

# Memorandum



**Date:** April 10, 2018

**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Agenda Item No. 8(A)(1)

**Subject:** Resolution Approving Second Amendment to Lease and Concession Agreement with Bijoux Airport Commerce, LLC for North Terminal Concessions Program at Miami International Airport

## **Recommendation**

It is recommended that the Board of County Commissioners (Board) approve the Second Amendment to the Lease and Concession Agreement with Bijoux Airport Commerce, LLC, d/b/a Bijoux Nouveau Inc. (Bijoux) at Miami International Airport (MIA). This amendment standardizes the methodology for recalculation of the Minimum Annual Guarantee (MAG) to that used in similar lease agreements at MIA, allows for the adjustment of payments made by Bijoux retroactively to contract assignment approval of September 11, 2013, and stipulates Bijoux's MAG obligations.

## **Scope**

MIA is located primarily within District 6, which is represented by Commissioner Rebeca Sosa; however, the impact of this item is countywide as MIA is a regional asset.

## **Fiscal Impact/Funding Source**

Bijoux currently pays the Miami-Dade Aviation Department (MDAD) a MAG of \$449,968, with an annual recalculation based on the enplaned passengers methodology. Upon approval of this Second Amendment, a MAG of \$308,257 (as of November 1, 2017), will be due under the Consumer Price Index (CPI) methodology. The recalculated MAG will require retroactive adjustments to September 11, 2013. Under the CPI methodology, the effective MAG as of September 11, 2013, is \$289,586.10. Due to variations in MAG billings, some months MDAD billed Bijoux more under the enplaned passenger calculation and others less when compared to the CPI. The net effect when considering the adjustments will result in a MAG credit due to Bijoux of approximately \$98,000 (through December 31, 2017).

## **Track Record/Monitor**

Bijoux is current in all payments to the County. MDAD's Chief of Aviation Business & Revenue Development Adrian Songer monitors this contract.

## **Background**

Pursuant to Resolution No. R-736-05 adopted June 1, 2005, the Board authorized a Non-Exclusive North/South Retail Concessions Program Lease and Concession Agreement to Miami International Pharmacy (MIP) d/b/a Terminal Rexall Pharmacy. MIP assigned that Agreement to Bijoux by letter dated July 16, 2013, and MDAD approved it on September 11, 2013.

Due to construction impacts and location availability beyond the control of the concessionaire, the First Amendment to the Lease Agreement changed the lease effective date to September 14, 2014, pursuant to Resolution No. R-96-14, adopted February 4, 2014.

As discovered with a few other Concession Agreements, MDAD has also realized that Bijoux had been negatively impacted by the MAG recalculation based on enplaned passengers and reached an agreement with Bijoux to pursue this Second Amendment, changing the methodology for calculation of the MAG from enplaned passenger to the CPI to provide parity with other MDAD concession agreements.

It is therefore recommended that the Board approve this Second Amendment.

**PROJECT NO.:** RFP No. MDAD-01-04, Package 4

**PROJECT LOCATION:** Miami International Airport, North Terminal Locations  
Post Security, Gate D22  
Pre Security, Door 5

**COMPANY NAME:** Bijoux Airport Commerce, LLC d/b/a Bijoux Nouveau, Inc.

**TERM OF AGREEMENT:** Nine years

**OPTIONS TO RENEW:** Two one-year terms, at the sole discretion of MDAD

**RECOMMENDED MODIFICATION:** Change the annual MAG recalculation to CPI methodology retroactively to contract assignment approval of September 11, 2013, and add standard termination language.

**CONTRACT MEASURES:** No goal established. This retail package was established for Small Businesses

**COMPANY PRINCIPALS:** Robyn Mohr, President

**GENDER, ETHNICITY AND OWNERSHIP BREAKDOWN:** White Female

**COMPANY LOCATION:** 6950 NW 77<sup>th</sup> Street  
Miami, Florida 33166

**YEARS IN BUSINESS:** 47

**PREVIOUS AGREEMENTS**

2

Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners  
Page 3

**WITH THE COUNTY IN LAST  
FIVE YEARS:**

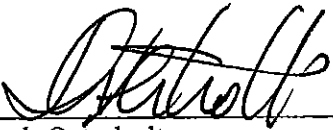
None

**FUNDING SOURCE:**

This is a revenue-generating agreement

**USING AGENCY:**

Miami-Dade Aviation Department



Jack Osterholt  
Deputy Mayor

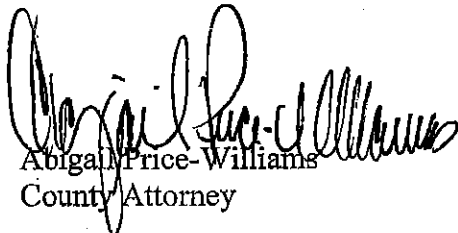


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** April 10, 2018

**FROM:**   
Abigail Price-Williams  
County Attorney

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

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor'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)  
4-10-18

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING THE SECOND AMENDMENT TO THE NON-EXCLUSIVE LEASE AND CONCESSION AGREEMENT FOR NORTH TERMINAL CONCESSIONS PROGRAM AT MIAMI INTERNATIONAL AIRPORT WITH BIJOUX AIRPORT COMMERCE, LLC, STANDARDIZING THE CONTRACT METHODOLOGY FOR RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE TO THAT UTILIZED IN SIMILAR LEASE AGREEMENTS WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2013, AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS THEREIN; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AMENDMENTS TO LEASE AND CONCESSION AGREEMENTS CONVERTING ESCALATION CLAUSES TO CONSUMER PRICE INDEXING WITHOUT NEED FOR PRIOR APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, 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:

**Section 1.** Approves the Second Amendment to the Non-Exclusive Lease and Concession Agreement for North Terminal Concessions Program at Miami International Airport with Bijoux Airport Commerce, LLC, changing the contract methodology for recalculation of the Minimum Annual Guarantee to an annual Consumer Price Index (CPI) calculation as used in other standard concessions, to be effective as of September 11, 2013, and authorizes the County Mayor or the County Mayor's designee to exercise all provisions therein.

**Section 2.** Authorizes the County Mayor or County Mayor's Designee, with respect to any Lease and Concession Agreements which currently provide for escalation of Minimum Annual

Guarantee's based on any factor other the Consumer Price Index, to amend such contracts to provide for escalation by the applicable Consumer Price Index, retroactive to a date as may be agreeable between the County and the Concessionaire. Such Amendments shall not require the subsequent approval of this Board.

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:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier Souto
Xavier L. Suarez	


The Chairperson thereupon declared the resolution duly passed and adopted this 10<sup>th</sup> day of April, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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

**SECOND AMENDMENT TO  
LEASE AND CONCESSION AGREEMENT  
FOR NORTH/SOUTH RETAIL CONCESSIONS CONTRACT  
BETWEEN MIAMI-DADE COUNTY, FLORIDA  
AND BIJOUX AIRPORT COMMERCE, LLC**

THIS SECOND AMENDMENT to the Lease and Concession Agreement, North Retail Concessions Program (the "Second Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Miami-Dade County acting by and through its Aviation Department ("County" or "MDAD") and Bijoux Airport Commerce, LLC ("Concessionaire").

WHEREAS, by Resolution No. R-736-05 passed and adopted June 21, 2005, the Board of County Commissioners of Miami-Dade County, Florida authorized a Non-Exclusive North/South Retail Concessions Program Lease and Concession Agreement at Miami International Airport.

WHEREAS, this Lease and Concession Agreement awarded by Resolution No. R-736-05 to Miami International Pharmacy, ("MIAP") D/B/A Terminal Rexall Pharmacy was assigned to Bijoux Airport Commerce, LLC by letter dated July 16, 2013 and such assignment was approved by the Aviation Department on September 11, 2013, as authorized by Sub-Article 9.01 "No Assignment" of the Lease and Concession Agreement.

WHEREAS, the Aviation Department desires to standardize the contract term methodology for Recalculation of the Minimum Annual Guarantee (MAG) in this and all other similar Concession lease agreements.

WHEREAS, the Aviation Department recognizes the need to clarify interpretation in the methodology used for recalculation of the Minimum Guarantee and to standardize the application of the CPI methodology for all Concession lease agreements.

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

1. Sub-Article 3.03 "Recalculation of the Minimum Guarantee" is replaced in its entirety as follows:

**3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE:** Effective as of September 11, 2013, the Minimum Annual Guarantee is set at \$289,586.10. The Minimum Annual Guarantee shall be recalculated on November 1, 2013 and annually thereafter, effective November 1<sup>st</sup> of each year, based on the Consumer Price Index (CPI) methodology. An appropriate adjustment will be made retroactive to September 11, 2013 to reflect the change in the CPI for all urban consumers in the South Region Average: All items, for the published, preceding twelve-month period.

2. The above mentioned adjustment will be applied to the Concessionaire's Lease Agreement and shall be deemed to fully satisfy and discharge Concessionaire's MAG and rent obligations since contract inception of July 30, 2009.

*JK*  
1/4/18



3. **Sub-Article 12.11 "Termination for Convenience"** is added to the Agreement as follows:

**12.11 TERMINATION FOR CONVENIENCE:** The Aviation Department, in addition to the rights and options to terminate for cause, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement upon thirty (30) days written notice at its sole option at any time for convenience, without cause, when in its sole discretion it deems such termination is in the best interest of the Department. In such circumstance, the County will be responsible for paying the unamortized costs of any improvements constructed by Concessionaire, but the County shall not be responsible for any other costs or damages, including but not limited to lost profits, loss of opportunity, borrowing costs, carrying costs, damage to reputation, loss of goodwill, or loss of income. Amortization shall be calculated as specified in **Sub-Article 4.10 "Amortization Schedule"** herein, with the date of such amortization beginning upon the beneficial occupancy date of the location or locations, which date may be prior to the Lease Effective Date.

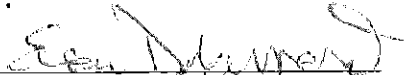
4. Except for the aforementioned modifications, and in all other respects, the Agreement, including the provisions stipulated in the Second Amendment, shall remain in full force and effect in accordance with the terms and conditions specified therein. No Exhibit to the Agreement is affected by this Second Amendment.
5. In consideration of the approval and full execution of this Second Amendment to the Lease and Concession Agreement, the Concessionaire (the "Releasing Party") does hereby release and forever discharge the County and all of its officers and employees (collectively, the "Released Party") from any and all known actions, claims, causes of action, or debts (collectively, "Claims") which the Releasing Party may or could assert arising out of or related to (i) the Agreement, (ii) the County's use of the terminal (iii) the conduct of the County's concession program, including but not limited to the procurement and marketing of concessions, and (iv) the issues or matters set forth in this Second Amendment. Notwithstanding the preceding, this release shall not apply to Claims which (x) accrue after the execution of this Second Amendment, (y) arise in connection with a breach of this Second Amendment, or (z) cannot be released by law. Additionally, nothing contained herein shall waive or release any claims the County may have regarding payments required pursuant to the Agreement, or for claims related to Concessionaire fraud or misrepresentation.

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

**CONCESSIONAIRE**

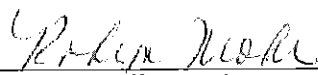
BILLOUX AIRPORT COMMERCE, LLC  
(Legal Name of Corporation)

**ATTEST:**

Secretary   
(Signature and Seal)

Evan Diamond, CFO, Bijoux Nouveau, Inc. -  
BAC's Manager

\_\_\_\_\_  
(Type Name & Title)

By:   
Authorized Officer - Signature

Robyn Mohr

Name: \_\_\_\_\_

President, Bijoux Nouveau, Inc. -- BAC's Manager

\_\_\_\_\_  
(Type Name & Title)

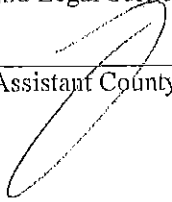
**BOARD OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

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

Attest: Harvey Ruvin, Clerk

By: \_\_\_\_\_  
Deputy Clerk

Approved for Form  
and Legal Sufficiency

  
Assistant County Attorney