Memorandum

MIAMI-DADE COUNTY

Date: February 2, 2010

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

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

From: George M. Burgess
County Manager

Subject: Award Recommendation - RFP for Retail Concessions Program 2009
RFP No. MDAD-04-09 - Package 1 – Host International, Inc.

RECOMMENDATION
It is recommended that the Board approve the award of a Lease and Concession Agreement ("Agreement") to Host International, Inc. for Retail Concessions Program 2009 Package 1, consisting of four food and beverage locations, and authorize the Mayor or the Mayor's designee to execute the Agreement attached hereto, with the exhibits on file with the Clerk of the Board.

SCOPE
Miami International Airport (MIA) is located primarily within Commission District Six; however, the impact of this item is countywide as MIA is a regional asset.

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 Aviation Director or designee has the authority to exercise the renewal options and to terminate the agreement.

FISCAL IMPACT/FUNDING SOURCE
This project is revenue generating. The County shall be paid the greater of a monthly percentage fee of the total monthly gross revenues or the minimum monthly guarantee. The Minimum Annual Guarantee ("MAG") submitted by Host International, Inc., is $2,458,000.

TRACK RECORD/MONITOR
Host International, Inc. has two current contracts with Miami-Dade County: one food & beverage location and two retail locations and their performance has been satisfactory. The Project Manager for the project is Adrian Songer, MDAD Commercial Operations.

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

BACKGROUND
The RFP for Retail Concessions Program 2009 was advertised on August 17, 2009, for qualified firms to propose for the opportunity to provide financing, designing and constructing, managing, operating and maintaining high quality, reasonably priced specialty retail, newsstand and food and beverage spaces that are available in the North and South Terminals of MIA. The RFP contained six packages and establishes opportunities for Master Concessionaires or Fee Managers for Packages 1, 2, and 3. Packages 4, 5, and 6 were open to all Concessionaires.

Package 1 has four food and beverage locations, Package 2 has a total of nine locations (three news and books and six specialty retail locations); Package 3 has a total of nine locations (two news and books and seven specialty retail locations); Package 4 has two specialty retail locations and Packages 5 (specialty retail) and 6 (food and beverage) each have one location.

The Selection Committee met and reviewed the five proposals for Package 1 submitted in response to the RFP, and heard presentations from the submitting firms. The five firms were deemed responsible and having met the minimum qualification requirements. The selection process consisted of two parts, technical and price. The Committee proceeded with the technical proposal evaluation. Following the technical proposal ranking, the sealed price envelopes were opened and read aloud. MDAD staff proceeded to apply the formula for calculation

of the price score, as provided in the RFP and determined an overall ranking based on technical and price combined for each proposer respectively. As a result for Package One, the Selection Committee recommended award of the agreement to Host International, Inc., the top-ranked proposer.

This resulted in an overall ranking as follows:

Adjusted Score	Price	Proposer
2,867.00	$2,458,000	Host International, Inc.
2,674.92	$1,958,000	Areas USA MIA, LLC
2,533.75	$1,485,050	Crave-Quality Concession JV
2,414.77	$1,100,000	NewsLink of South Florida, LLC
2,201.94	$770,000	OTW Miami, LLC

Note that the first-ranked proposer, Host International, Inc. received the highest adjusted score and provided the highest Minimum Annual Guarantee (MAG). Also, the point differential for the adjusted score (technical and price) between the top-ranked proposer, Host International, Inc., and the second ranked proposer, Areas USA MIA, LLC, is 192.08 points.

PROJECT:	Retail Concessions Program 2009
PROJECT NO.	RFP No. MDAD-04-09
PROJECT LOCATION:	Miami International Airport
COMPANY NAME:	Host International, Inc.
TERM OF AGREEMENT:	Eight years
OPTION(S) TO RENEW:	At the sole discretion of the County, the initial eight-year term may be extended for a maximum of one two-year term provided the extension is mutually agreed to by the County and the Master Concessionaire in writing.
COMPANY PRINCIPALS:	HMSHost Corporation (100%)
GENDER, ETHNICITY & OWNERSHIP BREAKDOWN:	N/A (Host International, Inc. is wholly owned by a corporation)
COMPANY LOCATION:	6905 Rockledge Drive, Bethesda, Maryland 20817
HOW LONG IN BUSINESS:	112 years
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	Two current concession agreements at MIA -- Food & Beverage (multiple locations), Retail (multiple locations) & Café Bookstore
CONTRACT MEASURE:	The goal established is a 32% Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Goal.
CONTRACT MEASURE ACHIEVED:	32%

ACDBEs:	Tinsley Family Concessions – 10% - $245,800 Master Concessionair, LLC – 22% - $540,760 Amount shown is based on the first year's Minimum Annual Guarantee.
ADVERTISEMENT DATE:	August 17, 2009
LIVING WAGE:	Not Applicable
USING DEPARTMENT:	Miami-Dade Aviation Department

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: February 2, 2010

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

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

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1(C)
2-2-10

RESOLUTION NO. _____

RESOLUTION RELATING TO MIAMI INTERNATIONAL AIRPORT; APPROVING AWARD OF A LEASE AND CONCESSION AGREEMENT FOR THE RETAIL CONCESSION PROGRAM 2009 PACKAGE 1, PROJECT NO. MDAD-04-09, BETWEEN HOST INTERNATIONAL, INC. AND MIAMI-DADE COUNTY, WITH A MINIMUM ANNUAL GUARANTEE OF $2,458,000, AND FOR A TERM OF EIGHT (8) YEARS, WITH A TWO (2) YEAR OPTION TO RENEW; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME, AND TO EXERCISE RENEWAL AND TERMINATION PROVISIONS THEREOF

WHEREAS, this 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 award of a Lease and Concession Agreement for the Retail Concession Program 2009 Package 1, Project No. MDAD-04-09, between Host International, Inc. and Miami-Dade County, with a minimum annual guarantee of $2,458,000, and for a term of eight (8) years with a two (2) year option to renew, in substantially the form attached hereto and made a part hereof, with Exhibits on file with the Clerk, and authorizes County Mayor or Mayor's designee to execute same and to exercise renewal and termination provisions thereof.

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 2nd day of February, 2010. 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.

David M. Murray

LEASE AND CONCESSION

AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

HOST INTERNATIONAL, INC.

MASTER CONCESSIONAIRE

(PACKAGE 1)

FOR THE RETAIL CONCESSIONS PROGRAM 2009

AT

MIAMI INTERNATIONAL AIRPORT

TABLE OF CONTENTS

	Page
Definitions	1
Article 1 – Term, Extension and Locations	**5**
1.01 Interim Term	5
1.02 Operational Term	6
1.03 Extension	6
1.04 Locations	6
1.05 Support Space	6
1.06 Storage Space	6
1.07 Common Warehouse System	6
1.08 Addition, Deletion and Modification of Locations	7
1.09 Nonexclusivity	8
1.10 Condition of the Locations	8
1.11 Capital Improvement Program	9
1.12 Request for Proposal Incorporated	9
Article 2 – Use of Locations	**9**
2.01 Locations	9
2.02 Use of Locations	9
2.03 Master Concessionaire Services and Sales Rights	10
2.04 New Concepts	10
2.05 Scope of Services	10
2.06 Annual Plan Submission	13
2.07 Prohibited Activities	14
Article 3 – Rentals, Payments and Reports	**14**
3.01 Minimum Annual Guarantee (MAG)	14
3.02 No Negotiations or Administrative Modifications	14
3.03 Recalculation of the Minimum Annual Guarantee	15
3.04 Percentage Fee to the Department	15
3.05 Concessions Category Percentage Fee	15
3.06 Annual Rental	16
3.07 Master Concessionaire Compensation	16
3.08 Annual Rental Rate Adjustment	17
3.09 Common Warehouse Logistics Fee	17
3.10 Concession Marketing Fee	17
3.11 MAG Performance Bond	17
3.12 Taxes	18
3.13 Reports of Gross Revenues	18
3.14 Other Reports	19
3.15 Late Payment	19
3.16 Dishonored Check or Draft	19
3.17 Address for Payments	19

3.18 Revenue Control Procedures 20
3.19 Annual Audit 20
3.20 Right to Audit/Inspect 20
3.21 Records and Reports 21
3.22 Additional Fees Due 22
3.23 Utilities 22
3.24 Liquidated Damages 23
3.25 Payment Security 23

Article 4 – Improvements to the Locations 24
4.01 Improvements to Locations 24
4.02 Design of Improvements 25
4.03 Refurbishment of Locations 25
4.04 Certain Construction Contract Terms 25
4.05 Improvements Free and Clear 25
4.06 Other Requirements 26
4.07 Review of Construction 26
4.08 Cost Documentation 26
4.09 Amortization Schedule 28
4.10 Construction Permit Fee 28
4.11 Construction Services 29

Article 5 – Standards of Operation 30
5.01 Standards of Operation 30
5.02 Market Basket Pricing Policy 31

Article 6 – Obligations of the Department 32
6.01 Department Services 32

Article 7 – Furniture, Fixtures, and Equipment 33
7.01 Furniture, Fixtures, and Equipment 33
7.02 Americans with Disabilities Act Requirements 33
7.03 Disposal of Furniture, Fixtures, and Equipment 34

Article 8 – Maintenance 34
8.01 Cleaning 34
8.02 Removal of Trash 34
8.03 Maintenance and Repair 35
8.04 Failure to Maintain 35
8.05 Environmental Recycling 36
8.06 Fire Protection and Safety Equipment 36

Article 9 – Assignment and Ownership 36
9.01 No Assignment 36
9.02 Ownership of the Master Concessionaire 36
9.03 Change of Control 36

9.04 Holdover 37

Article 10 – Indemnification 37
10.01 Indemnification Required of Master Concessionaire 37

Article 11 – Insurance 38
11.01 Insurance Required of Master Concessionaire 38
11.02 Certificate of Continuity 39
11.03 Insurance Company Rating Requirements 39
11.04 Master Concessionaire Liable 39
11.05 Cancellation of Insurance or Bonds 39
11.06 Right to Examine 39
11.07 Personal Property 40
11.08 Survival of Provisions 40
11.09 Insurance Required of Sub-Tenants 40
11.10 Indemnification, Construction Bonds and Insurance Required 41

Article 12 – Default and Termination by County 44
12.01 Events of Default 44
12.02 Payment Default 45
12.03 Other Defaults 46
12.04 Habitual Default 46
12.05 Notice of Default and Opportunity to Cure 46
12.06 Unamortized Investment Extinguished 47
12.07 Termination for Abandonment 47
12.08 Termination for Cause 47
12.09 Adequate Assurances 48
12.10 Actions at Termination 48

Article 13 – Claims and Termination by Master Concessionaire 48
13.01 Administrative Claim Procedures 48
13.02 Termination 49

Article 14 – Airport Concession Disadvantaged Business Enterprise (ACDBE) 49
14.01 ACDBE Requirements 49
14.02 Counting ACDBE Participation toward Contract Goals 49
14.03 ACDBE Goal Achieved through Joint Venture (JV) Partnering 50
14.04 Certification-Airport Concession Disadvantaged Business Enterprise (ACDBE) 51
14.05 Affirmative Action and Airport Concession Disadvantaged Business Enterprise Programs 51
14.06 ACDBE Mentoring Assistance and Training Program 52
14.07 Airport Concession Disadvantaged Business Enterprise Participation Plan 53

Article 15 – Rules, Regulations and Permits 54
15.01 Rules and Regulations 54
15.02 Violations of Rules and Regulations 54

15.03 Permits and Licenses 54
15.04 Resolution No. 456-07 Prohibiting County and Public Heath Trust Employees from using products containing Transfats 54

Article 16 – Governing Law 55
16.01 Governing Law; Venue 55
16.02 Notice of Commencement of Civil Action 55
16.03 Labor Peace Requirement 55

Article 17 – Trust Agreement 56
17.01 Incorporation of Trust Agreement by Reference 56
17.02 Adjustment of Terms and Conditions 56
17.03 Inspections 56
17.04 Independent Private Sector Inspector General Review 56
17.05 Miami-Dade County Inspector General Review 57

Article 18 – Other Provisions 57
18.01 Payment of Taxes 57
18.02 Alterations by Master Concessionaire 58
18.03 Rights to be Exercised by Department 58
18.04 Administrative Modifications 58
18.05 Security 58
18.06 Rights of Department at Airport 58
18.07 Other Department Rights 58
18.08 Federal Subordination 58
18.09 Notices 59
18.10 Severability 59
18.11 Rights Reserved to Department 59
18.12 County Lien 59
18.13 Authorized Uses Only 60
18.14 No Waiver 60
18.15 Secured Areas/Airfield Operations Area (AOA) Sterile Areas Security 60
18.16 Intent of Agreement 62
18.17 Modifications 62
18.18 Radon Disclosure 63
18.19 Trademarks and Licenses 63
18.20 Headings 63
18.21 Binding Effect 63
18.22 Governmental Department 63
18.23 Independent Contractor 63
18.24 Other Liens 64

Article 19 – Sub-Leases 64
19.01 Assignment of Sub-Leases by Department 64
19.02 Department's Right to Approve Sub-Leases 65
19.03 Master Concessionaire's Sub-Lease Agreement Requirements 65

19.04 Sub-Tenant Minimum Qualifications Requirement 65

Article 20 – Waiver of Claims 65

Article 21 – Required, General and Miscellaneous Provisions 66
21.01 Agreements with State of Florida and Miami-Dade County 66
2102 Right to Amend 66
21.03 Master Concessionaire Covenants and Assurances 66
21.04 Right to Modify 68
21.05 Tax Exempt Status of Department Revenue Bonds 68
21.06 Remedies 69
21.07 Not Used 69
21.08 Regulations of Department 69
21.09 Interest 69
21.10 Miscellaneous Provisions 69
21.11 Force Majeure 70
21.12 Entire Agreement 71
Signature Page 72

Attachments

Exhibit C - Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation Plan / Provision

Exhibit H – Executed copies of the Affidavits and Condition of Award Certificates

DEFINITIONS

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

The term "**ACDBELO**" shall mean Airport Concession Disadvantaged Business Enterprise Liaison Office, Associate Aviation Director, Minority Affairs Division, Miami-Dade Aviation Department.

The term **"Agreement"** shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Master Concessionaire.

The term **"Airport"** shall mean Miami International Airport.

The term "**Airport Concession Disadvantaged Business Enterprises" or "ACDBE"** shall have the meaning ascribed in Article 14 entitled "Airport Concession Disadvantaged Business Enterprises".

The term **"Approved Improvements"** are the improvements to a Location, which have been approved by the Department which may include the design, equipment, fixtures, flooring, and signage.

The term **"Base Building Work"** shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Locations in Shell Condition.

The term **"Beneficial Occupancy"** shall mean the date when a Certificate of Occupancy or Temporary Certificate of Occupancy has been received for each Location.

The term **"Board**" shall mean Board of County Commissioners of Miami-Dade County.

The term **"Capital Improvement Program**" or "**CIP**" shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The term **"Code"** shall mean the Code of Miami-Dade County, Florida.

The term **"Common Logistics Fee"** shall mean an amount to be invoiced as a separate line item and collected from Sub-tenants by the Master Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Master Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for

the efficient operation of the Retail Program. The Master Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term **"Common Logistics Program"** shall mean a program to offer logistics support either on or off Airport which may include leasing of Airport property for storage; delivery services or equipment necessary to the operation of a common logistics system.

The term **"Concession Asset Manager"** shall mean the firm or entity that enters into this Lease and Concession Agreement and does not operate any of the Locations, but sub-leases the Locations.

The term **"Consumer Price Index"** or "**CPI**" shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for all urban consumers ("CPI-U") in the U.S. Cities Average: All items.

The term "**County"** shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term **"Days"** shall mean calendar days, unless specifically stated as other.

The term "**Department"** or **"MDAD"** shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term **"Extension"** shall mean the addition of one (1) separate two (2) year term following the Operational Term in writing by the County.

The term **"Gross Revenues",** as used in this Agreement, shall mean all Sub-tenant minimum annual guaranteed rents and percentage fees, if any, paid or payable by the Master Concessionaire from the Sub-tenants and any consideration of determinable value paid or payable to the Master Concessionaire by any third party (for example, retail display allowances and other promotional incentives). However, the term Gross Revenues shall not include: (i) any and all pass-through charges such as Sub-tenant payments to the Master Concessionaire for any sums collected for federal, state, County and municipal taxes imposed by law upon the sale of merchandise or services, utilities, the Common Logistics Fee and contribution to the Marketing Program; (ii) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable or (iii) promotional discount and coupon offers issued to customers as a result of a Department approved marketing plan. In connection with such Master Concessionaire's Gross revenues, Master Concessionaire hereby agrees to apply any security deposits received from its Sub-tenants to the payment of Sub-tenant minimum annual guaranteed rents and percentage fees, if any, due to non-payment by a Sub-tenant from time to time following applicable notice and cure periods provided in the Sub-Lease agreement.

The term **"Gross Receipts"** shall mean Gross Revenues received by Master Concessionaire as a result of operations pursuant to Master Concessionaire's Sub-Lease of a Location to an approved Sub-tenant.

The term **"Interim Term"** shall mean as ascribed in Article 1.01.

The term "**Labor Peace Agreement**" shall refer to the Agreement to be entered between Proposers and labor organization(s) pursuant to Section 3.7 of this RFP.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the concession locations as depicted on Exhibit A, "Locations (Package Summary".

The term **"Location Commencement Date"** shall mean for each Location, the earlier of the date of Beneficial Occupancy or 120 Days after the Turnover Date (180 days for food & beverage).

The term **Master Concessionaire**" shall mean the Master Concessionaire who operates one or more Locations and sub-leases one or more of the Locations.

The term "**Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Article 3.01.

The term **"Minimum Monthly Guarantee"** shall mean as ascribed in Article 3.01.

The term "**Nonexclusivity**" shall mean as ascribed in Sub-Article 1.10 of this Agreement.

The term **"Market Basket "** shall mean that MIA concession store prices shall not exceed by more than 10% stated market basket of a selection of three (3) Greater Miami Area locations where visitors may purchase similar product categories excluding stadiums, arenas, amusement and entertainment venues and hotels.

The term "**North Terminal**" shall mean the area of the terminal building and concourses, within the north part of the terminal area, landside or airside now known as Concourse D.

The term **"Operational Term"** shall mean as ascribed to in Article 1.02.

The term **"Proposal"** shall mean a Proposer's written response to RFP MDAD-04-09.

The term **"Refurbishment of Locations"** shall mean the refurbishment and expenditure by the Master Concessionaire or its Sub-tenants of not less than fifty dollars per square foot ($50psf) for Approved Improvements to begin no earlier than the sixth (6th) Operational Term year of the Agreement and be completed no later than the last day of the sixth (6th) Operational Term year of this Agreement.

The term **"Request for Proposal" or "RFP"** shall mean this RFP No. MDAD-04-09, and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term **"Retail"** when used in this Agreement shall mean those newsstand, retail, and food & beverage Locations as depicted in Exhibit A of the Lease and Concession Agreement.

The term **"Retail Concession Design Guidelines"** shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in Exhibit E.

The term **"Shell Condition"** shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the south part of the terminal area, landside or airside which is now known as Concourse H, and Concourse J and connecting concession and public locations.

The term **"State"** shall mean the State of Florida.

The term **"Sub-Lease"** shall mean the contractual agreement between the Master Concessionaire and its Sub-tenant.

The term **"Sub-tenant"** shall mean any person, firm, entity or organization, entering into an agreement with Master Concessionaire for sale, retail products to the public at the Airport at a Location.

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall mean the date approved by the Department for the Master Concessionaire to commence construction of a Location.

LEASE AND CONCESSION AGREEMENT FOR A NON-EXCLUSIVE MASTER CONCESSIONAIRE FOR RETAIL CONCESSIONS PROGRAM 2009 AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 2010, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and Host International, Inc., ("Master Concessionaire") (Package 1) , a Maryland Corporation authorized to do business in the State of Florida.

RECITALS:

WHEREAS, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

WHEREAS, the Department desires to create a retail and food & beverage concessions program in conjunction with the development program for the North Terminal project; and

WHEREAS, the concessions program is designed to provide a locally, nationally, and internationally recognized themed tenant base; and

WHEREAS, the retail and food & beverage concessions program will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

WHEREAS, Request for Proposal, RFP No. MDAD-04-09 was issued by the County and in response to the Request for Proposal, the County received proposals and an award has been made to the Master Concessionaire,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATIONS

1.01 INTERIM TERM: The County hereby leases to the Master Concessionaire the Locations depicted in Exhibit A for the Interim Term which commences on the Lease Effective Date and terminates on the earlier to occur of: 1) the first day of the month following Beneficial Occupancy of the last Location to complete the required improvements pursuant to **Sub-Article 4.01, Improvements To Location** or 2) the first day of the month following three hundred and sixty-five (365) Days after the Lease Effective Date. Notwithstanding the above, the Interim Term may be extended by the County for unforeseen delays.

1.02 OPERATIONAL TERM: The County hereby leases to the Master Concessionaire the Locations depicted in Exhibit A commencing upon the termination of the Interim Term of this Agreement and expiring at 11:59 P.M. on the last day of the eighth (8th) year thereafter unless sooner terminated. In no event shall this Agreement afford Master Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, termination of the Agreement.

1.03 EXTENSION: At the sole discretion of the County, the initial eight (8) year Operational Term may be extended for a maximum of one (1) two (2) year term provided the extension is mutually agreed to by the County and the Master Concessionaire in writing.

In the event the County elects to extend the Agreement, the Master Concessionaire shall be notified, in writing, no less than three hundred and sixty-five (365) Days prior to the expiration of the Operational Term. The Master Concessionaire may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

In the event the Master Concessionaire is in default, pursuant to **Article 12 "Default and Termination by County"** of the Lease and Concession Agreement beyond applicable grace and cure periods, the County shall not exercise its rights to extend the Agreement.

1.04 LOCATIONS: The Department hereby provides to the Master Concessionaire the Locations as depicted in Exhibit A, Locations (Package Summary).

1.05 SUPPORT SPACE: In addition to the Locations provided to the Master Concessionaire in **Sub-Article 1.04 "Locations",** the Department may provide administrative and support space, if available, to the Master Concessionaire.

The Master Concessionaire shall pay monthly rental payments for the Master Concessionaire's administrative and storage space at the rate applicable for terminal rental payments and annual adjustments as provided for in **Sub-Article 3.06 Annual Rent**.

1.06 STORAGE SPACE: The Department may make available to the Master Concessionaire storage space outside of Location(s), if available.

1.07 COMMON WAREHOUSE SYSTEM: Due to the fact that storage space is limited in this Agreement and such space is separate from the Locations, should the Master Concessionaire determine, in its sole discretion, the need to use off-Airport properties for storage space, the Master Concessionaire shall be entitled through itself, or through an independent third-party contractor, to operate a common logistical support service with respect to the delivery and storage of Sub-tenants' merchandise, inventory, equipment and supplies to a central commissary warehouse location off of the Airport and the re-delivery of Sub-tenants' merchandise, inventory, equipment and supplies to each of the Sub-tenants' Location at the Airport as approved by the Department. The Department may elect to initiate a Common Logistics Program to assist in storage, delivery equipment and

supplies in which case a Common Logistics Fee may be assessed to Master Concessionaire.

In the event of a Department initiated Common Logistics Program, the actual costs incurred to rent any such off-Airport properties for storage and/or The actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of equipment needed to operate such program), as may be determined by the Department from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Master Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Master Concessionaire shall not be entitled to charge Sub-tenants for any of the Master Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Master Concessionaire as part Common Logistics Fee shall not be included in Master Concessionaire's Gross Revenues for any and all purposes of this Agreement. It is recognized by the Department that any such payments by Sub-tenants to the Master Concessionaire shall not be included in the calculation of the Percentage Fee, if any, from Master Concessionaire to the Department as provided for in **Article 3.03 "Percentage Fee to the County"**. The Department reserves the right to review the basis of the actual costs and allocation thereof should the Master Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to approve such program and require that the Master Concessionaire impose the Common Logistics Fee in a non-discriminatory manner.

1.08 ADDITION, DELETION AND MODIFICATION OF LOCATIONS:

A. ADDITION OF LOCATIONS: If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional Location to the Master Concessionaire upon written notification. The Master Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional Location. Acceptance of any additional Location will require the Department and the Master Concessionaire to mutually agree upon an applicable retail category as described in Exhibit A at the applicable category percentage fee, **Sub-Article 3.05, Concessions Category Percentage Fee**, prior to final approval.

B. ADDITION OF TEMPORARY LOCATIONS: The Department reserves the right to require the Master Concessionaire to provide, and cause to be operated, temporary locations. Any rents for these locations are subject to the terms of this Agreement. The square footage for these temporary locations shall not be included in the calculation of the Minimum Annual Guarantee pursuant to **Sub-Article 3.01**. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.

C. **DELETION OR MODIFICATION OF LOCATIONS:** The Department reserves the right, at its sole discretion, to delete or modify any of the Locations, or any administrative support and storage spaces due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Master Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Master Concessionaire or its Sub-tenants (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.10** for any inconvenience or loss of business as a result of the deletion or modification of any Locations or other space pursuant to this Sub-Article.

D. **ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Articles 1.04 "Locations", 1.05 "Support Space", and 1.06 "Storage Space"** and total payments due the Department in accordance with **Article 3, Rentals, Payments and Reports** and **Article 2 Use of Locations.**

E. The Master Concessionaire shall utilize the sub-lessees or sub-tenants listed or shown in the Master Concessionaire's proposal, and shall not substitute or replace such sub-lessee's or sub-tenants without the written consent of the County. Substitution of ACDBE firms is addressed in Section 14 of this Agreement.

1.09 NONNEXCLUSIVITY: This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other Master Concessionaires and/or others in other locations at the Airport during the Interim Term, Operational Term and any Extension of this Agreement.

1.10 CONDITION OF THE LOCATIONS: MASTER CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE MASTER CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE MASTER CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS including: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-

governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Master Concessionaire to the Department, including any statements relating to the potential success or profitability of such Proposal. Master Concessionaire represents and warrants that it has made an independent investigation of all aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Master Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Master Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Master Concessionaire accepts the Locations in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Locations to the requirements of applicable law, the Master Concessionaire assumes sole responsibility for any such work.

1.11 CAPITAL IMPROVEMENT PROGRAM: The Capital Improvement Program (CIP) is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE INTERIM TERM, OPERATIONAL TERM AND ANY EXTENSION OF THIS AGREEMENT.** The Department shall use reasonable good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.

1.12 REQUEST FOR PROPOSAL INCORPORATED: The Master Concessionaire acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal (RFP), that was the basis for the award of this Agreement and upon which the County relied. The RFP and the proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

ARTICLE 2 – USE OF LOCATIONS

2.01 LOCATIONS: The Locations as referenced in Exhibit A, "Locations (Package Summary)" shall be used solely for their assigned and approved concept category unless otherwise modified pursuant to **Sub-Article 2.04. "New Concepts"** Failure to maintain the concept category pursuant to **Article 2 "Use of Locations"** may result in liquidated damages as indicated in **Sub-Article 3.24 "Liquidated Damages"**.

2.02 USE OF LOCATIONS: The Master Concessionaire shall have the right, privilege, and obligation to develop, lease, market and manage and to cause the Sub-tenants to operate

and maintain the Locations, depicted in Exhibit A, "Locations (Package Summary)", for the purpose of establishing high quality, state of the art retail concessions as approved by the Department.

2.03 MASTER CONCESSIONAIRE SERVICES AND SALES RIGHTS: The Master Concessionaire shall not allow any services or the sale of any item or product not specifically covered by the categories approved in this Agreement. Any such sales by the Master Concessionaire or Master Concessionaire's Sub-tenants of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Master Concessionaire shall discontinue or cause its Sub-tenants to discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Master Concessionaire or its Sub-tenants to discontinue such sales within twenty-four (24) hours shall subject the Master Concessionaire to liquidated damages pursuant to **Sub-Article 3.24 "Liquidated Damages"**. Upon the assessment of thirty (30) Days of liquidated damages as to a Location for a Location operated by a Sub-tenant, the Master Concessionaire shall tender a notice of default to the Sub-tenant(s) in violation, with copies of said default notice to the Director and pursue all remedies available in law and equity to cease such actions. Failure of the Master Concessionaire to: (i) notify the Sub-tenant(s) of the default, (ii) pursue all remedies available to cease the unauthorized sales or services shall be an event of default and grounds for termination of this Agreement. Upon the assessment of thirty (30) Days of liquidated damages against a Master Concessionaire for violation committed by such Master Concessionaire or its Sub-tenant(s), a notice of default will be tendered.

2.04 NEW CONCEPTS: The Master Concessionaire and the Department may modify, by mutual agreement, certain concepts within the established categories and among the Locations. The proposed new concept as agreed to by the Department and the Master Concessionaire will be reflected in a revised Exhibit A, a revised Percentage Fee as applicable for the category as provided for in **Article 3 "Rentals, Payments and Reports"**, and a revised **Article 2 "Use of Locations"**.

2.05 SCOPE OF SERVICES: The Master Concessionaire hereby agrees that it will cause its tenants to finance, design and construct, lease, manage, operate and maintain the Locations depicted in Exhibit A, "Locations (Package Summary)", for the purpose of establishing high quality, state of the art retail concessions as approved by the Department. Its responsibilities are further defined but not limited to the following:

A. Financing:

Be capable of financing the design, construction and build out of the Locations depicted on Exhibit A, "Locations (Package Summary)".

Develop a financial plan indicating the source of funding for capital investment and continued maintenance and operation of the Locations.

B. Developing:

The Master Concessionaire shall design a concession program to fulfill the concept categories and submit initially and thereafter annually a merchandising and layout plan identifying the product categories within each Location for each Location. The Master Concessionaire will be responsible for updating the store layout plan and merchandising plan no less than annually or as necessary throughout the Interim Term, Operational Term and any Extension of this Agreement, providing suggestions as needed for Sub-tenant for each concept for consideration by the Department.

C. Design and Construction Coordination:

Design and Construction Coordination requirements are detailed in Sub-Article 4 Improvements to the Locations.

D. Leasing:

The Master Concessionaire shall be responsible for subleasing as follows:

1. Coordinate its leasing process with the Department, obtaining approval of each Sub-Lease agreement prior to subleasing.
2. Develop, subject to review and approval by the Department, a standard Sub-tenant Lease Agreement, if subleasing is conducted, in accordance with **Article 20, "Sub-Leases"** of the Lease and Concession Agreement no later than thirty (30) Days from the Lease Effective Date of the Lease and Concession Agreement.
3. Perform background checks and investigate all prospective Sub-tenants, including partners, joint ventures, and other key participants. Prepare and make available to the Department, if requested, background check summaries.
4. Negotiate Sub-Leases with potential Sub-tenants to include, but not be limited to:
    a. Negotiating financial terms with potential Sub-tenants in accordance with the Department's approved key business terms and baseline pro-forma.
    b. Preparing term sheets of potential sub-tenant deals, outlining all business terms for the Department's approval.
    c. List of use and products for each concept.
5. Prepare the appropriate Sub-tenant lease agreement and exhibits.

    Sub-Lease agreements shall:

    (1) Not extend beyond the expiration date or termination date of the Lease and Concession Agreement.

    (2) Contain comparable terms and conditions as may be applicable to those contained in the Lease and Concession Agreement.

E. ACDBE Plan

The Successful Master Concessionaire for Packages 1, 2 and 3 shall comply with the ACDBE Plan submitted with its Proposal and shall:

1. Maximize ACDBE and local participation by meeting or exceeding the ACDBE goal under this Lease and Concession Agreement.
2. Develop, implement, manage, and monitor a program to identify and include Local/ ACDBE businesses in the concession programs.
3. For Packages 1, 2 & 3, describe the extent and type of ACDBE subleasing in the Program.
4. Submit an ACDBE community and local business opportunities outreach program for concession opportunities, subject to the Department's approval.

F. Managing

The Master Concessionaire shall, if applicable:

1. Design a concession program fulfilling the concept category and submit a merchandising plan initially and for annual review until expiration of the Agreement identifying the product categories for each Location. The Master Concessionaire will review the store layout plan no less than annually and update the store layout as necessary throughout the Agreement.
2. Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
3. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement and any Sub-Lease agreements, including but not limited to, use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
4. Function as operations liaison between the Department, governmental agencies, Sub-tenants and others.
5. Maintain permanent records for each Location leased.
6. Maintain computerized records on a commercially available property management software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital and electronic).
7. Establish and maintain for the Department a potential Sub-tenant database, including correspondence with potential Sub-tenants.
8. Develop, maintain and make available, if requested, all files, including those of any Sub-tenants, to include copies of licenses, permits, insurance certificates, and letters of credit.
9. Provide from time to time, as requested by the Department, annual financial statements demonstrating its and its Sub-tenant's financial capacity to perform its obligations under the terms of the Agreement.

G. Operating

The Master Concessionaire shall:

1. Provide quality control audits and reports, including maintenance of the street pricing requirements covering compliance with contract requirements, cleanliness of the Location, timeliness of service, quality of the product
2. Generate monthly reports to the Department, including sales by unit, concept and Location.
3. Develop annual revenue projections by month by its Sub-tenant, by Location, concession category, and product category to be updated on a regular basis.
4. Generate and provide the Department monthly airport revenue reports, and such other financial and management reports as are usual and customary in sophisticated airport concession management programs. Prepare other reports and analyses as may be requested periodically by the Department, including number of transactions per hour, average sales per transaction, and sales per product category.
5. Provide on-site staff to perform daily functions as required by the Scope of Services and the Standards of Operations identified in this Lease and Concession Agreement, subject to acceptance by the Department
6. Ensure compliance, or cause Sub-tenants to comply with the Department and other governmental agency ID Badging requirements.
7. Implement any new policies, and procedures, and operational directives as issued from time to time by the Department.
8. Ensure payment is submitted with the Monthly Report of Gross Revenues to the Department.
9. Respond to customer/passenger complaints on a timely basis. Ensure customer service program compliance. The Master Concessionaire and/or its Sub-tenants will submit its/their customer service-training program within thirty (30) Days of the Lease Effective Date of the Agreement, for the Department's review and approval.
10. Coordinate and implement regular employee customer service training programs, to include employees from both the Master Concessionaire and its Sub-tenants, if applicable.
11. Participate and shall cause any Sub-tenant to participate in an airport-wide customer service program implemented by the Department.

H. Maintaining

The Master Concessionaire shall:

1. Maintain or cause to maintain the Locations pursuant to Department standards, which may be promulgated from time to time.
2. Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
3. Shall take such corrective action as necessitated to maintain Locations in an acceptable condition as required by the Department.

2.06 ANNUAL PLAN SUBMISSION: The Master Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90)

Days prior upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) Days after receipt of the foregoing plan to approve or disapprove the same in its discretion. If MDAD disapproves the plan, the Master Concessionaire shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

The Department reserves the right to request at any time any further submission of plans.

2.07 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Master Concessionaire or its Sub-tenants shall not, without the prior written consent of the Department which may be withheld in its sole and absolute discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA Terminal Building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA Terminal Building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Master Concessionaire or its Sub-tenants to perform its maintenance and repair obligations under this Agreement, Master Concessionaire or its Sub-tenants shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole and absolute discretion.

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 MINIMUM ANNUAL GUARANTEE (MAG): As consideration for the privilege to engage in business at Miami International Airport, the Master Concessionaire shall pay the Department the amount of **$2,458,000** annually as may be adjusted by the prorated amount stated below and subject to recalculation pursuant to **Sub-Article 3.03 "Recalculation of the Minimum Annual Guarantee"**, inclusive of Location and Location Storage rent.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law.

The MAG shall commence upon the Location Commencement Date of each Location and is comprised of a rent payment of **$65.69** per square foot annually for each square foot of Location space occupied and the amount by which the stated MAG above, as adjusted and recalculated from time to time, exceeds the Location rent.

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Master Concessionaire understands and agrees, as a condition precedent to the County's

consideration of the proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Percentage Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 22.11 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Interim Term, Operational Term and any Extension of this Agreement. If the Master Concessionaire's Locations are so damaged as to significantly impact the Master Concessionaire's operations for a period in excess of seventy-two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Lease Effective Date and every year thereafter. An appropriate adjustment will be made to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the U.S. Cities Average: All Items, for the published, preceding twelve-month period.

3.04 PERCENTAGE FEE TO THE DEPARTMENT: The Master Concessionaire shall pay the Department the total percentage fee of Gross Revenues or the Minimum Monthly Guarantee; whichever is greater, for each respective package. The monthly percentage fee shall be due on the tenth (10th) Day of the month following the month during which the monthly gross revenues were received or accrued. Percentage fees are non-taxable.

The Monthly Percentage Fee payments to the Department shall commence upon the Beneficial Occupancy for each Location.

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.19 "Annual Audit"**, are considered as having been due on the tenth (10th) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

To the extent the Master Concessionaire and the Department mutually agree to change a concept category for a particular Location, the corresponding percentage fee, as listed per category in **Sub-Article 3.05, "Concessions Category Percentage Fee"**, will be adjusted accordingly.

3.05 CONCESSIONS CATEGORY PERCENTAGE FEE: The Master Concessionaire shall pay the Department the Percentage Fee for the corresponding category. The Master Concessionaire Percentage (Column A) will be paid for all Locations operated by the Master Concessionaire and the Sub-Tenant Percentage (Column B) will be paid for all Locations that are sub-leased.

CONCEPT CATEGORY	COLUMN A CONCESSIONAIRE PERCENTAGE	COLUMN B SUB-TENANT PERCENTAGE
RETAIL		
Bookstores	**12%**	**9%**
News & Gifts	**19%**	**16%**
Newsstands	**16%**	**13%**
Entertainment & Electronics	**11%**	**8%**
Fashion Apparel & Accessories	**14%**	**11%**
Gift Specialty Shops	**16%**	**13%**
Jewelry, Watches & Accessories	**17%**	**14%**
Sundries, Personal Care	**17%**	**14%**
Travel Accessories	**17%**	**14%**
Services	**13%**	**10%**
FOOD & BEVERAGE		
Casual Dining	**12%**	**9%**
Branded Concept	**13%**	**10%**
Bar	**15%**	**12%**
Quick Serve/Walk Away	**17%**	**14%**
Self Branded	**18%**	**15%**
Beer/Wine	**18%**	**15%**
Merchandise	**18%**	**15%**
Alcoholic Beverages	**21%**	**18%**

3.06 ANNUAL RENTAL: The Master Concessionaire shall be required to pay rent at the prevailing terminal class rates for the lease of support and storage spaces provided by **Sub-Articles 1.05** and **1.06**, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.17, Address for Payments**.

3.07 MASTER CONCESSIONAIRE COMPENSATION: In consideration for the services provided under this Agreement, the Master Concessionaire may retain up to a maximum of three percent (3%) of the Sub-tenant percentage fee as stated in **Sub-Article 3.05, Concessions Category Percentage Fee**.

3.08 ANNUAL RENTAL RATE ADJUSTMENT: On October 1st of each year of the Agreement, the rental rates, pursuant to **Article 3.06, "Annual Rental"** shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten (10) Days of same.

3.09 COMMON WAREHOUSE LOGISTICS FEE: In the event the Department initiates a Common Logistics Program the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or Master Concessionaire from time to time, shall be included in the Common Logistics Fee. The Common Logistics Fee shall be reimbursed to the Master Concessionaire by its Sub-tenants on a non-discriminatory basis for all similarly situated Sub-tenants. The Master Concessionaire shall not be entitled to charge Sub-tenants for any of the Master Concessionaire's internal administrative expenses in managing the common logistical support service program as part of the Common Logistics Fee. All funds received by Master Concessionaire as part of the Common Logistics Fee shall not be included in Master Concessionaire's Gross Revenues for any and all purposes of this Agreement, it being recognized by the Department that any such payments by Sub-tenants to the Master Concessionaire shall not be included in the calculation of the Percentage Fee, if any, due from Master Concessionaire to the Department as provided for in **Sub-Article 3.04 "Percentage Fee to the Department"**. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Master Concessionaire elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Master Concessionaire impose the Common Logistics Fee in a non-discriminatory manner within store categories.

3.10 CONCESSION MARKETING FEE: A concession marketing fee of one half (l/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the first Location opening on the twentieth (20th) of each month to be used for marketing the concessions at the Airport.

3.11 MAG PERFORMANCE BOND: Within thirty (30) Days of the Lease Effective Date of this Agreement, the Master Concessionaire shall provide the Department a Performance Bond to guarantee payment of the MAG and rental for the lease of support and storage spaces. Master Concessionaire shall keep such Performance Bond in full force and effect during the Interim Term and Operational 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. 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 or other security instrument 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 or other security instrument shall initially be in an amount equal to seventy-five percent (75%) of the MAG amount provided for in Sub-Article 3.01, which is equal to **One Million Eight Hundred Forty-three Thousand Five Hundred Dollars ($1,843,500)** and seventy-five percent (75%) of any annual rental and applicable taxes for the lease of support and storage spaces set forth in Sub-Article 3.06. Thereafter, the amount shall be adjusted as necessary to reflect any increases in the MAG and lease of support and storage spaces.

The Department may draw upon such form of security instrument, if the Master Concessionaire 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, Master Concessionaire 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 Master Concessionaire is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to Master Concessionaire within one hundred eighty (180) Days after the end of the Operational Term or any Extension of the Operational Term.

3.12 TAXES: The Master Concessionaire shall be solely responsible for the payment of all applicable taxes, levied upon the fees and other charges payable by the Master Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest, liquidated damages and charges levied thereon. The Master Concessionaire hereby agrees to indemnify the County and Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Master Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Master Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and liquidated damages payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.13 REPORTS OF GROSS REVENUES: On or before the tenth (10th) Day following the end of each month throughout the Interim Term, Operational Term and any Extension of this Agreement, the Master Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall report each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Master Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may

modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Master Concessionaire. The statement must be signed by an officer (if the Master Concessionaire is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Master Concessionaire, and identify all Gross Revenues by Location reported to the Master Concessionaire during such month. Failure to comply within ten (10) Days following the due date of the report shall result in a late fee liquidated damage of fifty dollars ($50.00) per Day, as provided in **Sub-Article 3.24 "Liquidated Damages"**.

3.14 OTHER REPORTS: The Master Concessionaire shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) Days written notice of the format and frequency required for said financial data and operating statistics.

3.15 LATE PAYMENT: In the event the Master Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is currently 1½% delinquency charge per month.

3.16 DISHONORED CHECK OR DRAFT: In the event the Master Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Master Concessionaire shall incur and pay a service fee of TWENTY-FIVE DOLLARS ($25.00), if the face value of the dishonored check or draft is fifty dollars ($50.00) or less, THIRTY DOLLARS ($30.00) if the face value of the dishonored check or draft is more than fifty dollars ($50.00) and less than three hundred dollars ($300.00), or FORTY DOLLARS ($40.00), if the face value of the dishonored check is three hundred dollars ($300.00) or more, or five percent (5%) of the face value of such dishonored check or draft, whichever is greater, plus liquidated damages imposed by law. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.17 ADDRESS FOR PAYMENTS: The Master Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:

In Person: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300

During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday:

By Mail: Miami-Dade Aviation Department
Finance Division
P.O. Box 592624
Miami, Florida 33152-6624

By Express Mail: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300
Miami, Florida 33122

By Wire Transfer: In accordance with Wire Transfer instructions provided by MDAD's Finance Division, 305-876-7383.

3.18 REVENUE CONTROL PROCEDURES: Notwithstanding anything to the contrary contained herein, the Master Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Master Concessionaire with at least thirty (30) Days prior written notice together with a copy of such revenue control procedures prior to requiring the Master Concessionaire to implement any such revenue control procedures.

3.19 ANNUAL AUDIT: Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Master Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and percentage fees separately stating its and each Sub-tenants Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Auditor Report", shall include a schedule of monthly Gross Revenues and percentage fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

3.20 RIGHT TO AUDIT/INSPECT: The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Master Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Master Concessionaire for recording or compiling Gross Revenues information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other

pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give advance notice to the Master Concessionaire.

If it is established that the percentage fees have been underpaid to the Department, the Master Concessionaire shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such amount or amounts should have been paid.

Further, if such examination establishes that Master Concessionaire has underpaid percentage fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Master Concessionaire.

In the event of any conflict between any provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Master Concessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Master Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

3.21 RECORDS AND REPORTS: The Master Concessionaire shall, at all times during the Interim Term and Operational Term of this Agreement, or any Extension hereof and in accordance with applicable law, maintain at the Master Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Locations, in a form consistent with good accounting practice. In addition, Master Concessionaire shall install or cause to be installed for use at all times in each Location such devices and forms as are reasonably necessary to record properly, accurately and completely all merchandise sales and services from each Location. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Master Concessionaire shall account or shall cause its Sub-tenants to account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Master Concessionaire (and of the Sub-tenants, as the case may be) and which supports the amounts reported to the Department in the Master Concessionaire's monthly schedules. At a minimum, the Master Concessionaire's accounting for such receipts shall include the following:

1. Master Concessionaire's bank account statements (separate bank accounts shall be maintained for receipts from Sub-tenants' payments to the Master Concessionaire and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Master Concessionaire's monthly "Revenue Reports"; and
3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Master Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Master Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, including the general ledger and bank statements and all federal, state and local tax returns relating to Sub-tenant's sales, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Master Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Locations will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Master Concessionaire's business.

3.22 ADDITIONAL FEES DUE: If the Department has paid any sum or has incurred any obligation or expense for which the Master Concessionaire agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Master Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed due and subject to an additional administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

3.23 UTILITIES: The cost of all utilities used or consumed on the Locations shall be borne by the Master Concessionaire; provided, however, except with respect to the Master Concessionaire's support and storage space as defined in **Sub-Articles 1.05 and 1.06** at the Airport, the Master Concessionaire shall be entitled to pass the cost of all utilities used or consumed to the Sub-tenants at the same rates as billed to the Master Concessionaire without any administrative mark-up or profit. The Department requires the Master Concessionaire where such capability exists, to provide and install or cause the Sub-tenants to provide and install meters for utilities used at the Master Concessionaire's or its Sub-tenant's expense. If the Locations are not provided with separate electric, gas, and/or water

meters, the Master Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal Building or (ii) at the option and expense of the Master Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Master Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Master Concessionaire hereby agrees to pay the same within thirty (30) Days after it has received Department's invoice thereof. The Master Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

3.24 LIQUIDATED DAMAGES: If Master Concessionaire or its Sub-tenants default under any of the covenants or terms and conditions, of this Agreement, Department shall to impose the financial liquidated damages described below, as a result of the violation(s), on a daily basis, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation	Fee
Violation of Permitted Use of a Location	$ 100 per Day/per Location
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	$ 50 per Day/per Location
Unauthorized Advertising	$ 50 per Day/per Location
Failure to maintain Location clean	$ 50 per Day/per Location
Failure to maintain Market Basket Pricing or to conduct the surveys as required	$ 50 per Day/per Location
Installation of Unapproved Items in Locations	$ 50 per Day/per Location
Violations of other terms and conditions	$ 75 per Day/per Location

The foregoing is due and payable from the Master Concessionaire; however, it shall not be construed as prohibiting the Master Concessionaire from imposing the financial liquidated damages described above, as a result of the Sub-tenant's violation(s), on a daily basis, on the applicable Sub-tenants, in addition to any other liquidated damages permissible by law and/or pursuant to the provisions of the Sub-Lease agreements, until said violations are remedied by the applicable Sub-tenants.

3.25 PAYMENT SECURITY: The Master Concessionaire 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 MAG amount provided for in Sub-Article 3.01, which is equal to **Six Hundred Fourteen Thousand Five Hundred Dollars ($614,500)** and twenty-five percent (25%) of any annual rental for the lease of support and storage spaces set forth in Sub-Article 3.06 and any applicable taxes. Thereafter the amount shall be adjusted as necessary

to reflect any increases in the MAG and lease of support and storage spaces. This requirement shall be met no later than thirty (30) Days after the Lease Effective Date of the Agreement. The payment security shall be kept in full force throughout the Interim Term, Operational Term and any Extension of this Agreement thereof. The Department may draw upon such payment security instrument if the Master Concessionaire fails to make the payments secured by this Sub-Article. Upon notice of any such draw, Master Concessionaire 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.

ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

4.01 IMPROVEMENTS TO LOCATIONS: The Master Concessionaire shall be required to invest a minimum of two hundred dollars per square foot ($200.00 psf), for Approved Improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for each Location listed in Exhibit A and any additional location taken by the Master Concessionaire pursuant to **Sub-Article 1.09(A) "Addition of Location"**. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of soft costs permitted to be included as Approved Improvements shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Master Concessionaire to build such improvements in compliance with MDAD TAC procedures.

It is the intent of the parties that Approved Improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the Final Plans, as such term is defined in **Sub-Article 4.02 "Design of Improvements"**.

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.09 "Cost Documentation"**, and (iii) can be removed without damage to the premises. The Master Concessionaire is liable and shall indemnify the Department for any damage to the Locations which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Locations, as stated in **Article 4 "Improvements to the Locations"** or as an extension of this Agreement, and costs incurred by either the Master Concessionaire or its Sub-tenants to provide such storage space shall not constitute Approved Improvements.

4.02 DESIGN OF IMPROVEMENTS: Plans for the design of improvements will be in accordance with Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) Design and Construction Procedures" or Exhibit M "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures", as applicable, the "MDAD Life Safety Master Plan", the "MDAD Public Address System Master Plan", and the "MDAD Design Guidelines Manual" (www.Miami-Airport.com) as may be established for the Terminal Retail Program. As plans for the improvement of individual Locations or common area improvements are completed, the Master Concessionaire shall submit to the Department for review, approval or modification detailed final plans ("Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, ordinances, and regulations.

4.03 REFURBISHMENT OF LOCATIONS: The Master Concessionaire shall refurbish the Locations or cause its Sub-tenants to refurbish their respective Locations to begin no earlier than the sixth (6th) Operational Term year of the Agreement and be completed no later than the last day of the sixth (6th) Operational Term year of this Agreement.

Approved Improvements for the refurbishment of the Locations shall not be less than fifty dollars per square foot ($50 psf). There will be no reimbursement or amortization of these costs for refurbishment.

4.04 CERTAIN CONSTRUCTION CONTRACT TERMS: All contracts entered into by the Master Concessionaire and/or its Sub-tenants for the construction of the Improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02 "Design of Improvements"** and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the County in the event the contractor fails to complete the construction on time. The Master Concessionaire agrees that it will use its best efforts and shall also require the Sub-tenants to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Master Concessionaire, the Master Concessionaire shall provide or cause to be provided to the County copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Exhibit B, "Surety Performance and Payment Bond" provided by Master Concessionaire to the County in the form contained in Exhibit B "Surety Performance and Payment Bond" in the Lease and Concession Agreement. The Surety Performance and Payment bond shall be in full force throughout the term of the installation contract.

4.05 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County's obligation to reimburse the Master

Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Master Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Master Concessionaire for contracts entered into by Sub-tenants) from the claims of any laborers, subcontractors or material men against the locations or improvements.

4.06 OTHER REQUIREMENTS: The Master Concessionaire shall or shall cause the Sub-tenants to apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Master Concessionaire shall furnish or shall cause the Sub-tenants to furnish to the Master Concessionaire and the County one complete set each of legible prints (black line), of construction drawings in electronic file format and in full compliance with Autodesk's DWG file format and standard revised as to "as built". Based upon submission date, the AutoCad.dwg version must be within two years of the latest release. MDAD will not accept the submission of any AutoCad drawing deliverable which contains references to external source drawing files. The closeout document package should include all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Master Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.

No Facility will be allowed to open without obtaining a Temporary Certificate of Occupancy or a Certificate of Occupancy.

Any change in the Location, concept or tenant proposed in response to the Request for Proposals must be approved in writing by the County. The Sub-tenant occupying the Location submitted in response to the Request for Proposal shall be given notice of the proposed change in writing with a copy to the County and an opportunity to respond in writing to the County and have an opportunity to be heard by the County.

4.07 REVIEW OF CONSTRUCTION: The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Master Concessionaire or the Sub-tenant and approved by the County.

4.08 COST DOCUMENTATION: Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01 "Improvements to Locations", 4.03 "Refurbishment of Locations"**, and **4.04 "Master Concessionaire Development Requirements"**, the Master Concessionaire shall submit to the County a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit"). The Master Concessionaire or the Sub-tenants, as the case may be, shall be responsible for documenting for the Auditor that the

monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Master Concessionaire or the Sub-tenants and approved by the County, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Master Concessionaire or the Sub-tenants, as the case may be. No non-receipted expenditures will be credited. Master Concessionaires not submitting certified audits within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten per cent (10%) of the monies due the County on the build-out of the Locations. In the event of any disputes between the County and the Master Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Master Concessionaire in writing that it has approved or disapproved the certified costs for each Location and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Master Concessionaire fails to submit the Certified Audit within the time prescribed above for any Location, then a liquidated damage will be assessed as noted in **Sub-Article 3.24 "Liquidated Damages"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Master Concessionaire for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.10 "Amortization Schedule"** shall equal the lesser of two hundred dollars ($200) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Master Concessionaire or its Sub-tenant's minimum investment and is depicted as such in the results of the Certified Audit, the Master Concessionaire shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Location.

If the approved total receipted amount for Refurbishment of Locations is below the Master Concessionaire's or its Sub-tenant's investment, the Master Concessionaire shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

The Master Concessionaire shall be entitled to obtain reimbursement of such payments made to the Department from the applicable Sub-tenant(s) who fails to spend the minimum investment or the refurbishment amount for their specific Locations.

4.09 AMORTIZATION SCHEDULE: The Master Concessionaire shall amortize its capital investment for a period not to exceed (60) months using the straight-line depreciation method. If, at any time during the Operational Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Locations at its sole discretion and reimburse the Master Concessionaire the unamortized balance of Approved Improvements for that Location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.
2. Stores displays more than $500.00 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Master Concessionaire will be required to confirm the Minimum Investment within one hundred twenty (120) Days of Beneficial Occupancy for each Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the ($200/psf) minimum, the Master Concessionaire will be required to pay the Department the difference between the Minimum Investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

Master Concessionaires not submitting a certified audit within the allotted time may be billed a liquidated damage of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five percent (25%) of the monies due the Department on the build-out of the Locations.

Prior to the commencement of any construction installation or work by the Master Concessionaire, the Master Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or contracts for all work to be performed at the Locations. The work to be performed under such contract(s) shall be insured by a Performance and Payment Bond provided by Master Concessionaire to the Department in the form contained in Exhibit B "Performance and Payment Bond" in the Agreement. The Performance and Payment Bond shall be in full force throughout the term of the installation / construction contract.

4.10 CONSTRUCTION PERMIT FEE: The Master Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Master Concessionaire to the Department is an amount equal to one percent (1%) of the estimated construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Master

Concessionaire's and Sub-tenant's plans/specifications. Such fee shall be non-refundable. The Master Concessionaire shall be entitled to require the Sub-tenants to pay their proportionate share for the construction costs for the improvements to be made by the Sub-tenants in each Location.

4.11 CONSTRUCTION SERVICES: The Master Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

1) Master Concessionaire Improvements

Pursuant to the terms of this Agreement, the Master Concessionaire shall construct or cause to construct certain improvements. The Department shall provide the Master Concessionaire with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Master Concessionaire and the Department, the Master Concessionaire shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Master Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Master Concessionaire shall proceed to design and construct or cause to be designed and constructed the improvements in accordance with the provisions of this Agreement.

2) Design and Construction Coordination

a. Master Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Locations and authorized administrative support space including those of Sub-tenants.
2. Coordinate meetings with Sub-tenants and Sub-tenant's architects, if applicable, MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide Sub-tenants, if applicable, with required information such as, but not limited to, leasehold outline or as-built drawings provided by the Department's Technical Support Division.
5. Provide and coordinate access to Location as necessary.
6. Purchase materials and services, and coordinate the fabrication and installation of the Master Concessionaire development requirement, whereby such elements are the designated responsibility of the Master Concessionaire, if so implemented.

3) Construction

Master Concessionaire shall:

1. Attend or cause Sub-tenants to attend pre-construction meetings, construction meetings, coordinate construction with Sub-tenants if applicable, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to and or cause Sub-tenants to adhere to MDAD's TAC-N or TAC-R Design and Construction procedures and requirements.
3. Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
4. Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations, including those of any Sub-tenants.
5. Monitor and report to the Department on on-site activities and progress for improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all construction activities including, but not limited to inspections, delivery, coordination and reporting.
6. Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
7. Establish a uniform system for the timely processing and control of drawings.
8. Review status of drawings with contractor(s) and architect(s) at progress meetings.
9. Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
10. Monitor punch list completion and review testing and inspection reports for all Locations.
11. Organize and have available upon request completed project files.
12. Coordinate access to the Location to allow staff training and equipment testing.
13. Obtain Certificate of Occupancy for each Location.
14. Submit Record Drawings (as-built drawings) as per the TAC-N or TAC-R requirements within sixty (60) Days from the issuance date of the Certificate of Occupancy, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Master Concessionaire shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" available on **www.miami-airport.com,** and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which the Master Concessionaire agrees to observe and obey and cause its Sub-tenants to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Master Concessionaire. The Master Concessionaire shall distribute such rules and regulations and operating performance standards to its Sub-tenants. The Department shall provide the Master Concessionaire with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Master Concessionaire shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Standards of Operation". The Master Concessionaire shall immediately implement and comply and shall cause its Sub-tenants to immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

The Master Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Exhibit L "Standards of Operation", as may be amended from time to time.

5.02 MARKET BASKET PRICING POLICY: The Department has instituted a Market Basket pricing policy to ensure that Airport prices are comparable to retail in the Miami Dade County, Florida area to reinforce the objective of making the Airport a more "passenger friendly" airport, pursuant to Exhibit L "Standards of Operation."

The Master Concessionaire or its Sub-tenants who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to **Sub-Article 18.09** to bring all products into compliance. Failure to do so shall subject the Master Concessionaire to liquidated damages pursuant to **Sub-Article 3.24 "Liquidated Damages"** and shall constitute a default under this Agreement.

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Master Concessionaire or its Sub-tenants, and further provided that the Master Concessionaire shall or shall cause its Sub-tenants to reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Master Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Master Concessionaire shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

B. The Master Concessionaire must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Locations.

Such maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Master Concessionaire's or Sub-tenant's Locations are of such a condition as to significantly impact the Master Concessionaire's or a Sub-tenant's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Master Concessionaire pursuant to this Agreement or the Sub-tenant pursuant to the Sub-Lease or license agreement, the Department may provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

C. No Other Obligation of Department: The Master Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability

of the Locations for the Master Concessionaire's or its Sub-tenant's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Master Concessionaire or its Sub-tenants.

1. The Master Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Sub-tenants to operate from the Locations hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Master Concessionaire by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Master Concessionaire under or in connection with this Agreement.
4. The Department shall not be liable to the Master Concessionaire for any loss of business or damages sustained by the Master Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7 – FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed in the Locations by the Master Concessionaire or its Sub-tenant shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Master Concessionaire or its Sub-tenant, as provided in **Sub-Article 4.01 "Improvements to Locations"**, shall, except as provided in **Sub-Article 7.03(B) "Disposal of Furniture, Fixtures, and Equipment"**, be removed from the Locations within five (5) Days following the expiration or earlier termination of this Agreement.

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS: The Master Concessionaire will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform

in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Master Concessionaire will be the same. However, the Department reserves the right to require the Master Concessionaire to modify its or its Sub-tenant's operations or its physical locations to comply with the Department's ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.

7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT: At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 "Default and Termination by County"** or **Article 13 "Claims and Termination by Master Concessionaire"** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Locations by the Master Concessionaire or any Sub-tenant:

(A) Require the Master Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of Sub-Article **4.01 "Improvements to Locations"**; or

(B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Master Concessionaire or any Sub-tenant (personal property as referred to in **Sub-Article 4.01 "Improvements to Locations"**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Master Concessionaire or any Sub-tenant).

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Master Concessionaire shall, at its cost and expense, keep or cause its Sub-tenants to keep the Locations clean, neat, orderly, sanitary and presentable at all times. If the Locations are not kept clean as provided in the Standards of Operation, Exhibit L, the Master Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in liquidated damages being assessed pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

8.02 REMOVAL OF TRASH: The Master Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Master Concessionaire enters into agreements for the janitorial and trash removal or any Sub-tenant service within the Locations, such service providers must have permits issued by the Department to do

business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. The Master Concessionaire shall have the right to charge Sub-tenants for a proportionate share of any such costs and expenses incurred to remove and properly dispose of all trash, refuse, and pest control as a result of inactions or actions by the Master Concessionaire and/or its Sub-tenants of any nature whatsoever. Any trash left or stored in any area visible to the public or edible items not properly contained may result in liquidated damages being assessed pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

The Department reserves the right to charge the Master Concessionaire retroactively non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Master Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Master Concessionaire or its Sub-tenants specifically as a result of their operation shall remain the obligation of the Master Concessionaire or its Sub-tenants. The Master Concessionaire shall repair or cause to be repaired, at or before the end of the Operational Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Master Concessionaire notice no less than two (2) hours in advance so that a representative of either the Master Concessionaire and/or a representative of the applicable Sub-tenant may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Master Concessionaire in writing. If said maintenance is not performed by Master Concessionaire (or if the Master Concessionaire fails to cause the Sub-tenant to perform such maintenance) to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Master Concessionaire for such services, as provided by **Sub-Article 8.04.**

8.04 FAILURE TO MAINTAIN: Upon failure of the Master Concessionaire or its Sub-

tenants to maintain the Locations as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Master Concessionaire, in addition to any liquidated damages imposed by the Department pursuant to **Sub-Article 3.24 "Liquidated Damages"**.

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in **Sub-Article 12.02 "Payment Default"**.

8.05 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport Master Concessionaires. Participation in this program, once established, will be mandatory. The Master Concessionaire and/or its Sub-tenants shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Master Concessionaire or its Sub-tenants is the sole responsibility of the Master Concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

8.06 FIRE PROTECTION AND SAFETY EQUIPMENT: The Master Concessionaire and its Sub-tenants must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Interim Term, Operational Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Locations.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT: The Master Concessionaire shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Master Concessionaire allow others to use the Locations, without the prior written consent of the Department.

9.02 OWNERSHIP OF THE MASTER CONCESSIONAIRE: Since the ownership, control, and experience of the Master Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Master Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control (deemed to mean more than fifty percent (50%) of the stock) of the Master Concessionaire without the prior written consent of the Department.

9.03 CHANGE OF CONTROL: If Master Concessionaire is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Master Concessionaire to result in

a change of control of Master Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership".** If the Master Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Master Concessionaire (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**.

9.04 HOLDOVER:

A. With the Department's Permission:

If the Master Concessionaire (or anyone claiming through Master Concessionaire) shall remain in possession of the Locations of no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement.

B. Without Department Permission:

If the Master Concessionaire (or anyone claiming through Master Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Master Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the amount payable monthly as MMG PLUS monthly Percentage Fee PLUS monthly installment of the support space annual lease rental pursuant to **Sub-Article 3.06 "Annual Rental"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Master Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Master Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF MASTER CONCESSIONAIRE: The Master Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County 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 Agreement by the Master Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Master Concessionaire 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

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

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF MASTER CONCESSIONAIRE: Prior to execution of this Agreement by the County and commencement of the Interim Term of this Agreement, the Master Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Interim Term, Operational Term and any Extensions of this Agreement.

The limits for each type of insurance may be revised upon review and approval of the Master Concessionaire's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Master Concessionaire must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

A. Workers' Compensation as required by Chapter 440, Florida Statutes.

B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

   The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Master Concessionaire in the performances of this Agreement.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Master Concessionaire allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Risk Management Office.

11.02 CERTIFICATE OF CONTINUITY: The Master Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with Article 11 "Insurance" remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the Agreement period, the Master Concessionaire shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Office at a minimum of thirty (30) Days before such expiration.

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

11.03 INSURANCE COMPANY RATING REQUIREMENTS: All insurance policies required above from the Master Concessionaire and its Sub-tenants shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

11.04 MASTER CONCESSIONAIRE LIABLE: Compliance with the requirements as to carrying insurance in Article 11 "Insurance" shall not relieve the Master Concessionaire and its Sub-tenants from liability under any other provision of this Agreement.

11.05 CANCELLATION OF INSURANCE OR BONDS: Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.

11.06 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice to examine the original policies of insurance of the Master Concessionaire and its Sub-tenants (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Master Concessionaire agrees to permit or cause its Sub-tenants to permit such inspection at the offices of the Master Concessionaire and/or its Sub-tenants, as may be applicable. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Master Concessionaire and/or its Sub-tenant agree to provide

copies to the Department, at the Master Concessionaire's or Sub-tenant's sole cost and expense.

11.07 PERSONAL PROPERTY: Any personal property of the Master Concessionaire or its Sub-tenants, or of others, placed in the Locations and support/storage spaces shall be at the sole risk of the Master Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

11.08 SURVIVAL OF PROVISIONS: The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.

11.09 INSURANCE REQUIRED OF SUB-TENANTS: The limits for each type of insurance may be revised upon review and approval of the Sub-tenant's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

The Master Concessionaire shall cause its Sub-tenant to provide certificates of insurance indicating the following types of insurance coverage prior to any occupation of the premises:

A. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County and the Master Concessionaire must be shown as an additional insured with respect to this coverage.

The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the contractor(s) in the performances of the construction contract.

B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Sub-tenant allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Department's Risk Management Office.

C. **Certificate Continuity:** The Master Concessionaire and its Sub-tenants shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force for the duration of the Agreement, including any and all option years, if applicable. If insurance certificates are scheduled to expire during the contract period, the Sub-tenant shall be responsible for submitting new or renewed insurance certificates to the Master Concessionaire at a minimum of thirty (30) Days before such expiration.

D. **Insurance Company Rating Requirements:** 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:

> The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the MDAD's Safety and Insurance Office.

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

E. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Master Concessionaire agrees to permit or cause such inspection of the Sub-tenant's insurance to be permitted at the offices of the Department. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Master Concessionaire and/or its Sub-tenant agree to provide copies to the Department, at the Master Concessionaire's or Sub-tenant's sole cost and expense.

11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. **Indemnification, Bonds and Insurance Required from Construction Contractor:** The following language, including the indemnification clause, shall be included in all construction contracts between the Master Concessionaire and its general contractor(s) and subcontractors and shall also be included in all construction contracts between the Sub-tenants and their respective general contractors and subcontractors:

Indemnification: The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Lessee of the locations, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in

part by any act, omission, or default of any Indemnitee arising from the contract or its performance shall be limited to the greater of $1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

B. **Surety Performance and Payment Bonds:** Pursuant to and in accordance with Section 255.05, Florida Statutes, the Master Concessionaire or each contractor performing any part of the work for the Master Concessionaire or its Sub-tenants shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (referred to herein as the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit "B", Surety Performance and Payment Bond". Within ten (10) Days of issuance, Master Concessionaire shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the Master Concessionaire shall deliver to County the Bonds required to be provided by Master Concessionaire or each contractor as set forth in this Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$ 500,001 to $1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over $10,000,000	A IX

For contracts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.

b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.

d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

e) For contracts in excess of $500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

g) The attorney-in-fact or other officer who signs an Exhibit B, "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

The Bond shall be delivered to the Department upon execution of the contract between the Master Concessionaire and its contractor or the Sub-tenant and its contractor, as the case may be.

C. **Insurance Required of Construction Contractor(s):** The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Master Concessionaire shall cause its contractor(s) and the Sub-tenants' respective contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

(a) Workers' Compensation as required by Chapter 440, Florida Statutes.

(b) Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Master Concessionaire must be shown as an additional insured with respect to this coverage.

55

(c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the contractor allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

D. **Certificate Continuity:** The Master Concessionaire and the contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Master Concessionaire and approved by the Master Concessionaire and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Master Concessionaire at a minimum of thirty (30) Days before such expiration.

E. **Insurance Company Rating Requirements:** 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:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Master Concessionaire.

F. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Master Concessionaire to agree to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Master Concessionaire and/or its Sub-tenant agree to provide copies to the Department, at the Master Concessionaire's or Sub-tenant's sole cost and expense.

G. **Personal Property:** Any personal property of the contractor, or of others, placed in the Locations shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12 – DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: A default shall mean a breach of this Agreement by the Master Concessionaire (an "Event of Default"). In addition to those defaults defined **in Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults"**, and **Sub-Article 12.04 "Habitual Default"**, an Event of Default, may also include one (1) or more

of the following occurrences:

(A) The Master Concessionaire or its Sub-tenant has violated the terms and conditions of this Agreement;

(B) The Master Concessionaire or its Sub-tenants has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;

(C) The Master Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Master Concessionaire's creditors, or the Master Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Master Concessionaire's affairs have been put in the hands of a receiver;

(D) The occurrence of any act, which operates to deprive Master Concessionaire of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;

(E) Abandonment or discontinuance of operations by Master Concessionaire of its business by any act(s) of Master Concessionaire;

(F) Any persistent violation on the part of Master Concessionaire, its agents or employees of the traffic rules and regulations of City at Airport or disregard of the safety of persons using the Airports, upon failure by Master Concessionaire to correct the same;

(G) Failure on the part of Master Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Master Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;

(H) Failure by Master Concessionaire or its Sub-tenants to maintain its other equipment in a manner satisfactory to the Director;

(I) The Master Concessionaire or its Sub-tenants has failed to obtain the approval of the Department where required by this Agreement;

(J) The Master Concessionaire or its Sub-tenants has failed to provide adequate assurances as required under **Sub-Article 12.09 "Adequate Assurances"**;

(K) The Master Concessionaire has failed to comply with any provision of Sub-Article 14.07 "Airport Concession Disadvantaged Business Enterprise Participation Plan";

(L) The Master Concessionaire has failed in a representation or warranty stated herein; or

(M) The Master Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

12.02 PAYMENT DEFAULT: Failure of the Master Concessionaire to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when

due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Master Concessionaire.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Master Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) Day period, such cure period shall be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) Days after such written notice the Master Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

(A) Failure of the Master Concessionaire to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default"**.

(B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.

(C) Any Event of Default.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Master Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Master Concessionaire, regardless of whether the Master Concessionaire has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Master Concessionaire may be determined by the Director to be an "habitual violator". At the time that such determination is made, the Director shall issue to the Master Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Master Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Master Concessionaire, such termination to be effective upon the seventh (7) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Master Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Master Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.10 "Actions at Termination"** hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Department shall notify the Master Concessionaire by sending a notice of

default, specifying the basis for such Event of Default, and advising the Master Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Master Concessionaire can cure and rectify the Event of Default, to the Department's satisfaction, within thirty (30) Days from Master Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Master Concessionaire has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) Day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Master Concessionaire shall discontinue the services.

12.06 UNAMORTIZED INVESTMENT EXTINGUISHED: Termination of this Agreement based upon **Sub-Article 12.07 "Termination for Abandonment"**, **Sub-Article 12.02 "Payment Default"**, **Sub-Article 12.03 "Other Defaults"**, **Sub-Article 12.04 "Habitual Default"**, or **Sub-Article 12.08 "Termination for Cause"**, shall extinguish any unamortized investment amounts owed the Master Concessionaire by the Department, for the slippage in Location Turnover Dates.

12.07 DEFAULT FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Master Concessionaire of the Locations or the voluntary discontinuance of Master Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Master Concessionaire from providing services on the Locations for the purposes authorized in **Article 2 "Use of Locations"**. The foregoing shall not include periodic Sub-tenant vacancies in individual Locations that may occur from time to time during the Interim Term and Operational Term of this Agreement, including any Extension. Abandonment shall be considered an event of default.

12.08 TERMINATION FOR CAUSE: The County may terminate this Agreement, effective immediately if: (i) the Master Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Master Concessionaire is convicted of a felony during the Interim Term, Operational Term or any Extensions thereof if applicable. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Master Concessionaire may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

12.09 ADEQUATE ASSURANCES: When, in the opinion of the Department, reasonable grounds for uncertainty exist with respect to the Master Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Master Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Master Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Master Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

12.10 ACTIONS AT TERMINATION: The Master Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

(A) Stop all work as specified in the notice to terminate;

(B) Take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property;

(C) Vacate, quit and surrender, all Locations and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County on or before the date of termination.

ARTICLE 13 – CLAIMS AND TERMINATION BY MASTER CONCESSIONAIRE

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Master Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Master Concessionaire at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Master Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Master Concessionaire's receipt of such decision, the Master Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Master Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Master Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with

Sub-Article 12.03 "Other Defaults". The failure of the Master Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

13.02 TERMINATION: The Master Concessionaire shall have the right, upon thirty (30) Days written notice to the County to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

(A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.

(B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Master Concessionaire of the existence of such breach.

(C) 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 airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Master Concessionaire's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

14.01 ACDBE REQUIREMENTS: The Department has established a ACDBE goal for Package One (1) of thirty-two percent (32%), Package Two (2) of thirty-two percent (32%), with no less than one-half (1/2) or 16% of gross revenues for Package 2 to be achieved through the use of ACDBE's in the News / Books category and Package Three (3) of thirty-two percent (32%), with no less than one-half (1/2) or 16% of gross revenues for Package 3 to be achieved through the use of ACDBE's in the News / Books category for certified ACDBE's in connection with this Agreement.

The Master Concessionaire will be required to submit to the Department's Minority Affairs Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, on or before the tenth (10th) day of every month.

14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS: When an ACDBE participates in a contract; only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.

When a ACDBE performs as a participant in a joint venture, a portion of the total dollar value of the contract during the complete contract term, equal to the distinct clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in Appendix C "Airport Concession Disadvantage Business

Enterprise Participation Plan/Provision".

Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:

A. ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the specific identified work.

B. The Department will determine whether a ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

C. An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.

D. If an ACDBE does not perform or exercise responsibility for at least their percentage of its participation or if the ACDBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.

E. When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this Article, the ACDBE may present evidence to rebut this presumption. The Department will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The Department's decision on commercially useful function matters is final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING: The Master Concessionaire may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE. The ACDBE partner must meet the eligibility standards set forth in 49 CFR Part 23, Subpart F. A "joint venture" or ("JV") shall mean and may be referred to as an "association" of two or more businesses acting as a Master Concessionaire and performing or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge. The joint venture agreement must specify the following:

A. Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner.

B. The work should be submitted as part of this RFP and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be Store-specific with regards to tasks and Locations. The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten (10) hours per week.

Each Joint Venture partner must submit the Monthly Utilization Reports (MURs), in addition to the Monthly Report of ACDBE Joint Venture Activity (Appendix C, page 12), providing details of how the performance objectives were achieved and providing documentation of the achievement on the ACDBE form on page 12 of Appendix C. This information should include, but not be limited to:

Details of training sessions, including class rosters and lesson plans.

1. Deliverables and work products.
2. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
3. Proof that employees of partners actually work for them (payroll, payroll tax returns, and the like).

C. Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

D. Each ACDBE JV partner must perform work that is commensurate with the Agreement.

As described below, each ACDBE must submit, as part of its ACDBE Plan, a plan for the achievement of the ACDBE goal, including Schedule of Participation and the Letter of Intent from certified ACDBE's, or who have applied for certification through the Miami-Dade County Department of Business Development, as required by the Airport Concession Disadvantaged Business Enterprise Participation Plan.

Without limiting the requirements of the Agreement, the Department will have the right to review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Proposal.

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE): ACDBE firms must maintain their certification throughout the Interim Term, Operational Term and any Extension of this Agreement.

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS: The Master Concessionaire acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, and 49 CFR Part 23, Subpart F, Airport Concession Disadvantaged Business Enterprise Programs,

are applicable to the activities of the Master Concessionaire under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation.

These requirements may include, but not be limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the Department, the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Master Concessionaire has defaulted in the requirement to comply with the provisions of this Article and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Master Concessionaire, to terminate this Agreement, pursuant to the default language referenced in the Agreement.

The Agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23, Subpart F. The Master Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any lease and concession agreement covered by 49 CFR Part 23, Subpart F.

The Master Concessionaire agrees to include the above statements in any subsequent lease and concession agreements.

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM: Consistent with the goal of providing ACDBEs with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Sub-Article 14.07 "Airport Concession Disadvantaged Business Enterprise Plan"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to, the following specific duties and responsibilities:

1. Store Operations
   - a. Passenger profile analysis
   - b. Cash handling/sales audit
   - c. Enhancing sales
   - d. Selling to the customer
   - e. Staffing to meet customer levels
   - f. Opening and closing procedures

2. Personnel
   - a. Employment practices
   - b. Compliance with wage and hour laws
   - c. Compliance with County and Airport requirements

d. Designing compensation and benefits plans
e. Management and staff training to enhance product knowledge and customer service
f. Warehousing, packaging and sales reporting of merchandise

3. Design and Display
   a. Retail layout
   b. Merchandising techniques
   c. Visual display techniques

4. Loss Prevention
   a. External and internal theft
   b. Shop security

5. Books, Records and Reports
   a. The books of account and supporting records of the Master Concessionaire and the Sub-tenant(s) shall be maintained at the principal office and shall be open for inspection by the Department or the ACDBE Sub-tenant(s) or joint venture(s), upon reasonable prior written notice, during business hours.
   b. The Master Concessionaire books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Master Concessionaire shall provide to the Sub-tenant(s) or joint venture(s), within an agreed upon time after the end of each month during the term of the Agreement, an un-audited operating (i.e., income) statement for the preceding month and for the year to date.
   c. Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered; total number of hours of training; training material covered; etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN: The Master Concessionaire shall contract with those firm(s) as are listed on the Master Concessionaire's ACDBE Participation Plan and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firms(s), (ii) reduce the scope of the work to be performed, (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The Department shall monitor the compliance of the Master Concessionaire with the requirements of this provision as referenced in **Sub-Article 14.01 "ACDBE Requirements"** during the Interim Term, Operational Term and /or Extension, if applicable. The Department shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, Sub-tenant Gross Revenues, records, records of expenditures, Sub-tenant Agreements between the Master

Concessionaire and ACDBEs, and other records pertaining to the ACDBE Participation Plan.

If at any time the Department has reason to believe that the Master Concessionaire is in violation of this provision, the Department may, in addition to pursuing any other available legal remedy, impose sanctions which may include, but are not limited to, the termination of this Agreement in whole or in part, unless the Master Concessionaire demonstrates, within a reasonable time, its compliance with the terms of this provision. No such sanction shall be imposed by the Department upon the Master Concessionaire except pursuant to a hearing conducted by the MDAD Compliance Monitor and/or Aviation Director.

ARTICLE 15 - RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS: The Master Concessionaire shall comply and cause its Sub-tenants to comply, with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder by the Department, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Master Concessionaire agrees to pay, on behalf of the County, any liquidated damage, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Master Concessionaire, its agents, employees, Sub-tenants or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Master Concessionaire further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreements which the Master Concessionaire may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

15.03 PERMITS AND LICENSES: The Master Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services. The Master Concessionaire shall cause its Sub-tenants to do the same.

15.04 RESOLUTION NO. 456-07 PROHIBITING COUNTY AND PUBLIC HEALTH TRUST EMPLOYEES FROM USING PRODUCTS CONTAINING TRANS FATS: The Master Concessionaire shall not market or distribute at the designated Premises under

this Agreement any pre-packaged, prepared or other foods, including catered foods, derived from or containing trans-fats (see Exhibit M). The Master Concessionaire shall, periodically review existing inventories and projected products, to assure that only trans-fat free products are being offered for public consumption.

Except for the aforementioned modifications, and in all other respects, the Agreement shall remain in full force and effect in accordance with the terms and conditions specified therein.

ARTICLE 16 – GOVERNING LAW

16.01 GOVERNING LAW; VENUE: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION: In the event that the County or the Master Concessionaire commence a civil action in the state or federal courts for Miami-Dade County, where such action is based in whole or in part upon an alleged breach of this Agreement, the County and the Master Concessionaire agree to waive the procedures for initial service of process mandated by Chapters 48 and 83 of the Florida Statues, by Rule 1.070 of the Florida Rules of Civil Procedure, and by Rule 4(c) of the Federal Rules of Civil Procedures. In such event, the County and the Master Concessionaire agree to submit to the jurisdiction of the court in which the action has been filed when initial service has been made either by personal service or by certified mail, returned receipt requested upon the representatives of the parties indicated in **Sub-Article 18.09** of this Agreement, with a copy provided to the County Attorney and the attorney, if any, which the Master Concessionaire has designated in writing. Notwithstanding the foregoing, and in addition thereto, the Master Concessionaire, if a corporation, shall designate a registered agent and a registered office and file such designation with the Florida Department of state in accordance with Chapters 48 and 607 of the Florida Statues.

16.03 LABOR PEACE REQUIREMENT: Pursuant to Resolution No. R-148-07, the Master Concessionaire provided a signed copy of the labor peace agreement for their employees as part of their Proposal to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). See Appendix M. Furthermore, the County has the right, in the event of a labor disruption, to suspend its obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Master Concessionaire is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the Master Concessionaire and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the proposal is

due. The Master Concessionaire and the labor organization shall equally share the costs of arbitration.

ARTICLE 17 – TRUST AGREEMENT

17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15th day of December, 2002, as amended from time to time, by and between the County and JPMorgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Master Concessionaire at the offices of the Department during normal working hours.

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Interim Term, Operational Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Master Concessionaire or by other Master Concessionaires under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the County, shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Master Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Master Concessionaire.

17.03 INSPECTIONS: The authorized employees and representatives of the County and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations and any storage/support spaces at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the County to inspect and shall impart no liability on the county should it not make such inspection(s).

17.04 INDEPENDENT PRIVATE SECTION INSPECTOR GENERAL REVIEW: Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of this Proposal, the County has the right to retain the services of an

Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Proposer shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Proposer's cost/price for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Proposer, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Proposer in connection with this RFP or any contract issued as a result of this Proposal. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Proposer or third party.

17.05 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW: 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 Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Master Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under $1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Master Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations and any support/storage spaces and its services hereunder, provided however, that the Master Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article**

12.03 "Other Defaults" hereof.

18.02 ALTERATIONS BY MASTER CONCESSIONAIRE: The Master Concessionaire shall not alter or modify the Locations and or any support/storage spaces, except in accordance with **Article 4 "Improvements to the Locations"** herein, without first obtaining written approval from the Department.

18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Master Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.09 "Addition, Deletion and Modification of Locations"**, **Sub-Article 18.02 "Alterations by Master Concessionaire", Sub-Article, 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**.

18.05 SECURITY: The Master Concessionaire acknowledges and accepts full responsibility for the security and protection of the Locations. The Master Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Master Concessionaire for protection of the Locations shall be the sole responsibility of the Master Concessionaire and shall involve no cost to the Department.

18.06 RIGHTS OF DEPARTMENT AT AIRPORT: The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to the Master Concessionaire for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the County, its employees, or agents.

18.07 OTHER DEPARTMENT RIGHTS: The Master Concessionaire shall be liable for any physical damage caused to the Locations by the Master Concessionaire, its employees, agents, contractors, subcontractors, suppliers, or it's Sub-tenants. The liability shall encompass: (i) the Master Concessionaire's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department arising from the physical damage caused by the Master Concessionaire or its Sub-tenants and its employees, agents, contractors, subcontractors or suppliers. The County may also initiate an action for specific performance and/or injunctive relief.

18.08 FEDERAL SUBORDINATION: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval

use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

18.09 NOTICES: Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:
(Mailing Address)

Director
Miami-Dade Aviation Department
Post Office Box 025504
Miami, Florida 33102-5504

or (physical address):

Miami International Airport
Terminal Building
Director's Office
Concourse E-5th floor
Miami, FL 33122

To the Master Concessionaire:

Host International, Inc.
6905 Rockledge Drive
Bethesda, MD 20817

with copies to:

(Address Here)

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

18.10 SEVERABILITY: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.

18.11 RIGHTS RESERVED TO DEPARTMENT: All rights not specifically granted the Master Concessionaire by this Agreement are reserved to the Department.

18.12 COUNTY LIEN: The County shall have a lien upon all personal property of the Master

Concessionaire in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

18.13 AUTHORIZED USES ONLY: The Master Concessionaire shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Master Concessionaire under this Agreement.

18.14 NO WAIVER: There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Master Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Master Concessionaire.

18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY: The Master Concessionaire acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Transportation Security Administration (TSA), Homeland Security, FAA, CBP and MDAD as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Master Concessionaire must obtain MDAD photo identification badges for all the Master Concessionaire employees working in the Secured/AOA/Security Identification Display Area (SIDA) Sterile Areas or any other restricted areas of the Airport. All Master Concessionaire employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Master Concessionaire shall be responsible for requesting MDAD to issue identification badges to all employees who the Master Concessionaire requests to be authorized access to the Secured/AOA/SIDA/Sterile Areas and any other restricted areas of the airport and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employer of the Master Concessionaire or upon final acceptance of the work or termination of this Agreement. The Master Concessionaire will be responsible for fees associated with lost and unaccounted for badges as well as the fee(s) for fingerprinting and ID issuance.

All employees of the Master Concessionaire who must work within MDAD Secured/ AOA/SIDA/Sterile areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced secured areas. Badges shall be worn on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the SIDA training program

conducted by MDAD and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued. At the present time, MDAD Security and Safety ID Section regularly provides SIDA Training.

Master Concessionaire Ramp Permits will be issued to the Master Concessionaire authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department guard gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. Theses permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

All vehicles operating within the AOA must be provided with the Automobile Liability Insurance required elsewhere in this Agreement. Proof of such insurance is provided to MDAD Airside Operations Division upon request.

Only Master Concessionaire staff with pictured MDAD ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Master Concessionaire shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

The Master Concessionaire agrees that its personnel, vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter, leave or while on the AOA. It is further agreed that the MDAD has the right to prohibit an individual, agent, or employee of the Master Concessionaire from entering the AOA, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage, or other unlawful activities, including repeated failure to comply with MDAD's or the TSA, Homeland Security, FAA, CBP, SIDA access control policies, rules and regulations. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a review hearing before the Director or his/her authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA should be advised, in writing, of the reason for such denial.

The Master Concessionaire acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts cargo tampering, aircraft sabotage, and other unlawful activities at the Airport and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control policies and procedures.

The Master Concessionaire understands and agrees that vehicle and equipment shall not be parked/stored on the AOA in areas not designated or authorized by MDAD nor in any manner contrary to any posted regulatory signs, traffic control devices, or pavement markings.

The Master Concessionaire understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Master Concessionaire in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Master Concessionaire.

Notwithstanding the specific provisions of this Article, the Owner shall have the right to add to, amend, or delete any portion hereof in order to meet reasonable security requirements of MDAD or of the TSA/Homeland Security/FAA/Federal Inspection Services agencies.

The Master Concessionaire shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as MDAD or appropriate Federal agencies may from time to time require.

Master Concessionaire agrees that it will include in all contracts and subcontracts with its MIA sub-consultants, service providers, and suppliers an obligation by such parties to comply with all security requirements applicable to their operations at the Airport. The Master Concessionaire agrees that in addition to all remedies, liquidated damages, and sanctions that may be imposed by TSA, Homeland Security, FAA, Federal Inspection Services Agencies or MDAD upon Master Concessionaire sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Master Concessionaire shall be responsible to the Owner for all such violations and shall indemnify and hold the Owner harmless for all costs, fines and liquidated damages arising there from, such costs to include reasonable attorneys' fees.

18.16 INTENT OF AGREEMENT: This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

18.17 MODIFICATIONS: This Agreement may be modified and revised in writing and duly executed by the parties hereto. Such modification may be made unilateral by the Department only as permitted pursuant to **Sub-Article 18.04 "Administrative Modifications", Sub-Article 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**. Any oral representation or modification concerning this Agreement shall be of no force or effect. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this

Agreement.

18.18 RADON DISCLOSURE: In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas: Radon is a naturally occurring radioactive gas. When accumulated in a building in sufficient quantities, it may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."**

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require the Master Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Master Concessionaire and the Department, on behalf of the Department granting the Master Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

18.20 HEADINGS: The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents 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 Agreement or any part or parts of this Agreement.

18.21 BINDING EFFECT: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

18.22 GOVERNMENTAL DEPARTMENT: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.

18.23 INDEPENDENT CONTRACTOR: The Master Concessionaire shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Master Concessionaire in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Master Concessionaire under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Master Concessionaire represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Master Concessionaire to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or

other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

18.24 OTHER LIENS: Master Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the furniture, fixtures and equipment or any portion thereof. Master Concessionaire or its Sub-tenants shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Master Concessionaire or its Sub-tenants may in good faith contest any such lien if Master Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Master Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Master Concessionaire shall assume the defense of and indemnify and hold harmless County against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Master Concessionaire or its Sub-tenants or as a consequence of the existence of Master Concessionaire's interest under this Lease.

ARTICLE 19 - SUB-LEASES

19.01 ASSIGNMENT OF SUB-LEASES BY DEPARTMENT: In the event this Agreement is terminated prior to the completion of the Operational Term or Extension, the Department shall have the following rights and obligations regarding the Sub-tenant Agreements then in effect:

(A) in case of termination without cause by the County or if the Master Concessionaire terminates with cause, the County shall execute an agreement assigning to the County the Master Concessionaire's right and duties under all Sub-Lease agreements then in effect (Assignment Agreement); and

(B) in cases of termination with cause by the County or if the Master Concessionaire terminates without cause, refer to Sub-Article 12.07 "Termination for Abandonment", the County reserves the right to not execute an Assignment Agreement to assume those Sub-tenant agreements that fail to satisfy any of the following criteria:

(i) Sub-tenant is not currently in non-monetary default, beyond all applicable notice and cure periods;

(ii) Sub-tenant has no outstanding uncured material defaults and no material defaults, cured or otherwise, within one (1) year before the proposed date of assignment;

(iii) Sub-tenant has not had no more that three (3) accumulated defaults of any kind during the previous twelve (12) months under its Sub-Lease agreement;
(iv) Sub-tenant is current regarding all payments of any kind for which it is responsible under its Sub-Lease agreement; and
(v) Sub-tenant has no outstanding claims of default against the Master Concessionaire in its capacity as landlord under the Sub-Lease agreement or has waived any such claims.

In addition to the foregoing, the County has no obligation to assume any Sub-tenant agreement (i) which does not conform to the requirements of this Agreement unless each non-conforming provision was explained to the Department and specifically approved prior to execution of the Sub-Lease or even if not approved, the non-conforming provisions are not adverse to the Department's interests, as determined in the judgment of the Department, or (ii) the Master Concessionaire does not execute an Assignment Agreement which provides that the Master Concessionaire remains liable for and indemnifies and holds harmless the County for any claims arising out of the performance of the Sub-Lease agreement up to the effective date of the Assignment Agreement.

19.02 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES: Master Concessionaire shall not Sub-Lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Master Concessionaire hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

19.03 MASTER CONCESSIONAIRE'S SUB-LEASE AGREEMENT REQUIREMENTS: The Master Concessionaire's Sub-Lease agreement(s) must not extend beyond the Operational Term or, any Extension and must contain comparable terms and conditions, as may be applicable, to those contained herein.

Costs not directly related to a Location of a Sub-tenant shall not be imposed upon that Sub-tenant except for such costs required by the Department such as the marketing fee and/or common logistics fee.

19.04 SUB-TENANT MINIMUM QUALIFICATIONS REQUIREMENT: The Master Concessionaire must ensure that each Sub-tenant has a minimum of three (3) years continuous experience within the last five (5) years in managing or operating and maintaining one or more retail or food & beverage locations in an airport, transportation center, retail shopping center or marketplace generating a minimum of $300,000 in gross sales per year per location.

ARTICLE 20 - WAIVER OF CLAIMS

The Master Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the

validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Master Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Master Concessionaire or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Master Concessionaire's or its Sub-tenants' ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Master Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY: This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the previsions of any and all existing agreements between the County and the State of Florida, or its boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

21.02 RIGHT TO AMEND: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Master Concessionaire hereby consents to any and all such modifications and changes as may be reasonably required.

21.03 MASTER CONCESSIONAIRE COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. Master Concessionaire on behalf of itself, its Sub-tenants, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Master Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title

49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Master Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Master Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Master Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Master Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Master Concessionaire will provide and cause its Sub-tenants to provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Master Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Master Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

4. Master Concessionaire assures County that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Master Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Master Concessionaire further assures County that it and its Sub-tenants will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Master Concessionaire also assures County that it will require its contractors and Sub-tenants to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Master Concessionaire's services hereunder.

6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Master Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

   b) Master Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Master Concessionaire agrees that it will adopt such requirements as part of this Agreement.

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Interim Term, Operational Term and/or Extension, if applicable, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Master Concessionaire from contesting said rulings or opinions, but the Master Concessionaire shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Master Concessionaire agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Master Concessionaire and delivery to the Department of an election not to claim depreciation or

any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System.

21.06 REMEDIES: All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

21.07 NOT USED

21.08 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Master Concessionaire hereunder and the occupancy and use by the Master Concessionaire and the Master Concessionaire's Sub-tenants of the Locations shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

21.09 INTEREST: Any sums payable to the Department by the Master Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of one and one half percent (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.10 MISCELLANEOUS PROVISIONS: The Master Concessionaire, its Sub-tenants and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Master Concessionaire or to its services or operations hereunder.

1. The Master Concessionaire shall, at its own cost and expense, procure and keep in force during the Interim Term, Operational Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Master Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Master Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Master Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Master Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

2. The Master Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Master Concessionaire or any of its Sub-tenants, officers, agents, employees, contractors,

subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.

3. The Master Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Master Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Master Concessionaire.

4 The County shall have the right during the Master Concessionaire's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Master Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.

5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

6. Time is expressed to be the essence of this Agreement.

7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.

9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.

10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Proposer shall comply with these requirements.

21.11 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Master Concessionaire, embargo's, general shortages of

labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

21.12 ENTIRE AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Master Concessionaire hereby affirms the completeness and accuracy of the information provided by Master Concessionaire to County in their Proposal, and in all attachments thereto and enclosures therewith, submitted by Master Concessionaire to County in connection with the award of this Agreement. None of the provisions, terms or conditions contained in the Agreement may be modified or otherwise altered except as may be specifically authorized by **Sub-Article 18.04** or the Sub-Articles stated therein, or by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

MASTER CONCESSIONAIRE

(Host International, Inc.)

ATTEST:

Secretary _____ By: _____
(Signature and Seal) Signature

SADYE C. SANDERS
Assistant Secretary

_____ Name: RICHARD M. IAPICCA
(Type Name & Title) ~~Vice President~~

_____
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

_____ _____
Legal Name Legal Name

By: _____ By: _____
Signature Signature

_____ _____
(Type Name & Title) (Type Name & Title)

Attest: _____

Name of Managing Joint Venturer:

_____ Witness: _____

By: _____
Signature of Authorized Representative of the Joint Venture

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

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

Resolution No.: _____

Date: _____

85

EXHIBIT C

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION PLAN/PROVISION

DEMONSTRATION OF GOOD FAITH EFFORTS
ACDBE UTILIZATION FORM

[Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.]

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

__X__ The bidder/offeror is committed to a minimum of __32__% ACDBE utilization in this Contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: **Host International, Inc.**

State Registration No. **852009**

By: _____ Title: **Vice President**
(Signature)

Stephen E. Douglas Date: 10/5/09
(Print Name)

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to "certified" ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL
Master Concessionair, LLC	Subtenant -Mojito Bar	22%
Tinsley Family Concession	Joint Venture Partner	10%

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

Signature of Proposer — Date: 10/5/09

Stephen E. Douglas	Vice President	Host International, Inc.
Print Name	Title	Company Name

ACDBE APPENDIX 2

Revised: February 24, 2006

88

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To: Host International, Inc.

Project: Retail Concessions Program 2009

Contract Number: MDAD-04-09 Total % of Bidder/Proposal: 22%

The undersigned holds ACDBD Certificate No. 11481 expiring on, Sept. 30, 2009*.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe): Operate Mojito Bar

Description of Services	% of Bid/Proposal
Subtenant operating Mojito Bar	

*Master Concessionair, LLC has submitted their renewal documents for recertification. See attached Florida UCP listing.

Total% 22%

Signature of ACDBE [signature] Date 9/29/09

Print Name PEDRO AMARO JR Title MANAGING DIRECTOR

ACDBE Firm Master Concessionnair, LLC

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) EXPERIENCE SHEET

ACDBE NAME **Master Concessionaire, LLC**

ADDRESS **Miami International Airport**
Concourse F #3472
Miami, FL 33122

	NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
(A)	**Food & Beverage lease between Miami-Dade & Host International (4/12/98)**	**Subtenant on 11 Food & Beverage Units**	**$16,231,050** **$16,685,480** **$17,000,000**	**2007** **2008** **2009 (E)**
(B)	**Lease and Concession Agreement between Miami Dade & Host International (8/1/06)**	**Joint Venture Partner - (30%)**	**$5,895,000** **$8,500,000**	**2008** **2009(E)**
(C)				

***Master Concessionair, LLC meets the minimum qualification requirements and has the required 3 years experience. See also ACDBE Plan.**

NOTES:
USE A SEPARATE SHEET FOR EACH DBE COMPANY.
ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To: Host International, Inc.

Project: Retail Concessions Program 2009

Contract Number: MDAD-04-09 Total % of Bidder/Proposal: 10%

The undersigned holds ACDBD Certificate No. 8866 expiring on, July 31, 2009*.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe): Joint Venture Partner

Description of Services	% of Bid/Proposal
Tinsley Family Concessions will own a 16% share of the non-sublease portion of the package (Beaudevin, Starbucks/News, and The Counter) which equates to at least 10% of the overall contract. They will have a substantial operating and management role in the joint venture with specific oversight and management of The Counter unit.	

*Tinsley Family Concessions has submitted their renewal documents for recertification. See attached Florida UCP listing as currently certified.

Total% 10%

Signature of ACDBE George Wm Tinsley Sr Date 10-1-09

Print Name George Wm Tinsley, Sr Title President

ACDBE Firm Tinsley Family Concessions

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) EXPERIENCE SHEET

ACDBE NAME **Tinsley Family Concessionaire, Inc.**

ADDRESS **353 6th St. SW**
Winter Haven, FL. 33880

	NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
(A)	**Food & Beverage lease between Maimi-Dade & Host International**	**Joint Venture Partner - (16%)**	**$6,917,601** **$5,918,401** **$2,764,592**	**2007** **2008** **2009 (Jan-Aug)**
(B)	**Food & Beverage lease between Hillsborough County Aviation Authority (TPA) & Host International**	**Joint Venture Partner - (30%)**	**$3,622,342** **$3,990,153** **$2,696,080**	**2007** **2008** **2009 (Jan-Aug)**
(C)				

NOTES:
USE A SEPARATE SHEET FOR EACH DBE COMPANY.
ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

92

Attachment 1

Model ACDBE Joint Venture Information
(to be submitted with joint venture agreement for review)

The Department recommends that airport sponsors request the following information from participants in prospective ACDBE joint ventures. The Department believes that this information will assist sponsors in evaluating joint venture proposals. The following form is a model that sponsors may wish to use in obtaining this information, but use of the model form is not mandatory.

****

1. Name of Joint Venture: **Host -Tinsley Joint Venture**
   (existing Joint Venture will be amended to add 3 units)
* 2. Name, address and phone number of joint venture contact person:

3. Firms participating in joint venture (use additional pages if necessary):

   Name of firm: **Host International, Inc.**
   Address: **6905 Rockledge Drive, Mail Stop 7-1 Bethesda, MD 20817**
   Phone Number: **240-694-4400**
   Contact name/phone number: **General Council**
   % ownership: **84** %
   ACDBE: ☐ yes ☒ no Certifying agency: **N/A**
   Date of Certification: **N/A**
   Type of work for which certification was granted: **N/A**

   Name of firm: **Tinsley Family Concession**
   Address: **P.O. Box 1442**
   Phone Number: **863-299-7177**
   Contact name/phone number: **George Tinsley, Sr.**
   % ownership: **16** %
   ACDBE: ☒ yes ☐ no Certifying agency: **Miami-Dade County-Dept. of Bus. Dev.**
   Date of Certification: **August 15, 2006**
   Type of work for which certification was granted: **Food & Beverage stores, other personal care services.**

4. ACDBE initial capital contribution: **$450,000 (Estimate)** **16** %

5. Future capital contributions (explain requirements):
   See Section 2.2 of Joint Venture Agreement
6. Source of funds for the ACDBE capital contribution:
   Combination of personal funds and bank loan
7. Describe the portion of the work or elements of the business controlled by the ACDBE: **See Section 3.3 and Exhibit C of the Joint Venture Agreement**

8. Describe the portion of the work or elements of the business controlled by the non-ACDBE: **See Section 3.2 and Exhibit C of the Joint Venture Agreement**

9. Describe the ACDBE's involvement in the overall management of the joint venture (e.g., participation on a management committee or managing board, voting rights, etc.) **See Section 3.1 of the Joint Venture Agreement and Exhibit C.**

10. Describe the ACDBE's share in the profits of the joint venture: **See Section 5.1 (b) of the Joint Venture Agreement**

11. Describe the ACDBE's share in the risks of the joint venture: **See Section 5.1 -5.4 and Section 6.3 of the Joint Venture Agreement**

12. Describe the roles and responsibilities of each joint venture participant with respect to managing the joint venture (use additional sheets if necessary):

    a. ACDBE joint venture participant:
    b. Non- ACDBE joint venture participant:

    > See Exhibit C of the Joint Venture Agreement

13. Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):

    a. ACDBE joint venture participant:
    b. Non- ACDBE joint venture participant:

    > See Exhibit C of the Joint Venture Agreement

14 Which firm will be responsible for accounting functions relative to the joint venture's business? **Host International, Inc. (Sec. 4.1)**

15. Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties? **See Section 3.5 of the Joint Venture Agreement**

16. Please provide information relating to the approximate **number** of management, administrative, support and non-management employees that will be required to operate the business and indicate whether they will be employees of the ACDBE, non-ACDBE or joint venture. **Numbers below show of employees in Joint Venture units today; figures in parenthesis would be for 3 new units**

	Non-ACDBE Firm	ACDBE Firm	Joint Venture
Management	**16 (3)**	**1 (1)**	**0**
Administrative	**13 (1)**	**0**	**0**
Support	**2**	**0**	**0**
Hourly Employees	**36 (6)**	**0**	**0**

17. Please provide the name of the person who will be responsible for hiring employees for the joint venture. Who will they be employed by?
Hourly employees will be hired by HMSHost with input from Tinsley Family Conc.

18. Are any of the proposed joint venture employees currently employees of any of the joint venture partners? ☐ yes ☐ no **N/A**
If yes, please list the number and positions and indicate which firm currently employs the individual(s).

There are no "Joint Venture Employees." The employees working in the Joint Venture are either employees of HMSHost or Tinsley Family Concessions.

APPENDIX C
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

I. DEFINITION:

Airport Concession Disadvantaged Business Enterprise (ACDBE): *means a concession that is a for-profit small business concern –*

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small business concern: *means a for- profit business that does not exceed the size standards of 49 CFR Part 23 Section 23.33 for airport concession.*

Socially and economically disadvantaged individual: *means any individual who is a citizen (or lawfully admitted permanent resident) of the United States who is –*

(1) Any individual determined by Miami-Dade County to be a socially and economically disadvantaged individual on a case-by-case basis.
(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, The U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americas," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

95

APPENDIX C
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

II. ACDBE PARTICIPATION PLAN

The ACDBE participation plan required to be submitted with the proposal by each Bidder/Proposer must contain at least the following:

1) Executed ACDBE Utilization Form (ACDBE APPENDIX 1); executed Schedule of Participation (ACDBE APPENDIX 2) and executed Letter of Intent (ACDBE APPENDIX 3) by the Bidder/Proposer of the percentage of participation by an ACDBE Firm the Bidder/Proposer intends to have in this Agreement and how the Bidder/Proposer intends to achieve such stated participation.

2) Below is the documentation which will be required as part of the Bidder/Proposer's ACDBE Participation Plan; Subcontract or Joint Venture Agreements for any one or combination of the following:

   (a) If Bidder/Proposer intends to meet the ACDBE goal as an ACDBE itself the Bidder/Proposer shall submit:

      1) Executed ACDBE Utilization Form (ACDBE APPENDIX 1);
      2) An executed Schedule of Participation (ACDBE APPENDIX 2);
      3) Executed Letter of Intent (ACDBE APPENDIX 3);
      4) ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) (Phone: (305) 375-3111) or the Florida Unified Certification Program (FLUCP) at (850) 414-4747 or their website address http://www.bipincwebapps.com/biznetflorida/;
      5) Explanation of participation by the ACDBE Firm in management and day-to-day operation; and,
      6) Financial participation by the ACDBE Firm Proposer in gross revenues from this agreement.

   (b) If Bidder/Proposer intends to meet the ACDBE goal as a partnership or Joint Venture, the Bidder/Proposer must submit:

      1) Executed ACDBE Utilization Form (ACDBE APPENDIX 1);
      2) An executed Schedule of Participation (ACDBE APPENDIX 2);
      3) Executed Letter of Intent (ACDBE APPENDIX 3);
      4) Executed Partnership, Joint Venture agreement that meets Joint Venture Guidance by U.S. DOT – FAA (APPENDIX 8);
      5) An explanation of participation by the ACDBE participant in the management and day-to-day operations;
      6) Financial participation by the ACDBE Firm to meet the ACDBE participation in gross revenues;
      7) ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County, Department of Small Business Development (SBD) Phone: (305) 375-3111 or the Florida Unified Certification Program (FLUCP) at (850) 414-4747 or their website address http://www.bipincwebapps.com/biznetflorida/;
      8) Experience of ACDBE joint venturer or partner must be listed on the Experience Sheet. (ACDBE APPENDIX 4)

   (c) If the Bidder/Proposer intends to meet the ACDBE goal through subcontracting, the Bidder/Proposer must submit:

      1) Executed ACDBE Utilization Form (ACDBE APPENDIX 1);

2) An executed Schedule of Participation (ACDBE APPENDIX 2);
3) Executed Letter of Intent (ACDBE APPENDIX 3);
4) A listing of those activities which the Proposer intends to subcontract and the estimated percentage of gross revenues such subcontracted services will represent of the gross revenues from all activities under the agreement that will be subcontracted;
5) ACDBE Certification or applied for ACDBE Certification to the Miami-Dade County Department of Small Business Development (SBD) or the Florida Unified Certification Program (FLUCP) at (850) 414-4747 or their website address http://www.bipincwebapps.com/biznetflorida/; of such ACDBE firms; and,
6) Experience of ACDBE subcontractors must be listed on the Experience Sheet. (ACDBE APPENDIX 4)

MDAD may request any other information as may be required to determine the listed ACDBE Firm's Qualifications. Agreements between a Bidder/Proposer and an ACDBE Firm in which the ACDBE firm promises not to provide quotations to other bidder/proposers is prohibited. The listing of an ACDBE Firm by a Bidder/Proposer as part of its Airport Concession Disadvantaged Business Enterprise Participation Plan shall constitute a representation by the Bidder/Proposer that such ACDBE Firm is Qualified and available, and a commitment by Bidder/Proposer that if it is awarded this agreement, it will utilize such ACDBE firms listed for the portion of the contract and at the percentage of gross revenues set forth in its submission, subject to the terms of these Provisions.

III. GOOD FAITH EFFORTS:

The Bidder/Proposer shall make good faith efforts to achieve the established ACDBE participation goal. In the event that the Bidder/Proposer's ACDBE Participation Plan does not meet the established ACDBE participation goal, the Bidder/Proposer must submit with his proposal documentation to demonstrate all good faith efforts extended by the Bidder/Proposer in attempting to meet the stated ACDBE participation goal. The good faith efforts documentation is required to be submitted with the proposal and shall include, but not be limited to:

a. A detailed statement of the efforts made to contact and negotiate with ACDBE Firms, including (i) the names, addresses and telephone numbers of ACDBE Firms who were contacted, (ii) a description of the information provided to ACDBE Firms regarding the proposal or portions of the work to be performed, and (iii) a detailed statement of the reasons why additional prospective agreements with ACDBE Firms, if needed to meet the stated goal, were not reached.

b. A detailed statement of the efforts made to select portions of the work proposed to be performed by ACDBE Firms in order to increase the likelihood of achieving the stated goal.

c. For each ACDBE Firm contacted but which the Bidder/Proposer considered to be not qualified, a detailed statement of the reasons for the Bidder/Proposer's conclusions.

d. Attendance at pre-proposal meetings, if any, scheduled by the Bidder/Proposer to inform ACDBEs of participation opportunities under a given solicitation.

e. Advertisement in general circulation media, trade association publications, and minority focus media for at least twenty (20) days before bidder/proposals are due. If the interval between MDAD advertising and proposal due date is so short that (20) days are not available, then publication for a shorter reasonable time is acceptable.

f. Efforts made to assist the ACDBE firms contacted that needed assistance in obtaining bonding or insurance required by the Bidder/Proposer or MDAD.

g. Written notification to ACDBEs that their interest in the contract is solicited.

Failure of the Bidder/Proposer to submit the evidence of ACDBE Participation and the good faith efforts if necessary, as set forth above, may render the proposal non-responsible.

IV. INVESTIGATION AND RECOMMENDATION BY ACDBELO

In the event that the Bidder/Proposer has not met the stated ACDBE participation goal established for this agreement, the Airport Concession Disadvantaged Business Enterprise Liaison Officer (ACDBELO), the Associate Aviation Director, MDAD, may require that the Bidder/Proposer meet with the ACDBELO at Miami-Dade County Aviation Department, Minority Affairs Division, Building 5A, 3rd Floor, Miami, Florida 33102-5504, or such other place as the ACDBELO may designate. The purpose of this meeting shall be for the ACDBELO to determine, if necessary, whether the effort of the Bidder/Proposer to meet the stated goals is sufficient. At this meeting, the Bidder/Proposer shall have an opportunity to present information pertinent to its compliance with the applicable requirements.

The ACDBELO may require the Bidder/Proposer to produce such additional information, as the ACDBELO deems appropriate.

No later than (15) days after initial meeting with the Bidder/Proposer, the ACDBELO shall make a written recommendation to the Deputy Aviation Director or his designee, which shall include a statement of the facts and reasons upon which the recommendation is based.

Administrative Reconsideration

a) Within 5 days of being informed by MDAD that it's Bid/Proposal is not in compliance and not responsible, because it has not documented sufficient good faith efforts, a Bidder/Proposer may request administrative reconsideration. Bidder/Proposer should make this request in writing to the Contracting Officer: Aviation Director or his designee, Miami-Dade Aviation Department P.O. Box 025504, Miami, Florida 33102-5504, telephone number (305) 876-7077. The reconsideration official will not have played any role in the original determination that the Bidder/Proposer did not document sufficient good faith efforts.

b) As part of this reconsideration, the Bidder/Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

c) MDAD will send the Bidder/Proposer a written decision on reconsideration, explaining the basis for finding that Bidder/Proposer did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

V. SUBSTITUTION OF ACDBE FIRMS FOR THOSE LISTED ON THE AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION PRIOR TO CONTRACT AWARD

A Bidder/Proposer may not change information required by these Provisions from that provided in its Airport Concession Disadvantaged Business Enterprise Participation Plan unless authorized to do so by the Director, or his designee, in writing.

Such written authorization may be given upon a receipt of written request from the Proposer outlining the reason the request for change is being submitted specific details of the requested change and impact of the requested change on the ACDBE Participation as originally submitted. Failure on the part of the Bidder/Proposer to comply with all of the requirement of these Provisions shall be grounds for the recommendation of the Director to the Board of County Commissioners that the Contract not be awarded to the Bidder/Proposer.

VI. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD

A. Airport Concession Disadvantaged Business Enterprise Participation Plan. The Proposer shall contract with those ACDBE firms listed on the Bidder/Proposer's Airport Concession Disadvantaged Business Enterprise Participation Plan, and shall thereafter neither terminate such ACDBE Firms nor reduce the scope of the work to be performed by, or decrease the percentage of participation by the ACDBE Firm(s) there under without the prior written authorization of the Director.

B. Substitution of ACDBE Firms

1. Excuse from entering into agreements with ACDBE Firms. If prior to execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director or his designee and demonstrates to the satisfaction of the Director that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of award of the Contract, an ACDBE Firm which is to enter into such agreement has become not qualified, or that the ACDBE Firm has unreasonable refused to execute the agreement, the successful Bidder/Proposer shall be excused from executing such agreement.

2. Rightful Termination of agreements entered into with ACDBE firms. If after execution of an agreement required by these Provisions, the Bidder/Proposer submits a written request to the Director and demonstrates to the satisfaction of the Director that, as a result of a change in circumstance beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of execution of such agreement, an ACDBE Firm

which entered into such agreement has become not qualified or has committed and failed to remedy a material breach of the agreement, the Bidder/Proposer shall be entitled to exercise such rights as may be available to it to terminate the agreement.

3. Determination of Excuse of Rightful Termination. If the Bidder/Proposer at any time submits a written request under these Provisions to the Director, as soon as practicable, shall determine whether the Bidder/Proposer has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Bidder/Proposer an opportunity to present pertinent information and arguments.

4. Alternative ACDBE Firm Participation Agreements. If the Bidder/Proposer is excused from entering or rightfully terminates an agreement with an ACDBE firm listed as part of the Bidder/Proposer's ACDBE Participation Plan, the Bidder/Proposer shall make every reasonable effort to enter into an alternative agreement for at least ACDBE Participation percentage as originally submitted as part of their proposal for this contract with another certified ACDBE firm.

   The Bidder/Proposer shall be deemed to have satisfied the requirements of this section if:

   a. It shall enter each such alternative agreement(s) for at least the ACDBE participation as originally proposed.

   b. It demonstrates to the satisfaction of the Director that it has made every reasonable efforts to negotiate with an ACDBE Firm in an attempt to enter into an agreement, but that it was unable to enter into such agreement because the ACDBE Firms were (i) not qualified; (ii) Unavailable; or (iii) although Qualified and not Unavailable, was unwilling or unable to reach an agreement.

   c. If any situation covered by this section arises; the ACDBELO shall promptly meet with the Bidder/Proposer and provide him an opportunity to demonstrate compliance with these Provisions.

VII. **Continued Compliance** - MDAD shall monitor the compliance of the Bidder/Proposer with the requirements of this Plan during the term of the contract. MDAD shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with these. Provisions including, but not limited to, manpower tables, records for expenditures, observations at the job site, and contracts between the Bidder/Proposer and his subcontractors, suppliers, etc., entered into during the life of the Contract.

VIII. **Sanctions for Violations** - If at any time MDAD has reason to believe that the Bidder/Proposer is in violation of is obligation under these Provisions, or has otherwise failed to comply with these Provisions, MDAD may, in addition to pursuing any other available legal remedy, commence proceeding to impose sanctions which may include, but are not limited to, one or more of the following:

APPENDIX C
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN/PROVISION

1. The suspension of any payment or part thereof due the ACDBE Subtenant, Joint Venture Partner or Subcontractor from the Bidder/Proposer until such time as the issues concerning the Proposers Compliance are resolved.

2. The termination or cancellation of the Contract in whole or in part, unless the Bidder/Proposer demonstrates within a reasonable time its compliance with the terms of these Provisions.

3. The denial to the Bidder/Proposer of the right to participate in any further contracts awarded by MDAD for a period of not longer than three years. No such sanction shall be imposed by MDAD upon the Bidder/Proposer except pursuant to a hearing conducted by the ACDBELO and/or Director.

ACDBE Reporting Requirements – The Bidder/Proposer shall submit a Notarized MDAD Concession Monthly Utilization Report (**APPENDIX 6**) as required for Contracts in which an ACDBE Goal has been set. In addition, each Joint Venture partner must submit a Notarized Monthly Report of ACDBE Joint Venture Activity (**APPENDIX 7**) providing documentation on the achievement of the ACDBE Joint Venture partner to the Minority Affairs Division.

DEMONSTRATION OF GOOD FAITH EFFORTS
ACDBE UTILIZATION FORM

[*Forms ACDBE Utilization Form, Schedule of Participation and Letter of Intent are provided as part of the solicitation documents.*]

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

_____ The bidder/offeror is committed to a minimum of _____% ACDBE utilization in this Contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By: _____ Title: _____
(Signature)

_____ Date: _____
(Print Name)

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to "certified" ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.

Signature of Proposer **Date**

Print Name **Title** **Company Name**

ACDBE APPENDIX 2

Revised: February 24, 2006

LETTER OF INTENT
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

To:_____

Project:_____

Contract Number:_____**Total % of Bidder/Proposal:**_____

The undersigned holds ACDBD Certificate No._____**expiring on,**_____**20**_____.

The undersigned intends to perform the following work in connection with the above Bid/ Proposal (Describe):_____

Description of Services	% of Bid/Proposal

Total%_____

Signature of ACDBE_____ **Date**_____

Print Name_____ **Title**_____

ACDBE Firm_____

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) EXPERIENCE SHEET

ACDBE NAME _____

ADDRESS _____
_____
_____

	NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
(A)				
(B)				
(C)				

NOTES:
USE A SEPARATE SHEET FOR EACH DBE COMPANY.
ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

105

CERTIFICATE OF UNAVAILABILITY

I, _____, _____
Title

of_____certify that on_____
Date

I contacted the _____to obtain a Bid/Proposal.
Airport Concession Disadvantaged Business Enterprise

Description of Services:

_____

_____

_____

_____

_____
Signature

_____
Print Name

_____
Title

I, _____, was offered the above opportunity to Bid/Propose.
ACDBE NAME

I was unavailable to provide the services at the above specified time due to:

_____

_____

_____

_____

_____ _____
Signature **ACDBD Certificate No.**

_____ _____
Print Name **Expires**

_____
Title

Revised: February 24, 2006

CONCESSION MONT Y UTILIZATION REPORT

Reporting Period: Name of Prime Concessionaire: _____ YTD ACDBE Goal:

From: _____ To: _____ Lease Number: _____ Required _____ Actual _____

Name and Address	Date of Award	Terms of Agreement	Agreement Amount	Modification Amount
		Starting: _____ Expiration: _____ Options: _____		

Amount of Revenues this Period $ _____ ACDBE Revenues for this Period $ _____

Operational Expenses this Period $ _____ ACDBE Operational Expenses this Period $ _____

Total Revenues to Date $ _____ Total ACDBE Revenues to Date $ _____

Total Operational Expenses to Date $ _____ Total ACDBE Operational Expenses to Date $ _____

AIRPOR T CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE) OPPORTUNITIES

Name of ACDBE Firm	ACDBE Goal	Revenue This Period	Revenues to Date	Operational Expenses This Period	Operational Expenses to Date	Concession Opening Date	Actual Opening Date

I attest that the above information is accurate and complete.

_____ Authorized Signature _____ Print Name _____ Title _____ Date (____)_____ Telephone

Sworn before me: This _____ day of _____ 20___

Notary Public: _____

Additional page (s) may be used if needed.

Revised 11/22/06

L01

Monthly Report Of . DBE Joint Venture Activity

Joint Venture Partner: _____

Reporting Month: _____

Function	Date Performed	Location	# of Hours Per Employee	# of Hours Extended	Attach Support Documentation	JV Partner Signature
		Total				

I attest that the above information is accurate and complete.

_____ _____
For Joint Venture Partner (ACDBE), Please Print and Sign Date

_____ _____
For Joint Venture (Prime), Please Print and Sign Date

Sworn before me: This _____ day of _____ 20 _____

Notary Public: _____

Additional page (s) may be used if needed.

Revised 11/22/06

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE

JOINT VENTURE GUIDANCE

U.S. Department of Transportation
Federal Aviation Administration

APPENDIX 8

AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE JOINT VENTURE GUIDANCE

Table of Contents

Section 1 – General 5

1.0 What is the purpose of this Joint Venture Guidance? 5
1.1 Why is Joint Venture Guidance necessary? 6
1.2 What does 49 CFR Part 23 say about joint ventures as an option for ACDBE participation? 6

Section 2 – Definitions 8

2.1 What is a joint venture? 8
2.2 What does an "association" of an ACDBE firm and one or more other firms mean? . 9
2.3 May a "single, for-profit business enterprise" have more than one contract or business location at an airport 10
2.4 What does "the parties combine their property, capital, efforts, skills and knowledge" mean? 10
2.5 What does "the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract" mean? 11
2.6 What does "whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest" mean? 11

Section 3 – Joint Venture Review 11

3.1 What reviews should the airport make? 11
3.2 How does the airport determine if the ACDBE's capital contribution, control, management, risks, and profits are commensurate with its ownership interest in the joint venture? 12
3.3 Can the non-ACDBE joint venture participant loan capital to the ACDBE joint venture participant? 15
3.4 How should profits and losses be calculated and divided? 17
3.5 Are service and management fees acceptable? 17
3.6 Can the ACDBE or joint venture purchase inventory, supplies, services, etc., from the non-ACDBE? 17

Section 4 – Counting ACDBE joint venture participation towards ACDBE goals 18

4.1 How is ACDBE participation in a joint venture counted towards ACDBE goals? 18
4.2 How can the value of the ACDBE role be determined? 21
4.3 What does "performs with its own forces" mean? 22
4.4 What if the level of participation by the ACDBE changes? 23

Section 5 – Monitoring ACDBE participation in joint ventures 23

5.1 What is needed in terms of monitoring the joint venture? 23
5.2 What is included in the airport's agreement with the joint venture? 24
5.3 What annual updates and changes are required? 24

Section 6 – Additional information 25

6.1 Can a joint venture be certified as an ACDBE? 25
6.2 Does the ACDBE participant in a joint venture have to be certified in a specific type of work? 26
6.3 Should the joint venture agreement provide for the dissolution of the joint venture in the event that the ACDBE participant ceases to be an eligible ACDBE? 27
6.4 Is the airport subject to enforcement of interpretations presented in this guidance for existing joint ventures? Is the guidance retroactive? 28
6.5 What enforcement mechanisms are available to the Department in the event of noncompliance or misconduct? 29

Attachment 1 - Model ACDBE Joint Venture Information (Sample Form) 30
Attachment 2 - Samples: Joint Venture -- ACDBE Portion of the Work 33
Attachment 3 - Joint Venture Review Process (Flowchart) 40

ACDBE JOINT VENTURE GUIDANCE

Section 1 – General

1.0 What is the purpose of this Joint Venture Guidance?

The purpose of this joint venture (JV) guidance is to provide information and direction to airports, Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) program staff, ACDBEs and various stakeholders on the structure, implementation, and counting of joint venture arrangements in the ACDBE Program.

The Federal Aviation Administration (FAA) is responsible for overseeing airport compliance with the ACDBE program found in 49 CFR Part 23. Airports have a vested interest in ensuring that the appropriate ACDBE participation is counted and that there is effective structuring and monitoring of joint ventures and joint venture participation by ACDBEs in the concession activities of airports. FAA and the Department of Transportation (the Department) support and provide guidance to airports, ACDBEs, and various stakeholders to effectively administer their overall ACDBE program.

In developing this guidance, the views of various stakeholders were solicited and considered. Whenever possible, FAA considered the representations made by stakeholders regarding "usual practices" or "standard practices." However, it should be noted that accommodation for certain practices was not possible where the practice conflicted with requirements of the regulation and/or objectives of the program. Some business, accounting, and tax practices that may be completely legitimate in the business world between two or more firms may not be appropriate under the Department's ACDBE regulation, 49 CFR Part 23, which was revised and updated in the Federal Register on March 22, 2005.

1.1 Why is Joint Venture Guidance necessary?

The preamble to 49 CFR Part 23 states "We have become aware that some concessions joint ventures indeed do not involve an ACDBE performing an independent part of the work; some of these have been the focus of fraud investigations by the Department's Office of Inspector General and other law enforcement organizations. If the ACDBE participant is not required to perform independently a distinct portion of the joint venture's work, it becomes very easy for a prime concessionaire seeking to circumvent ACDBE requirements by having an ACDBE silent partner on its payroll. We believe that changing this provision would adversely affect the integrity of the program. Because joint ventures have become a problematic part of the ACDBE program, the Department is drafting additional guidance on the subject."

Airports, ACDBEs, consultants and other stakeholders are obligated to develop, approve, monitor, and count ACDBE participation in joint venture agreements in accordance with current rules and guidelines. However, as noted above, joint ventures present unique challenges in the Part 23 concessions program. The Department is concerned that airport owners/operators, ACDBEs, non-ACDBEs, and consultants may be interpreting and applying the current regulations in an inconsistent as well as an incorrect manner. Many have requested guidance to assist them in implementing the ACDBE program. This guidance is designed to assist in the effective structuring, monitoring and counting of joint ventures and joint venture participation by ACDBEs in the concessions activities of airports receiving Federal financial assistance from the Airport Improvement Program of the FAA. This guidance does not implement new regulations or requirements but merely clarifies existing requirements.

1.2 What does 49 CFR Part 23 say about joint ventures as an option for ACDBE participation?

The Department's revised final rule for 49 CFR Part 23 (Participation of Disadvantaged Business Enterprises in Airport Concessions) was issued on March 22, 2005, making the rule parallel in many respects to the Department's DBE regulation for federally-assisted contracts. The preamble states, in part, that the "objectives of this program are very similar to those stated for Part 26. Extensive information has been developed over the years . . . that supports the proposition that there is not a level playing field for small disadvantaged businesses in the U.S. The legislative history of the original ACDBE statute itself shows that Congress was very

concerned that DBE firms had fair (i.e., nondiscriminatory) access to concession opportunities." The program requires goal-setting by airports to obtain ACDBE participation. These goals can be met in a variety of ways, including direct ownership arrangements by ACDBE firms in airport concessions as well as through the purchase of goods and services by concessionaires from ACDBE vendors The airport owner or operator must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs, including joint ventures and franchises.

Some stakeholders may have interpreted this to mean that all direct ownership arrangements, including joint ventures, are equally effective in achieving meaningful ACDBE participation and that one method should not be preferred over another. In fact, each opportunity represents unique challenges and one method may be better suited for a particular structure than another.

It should be noted that, prior to considering the best structure for participation, airports are encouraged to carefully evaluate (on a case-by-case basis) proposed bid requests, requests for proposals, and other types of solicitations to ensure that it is practical for ACDBE participation to be met in a reasonable manner.

49 CFR § 23.25(e)(1)(iv) states as follows:

> *The administrative procedures applicable to contract goals in part 26, § 26.51–53, apply with respect to concession-specific goals.*

49 CFR § 26.51(e)(2) states as follows:

> *You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.*

Airports are encouraged to consider, in the development and implementation of their ACDBE plan, the best method of ACDBE participation, including the potential for "unbundling" contracts to create separate and smaller opportunities for direct contracting, thus creating an environment where small and disadvantaged firms could be more competitive. In some instances, a joint venture scenario may be difficult to implement while a subcontract or other arrangement may be a better vehicle to achieve ACDBE participation. In other cases, a joint venture may represent the best opportunity for implementing a workable arrangement. We encourage airports to promote joint venture opportunities whereby ACDBEs would partner with former ACDBEs (e.g., those which have exceeded PNW and/or size standards). This may create a more even bargaining position and may also provide a much needed transitional role for the former ACDBE. Of course, there would be no ACDBE credit given for the former ACDBE, only for the currently certified ACDBE participant in the joint venture. The former ACDBE might serve as a mentor to a less experienced ACDBE. The initial determination by the airport as to the best form of business structure (i.e., JV, subcontract, management contract, etc.) identified in its solicitation for requests and/or proposals from interested parties may reduce difficulties in counting ACDBE participation for accomplishment reporting purposes.

Section 2 – Definitions

2.1 What is a joint venture?

For purposes of the ACDBE program, a joint venture is defined as an "association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest." Much of the remainder of this document will be directed toward further explaining many of the components of this "joint venture" definition.

2.2 What does an "association" of an ACDBE firm and one or more other firms mean?

In accordance with the objectives of the ACDBE regulations, joint ventures are intended to have **a business structure set forth in a signed written agreement** that **clearly and specifically** defines the participation of each party in the contribution of property, capital, efforts, skills and knowledge.

Any legal structure that meets federal and state legal requirements may be used to form a joint venture provided that, for purposes of counting ACDBE participation, the requirements of 49 CFR Part 23 are met. The joint venture should operate in accordance with a written agreement. Please note that any business structure that meets the Part 23 definition of "joint venture" will be considered a joint venture for purposes of counting ACDBE participation, regardless of the name attributed to the business structure in the written agreement.

Some of the important components that should be included in the written agreement are noted below:

- **Identification of the participants in the Joint Venture**. The JV participants must be firms, including sole proprietorships, not individuals. In addition, the ACDBE participant must be certified as an ACDBE in the type of business operated by the joint venture, and in the State where the airport is located, in order for the participation to count towards ACDBE goals.
- **Identification of the single, for-profit business enterprise to be undertaken by the joint venture.** See Section 2.3 for further explanation.
- **Term of the joint venture agreement and factors effecting the term** (e.g., concession contract extensions or termination, sale of interest, etc.).
- **Capital to be contributed by each party** (initial contributions and future needs should be addressed).
- **Accounting methods and distribution of profits/losses.**
- **Management of the joint venture's business,** including overall management (e.g., participation on a management committee or management board) and day-to-day management responsibilities.

- **Administrative matters,** including joint venture office locations, recordkeeping requirements, identification of an auditor, fiscal year, addresses for notices, transfer of interests, etc.
- **Dissolution,** including events/conditions upon which the joint venture may be dissolved and terminated, and assets distributed.

2.3 May a "single, for-profit business enterprise" have more than one contract or business location at an airport.

While a joint venture must be a single business entity, it may have more than one contract with a given airport or more than one business location at the airport. It is the joint venture as an entity, and not the individual participants in the joint venture, that should have the contractual relationship(s) with the airport. The specifics of the participation in each contract should be clearly stated in the joint venture agreement to enable the airport to separately monitor all of the elements of the joint venture entity's participation in each. The participants in the joint venture which are requesting ACDBE credit should be required to disclose any other business relationships currently in existence between or among the parties (e.g., joint ventures at other airports). In the event that other relationships exist, the airport and/or Unified Certification Program (UCP) should review the ACDBE participants' eligibility for certification, to ensure continuing independence and control of the ACDBE firm in the operation of its business.

2.4 What does "the parties combine their property, capital, efforts, skills and knowledge" mean?

Each party in a joint venture should bring real and substantial value to the joint venture enterprise. The parties should each contribute both tangible and intangible assets. If property is contributed, the joint venture agreement should clearly state at the outset its value; which is usually assessed based on liquidation value, replacement cost, or "value in use" methods. The parties should contribute capital commensurate with their ownership interest, knowledge and skills relative to the portion of the joint venture's business for which they are responsible, and efforts to the success of the venture. The skill set (a combination of experience, core competencies, unique talent, etc.) provided by each party should add value to the joint venture relationship that is objectively apparent. This skill set should be specifically addressed in the

joint venture agreement, and verified by the airport during its initial review and periodically thereafter.

2.5 What does "the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract" mean?

In this context, "distinct" means separate and distinguishable from the work of the non-ACDBE. "Clearly defined" means that there is no guesswork involved in determining the nature of the work assigned to the ACDBE. In order to be considered a distinct, clearly defined portion of the work, it is necessary to fully understand exactly what the work will entail, including an estimate of the time and resource requirements for each major task. For example, if the ACDBE's portion of the work is only described as "advise about " or "participate in" a portion of the work, the work would likely not be considered distinct or clearly defined because it is not clear what work the ACDBE will accomplish. Much more detail would be necessary in order to determine the portion of the work to be attributed to the ACDBE. Of course, the work of the contract also includes the role of the ACDBE in the overall management of the business (e.g., as a participant on a management committee or some other governing board) as well as participation in the day-to-day management of the business.

2.6 What does "whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest" mean?

The ACDBE's participation in each of these five areas should be proportionate to the claimed ownership. This is further discussed in Section 3.2.

Section 3 – Joint Venture Review

3.1 What reviews should the airport make?

The airport should review the joint venture agreement and supporting documents submitted by a joint venture entity to determine whether, in fact, the arrangement meets all the requirements of the regulation (49 CFR Parts 23 and 26) and what portion(s), if any, is eligible to be counted towards ACDBE participation. Pursuant to 49 CFR § 26.109, all participants in the DBE program, including, but not limited to, DBE firms and applicants for DBE certification, are required to cooperate fully and promptly with recipient certification reviews, investigations, and

other requests for information. Based on the review, the airport will assign a value to the ACDBE participation which may be counted towards the ACDBE goal provided that the joint venture operates in accordance with the submitted agreement. (See Attachment 3 – JV Review Process for a flowchart describing the recommended process for the review.) The airport should provide a written letter outlining any areas of concern and allow a reasonable amount of time for the applicant to respond and/or make reasonable adjustments where applicable. In accordance with 49 CFR § 23.29, airports must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. An airport must include in its concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means to be used to ensure continued compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. In order to make this evaluation, the airport should review the entire set of circumstances involved in performing the contract and not rely on a single factor for making a compliance determination. The airport's ACDBE program should describe in detail the level of effort and resources devoted to consistent monitoring and enforcement.

3.2 How does the airport determine if the ACDBE's capital contribution, control, management, risks, and profits are commensurate with its ownership interest in the joint venture?

An airport is responsible for reviewing joint venture agreements to ensure that capital contribution, control, management, risks, profits, ownership, and work to be performed by the ACDBE are clearly addressed. The parties involved in the joint venture and seeking to count ACDBE participation towards the ACDBE goal for the contract have the obligation to demonstrate to the airport that the ACDBE capital contribution, control, management, risks, and profits are commensurate with its ownership interest. (We recommend that, as with respect to other certification and counting matters, airports apply a "preponderance of the evidence" standard in evaluating whether the joint venture has made this demonstration.) The airport may follow up with questions and request written explanations. The airport may require the joint venture to submit information, including a summary of the agreement and supporting documentation, for review. (A sample form that may be used to accomplish this is included as Attachment 1.) The firm seeking to count ACDBE participation in a joint venture has the burden of demonstrating to the airport, by a preponderance of the evidence, that it meets the

requirements of the regulation with respect to being an eligible joint venture for counting purposes.

The following are tips for reviewing the various required areas for participation:

- **Capital contribution** – The capital to be contributed by each party should be clearly specified in the joint venture agreement. The agreement should specify the initial capital contributions to be made by each party and how future capital contributions will be allocated. The ACDBE's portion of the initial and future capital contributions should be equal to its ownership percentage. A subsequent section of this guidance will discuss issues relating to **how** the capital is contributed (i.e., cash contributions or financing provided by the non-ACDBE joint venture participant).
- **Control** – The ACDBE participant(s) in the joint venture should have control in proportion to their ownership interest and proportionate control of the governance of the joint venture. Each joint venture partner should assume full responsibility for executing each element of the work assigned to it. Usually, a joint venture will have a management committee (referred to by various names, including "Executive Committee" or "Board") that controls the overall business. The ACDBE participant(s) is usually a minority participant, owning less than 50% of the business. In this case, the ACDBE(s) can be out-voted on most of the business decisions made by the committee. This really means that for the most part, the joint venture is controlled by the party owning 51% or more of the business, usually not the ACDBE. However, the agreement should provide for control by the ACDBE of the activities for which it is responsible. This can be accomplished through direct control of their assigned role or establishment of a separate management committee or subcommittee in which the ACDBE has majority vote for issues involving facilities or responsibilities which it controls. In addition, there should be some major decisions requiring a unanimous vote to substantiate some level of control attributable to the ACDBE (e.g., items related to expansion, borrowing, lending money, etc.).
- **Management** – The ACDBE participant must share in the management of the joint venture. The agreement should address the issue of the overall management, or governance, of the business of the joint venture and the day-to-day management of the joint venture's operation. The ACDBE participant should participate in the overall management, decision making, and day-to-day operations, including decisions

on the hiring and firing of management personnel (and if appropriate non-management personnel) for the joint venture to be eligible for ACDBE credit. This can be accomplished through a "Management Committee," as described under "control," though this is not the only acceptable mechanism. Under a management committee structure, the committee is responsible for managing and directing the business of the joint venture. Each participant is represented on the management committee and votes according to its ownership interest in the venture. Each participant on the management committee not only has a right, but an obligation to receive and consider the views of the ACDBE participant. The agreement should specify the frequency of the management committee meetings, and formal agendas and meeting minutes should be prepared. In addition, the agreement should provide for the day-to-day management of the joint venture and specify the roles and responsibilities of each participant. The issue of day-to-day roles and responsibilities assigned to the ACDBE participant is further discussed in Section 4.

- **Risks** – Each of the participants in the joint venture must share in the risks of the business in proportion to their ownership interest. These risks include financial, legal, operational, etc. The agreement should include provisions for proportional sharing in profits as well as losses (see section 3.4). However, a monthly distribution of actual profits or monthly payment of a management fee, as defined in the agreement, consistent with industry standards, is permissible.
- **Profits** – Each of the participants must also share in the profits and losses in proportion to the ownership interest. Accounting methods and the timing of distribution should be included in the agreement and reviewed for reasonableness by the airport. There should be no provisions in the agreement which have the effect of creating separate profit centers to siphon profits before each participant's share is calculated. For example, requirements to purchase goods and/or services from one of the participants that results in controlling profits remaining for distribution to the joint venture participants are not acceptable. However, purchasing goods and/or services from one of the participants may be acceptable if the terms are spelled out and the cost of the goods reflects the actual cost of the product plus any processing/handling costs and reasonable overhead expenses. Airports should carefully examine all accounting mechanisms to ensure that the distribution process is reasonable.

3.3 Can the non-ACDBE joint venture participant loan capital to the ACDBE joint venture participant?

Yes, with some restrictions and adequate documentation of the loan agreement. The airport should review the loan agreement (and related financial documents) to ensure that the arrangement does not limit the ACDBEs participation in the venture (e.g., by limiting risk, control, etc.).

The agreement should specify the amount of capital to be contributed by each joint venture participant. Capital contributions may include, for example, capital investment in facilities, inventory, security deposit, assets, working capital and first month's rent. It is preferable that each participant provides its own capital contributions or obtains a loan from an independent third-party source. To assist the ACDBE with third-party sourcing for capital, the non-ACDBE participant may provide and is encouraged to support the ACDBE participant with technical assistance in preparing financial reports and presentations to commercial banks and financial institutions for the purpose of obtaining financing. We realize that it may not be possible in some cases for small ACDBE firms to obtain independent financing given the unique nature of the airport environment. In this case, the non-ACDBE participant may provide financing to the ACDBE participant upon the following conditions:

- The terms and conditions of such a loan should be comparable to prevailing market conditions offered by commercial lenders for similar type projects (e.g., in terms of such factors as duration, rate, fees, etc.).
- The loan should be evidenced by a promissory note or loan agreement clearly stating the terms and conditions of the loan, including: due date and payment method, interest rate, prepayment, defaults, and collateral.
- The note should be a full recourse note. The note should be personally guaranteed by the ACDBE and/or secured by assets outside of the ownership interest or future profits of the joint venture. Otherwise the business risk is reduced or eliminated for the ACDBE.
- The loan should not be for 100% of the capital requirement. The ACDBE should invest capital from its own resources or through a third-party arms-length loan at market conditions. Generally, 10%–20% of the capital required (including all

capital contributions made to the joint venture, e.g., start-up capital, pre-opening expenses, facility construction, operating capital, reinvestment, etc.) is recommended as a benchmark to be provided by the ACDBE from its own resources or through a third-party as previously referenced.

- The term of the loan should not be longer than the term of the contract under which the joint venture operates (excluding options or extensions).
- There must not be provisions in the loan agreement which have the effect of limiting the ACDBEs ability to control its business or independently perform its designated role in the joint venture's business. Of course, this does not preclude a lender from including provisions in a loan agreement designed to preserve property that may have been pledged as collateral.

Some hold the view that the ACDBE participant should never borrow from the non-ACDBE participant as it leads to questions of independence and control by the ACDBE. However, we realize that the lack of access to capital is a real and substantial barrier to ACDBE participation in airport concessions. It may be difficult to obtain a loan for a joint venture business where the loan applicant has limited control over the business. Prohibiting such loans may limit the ability of ACDBEs to participate in joint venture businesses. However, in the event that it is necessary for the ACDBE to obtain a loan from the non-ACDBE joint venture participant, airports should ensure that the overall loan arrangement is consistent with the principle that the ACDBE participant brings his or her own property, capital, efforts, skills, and knowledge to the firm. Specifically, the financial arrangement should not be structured in a way that negatively affects the ACDBE's ownership and control under the DBE regulations. In addition, there should be safeguards that explicitly state that disagreements over operating the business should not be a basis for adverse action or penalties under the loan agreement.

3.4 How should profits and losses be calculated and divided?

The joint venture agreement should provide details on how profits and losses will be calculated and divided between the participants. The profit or loss of the joint venture should be distributed between the participants in proportion to their interest in the joint venture. Any funds or other forms of payment (including draws) that are taken from the joint venture assets, profits, distributions, etc., should be documented and accounted for in order for the airport to determine the amount of benefit each participant has received from the business during the year. The joint venture agreement should specify the timing of the distributions. We do not view as consistent with the regulatory requirement for commensurate sharing of risks and profits any provision in an agreement that calls for a party: (1) to be entitled to a distribution of money regardless of the profitability of the joint venture, or (2) to have a debt that is a portion of a joint venture participant's risk in the joint venture forgiven by another party.

3.5 Are service and management fees acceptable?

Yes, subject to some restrictions. The joint venture agreement should state, if applicable, "management fees" or "service/administrative fees" to be paid to the various participants, dependent upon a participant's contribution to the "indirect" management of the operation (i.e., corporate overhead or corporate support services). The fees charged should be reasonable, and not used as a method of draining profits of the joint venture to the benefit of a particular participant. In addition, management fees are not to be used in place of a "draw" arrangement. Service and management fees should represent a recovery of costs and not profit to the non-ACDBE if it is the provider of the service. The agreement should specifically address how the costs for such services are derived, the ability of the ACDBE to participate in the selection of the service provider, and a vehicle for monitoring and/or auditing such costs.

3.6 Can the ACDBE or joint venture purchase inventory, supplies, services, etc., from the non-ACDBE?

The agreement should not mandate that the ACDBE participant or joint venture purchase inventory, supplies, or services from the non-ACDBE participant. The ACDBE should always have the option of obtaining goods and services on an arms-length, market price basis from any

source. However, a joint venture agreement may allow such purchases from a non-ACDBE participant. This may be advantageous when, for example, the non-ACDBE participant can obtain the goods or services at a lower rate/price than the ACDBE participant. In such a case, however, we believe it would be inconsistent with the nature of a joint venture as defined in Part 23 for the non-ACDBE to charge a markup for these goods and services. The joint venture agreement should specifically address how the costs for such products and services are derived and provide a vehicle for monitoring and/or auditing such costs.

Unless the operation is a franchise, the ACDBE participant or joint venture should have the option to purchase products and services from an unrelated third party on a market price/arms-length basis. In the case of a franchise, the joint venture should have the same option providing it does not conflict with the franchise agreement requirements.

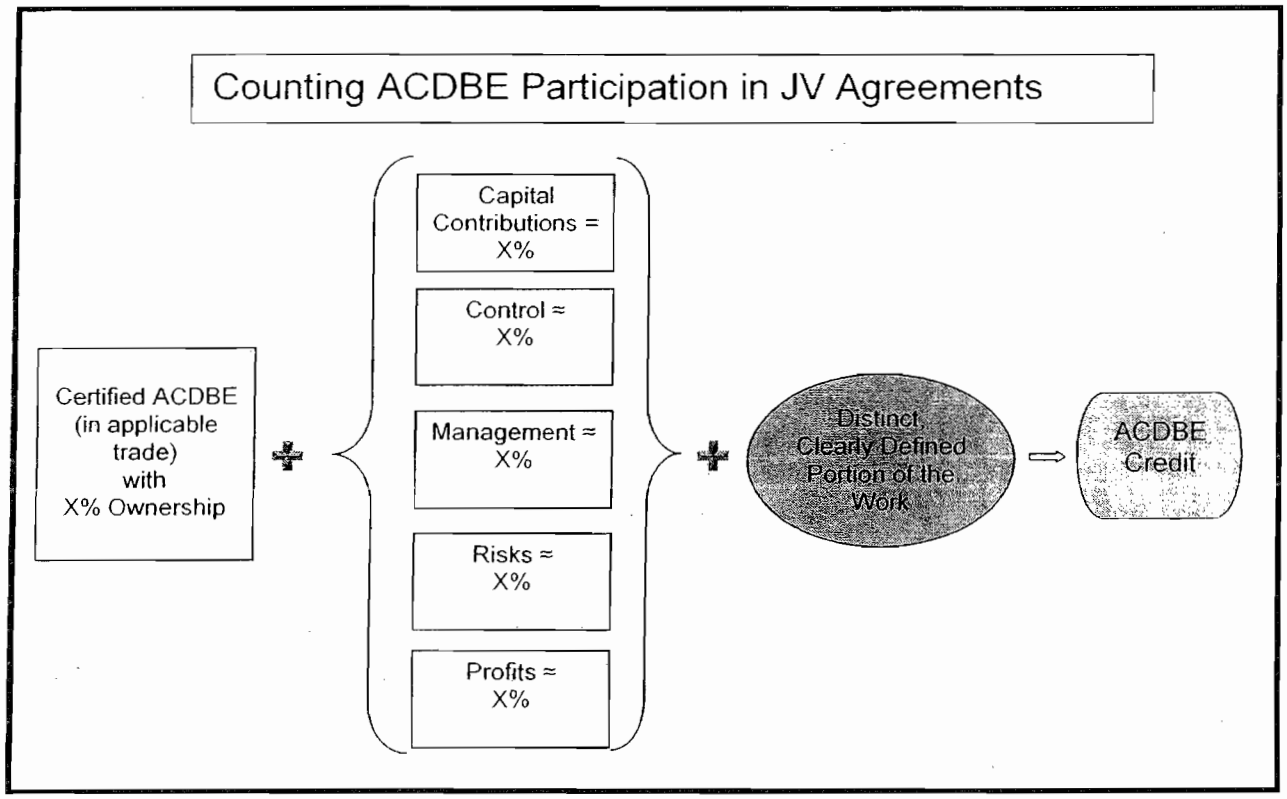
Section 4 – Counting ACDBE joint venture participation towards ACDBE goals

4.1 How is ACDBE participation in a joint venture counted towards ACDBE goals?

49 CFR § *23.55(d)* states as follows:

> *When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.*

The definition of a joint venture states that the ACDBEs share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest. Therefore, before the airport considers the ACDBE credit to be given, the airport will have a good idea of the credit that is desired, since it should be commensurate with ownership percentage. For example, if the ACDBE ownership in a joint venture is stated as 25%, it is likely that the joint venture participants are seeking to count the ACDBE participation at 25%. The airport should look at the roles and responsibilities of the ACDBE and determine if the claimed ownership appears reasonably proportionate to the "distinct, clearly defined portion of the work performed by the ACDBE." (Note: The phrase "with its own forces" is addressed in the following section.) Some slight variations may occur due to the fact that the measurement is somewhat subjective in certain categories (e.g., overall management and portion of the work). The key factor is the reasonableness of the claimed participation after reviewing all of the elements of the joint venture.



As illustrated in the chart above, the review of joint venture agreements is comprised of: (1) confirming that the ACDBE participant is a certified ACDBE in the applicable trade; (2) making a determination that the agreement meets the definition of a joint venture under the regulation, and; (3) determining the appropriate credit based on the "distinct, clearly defined portion of the work performed by the ACDBE." Once the airport has reviewed the joint venture agreement to ensure that it meets the definition of a joint venture in accordance with the regulation (i.e., in terms of the various areas being commensurate with ownership interest) the airport should proceed to a review of the distinct, clearly defined portion of the work assigned to the ACDBE in order to determine how to count ACDBE participation towards the ACDBE goal.

The following are tips for accomplishing this review:

1. <u>The assigned role of the ACDBE should be distinct and clearly defined.</u> Analyze the written description of the roles and responsibilities of each participant. The description of the work to be performed by the ACDBE should be clear. Descriptions that are vague are not acceptable. For example, phrases such as "participate in the budgeting process," "assist with

hiring," "work with managers to improve customer service" do not alone provide any basis for awarding credit since none of these represent a "distinct, clearly defined" portion of the work. ACDBE credit should not be given for tasks which are vaguely worded and cannot be monitored.

2. A comprehensive role in the complete operation of a separate location under the contract is easier to count.

The preamble to 49 CFR Part 23, revised in 2005, states as follows:

> *"As a policy matter, we believe it is preferable for ACDBE joint venture participants to actually have a defined role in the revenue-generating activities of the business (e.g., the joint venture runs four food service locations in the airport, and the ACDBE is directly responsible for one of them). There is a greater likelihood of confusion, counting, and other administrative difficulties, as well as of abuse, when ACDBE participation is claimed for joint ventures in which the ACDBE participant has only a vaguely defined role in the entity as a whole."*

Clearly, joint ventures structured so that the ACDBE actually has a role in the operation of the business are preferable for counting purposes to those in which the ACDBE is assigned a vague role in the overall operation. The determination of credit is much simpler and easier to document in such a case. In addition, monitoring the participation also becomes less cumbersome. In the event that an operating role is assigned, credit can be counted at the level of gross receipts earned by the operations managed by the ACDBE. This is not to say that managerial or "back office" functions cannot be credited. However, if the role of the ACDBE participant can't be quantified or qualified, it can't be counted.

3. Roles, especially minor roles, relating to the performance of an activity in support of the overall operation may present challenges. In the event that the ACDBE is assigned a distinct, clearly defined role that does not involve managing a revenue-generating activity, but is rather a task for which gross revenues cannot be directly correlated, it is difficult to determine the credit to be assigned. If the role assigned involves activities that occur on an ongoing basis, and with regard to a core function, crediting participation is easier. However, if the role of the ACDBE occurs on an "as-needed" basis and is a minor function, it is very difficult to predict, in advance, the level of the ACDBE participation and therefore difficult

to determine credit for ACDBE participation at time of review. The ACDBE must perform a commercially useful function. Assuming that the role assigned is one that is required on an ongoing, predictable basis, it will be necessary to determine how much credit, if any, should be assigned to the role. In order to make a determination, the airport should have an understanding of the tasks involved in managing and operating the business as well as the level of difficulty and relative importance of each task. The airport should break down the business into major components and determine if the claimed ownership percentage would reasonably appear to correspond with the assigned task(s). It is the obligation of the firm seeking ACDBE credit to clearly present the information necessary and provide additional information and/or documentation as requested for a determination to be made. If the airport cannot make a reasonable judgment that the ACDBE performs a distinct, clearly defined portion of the work proportionate to its ownership interest, it may reject the joint venture for ACDBE credit or count a smaller percentage than claimed toward ACDBE participation. Please note once again that if the role of the ACDBE participant in the joint venture operation can't be quantified, it can't be counted.

4.2 How can the value of the ACDBE role be determined?

There are a number of steps that should be taken to assist in determining the value of ACDBE participation.

First, the airport may examine the typical business practice of each of the firms participating in the joint venture to determine if their assigned roles appear logical. For example, if the non-ACDBE firm is a retail firm with operations at 50 other airports and the ACDBE firm has 5 years of experience operating a candy store in the local mall, it would seem unreasonable to assign the buying of merchandise to the ACDBE participant since the larger firm would almost certainly have greater skills, knowledge and purchasing power than the ACDBE.

The airport may also look at how the non-ACDBE participant performs the role(s) assigned to the ACDBE operator at its other operations. For example, if the ACDBE is assigned to recruit minority employees, the airport should request information regarding how this is performed at other locations in which the non-ACDBE operates without an ACDBE

participant and request documentation regarding the cost (and the value) of performing that task without the ACDBE participant. Further, the airport could develop a chart of tasks to provide a framework for assigning credit. Attachment 2 will provide examples of how this may be accomplished. Since each business operation is unique and often complex, the value of specific tasks may vary from operation to operation. The role of each participant should be evaluated in the light of the specific business opportunity being performed. Ultimately, it is the joint venture participants who should provide information which would lead a reasonable person to conclude that the roles of each party justify the claimed ACDBE participation credit.

4.3 What does "performs with its own forces" mean?

If persons employed directly by the ACDBE perform the tasks associated with its participation in the joint venture, then the ACDBE is clearly performing that work with its own forces. For purposes of counting ACDBE joint venture participation, however, we view work performed by employees of the joint venture entity or a non-ACDBE participant in the joint venture as performed by the ACDBE's "own forces" IF the ACDBE has the power to control those employees with respect to the performance of the ACDBE's role.

Ideally, the "distinct clearly defined" portion of the work performed by the ACDBE participant in a joint venture would be performed by the ACDBE's own employees. This provides a clearer view of the management and control over the element of work attributed to the ACDBE. However, in some circumstances it may be advantageous for the joint venture or the non-ACDBE to employ the staff in order to provide comparable compensation and benefits to all employees. In the event that some employees are employees of the joint venture or the non-ACDBE, the ACDBE portion of the work can be considered as being performed "with its own forces" if the ACDBE has the power to control staff with regard to the performance of the work for which the ACDBE is responsible, analogous to the utilization of contract employees.

There should be a higher burden of proof that the ACDBE controls the employees performing its designated portion of the work in instances when the employees are employees of the joint venture and an even higher burden of proof when the employees are employees of the non-ACDBE. Conversely, simply having the employees on the payroll of the ACDBE firm does not

remove the burden of proving that the ACDBE actually controls those employees. There should exist a reporting relationship between the staff responsible for the ACDBE portion of the work and the ACDBE. The ACDBE should have the power to hire and fire staff responsible for performing its share of the work without the approval of the non-ACDBE participant. One factor to be considered in evaluating the amount of participation to be counted is the evaluation of resources necessary to perform the ACDBE's assigned role. For example, if the joint venture employs 5 managers, 2 administrative/support staff members and 100 hourly employees, and the ACDBE has no employees reporting to it in the performance of its assigned role, then it would be very difficult to show that the role is a substantial one and, therefore, little, if any, credit might be counted towards ACDBE participation.

4.4 What if the level of participation by the ACDBE changes?

If it is determined that the ACDBE has not performed its role in accordance with the joint venture agreement in a given year, and has in fact participated less than expected, participation may be counted at less than originally approved for that year. In the event that the reduced level of participation is planned to continue, the airport should request that the joint venture participants amend their agreement to reflect the new level of participation.

If it is determined that the ACDBE has not performed its role in accordance with the joint venture agreement in a given year, and has in fact participated more than expected, participation may be counted at the originally approved level, but not higher. In the event that the increased level of participation is planned to continue, the airport should request that the joint venture participants amend their agreement to reflect the new, ongoing level of participation.

Section 5 – Monitoring ACDBE participation in joint ventures

5.1 What is needed in terms of monitoring the joint venture?

It is the responsibility of the airport to monitor the operation of the joint venture to ensure that the joint venture is operating as intended and approved, and that the ACDBE participant's participation is real and meaningful. Should the airport find that this is not the case, the airport could find the joint venture in default of its contract. In addition, if the ACDBE is found to have

relinquished an element of control in the joint venture, the airport should immediately review the firm's certification eligibility or refer the matter to the certifying authority, and where appropriate, initiate decertification of the firm in accordance with § 26.87. The airport should develop a formal monitoring program that includes, at a minimum, the following elements:

- Annual verification of the status of the ACDBEs certification eligibility
- Periodic (not less than annual) review of the managing entity's meeting minutes and reports
- On-site visits to the operation
- Periodic interviews with the joint venture participants, managers, and employees
- Review of any documentation, including financial reports and agreements, necessary to ensure compliance with the agreement

5.2 What is included in the airport's agreement with the joint venture?

In addition to the items specifically stated in 49 CFR § 23.9, the airport should include in its agreement with the joint venture firm a requirement for regular or periodic submission of reports and other forms of communications between the non-ACDBE participant and the ACDBE participant. The agreement should require the joint venture to submit agendas, minutes, and attendance rosters from the managing entity's meetings; financial reports; and other information deemed appropriate by the airport. The agreement with the joint venture should also provide for sanctions for failing to operate in accordance with the joint venture agreement. The sanctions should be similar to those imposed for other defaults under the contract.

5.3 What annual updates and changes are required?

There are no annual updates required for joint venture agreements. However, changes to the agreement should be submitted for review prior to implementation. Also, once certified, the ACDBE participant in the joint venture must comply with 49 CFR Part 23, including but not limited to § 23.31. These requirements include annually submitting an affidavit or declaration that there have been no changes in the ACDBE participant's circumstances affecting its certification eligibility. At any time there is a change in circumstances affecting the ACDBE participant's ability to meet size, disadvantaged status, ownership or control requirements, or a

material change in the information provided in the application, the ACDBE participant must submit this information to the airport. Similarly, proposed material changes in the joint venture agreement, including management responsibilities among the participants, ownership, or control, should be submitted to the airport. In such cases, the airport should review and respond to the proposed changes within a reasonable period of time.

Section 6 – Additional information

6.1 Can a joint venture be certified as an ACDBE?

No. Joint venture entities, themselves, are not certified as ACDBEs. In order to count towards ACDBE participation, one or more of the **joint venture participants** must be a certified ACDBE. Even if the joint venture is more than 51% owned by an ACDBE firm, it is not certified as an ACDBE because, by definition, a joint venture is an association of firms, not individuals. The regulation states as follows:

> *§ 26.73(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm -- even a DBE firm -- cannot be an eligible DBE.*

Therefore, a joint venture cannot be certified as an ACDBE.

With regard to certification, the regulation provides for an exception to the above as follows:

> *§ 26.73(e)(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.*

However, this would not apply to joint ventures since the ACDBE participant in a joint venture must be certified in order to count towards ACDBE participation in a joint venture and holding companies are not certified; only the subsidiary can be certified. Therefore, a holding company cannot be an ACDBE participant in a joint venture.

6.2 Does the ACDBE participant in a joint venture have to be certified in a specific type of work?

Yes. ACDBE firms must be certified in the type of work to be undertaken by the joint venture (e.g., an ACDBE participant in a retail joint venture must be a certified as an ACDBE retail operator). An ACDBE firm is required to share in the management and control of the operation. In order to do so, the ACDBE should be capable of participating at this level. In addition, the ACDBE should have involvement in the broader areas of the operation which would enable them to gain operating experience for the purpose of competing independently for operations in the future. The implementation of joint ventures which promote participation in the provision of services not related to the overall management of the operation does not support the objectives of the program. Certified firms may request that a trade be added to their certification.

49 CFR Part 23 states as follows:

> *§ 23.31(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§ 26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, § 26.81).*

49 CFR Part 26 states as follows:

> *§ 26.71(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.*

In an effort to ensure that appropriate time is allowed for firms to be certified as ACDBEs, airports should set their deadlines and requirements keeping this in mind. Non-ACDBE joint venture participants and potential ACDBE joint venture participants should be cautious about investing capital in a project before the appropriate certification is issued by the certifying agency and the joint venture agreement is approved for counting by the airport. In the event that the potential ACDBE participant is not certified or the joint venture is not approved for counting,

and as a result, the joint venture is not executed, the return of capital is a business/contract issue between the parties and not subject to reimbursement by or assistance from the airport.

A stated overarching objective of the DBE and ACDBE programs is to ensure that only firms that fully meet the eligibility standards are permitted to participate in the program (see § 23.1 and § 26.1). Airports should be cautious when reviewing joint venture agreements to ensure that the ACDBE's participation in the joint venture does not result in the sacrifice of independence or loss of control of the ACDBE. If the ACDBE loses its independence or control over its business as a result of the joint venture, the ACDBEs certification eligibility is compromised. Any suspected loss of control or independence should be referred to the certifying agency, which shall institute decertification proceedings, if appropriate, consistent with § 26.87.

6.3 Should the joint venture agreement provide for the dissolution of the joint venture in the event that the ACDBE participant ceases to be an eligible ACDBE?

No. 49 CFR Part 23 states as follows:

> *§ 23.39 (e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible ACDBE, you may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g. , in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).*

Given the fact that the participation of the ACDBE would continue to count in the above circumstance, the agreement should not permit the dissolution of the joint venture agreement in this event. However, if the ACDBE is decertified for reasons which prevent the counting of participation in the joint venture, such as sale of the majority interest in the company or fraud, it is reasonable to allow a provision for dissolution or the buyout of the ACDBE participant. Resolution of this issue would be handled between the parties.

6.4 Is the airport subject to enforcement of interpretations presented in this guidance for existing joint ventures? Is the guidance retroactive?

Yes, the airport is subject to enforcement of interpretations presented in this guidance. This guidance seeks to clarify many of the issues surrounding ACDBE participation in airport concession joint venture agreements. Airports are instructed to review existing concession joint ventures for which ACDBE participation is counted towards goals to ensure compliance with this guidance. With regard to credit for ACDBE participation, the FAA will not penalize airports for past misinterpretations, nor will adjustments to past accomplishment reports be required. However, future counting of ACDBE participation in existing joint venture agreements should be determined in light of this guidance. Future annual concession accomplishment reports should reflect the appropriate credit. This will require a re-evaluation of joint venture agreements currently operating to determine the appropriate level of ACDBE participation which should be counted. If there is a small difference, airports are encouraged to pursue an increase in the ACDBE role. If there is a significant difference as a result of this re-evaluation, airports are encouraged to look for other sources or methods for increasing participation (e.g., new opportunities and/or ACDBE goods and services). Airports are advised to evaluate their entire program and find avenues and opportunities for achieving their overall goal. This may or may not include the renegotiation of the ACDBE role in joint venture agreements already in place. Past mis-counting of ACDBE participation in joint venture agreements, except in cases of intentional misrepresentation, should not be a reason for an airport to find the joint venture in default of the concessions agreement or lease, nor should it be a reason to for the non-ACDBE to find the ACDBE in default of the joint venture agreement.

6.5 What enforcement mechanisms are available to the Department in the event of noncompliance or misconduct?

The same compliance and enforcement and compliance mechanisms apply under Part 23 as under Part 26. Under 49 CFR § 26.105, airports are subject to sanctions under FAA statutes and regulations if they fail to comply with DBE regulations. Under 49 CFR § 26.107, businesses working in the DBE or ACDBE program who engage in misconduct may be subject to suspension or debarment, enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, or criminal prosecution. The Department of Transportation's Office of Inspector General (OIG) makes investigating and prosecuting DBE fraud a priority. The OIG, working with U.S. attorneys' offices, has helped to create successful criminal prosecutions for fraudulent conduct in the DBE and ACDBE programs. Anyone who becomes aware of fraud, waste, or abuse in these programs should inform OIG as well as FAA officials.

Attachment 1

Model ACDBE Joint Venture Information
(to be submitted with joint venture agreement for review)

The Department recommends that airport sponsors request the following information from participants in prospective ACDBE joint ventures. The Department believes that this information will assist sponsors in evaluating joint venture proposals. The following form is a model that sponsors may wish to use in obtaining this information, but use of the model form is not mandatory.

****

1. Name of Joint Venture:

2. Name, address and phone number of joint venture contact person:

3. Firms participating in joint venture (use additional pages if necessary):

   Name of firm:
   Address:
   Phone Number:
   Contact name/phone number:
   % ownership: %
   ACDBE: ☐yes ☐ no Certifying agency:
   Date of Certification:
   Type of work for which certification was granted:

   Name of firm:
   Address:
   Phone Number:
   Contact name/phone number:
   % ownership: %
   ACDBE: ☐yes ☐ no Certifying agency:
   Date of Certification:
   Type of work for which certification was granted:

4. ACDBE initial capital contribution: $ %

5. Future capital contributions (explain requirements):

6. Source of funds for the ACDBE capital contribution:

7. Describe the portion of the work or elements of the business controlled by the ACDBE:

8. Describe the portion of the work or elements of the business controlled by the non-ACDBE:

9. Describe the ACDBE's involvement in the overall management of the joint venture (e.g., participation on a management committee or managing board, voting rights, etc.)

10. Describe the ACDBE's share in the profits of the joint venture:

11. Describe the ACDBE's share in the risks of the joint venture:

12. Describe the roles and responsibilities of each joint venture participant with respect to managing the joint venture (use additional sheets if necessary):

    a. ACDBE joint venture participant:
    b. Non- ACDBE joint venture participant:

13. Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):

    a. ACDBE joint venture participant:
    b. Non- ACDBE joint venture participant:

14. Which firm will be responsible for accounting functions relative to the joint venture's business?

15. Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties?

16. Please provide information relating to the approximate **number** of management, administrative, support and non-management employees that will be required to operate the business and indicate whether they will be employees of the ACDBE, non-ACDBE or joint venture.

	Non-ACDBE Firm	ACDBE Firm	Joint Venture
Management			
Administrative			
Support			
Hourly Employees			

17. Please provide the name of the person who will be responsible for hiring employees for the joint venture. Who will they be employed by?

18. Are any of the proposed joint venture employees currently employees of any of the joint venture partners? ☐ yes ☐ no
    If yes, please list the number and positions and indicate which firm currently employs the individual(s).

19. Attach a copy of the proposed joint venture agreement, promissory note or loan agreement (if applicable), and any and all written agreements between the joint venture partners.

20. List all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved.

Attachment 2

Samples
Joint Venture - ACDBE Portion of the Work

Each joint venture agreement submitted for ACDBE credit must be reviewed and analyzed in order to determine the amount of ACDBE credit to be given, if any, for the ACDBE participation in the business. It is critical that the reviewer gain a clear understanding of the ACDBE role in relation to the entire operation of the total business. Once that is accomplished and it has been determined that ACDBE participation will be counted toward the ACDBE goal, the business must be monitored to ensure that it is operating as represented in the joint venture agreement and as approved for counting. The following will provide some examples of possible ways to analyze the value of the portion of the work assigned to the ACDBE. These examples are not meant to provide a comprehensive guide for establishing values since each business and each agreement may have unique characteristics. Rather, these examples are provided to establish potential thought processes for analyzing participation.

Example 1

The ACDBE ownership of a retail joint venture is stated as 20%. The ACDBE shares in the capital contribution, control, overall management (through participation on the management committee), risks, and profits of the joint venture commensurate with its stated ownership interest. The ACDBE assigned role in the business includes "participation in" and "assistance with" various activities which routinely occur in the day-to-day operation of the business. These roles may be valued as part of the overall management of the business, but should not be valued in terms of performing a **distinct, clearly defined portion of the work,** since the extent of this participation is unknown and is neither distinct nor clearly-defined.

Now, let us assume that the ACDBE partner is also assigned the role of finding DBE vendors to be utilized by the business and recruiting minority employees for the business.

The major day-to-day activities performed by the business are determined to be approximately:

Operations (1/3 of the business effort)	Product (1/3 of the business effort)	Administration/ Corp Support (1/3 of the business effort)
Human Resources (Supervise on-site operations staff, hire/fire staff, scheduling, training, etc.)	Purchasing	Accounting/Payroll/ Taxes
Loss Prevention	Inventory Management	Legal Services
Safety/Security	Pricing	Business Development/ Landlord Relations
Cash Management (check-out, banking)	Décor/Display	Human Resources/ Training Programs
Day-to-Day Landlord Relations	Product Assortment (retail)/Menu Development (food)	Policies/Procedures
Maintenance/Cleaning	Negotiation of Special Programs, Rebates, Display Allowances, etc.	Other Corporate Support
Budgeting/Monitoring Performance	Budgeting/Monitoring Performance	Budgeting/Monitoring Performance

The ACDBE roles of recruiting minority employees and finding DBE vendors are activities included under broader categories - Human Resources (under the "Operations" category of the business) and Purchasing (under the "Product" category of the business). There are numerous daily activities involved in the subcategories of "Human Resources" and "Purchasing." All of "Operations" is about 1/3 of the business effort in this example and all of "Product" is also about 1/3 of the business effort. Human Resources is only one task within the "Operations" category and purchasing is only one task within the "Product"

category. Recruiting minority employees and finding minority vendors are small tasks within the broader subcategories. In addition, it is difficult, if not impossible, to quantify the value of these tasks in terms of their impact on gross receipts. In fact, it is likely that this portion of the work is negligible since neither of these activities actually involves management of a function or control of a result (i.e., DBE vendors may be located, however the level of purchasing to be accomplished from these vendors, their product placement within the facility, prices to be paid for merchandise, etc. are outside of the control of the ACDBE; minority employees may be recruited, however their hiring, training, management and retention are outside of the ACDBE's control). In this instance, an airport would not have sufficient data to approve the joint venture for counting towards ACDBE participation because the portion of the work to be performed by the ACDBE is very difficult to quantify. In this instance, the airport should request that the joint venture participants clarify the role of the ACDBE in order to understand the nature and extent of the ACDBE's role.

Conversely, assume that all other factors are the same as described above (i.e., the ownership is stated as 20% and capital contributions, management, etc, are commensurate), except that the ACDBE independently performs all functions in the "Operations" category. In this case, it could reasonably be determined that the ACDBE performs at least 33% of the work for its 20% ownership share. However, because the definition states that the ACDBE shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest, a joint venture where the ACDBE's contributions are not proportionate do not meet the definition of a joint venture under the regulation. In this instance, the participation could be counted at 20%, not a greater percentage which might be indicated by the portion of the work performed by the ACDBE.

Example 2

In this example, a joint venture between a non-ACDBE and an ACDBE operates a news/gift concession at an airport. The ACDBE is reported to have a 15% share in the ownership of the joint venture. The ACDBE has contributed capital from its own funds in proportion to its stated ownership. The ACDBE participates on a management committee and there are a number of business decisions requiring unanimous consent. The ACDBE's share of the profits and risks of the joint venture are proportionate to its stated ownership interest. There are management fees paid to the non-ACDBE partner, however, they are calculated as a reimbursement of costs incurred to perform support functions and are not a profit center. Up to this point, the joint venture agreement appears to comply with the regulation and this guidance. The ACDBE is assigned the following activities:

1) Supervise the Manager in developing the annual budget of the Joint Venture
2) Evaluate day-to-day operations and make recommendations to improve efficiencies
3) Sourcing and recruitment of personnel
4) Supervise employee training and development
5) Develop marketing and promotional concepts
6) Assist and advise regarding the needs of the local community
7) Identify potential DBE vendors
8) Monitor store compliance with other income programs

Given the description of the various activities above, it is not possible to ascertain exactly what portion of the work will be performed by the ACDBE. In order to assign any credit for the ACDBE role, additional information is needed for each of the assigned roles as follows:

1) Supervise the Manager in developing the annual budget of the Joint Venture

   Who does the Manager report to for other functions? What control does the ACDBE have over the budget? While budgeting is important, it is only an annual budget and the description does not really indicate a very active role. How much time will be spent on this? Exactly what will the ACDBE do?

2) Evaluate day-to-day operations and make recommendations to improve efficiencies

Without further explanation this appears to be is a relatively meaningless role. What happens to the evaluations and recommendations once they are made? How often does this occur? Who actually does it? This seems to apply more to the overall management of the business. There is no supporting evidence to indicate that it is a distinct, clearly defined role.

3) Sourcing and recruitment of personnel

What exactly does this activity entail? Is the ACDBE actually responsible for hiring? How often does this occur and what is the level of effort expended to accomplish this? Does on-site staff participate? If so, to what extent?

4) Supervise employee training and development

Who will the ACDBE supervise? What level of effort is required for this activity? How much time is involved? Describe the nature of the training and development to be supervised.

5) Develop marketing and promotional concepts

Is the ACDBE solely responsible for marketing? What level of effort is required? How much time is involved? What is the budget for this? Are employees involved? If so, to whom do they report?

6) Assist and advise regarding the needs of the local community

An "assist" role does not appear to represent a "distinct, clearly defined" portion of the work. What is meant by the "needs of the local community?" Describe what the needs of the community might be. This seems to be a minor role in the overall scope of the operations.

7) Identify potential DBE vendors

What happens after the vendors are identified? Who has control over determining if they are used? Who negotiates with them and determines if goods or services will be purchased? What does this represent in dollars compared to the total purchases made?

8) Monitor store compliance with other income programs

This is, again, very unclear. What happens after monitoring? Who determines what compliance is necessary? What happens in the event of non-compliance? How often

is this monitoring done? How long does it take? How is it accomplished in other operations? How important is this in the scope of the operation?

As you can see, before any credit is assigned for ACDBE participation, there are a number of questions to be answered and issues to be resolved. Until the ACDBE is assigned a "distinct, clearly defined" portion of the work to perform, no credit can be given.

Example 3

A joint venture between a non-ACDBE and an ACDBE operates a food/beverage concession consisting of 8 locations at an airport. The ACDBE is reported to have a 35% share in the ownership of the joint venture. The ACDBE has contributed its proportionate share of the capital obtained through a combination of its own funds (15% of the required investment) and a loan from the non-ACDBE (85% of the required investment). A loan agreement has not been supplied. The ACDBE participates on a management committee and certain business decisions require unanimous consent. The ACDBE shares in the profits and risks of the joint venture in proportion to its stated ownership interest. There are no management fees paid to either party. The following is the description of the ACDBE role in the operation of the business as supplied in the joint venture agreement:

1) [ACDBE] company will have primary responsibility for the operation of gourmet coffee locations in Terminals 1, 2 and 3
2) [ACDBE] company will employ staff to manage and operate said locations in accordance with the lease agreement and direction provided by the Management Committee
3) [ACDBE] company will attend and participate in weekly manager's meetings
4) [ACDBE] company will attend and participate in monthly meetings of the Management Committee

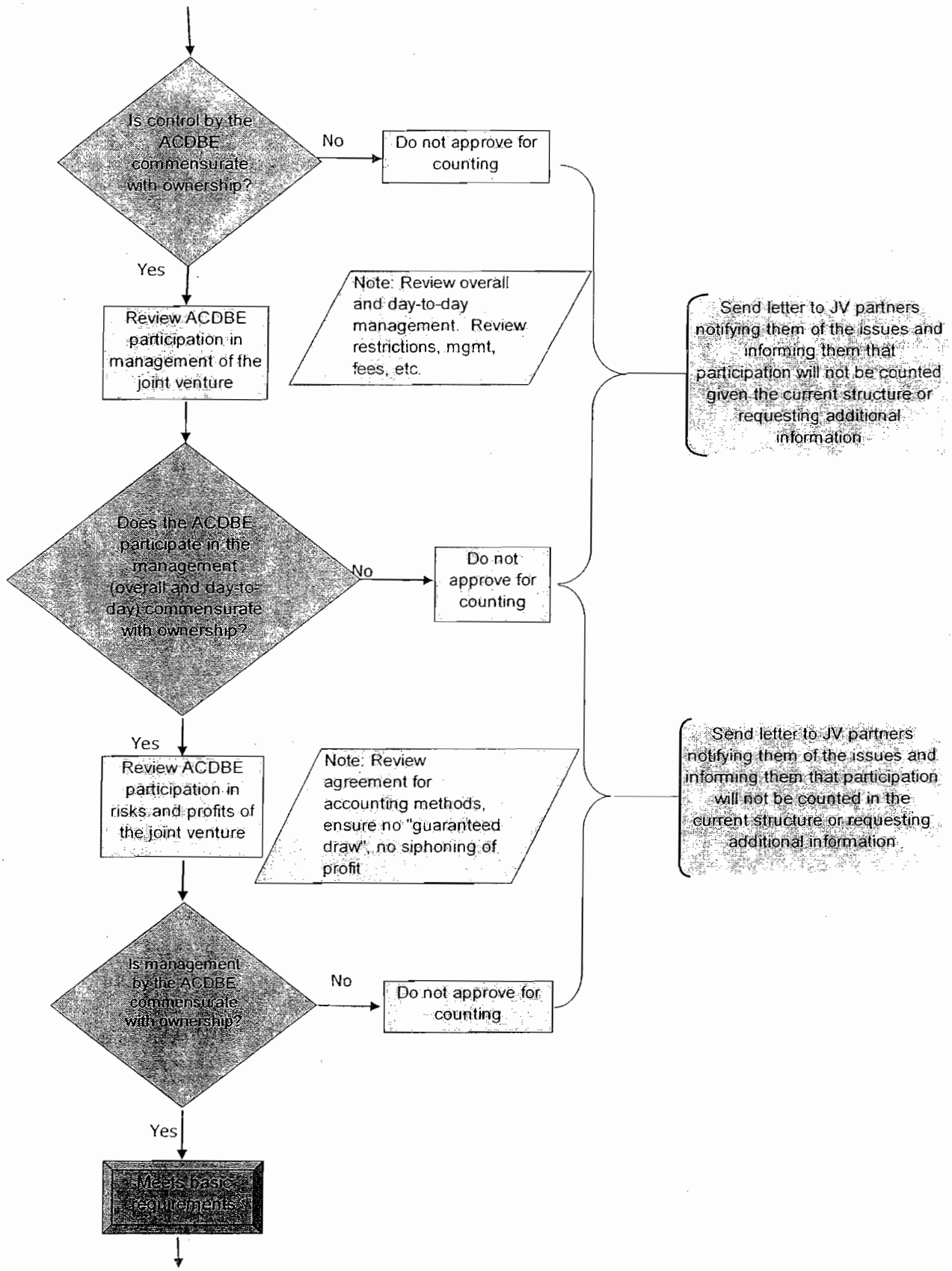
Given the above situation, the airport should request the following information in order to assess the credit to be counted towards ACDBE participation for this joint venture:

1) A copy of the proposed loan agreement in order to ensure that the loan provides information detailed in Section 3.3 of the joint venture guidance

2) A clear explanation of what "primary responsibility" actually means

3) An estimate of gross receipts to be earned by the ACDBE operated locations compared to total gross receipts

While there are questions to be answered in order to determine the credit to be counted for this joint venture, the fact that the ACDBE firm will be assigned specific units to operate will provide a more objective basis for establishing credit.


Is control by the ACDBE commensurate with ownership?
No
Do not approve for counting
Yes
Review ACDBE participation in management of the joint venture
Note: Review overall and day-to-day management. Review restrictions, mgmt, fees, etc.
Send letter to JV partners notifying them of the issues and informing them that participation will not be counted given the current structure or requesting additional information
Does the ACDBE participate in the management (overall and day-to-day) commensurate with ownership?
No
Do not approve for counting
Yes
Review ACDBE participation in risks and profits of the joint venture
Note: Review agreement for accounting methods, ensure no "guaranteed draw", no siphoning of profit
Send letter to JV partners notifying them of the issues and informing them that participation will not be counted in the current structure or requesting additional information
Is management by the ACDBE commensurate with ownership?
No
Do not approve for counting
Yes
Meets basic requirements

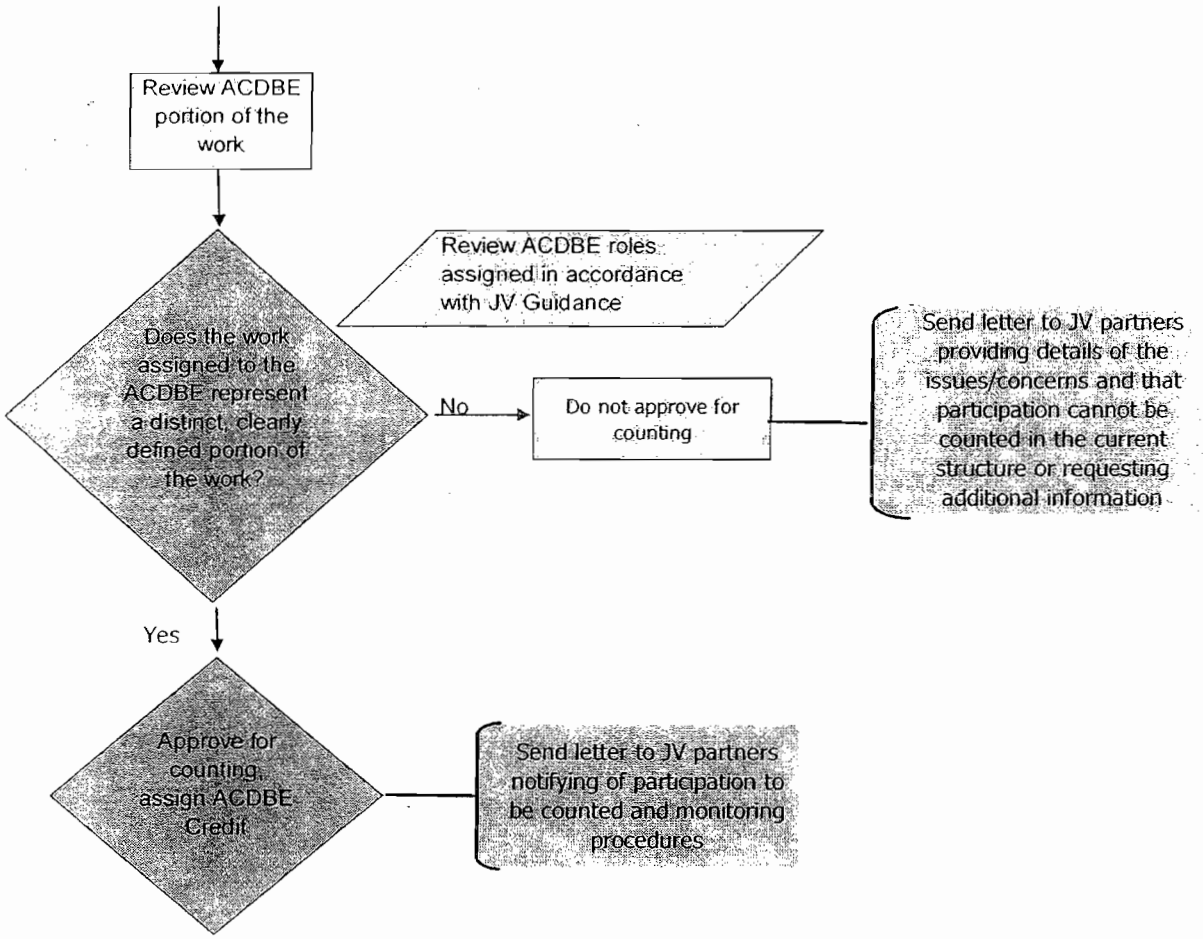

Review ACDBE portion of the work
Review ACDBE roles assigned in accordance with JV Guidance
Does the work assigned to the ACDBE represent a distinct, clearly defined portion of the work?
No
Do not approve for counting
Send letter to JV partners providing details of the issues/concerns and that participation cannot be counted in the current structure or requesting additional information
Yes
Approve for counting, assign ACDBE Credit
Send letter to JV partners notifying of participation to be counted and monitoring procedures

EXHIBIT H

EXECUTED COPIES OF THE AFFIDAVITS AND CONDITION OF AWARD CERTIFICATES

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION VENDOR AFFIRMATION AND COLLUSION AFFIDAVITS

Affirmation of Vendor Affidavits

In accordance with Ordinance 07-143 amending Section 2-8.1 of the Code of Miami-Dade County, effective June 1, 2008, vendors are required to complete a *new* Vendor Registration Package, including a Uniform Affidavit Packet (Vendor Affidavits Form), before being awarded a new contract. The undersigned affirms that the Vendor Affidavits Form submitted with the Vendor Registration Package is current, complete and accurate for each affidavit listed below.

Contract No. **MDAD-04-09** **Federal Employer Identification No. (FEIN):** **52-1242334**

Contract Title: **Retail Concession Program 2009**

Affidavits and Legislation/Governing Body

1.	***Miami-Dade County Ownership Disclosure*** *Sec. 2-8.1 of the County Code*	6.	***Miami-Dade County Vendor Obligation to County*** *Sec. 2-8.1 of the County Code*
2.	***Miami-Dade County Employment Disclosure*** *County Ordinance No. 90-133, amending Section 2.8-1(d)(2) of the County Code*	7.	***Miami-Dade County Code of Business Ethics*** *Article 1, Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and County Ordinance No. 00-1 amending Section 2-11.1 (c) of the County Code*
3.	***Miami-Dade County Employment Drug-free Workplace Certification*** *Sec. 2-8.1.2(b) of the County Code*	8.	***Miami-Dade County Family Leave*** *Article V of Chapter 11 of the County Code*
4.	***Miami-Dade County Disability Non-Discrimination*** *Article 1, Section 2.8.1.6 Resolution R182-00 amending R-385-95*	9.	***Miami-Dade County Living Wage*** *Sec. 2-8.9 of the County Code* **(If applicable)**
5.	***Miami-Dade County Debarment Disclosure*** *Section 10-38 of the County Code*	10.	***Miami-Dade County Domestic Leave and Reporting*** *Article 8, Section 11A-60, 11A-67 of the County Code*

COLLUSION AFFIDAVIT

(Code of Miami-Dade County Section 2-8.1.1 and 10-33.1) (Ordinance No. 08-113)

I, being duly first sworn, hereby state that the bidder of this contract:

☒ is not related to any of the other parties bidding in the competitive solicitation, and that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer.

OR

☐ is related to the following parties who bid in the solicitation which are identified and listed below:

_____ _____

_____ _____

_____ _____

Note: Any person or entity that fails to submit this executed affidavit shall be ineligible for contract award. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

Stephen E. Douglas
Printed Name of Affiant

Vice President
Printed Title of Affiant

Stephen E. Douglas
Signature of Affiant

Host International, Inc.
Name of Firm

9/24/09
Date

6905 Rockledge Drive, Bethesda MD 20817
Address of Firm (include State, Zip Code)

Notary Public Information

Notary Public – State of Maryland **County of** Montgomery

Subscribed and sworn to (or affirmed) before me this 24th **day of,** September **20**09

by Stephen E. Douglas **He or she is personally known to me** ☒ **or has produced I.D.** ☐

Type of identification produced _____

Signature of Notary Public **Serial Number** **Print or Stamp of Notary Public**

5/13/13
Expiration Date

Notary Public Seal

PHILIP FLETCHER
Notary Public-Maryland
Montgomery County
My Commission Expires
May 13, 2013

PHILIP FLETCHER NOTARY PUBLIC MONTGOMERY CO. MD

SUBCONTRACTOR/SUPPLIER LISTING
PURSUANT TO SECTION 10-34 OF THE CODE

Firm Name of Prime Entity/Respondent: **Host International, Inc.** Project No. **RFP No. 04-09**

Project Name: **Retail Concession Program 2009**

Business Name and Address of First tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	Subcontractor/ Subconsultant Dollar Amount	(Principal Owner) Gender Race	
Tinsley Family Concession **353 6th St. SW**	**George Tinsley, Sr.**	**Concession Operations-JV Partner**		**Male**	**Black**
Winter Haven, FL. 33880					
Master Concessionair, LLC	**Peter Amaro, Jr.**	**Concession Operations-Sublease**		**Male**	**Hispanic**
Miami International Airport **Concourse F, RM F-3472, 3rd Floor**					
Business Name and Address of Direct Supplier *	**Principal Owner** *	**Supplies/Materials/Services to be Provided by Supplier** *	**Supplier Dollar Amount**	**(Principal Owner) Gender Race**	

I certify that the certifications contained in this Subcontractor/Supplier Listing are to the best of my knowledge true and accurate

Prime Entity/Respondent Signature	Print Name	Print Title	Date
Stephen E. Douglas	**Stephen E. Douglas**	**Vice President**	9/24/09

(Duplicate if additional space is needed)

*** No decision has been made regarding Contractors/Subcontractors and Material Suppliers, however, we can supplement this disclosure when Contractors/Subcontractors and Material Suppliers are identified.**

153

SUBCONTRACTING POLICIES STATEMENT PURSUANT TO SECTION 2-8.8(4) OF THE CODE

(Insert Here)

When awarding major construction contracts it is Host International, Inc.'s policy to solicit competitive bids. Bids are solicited from a variety of contract/ supplies to include local businesses. Project specific information is shared with the potential contractors/vendors at the start of the bid process. Communication channels are established so proposal requirements can be discussed, and contracts are awarded based on full consideration of the proposals received.

PROOF OF AUTHORIZATION TO DO BUSINESS

(Attach a copy of the Certificate of Status or Authorization per 607.0128 F.S., and certificate evidencing compliance with the Florida Fictitious Name Statute per 865.09 F.S., if applicable.)

(Insert Here)

State of Florida

Department of State

I certify from the records of this office that HOST INTERNATIONAL, INC. is a corporation organized under the laws of Delaware, authorized to transact business in the State of Florida, qualified on February 26, 1982.

The document number of this corporation is 852009.

I further certify that said corporation has paid all fees due this office through December 31, 2009, that its most recent annual report was filed on March 19, 2009, and its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Tenth day of September, 2009

Secretary of State

Authentication ID: **900160566589-091009-852009**

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.
https://efile.sunbiz.org/certauthver.html