

Form B-1

RENT PROPOSAL SCHEDULE

INSTRUCTIONS:

The Proposer's rent shall be submitted on this **Form B-1 "Rent Proposal Schedule"**, and in the manner stated herein; there is no exception to this requirement. Proposer shall submit only one option: either Option A or Option B. Proposer is requested to fill in the applicable blanks on this form and to make no other marks.

OPTION A:

BASE RENT (Minimum Annual Guarantee with an Annual Escalation Percentage)

The Proposer shall state the Minimum Annual Guarantee (MAG) for the initial term of the contract including any extensions. In addition, the Proposer shall state an Annual Escalation Percentage, to be added to the monthly MAG for the term of the contract.

BASE RENT (Minimum Annual Guarantee)	\$ _____ Annually
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Annual Escalation Percentage	_____ Annual Escalation %
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Note: For example, if the Proposer proposes \$1,800 as the MAG and proposes a 5% increase, then in Year 2, the Proposer will pay a MAG of \$1,890 (\$1,800 X 5% = \$1,890). In Year 3, the Proposer will pay a MAG of \$1,985 (\$1,890 X 5% = \$1,985), and so on.

OR

OPTION B

BASE RENT (Minimum Annual Guarantee) Plus PERCENTAGE RENT (% of Monthly Gross Receipts)

Proposer shall state a Minimum Annual Guarantee (MAG) for the initial term of the contract including any extensions. In addition to the MAG, Proposer also shall propose a Percentage of Monthly Gross Receipts for leasing the space for the term of the contract. Each month the selected Proposer shall submit to the County the Base Rent **PLUS** the % of Total Monthly Gross Receipts.

BASE RENT (Minimum Annual Guarantee)	\$ _____ (Annually)
PERCENTAGE RENT (% of Total Monthly Gross Receipts)	_____ % (Monthly)

Note: For example, if the Proposer proposes \$1,800 as the MAG and Gross Receipts are \$100,000 for the month, and the percentage proposed for Total Monthly Gross Receipts is 5%, then the total payment to the County would be \$6,800 (\$1,800 + 5% of \$100,000 = \$6,800).

Notes:

- 1) The MAG or Base Rent shall be stated as an annual amount, to be paid in twelve equal monthly installments, due on the first day of each month, without billing.
- 2) The annual escalation percentage shall be stated as a monthly percentage for the applicable year, to be added to the MAG or Base Rent each month.
- 3) The Percentage Rent shall be stated as a percentage of monthly gross receipts, under the Lease Agreement, to be paid in twelve monthly installments, due on the tenth (10th) day of each month, for each preceding month.
- 4) The MAG and Percentage Rent stated shall be guaranteed for the initial contract period.

- 5) Notwithstanding any proposed prices, as stated in Section 4.6 of this Solicitation, the County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

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OPTION A:

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BASE RENT (Minimum Annual Guarantee)	\$ _____ Annually
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Annual Escalation Percentage	_____ Annual Escalation %
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Note: For example, if the Proposer proposes \$1,800 as the MAG and proposes a 5% increase, then in Year 2, the Proposer will pay a MAG of \$1,890 (\$1,800 X 5% = \$1,890). In Year 3, the Proposer will pay a MAG of \$1,985 (\$1,890 X 5% = \$1,985), and so on.

OR

OPTION B

BASE RENT (Minimum Annual Guarantee) Plus PERCENTAGE RENT (% of Monthly Gross Receipts)

Proposer shall state a Minimum Annual Guarantee (MAG) for the initial term of the contract including any extensions. In addition to the MAG, Proposer also shall propose a Percentage of Monthly Gross Receipts for leasing the space for the term of the contract. Each month the selected Proposer shall submit to the County the Base Rent **PLUS** the % of Total Monthly Gross Receipts.

BASE RENT (Minimum Annual Guarantee)	\$ _____ (Annually)
PERCENTAGE RENT (% of Total Monthly Gross Receipts)	_____ % (Monthly)

Note: For example, if the Proposer proposes \$1,800 as the MAG and Gross Receipts are \$100,000 for the month, and the percentage proposed for Total Monthly Gross Receipts is 5%, then the total payment to the County would be \$6,800 (\$1,800 + 5% of \$100,000 = \$6,800).

Notes:

- 1) The MAG or Base Rent shall be stated as an annual amount, to be paid in twelve equal monthly installments, due on the first day of each month, without billing.
- 2) The annual escalation percentage shall be stated as a monthly percentage for the applicable year, to be added to the MAG or Base Rent each month.
- 3) The Percentage Rent shall be stated as a percentage of monthly gross receipts, under the Lease Agreement, to be paid in twelve monthly installments, due on the tenth (10th) day of each month, for each preceding month.
- 4) The MAG and Percentage Rent stated shall be guaranteed for the initial contract period.

- 5) Notwithstanding any proposed prices, as stated in Section 4.6 of this Solicitation, the County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

(This is the form of the lease agreement the County anticipates awarding to the selected proposer.)

WEST LOT RESTAURANT LEASE AGREEMENT

THIS AGREEMENT made and entered into as of this _____ day of _____, 2013 by and between a corporation organized and existing under the laws of the State of Florida, having its principal office at _____, _____, _____ (hereinafter referred to as the "Lessee"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, the County owns the West Lot Building (the "West Lot") for the use by patrons, lessees, employees and visitors, and which facilities are administered for the County by its Director of the Internal Services Department (the "Department"), or designee; and,

WHEREAS, the Lessee has offered to lease and operate the West Lot Restaurant (the "Restaurant") in a manner that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposals (RFP) No. 836 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Lease Agreement;

WHEREAS, the Lessee has submitted a written proposal dated _____, hereinafter referred to as the "Lessee's Proposal" which is incorporated by reference herein; and,

WHEREAS, the Lessee's Proposal is recommended as being in the best interest of the County; and formed the basis for award of this Lease Agreement,

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

1. **Definitions:** The following words and expressions used in this Lease Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:
- a) The words "Lease Agreement" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 836 and all associated addenda and attachments, the Lessee's Proposal, and all other attachments hereto and all amendments issued hereto.
 - b) The words "Lease Agreement Effective Date" or "Effective Date" to mean the commencement date of this Lease Agreement, and shall begin on the date indicated in the first page of this Lease Agreement.
 - c) The words "Lease Agreement Year" to mean each twelve month period starting from the Lease Agreement Effective Date and the first Lease Agreement Year shall commence immediately upon the Lease Agreement Effective Date. Each new Lease Agreement Year begins on the one year anniversary of the Lease Agreement Effective Date.
 - d) The words "Contract Manager" to mean Miami-Dade County's Internal Services Department, Real Estate Division Director, or the duly authorized representative designated to manage the Lease Agreement.
 - e) The word "Landlord" to mean Miami-Dade County.
 - f) The word "Lessee" to mean the corporate entity _____ and its permitted successors and assigns.
 - g) The word "Days" to mean Calendar Days.
 - h) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Landlord's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Landlord's Project Manager.
 - i) The words "Project Manager" to mean Miami-Dade County's Internal Services Department, Real Estate Division Director or the duly authorized representative designated to manage the Project.
 - j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Lessee.
 - k) The word "subcontractor" or "sub-consultant" to mean any person, entity, firm or corporation, other than the employees of the Lessee, who furnishes labor and/or materials, in connection with the Services, whether directly or indirectly, on behalf and/or under the direction of the Lessee and whether or not in privity of Lease Agreement with the Lessee.
 - l) The words "Work", "Services", or "Project" to mean all documentation and any items of any nature submitted by the Lessee to the Landlord's Project Manager for review and approval pursuant to the terms of this Lease Agreement, and all matters and things required to be done by the Lessee in accordance with the provisions of this Lease Agreement.
 - m) The words "Lease Operations Year" to mean each twelve month period starting from the Date of Beneficial Occupancy and the first Lease Operations Year shall commence immediately upon the Date of Beneficial Occupancy. Each new Lease Operations Year begins on the one year anniversary of the Date of Beneficial Occupancy.

2. **Use:** The County hereby grants unto the Lessee, and the Lessee hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth herein to develop and operate the Restaurant at the West Lot. Lessee shall use the Restaurant only for the use permitted. The Lessee shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of the Landlord, and any sales by the Lessee of services or items not specifically authorized in writing by the Landlord shall constitute a default. The unapproved services or items shall be discontinued immediately by the Lessee, as directed by the Landlord upon written notice. Lessee shall conduct its business at all times in accordance with this Agreement.
3. **Operations:** Lessee shall continuously and uninterruptedly use and operate for purposes outlined herein all of the Restaurant other than such minor portions thereof as are reasonably required for storage and office purposes, and such storage and office space shall only be used in connection with the business conducted by Lessee in the Restaurant. Lessee shall will have on the premises adequately trained uniformed personnel for efficient service to customers.
4. **Limitations on Use:** Subject to Lessee's right to use the Restaurant for the purposes specified in this Lease Agreement, Lessee shall not suffer or permit the Restaurant or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Restaurant or West Lot building or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Restaurant or West Lot structure; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Restaurant or West Lot building structure or the proper and economic functioning of any other common service facility or common utility of the Restaurant or West Lot building structure; (vi) impair or interfere with the physical convenience of any of the occupants of the Restaurant or West Lot building structure; or (vii) impair any of the Lessee's other obligations under this Lease Agreement.
5. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Lessee's business in the Restaurant, or any part thereof, and if failure to secure such license or permit would in any way adversely affect the County, Lessee at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Lessee shall at all times comply with the terms and conditions of each license and permit.
6. **Non-exclusivity:** This Lease Agreement is non-exclusive in character and in no way prevents the Landlord from authorizing or offering competitive services, products or items by other vendors or others in other premises owned and operated by the Landlord or from authorizing other unrelated concession services within the West Lot. The Lessee shall have no rights to any other location that may be made available by the Landlord.
7. **Order of Precedence:** If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions (the Scope of Services and Price Schedule) 3) the Miami-Dade County's RFP No. 836 and any associated addenda and attachments thereof, and 4) the Lessee's Proposal.
8. **Request for Proposal Incorporated:** The Lessee acknowledges that it has submitted to the County a proposal ("Lessee's Proposal") that was the basis for the award of this Agreement and upon which the County has relied and is incorporated herein by reference.

9. **Appendix and Attachments:** The Appendix and Attachments listed in this Paragraph and attached to this Agreement are hereby incorporated in and made a part of this Lease Agreement:
- Appendix A: Scope of Services
 - Appendix B: Rent Proposal Schedule
 - Attachment A: Layout/Floor Plan
10. **Property Description:** The West Lot Restaurant area is located at 220 NW 3rd Street, Miami, FL 33128 on the ground floor at the corner of N.W. 2nd Street and N.W. 2nd Avenue and has approximately 1,263 square feet as shown on Attachment A, attached hereto and incorporated herein by reference.
11. **Term:** The Lease Agreement shall become effective on the date indicated on the first page of this Lease Agreement, and shall continue until the last day of the 60th month. The County, at its sole discretion, reserves the right to exercise the option to renew this Lease Agreement for a period of two (2) additional terms of five (5) years each upon the same terms and conditions contained herein. The County reserves the right to exercise its option to extend this Lease Agreement for up to one hundred-eighty (180) calendar days beyond the current Lease Agreement period and will notify the Lessee in writing of the extension. This Lease Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Lessee, upon approval by the Board of County Commissioners.
12. **Security Deposit:** Prior to the start of the Lease Agreement, the Lessee shall furnish a security deposit in cash or cashier's check payable to the Board of County Commissioners, equal to three (3) months Base Fee or \$5,000.00 whichever is greater. The security deposit shall be redeemable at the end of the Lease Agreement term except for such conditions pertinent thereto. If the Landlord must draw upon any amount owed to the Landlord for this Lease Agreement, Lessee hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the Landlord that the security was drawn upon. In the event the Lessee abandons its performance, the Landlord will retain the security deposit.
13. **Minimum Annual Guarantee (MAG) – Base Rent:** The Lessee, in consideration of the use and occupancy of the Restaurant, does hereby covenant and agree to pay to the Landlord during the period from the commencement date of this Lease Agreement to the termination date of the Lease Agreement without deduction or set off of any kind the sum of \$TBD (plus tax) per annum as Base Fee in monthly installments of \$TBD (plus tax) on the first day of each month without billing. The Base Fee shall be adjusted upward at the end of each Lease Agreement Year, based on the Consumer Price Index (CPI) under the City of Miami Group, for All Urban Consumers, All Items.
14. **Percentage of Monthly Gross Receipts – Additional Rent:** In addition to the Base Rent, Lessee agrees to pay to the Landlord, monthly, an amount equal to ____% (plus tax) of monthly Gross Receipts hereinafter referred to as "Additional Rent" within 10 days following the end of each month during the term of this Lease Agreement.
15. **Sales Tax:** The Lessee shall be liable for the prevailing State of Florida Sales and Use Tax imposed on payment (currently at the rate of 7%) on the amounts payable to the County. This Sales and Use Tax shall be payable to the County, when payment is due, the County in turn will remit same, less authorized handling deductions, to the State.
16. **Additional Taxes:** If at any time during the term of this Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on the Percentage Rent or Monthly Minimum Guarantee, whichever is greater, (fixed minimum or additional), or other tax (except income tax), however described, against the County on account of the payment, shall be deemed to constitute real estate taxes on the Pharmacy and the premises for the purposes of this Paragraph.

17. **Taxes on Lessee's Personal Property:** Lessee shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Pharmacy by Lessee.
18. **Late Payment Charge:** In the event that the Lessee fails to make any payments, within ten calendar days of the first day of the month, as required to be paid under the provisions of this Agreement, a late payment charge of \$100.00 per month shall be assessed. The right of the County to require payment of such late payment charge and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.
19. **Application of Payments:** Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Percentage Rent or Monthly Minimum Guarantee, whichever is greater and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
20. **Worthless Check or Draft:** In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service charge of \$40.00 or five percent (5%) of the face amount of the check, whichever is greater. This amount will be in addition to any late fee's that might apply. For each such dishonored check, such payment is to be made not more than five (5) days from written notice of such default. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department. A second such occurrence of dishonored check during the Agreement term will be a breach of contract and, at the County's option, will constitute a default allowing termination.
21. **Payment of Rent:** The Base Rent and Additional Rent as well as other amounts payable by Lessee to the Landlord, under the terms of this Lease Agreement, shall be paid promptly when due, without notice for any reason whatsoever and without abatement. Base Rent and Additional Rent and all other payments provided for in this Lease Agreement shall be paid or mailed to:

Miami-Dade County
Internal Services Department
Real Estate Development Division
Retail Leasing Manager
111 NW 1st Street, Suite 2460
Miami, FL 33128

(Checks shall be made payable to the "Miami-Dade County Board of County Commissioners".)

22. **Accord and Satisfaction:** No payment by Lessee or receipt by County of a lesser amount than any payment of Percentage Rent or Monthly Minimum Guarantee, whichever is greater, or additional payment herein stipulated shall be deemed to be other than on account of the earliest stipulated Percentage Rent or Monthly Minimum Guarantee, whichever is greater, due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Percentage Rent or Monthly Minimum Guarantee, whichever is greater, or additional payment be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Percentage Rent or Monthly Minimum Guarantee, whichever is greater, or additional payment or pursue any other

remedy provided in this Agreement, at law or in equity.

23. **Gross Receipts:**

A. Lease Agreement Year Defined: "Lease Agreement Year" means a twelve-month period beginning on the Lease Agreement Effective Date and ending twelve months thereafter.

B. Gross Receipts Defined: "Gross Receipts" means all monthly receipts collected by the Lessee from the sale of services or merchandise by Lessee, concessionaires of Lessee and sub-Lessee(s) of Lessee, sold in, upon or from the Restaurant, including such sales as shall in good faith be credited by Lessee, its concessionaires, and sub-Lessees in the regular course of its or their business to personnel employed at the time of sale at the Restaurant, including sub-concession Agreements or contract employee payments to the Lessee and mail and telephone orders received at the Restaurant and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Lessee or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Lessee's trade fixtures, operating equipment or other property used by Lessee or its concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Lessee, or its concessionaires, whichever of such events shall first occur.

C. Lessee's Certification of Receipts: Lessee shall submit to Landlord on or before the 10th day following the end of each month during the term of this Lease Agreement and on or before the 10th day following the expiration or earlier termination of this Lease Agreement, a written statement, signed by Lessee and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Lessee shall submit to Landlord on or before the 60th day following the end of each Lease Agreement Year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Lessee and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Lease Agreement Year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as Landlord may reasonably determine or require.

D. Examination of Lessee's Books and Records: Such books and records as are necessary to determine the amount of any Percentage Fee payable to Landlord shall be subject to examination by the County or its authorized representatives at reasonable times during Lessee's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Lessee's business. All information obtained by the County or its authorized representatives from Lessee's books and records shall be kept confidential by the County and all such representatives except in connection with any mortgage or assignment of this Lease Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Lessee's Receipts Records: For the purpose of computing and verifying the Percentage Fee due hereunder, Lessee shall prepare and keep, for a period of not less than three (3) years following the end of each Lease Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Lessee. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Lease Agreement. Lessee shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Lessee shall keep, for at least three (3) years following the end of each Lease Agreement Year, all pertinent original sales records, which records shall include (i) cash

register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Lessee's Gross Receipts.

The acceptance by County of payments of Percentage of Monthly Gross Receipts or reports thereon shall be without prejudice and shall in no case constitute a waiver of County's right to examination of Lessee's books and records of its Gross Receipts and inventories of merchandise.

F. **Audit of Lessee's Business Affairs and Records:** Landlord shall have the right to cause, upon five (5) business days' written notice to Lessee, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by Landlord, or the Audit and Management Services Department of the County. Lessee shall make all such records available for said examination at the Restaurant or at some other mutually agreeable location. If the result of such audit shall show that Lessee's statement of Gross Receipts for any period has been understated, Lessee shall pay Landlord the amount due. If such understatement is three percent (3%) or more, Lessee shall pay Landlord the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as rent. A report of the findings of said accountant shall be binding and conclusive upon Landlord and Lessee. The furnishing by Lessee of any grossly inaccurate statement shall constitute a breach of this Lease Agreement.

G. If Lessee fails to record, maintain, or make available sales supporting documentation as specified above, then Lessee may be deemed by the County to be in default of this Lease Agreement.

24. **New Construction:** The Landlord's approval is required prior to all construction, all installation and all use of facilities. All improvements shall become the property of the County. All construction shall be accomplished in accordance with the City of Miami and County permitting requirements.
25. **Security Deposit:** After the contract award and prior to any work under this Agreement, the Lessee shall furnish a Security Deposit in the amount of \$ [REDACTED] in the form of a cashier's check payable to the Board of County Commissioners, redeemable at the end of the Agreement except for such conditions pertinent thereto. Additionally, if the County must draw upon the Security Deposit for monies owed to the County for this Agreement, Lessee hereby agrees to restore the Security Deposit to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon. In the event the Lessee abandons its performance of the services herein, the County will retain the Security Deposit.
26. **Common Areas:**
 - a. **Common Areas** shall mean all areas, space, equipment and special services provided by the County on or off the land occupied by the Retail Complex (refers to the ground level of the West Lot where retail outlets and government offices are located) for the common or joint use or benefit of Lessees of the West Lot, their employees, agents, customers, invitees and licensees, including but not limited to, open and enclosed courts and malls, landscaped and planted areas, and the equipment and facilities appurtenant to each of the aforesaid.

b. **Common Area Operating Costs** shall mean all costs and expenses of every kind and nature allocated to the Retail Complex paid or incurred by County or in connection with operating, managing, equipping, policing and protecting, lighting, repairing, replacing, and maintaining the Common Areas and the appurtenances and equipment therein. The allocation of such costs to the Retail Complex by the County shall be at the County's sole discretion. Such costs and expenses may include, but not be limited to, gardening; landscaping; illumination and maintenance of signs advertising or referring to the Leased Premises; cleaning; insurance coverage as the County may, in its sole discretion, from time-to-time deem proper; cost of personnel providing services in the Common Areas (including, but not limited to wages, unemployment taxes, social security taxes, employee benefits); supplies; operation of the Common Areas and equipment serving the property; and the cost of all personnel required to supervise, implement and accomplish all the foregoing.

c. **Common Area Maintenance and Escalation Charge:**

(1) Effective on the Commencement Date of this Agreement, and as additional rent hereunder, Lessee shall pay monthly to the County, on the first day of each month during the term of this agreement. Lessee's share of the Common Area Maintenance Costs is based on the County's estimate, subject to adjustment as hereinafter provided in Paragraph (2) below. Lessee's share of Common Area Maintenance Costs shall be the product which results by multiplying such Common Area Costs by the percentage that the gross square foot area of the Leased Premises is of the gross square foot area of all retail spaces located on the first floor of the Retail Leased Premises, as calculated by the County.

(2) **Common Area Adjustment:** Within one hundred twenty (120) days following the end of each calendar year of the West Lot Restaurant operation the County shall furnish to Lessee a statement showing the total Common Area Maintenance Costs for the calendar year just expired, the amount of Lessee's share of such Common Area Maintenance Costs, and payments made by Lessee during such calendar year under this Paragraph. If Lessee's share of such Common Area Maintenance Costs for such calendar year shall exceed Lessee's payments so made, Lessee shall pay to the County the deficiency within ten (10) days after receipt of said statement. If Lessee's payments shall exceed Lessee's share of such Common Area Maintenance costs as shown on such statement, Lessee shall be entitled to offset the excess against its next payment thereafter becoming due under this Agreement.

d. **Use of Common Areas:** Lessee and its concessionaires, Sub-Lessees, officers, employees, agents, customers and invitees shall have the right, in common with the County and all others to whom the County has granted or may hereafter grant rights or who shall otherwise have such rights, to use the Common Areas, subject to such reasonable Rules and Regulations as the County may from time to time impose. Lessee agrees to abide by such Rules and Regulations. The County shall have the right to limit, or otherwise schedule, deliveries to Lessee if, in the County's judgment, said limitation is necessary for the proper operation of the County or County's Leased Premises in the building.

27. **Landlord Approval:** The Lessee agrees that it will obtain prior written approval from the Landlord in all of the following matters:

A. Changes from originally approved specifications, pricing, activities, signage,

- merchandise and graphics.
- B. Equipment Lessee plans to install requiring any building modifications.
- C. Aesthetics of the Restaurant.
- D. Any use of the County's, facility's or Restaurant's name.
- E. Hours of Operation
- F. Uniforms to be used by employees which shall be consistent with or better than those normally used by professionally operated Restaurants.

Should any of the above items be disapproved, Lessee may offer alternative solutions. The County reserves the right with stated just cause to require the Lessee to change within a stated time any and all items contained in this paragraph it deems in need of change, despite previous approval of same.

28. **Public Contact of Lessee's Employees:** Lessee's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the Landlord to require his or her removal from duties in the Restaurant. Lessee's employees will not be considered agents of the County.
29. **Hours of Operation:** The Restaurant shall operate, at a minimum, five (5) days a week Monday thru Friday, continuously from 7:30am to 5:30pm, except on County, State and Federal designated holidays. Hours of operations may be extended as deemed appropriate by the Lessee, and approved by the County. The Lessee shall provide sufficient staff to provide customer service. The County's Project Manager may require a change in hours of operation, if, in the reasonable discretion of the County, such a change is desirable in providing the best service to the public.
30. **Pricing:** Lessee shall maintain the pricing schedule for goods and services submitted with its Proposal, which prices shall be comparable to those off-premise operations of its own company-owned or franchised stores in Miami-Dade County, if it is part of a chain, or comparable to a similar type of operation if an independent or non-chain affiliate. Lessee shall provide to the County a schedule of such proposed changes not later than ten (10) days prior to the intended implementation date, for approval or disapproval, at any time during the Lease Agreement Term when price changes are contemplated. Pricing for special events or services shall be expeditiously reviewed by the Landlord.
31. **Personnel:** The Lessee shall provide the Landlord with the name and telephone number of a management person of the Lessee who will be on call, at all times, for emergencies or other matters related to the operations under this Lease Agreement. The Lessee shall ensure that all of its personnel are courteous and cooperative and present a neat, clean uniformed and professional appearance at all times. Failure of an employee to do so shall be grounds for the Landlord to demand his or her removal from duties in the Restaurant. The Lessee shall ensure that all employees having public contact are able to understand and communicate in spoken English. All employees of the Lessee shall be considered to be, at all times, employees of the Lessee under its sole direction and not employees or agents of the Landlord.

In the event the Lessee wishes to substitute personnel for the key personnel identified by the Lessee's Proposal, the Lessee must notify the Landlord in writing and request written approval for the substitution at least ten business days prior to effecting such substitution.

32. **Signs:** The nature, size, shape and installation of Lessee's business signs within the Restaurant or in, on or adjacent to the Restaurant or West Lot must first be approved in writing by Landlord. Said signage must also be approved by all governmental authorities having jurisdiction over the

Restaurant. All signs shall be removed by the Lessee at the termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Lessee. Signage must be maintained in good condition and appearance.

33. **On-Site Manager:** The Lessee shall employ a qualified full-time on-site restaurant Manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Lessee under this Lease Agreement and to accept service of all notices provided for herein.
34. **Quality of Lessee's Service:** The Lessee shall conduct its operations in an orderly manner and so as not to annoy, disturb, or be offensive to customers, patrons, or others in the immediate vicinity of such operations.

The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, and upon objection of the Landlord concerning the conduct, demeanor or appearance of any such person, Lessee shall immediately take all necessary steps to correct the cause of such objection.

Lessee shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, keep, maintain, and repair and, upon the expiration of this Agreement or its termination in any manner, shall deliver said premises to the Landlord in the same condition as at the commencement of this Agreement, with the exception of loss by fire or other casualty and with the exception of leaving those interior improvements so agreed upon by the Landlord to remain in place. Lessee shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore.

It is expressly understood and agreed that the Lessee's operation shall not interfere in any manner with the use of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Lessee agrees that a determination by the Landlord will be accepted as final in evaluating whether its activities infringe on the rights of others and that Lessee will fully comply with any decisions on this matter.

35. **Monitoring Services:** The Landlord shall have the right, without limitation, to monitor and test the quality of services of the Lessee, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of a shopping service, closed circuit TV, and other reasonable means.
36. **Services/Equipment Provided by County:** The Landlord shall provide access to the following:
- A. Electrical as existing.
 - B. Water facilities as existing.
 - C. Sewage collection facilities as existing.
 - E. Waste collection.
37. **Equipment and Services Provided by Lessee:** The Lessee, at its sole cost, shall provide at the Restaurant:

- A. Janitorial service within the Restaurant.

The Lessee shall keep the Restaurant and equipment clean at all times. If the Restaurant and equipment are not kept clean in the opinion of the Landlord, the Lessee will be so

advised and if corrective action is not immediately taken, the Landlord will cause the same to be cleaned and the Lessee shall assume responsibility and liability for such cleaning.

B. **Maintenance service to air conditioning.**

The Lessee shall contract a licensed air conditioning contractor to perform regular monthly maintenance and necessary repairs to the separate air conditioning unit servicing the Restaurant.

C. **Pest extermination.**

The Lessee shall follow the guidelines of the County's Integrated Pest Management program.

35. **Equipment Installed by Lessee:** The Lessee shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Restaurant. All furnishings, fixtures and equipment acquired for the Restaurant shall be of a high quality as good as or better than that found at similar facilities. The Landlord shall be afforded the opportunity to approve all furnishings, fixtures and equipment for the facility.

Any equipment, furnishings, signage and advertising installed by the Lessee shall be with the appropriate standards of decor at the West Lot. Following the installation of any additional equipment, furnishing and improvements which the Landlord may approve from time to time, Lessee shall provide to the Landlord a statement setting forth the cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed.

Lessee agrees that all new equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.

Lessee shall not alter or modify any portion of the West Lot, the Restaurant or the improvements constructed therein without first obtaining written approval from the Landlord.

36. **Security and Protection:** The Lessee acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The Landlord makes no warranties as to any obligation to provide security for the Restaurant, outside of standard security measures supplied by the Landlord in general. Lessee may provide its own specialized security for the Restaurant subject to the Landlord's written approval.
37. **Hurricane Preparedness:** The Lessee shall follow the County's emergency evacuation and hurricane plan as set forth for West Lot.
38. **Maintenance Responsibilities of Lessee, Appearance of Facility:** Lessee shall, at its sole cost and expense, keep and maintain the Restaurant in a clean and good condition. The provision of janitorial services and all interior maintenance within the Restaurant are the sole and exclusive responsibility of the Lessee. Upon failure of the Lessee to maintain the Restaurant as required in this Paragraph, the Landlord may, after fifteen days written notice to the Lessee, enter upon the Restaurant and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall constitute additional rental(s), and shall be billed to and paid by the Lessee.
39. **Building Services:** The Landlord has caused all necessary utility lines and services to be brought to the Leased Premises. Lessee shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the West Lot as determined either by the

public utility providing such service or by the Landlord in the exercise of reasonable judgment. Lessee shall make all repairs caused by Lessee's negligence.

40. **Payment of Building Services:** Lessee agrees to pay for all charges for utility service used or consumed in or upon the Leased Premises including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such charges are separately measured by metering or otherwise, Lessee agrees to pay the actual cost thereof, without addition or surcharge by the County. To the extent that such charges are not separately metered, Lessee agrees to pay Lessee's pro-rata share thereof. Lessee's pro-rata share for such services shall be computed by multiplying Lessee's share by the total charge for the service attributable to the County's Retail Leased Premises. For services or utilities not used by or provided to all Lessees of the West Lot, Lessee's pro-rata share shall be determined by dividing the charge among those permittees and lessees using the utility or service on the basis of relative area of their charge among those permittees and lessees using the utility or service on the basis of the relative area of their Leased Premises. In the event Lessee uses a disproportionate amount of any utility or service provided under Paragraph 34 and not separately metered, the Landlord shall have the right to engage a registered Professional Engineer to compute Lessee's utility usage, and determine an equitable utility charge to Lessee based upon such usage.
41. **Curtailment or Interruption of Service:** The Landlord reserves the right to interrupt, curtail or suspend the provision of any utility service to which Lessee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of the Landlord desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the Landlord. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The Landlord shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Lessee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of payment or other charges, nor damages, shall be claimed by Lessee by reason of the Landlord's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Lessee's obligations hereunder be affected or reduced thereby.
42. **Damages:** Lessee shall repair all damages to the Restaurant or West Lot caused by the Lessee, its employees, agents, contractors, or independent Lessees.
43. **Inspection by Landlord:** The Landlord shall have the authority to make periodic reasonable inspections of the Restaurant, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Lessee shall be required to make any improvements in cleaning or maintenance methods reasonably required by the Landlord. Such periodic inspections may also be made at the Landlord's discretion to determine whether the Lessee is operating in compliance with the terms and provisions of this Agreement.
44. **Right of Entry:** The Landlord shall have the right to enter upon the Restaurant at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Restaurant as the County deems necessary, but the Landlord assumes no obligation to make repairs in the Restaurant other than those expressly provided for in this Lease Agreement. The Landlord agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Lessee and that the Landlord will diligently proceed therewith to completion.

The Landlord or the Landlord's agents shall also have the right to enter upon the Restaurant at reasonable times to show it to actual or prospective mortgagees, operators, or Lessees of the Restaurant. During the one hundred and eighty (180) days prior to the expiration of the term of this Lease Agreement, the Landlord may show the Restaurant to prospective operators. If, during the last ninety (90) days of the term of this Lease Agreement, Lessee shall have removed all or substantially all of Lessee's property there from, the Landlord may immediately enter, alter, renovate, and redecorate the Restaurant without elimination or abatement of payment or other compensation and such action shall have no effect upon this Lease Agreement.

45. **Damage or Destruction of Premises:** If either the Restaurant, or West Lot is partially damaged, but not rendered unusable for the purposes of this Lease Agreement, the same shall with due diligence be repaired by the Lessee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Average Percentage Rent paid or Monthly Minimum Guarantee, whichever is greater, payable hereunder for the period of the Lessee's business interruption, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Lessee from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Lessee's business interruption a pro-rata adjustment shall be made as to the Average Percentage Rent paid or Monthly Minimum Guarantee, whichever is greater.

In the event the said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, the Lessee and the Landlord shall be under no obligation to repair and reconstruct the premises, and adjustment of the payment payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Lease Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly.

46. **County's Repair, Facility Repairs, Alterations and Additions by the County:** The Landlord, as its responsibility, and at its expense (except if the damage is caused by Lessee, its employees, agents, or independent Lessees), shall make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair the foundations, roofs and structural soundness of floors and walls of the Restaurant and the Common Areas of the West Lot. There shall be no allowance to Lessee for a diminution of Guaranteed Monthly Rent for interruption of business and no liability on the part of the Landlord by reason of inconvenience, annoyance, or injury to business arising from the Landlord, Lessee or others making any repairs, alterations, addition, improvements, restorations; or replacements, in or to any portion of the Restaurant or West Lot, or to fixtures, appurtenances, or equipment thereof. The Landlord shall have the absolute right to make repairs, alterations, and additions to any structures and facilities, including the Restaurant under this Lease Agreement, free from any and all liability to the Lessee for loss of business or damages of any nature whatsoever during the making of such repairs, alterations, and additions. In making such repairs, alterations, and additions, the Landlord shall take such reasonable measures as are necessary to minimize interference with Lessee's operations of the Restaurant, for short term disruption of one week or less to Lessee's business where adequate accommodations can be made to minimize the inconvenience and injury to Lessee's business. If the Lessee's business is interrupted for more than one week, a pro-rata adjustment of the Average Percentage Rent paid or Monthly Minimum Guarantee, whichever is greater, payable hereunder for the period of such interruption shall be made.
47. **Diminution for Landlords Repair:** Except as elsewhere specifically provided in this Lease Agreement, there shall be no allowance to Lessee for a diminution of Guaranteed Monthly Rent and no liability on the part of the Landlord by reason of inconvenience, annoyance or interference

with Lessee's business arising from the Landlord or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Restaurant or West Lot, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Lessee's use of the Restaurant.

48. **Performance of Obligations:** Lessee covenants at all times during the term of this Lease Agreement to perform promptly all of the obligations of Lessee set forth in this Lease Agreement.
49. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this Lease Agreement governing the use of the Restaurant, Lessee, his agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.
50. **Assignment, and Successors in Interest:** Lessee shall not assign this Lease Agreement or any portion thereof, nor any property associated with this Lease Agreement without prior written approval of the Landlord. Unapproved assignment shall be grounds for immediate termination of this Lease Agreement. It is agreed that all terms and conditions of this Lease Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.
- A. Lessee shall not enter into any sub-agreement for services required to be provided under this Lease Agreement without prior written approval of the Landlord. It is agreed that all terms and conditions of this Lease Agreement shall extend to and be binding on any sub-Lessees as defined in this Lease Agreement. Lessee shall be liable for acts and omissions by any sub-Lessee affecting this Lease Agreement. The Landlord reserves the right to require the removal of any sub-Lessee of the Lessee for any cause for which Lessee may be terminated.
- B. Any sub-agreement for Lease Agreement services must be made available and accounted for through the Lessee so as to provide seamless service to the public as if provided directly by the Lessee.
51. **Ownership of Lessee:** The ownership of the Lessee is very important to the Landlord. Therefore, the Landlord reserves the right to terminate this Lease Agreement at any time if more than 10% of the ownership of the Lessee has not been specifically approved by the Landlord. The Landlord may withhold approval of any proposed new owner for any reason it believes is in the best interests of the public. Lessee agrees to provide on 24-hour notice to the Landlord an accurate list of all owners of the Lessee, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. If Lessee's, stock is listed on a major stock exchange, Lessee may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the Landlord.
52. **County's Property Insurance:** Any insurance the Landlord may maintain shall not cover Lessee's improvements and betterments, contents, or other property of Lessee. Lessee shall not violate, or permit the violation of, any condition imposed by any of the Landlord's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Restaurant which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Restaurant is located or the property therein over the rate which would otherwise then be in effect (unless Lessee pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the Landlord. If, by reason of any act or omission on the part of Lessee, the rate of property insurance on the Restaurant or West Lot or equipment or other

property of the Landlord shall be higher than it otherwise would be, Lessee shall reimburse the Landlord, on demand, for that part of the premiums for property insurance paid by the Landlord because of such act or omission on the part of Lessee, which sum shall be deemed additional payment for purposes of collection only.

53. **Lessee's Insurance:** The Lessee shall furnish to the Department Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A.

B.

C.

D.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee.

All Insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The Company must be rated no less than "B" as to management, and no less than Class "V" as to strength, by the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwiche, New Jersey, or its equivalent, subject to the approval of the County

Risk Management Division.

Or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

Compliance with the foregoing requirements shall not relieve the Lessee of any liability and obligation under this section or under any other section of this Agreement.

Award is contingent upon receipt from the Lessee of insurance documents within fifteen (15) calendar days after County Mayor or designee approval. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Lessee shall be verbally notified of such deficiency and shall have an additional five (5) days to submit a corrected certificate to the Landlord. If the Lessee fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after Board of County Commission approval, the Lessee shall be in Default of the contractual terms and condition and award of the contract will be rescinded, unless such time frame for submission has been extended by the Landlord.

The Lessee shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period; including any and all option years that may be granted by the Landlord. If insurance certificates are scheduled to expire during the contractual period, the Lessee shall be responsible for submitting new or renewed insurance certificates to the Landlord at a minimum of thirty (30) calendar days in

advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Landlord shall suspend the contract until such time as the new or renewed certificates are received by the Landlord in the manner prescribed in this Agreement; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Landlord may, at its sole discretion, terminate this contract.

The Department reserves the right to reasonably amend the insurance requirements by the issuance of a notice in writing to the Lessee. Modification or waiver of any of the aforementioned requirements is subject to approval of the County's Risk Management Division.

54. **Indemnification**: The Lessee shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease Agreement by the Lessee or its employees, agents, servants, partners principals or sub-lessees. The Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Landlord, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue

thereon. The Lessee expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by the Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord or its officers, employees, agents and instrumentalities as herein provided.

55. **Liability for Damage or Injury**: The Landlord shall not be liable for damage or injury which may be sustained by any party or persons at the Restaurant other than the damage or injury solely caused by the negligence or intentional actions of the Landlord, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes.
56. **Termination by Landlord**: The occurrence of any of the following may cause this Lease Agreement to be terminated by the Landlord upon the terms and conditions also set forth below:
- A. Termination upon written notice by the Landlord:
 - i. Institution of proceedings in voluntary bankruptcy or reorganization by the Lessee.
 - ii. Institution of proceedings in involuntary bankruptcy against the Lessee if such proceedings continue for a period of ninety (90) days.
 - iii. Assignment by Lessee for the benefit of creditors.
 - iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the Landlord.
 - v. The discovery of any misstatement in the Lessee's Proposal leading to award of this Lease Agreement, which in the determination of the Landlord significantly affects the Lessee's qualifications to perform under the Agreement
 - vi. Unapproved change of ownership interest in Lessee and/or failure to submit the ownership list within 24 hours upon the request of the Landlord.
 - vii. Failure to cease any activity which may cause limitation of Landlord's use of

West Lot.

- B. Termination after seven (7) calendar days written notice by the Landlord either by posting on or at the Restaurant and by certified or registered mail to any known address of Lessee set forth in this Agreement hereof for doing any of the following:
- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Lessee makes the required payment(s), including any late payment charges, during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Percentage Rent or Monthly Minimum Guarantee, whichever is greater, and additional payment for the unexpired term of this Lease Agreement.
 - ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.
- C. Termination after fourteen (14) days written notice by the Landlord either by posting on or at the Restaurant or by certified or registered mail to the address of the Lessee set forth in this Lease Agreement:
- i. Non-performance of any covenant of this Lease Agreement other than non-payment of payment or performance fees and others listed in A and B above, and failure of the Lessee to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
 - ii. A final determination in a court of law in favor of the County in litigation instituted by the Lessee against the County or brought by the County against Lessee.
- D. Revenue Control and Audit Defaults: The inability or failure of the Lessee to provide the Landlord with an unqualified certified statement of Gross Receipts, or to strictly adhere to the revenue control procedures established in this Lease Agreement shall constitute a non-curable default and in such event the Landlord shall have the right to terminate this Lease Agreement upon seven (7) calendar days written notice to the Lessee. In addition to termination for such default, the Landlord shall be entitled to collect damages in the full amount of the Security Deposit required in this Agreement.
- E. Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has repetitively defaulted (4) four times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, regardless of whether the Lessee has cured each individual condition of breach or default as provided herein above, the Lessee may be determined by the Director of the Department to be an "habitual violator". At the time that such determination is made, the Department shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach (es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Lease Agreement. In the event of any such subsequent breach or default, County may terminate this Lease Agreement upon the giving of written notice of termination to the Lessee, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder. Immediately upon receipt

of said notice of termination, the Lessee shall discontinue its operations at the West Lot, and proceed to remove all its personal property in accordance with this Lease Agreement.

In the event that the Landlord terminates this Lease Agreement by operation of any of the provisions as stated in this Lease Agreement, then in addition to other rights and remedies available to the Landlord under the law, the Landlord may accelerate the rental payments under this Lease Agreement, whereupon the entire balance owed by the Lessee under this Lease Agreement shall become immediately due and payable without further notice or demand.

57. **Termination by Lessee:** Lessee shall have the right upon thirty (30) calendar days from receipt of written notice to the Landlord by certified or registered mail to the address set forth in this Lease Agreement to terminate this Lease Agreement at any time after the occurrence of one or more of the following events:

- A. A breach by the Landlord of any of the terms, covenants or conditions contained in this Lease Agreement and the failure of the Landlord to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Lessee, of the existence of such breach.
- B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the West Lot, or any substantial part, or parts, thereof in such a manner as substantially to restrict Lessee's operations for a period of ninety (90) calendar days or more.

58. **Cessation of Operation:** At the expiration or earlier termination of the term of this Lease Agreement, Lessee shall peaceably surrender the Restaurant and all operations at the Restaurant and shall ensure the Restaurant is in as good a condition as the Restaurant was on the Commencement Date of this Lease Agreement, ordinary wear and tear and damage by condemnation, fire or other casualty excepted. Lessee shall deliver all keys for the Restaurant to the Landlord at the place then fixed for the payment and shall notify the Landlord in writing of all combinations of locks, safes and vaults, if any, in the Restaurant. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Lessee's property or trade fixtures into or out of the Restaurant. Lessee's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this Lease Agreement.

59. **Termination of Contract:** Following the termination of this Lease Agreement the Lessee, within fifteen (15) calendar days, or earlier if determined by the Landlord, shall forthwith remove all of its personal property not acquired under the terms of this Lease Agreement. Any personal property of Lessee not removed in accordance with this paragraph may be removed by the Landlord for storage at the cost of the Lessee or shall constitute a gratuitous transfer of title thereof to the Landlord for whatever disposition is deemed to be in the best interests of the County. The Landlord shall not be liable to Lessee for the safekeeping of Lessee's personal property during or after termination of this Lease Agreement. The Landlord shall have the senior interest in the Lessee's personal property. Lessee shall not remove any equipment, supplies in bulk, or fixtures within the Restaurant at any time without pre-approval in writing from the Landlord. Lessee shall be liable to the Landlord for the fair market value of any equipment, supplies in bulk, or fixtures removed without Landlord pre-approved written permission. Lessee shall also be liable for any expenses incurred by the Landlord in prosecuting any action against Lessee following unapproved item removal described above. Lessee shall also be liable to the Landlord for any expenses incurred by the Landlord in replacing any items wrongfully removed by Lessee. It is the intention of the parties to this Lease Agreement that all furnishings and equipment purchased or leased by the Lessee except those permanently affixed to buildings, as defined under the laws of

the State of Florida, shall be the personal property of the Lessee. Upon the termination of this Lease Agreement and the removal of all personal property by Lessee, the Lessee shall deliver said premises to the Landlord in the condition set forth in this Paragraph.

60. **Unauthorized Operations:** If Lessee continued to use and operate the Restaurant after the expiration of the term of this Lease Agreement, or any option period, without a new Lease Agreement reduced to writing and duly executed and delivered (even if Lessee shall have paid, and County shall have accepted, payment in respect to such unauthorized operations), Lessee shall be deemed to be operating and using the Restaurant only from month-to-month, subject to all covenants, conditions, and agreements of this Lease Agreement. If Lessee fails to surrender the Restaurant upon the termination of this Lease Agreement, then Lessee, in addition to any liabilities to Landlord accruing there from, shall indemnify and hold harmless the Landlord and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Lessee on such failure.
61. **Lien:** The Landlord shall have a lien upon all personal property of the Lessee on the Restaurant to secure the payment to the Landlord of any unpaid money accruing to the Landlord under the terms of this Lease Agreement.
62. **Limiting Legislative or Judicial Action:** In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the West Lot for the purposes of this Lease Agreement, this Lease Agreement will be null and void and unenforceable by any party to this Lease Agreement and the Landlord shall have no further liability under this Lease Agreement. In the event that a referendum vote of the electorate of the Landlord in any way restricts or prohibits the use of the Restaurant for the purposes of this Lease Agreement, this Lease Agreement will be null and void and unenforceable by any party to this Lease Agreement and the Landlord shall have no further liability under this Lease Agreement. If the Landlord deems the Lease Agreement null and void by function of this Paragraph, the Landlord will not be liable to the Lessee for damages arising there from and the Landlord shall have no further liability under this Lease Agreement.
63. **Non-Discrimination:** Lessee does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:
- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Restaurant, except as provided by law.
 - ii. That in the construction of any improvements on, over, or under the premises and the furnishings of services thereon, no person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except as provided by law.
 - iii. The Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
 - iv. In the event of breach of any of the above non-discrimination covenants, the Landlord shall have the right to terminate the Lease Agreement and re-enter and repossess said

Restaurant thereon and hold the same as if said Lease Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.

- v. The Lessee shall not discriminate against any employee or applicant for employment in the performance of the contract with respect to hiring, tenure, terms, conditions, or privileges of employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national origin, or ancestry.

64. **No Waiver of Right to Enforce:** The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Percentage Rent or Monthly Minimum Guarantee, whichever is greater, or additional payment hereunder by County shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease Agreement, other than the failure of Lessee to pay the particular Percentage Rent or Monthly Minimum Guarantee, whichever is greater, or additional payment so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Percentage Rent or Monthly Minimum Guarantee, whichever is greater, or additional payment. No covenant, term, or condition of this Lease Agreement shall be deemed to have been waived by County, unless such waiver is in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Lessee.
65. **Rules and Regulations:** The Lessee will observe, obey, and comply with all rules and regulations adopted by the Landlord and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Lessee's operations under this Lease Agreement. Failure to do so will constitute a breach of the Lease Agreement.
66. **Notices:** Any notices submitted or required by this Lease Agreement shall be sent by registered or certified mail (or email or fax if provided below, with a hardcopy to the address below) addressed to the parties as follows or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party.

1. To the County:

- a) To the Project Manager (to mean the County Mayor or the duly authorized representative designated to manage the Project):

Miami-Dade County
 Internal Services Department
 Real Estate Development Division
 111 NW 1st Street, Suite 2460
 Miami, Florida 33128
 Attn: Director
 Phone: (305) 375-1688
 Fax: (305) 375-4968

And

- b) To the Contract Manager (to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract):

Miami-Dade County
 Internal Services Department
 111 N.W. 1st Street, Suite 2100
 Miami, FL 33128-1974
 Attention: Director
 Phone: (305) 375-5548
 Fax: (305) 375-2316

2. To the Lessee:

 Miami, FL _____
 Attention: _____
 Phone: _____
 Fax: _____ Email: _____

or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party. The Landlord may alternatively provide notice by posting written notice on or at the Restaurant. If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient that notice will have the effect of being constructively received by the recipient.

67. Authority Of The Landlord's Project Manager

- a) The Lessee hereby acknowledges that the Landlord's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Lease Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Lessee shall be bound by all determinations or orders and shall promptly obey and follow every order of the Landlord's Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Lessee agrees with the Landlord's Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Landlord's Project Manager as soon thereafter as is practicable.
- c) The Lessee must, in the final instance, seek to resolve every difference concerning the Lease Agreement with the Landlord's Project Manager. In the event that the Lessee and the Landlord's Project Manager are unable to resolve their difference, the Lessee may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Lease Agreement authorize the County Mayor or designee, who may not be the Landlord's Project Manager or anyone associated with this project, acting personally, to decide all questions arising out of, under, or in connection with, or

in any way related to or on account of the Lease Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Lessee's performance or any Deliverable meets the requirements of this Lease Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Lease Agreement. All such disputes shall be submitted in writing by the Lessee to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Lessee. Except as such remedies may be limited or waived elsewhere in the Lease Agreement, Lessee reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.
68. **Interpretations:** This Lease Agreement and the appendixes and attachments hereto, and other documents and agreements specifically referred to herein, constitute the entire, fully integrated Lease Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Lease Agreement. This Lease Agreement may be amended only by written document, properly authorized by both parties and executed. This Lease Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The Lease Agreement shall not be construed in favor of one party or the other. All matters involving the Lease Agreement shall be governed by laws of the State of Florida.
69. **Rights Reserved to Landlord:** All rights not specifically granted to the Lessee by this Lease Agreement are reserved to the Landlord. The designation of any particular remedy for the Landlord is without prejudice to any other relief available in law or equity, and all such relief is reserved to the Landlord.
70. **Entirety of Agreement:** The parties hereto agree that this Lease Agreement sets forth the entire Lease Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.
71. **Headings:** The headings of the various Paragraphs and Sections of this Lease Agreement, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease Agreement or any part or parts of this Lease Agreement.
72. **Waiver:** Waiver of any breach shall not constitute waiver of any other breach. Invalidation of any portion of this Lease Agreement shall not automatically invalidate the entire Lease Agreement.

73. **No Partnership or Agency:** The Landlord and the Lessee are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Lease Agreement does not constitute and shall not be represented to constitute a partnership between the Landlord and the Lessee.
74. **Choice of Venue:** Any litigation between the Landlord and the Lessee relating in any way to this Lease Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida.
75. **Audits:** The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Lease Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Lessee's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the Landlord. Such records shall subsequently conform to Generally Accepted Accounting Principle requirements, as applicable, and shall only address those transactions related to this Lease Agreement.

Pursuant to County Ordinance No. 03-2, the Lessee will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Lessee agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

76. **Vendor Registration / Conflict of Interest:**

a) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

b) Vendor Registration

The Lessee shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Lease Agreement. In becoming a Registered Vendor with Miami-Dade County, the Lessee confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the County Code)
2. ***Miami-Dade County Employment Disclosure Affidavit*** (Section 2.8-1(d)(2) of the County Code)
3. ***Miami-Dade Employment Drug-free Workplace Certification***
(Section 2-8.1.2(b) of the County Code)

- 4. **Miami-Dade Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the County Code)
 - 5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the County Code)
 - 6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the County Code)
 - 7. **Miami-Dade County Code of Business Ethics Affidavit**
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
 - 8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code)
 - 9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code)
 - 10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)
 - 11. **Subcontracting Practices**
(Ordinance 97-35)
 - 12. **Subcontractor /Supplier Listing**
(Section 2-8.8 of the County Code)
 - 13. **Environmentally Acceptable Packaging**
(Resolution R-738-92)
 - 14. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
 - 15. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
 - 16. **Office of the Inspector General**
(Section 2-1076 of the County Code)
 - 17. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
 - 18. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.
77. **Survival:** The parties acknowledge that any of the obligations in this Lease Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Lessee and the Landlord under this Lease Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement effective as of the date first herein above set forth.

Lessee

Miami-Dade County

By: _____

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Corporate Secretary

Name: _____

Title: _____

Date: _____

Approved by County Attorney as to
Form and Legal Sufficiency

This document is a draft of a planned solicitation and is subject to change without notice.

**REQUEST FOR PROPOSALS (RFP) No. 836
FOR
WEST LOT RESTAURANT**

PRE-PROPOSAL CONFERENCE TO BE HELD:

_____, 2013 at __:00 AM (local time)
111 NW 1st Street, 13th Floor, Conf. Rm. __, Miami, Florida

ISSUED BY MIAMI-DADE COUNTY:

Internal Services Department, Procurement Management Division
for
Internal Services Department, Real Estate Division

COUNTY CONTACT FOR THIS SOLICITATION:

Name and Title: Pearl P. Bethel, Procurement Contracting Officer
Address: 111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-2102
E-mail: bpearl@miamidade.gov

PROPOSALS ARE DUE AT THE CLERK OF THE BOARD NO LATER THAN:

_____, 2013 at 2:00 PM (local time)
at
CLERK OF THE BOARD
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, Florida 33128-1983

The Clerk of the Board business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. Additionally, the Clerk of the Board is closed on holidays observed by the County.

All proposals received and time stamped by the Clerk of the Board prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped by the Clerk of the Board after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by mail delivery or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

The submittal of a proposal by a Proposer will be considered by the County as constituting an offer by the Proposer to perform the required services at the stated prices. A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal.

Requests for additional information or inquiries must be made in writing and received by the County's contact person for this Solicitation. The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date. Proposers who obtain copies of this Solicitation from sources other than the County's Internal Services Department website at www.miamidade.gov/dpm or the Vendor Assistance Unit risk the possibility of not receiving addenda and are solely responsible for those risks.

1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS

1.1 Introduction

Miami-Dade County, hereinafter referred to as "the County", as represented by the Internal Services Department, Real Estate Development Division, is soliciting proposals from experienced and capable parties interested in operating a restaurant in the commercial/retail space of the County's West Lot Building. The West Lot Building (West Lot) is located in Downtown Miami, at 220 N.W. 3rd Street, Miami, Florida, 33128. The area designated for the Restaurant is located on the ground floor, at the corner of N.W. 2nd Street and N.W. 2nd Avenue and has approximately 1,263 square feet.

The County anticipates awarding a contract for a ten (10) year period, with one (1) five-year option to renew, at the County's sole discretion.

The anticipated schedule for this Solicitation is as follows:

Solicitation issued:

Pre-Proposal Conference: See front cover for date, time and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the ADA Coordinator at (305) 375-2013 or email hjwrig@miamidade.gov at least five days in advance.

Deadline for receipt of questions:

Proposal due date: See front cover for date, time and place.

Evaluation process:

Projected award date:

1.2 Definitions

The following words and expressions used in this Solicitation shall be construed as follows, except when it is clear from the context that another meaning is intended:

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The word "Proposer" to mean the person, firm, entity or organization, as stated on Form A-1, submitting a response to this Solicitation.
4. The words "Scope of Services" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
5. The word "Solicitation" to mean this Request for Proposals (RFP) or Request for Qualifications (RFQ) document, and all associated addenda and attachments.
6. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
7. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.

1.3 General Proposal Information

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process. A proposal shall be the Proposer's firm commitment to provide the goods and services solicited in the manner requested in the Solicitation and described in the proposal. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional

information from any respondent regarding respondent's responsibility after the submission deadline as the County deems necessary.

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon the expiration of 180 calendar days after the opening of proposals.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the County request the withdrawal of the confidentiality restriction if such communication would in the County's sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible. To request a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

1.4 Cone of Silence

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff, County Commissioners or their respective staffs;
- the County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in

writing (if County deems a response necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at clerkbcc@miamidade.gov.

1.5 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any 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 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 Section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.6 Lobbyist Contingency Fees

- a) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

1.7 Collusion

In accordance with Section 2-8.1.1 of the Code of Miami-Dade County, where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer or the principals thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership interest in another Proposer for the same contract. Furthermore, any prior understanding, agreement, or connection between two or more corporations, firms, or persons submitting a proposal for the same services shall also be presumed to be collusive. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

2.0 SCOPE OF SERVICES

2.1 Background

Miami-Dade County, hereinafter referred to as "the County", as represented by the Internal Services Department, Real Estate Development Division, is soliciting proposals from experienced and capable parties interested in operating a restaurant in the commercial/retail space of the County's West Lot (West Lot) Building.

The West Lot is located in Downtown Miami across the street from the Stephen P. Clark Center (Government Center), at 220 N.W. 3rd Street, Miami, Florida, 33128. The Government Center houses approximately 2000 County employees. Noticeably, Government Center is the busiest transportation location facility in Miami-Dade County, having passenger stops for the County's Metrorail and Metromover, together serving close to 30 million passengers annually (for fiscal year 2012, from October through September, the Metrorail served 18,706,102 and the Metromover served 9,167,110 passengers). The area designated for the restaurant is located on the ground floor of the West Lot, at the corner of N.W. 2nd Street and N.W. 2nd Avenue and has approximately 1,263 square feet.

The West Lot is a brand new building, which received a certificate of occupancy on September 21, 2012. The build-out for the interior of the building is expected to be completed by April 1, 2014. One of the County agencies scheduled to occupy the West Lot is the Tax Collector's Office, with a scheduled occupancy date of June 1, 2014. Currently, the Tax Collector's Office is located at 140 West Flagler Street, and has approximately 200,000 visitors annually.

The parking garage which is connected to the West Lot was designed to not only accommodate the parking needs of West Lot visitors, but also the Children's Courthouse (Court House), a new courthouse, which is under construction, and will be located at the corner of N.W. 2nd Avenue and N.W. 3rd Street. The courthouse will not contain public parking for guests or patrons visiting the courthouse, or for employees. As a result, public and employee parking for the Courthouse will be at the West Lot parking garage.

Moreover, it is worthwhile to note that many people converge on Government Center from the rail service to connect with bus service at the street level bordering the Government Center. There are 13 different County bus routes that converge at the Government Center, utilizing at least one (1) of five (5) bus stops. The combined average daily ridership for the 13 County buses total 9,030 daily passengers (2,608 ons and 6,422 offs). In addition, there are at least two (2) Broward County Transit bus routes that stop at the Government Center.

2.2 Preferred Qualifications

The selected Proposer shall have:

1. Experience as an owner/manager/supervisor in a restaurant or food/beverage (e.g., café, bistro, cafeteria etc.) service establishment involved in the development and provision of food and beverage service with annual gross sales in excess of \$50,000 per year. The County does not anticipate awarding a contract to any firm that has less than five years' experience in successfully providing quality food and beverage services.
2. Knowledge of the legal requirements that are needed for the development and operation of food and beverage service facilities.
3. Adequate financial strength to provide equipment, furniture and fixtures, start-up operations and reasonable working capital.

2.3 Requirements and Services to be Provided

The restaurant space will be provided in its "AS – IS" condition. The County will not pay to paint or otherwise improve the existing space; as this expense is the responsibility of the selected Proposer. The selected Proposer shall perform all restaurant improvements, in compliance with the South Florida Building Code, with all necessary permits, and County's approval, obtained prior to starting construction of the Restaurant improvements and pursuant to the County's then current Construction Rider.

A. General Services

The selected Proposer shall:

1. Obtain all permits/licenses necessary for the provision of the services as may be required by the County, City of Miami, and State of Florida.
2. Comply with all applicable rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to selected Proposer's operations of the Restaurant.
3. Prepare an appropriate emergency evacuation plan and hurricane plan and provide to the County prior to operations. Thereafter, selected Proposer shall provide the County with any updates to the plans.

B. Operation and Quality of Services

The selected Proposer shall:

1. Create a first-class food service Restaurant. The Restaurant shall provide quality products and customer service, with an emphasis in appearance and ambiance in maintaining competitiveness with other food and beverage destinations in the local marketplace.
2. Create a visually exciting and inviting restaurant environment, through a creative high-impact store design, including product displays, signage, graphics and lighting.
3. Develop and submit a detailed operation, signage and marketing plan to the County for approval, within sixty (60) days from contract award. At a minimum, the plan shall include the budget for operation and marketing of the business including outdoor advertising signage, marketing, and promotions. The marketing portion of the plan should be updated on an annual basis and submitted to the County for approval.
4. Maintain a menu that is reflective of current trends in the fast/casual food industry and the local consumer market. Original menu, menu pricing, and future changes, must be approved by the County.
5. Be in full operation to provide food and beverage service no later than 90 days following the award date of the contract. The County reserves the right to extend this time-frame if necessary.
6. Operate the Restaurant at a minimum, five (5) days a week, Monday through Friday, continuously from 7:30 AM to 5:30 PM, except on County, State and Federal holidays. Any changes in the hours of operation require the express written agreement of both parties.
7. Maintain all foodservice areas and equipment in a safe manner as outlined in the Food and Drug Administration Food Code, Chapter 64E-11, Florida Administrative Code and the National Restaurant Association Guidelines.
8. Pursuant to Florida Statute 509.039, employ a qualified full-time on-site certified professional food manager with experience in the management of a restaurant or similar type of operation, who shall be available during all business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of the selected Proposer. The selected Proposer and

employees shall be distinctly uniformed or appropriately attired so as to be distinguishable as the selected Proposer's employees.

9. Have adequate staffing at all times to provide good, prompt and efficient service to meet all reasonable demands.
10. Purchase Access and Identification Cards for permanent employees. All employees with access to the restaurant space must go through the County's background check service. The cost for said service, per person, is \$45.00, plus an additional \$15.00 for each Identification/Access Card.

C. Improvement, Maintenance and Repairs

The selected Proposer shall have the use of the leased space as shown on the attached map and layout/floor plan (Attachment A). However, because of the design and construction of the space, the restaurant is not permitted to perform any cooking (including baking, roasting, and/or frying) in the leased space. There is insufficient ventilation and fire suppression equipment to accommodate cooking in the space. For the restaurant, only food items that can be or need to be heated, re-heated, warmed, and microwaved are permitted in the restaurant space.

The selected Proposer shall:

1. Prepare and submit for the County's review and approval, a proposed Conceptual Plan, which illustrates how the space will look upon completion of the build-out by the selected Proposer. The Conceptual Plan should describe what types of food will be served in the restaurant, and the anticipated hours of service (the Conceptual Plan shall be submitted with the Proposer's proposal). The build-out, including any alteration/remodeling, shall be completed within ninety (90) days from contract award subject to permitting. No alterations, changes or additions to the space shall be made by the selected Proposer without the prior written consent of the County. All work will be in compliance with applicable building codes and the American with Disabilities Act (ADA), and performed by licensed and insured contractors.
2. Provide ample tables and chairs for the dining room/seating area and all equipment required for the operation of the Restaurant. Operate and maintain the entire premises in a first-class manner and condition and keep it clean at all times.
3. Keep and maintain the leased space in a clean and neat condition. Janitorial services and interior maintenance including air conditioning maintenance and repairs shall be the sole responsibility and expense of the selected Proposer. The selected Proposer shall contract a licensed and insured air conditioning contractor to perform regular monthly maintenance and necessary repairs to the separate air conditioning unit servicing the leased space. The selected Proposer shall provide a copy of the air conditioning maintenance agreement with a licensed and insured air conditioning contractor within ninety (90) days from contract award.
4. After the restaurant opens for business, in the event the selected Proposer fails to properly maintain the space, and/or fails to make necessary alterations, changes, additions, repairs, rebuilding, remodeling or repainting of the leased space, the County, in accordance with the terms and conditions of the lease agreement, may make the needed corrections, on behalf of the selected Proposer, and the cost and expenses of such repairs and alterations shall be the responsibility of the selected Proposer.
5. Provide security for the interior of the leased space at its own discretion. The County is not responsible for the security pertaining to the leased space, including but not limited to the selected Proposer's furnishings, fixtures, equipment, soft goods, and/or supplies.

- Notes:
1. The County has no objection to outdoor seating, so long as the selected Proposer has secured any and all necessary permits and/or authorizations from the appropriate governmental office or agency.
 2. The County currently has a recycling program in place at Government Center, in which the selected Proposer could participate. Presently, paper, cardboard, aluminum, and printer cartridges are recycled.

D. Financial

The selected Proposer shall:

1. Submit to the County a Pro Forma statement and a financial plan which will indicate the source of funding to be utilized for improvements or repairs, and the amount of working capital the selected Proposer determines will be required to maintain operations. (Attachment B, Sample Pro Forma). Additional information shall include but not limited to estimated costs for improvements or repairs, with projected expenses for furniture, fixtures and equipment.
2. Provide a Security Deposit, prior to operations, equal to three times the monthly Base Rent (see Section 2.3.A) as described in the Management and Operating Agreement, Section 5.0, Article, 12.

2.3 Rent (Minimum Annual Guarantee) and Fee Schedule

- a) The selected Proposer shall pay a Minimum Annual Guarantee (MAG) to the County on the first day of each month as of the first date of operation of the Restaurant. Partial months will be pro-rated.
- b) The selected Proposer shall pay the County a Percentage of Gross Receipts in addition to the MAG for revenue from the sale of all goods and services provided at the Restaurant as of the first date of operation of the Restaurant.
- c) The selected Proposer shall be responsible for a Monthly Common Area Maintenance Fee (inclusive of 7% State sales tax) currently estimated at \$600.00 per month (Fee based on cost and subject to annual adjustments).
- d) The selected Proposer shall be responsible for a Monthly Building Services Fees for Water and Electricity (sales tax does not apply) currently estimated at \$130.00 per month (Fee based on usage and reconciled on an annual basis based on sub-meter readings).
- e) The selected Proposer shall submit to the County a financial plan, which will indicate the source of funding to be used for capital improvements, and the amount of working capital the selected Proposer determines will be required to maintain operations. Additional information will include, but not be limited to, estimated costs for improvements with projected expenses for improvements and/or furniture, fixtures and equipment.

It is the intent of the County to provide the best possible service to the public. It is the County's further intent to gain revenues. However, the County makes no guarantee the Department or the County will act, promote, approve, assist or cooperate in any manner to assure that this project will be a financial success for the County or for the selected Proposer. The objective of this Solicitation is to establish a contract to provide for the development and operation of the Restaurant.

3.0 RESPONSE REQUIREMENTS

3.1 Submittal Requirements

In response to this Solicitation, Proposer should **return the entire completed Proposal Submission Package** (see attached). Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.0 EVALUATION PROCESS

4.1 Review of Proposals for Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

4.2 Evaluation Criteria

Proposals will be evaluated by an Evaluation/Selection Committee which will evaluate and rank proposals on criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Evaluation/Selection Committee is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Evaluation/Selection Committee member.

<u>Technical Criteria</u>	<u>Points</u>
1. Proposer's relevant experience, qualifications, and past performance related to providing the type of services requested in this Solicitation	40
2. Relevant experience and qualifications of key personnel, including key personnel of subcontractors that will be assigned to this project, and experience and qualifications of subcontractors	20
3. Proposer's approach to providing the services requested in this Solicitation	25
 <u>Price and Financial Criteria</u>	 <u>Points</u>
4. Proposer's Financial capabilities, Pro-forma, Base Fee, Percentage Fee and Capital Improvement Investment	15

4.3 Oral Presentations

Upon completion of the technical criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. (See Form A-2 regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentation(s), the Evaluation/Selection Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

4.4 Selection Factor

This Solicitation includes a selection factor for Miami-Dade County Certified Small Business Enterprises (SBE's) as follows. A SBE/Micro Business Enterprise is entitled to receive an additional ten percent (10%) of the total technical evaluation points on the technical portion of such Proposer's proposal. An SBE/Micro Business Enterprise must be certified by Small Business Development for the type of goods and/or services the Proposer provides in accordance with the applicable Commodity Code(s) for this Solicitation. For certification information contact Small Business Development at (305) 375-2378 or access <http://new.miamidade.gov/business/business-development.asp>. The SBE/Micro Business Enterprise must be certified by proposal submission deadline, at contract award, and for the duration of the contract to remain eligible for the preference. Firms that graduate from the SBE program during the contract may remain on the contract.

OR

A Selection Factor is not applicable to this Solicitation.

OR

(If no points are assigned to evaluation criteria, include the following in addition to above paragraph):

Whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked proposals is submitted by a Proposer entitled to a selection factor, the selection factor shall be the deciding factor for award.

4.5 Local Certified Service-Disabled Veteran's Business Enterprise Preference

This Solicitation includes a preference for Miami-Dade County Local Certified Service-Disabled Veteran Business Enterprises in accordance with Section 2-8.5.1 of the Code of Miami-Dade County. A VBE is entitled to receive an additional five percent (5%) of the total technical evaluation points on the technical portion of such Proposer's proposal. If a Miami-Dade County Certified Small Business Enterprise (SBE) measure is being applied to this Solicitation, a VBE which also qualifies for the SBE measure shall not receive the veteran's preference provided in this section and shall be limited to the applicable SBE preference.

4.6 Price Evaluation

After the evaluation of the technical proposal, in light of the oral presentation(s) if necessary, the County will evaluate the price proposals of those Proposers remaining in consideration.

The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

4.7 Local Preference

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses (see **Form A-4**). If, following the completion of final rankings by the Evaluation/Selection Committee, a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Evaluation/Selection Committee will recommend that a contract be negotiated with said local Proposer.

4.8 Negotiations

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score and rank proposals, and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. In his sole discretion, the County Mayor or designee may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, or may request best and final offers.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

Any Proposer recommended for negotiations shall complete a Collusion Affidavit, in accordance with Sections 2-8.1.1 of the Miami-Dade County Code. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

Any Proposer recommended for negotiations may be required to provide to the County:

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

4.9 Contract Award

Any contract, resulting from this Solicitation, will be submitted to the County Mayor or designee for approval. All Proposers will be notified in writing when the County Mayor or designee makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

4.10 Rights of Protest

A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Implementing Order No. 3-21.

5.0 TERMS AND CONDITIONS

The anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

a) Vendor Registration

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the website at http://www.miamidade.gov/DPM/vendor_registration.asp or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

b) Insurance Requirements

The Contractor shall furnish to the County, Internal Services Department, Procurement Management Division, prior to the commencement of any work under any agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

c) Inspector General Reviews

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise indicated. The cost of the audit, if applicable, shall be one quarter (1/4) of one (1) percent of the total contract amount and the cost shall be included in any proposed price. The audit cost will be deducted by the County from progress payments to the Contractor, if applicable.

d) User Access Program

Pursuant to Section 2-8.10 of the Miami-Dade County Code, any agreement issued as a result of this Solicitation is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Solicitation and the utilization of the County contract price and the terms and conditions identified therein, are subject to the two percent (2%) UAP.

6.0 ATTACHMENTS

Form of Agreement
Proposal Submission Package
Attachment A-Layout/Floor Plan
Attachment B- Sample Pro-Forma

Proposer Information

Proposer's Experience and Past Performance

1. State the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.
2. Describe the Proposer's experience and past performance in the development and operation of food and beverage service facilities, plus any other related activities, or other such endeavors. See Section 2.2(1), Scope of Services.
3. Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past five (5) years. The description should identify for each project:
 - (i) client;
 - (ii) description of work;
 - (iii) total dollar value of the contract;
 - (iv) dates covering the term of the contract;
 - (v) client contact person and phone number;
 - (vi) statement of whether Proposer was the prime contractor or subcontractor; and
 - (vii) the results of the project.

Note: Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).

4. List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project:
 - (i) name of the County Department which administers or administered the contract;
 - (ii) description of work;
 - (iii) total dollar value of the contract;
 - (iv) dates covering the term of the contract;
 - (v) County contact person and phone number;
 - (vi) statement of whether Proposer was the prime contractor or subcontractor; and
 - (vii) the results of the project.
5. Describe the Proposer's knowledge of the legal requirements that are needed for the development and operation of food and beverage service facilities. See Section 2.2(2), Scope of Services.

Key Personnel and Subcontractors Performing Services

6. Provide an organization chart showing all key personnel, including their titles, to be assigned to this project (including the design, improvements/repairs and operations phases). This chart must clearly identify the Proposer's on-site Restaurant manager, employees and those of the subcontractors or subconsultants and shall include the functions to be performed by the key personnel. All key personnel includes all partners, managers, and other professional staff that will perform work and/or services in this project.
7. List the names and addresses of all first tier subcontractors, and describe the extent of work to be performed by each first tier subcontractor. Describe the experience, qualifications and other vital

Proposer Information

information, including relevant experience on previous similar projects, of the subcontractors who will be assigned to this project.

8. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including those of subcontractors, who will be assigned to this project. Include key individual's specific experience in the development and/or operation of a restaurant or food/beverage service establishment.
9. Provide resumes, if available with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any key personnel of subcontractors.

Note: After proposal submission, but prior to the award of any contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

Proposed Approach to Providing the Services

10. Describe Proposer's approach in providing the restaurant management and operation services. The description should include:

- (i) Operation's plan (theme, style, type of food, etc.);
- (ii) Specific policies/procedures or techniques to be used in providing food and beverage services;
- (iii) Plan on how the Proposer will ensure that service is provided in an expedient manner;
- (iv) Standards for providing excellent customer service;
- (v) Overall approach in meeting the restaurant's objectives described in Scope of Services; and
- (vi) Why the proposed concept is the best suited for the West Lot Building.

11. Prepare and submit for the County's review and approval, a proposed Conceptual Plan, which illustrates how the space will look upon completion of the build-out by the selected Proposer. The Conceptual Plan should describe what types of food will be served in the restaurant, and the anticipated hours of service
12. Provide a schedule identifying specific key tasks for start-up and duration, including initial improvements and repairs of the restaurant. Describe Proposer's procedures for coordinating design, improvements and repairs, as well as Proposer's understanding of the City and or County Building department's permitting process in order to meet the 90 day completion schedule.
13. Describe Proposer's approach to food preparation and food display to the customer. Describe Proposer's approach to comply with the Minimum Operating Standards for Food Services. See **Attachment B**, Minimum Operating Standards for Food Services.

14. Submit proposed sample menus indicating the variety of food and beverage offerings and the prices to be charged to consumers.

Note: Any changes in menu from those originally agreed upon must be approved by the County.

15. Provide the Proposer's proposed emergency evacuation plan and hurricane plan for the restaurant.
16. Describe Proposer's approach in developing and implementing an ongoing marketing program which shall be designed to expand and maintain a customer base. Describe what means of advertisement the Proposer will be utilizing.

Proposer Information

17. Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s).

Financial Information

18. Provide a Pro Forma Statement showing 10 years of projected sales and expenses. Inflated statements or statements skewed outside normal operating ranges may be evaluated as less desirable than reasonable Pro Forma Statements. See **Attachment B**, Sample Pro Forma.

Provide a Capital Investment Plan, which will indicate the source of funding to be used for capital improvements and repairs including equipment, furniture and fixtures, the amount of working capital the selected Proposer determines will be required to maintain operations.

19. Provide documentation demonstrating Proposer's financial strength and financial capability to provide services. (See Section 2.2(3), Scope of Services.) Such documentation should include Proposer's most recent certified financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. Provide letters of credit from accredited financial institutions.

Proposer Information

Proposer's Experience and Past Performance

1. State the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.
2. Describe the Proposer's experience and past performance in the development and operation of food and beverage service facilities, plus any other related activities, or other such endeavors. See Section 2.2(1), Scope of Services.
3. Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past five (5) years. The description should identify for each project:
 - (i) client;
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 - (vii) the results of the project.

Note: Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).

4. List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project:
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 - (iv) dates covering the term of the contract;
 - (v) County contact person and phone number;
 - (vi) statement of whether Proposer was the prime contractor or subcontractor; and
 - (vii) the results of the project.
5. Describe the Proposer's knowledge of the legal requirements that are needed for the development and operation of food and beverage service facilities. See Section 2.2(2), Scope of Services.

Key Personnel and Subcontractors Performing Services

6. Provide an organization chart showing all key personnel, including their titles, to be assigned to this project (including the design, improvements/repairs and operations phases). This chart must clearly identify the Proposer's on-site Restaurant manager, employees and those of the subcontractors or subconsultants and shall include the functions to be performed by the key personnel. All key personnel includes all partners, managers, and other professional staff that will perform work and/or services in this project.
7. List the names and addresses of all first tier subcontractors, and describe the extent of work to be performed by each first tier subcontractor. Describe the experience, qualifications and other vital

Proposer Information

information, including relevant experience on previous similar projects, of the subcontractors who will be assigned to this project.

8. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including those of subcontractors, who will be assigned to this project. Include key individual's specific experience in the development and/or operation of a restaurant or food/beverage service establishment.
9. Provide resumes, if available with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any key personnel of subcontractors.

Note: After proposal submission, but prior to the award of any contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

Proposed Approach to Providing the Services

10. Describe Proposer's approach in providing the restaurant management and operation services. The description should include:
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 - (iv) Standards for providing excellent customer service;
 - (v) Overall approach in meeting the restaurant's objectives described in Scope of Services; and
 - (vi) Why the proposed concept is the best suited for the West Lot Building.
11. Prepare and submit for the County's review and approval, a proposed Conceptual Plan, which illustrates how the space will look upon completion of the build-out by the selected Proposer. The Conceptual Plan should describe what types of food will be served in the restaurant, and the anticipated hours of service
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13. Describe Proposer's approach to food preparation and food display to the customer. Describe Proposer's approach to comply with the Minimum Operating Standards for Food Services. See **Attachment B**, Minimum Operating Standards for Food Services.
14. Submit proposed sample menus indicating the variety of food and beverage offerings and the prices to be charged to consumers.

Note: Any changes in menu from those originally agreed upon must be approved by the County.
15. Provide the Proposer's proposed emergency evacuation plan and hurricane plan for the restaurant.
16. Describe Proposer's approach in developing and implementing an ongoing marketing program which shall be designed to expand and maintain a customer base. Describe what means of advertisement the Proposer will be utilizing.

Proposer Information

17. Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s).

Financial Information

18. Provide a Pro Forma Statement showing 10 years of projected sales and expenses. Inflated statements or statements skewed outside normal operating ranges may be evaluated as less desirable than reasonable Pro Forma Statements. See **Attachment B**, Sample Pro Forma.

Provide a Capital Investment Plan, which will indicate the source of funding to be used for capital improvements and repairs including equipment, furniture and fixtures, the amount of working capital the selected Proposer determines will be required to maintain operations.

19. Provide documentation demonstrating Proposer's financial strength and financial capability to provide services. (See Section 2.2(3), Scope of Services.) Such documentation should include Proposer's most recent certified financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. Provide letters of credit from accredited financial institutions.

Walters, Vivian (RER)

From: Bethel, Pearl (ISD)
Sent: Tuesday, March 26, 2013 10:17 AM
To: Walters, Vivian (RER)
Cc: Clark, Veronica (RER); Johnson, Laurie (RER)
Subject: RFP836, West Lot Restaurant
Attachments: Revised B1 Price Form 3-15-13.doc; Draft RFP836, West Lot Restaurant Lease Agreement,3-25-13.doc; MASTER RFP SHELL.docx; Proposer Information.doc; Input Doc-Project Measure Worksheet.doc

Hi Vivian

Please review the attached RFP for a determination of the SBE measure to be applied. A copy of the input doc/project measures worksheet is also attached. This is a revenue generating project with expected revenue over the term of the initial contract (ten years) of \$200,000. My recommendation is No Measures.

Thanks.

Pearl P. Bethel, Procurement Contracting Officer 2
Miami-Dade County Internal Services Department
111 NW 1st Street, Suite 1300, Miami, Florida 33128
305-375-2102 Phone 305-372-6128 Fax
<http://www.miamidade.gov/dpm/>
"Delivering Excellence Every Day"

Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.