

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** May 20, 2024

**RE: Food, Beverage and Retail Concessionaire Agreement with  
Aerospace Center for Excellence, Inc.**

Attached hereto for your consideration is a proposed Concessionaire Agreement with Aerospace Center for Excellence, Inc. (ACE) to provide food, beverage and retail concessions located in the security area of the Airport terminal. Pursuant to this Agreement, ACE shall be granted the non-exclusive right to rent approximately 290 square feet of space in the security area of the Airport's terminal building to sell pre-packaged food and beverages, such as sandwiches, breakfast sandwiches, chips, cookies, crackers, soft drinks, energy drinks, coffee, iced tea, bottled water, fruit cups, salads and meals-to-go. Additionally, ACE may sell retail merchandise such as common traveler supplies including, but not limited to, travel pillows, mobile device chargers, tissues, ear plugs, over the counter medications, souvenirs (i.e., area branded hats, t-shirts, cups, mugs and key chains), as well as printed materials (i.e., books, newspapers and magazines).

The initial term of this Agreement is for a period of three (3) years, effective May 20, 2024, subject to City Commission approval. The Agreement also provides for two (2) additional one (1) year options of renewal upon mutual written agreement of the parties. Either party may terminate the Agreement for any reason upon thirty (30) days prior written notice.

In accordance with the Agreement, ACE shall pay base rent in the amount of \$531.67 per month or \$6,380.04 per year to rent the 290 square feet of concession space at an annual rate of \$22.00 per square foot. The monthly base rent includes utilities, but does not include any applicable taxes, which ACE shall pay in addition to its base rent. Due to the start-up nature of this business, the City has agreed to issue a monthly rent credit in the amount of \$531.67 for the first twelve (12) months of operation commencing on the effective date this Agreement. Accordingly, ACE shall pay to the City, in furtherance of the economic benefit to support the continued operation of the Airport, a monthly Concession Fee equivalent to 12% of all ACE's gross revenue generated, plus applicable state and local sales tax. For purposes of this Agreement, gross revenue is the total amount charged to a customer after any direct applied discounts.

For any improvements made to the Premises, the City will provide ACE with a rent credit of up to 50% of the total cost of any such improvements, which shall be applied

to ACE's monthly base rent. The maximum amount of the City's rent credit to ACE shall not exceed \$25,000 during any term of the Agreement. ACE shall be required to document any such improvements, in writing, and provide the City with complete invoices showing the work completed. All such improvements shall become property of the City upon expiration or termination of the Agreement.

It is recommended that the City Commission approve this Concessionaire Agreement with ACE and authorize the appropriate City officials to finalize and execute all corresponding documents consistent with the above-specified terms.

Attachment

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**LAKELAND LINDER INTERNATIONAL AIRPORT  
FOOD, BEVERAGE AND RETAIL CONCESSIONAIRE AGREEMENT**

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**THIS AGREEMENT**, made and entered into on the 20th day of May 2024, by and between the **City of Lakeland, Florida** a municipality organized and existing in accordance with the laws of the State of Florida, hereinafter referred to as the “City”, located at 228 South Massachusetts Avenue, Lakeland, Florida 33801, and the **Aerospace Center for Excellence, Inc**, located at 4175 Medulla Road, Lakeland, Florida 33811, hereinafter referred to as the “Concessionaire”.

**WITNESSETH:**

**WHEREAS**, the City owns and operates a municipal airport known as the Lakeland Linder International Airport, located in Polk County, Florida (hereinafter “Airport”) and is the sponsor of the Airport under federal law; and

**WHEREAS**, the City has constructed upon the Airport a commercial passenger terminal (hereinafter “Terminal”) to serve the needs of the traveling public; and

**WHEREAS**, the Concessionaire desires to operate a food, beverage and retail concession in the security area of the Terminal; and

**WHEREAS**, the City finds the provision of food, beverage and retail concessions to Airport customers to be in the public interest and essential to the operation of the Airport; and

**WHEREAS**, the City finds that businesses providing food, beverage and retail services to Airport customers derive a special economic benefit to support the continued and ongoing operations of the Airport through fees imposed for the privilege of doing business with customers who use Airport facilities.

**NOW THEREFORE**, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Concession. The City grants to the Concessionaire and Concessionaire hereby accepts the non-exclusive right to operate a food, beverage and retail concession at the Airport for the purpose of offering food, beverages, magazines, books, newspapers, souvenirs and other goods and related products (“concessions”) to the traveling public in accordance with the terms and conditions set forth in this Agreement.
2. Term. The initial term of this Agreement shall commence on June 13, 2024 (“Effective Date”) and

be in effect for a period of three (3) years unless otherwise extended or terminated as provided herein. Thereafter, Concessionaire shall have two (2) additional one (1) year renewal options upon mutual written agreement of the parties by providing no less than ninety (90) days prior written notice of its intent to renew prior to the expiration of the initial term or any subsequent renewal term.

3. Amendment of the Agreement. This Agreement may be amended only by mutual written agreement of the parties.
4. Assignment/Subcontracting. Concessionaire shall perform this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the City. In the event of a corporate acquisition and/or merger, the Concessionaire shall provide written notice to the City within thirty (30) business days of Concessionaire's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this Agreement, which shall not be unreasonably withheld by City, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or is contrary to any local, state, or federal law.
5. City's Right of Termination. City reserves the right to terminate this Agreement, without cause, by providing thirty (30) days prior written notice to the Concessionaire of its intent to cancel, or with cause, pursuant to law and the terms of this Agreement, if at any time the Concessionaire fails to fulfill or abide by any of the terms or conditions specified herein. Failure of the Concessionaire to comply with any of the provisions of this Agreement shall be considered a material breach of the Agreement and shall be cause for immediate termination of the Agreement at the sole discretion of the City.
6. Concessionaire's Right of Termination. In addition to any other right of cancellation herein given to Concessionaire or any other rights to which it may be entitled by law, provided Concessionaire is not in default in payment to the City of any amounts due and owing to the City under this or any other agreement, Concessionaire may terminate this Agreement without cause by giving the City thirty (30) days prior written notice, to be served as hereinafter provided.
7. Concession Fee. Concessionaire shall pay to the City, in recognition of the economic benefit of the continued operation of the Airport, a monthly Concession Fee equivalent to Twelve Percentage (12%) of all Concessionaire's Gross Revenues generated, plus applicable state and local sales tax. It is the intent and understanding of both parties that the Concession Fee is paid for intangible rights and is not consideration for the use or occupancy of any real property owned by the City.

Concessionaire acknowledges the Concession Fee may be amended from time to time.

8. Payment of Fees. Concessionaire shall submit to the Airport by the 15<sup>th</sup> day of the succeeding month of the term hereof a copy of an accurate statement of Gross Revenues as defined in Section 9. of the Agreement for the preceding month, and simultaneously therewith pay the Airport an amount set forth in Section 7. for those percentages of Gross Revenues and applicable fees of the preceding month. Any fee that remains unpaid for a period of more than thirty (30) days from the date due shall be assessed a delinquent charge of 1.5% of the past due balance, but in no event shall any such delinquent charges be assessed on the delinquent charges (no fees on fees).

9. Gross Revenues.

A. Gross Revenues as used herein shall mean the total amount actually charged to the customer, after discounts whether for cash or credit or whether collected or uncollected by Concessionaire for or in connection with the sale of food, beverage, or other merchandise.

B. Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer (i.e. promotional discounts given to other entities at a certain volume of customers participating in a program).

C. Gross Revenues shall not include the following:

i. Any tips and gratuities.

ii. Any free or compensatory meals for employees of Concessionaire.

iii. Any refunds made by Concessionaire to customers.

iv. Any sums received by Concessionaire from customers for damage to and/or property loss, conversion, or abandonment.

v. Any sums received by Concessionaire's disposal of capital assets and/or trade fixtures.

vi. The amounts of any federal, state, or county sales taxes and Florida State surcharge collected from the customers of Concessionaire now or hereafter levied or imposed and paid to the appropriate taxing entity (fees charged to recover business costs are not taxes and are not excluded from Concessionaire income).

D. It is understood and agreed that all losses are to be borne solely by Concessionaire and

that the City is to be paid on the Gross Revenue without charge or reduction for costs of losses.

10. Payment. Concessionaire shall pay all fees and charges pursuant to this Agreement to the “City of Lakeland” at the following address: Lakeland Linder International Airport, 3900 Don Emerson Drive. Ste. 210 Lakeland, Florida 33811.

11. Taxes. Concessionaire shall bear, at its own expense, all costs of operating its equipment and business, including any and all taxes assessed against its interest in the premises from which Concessionaire is operating, including sales tax on concession fee payments, furnishings, equipment or stocks of merchandise, and supplies.

12. Grant of Non-exclusive Concession. In exchange for payment of the Concession Fee, the City hereby authorizes Concessionaire to operate a food, beverage and retail concession at the Airport to the traveling public. This concession is non-exclusive, and the City reserves the right to grant similar concessions to as many concessionaires as the City finds, in its sole discretion, to be in the public interest.

13. Use and Rights. The rights granted hereunder are expressly limited to the operation of a food, beverage and retail concession at specified locations assigned by the City in the Airport Terminal.

A. The food and beverage concession rights and privileges granted to Concessionaire shall be limited to the non-exclusive right to sell pre-packaged food and non-alcoholic beverages, including hot and cold food/beverages, sandwiches, breakfast sandwiches, chips, cookies, crackers, soft drinks, energy drinks, coffee, iced tea, bottled water, fruit cups, salads, and meals-to-go.

B. Additionally, concession rights and privileges granted to Concessionaire include the non-exclusive right to sell retail merchandise including common traveler supplies including, but not limited to, travel pillows, mobile device chargers, tissues, ear plugs, antacids and other over the counter medications), souvenirs (i.e., area branded hats, t-shirts, cups, mugs, key chains), and printed materials (i.e. books, newspapers, and magazines).

C. Concessionaire shall not sell any tobacco products, popcorn, or chewing gum. Concessionaire agrees not to undertake any use not authorized by this Agreement.

14. Access to Food and Beverage Concession Space. Concessionaire shall pay the City for its use and occupancy of the space (hereinafter “Premises”), as described in **Exhibit A** hereof, a rental rate of Twenty-Two dollars and 00/100 (\$22.00) per square foot annually, in addition to applicable sales tax during the term of this Agreement. Rent for the Premises, totaling 290 square feet, shall be Five

Hundred Thirty One Dollars and 67/100 (\$531.67) per month, in addition to any applicable sales tax. Due to the start-up nature of this business, the City will issue a monthly rent credit in the amount of \$531.67 for the first twelve (12) months of operation commencing on the Effective Date this Agreement. All payments shall be due on the first day of each calendar month thereafter during the term of this Agreement. Late rent payments, which shall be any payment received more than fifteen (15) days after the due date, shall bear a late payment charge of five percent (5%) per month of the late payment for any month or any portion of any month until paid.

Concessionaire shall operate and maintain the Premises throughout the term hereof subject to all terms and conditions set forth in this Agreement. The City reserves the right to assign the location of the Premises to the Concessionaire but will make reasonable efforts to accommodate the request of the Concessionaire.

For any improvements made to the Premises, as described in **Exhibit E** hereof, the City shall provide a rent credit of up to 50% of the total cost of improvements which shall be applied to Concessionaire's monthly rent. The maximum amount of the City's Rent Credit to Concessionaire for any such improvement shall not exceed Twenty-Five Thousand Dollars and 00/100 (\$25,000) during any term of the Agreement. Concessionaire shall be required to document any such improvements, in writing, and provide the City with complete invoices showing the work completed. All such improvements shall become property of the City upon expiration or termination of this Agreement.

15. Service Standards. Concessionaire shall furnish prompt, efficient, and courteous service adequate to reasonably meet all advertised food and beverage services equal to or better than high-quality food and beverage operations in comparable commercial service airports. Concessionaire shall, within reason, control the conduct, demeanor, and appearance of its employees, invitees, and of those doing business with the Concessionaire.

16. Minimum Performance Standards.

A. *Period of Operation*. Concessionaire shall provide service concurrent to the opening of the Transportation Security Administration's (TSA) security screening checkpoint and remain open until fifteen (15) minutes after the last airline customer departs the hold room(s).

B. *Employee Uniforms*. Concessionaire shall provide its employees with uniforms. All of Concessionaire's employees shall wear the appropriate uniform when on duty. Concessionaire

agrees to ensure that all employees and uniforms are continually worn in a clean, neat, and professional manner.

C. *Minimum Staffing.* Concessionaire shall provide sufficient employees to properly conduct Concessionaire's operation including receiving deliveries, stocking displays and vending machines (as applicable), and meeting TSA security inspection regulations.

D. *Manager.* The management, maintenance, and operation of the food and beverage concession shall always be under the supervision and direction of an active, qualified, competent manager or their designated agent who shall be subject to the direction and control of the Concessionaire.

E. *Authorized Representatives.* Concessionaire shall designate in writing their authorized representative for all matters relating their operations at the Airport. Concessionaire shall provide to the City the name, address, e-mail, and telephone number of their Authorized Representative and, if applicable, their designated agent.

F. *Equipment & Displays.* Concessionaire shall continually provide and maintain in normal working order modern, reliable, and efficient equipment, displays, and vending machines (as applicable) as determined by the Airport Director.

G. *Credit Cards.* Concessionaire shall accept at least two (2) major credit cards for customer charges. The selection of acceptable credit cards shall include at least two (2) of the following: American Express, Master Card, or Visa.

H. *Deliveries.* Concessionaire shall coordinate its deliveries to minimize inconvenience, or disturbance of the traveling public and involvement of Airport personnel. Due to operational constraints, Concessionaire shall schedule deliveries to locations and at times coordinated and approved by the City.

I. *Utilities.* The Airport shall provide to Concessionaire electricity, plumbing, heating, and air conditioning to the Premises. Internet services for point-of-sale systems and other uses is excluded and shall be paid for by the Concessionaire at its sole cost and expense.

J. *Security.* Concessionaire acknowledges and accepts full responsibility for the security and protection of its Premises and any and all inventory, fixtures, and equipment now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized

access to its equipment.

Concessionaire shall comply with the provisions of the City's TSA-approved Airport Security Program for the Airport as from time to time existing, and applicable regulations of the TSA, as from time to time existing and amended. If Concessionaire fails or refuses to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other terms of this Agreement, Concessionaire shall be responsible and shall reimburse the City in the full amount of any such monetary penalty or other damages.

K. *Cleanliness and Preservation of Property.* Premises, equipment, and materials used by Concessionaire shall continuously be clean, sanitary, and free from rubbish, refuse, food scraps, waste, garbage, dust, dirt, pests, and other offensive or unclean materials.

Concessionaire, at its sole cost and expense, shall be responsible for the provision of all janitorial services in the Premises. Concessionaire shall remove or cause to be removed, at Concessionaire's sole cost and expense, all waste, garbage, and rubbish, and agrees not to deposit same on any part of the Airport; provided, however, Concessionaire may deposit same temporarily on its Premises or in space designated by City for removal and pay its share of the removal fee.

The City shall reasonably determine whether Concessionaire is in full compliance with the obligations, as provided for herein this Agreement, and shall provide Concessionaire with written notice of any violations of Concessionaire's obligations. If corrective action is not initiated within ten (10) days of receipt of the City's written notice and pursued to completion in a diligent manner, the City may cause the same to be accomplished and Concessionaire hereby expressly agrees that Concessionaire shall assume and be liable to the City for payment of all such costs, plus twenty-five percent (25%) for administrative overhead. Such costs, plus the administrative overhead cost, shall be due and payable within thirty (30) consecutive days following invoicing.

L. *Garbage & Waste.* Concessionaire must dispose of all trash, food waste, debris and refuse (hereinafter "waste") in areas and containers maintained for the exclusive use of the Concessionaire. Concessionaire may not dispose of any waste in those containers maintained by the City for the benefit of its employees, customers, invitees, and guests.

Concessionaire may not place or leave or permit to be placed or left in or upon any part of the

common areas of the Airport any waste. The disposal of any waste from Concessionaire's operation shall be subject to local, state, and federal environmental laws and regulations. Concessionaire shall cause its agents and employees to use proper waste receptacles for accumulated waste.

Concessionaire shall take all steps reasonable and necessary to completely bag and enclose all food waste products and not to leave same exposed, even in outside garbage receptacles, it being acknowledged by the parties hereto that garbage consisting of food waste can be a health menace and can lead to infestation by rodents or pests.

In the event the City in its reasonable judgement determines that the disposal of food waste or garbage is leading to problems concerned with odor, pests, or general sanitation, the City may require the use of additional precautionary measures, including a different bagging system, garbage compactor system, or the like.

M. *Public Traffic Areas.* Concessionaire, its agents, employees, or suppliers, shall not block any areas used for ingress or egress by Airport traffic unless required in an emergency, and further, shall not interfere with the activities of the City, its agents or employees, or any Airport tenant.

17. Installation of Equipment. Concessionaire shall install all equipment, at their sole cost and expense, and complete other necessary alterations to the Premises required for its operation under this Agreement. All installations and improvements shall meet applicable building codes, ordinances, and laws. Concessionaire shall submit plans and specifications to the Airport for approval prior to seeking a construction permit for modifications to the Premises. The Parties hereto recognize the value, necessity, and importance of maintaining the Premises in a well-kept condition with an attractive décor and aesthetic presentation.

18. Maintenance Responsibilities. Concessionaire shall keep the Premises, all furniture, fixtures, equipment, displays, and apparatuses, and every part thereof, in good condition and repair, and in compliance with applicable laws, including the replacement of any facility or equipment of the Airport used by the Concessionaire which requires replacement by reason of the Concessionaire's use thereof, minus ordinary wear and tear. Concessionaire shall be responsible for the cost of repair for any damage to the Premises or the adjacent space or improvements, caused by Concessionaire, its agents, or employees. Concessionaire agrees to be solely responsible for any damage (other than normal wear and tear) resulting from the removal by Concessionaire of its personal property, trade

fixtures, or signs. Please reference **Exhibit D** for additional information regarding maintenance obligations.

19. Removal of Trade Equipment. Notwithstanding anything to the contrary in this Agreement, all equipment, materials, and supplies of Concessionaire (hereinafter "Trade Fixtures") shall be removed from the Premises within five (5) calendar days immediately following the expiration or earlier termination of this Agreement.

Concessionaire shall exercise care in the removal of all Trade Fixtures and Concessionaire shall be responsible to immediately repair any damage to the Premises caused by said removal.

If Concessionaire fails to removed all Trade Fixtures from the Premises within five (5) calendar days following the expiration or earlier termination of this Agreement, or to repair any damage to the assigned Premises caused by said removal, the City shall have the right to remove all Trade Fixtures and to repair any damage caused by said removal. Any costs incurred by the City in the removal and storage of such Trade Fixtures, or the repair of damage to the assigned Premises caused by said removal, shall be borne by Concessionaire.

20. Permits & Licenses. Concessionaire must secure and maintain any and all permits and licenses required to operate pursuant to this Agreement.

21. Records. Concessionaire shall maintain records of its operations hereunder, including franchisee/licensee records and federal and state tax returns.

22. Annual Audit. Within ninety (90) days after each anniversary of the commencement date of this Agreement, Concessionaire shall provide, at its sole cost and expense, an audit by an independent certified public accountant, licensed in the State of Florida and acceptable to the City, of annual Gross Revenues and other applicable fees, as defined hereunder. The examination shall include a schedule of Gross Revenues and fees per month of the Concessionaire's operations. The auditor shall report such procedures and findings in a separate letter to the City. Any unreported revenues determined by the auditor are considered due by the 15<sup>th</sup> day of the following month.

23. Access to Records/Audit. The Concessionaire shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. Concessionaire shall maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all payments to the City. City reserves the right to audit such records upon notice to the Concessionaire, at Concessionaire's sole cost and expense.

24. Restrictions. Concessionaire agrees to the following conditions:

A. Concessionaire shall not permit its agents, servants, or employees so engaged to solicit tips, to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, to solicit business outside its Premises in any manner whatsoever, or to offer any service not directly authorized or related to the food and beverage concessions hereunder. The City reserves the right to disapprove any product offered for sale, for any reason, and Concessionaire agrees to remove the product when requested to do so by the Airport Director.

B. Concessionaire shall not have the right to mortgage the Premises for the purpose of securing a loan from any lender.

C. Concessionaire shall not make any improvements or erect, maintain, or display any sign or any advertising at or on Airport property without the written approval of the Airport Director.

25. Public Records. Concessionaire shall comply with Florida Statute Chapter 119, the Florida Public Records Act as it relates to records kept and maintained by the Concessionaire in performance of services pursuant to this Agreement.

**IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.**

In accordance with Florida Statute §119.0701, Concessionaire shall keep and maintain public records required by the City in performance of services pursuant to this Agreement. Upon request from the City's custodian of public records, Concessionaire shall provide the City 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 pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Concessionaire shall 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 contract term and following termination or expiration of the Agreement if the Concessionaire does not transfer the records to the City. Concessionaire shall, upon expiration or termination of the Agreement, transfer, at no cost, to

the City all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform services pursuant to the Agreement. If the Concessionaire transfers all public records to the City upon termination or expiration of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon termination or expiration of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

26. Minimum Insurance Requirements. The Concessionaire must maintain insurance, at its own expense, in at least the amounts set forth in **Exhibit B** attached hereto and incorporated herein by reference throughout the term of this Agreement. The Concessionaire must provide a Certificate of Insurance in accordance with said Insurance Requirements evidencing such coverage prior to commencement of any activity under this Agreement.

27. Indemnification. Concessionaire shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the City from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by Concessionaire in accordance with the indemnification provision set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

28. Non-Liability. The City shall not be liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (a) temporary closure of the Airport in response to hazardous conditions or for any other reason, (b) cessation for any reason of scheduled air carrier operations at the Airport, or (c) diversion of passenger traffic to any other facility.

29. Jurisdiction/Venue/Governing Law. The Parties consent to jurisdiction and venue of the Courts of Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement, document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement, or breach of this Agreement or any such document or instrument. The law of the State of Florida shall govern this Agreement.

30. Independent Contractor Status. The Concessionaire is and shall remain an independent entity and is neither an agent, employee, partner, nor joint venturer of the City.

31. Compliance with Laws. Concessionaire shall comply with all applicable local, state, and federal ordinances, codes, laws, statutes, regulations, and standards in force during the term of this Agreement.

32. Severability. The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement to be impossible of performance.

33. Notices. All Notices pursuant to this Agreement shall be deemed sufficiently given when in writing when (i) personally served on a party to be notified, (ii) delivery by overnight express courier, or (iii) three (3) business days following deposit in the United States mail, postage prepaid certified delivery, directed to the party to be notified at the following address and first class mail:

**Concessionaire:**

Aerospace Center for Excellence, Inc.  
Attn: Chief Financial Officer  
4175 Medulla Road  
Lakeland, Florida 33811

**As to City:**

Lakeland Linder International Airport  
Attn: Airport Director  
3900 Don Emerson Drive, Suite 210  
Lakeland, FL 33811

34. Non-Discrimination. Concessionaire, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities; (2) Concessionaire shall use Airport facilities in compliance with all requirements of 49 CFR Part 21, Department of Transportation Subtitle A, Office of the Secretary, Nondiscrimination

in Federally-Assisted Programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act of 1964, and as may be amended.

35. Airport Concession Disadvantaged Business Enterprise Participation (ACDBE). This Agreement may also be subject to the requirements of 49 CFR Part 23. Affirmative Action Employment Programs, may be applicable to the activities of Concessionaire, unless exempt by said regulations, and hereby agrees to comply with said regulations, as now or hereafter amended or any successor regulations, and all requirements of the City, FAA, and U.S. Department of Transportation, in reference thereto. These requirements include, but are not limited to, compliance with ACDBE and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by City, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises in accordance with the goals established. The Concessionaire 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 Agreement covered by 49 CFR Part 23. Concessionaire agree to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

36. Right of Flight. The City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property owned by the City, including such noise as is inherent in the operation of aircraft, now known or hereafter used, in such airspace for landing on, taking off from, or operation on the Airport.

37. Rights Reserved to City. Rights not specifically granted to Concessionaire by this Agreement are expressly and independently reserved to the City. The City expressly reserve(s) the right to prevent any use of Airport property which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard.

38. Status Upon Expiration. If Concessionaire continues to conduct business after the expiration of the term of this Agreement or any extension of that term, Concessionaire will be deemed to be operating on a month-to-month basis, without limitation on any of the City's rights or remedies hereunder, subject to all of the terms and conditions of this Agreement. Fees shall be based on the same formula as the last month of the term of the Agreement prior to the hold over.

39. Surrender of Premises. Failure on the part of Concessionaire to remove its personal property from the Airport within five (5) days of the date of termination shall constitute a gratuitous transfer of title thereof to the City for whatever disposition is deemed to be in the best interest of the City. Any costs incurred by the City in the disposition of such property shall be borne by the Concessionaire.

40. Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facility of the Airport or the portion thereof wherein the Concessionaire is located then this Agreement shall thereupon terminate and the City shall be released and fully discharged from any and all liability hereunder.

41. Public Entity Crimes. As provided in §287.133, Florida Statutes by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date of this Agreement.

42. Entire Agreement. This Agreement and the Exhibits attached hereto contain the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understanding with respect thereto.

43. Construction Lien. The City's interest in said Premises shall not be liable for or subject to any construction lien whether the City has given its written approval for the improvements or otherwise; Concessionaire shall save and hold harmless the City and its interest in the Premises from any such lien or purported lien. Within fifteen (15) days of filing of any lien, Concessionaire shall cause same to be satisfied or shall bond off the lien. At the request of the City, Concessionaire will execute a memorandum of Agreement reciting the basic terms of this Agreement, including this provision, which memorandum, at the City's option, may be recorded in the Public Records of Polk County, Florida.

44. Americans with Disabilities Act. Concessionaire shall at all times maintain the Premises in accordance with and in compliance with the requirements of the Americans with Disabilities Act (ADA) of 1990, and its implementing regulations, as each may be amended from time to time, and with the State of Florida Accessibility Requirements Manual (ARM) as it applies to Concessionaire's facilities and operations at the Airport. If, as a result of Concessionaire's use or occupancy of the Premises, any additions, alterations or improvements must be made to any part of the Airport in order to comply with the requirements of the ADA or the ARM, or any other laws or regulations concerning the

accommodation of persons with disabilities, Concessionaire shall reimburse the City, on demand, for the costs incurred by the City to effect such compliance.

45. Right to Entry. The City, through the Airport Director, shall have the right to request from Concessionaire and to be provided entry to the Premises assigned herein to Concessionaire, for the purposes and to the extent necessary to protect the City's rights and interest, to provide for periodic inspection of said Premises from the standpoint of safety and health, and to check Concessionaire's compliance with the terms of this Agreement. Access shall be upon forty-eight (48) hours' notice and jointly with a representative from Concessionaire. No notice shall be required in the event of emergency.

46. Quiet Enjoyment. The City covenants that Concessionaire shall and may peaceably and quietly have, hold and enjoy its Concessionaire space and all parts thereof for the term hereby granted, subject to the terms and provisions hereof.

**IN WITNESS WHEREOF**, the parties herein have executed this Agreement as of the Effective Date first written above.

CITY OF LAKELAND, FLORIDA

AEROSPACE CENTER FOR EXCELLENCE,  
INC.

By: \_\_\_\_\_

H. William Mutz, Mayor

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_

Kelly S. Koos, City Clerk

By: \_\_\_\_\_

Printed: \_\_\_\_\_

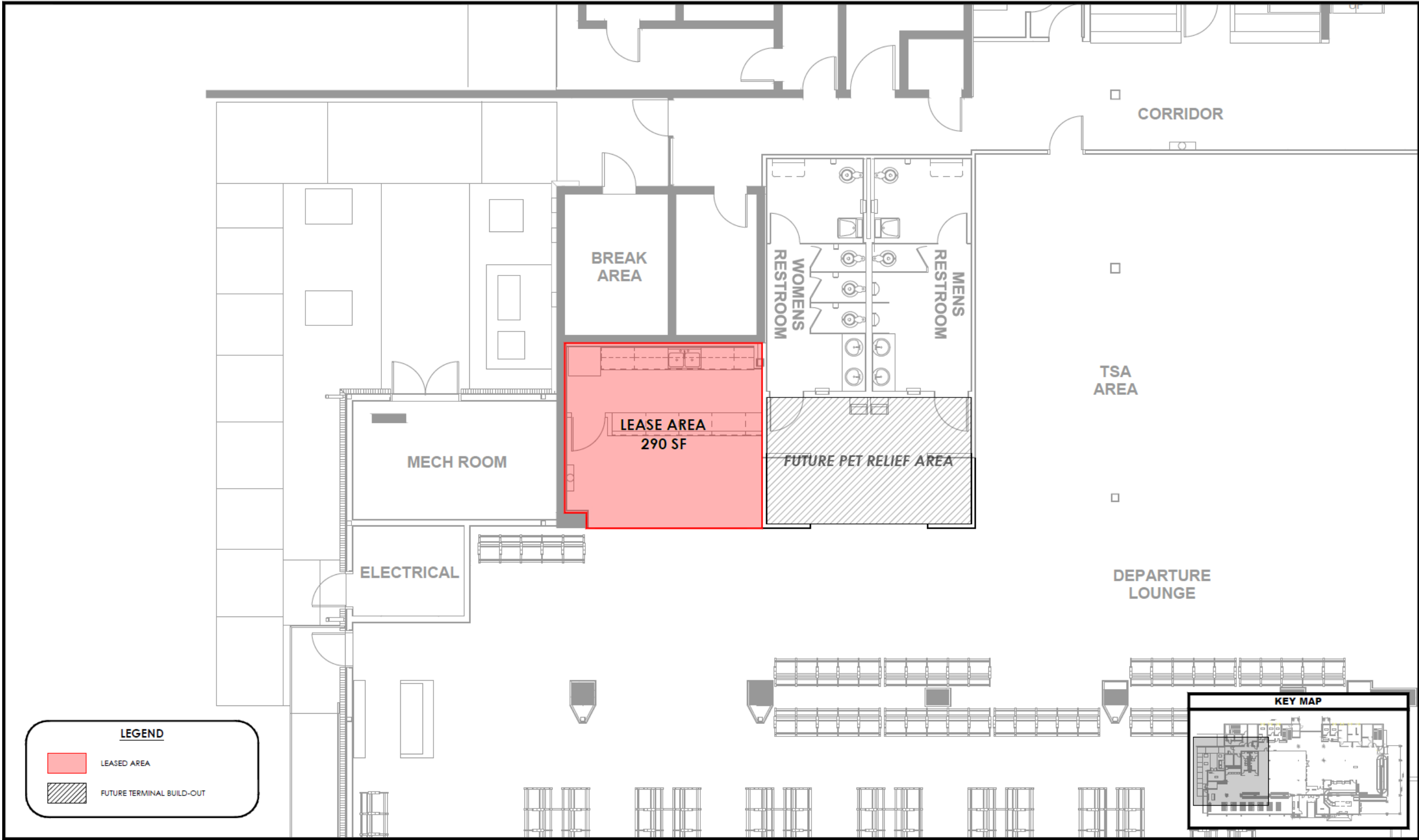
[Corporate Seal]

Approved as to form and correctness:

\_\_\_\_\_  
Palmer C. Davis, City Attorney

EXHIBIT A

LEASE AREA



**LEGEND**

-  LEASED AREA
-  FUTURE TERMINAL BUILD-OUT

**EXHIBIT B**  
**MINIMUM INSURANCE REQUIREMENTS**  
**FOOD AND BEVERAGE CONCESSIONAIRE INSURANCE AND SAFETY REQUIREMENTS**

**STATEMENT OF PURPOSE**

The City of Lakeland (the “City”) from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City’s interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

**CITY DEFINED**

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

**OTHER PARTY DEFINED**

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party’s subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

**LOSS CONTROL/SAFETY**

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

**INSURANCE - BASIC COVERAGES REQUIRED**

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party’s interests or liabilities, but are merely minimums.

"Except for workers’ compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as **additional insured**. It is agreed that the Other Party's insurance

## **INSURANCE – BASIC COVERAGES REQUIRED (cont’d)**

shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

Except for worker’s compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party’s deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

**Commercial General Liability:** This insurance shall be an “occurrence” type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party’s employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and **“Products and Completed Operations” coverage.**

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City’s acceptance of renovation or construction properties.

**The liability limits shall not be less than:**

<b>Bodily Injury and Property Damage</b>	<b>\$1,000,000 Single limit each occurrence</b>
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**Business Automobile Liability:** Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

**The liability limits shall not be less than:**

<b>Bodily Injury and Property Damage</b>	<b>\$1,000,000 Single limit each occurrence</b>
--	---

**Workers’ Compensation:** Workers’ Compensation coverage to apply for all employees for statutory limits and shall include employer’s liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. (“All States” endorsement is required where applicable). If

exempt from Worker's Compensation coverage, as defined in Florida Statute 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation. The Other Party shall also purchase any other coverage required by law for the benefit of employees.

**Excess Liability:** This insurance shall protect the Other Party and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial general liability policies. The policy shall be an "occurrence" type policy, and shall follow the form of the General and Automobile Liability.

**The liability limits shall not be less than: \$1,000,000**

## **ADDITIONAL INSURANCE**

**Additional Insurance:** The City requires the following types of insurance.

**Fidelity/Dishonesty/Liability Coverage:** Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the Other Party's employees resulting in loss to the City.

The liability limits shall not be less than: **\$1,000,000**

**Fire Legal Liability:** Tenant's liability for damages by fire to the rented premises the tenant occupies.

**The liability limits shall not be less than: \$100,000**

**Liquor Liability Coverage:** In anticipation of alcohol being served, the Other Party shall provide evidence of coverage for liquor liability in an amount equal to the general/umbrella/excess liability coverage. If the general liability insurance covers liquor liability (e.g. host or other coverage), the Other Party's agent or insurer should provide written documentation to confirm that coverage already applies to this agreement, contract, or lease. If needed coverage is not included in the general/umbrella/excess liability policy (ices), the policy (ices) must be endorsed to extend coverage for liquor liability, or a separate policy must be purchased to provide liquor liability coverage in the amount required. The liquor liability coverage is contingent upon alcohol service commencement.

**The liability limits shall not be less than: \$1,000,000**

## **EVIDENCE/CERTIFICATES OF INSURANCE**

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage, the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

## **Specification of Safety and Occupational Health Requirements**

All City of Lakeland project representatives who assume responsibility for contract management will be responsible for ensuring compliance with these safety requirements by all Contractors and Subcontractors.

### **I. General**

- A. All contractors are responsible for providing their employees with a safe and healthful working environment as required the Occupational Health and Safety (OSH) Act of 1970 and the Occupational Safety and Health Administration (OSHA) standards. Therefore, the contractor and their employees are responsible for following OSHA standards, applicable state regulations, and the City of Lakeland Safety Practices and Policies.
- B. The City of Lakeland's Safety Team and City management reserve the right to STOP work for any condition found to be Immediately Dangerous to Life and Health (IDLH). The contractor is solely and exclusively responsible for compliance with all safety requirements and the safety of all their employees and property on the project site. Note: Nothing in this requirement is to be construed to as removing or shifting responsibility from the contractor.
- C. The parties hereto expressly agree that the obligation to comply with applicable safety provisions is a material provision of this Contract and a duty of the Contractor. The City reserves the right to require demonstration of compliance with the safety provisions of this Contract. The parties agree that such failure is deemed to be a material breach of this Agreement. The Contractor agrees upon such breach, all work under the Contract shall terminate until compliance with the provisions of this Agreement is demonstrated. In no event shall action or failure to act on the part of the City be construed as a duty to enforce the safety provisions of this Agreement, nor shall it be construed to create liability for the City for any act or failure to act in respect to the safety provisions of this Agreement.

### **II. Personal Protective Equipment (PPE) (OSHA 29CFR§1910 Subpart I)**

It is the contractor's sole responsibility to provide adequate PPE for their employees. Additionally, the contractor is responsible for training their employees in the proper selection, maintenance, use of PPE. Minimal PPE requirements on City of Lakeland worksites:

- a. **Foot protection** must meet ANSI Z41.1-1999 standards and worn on all City properties.
- b. **Head protection** must meet ANSI Z89.1-1986 standards and worn in all areas except office buildings and office trailers.
- c. **Eye and face protection** must meet ANSI Z87.1-1989 standards and worn in all areas except office buildings and office trailers.
- d. **Hand and Arm Protection** must meet OSHA 29CFR§1910.138 requirements for proper selection, inspection, and care.

- e. **Hearing Protection** must meet ANSI S3.19-74, OSHA 29CFR§1910.95(j) and 29CFR§1910.95 Appendix: B requirements.

Hearing protection must be worn in areas where the noise level is over 85 dB

### **III. Housekeeping**

It is the contractor's sole responsibility to keep the project work site clean during and after working hours. Contractor shall supply waste receptacles for each site location. They shall be emptied not less frequently than once each working day, unless unused, and shall be maintained in a clean and sanitary condition. At the completion of the contract the contractor will ensure that all excess materials are removed from the work site and that the worksite is left clean and safe. If the contractor leaves a project work site unkept and in a hazardous condition; the City will have the area cleaned and forward the bill to the contractor.

### **IV. Smoking**

Smoking is permitted only in designated areas. Receptacle's must be used or waste removed in contractors' waste disposal container.

### **V. Safety Kick-offs and Safety Stand-Downs**

A safety kick-off to disseminate safety expectations will be conducted before the project commences. Safety sand-downs will be conducted when major safety concerns, accidents, or near misses occur.

### **VI. Training Documentation**

OSHA requires documentation of all safety training provided to employees by their employers. Documentation of all required safety training required for work proposed for this contract must be submitted within thirty days of contract award or before commencement of contracted work. Please reference the Safety Requirements Report for details.

### **VII. Written Safety Programs or Plans**

Contactors awarded contracts with the City of Lakeland must, thirty days of contract award or before commencement of contracted work, provide the Risk Management Office written safety programs or plans. Please reference the requirements set forth in the Safety Requirements Report. The Risk Management Office will approve the submitted safety programs or plans as adequate to reduce risk of the work being performed.

**EXHIBIT C**

**INDEMNIFICATION / HOLD HARMLESS**

**FOOD AND BEVERAGE CONCESSIONAIRE INDEMNIFICATION**

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the Contractor shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, gross negligence or intentional wrongful misconduct in the performance of the work by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the Contractor, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

**Applicability:** It is the express intent of the Contractor that this agreement shall apply for the project(s) or time period indicated below. (Check and complete one):

\_\_\_\_\_ **Agreement is applicable to all contracts, purchase orders and other work performed for the City of Lakeland for the time period of not more than five (5) years.**

\_\_\_\_\_ to \_\_\_\_\_  
(Date) (Date)

(OR)

\_\_\_\_\_ **Agreement is limited to Bid #, Purchase Order #, Requisition # \_\_\_\_\_, or Contract dated \_\_\_\_\_.**

**Subrogation:** The Contractor and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor or Subcontractor enter into such an agreement on a pre-loss basis.

**Release of Liability:** Acceptance by the Contractor of the last payment shall be a release to the City and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for,



**EXHIBIT D**  
**MAINTENANCE MATRIX**

RESPONSIBILITY	TENANT	AIRPORT
Air Compressor (If Installed)	N/A	N/A
Air Handling System(s)		X
Ceiling Tiles		X
Disposal of Garbage, Debris and Waste Materials	X	
Elevators		X
Exterior Electrical		X
Exterior Electrical Fixtures		X
Exterior Light Bulbs		X
Exterior Painting		X
Exterior Plumbing		X
Exterior Signage	N/A	N/A
Fire Protection System including Minimum Required Fire Extinguishers		X
Generator (If Installed)		X
Floor Replacement (Carpet, Tile Laminate ect.)		X
Grounds Care		X
Hangar Doors	N/A	N/A
Hangar Insulation	N/A	N/A
Interior Electrical		X
Interior Electrical Fixtures		X
Interior Light Bulbs		X
Interior Painting		X
Interior Plumbing		X
Interior Walls		X
Irrigation		X
Janitorial Service	X	
Janitorial Service - Flooring	X	
Keys / Locks		X
Mechanical / HVAC Maintenance		X
Mechanical / HVAC Replacement		X
Non-Structural Repairs	X	
Parking Lot & Side Walks		X
Pedestrian Doors Including Hardware		X
Personal Property	X	
Pest Control		X
Restroom Fixtures (Exclusive to Tenant Premises / Toilets / Faucets)		X
Roof Maintenance		X
Roof Replacement		X
Security System	X	
Signage / Wayfinding		X
Structural Elements of Building		X
Water Fountains / Water Filters	X	
<b>CURRENT 2024.02.14</b>		

## EXHIBIT E

### PREMISE IMPROVEMENTS

Improvements made to the Premises that are eligible for rent credit as defined in Section 14 of this Agreement include the following:

- Ceilings
- Electrical
- Flooring
- HVAC
- New Built-In Display Cabinets
- Plumbing
- Signage
- Wall Coverings and Paint

Improvements made to the Premises that are ineligible for rent credit as defined in Section 14 of this Agreement include the following:

- Coolers
- Freezers
- Point of Sale (POS) Systems
- Security Cameras / Systems
- Toasters
- Vending Machines
- Other Equipment and Furnishings

Improvements not expressly outlined herein for credit, shall be credited at the discretion of the Airport Director.