Memorandum

MIAMI-DADE COUNTY

Date: January 22, 2009

Agenda Item No. 8(A)(1)(I)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: First Amendment, Wireless High Fidelity (WI-FI) System Provider at Miami International Airport between Miami-Dade County and Electronic Media Systems, Inc. (EMS)

RECOMMENDATION

It is recommended that the Board approve the attached First Amendment to the Non-Exclusive License Agreement for the Wireless High Fidelity (WI-FI) System provider at Miami International Airport (MIA) ("Agreement") with Electronic Media Systems, Inc. (EMS), to amend the Performance Bond and Security Deposit requirement as a result of current operating environment of the concession.

SCOPE

Miami International Airport is located primarily within Commission District Six.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the Director or designee has the authority to exercise the renewal and termination provisions in the agreement.

FISCAL IMPACT/FUNDING SOURCE

The County is paid a monthly fee consisting of sixty-five percent (65%) of the gross revenues for the month. The County is also paid fifty percent (50%) of all advertising revenues obtained from title and/or presenting sponsors and any other related advertising revenues. Passengers are charged $4.95 for 30 minutes plus $.25 for each additional minute, $7.95 for 24 hours of access or $19.95 per month.

TRACK RECORD/MONITOR

Electronic Media Systems, Inc. currently has a contract with Miami-Dade Aviation Department since June of 2008 and a contract with H.I. Development, the firm which manages the MIA Hotel for MDAD. Under both contracts, the track record for EMS has been satisfactory according to Ray Diaz, Commercial Operations Project Manager, who monitors the hotel management contract.

COMPLIANCE DATA

There is no history of violations for this firm in the Small Business Development Department's database.

BACKGROUND

The Non-Exclusive Wireless High Fidelity (WI-FI) System Provider PFR No. MDAD-01-06 was awarded by the Board on May 6, 2008 to EMS to provide public internet access at MIA, via the wireless network infrastructure installed and maintained by MDAD. The language in the Agreement only allows for increases in the Performance Bond and Security Deposit. The current amounts are higher than required to protect the County and are based on good faith estimate in the proposal documents.

On June 9, 2008, the Non-Exclusive License Agreement for Wireless High Fidelity (WI-FI) System Provider was fully executed by the County. The amended Performance Bond and Security Deposit were derived by revenue estimates established twenty-one (21) months ago.

The proposed amended Performance Bond and Security Deposit now incorporate the following factors which have evolved since the price proposals were submitted twenty one (21) months ago:

1. The downturn of the economy has negatively affected anticipated revenues;
2. The existing MIA Hotel WI-FI agreement revenues that were previously included in the revenue projections of this contract are separated under the hotel agreement.

PROJECT:	Non-Exclusive Wireless High Fidelity (WI-FI) System Provider at Miami International Airport
PROJECT LOCATION:	Miami International Airport
DESCRIPTION OF PROJECT:	The concessionaire provides public internet access. The locations shall be in the North, Central and South Terminals of MIA.
TERM OF CONTRACT:	Five (5) years
OPTION(s) TO RENEW:	One (1) two (2) year term.
CONTRACT MEASURES:	Airport Concession Disadvantaged Business Enterprise (ACDBE) participation was voluntary for this project. EMS committed to utilizing the following ACDBE firms: The Himmer Group, LLC – 15% LMG Worldwide PR, LLC – 5%
HOW LONG IN BUSINESS:	18 Years
COMPANY PRINCIPALS:	H. Scott Phillips, President and CEO Sarah J. Phillips, Secretary
GENDER,ETHNICITY & OWNERSHIP BREAKDOWN:	H. Scott Phillips – Male Caucasian – 100% of Stock
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS;	None
INSPECTOR GENERAL:	Provisions included in the agreement
FUNDING SOURCE:	This is a revenue-generating agreement.
USER AGENCY:	Miami-Dade Aviation Department

RECOMMENDED MODIFICATION:

Revise Performance Bond from Four Hundred Seventy-Two Thousand Six Hundred Forty-Four Dollars and Forty-One Cents ($472,644.41) to Three Hundred Thousand Dollars ($300,000.00) and such amount shall be adjusted as necessary to reflect any increases or decreases in the Revenue.

Revise Security Deposit from One Hundred Fifty-Seven Thousand Five Hundred Forty-Eight Dollars and Fourteen Cents ($157,548.14) to One Hundred Thousand Dollars ($100,000.00) and such amount shall be adjusted as necessary to reflect any increases or decreases in the Revenue.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 22, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(I)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(I)
1-22-09

RESOLUTION NO. _____

RESOLUTION APPROVING AN AMENDMENT FOR THE NON-EXCLUSIVE LICENSE AGREEMENT FOR WIRELESS HIGH FIDELITY (WI-FI) SYSTEM PROVIDER AT MIAMI INTERNATIONAL TO ELECTRONIC MEDIA SYSTEMS, INC. (EMS) TO AMEND THE PERFORMANCE BOND AND SECURITY DEPOSIT REQUIREMENT

WHEREAS, the Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the amendment to the non-exclusive License Agreement for Wireless High Fidelity System Provider at Miami International Airport previously awarded to Electronic Media Systems, Inc., (EMS) as set forth in the accompanying memorandum from the County Manager; and authorizes the Mayor or designee to execute the First Amendment to amend the Performance Bond and Security Deposit which reflects the current operating environment between Miami-Dade County and EMS, in substantially the form attached hereto.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

FIRST AMENDMENT TO
LICENSE AGREEMENT FOR
WIRELESS HIGH FIDELITY (WI-FI) SYSTEM PROVIDER
AT MIAMI INTERNATIONAL AIRPORT

THIS FIRST AMENDMENT to the License Agreement for Wireless High Fidelity (WI-FI) System Provider (the "First Amendment") is made and entered into this 20th day of November, 2008, by and between Miami-Dade County acting by and through its Aviation Department ("County" or "MDAD") and Electronic Media Systems, Inc. ("EMS or Operator").

WHEREAS, by Resolution No. R-461-08, passed and adopted May 6, 2008, the Board of County Commissioners of Miami-Dade County, Florida authorized a Non-Exclusive License Agreement for Wireless High Fidelity (WI-FI) System Provider at Miami International Airport.

WHEREAS, the License Agreement set forth various terms and conditions applicable to the Operator's use of the public WI-FI System portal at Miami International Airport ("MIA").

WHEREAS, as the original "Performance Bond" and "Security Deposit" were derived by revenue estimates twenty-one months ago and as a result in the downturn affecting the economy and market, the Department wishes to amend the Agreement to allow for adjustment in the bond and deposit amounts to reflect actual market conditions;

NOW THEREFORE, in consideration of the premises, and terms and conditions of the License Agreement, the parties to this First Amendment agree as follows:

Delete:

3.04 PERFORMANCE BOND: Within thirty (30) Days of the Effective Date of this License Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of the Revenues. Operator shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished, refer to **Sub-Article 3.17 "Security Deposit".** Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney.

The amount of the Performance Bond shall initially be in an amount equal to seventy-five percent (75%) of the Revenue amount provided for in **Sub-Article 3.01 "Compensation Fee to Department",** which is equal to **Four Hundred Seventy-two Thousand Six Hundred Forty-four and Forty-one Cents ($472,644.41).** Thereafter, the amount shall be adjusted as necessary to reflect any increases in the Revenue.

7

The Department may draw upon such form of security instrument, if the Operator fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Operator shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Operator is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Operator within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

Add:

3.04 PERFORMANCE BOND: Within thirty (30) Days of the Effective Date of this License Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of the Revenues. Operator shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished, refer to **Sub-Article 3.17 "Security Deposit".** Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney.

The amount of the Performance Bond shall initially be in an amount equal to seventy-five percent (75%) of the Revenue amount provided for in **Sub-Article 3.01 "Compensation Fee to Department",** which is equal to **Three Hundred Thousand Dollars ($300,000.00).** Thereafter, the amount shall be adjusted as necessary to reflect any increases **or decreases** in the Revenue.

The Department may draw upon such form of security instrument, if the Operator fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Operator shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided Operator is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Operator within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

Delete:

3.17 SECURITY DEPOSIT: The Operator shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an initial amount equal to twenty-five percent (25%) of the Revenue amount provided for in **Sub-Article 3.01 "Compensation Fee to Department",** which is equal to **One Hundred Fifty-seven Thousand Dollars Five Hundred Forty-eight Dollars and Fourteen Cents ($157,548.14).** Thereafter the amount shall be adjusted as necessary to reflect any increases in the Revenue. This requirement shall be met no later than thirty (30) days after the Effective Date of this Agreement. The payment security shall be kept in full force throughout the Term and any Extension of this Agreement thereof.

The Department may draw upon such payment security instrument if the Operator fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Operator shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

Add:

3.17 SECURITY DEPOSIT: The Operator shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an initial amount equal to twenty-five percent (25%) of the Revenue amount provided for in **Sub-Article 3.01 "Percentage Fee to Department",** which is equal to **One Hundred Thousand Dollars ($100,000.00).** Thereafter the amount shall be adjusted as necessary to reflect any increases **or decreases** in the Revenue. This requirement shall be met no later than thirty (30) days after the Effective Date of this Agreement. The payment security shall be kept in full force throughout the Term and any Extension of this Agreement thereof.

The Department may draw upon such payment security instrument if the Operator fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Operator shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) be a default of this Agreement entitling Department to all available remedies.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement the date and year first above written.

OPERATOR

Electronic Media Systems, Inc.
(Legal Name of Corporation)

ATTEST:
Secretary _____
(Signature and Seal)

By: _____
Authorized Officer - Signature

Sarah J. Phillips; Secretary
(Type Name & Title)

Name: H. Scott Phillips

President
(Type Name & Title)

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Approved for Form
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

_____
Assistant County Attorney

By: _____
Deputy Clerk