proposal the Airports Director to include the nature of the request, the expected benefits (financial and/or customer service), what is being replaced (if applicable), timeline, and the projected cost. The Airports Director will review and provide a written response within thirty (30) calendar days upon receipt. If there is a balance remaining at the end of the Base Term, the fund balance will carry forward through the end of the Option Term, if exercised. If the Option Term is not exercised, and remaining balance will remain with the County to be used at the County's sole discretion.

An additional Option Term Repair and Refurbishment Fund requirement of one hundred thousand dollars (\$100,000.00) is required by the Contractor in order to execute the Option Term. The amount must be deposited with the County prior to the execution of the Option Term. The same process will be followed for using the fund for qualifying projects. If there is a fund balance at the end of the Option Term, the remaining balance shall be retained by the County for its use, at the sole discretion of the Airports Director.

Section 6.2 Security Fee: For use of the security services at the Airport to process products and employees, Contractor shall pay to the County a flat fee of one hundred dollars (\$100.00) per month for the Term of the Agreement.

Section 6.3 Environmental Monthly Fee: Contractor agrees to pay for its share of the rubbish disposal, recycling, and monitoring, a monthly flat fee of one thousand six hundred dollars (\$1,600.00) due and payable with the monthly reported activity. This flat fee shall escalate at five percent (5%) per year through the Base Term, Option Term, if exercised, and in Holdover until the Agreement is terminated as called for herein.

Section 6.4 Pest Control Monthly Fee: Contractor agrees to pay a monthly fee for its share of pest control services in the amount of seventy-five dollars (\$75.00). This flat fee shall escalate at five percent (5%) per year through the Base Term, Option Term, if exercised, and in Holdover until the Agreement is terminated as called for herein.

Section 6.5 Fee for Electrical Consumption: Contractor agrees to pay for its share of the monthly electrical consumption a flat fee of one thousand dollars (\$1,000.00) due and payable with the monthly reported activity. This flat fee shall escalate at five percent (5%) per year through the Base Term, Option Term, if exercised, and in Holdover until the Agreement is terminated as called for herein.

Section 6.6 Fee for Restaurant and Liquor License: Contractor agrees to pay for all fees associated with obtaining a restaurant license and airport liquor license in its name from Okaloosa County and the State of Florida. Contractor shall be responsible for complying with all insurance requirements associated with the liquor license and shall assume all liability for any actions resulting from the serving of alcohol covered by the license and shall further hold the County harmless from any and all actions associated with the license and the serving of alcohol.

Section 6.7 Fee for Employee Background Checks and Security Badges: Contractor agrees to pay for all costs of required fingerprint based criminal history record checks and other Airport badging related expenses conducted on Contractor's agents and employees.

Section 6.8 Employee Parking Fee: Contractor agrees to pay the employee parking fee established by the County for tenants as determined at the discretion of the County.

Section 6.9 Fee for Failure to Maintain: In the event that Contractor fails to keep the CSA in a neat, clean, orderly and sanitary condition as is required by this Agreement and the Airports Director has issued a written notice of such deficiency and provided a reasonable cure period as determined solely by the Airports Director, County may itself clean or cause to be cleaned those portions of the CSA not so kept, and Contractor agrees to reimburse County for the direct and indirect costs incurred

by County for the performance of said work plus a fifteen percent (15%) administrative fee, due and payable upon the receipt of the invoice.

Section 6.10 Fee for Repairs and Replacement as a Result of Contractor Actions: Contractor shall promptly repair or replace any property of the County lost, destroyed or damaged by its operations hereunder. If Contractor fails to promptly repair or replace such property following written notice by the Airports Director of such deficiency and a reasonable cure period as determined solely by the Airports Director, County may repair or replace it and Contractor agrees to reimburse for the direct and indirect costs incurred by County for such repair or replacement plus a fifteen (15%) percent administrative fee, due and payable upon the receipt of the invoice. These repairs and replacements will not be eligible to be funded by the Repair and Refurbishment Account.

Section 6.11 Fee for Unpaid Licenses, Fees, Taxes, and Assessments: Contractor hereby agrees to pay all licenses, fees, taxes and assessments of any kind whatsoever which arise because of, or in the course of any operations covered by this Agreement during the term hereof. Should Contractor fail to pay such amounts following written notice of such deficiency and a reasonable cure period as determined solely by the Airports Director, the County reserves the right to pay the same on behalf of Contractor, and Contractor agrees to reimburse County for said amounts paid plus a fifteen percent (15%) administrative fee due and payable upon the receipt of the invoice.

Section 6.12 Fee for Telephone, Internet and Computer: Contractor shall be responsible for providing and installing all telephone, private internet, cable/satellite television service, computer systems, and point of sale systems necessary for its operation at its sole expense along with any monthly service fees.

ARTICLE 7 BOOKS AND RECORDS

Section 7.1 Monthly Reports: On or before the 20th day of each month during the Term, Contractor shall provide the County, a report of Gross Revenues for the preceding month, which shall include separate totals for food products, non-alcoholic beverages, alcoholic beverages, merchandise, and other items as required by the County. Said report shall be on a form provided to Contractor by the County and shall be signed by an officer, partner, or other person authorized to sign on behalf of Contractor, and shall be submitted to the County accompanied by any payment due thereon. Any and all reports and other data and documents provided to the County by Contractor in connection with the Agreement are and shall remain the property of the County.

Section 7.2 Cash Handling: Equipment such as a point of sale system(s), or any other comparable electronic or mechanical device used for recording customers' sales in compliance with the requirements outlined herein, shall have a serial totaling unit built in them with a continual sequence recording of transaction of sales for proper sales accountability. The totalizer of such units may not be turned back but shall be continuous in adding to each transaction as made. All units, where the County shall determine visible monitoring is to be made of customers' transactions, shall be placed so that said monitoring can be made readily, and the windows thereof shall be properly illuminated so that transactions can be viewed by customers from a reasonable distance when such equipment is in use.

Section 7.3 Point of sale systems and devices: All point of sale systems and devices used in recording sales to customers shall have a non-resettable grand total that accumulates each

transaction entered into these devices. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance. No point of sale system or device in which cash sales are recorded and deposited may be opened without recording the date and time of said opening. Register or device drawers must be kept closed at all times except when sales are made, change is made, or routine audits are conducted. The point of sale system must have sufficient keys for proper breakdown of and segregation of transactions and meet all accepted standards of accounting systems and cash control.

Section 7.4 Reading of Sale systems: The point of sale system and other electronic or mechanical devices that total customers' transactions shall have a reading taken of the same at least once each twenty-four hours and recorded for accounting purposes. Adequate security protection is to be maintained so that unauthorized persons may not tamper with the totaling unit of such devices.

Section 7.5 Sales personnel procedure: All persons handling sales shall promptly record said sales (cash or credit) in electronic or mechanical devices and shall not delay or "gang" register or record such sales.

Section 7.6 Records: Contractor, its sublessees, subcontractors, and sublicensees, shall keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, and all other documents pertinent to this Agreement (collectively, "Books and Records"). The Books and Records shall, among other things, show all sales made for cash, or credit, or otherwise, without regard to whether paid or not, the cost of all Leasehold Improvements and Personality, hereof, all labor, overhead and all sales taxes collected, and also, the Gross Revenues of the business conducted at the Airport by Contractor, its sublessees, subcontractors, and sublicensees, and the aggregate amount of all sales and services and orders of all such business done upon or within the premises of, or in connection within the Airport. Contractor further agrees to keep its Books and Records in accordance with generally accepted accounting principles (GAAP) and agrees to maintain such other books and records as County may request. Contractor its sublessees, subcontractors, and sublicensees, shall keep separate Books and Records for each of its Airport operations and shall provide copies thereof to the County upon request.

- a. Books and Records to be Retained. Contractors and its sublessees', subcontractors', and sublicensees', Books and Records shall be kept and maintained during the "Retention Period" (as hereinafter defined). The "Retention Period" is three (3) years following completion of each Contract Year, or if any audit has been initiated and audit findings have not been resolved at the end of the three years, the Books and Records shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the County to be applicable to any Books and Records, Contractor and its sublessees, subcontractors, and sublicensees, shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor or its sublessees, subcontractors, and sublicensees. Contractor and its sublessees, subcontractors, and sublicensees, shall make all Books and Records required to be maintained hereunder available to the County at the Airport, or at the corporate headquarters of Contractor or its sublessees, subcontractors, and sublicensees, as applicable and as may be directed by the County.
- b. Audit of Contractor's Sublessees, Subcontractors and Sublicensees. The County shall have the right, upon reasonable notice to Contractor at any time during the Retention

Period, to review, inspect, and/or audit the Books and Records relating to Contractor's operations and the operations of its sublessees, subcontractors, and sublicensees, pursuant to this Agreement to determine the correct amount of any monies required to be expended by Contractor hereunder towards Leasehold Improvements and refurbishments, and the correctness of the Privilege Fees paid by Contractor to the County for any Contract Year which ended no more than three (3) years prior to the date of commencement of such audit, and all such records shall be made available upon forty- eight (48) hours notice and copies thereof shall be provided to the County upon request. In the event that any such audit reflects that the total Privilege Fees actually paid by

Contractor during such Contract Year shall exceed the Privilege Fees due and owing for such Contract Year, then a refund will be made by County to Contractor of the amount of the difference through credits against the monthly installments of Privilege Fees payable by Contractor hereunder. In the event that any audit reflects that the total Privilege Fees actually paid by Contractor during such Contract Year shall be less than the Privilege Fees due and owing for such Contract Year, then Contractor shall immediately pay the difference to County with interest thereon at eighteen percent (18%) per annum from the date such additional Privilege Fees were due.

c. Understated Gross Revenues. If, as a result of any audit, it is established that Contractor understated the Gross Revenues it received from operations covered by this Agreement by three percent (3%) or more (after deductions and exclusions provided for herein) during the period covered by the audit, the entire expense of said audit shall be borne by Contractor. The provisions of this Section shall survive the expiration of termination of this Agreement.

Section 7.7 Annual Audit Requirements: Contractor shall annually provide to County a special audit report on all Gross Revenues from its operations at the Airport and a separate similar report for each sublessee, subcontractor, or sublicensee. The special audit reports shall be prepared by an Independent Certified Public Accountant in accordance with the provisions of the "Codification of Statements on Auditing Standards." The special audit reports shall be filed with County within ninety (90) calendar days after the end of each Contract Year covered by this Agreement during the Term and shall include the following: (i) Schedule of all revenues by category by month; (ii) Schedule of revenues by category upon which monthly payments to County are computed and a list of payments to County for the period.; (iii) A calculation to determine that the total monthly and annual Privilege Fees were paid in accordance with this Agreement.

The special audit reports shall include an opinion on the schedule of all revenues by category and by month, the schedule of payments to County, and the calculation of Privilege Fees. If the audit report indicates that the amount of Privilege Fees (together with any sales taxes thereon) due and owing for any Contract Year is greater than the amount paid by Contractor to County during such Contract Year, the Contractor shall pay the difference to County with the audit report. If amount of Privilege Fees paid by Contractor to County during any Contract Year exceeds the Privilege Fees due and owing for such Contract Year, the County shall credit the overpayment in the following order: (i) against any past due amounts owed to County by Contractor, including interest and late fees; (ii) against currently outstanding, but not yet due, Privilege Fees owed to County by Contractor; (iii) against future Privilege Fees which will become due during the succeeding Contract Year; and (iv) against any other sums payable by Contractor to County under this Agreement or for any other reason. Notwithstanding the foregoing, in the event of an overpayment by Contractor during the last Contract Year, the County shall credit the overpayment against any

remaining amounts owed to County, including interest and late fees, and refund to Contractor any overpayment amount in excess of the credit.

Section 7.8 Audit by County: Notwithstanding any provision in this Agreement to the contrary, County or its representative(s) may at any time perform audits of all or selected operations performed by Contractor under the terms of this Agreement. In order to facilitate the audit performed by County, Contractor agrees to make suitable arrangements with the Certified Public Accountant, who is responsible for preparing the audit report on behalf of Contractor, to make available to County's representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. County or its representative(s) shall make available to Contractor a copy of the audit report prepared by or on behalf of County. Contractor shall have thirty (30) calendar days from receipt of the audit report from County or its representative(s) to provide a written response to County regarding the audit report. Contractor agrees that failure of Contractor to submit a written response to the audit report in accordance with the requirements of this Article shall constitute acceptance of the audit report as issued.

Section 7.9 Unpaid Fees: If Contractor fails to make timely payment of any rentals, fees, charges and payments due and payable in accordance with the terms of this Agreement within ten (10) calendar days after same shall become due and payable, plus interest at the rate of one and one-half percent [1 ½%] per month, shall accrue against the delinquent payments(s) from the date due until the date payment is received by County. The foregoing shall in no way be construed as a waiver of any right granted County in this Agreement, nor shall this provision be construed to prevent County from terminating this Agreement for cause or from exercising any other right or from enforcing any other provision contained herein or provided by law.

Section 7.10 Place of Payments: Payments required to be made by Contractor under this Agreement shall be made payable to:

Okaloosa County
Okaloosa County Airports
1701 State Road 85 North, Suite 1
Eglin Air Force Base, FL 32542-1498
or to such other office or address as may be substituted therefore.

Section 7.11 Licenses, Fees and Taxes: Contractor shall pay, on or before their respective due dates, all federal, state, city, county, and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon any premises used by Contractor or the estate hereby granted, or upon Contractor, or upon the business conducted by Contractor, or upon any of Contractor's property used in connection therewith, or upon any sums payable hereunder, including, but not limited to any ad valorem, tangible property or intangible property taxes, and sales or excise taxes on any sums payable hereunder. Contractor shall maintain in current status all federal, state, county, city and local licenses and permits required for the operation of the business conducted by Contractor. In addition, Contractor shall be responsible for any and all other taxes which are due, or which may become due, pursuant to Chapter 212, Florida Statutes, as it may be amended from time to time, and any implementing regulations. **Section 7.9 No Set Off:** The Contractor acknowledges that it has no claims against County with respect to any of the operations of the Contractor at the Airport, if any, or any other agreement it may have with

the County, and it has no right of set off or counterclaims against any of the amounts payable by Contractor to County.

Section 7.12 Late Payments – Interest: County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid on any amounts that are past due under this Agreement. The right of County to require payment of such interest and the obligation of Contractor to pay same shall be in addition to and not in lieu of the right of County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

Section 7.13 Other Fees and Charges: Contractor acknowledges that County has or will establish, from time to time, various fees and charges for the use of various facilities, equipment and services provided by County and not leased to or specifically provided to Contractor hereunder, and the procedures relating to payment of same. Contractor shall pay for its use of such facilities, equipment and services at the rates and in the manner prescribed by County.

Section 7.14 Additional Rent and Charges: If County is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of Contractor to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of any act or omission of the Contractor contrary to said conditions, covenants or agreements, Contractor agrees to pay the sum or sums so paid by the County or the expense so incurred by the County, including all interest, costs, damages and penalties, and the same may be added to any installment payment thereafter due hereunder, and each and every part of the same shall be and become additional rent recoverable by County in the same manner and with like remedies as if it were originally a part of the Privilege Fees payable under this Agreement. All such sums of money shall be paid by Contractor within thirty (30) calendar days after written demand therefore.

Section 7.15 Dishonored Check or Draft: If Contractor delivers a dishonored check or draft to County in payment of any obligation arising under this Agreement, Contractor shall incur and pay a service charge in the amount established by County from time to time. In such event, County may require that future payments be made by cashier's check or other means acceptable to County.

Section 7.16 Net Agreement: This Agreement in every sense shall be without cost or expense to County including without limitation, cost and expenses relating to the development, maintenance, improvements and operation of the Assigned Area.

Section 7.17 Employee Parking Facilities: County, while providing parking facilities to Contractor's employees in common with employees of other Contractors and users of the Airport, retains the right, at the sole election of County, to impose a reasonable charge for the privilege of utilizing these parking facilities.

Section 7.18 Employee Identification Badges: Contractor agrees and consents to comply with County's identification badge requirements. All of Contractor's employees and staff that work or have business at the Airport and any other person at the Airport at the request of, or pursuant to

the requirements of, Contractor will obtain proper Airport badges to access and work in the respective work location and shall pay the County's charges for such badges.

ARTICLE 8
UTILITIES

The County agrees to provide such heat, air conditioning, internet infrastructure, telephone infrastructure, water, and sewage from the central collection point as are reasonably necessary for Contractor's operations at no additional cost to Contractor.

ARTICLE 9
SECURITY
DEPOSIT

To guarantee its performance of all of the conditions and obligations under this Agreement, Contractor agrees to secure a performance bond or letter of credit or provide a security deposit issued to the County in the amount of fifty percent (50%) of the annual MAG payment, to be updated each year of the Agreement. If a bond or letter of credit, it must be secured from a surety which is acceptable to the Airports Director and guaranteeing performance by the Contractor of all of the terms and conditions of this Agreement and further guaranteeing all payments to be made hereunder. Said bond or letter of credit shall further include a requirement that the surety notify the County in writing at least thirty (30) days prior to the cancellation or termination of said performance bond or letter of credit. It is agreed that the amount of such bond or letter of credit may not be diminished below the required amount as set forth herein during the term of this Agreement. As an alternative and in lieu of a performance bond or letter of credit, Contractor may deposit with the County the required amount utilizing a cashier's check.

ARTICLE 10
OPERATIONAL STANDARDS

Section 10.1 Service Standards:

15. Required Services: Contractor shall be required to sell food, snacks, beverages, books, magazines, newspapers, souvenirs, convenience items, sundries, and other goods and products typically available from similar airport concessions in the CSA in the Terminal. Food offerings must include a variety of "grab and go" products as well as a variety of healthy options. Contractor shall use its best efforts to include local alternatives in the alcoholic beverage selections.
16. Greeting: Contractor shall greet all of its customers in a friendly, prompt, and courteous manner. Telephones shall be answered promptly. Walk-in customers shall be given priority.
17. Food Service and Catering Menu: Contractor shall develop and maintain a food and beverage menu to meet the needs of both the traveling public and persons employed at the Airport. Prices for items on the food service menu shall be at Market Pricing. Respondents must provide in their proposal a complete listing of proposed food products with proposed pricing. Food offerings must include a variety of "grab and go" products as well as a variety of healthy options. Contractor shall use its best efforts to include local alternatives in the alcoholic beverage selections. Respondents shall

also include a separate catering menu that identifies food selections and prices that will be offered to airport users for catering events.

18. Food Quality and Display: Contractor shall provide high quality, fresh, and professionally prepared and presented food in all visible display units. Prices will be professionally displayed in such a manner as to be easily visible and understood by potential customers.
19. Merchandising: Contractor shall display attractive merchandising that entices customers to purchase food and retail products. Contractor shall develop and implement creative and effective merchandising means within the CSA; those means may include, without limitation, merchandise displays, full display cases, promotional displays (for which Airports Director approval must be obtained), and attractive packaging. All signage and merchandising displays must be approved by the Airports Director which approval shall not be unreasonably withheld. . Contractor shall use its best efforts to include local alternatives in the merchandising selections.
20. Marketing: Contractor shall develop, implement and maintain a marketing and promotion program that will effectively inform private and commercial aviation service providers and other Airport tenants, persons employed at the Airport, and the general public of the food, beverage, and retail services offered at the Terminal by Contractor. Contractor shall provide daily food specials at discounted prices designed to encourage persons employed at the Airport to utilize the concession.
21. Service: Contractor shall provide timely, attentive, and friendly service. Food and beverage orders and merchandise requests shall be taken promptly and in a friendly and courteous manner and delivered in reasonable time periods. Processing of payments for food service, beverages, and retail products shall be prompt. Sales receipts shall be properly itemized and provided to the customer, shall reflect a description of the goods and services purchased, the individual price for each item of goods and services purchased, totals and applicable taxes. All customers shall be thanked for their patronage.
22. Credit Cards: Contractor shall accept traveler's checks and major credit cards for any purchase.
23. Hours of Service: Contractor shall provide all services required under this Agreement three hundred sixty-five (365) days a year with operating hours and staffing levels adequate for both the hourly and seasonal peaks in passenger traffic. The concessions shall be open for service commencing one hour prior to the first scheduled departure and stay upon consistently until fifteen minutes prior to the last scheduled departure. The hours of operation for the Concourse A and C concessions will be agreed to with the Airports Director. In the event of departure delays, the Contractor will use commercially reasonable efforts to keep the concession open until the last flight departs factoring in the value of customer service and the cost required to keep the concession open.
24. Testing and Inspection: The Contractor shall monitor, test, or inspect Contractor's services at any time through the use of a mystery shopping service at least once per year. Contractor shall provide the results of the test to the Airports Director within

thirty (30) days following receipt of the report by Contractor. If findings indicate that the Contractor is not in compliance with the terms and conditions of this Agreement, a plan must be submitted in writing with the report and a corrective action plan provided within ten (10) calendar days after submission to the Airports Director.

25. Security Requirements: Contractor shall abide by, and require its agents, contractors, suppliers, and employees to abide by, and be subject to all rules and regulations which are now, or may from time to time, be promulgated by the County or the Airports Director concerning the management, operation, or use of the Airport, and specifically to abide by all provisions of the airport security plan on file in the office of the Airports Director. Contractor must comply with all security requirements of the County, Department of Homeland Security, the Federal Aviation Administration and any other governing agency. Contractor further agrees to provide airport identification badges as required by the Airports Director at its sole cost for all of its agents, contractors and employees serving at the Airport, and shall require said agents, contractors and employees to have such badges in their possession at all times while on duty at the Airport.
26. Badging: Contractor shall display the required security identification and access badges at all times while on duty at the Airport.
27. Retail Items: Contractor agrees to display and sell items listed in **Exhibit C**, as may be amended from time to time, attached to and made part of this Agreement. This includes the menu, products and pricing for those items. Any adjustments to **Exhibit C** shall be reviewed quarterly with the Airports Director.

Section 10.2 Employee Standards: Contractor shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the service standards set forth above. Each employee shall: (1) be clean, neat, and attired in the approved uniform; (2) be free from offensive body odor; (3) be professional, courteous, and friendly to the public; (4) not wear excessive amounts of jewelry, perfume, or cologne; and (5) wear the employee's Airport identification at all times while on duty, showing the names of both the Contractor and the employee, within the guidelines of all local, state and federal laws. Contractor shall discipline and, if necessary, discharge any employee who fails to conform to the foregoing standards while working at the Airport.

Section 10.3 Sanitation, Hygiene, and Cleanliness:

1. Contractor shall keep the CSA and proximately located surrounding public areas reasonably free of debris, trash or soiled cleaning supplies (e.g., rags and buckets) originating from Contractor's operations or customers. Contractor shall ensure that all equipment, walls, floors, counters, tables and other surfaces are cleaned and sanitized frequently, and that employee areas are cleaned daily. Contractor shall keep the CSA free of hazardous conditions, shall keep public areas around the CSA free of hazardous conditions originating from Contractor's operations, and shall notify the County promptly of other hazardous conditions in the Public Areas outside the CSA. Contractor shall monitor areas within and contiguous to the CSA to ensure that they are kept clean and orderly, and that trash is not allowed to accumulate. Contractor shall ensure that all its employees conform to the employee standards set forth above and to personal hygiene and health requirements established by Contractor's policy(ies) and by federal, state, or local laws, rules, regulations and/or ordinances.

2. Contractor shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of Contractor's operations and shall provide for its timely removal to the central collection point designated by the Airports Director. Contractor shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Contractor shall keep all garbage and putrescible materials in durable, fly- and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept covered when material is not being deposited in them. Contractor shall clean the containers as necessary to prevent odors. Contractor shall not allow boxes, cartons, barrels, or other similar items to remain within view of the public. County at its expense shall be responsible for handling and removal of trash and other refuse deposited by customers in public areas.

Section 10.4 Waste Reduction, Recycling, Reuse:

1. General: Contractor shall gather, sort, and transport all garbage, refuse, and recyclable materials daily to the central collection point designated by the Airports Director. Contractor shall place all garbage, refuse, and recyclable materials in the appropriate containers at the designated collection point. Contractor is encouraged to maximize its participation in a recycling program.
2. Garbage: Contractor shall take all reasonable measures to reduce the amount of waste it generates by requiring suppliers to remove nonessential overwraps, containers, and other packaging, and to use recyclable materials for essential packaging.
3. Recyclable Materials: The Airports Director reserves the right to institute a recycling program in which Contractor shall participate. Recyclable materials collected by Contractor shall be stored separately from trash and refuse. County may provide containers for recycling: (1) corrugated cardboard, (2) magazines, (3) newspapers, (4) tin and steel cans, (5) glass that is clear, brown, or green, and (6) high grade office paper, including letterhead, typing paper, photocopy paper, and computer paper. Contractor shall ensure that the following materials are not deposited in County recycling containers: (1) hazardous materials, (2) cans or other containers used to store paint, oil, solvent, cleaning fluids, or other hazardous liquids; and (3) "non-clean" paper, including wax coated paper, paper that is soiled with food, paper with plastic covers or windows, and colored paper.

Section 10.5 Deliveries:

1. Hours: All deliveries shall be scheduled during non-peak aircraft arrival and departure times. The Airports Director may issue schedules of acceptable delivery times, which, upon reasonable notice to Contractor, Airports Director may adjust from time to time, and from which Contractor shall not deviate without Airports Director's prior consent.
2. Zones: The Airports Director may establish authorized vendor delivery zones which may, upon reasonable notice to Contractor, be changed from time to time at the sole discretion of the Airports Director. Use of any such delivery zones by Contractor or

Contractor's suppliers shall be limited to thirty (30) minutes at any one time; deliveries that will take longer than thirty (30) minutes must be pre-approved by the Airports Director, or designee. All vehicles using the delivery zones must be prominently marked on both sides with the company name or logo.

3. **Transportation:** Contractor shall ensure that inventory, merchandise, supplies, trash, refuse and recyclable materials being transported within the Terminal are handled with care in a manner that ensures that items do not spill or leak. Inventory, merchandise and supplies transported from the non-secured side of the Terminal to the secured side of the Terminal may be required to pass through x-ray inspection units. In transporting inventory, merchandise, supplies, trash, refuse and recyclable materials associated with Contractor's operations within the Terminal, Contractor shall use only those delivery and receiving routes established by the Airports Director and shall use appropriate carts, vehicles, or other conveyances. If delivery and receiving routes are carpeted, delivery carts must be equipped with wheels suitable for operating on carpets without causing damage to them. If spills occur during transport, Contractor shall be responsible for all cleaning required to return the flooring to its original condition.

Section 10.6 Product Pricing: Contractor shall charge fair, reasonable and not unjustly discriminatory prices for all food, beverage and retail products that reflect Market Pricing. Contractor will provide a written report and meet quarterly with the Airports Director to review sales, products, prices, and customer service complaints.

Section 10.7 Non-Interference with Utilities: Contractor shall do nothing, and shall permit nothing to be done, that may interfere with the drainage or sewerage systems, fire hydrants, heating and air conditioning systems, electrical systems, domestic hot water, domestic cold water, gas, fire suppression systems, fire alarm system, or plumbing at the Terminal or elsewhere at the Airport. Contractor's duty under this section includes, but is not limited to, preventing grease and oils from entering waste lines, drains, and sewers.

Section 10.8 Record Handling and Auditing:

1. Contractor will maintain, in accordance with generally accepted accounting principles for each year during which the Agreement is in effect, all records, documents and books of account recording all transactions of the business conducted by Contractor at the Airport, which records, documents and books of account shall be held accessible to the County and its representatives at any time upon reasonable demand by the Airports Director. As an alternative, Contractor may maintain such records electronically and they shall be made available to the Airports Director immediately upon request. All records must be maintained by Contractor for a minimum of six (6) years following the termination of the contract as called for herein.
2. Contractor will allow the examination and audit by the County and/or the state auditor or their representatives, of any records, documents or books of account of Contractor pertaining to their operations within the Terminal. Contractor must provide the records requested within seven (7) calendar days upon receipt of notice. If as a result of such inspection and upon audit, deficiency in payments made to the County hereunder of more than five percent (5%) is disclosed, the cost of audit shall

be borne by the Contractor due and payable upon demand. Otherwise, the cost of inspection and audit shall be borne by the County.

Section 10.9 Management: The operation and maintenance of the CSA shall be under the constant, direct supervision of a trained, qualified, and experienced manager employed by Contractor. Contractor's manager shall be authorized to accept any notice required or allowed by this Agreement and shall have the authority to make all decisions reasonably necessary in the day-to-day operation of the concession, including, without limitation, decisions regarding merchandise quality, merchandise price, resolving customer complaints, and employee conduct. Contractor's manager or a designated supervisor to make decisions, shall be available on-site during all business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager. Contractor may employ more than one manager to satisfy the requirements of this section.

Section 10.10 Restaurant License; Liquor License: Contractor shall file the appropriate applications to obtain a restaurant license and the designated liquor license from the County and/or the State of Florida for its operations at the Airport and shall diligently prosecute such applications until such licenses are issued. Liquor licenses must specify what specific areas of the CSA the liquor may be used. Contractor shall not serve prepared food or alcoholic beverages at the Airport until the necessary permits and/or licenses have been secured and the required liquor liability insurance coverage have been obtained.

ARTICLE 11

ALCOHOLIC BEVERAGES, LIQUOR PERMIT AND SALES

Contractor shall obtain at its own expense the necessary Alcoholic Beverage Licenses to provide alcoholic beverages for resale at the Airport located at 1701 SR 85 North, Eglin AFB, FL 32542. Alcohol sale will be restricted to restaurant and Contractor's Assigned Area(s).

ARTICLE 12

RIGHTS OF INGRESS AND EGRESS

Subject to any applicable rules, regulations, or County policies governing the use of the Airport and Terminal, The County grants to Contractor the non-exclusive right to use, in common with others, the areas designated by County to be public or to be used in common, including, but not limited to, the walkways, streets, roadways, waiting rooms, hallways, restrooms and other passenger conveniences at the Airport and the Terminal, herein after referred to as "Public Areas", for Contractor's employees, patrons, guests and invitees for the use for which the Public Areas were designed. Contractor's right under this section includes the right of ingress to and egress from the CSA for Contractor and its employees, patrons, guests, invitees, suppliers of materials and services, along with equipment, and other property related to Contractor's business within the Terminal at the Airport under this Agreement. The rights of ingress and egress granted by this section may be exercised without charge, provided that County may charge Contractor for employee, patron, guest, and supplier parking privileges.

All delivery times shall be coordinated with the Airports Director, or designee, to ensure that deliveries do not negatively impact the operation at the Airport. Contractor shall provide a written program to the Airports Director for the orderly movement of products to the secured areas of the Terminal for written approval prior to implementation. The plan must be fully compliant with all

Department of Homeland Security requirements, as may be amended from time to time. The County will incur no cost for any alterations that may be required for compliance.

ARTICLE 13
CONTRACTOR'S
RESPONSIBILITY

Section 13.1 Contractor's Responsibility: Contractor shall, at its sole risk and expense, be responsible for the purchase and installation of the following:

6. Any and all equipment needed for the operation of a high-quality food, beverage, and retail concessions program in the CSA for the purpose of offering food, snacks, beverage, books, magazines, newspapers, souvenirs and other goods and related products and services to the traveling public, employees, and guests.
7. All grab and go dispensing units and supporting ADA compliant casework to accommodate products and condiments.
8. All dishes and utensils needed for its food, beverage and other related services within the CSA authorized by the Department of Homeland Security.
9. Menu boards over the main order counter and bar area in the CSA's.
10. Point of sale system(s) for food/beverage/retail and other related services at each location.
11. Branded signage at the entrance.
12. Seating and tables for the bar and food service areas. This will include any adjacent seating included and agreed to by the Airports Director.
13. Televisions and cable/satellite television service.
14. Hot water heater(s).
15. All equipment and systems to support the bar.
16. All coolers and freezers.
17. Stoves, grills, hoods, and fryers as identified in the **Exhibit E**.
18. Sinks and dishwashing equipment.
19. Storage racks and preparation tables as identified in **Exhibit E**.
20. All display units identified in **Exhibit E**.
21. All counters to include ADA accessibility to conform with all required regulations.

The County must approve all final plans before construction/installation.

ARTICLE 14
COUNTY'S RESPONSIBILITY

Section 14.1 County's Responsibility: County shall, at its sole risk and expense, include the following:

1. Finished ceilings and lighting to include lay in tiles and fluorescent fixtures.
2. Main water connection to the leased Premises sufficient to support the proposed layout at a point that is convenient for efficient distribution.
3. The main sanitary sewer connection to the leased Premises.
4. Electrical service sufficient to support the proposed use to a central location in the leased Premises.

5. Air conditioning service and distribution to the Premises sufficient to maintain the space at the same condition as the surrounding space.
7. Fire protection system for the Premises.

ARTICLE 15
MAINTENANCE

Section 15.1 Maintenance: Contractor shall at all times and at its sole expense, keep the CSA and all improvements in the CSA, including furnishings, fixtures, and equipment, in a safe, neat, clean and orderly condition and appearance, normal wear and tear excepted. Without limiting the generality of the foregoing, Contractor shall, at its sole cost and expense, be responsible for performing the following:

1. Janitorial services, providing janitorial supplies, window washing, floor treatment, wall cleaning, rubbish, and trash removal to the central collection point designated by the Airports Director.
2. Replacement of light bulbs in the CSA.
3. Cleaning of stoppages in sinks, plumbing fixtures and drain lines to the first “clean-out” outside the CSA.
4. Cleaning and maintaining grease traps.
5. Cleaning and replacement of filters in exhaust hoods.
6. Cleaning and maintaining the fire suppression system and related components required over the cooking appliances (*e.g.*, grill, fryer), including required periodic inspections.
7. Regularly scheduled maintenance of County-owned equipment and fixtures in conformity with manufacturer’s recommendations. (If necessary to prevent voiding manufacturer’s warranties, such maintenance shall be performed only by certified or authorized technicians.)
8. Maintaining hand fire extinguishers in accordance with applicable safety codes.
9. Supplying, stocking, servicing and maintaining Contractor-owned, -leased or -operated mobile food or beverage carts (including policing the area surrounding the same) at Airports Director approved locations within the Terminal.
10. Cleaning floors and floor coverings in and around the CSA.
11. Maintaining electrical loads within the designed capacity of the CSA’s electrical system. (Prior to making any change in the electrical loading which may exceed such capacity, Contractor shall first obtain Airports Director’s written consent).

Upon termination of this Agreement, Contractor shall deliver the CSA, and all improvements thereon, including all improvements, furnishings, fixtures and equipment included as part of the Proposal and/or funded through the Repair and Refurbishment Fund to the County at no cost in its original condition, normal wear and tear excepted. Any personal property of the Contractor not included in the Proposal or funded through the repair and Refurbishment Fund shall be removed at the termination date and time of the Agreement and the space restored to its original condition, normal wear and tear excepted.

Section 15.2 Repairs: The County shall keep the structural components of the CSA (including the walls and roof), the mechanical systems serving the CSA (*i.e.* main HVAC, plumbing, electrical and natural gas systems), and the County-owned equipment and fixtures in good repair, subject to Contractor’s maintenance obligations set forth above. County shall not be required to make any repairs to the CSA, mechanical systems or County-owned equipment or fixtures or any other elements of the CSA unless and until Contractor has notified County in writing of the need for such

repairs. County shall have a reasonable period of time following receipt of such notice to commence and complete said repairs. Notwithstanding the foregoing, Contractor shall repair all damage to the CSA and all improvements on the CSA, including furnishings, fixtures, and equipment, caused by the negligence or willful acts or omissions of Contractor, its employees, agents, servants, or licensees. All repairs to the CSA done by or on behalf of Contractor shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original in materials and workmanship, and, except in emergencies requiring immediate response, shall have the prior written approval of the Airports Director. All repairs shall conform to the applicable rules and regulations and building codes prescribed from time to time by federal, state, or County or other jurisdiction having oversight rights for the CSA. The Airports Director shall be the sole judge of the quality of the repairs. Contractor expressly waives any and all claims for damages of any kind, including but not limited to loss of profits as a result of the interruption of Contractor's business, resulting from the need for repairs to the CSA, the mechanical systems or County-owned equipment or fixtures, whether such repairs are undertaken by the County or Contractor.

Section 15.3 Repaint/Refinish: Contractor shall repaint or refinish in the same materials in existence, at its sole cost and expense, high traffic areas of the CSA subject to greater-than-normal wear on a schedule to be specified by Contractor, or as may be directed by the Airports Director if Contractor fails to specify a reasonable schedule. Contractor shall repair or replace Contractor's trade fixtures and equipment that become worn, chipped, dented, or gouged. All repainting and refinishing shall have the prior approval of the Airports Director.

Section 15.4 Right to Enter: County shall have the right to enter the CSA at reasonable times during Contractor's regular business hours to inspect the CSA and to determine whether Contractor has complied with and is complying with the terms and conditions of this Agreement. County shall have the right to enter the CSA to cure any material breach that remains uncured by Contractor after written notice and a reasonable cure period. County shall have the right to enter the CSA at any time to respond to any emergency.

Section 15.5 Police Power: Nothing in this section shall be construed to be a limitation or restriction on the exercise of the County's police power.

ARTICLE 16 CONSTRUCTION AND CSA IMPROVEMENTS

Section 16.1 Approval of Airports Director: In the event that Contractor wishes to make any CSA Improvements within the CSA during the Base Term of this Agreement and Option Term, if exercised, Contractor shall submit a written request to the Airports Director together with design development or construction drawings showing all details of said CSA Improvement. No improvement shall be made in the CSA without the prior written approval of the Airports Director, which approval shall not be unreasonably withheld, and then only in conformance with the approved plans and this section.

Section 16.2 Regulations and Standards: All work performed on behalf of Contractor shall conform to all applicable regulations, building design standards, building codes and health standards, as well as the following requirements:

1. All construction shall meet the requirement of Type I (fire resistant) construction as set forth in the Florida State Building Code (current edition) and the building standards for the

Airport.

2. Complete contract drawings and specifications on all work, including alterations, additions or replacements, must be submitted for and receive prior written approval of the Airports Director. Contractor will be responsible for delivering to the County, at no cost, "as built" drawings and an electronic version of same or any reasonable substitute as agreed to in writing by the Airports Director within sixty (60) calendar days of completion of any CSA Improvement.
3. All work must be done by qualified and licensed contractors authorized to do business at the Airport in the time and manner approved by and coordinated with the Airports Director. Contractor shall comply with the indemnity and insurance and bond requirements below. Work must be performed such that it may not have a material impact on the operations of the Airport or negatively impact any tenants operating at the Airport, as determined in the sole discretion of the Airports Director.
4. An authorized representative of Contractor shall be available at all reasonable times at the site to coordinate the work of the CSA Improvements.

Section 16.3 Construction Bonds and Insurance:

Section 16.3.1 Bonds: During the term of this Agreement when any CSA Improvements are constructed, installed or renovated, Contractor shall require the contractor and any subcontractor to furnish a payment bond, approved as to form and substance by the County's legal counsel, written by a company or companies authorized to write such bonds in the State of Florida and who are acceptable to the County. The amount of such bond(s) shall be not less than the cost of such construction, installation or renovation including all persons doing work or furnishing skills, tools, machinery, materials, insurance premiums, equipment or supplies incident to such construction, installation or renovation, such bond or bonds to be conditioned for payment of claims as required and in full compliance with Florida statutes. Further, during the term of this Agreement, for any construction, installation or renovation of CSA Improvements, and before the commencement of work thereon, Contractor shall furnish to County performance bonds, written by similarly qualified companies, covering all work to be performed thereunder guaranteeing the performance of all such work. In the alternative, if the value of labor and materials to be furnished for any such improvement shall not exceed Fifteen Thousand Dollars (\$15,000), Contractor may furnish to County written proof thereof and may, at its option, deposit a sum equal to the value of the labor and materials with an escrow agent approved by the Airports Director or may deposit said sum directly with County. County shall have the right, but not the obligation, to draw upon said sum to pay all bills unpaid by Contractor for said labor and materials supplied for said CSA Improvement. Upon completion of the CSA Improvement project and the furnishing by Contractor to The County of lien waivers by all contractors, laborers and materialman involved in said CSA Improvement, County shall agree to the release of any funds remaining in escrow or held by it to Contractor.

Section 16.3.2 Contractor's Public Liability and Property Insurance: Before commencing any CSA Improvement, work or equipment installation in the CSA, Contractor shall require all contractors and subcontractors to procure and maintain insurance during the term of such contracts, protecting the County and the Contractor as follows:

1. Workers' Compensation Insurance.
2. Contractor's Comprehensive Liability and Property Damage Insurance with limits no less than \$1,500,000 combined single limit per occurrence, including but not limited to, bodily injury and property damage, airport premises and products/completed operations liability, contractual liability, independent contractor's liability.
3. Contractor's Automobile Liability and Property Damage Insurance, including automobile and non-ownership and hired cars with limits no less than \$1,000,000 each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.
4. Owner's Protective Public Liability and Protective Property Damage Insurance.

Section 16.3.3 Insurance Requirements:

1. County shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.
2. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by County.
3. Forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent.
4. Insurance, as above provided, shall be kept intact and in force throughout the term of the CSA Improvement. Such insurance shall be subject to the approval of the County's legal counsel and copies furnished to The County prior to the commencement of construction.

Section 16.4 Subsequent Improvements: Any changes in, additions to, or deletions from existing or later constructed CSA Improvement shall be subject to the prior written approval of the Airports Director, and the Airports Director may impose such conditions as it shall deem necessary to protect the County, and the integrity of all operations at the Terminal, including, but not limited to, bonding and insurance requirements.

**ARTICLE 17
INSURANCE PROVISION**

Section 17.1 General Insurance Requirements: Contractor shall be required to provide the following insurance requirements as part of its operation:

1. The Contractor shall not commence any work in connection with this Agreement until he has obtained all required insurance and such insurance has been approved by the Okaloosa County Risk Manager or designee.
2. All insurance policies shall be with insurers authorized to do business in the State of Florida.
3. All insurance shall include the interest of all entities named and their respective officials, employees & volunteers of each and all other interests as may be reasonably required by Okaloosa County. The coverage afforded the Additional Insured under this policy shall be primary insurance. If the Additional Insured have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent

basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.

4. Where applicable, the County shall be shown as an Additional Insured with a Waiver of Subrogation on the Certificate of Insurance.
5. The County shall retain the right to reject all insurance policies that do not meet the requirement of this Agreement. Further, the County reserves the right to change these insurance requirements with 60-day notice to the Contractor.
6. The County reserves the right at any time to require the Contractor to provide copies (redacted if necessary) of any insurance policies to document the insurance coverage specified in this Agreement.
7. The designation of Contractor shall include any associated or subsidiary company which is involved and is a part of the contract and such, if any associated or subsidiary company involved in the project must be named in the Workers' Compensation coverage.
8. Any exclusions or provisions in the insurance maintained by the Contractor that excludes coverage for work contemplated in this agreement shall be deemed unacceptable and shall be considered breach of contract.

Section 17.2 Workers Compensation Insurance:

4. The Contractor shall secure and maintain during the life of this Agreement Workers' Compensation insurance for all of his employees employed for the project or any site connected with the work, including supervision, administration or management, of this project and in case any work is sublet, with the approval of the County, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation insurance for all employees employed at the site of the project, and such evidence of insurance shall be furnished to the County not less than ten (10) days prior to the commencement of any and all sub-contractual Agreements which have been approved by the County.
5. Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.
6. No class of employee, including the Contractor himself, shall be excluded from the Workers' Compensation insurance coverage. The Workers' Compensation insurance shall also include Employer's Liability coverage.

Section 17.3 Business Automobile Liability: Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident. If the contractor does not own vehicles, the contractor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Policy. Contractor must maintain this insurance coverage throughout the life of this Agreement.

Section 17.4 Commercial General Liability Insurance:

3. The Contractor shall carry other Commercial General Liability insurance against all other Bodily Injury, Property Damage and Personal and Advertising Injury exposures.
4. All liability insurance (other than Professional Liability) shall be written on an occurrence basis and shall not be written on a claims-made basis. If the insurance is issued with an aggregate limit of liability, the aggregate limit of liability shall apply only to the locations included in this Agreement. If, as the result of any claims or other reasons, the available limits of insurance reduce to less than those stated in the Limits of Liability, the Contractor shall notify the County representative in writing. The Contractor shall purchase additional liability insurance to maintain the requirements established in this Agreement. Umbrella or Excess Liability insurance can be purchased to meet the Limits of Liability specified in this Agreement.
5. Commercial General Liability coverage shall include the following:
 - 1.) Premises & Operations Liability
 - 2.) Bodily Injury and Property Damage Liability
 - 3.) Independent Contractors Liability
 - 4.) Contractual Liability
 - 5.) Products and Completed Operations Liability
4. Contractor shall agree to keep in continuous force Commercial General Liability coverage for the length of the contract.

Section 17.5 Limits of Liability: The insurance required shall be written for not less than the following, or greater if required by law and shall include Employer’s liability with limits as prescribed in this contract:

	<u>Coverage</u>	<u>Limit</u>
1.	Worker’s Compensation	
	1.) State	Statutory
	2.) Employer’s Liability	\$500,000 each accident
2.	Business Automobile	\$1,000,000 each accident (A combined single limit)
3.	Commercial General Liability	\$1,000,000 each occurrence for Bodily Injury & Property Damage \$1,000,000 each occurrence Products and completed operations
4.	Personal and Advertising Injury	\$1,000,000 each occurrence

Section 17.6 Notice of Claims or Litigation: The Contractor agrees to report any incident or claim that results from performance of this Agreement. The County representative shall receive written notice in the form of a detailed written report describing the incident or claim within ten (10) days of the Contractor’s knowledge. In the event such incident or claim involves injury and/or property

damage to a third party, verbal notification shall be given the same day the Contractor becomes aware of the incident or claim followed by a written detailed report within ten (10) days of verbal notification.

Note: For Contractor's convenience, this certification form is enclosed and is made a part of the RFP package.

CERTIFICATE OF INSURANCE

7. Certificates of insurance indicating the job site and evidencing all required coverage must be submitted not less than 10 days prior to the commencement of any of the work. The certificate holder(s) shall be as follows: Okaloosa County, 5479A Old Bethel Road, Crestview, Florida, 32536.
8. The contractor shall provide a Certificate of Insurance to the County with a thirty (30) day notice of cancellation; ten (10 days' notice if cancellation is for nonpayment of premium).
9. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the contractor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the Okaloosa County Purchasing Department at 5479-A Old Bethel Road, Crestview, FL 32536.
10. In the event the contract term goes beyond the expiration date of the insurance policy, the contractor shall provide the County with an updated Certificate of insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The County reserves the right to suspend the contract until this requirement is met.
11. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
12. All certificates shall be subject to Okaloosa County's approval of adequacy of protection and the satisfactory character of the Insurer.
13. All deductibles or SIRs, whether approved by Okaloosa County or not, shall be the Contractor's full responsibility. In particular, the Contractor shall afford full coverage as specified herein to entities listed as Additional Insured.
14. In no way will the entities listed as Additional Insured be responsible for, pay for, be damaged by, or limited to coverage required by this schedule due to the existence of a deductible or SIR.

GENERAL TERMS

Any type of insurance or increase of limits of liability not described above which, the Contractor required for its own protection or on account of statute shall be its own responsibility and at its own expense.

Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this contract shall be deemed unacceptable and shall be considered breach of contract.

The carrying of the insurance described shall in no way be interpreted as relieving the Contractor of any responsibility under this contract.

Should the Contractor engage a subcontractor or sub-subcontractor, the same conditions will apply under this Agreement to each subcontractor and sub-subcontractor.

The Contractor hereby waives all rights of subrogation against Okaloosa County and its consultants and other indemnities of the Contractor under all the foregoing policies of insurance.

UMBRELLA INSURANCE

The Contractor shall have the right to meet the liability insurance requirements with the purchase of an umbrella insurance policy. In all instances, the combination of primary and umbrella liability coverage must equal or exceed the minimum liability insurance limits stated in this Agreement.

ARTICLE 18 INDEMNIFICATION & HOLD HARMLESS

Contractor shall indemnify and hold harmless the County, its officers and employees from liabilities, damages, losses, and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of this contract.

ARTICLE 19 CONTRACTOR'S COVENANTS

Section 19.1: Contractor shall comply with all laws, ordinances, rules, regulations, policies, and orders now in effect or hereinafter adopted of the United States, the State of Florida, and Okaloosa County, and any agency, department or governmental subdivision thereof, including but not limited to the Department of Homeland Security, the Occupational Safety and Health Administration (“OSHA”) and the Federal Aviation Administration relating to Contractor's activities at the Airport, including but not limited to the Airport certification manual, the Airport security plan, and the Airport minimum standards, current copies of which are on file in the office of the Airports Director located at the Airport.

Section 19.2: Contractor for itself, its personal representatives, successors in interest, and assigns, and as a part of the consideration hereof, does hereby agree that it shall comply with all applicable requirements of Federal and State civil rights, unlawful discrimination, and rehabilitation statutes, rules and regulations now in effect or hereinafter adopted, including but not limited to Title 49, Code of Federal Regulations, Department of Transportation of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and with the Americans Disabilities Act.

Section 19.3 Advertising: No advertising signs shall be used or displayed by Contractor on the Airport other than those approved in writing by the Airports Director.

ARTICLE 20 COUNTY'S RIGHTS UPON DEFAULT

Section 20.1 Rights Upon Default: If at any time Contractor shall be in default, as defined in this Article, with regard to the requirements of this Agreement, it shall be lawful for the County, and the County may at any time thereafter:

1. Immediately, or at any time thereafter without further notice to Contractor, re-enter into or upon the CSA under this Agreement or any part thereof and take possession of the same fully and absolutely without such re-entry representing a forfeiture of the Concession Fee or MAG, whichever is greater, other fees, and charges to be paid and of the covenants, terms and conditions to be performed by Contractor for the full term of this Agreement, and in the event of such re-entry, the County may proceed with the collection of Concession Fee or MAG, whichever is greater, other fees, and charges to be paid under the Base Term of this Agreement and Option Term, if exercised, or to recover properly measured damages.
2. County may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon said CSA, and the Contractor covenants in case of such termination to indemnify the County against all loss of rentals, fees, and charges which the County has suffered or paid by reason of such termination, during the remainder of the Base Term of this Agreement and Option Term, if exercised.
3. The County shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings shall be deemed cumulative.

Section 20.2 Default Defined: "Default" shall be defined when any of the following circumstances exist:

1. If the Contractor has failed to pay the Concession Fee or MAG, whichever is greater, or any other fees or taxes when due hereunder and such failure to pay shall continue for fifteen (15) calendar days after written notice to Contractor in the manner hereinafter provided.
2. Failure to provide and/or maintain the insurance coverages required herein.
3. If the Contractor fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for fifteen (15) calendar days after County has given Contractor written notice, or the Contractor shall have failed to commence the corrective action of such failure within fifteen (15) calendar days after such notice and to diligently prosecute the same where the same cannot be completed within fifteen (15) calendar days.
4. If a petition to reorganize the Contractor or for its arrangement of its unsecured debts shall be filed.

5. If the Contractor shall be adjudicated bankrupt.
6. If a receiver or trustee of the Contractor's property shall be appointed by any court.
7. If the Contractor shall make a general assignment for the benefit of creditors.
8. If all of the interest of the Contractor in its property shall be taken by garnishment, attachment, execution or other process of law.
9. If the CSA shall be deserted or vacated.

Section 20.3 Attorneys' Fees and Costs: In the event County shall prevail in any action or suit or proceeding brought by County to collect fees or taxes due or to become due hereunder or any portion thereof, or to take possession of the CSA, or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement, Contractor agrees to pay County such sums as a court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.

Section 20.4 Non-Waiver: No waiver or default by County of any of the terms, covenants or conditions hereof to be performed, kept and observed by Contractor shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Contractor.

ARTICLE 21 CONTRACTOR'S TERMINATION RIGHTS

Section 21.1 Termination Rights: Contractor shall have the right upon written notice to the County to terminate this Agreement upon the happening of one or more of the following events, if said event or events are then continuing:

1. The issuance by any court of competent jurisdiction of an injunction, order or decree: (1) preventing or restraining the use by Contractor of all or any substantial part of the CSA used and occupied by Contractor hereunder, or (2) preventing or restraining the use of all or a part of the Airport for normal airport purposes which may be used by Contractor and which is necessary for its operations on the Airport, or (3) preventing Contractor from its Concessions operation and which injunction, order or decree remains in force for a period of at least ninety (90) calendar days.
2. If all or a material part of the CSA used and occupied by Contractor hereunder is damaged or destroyed or all or a part of the Airport or Airport facilities which are necessary to the operation of Contractor's business are damaged or destroyed or the use thereof disrupted for causes beyond Contractor's control.
3. If, by reason of any action of any governmental County, Contractor is unable to conduct its business for a period of in excess of ninety (90) consecutive days in substantially the same manner or substantially to the same extent as prior to such action.
4. Permanent abandonment of Airport for scheduled airline service.

**ARTICLE 22
ASSIGNMENTS**

Contractor shall not assign or transfer this Agreement, in whole or in part, in any manner, nor any interest therein, nor permit the foregoing Agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of County shall first be obtained in each and every case of subletting, assignment or transfer. It is expressly agreed by the parties that a change in ownership of the controlling share of stock in Contractor, if any, shall be deemed to be an assignment hereunder. It is expressly agreed by the Contractor that in the event permission be granted by the County as herein provided, the assignee shall be required to assume and agree to perform the covenants of this Agreement and that notwithstanding any such assignment, the Contractor shall be and remain liable for the payments of all Concession Fee or MAG, other fees and charges and, other payments due hereunder and the performance of all covenants and conditions for the full term of this Agreement.

**ARTICLE 23
SUBORDINATION**

This Agreement shall be subordinate to the provisions of any existing or future Agreement between the County and the United States of America or the State of Florida relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or state funds for the development of the Airport, or to any security requirements of state or U.S. Government, including temporary security procedures or instructions.

**ARTICLE 24
MODIFICATION**

Any of the terms of this Agreement may be changed upon the mutual consent of the County and the Contractor, but to be valid any such changes must be in writing, dated, and must be executed with the same formalities as this Agreement. In the event that any provision of this Agreement is determined to violate any local, state, or federal rule or regulation or is deemed to cause a violation of any rate covenants, the Agreement shall be modified upon consultation with Contractor to cause such violation to be compliant with such provision and an amendment will be executed on a timely basis to incorporate the required changes.

**ARTICLE 25
INDEPENDENT CONTRACTORS**

Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by Contractor and Contractor's employees. Under no circumstances shall Contractor or any of Contractor's employees look to the County as his/her employer, or as partner, agent or principal. Neither Contractor, nor any of Contractor's employees, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for

providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

**ARTICLE 26
NOTICES**

All notices required by this Agreement shall be in writing to the representatives listed below:

The authorized representative of the County shall be:

Tracy Stage, Airports Director
1701 State Rd. 85N
Eglin AFB, FL 32542
Phone: 850-651-7160
Email: tstage@myokaloosa.com

The authorized representative(s) for the Contractor shall be:

Phone: _____
Email: _____

Courtesy copy to:

Okaloosa County Purchasing Department
5479A Old Bethel Road
Crestview, FL 32536
Phone: 850-689-5960
Fax: 850-689-5998
Email: dmason@myokaloosa.com

Any party shall have the right, from time to time, to change the address to which notices shall be sent by giving the other party at least five (5) business days prior notice of the address change.

**ARTICLE 27
PUBLIC RECORDS**

Contractor shall adhere to the Public Records law of Florida.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (INSERT TELEPHONE NUMBER, E-MAIL ADDRESS, AND MAILING ADDRESS).

Contractor must comply with the public records laws, Florida Statute chapter 119, specifically Contractor must:

1. Keep and maintain public records required by the County to perform the service.
2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the agreement if the contractor does not transfer the records to the County.
4. Upon completion of the agreement, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the public agency upon completion of the agreement, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the agreement, the contractor shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the public agency, upon the request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

ARTICLE 28 GOVERNING LAW & VENUE

This Agreement shall be interpreted in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws. Venue for any legal proceedings arising out of this Agreement shall be in the state courts of Okaloosa County, Florida.

ARTICLE 29 THIRD PARTY BENEFICIARIES

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

ARTICLE 30 TAXES

Contractor agrees to remit all sales, use, or other taxes, assessments and other similar charges for the performance of services under this Agreement when due now or in the future, required by any local, state or federal law, including but not limited to such taxes and assessments as may from time to time be imposed by the County. Contractor further agrees that it shall protect, reimburse and indemnify County from and assume all liability for the remittance of its tax and assessment obligations under the terms of this Agreement.

**ARTICLE 31
ENTIRE AGREEMENT AND WAIVER**

This Agreement and all Exhibit(s) as incorporated herein contains the entire agreement between the parties and supersedes all prior oral or written agreements. Contractor acknowledges that it has not relied upon any statement, representation, prior or contemporaneous written or oral promises, agreements or warranties, except such as are expressed herein. The terms and conditions of this Agreement can only be amended in writing upon mutual agreement of the parties and signed by both parties.

The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

**ARTICLE 32
SEVERABILITY**

If any term or condition of this Agreement shall be deemed, by a court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall remain in full force and effect. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof.

**ARTICLE 33
REPRESENTATION OF AUTHORITY TO CONTRACTOR/SIGNATORY**

The individual(s) signing this Agreement on behalf of the Contractor represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The Contractor represents and warrants to the County that the execution and delivery of the Agreement and the performance of Contractor's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Contractor and enforceable in accordance with its terms.

**ARTICLE 34
COMPLIANCE WITH LAWS**

Contractor shall secure any and all permits, licenses and approvals that may be required in order to perform the Work, shall exercise full and complete authority over Contractor's personnel, shall comply with all workers' compensation, employer's liability and all other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer performing services such as the Work, and shall make all reports and remit all withholdings or other deductions from the compensation paid to Contractor's personnel as may be required by any federal, state, county, or municipal law, ordinance, rule, or regulation.

**ARTICLE 35
FEDERAL REGULATIONS**

The contractor agrees to comply with all federal, state and local laws, rules and regulations, including but not limited to, those set forth in Attachment 1, which is expressly incorporated herein as a part of this Agreement.

SECTION 36
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
COMPLIANCE

1. The County has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Contractor is required to participate in the County's ACDBE program.
2. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
3. The Contractor agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
4. The County has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:
 - a. Breach of contract action, pursuant to the terms of this contract;
 - b. Breach of contract action, pursuant to applicable state statutes
5. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, including, but not limited to, the following:
 - a. Suspension or debarment proceedings pursuant to 49 CFR part 23;
 - b. Enforcement action pursuant to 49 CFR part 31; and
 - c. Prosecution pursuant to 18 USC 1001.
6. The County will comply with all regulations set forth in 49 CFR Part 23 and will monitor Contractors at the Airport for compliance with the ACDBE program.
7. The County will submit to the Federal Aviation Administration's, Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The County will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.

IN WITNESS WHEREFORE, the parties hereto have executed this Agreement as of the day and year written below.

CONTRACTOR

Signature

Print Name

Date: ____/____/____

OKALOOSA COUNTY, FLORIDA

J.D. Peacock, II, Clerk

Graham W. Fountain, Chairman

Date: ____/____/____

ATTACHMENT 1

Standard Contract Clauses

Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

- 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation

systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The *contractor* has full responsibility to monitor compliance to the referenced statute or regulation. The *contractor* must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

E-VERIFY

Enrollment and verification requirements.

(6) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-

- a. Enroll. Enroll as a Federal Contractor in the E-Verify Program within thirty (30) calendar days of contract award;
 - b. Verify all new employees. Within ninety (90) calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); and,
 - c. Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within ninety (90) calendar days after date of enrollment or within thirty (30) calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
- (7) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of
- a. All new employees.
 - i. Enrolled ninety (90) calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or
 - ii. Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within ninety (90) calendar days after date of contract award or within thirty (30) days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
 - b. Enrolled less than ninety (90) calendar days. Within ninety (90) calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or
 - ii. Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within ninety (90) calendar days after date of contract award or within thirty (30) days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
- (8) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State of local government or the government of a Federally recognized Indian tribe, or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements of (b) (1) or (b) (2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
- (9) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 2986 (after November 27, 2009,

in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within one hundred eighty (180) calendar days of-

- i. Enrollment in the E-Verify program; or
- ii. Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contract information provided in the E-Verify program Memorandum of Understanding (MOU)

(10) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

- i. The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor, will be referred to a suspension or debarment official.
- ii. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
- iii. Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

- (d) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
- (e) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top-secret information in accordance with the National Industrial Security Program Operating Manual; or
- (f) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12. Policy for a Common Identification Standard for Federal Employees and Contractors.

Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph €(appropriately modified for identification of the parties in each subcontract that-

- (4) Is for-(i) Commercial and noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS contractor, and are normally provided for that COTS item); or
 - (ii) Construction;
- (5) Has a value of more than \$3,500; and
- (6) Includes work performed in the United States.

