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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

# Memorandum

MIAMI-DADE COUNTY

Date: November 3, 2009

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

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

**Resolution No. R-1232-09**

From: Carlos Alvarez
Mayor

George M. Burgess
County Manager

Subject: Retroactive Second Amendment to Baggage Wrap Services Concession Agreement between Miami-Dade County and Secure Wrap of Miami, Inc.

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## RECOMMENDATION

It is recommended that the Board approve the attached Retroactive Second Amendment to the Baggage Wrap Services Concession Agreement between Miami-Dade County and Secure Wrap of Miami, Inc., at Miami International Airport (MIA); extending the term of the agreement on a month-to-month basis not to exceed one year, to begin on August 22, 2009; and increasing the monthly percentage fee to 20 percent of the monthly gross revenues, commencing retroactively on August 22, 2009.

It is further recommended that the Board authorize the Mayor or the Mayor's designee to execute said Amendment for and on behalf of the County and exercise any termination provisions therein. It is also recommended that the Board approve a waiver of County competitive bid procedures in accordance with Section 5.03(D) of the Home Rule Charter and Section 2-8.1 of the County Code, as being in the best interest of the County.

## SCOPE

MIA is located primarily within Commission District Six; however the impact of this item is countywide as the airport is a regional asset.

## FISCAL IMPACT/FUNDING SOURCE

This contract generates annual gross revenues of more than $8,000,000 (based on sales for FY 08-09). Under the current Agreement, the revenue to the County is approximately $1,200,000. With the implementation of a straight twenty (20%) percent increase to the monthly gross revenue, the revenue to the County based on the same gross revenue will increase to approximately $1,600,000.

## TRACK RECORD/MONITOR

Secure Wrap has been satisfactorily providing this service at Miami International Airport since the inception of the original agreement on August 22, 2001. The Miami-Dade Aviation Department (MDAD) staff member responsible for monitoring this project is Adrian Songer, Property Manager for Commercial Operations.

## BACKGROUND

Pursuant to Resolution No. R-100-01, the Board awarded a concession agreement to Secure Wrap to operate the baggage wrap services at MIA. The agreement commenced on August 22, 2001 for a three-year term with the rights of the County to extend it for four separate terms of one year each.

Less than one month after commencement of its operations, Secure Wrap was prevented from operating following the tragedy of September 11, 2001. It was only after several months that Transportation Security Administration (TSA) allowed them to start the wrapping operation again. MDAD subsequently concluded that Secure Wrap's business had been heavily impacted by TSA's implementation of security measures at

MIA. It was therefore recommended to extend the agreement for five years to allow the operator to recoup the lost revenue. Additionally, in an effort to address the changed market and business environment, MDAD recommended the payment terms be modified. This First Amendment was approved by the Board pursuant to Resolution No. R-1220-04, on June 30, 2005, extending the agreement through August 20, 2009.

On June 11, 2009, the Airport and Seaport Committee (ASC) discussed the need for the extension of the agreement on a month-to-month basis commencing on August 22, 2009, to allow time for the County to complete the solicitation process and award of a new agreement. MDAD advised the ASC that they intended to pursue negotiating a higher monthly percentage fee with Secure Wrap. As a result, MDAD and Secure Wrap agreed to extend the agreement on a month-to-month basis not exceeding one year and to increase the monthly percentage fee to 20 percent of the monthly gross revenues, commencing retroactively on August 22, 2009.

In order to avoid any service interruptions, it is recommended the Board approve this second amendment and maintain the agreement until the new solicitation is finalized.

| | |
|---|---|
| **PROJECT:** | Second Amendment to Concession Agreement for Baggage Wrap Services at MIA |
| **PROJECT NO.** | N/A |
| **USING AGENCY:** | Miami-Dade Aviation Department |
| **COMPANY NAME:** | Secure Wrap of Miami, Inc. |
| **COMPANY PRINCIPAL(S):** | Radames Villalon, President<br>Enrique A. Ramos, Vice-President |
| **LOCATION OF COMPANY:** | 4050 NW 29th Street<br>Miami, Florida 33142 |
| **YEARS IN BUSINESS:** | 15 years |
| **CONTRACT MEASURES:** | No measure was required by the agreement. However, Secure Wrap, a Disadvantage Business Enterprise (DBE - Certification No. 4157, expires May 31, 2012), has adopted a mentoring program for Hannah Wrap, Inc., a local certified Micro/SBE (Certification No. 10975, expires March 31, 2010). |
| **PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:** | Baggage Wrap Services Concession Agreement at MIA |
| **RECOMMENDED MODIFICATION:** | Extend the term of the agreement on a month-to-month basis not to exceed one year, to begin on August 22, 2009, and to increase the monthly percentage fee to 20 percent of the monthly gross revenues, commencing retroactively on August 22, 2009. |
| **LIVING WAGE:** | N/A |

Assistant County Manager

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| **LIVING WAGE:** | N/A |

Assistant County Manager

# MEMORANDUM

(Revised)

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

**DATE:** November 3, 2009

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

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

**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)(B)
11-3-09

RESOLUTION NO. **R-1232-09**

RESOLUTION AUTHORIZING RETROACTIVE SECOND AMENDMENT TO BAGGAGE WRAP SERVICES CONCESSION AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND SECURE WRAP OF MIAMI, INC. AT MIAMI INTERNATIONAL AIRPORT; AUTHORIZING WAIVER OF COMPETITIVE BID PROCEDURES; AND AUTHORIZING COUNTY MAYOR OR DESIGNEE TO EXECUTE SECOND AMENDMENT AND TO EXERCISE ALL OTHER RIGHTS INCLUDING CANCELLATION PROVISIONS CONTAINED THEREIN

**WHEREAS**, this Board desires to meet this need and accomplish the purposes outlined in the accompanying memorandum and documents, which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that the Board authorizes: (i) execution of the Retroactive Second Amendment for the operation of the Baggage Wrap Services at Miami International Airport ("MIA") between Miami-Dade County, Florida ("County") and Secure Wrap of Miami, Inc. ("Operator"), which extends the current agreement on a month-to-month basis not to exceed one (1) year, retroactively commencing August 22, 2009, directs the Operator to pay to the County the amount by which a Monthly Percentage Fee of twenty percent (20%) of the Monthly Gross Revenues exceeds the sum of the Minimum Monthly Guarantee during the extension of the agreement; (ii) waiver of competitive bid procedures upon the written recommendation of the County Mayor or designee pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8-1 of the County Code by a two-thirds (2/3s) vote of the Board members present, (iii) the County Mayor or designee to execute the Second Amendment; and (iv) the County Mayor or designee to exercise or enforce any provision of the Second Amendment during said extension, including cancellation provisions contained therein.

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The foregoing resolution was offered by Commissioner **Barbara J. Jordan**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. for

Cynji A. Lee

**RETROACTIVE SECOND AMENDMENT TO BAGGAGE WRAP SERVICES CONCESSION AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND SECURE WRAP OF MIAMI, INC.**

This Retroactive Second Amendment to the Baggage Wrap Services Concession Agreement at Miami International Airport ("MIA") entered into this _____ day of 2009, by and between Miami-Dade County (the "County"), a political subdivision of the State of Florida, and Secure Wrap of Miami Inc. (the "Operator" or "Secure Wrap").

WITNESSETH:

WHEREAS on August 6, 2001, the Board of County Commissioners of Miami-Dade County, Florida (the "Board"), passed and adopted Resolution No. R-100-01, which authorized a concession agreement with Secure Wrap, for the operation of the Baggage Wrap Services at MIA (the "Agreement"); and

WHEREAS on June 30, 2005, the Board, pursuant to Resolution No. 1220-04, authorized a first amendment to the Agreement with Secure Wrap, for the operation of the Baggage Wrap Services Concessions at MIA (the "First Amendment"), to provide an extension to the Agreement, and which First Amendment expires on August 21, 2009, and

WHEREAS, the Miami International Airport's Retail Ordinance provides authority for extension of this concession on a month to month basis, as needed to avoid disruptions to passenger services; and

WHEREAS, without provision of this service, the traveling public will not be provided with the protections they want and demand when transporting baggage; and

WHEREAS, on June 11, 2009 during the discussion of Agenda Item No. 3F the Airport and Seaport Committee, by motion, authorized the Mayor or his designee to extend the Agreement on a month to month basis commencing on August 22, 2009, to allow sufficient time for the County to complete (i) the solicitation process, and (ii) the award of a new agreement; and

WHEREAS, Secure Wrap has agreed to extend the Agreement on a month to month basis, not exceeding one (1) year, and to increase the Monthly Percentage Fee amount to twenty (20%) percent of the Monthly Gross Revenues, commencing retroactively on August 22, 2009,

NOW, THEREFORE, in consideration of the premises contained herein, the parties hereto agree to the following modifications to the Agreement as follows:

1. In Article 1 entitled "Term", Sub-Article 1.02 entitled "<u>Extensions</u>", insert the last paragraph:



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Following the expiration of the Agreement on August 21, 2009, the Department retains the right to extend this Agreement on a month to month basis, not to exceed one (1) year. This Agreement shall be automatically renewed each month unless the Department, during any one (1) month extension period , advises the Operator of no further subsequent extension periods by written notice of termination delivered to the Operator at least thirty (30) days prior to the effective date of the intended termination. The extension period shall be retroactive to August 22, 2009.

2. Article 3 entitled "Payments", Sub-Article 3.04 "Minimum Annual Guarantee" and Sub-Article 3.03 "Monthly Percentage Fee", should be replaced on its entirety as follows:

   3.03 "Monthly Percentage Fee"
   As consideration for the privileges granted the Operator herein to engage in business at the Airport and not as payment for the use and occupancy of any property, effective August 22, 2009, the Operator shall pay to the County the amount by which a Monthly Percentage Fee of twenty (20%) percent of the Monthly Gross Revenues exceeds the sum of the Minimum Monthly Guarantee, for the term of this Agreement and any extensions thereof. Such payment shall be made in U.S. funds, by the tenth ($10^{th}$) day of the month following the month during which the Monthly Gross Revenues were received or accrued.

   3.04 "Minimum Annual Guarantee"
   As part of the consideration for the privileges granted to the Operator herein to engage in business at the Airport, effective August 22, 2009, the Operator shall pay to the County a Minimum Annual Guarantee (MAG) of $150,000 or the Percentage Fee, as set forth in section 3.03 above, whichever is greater.

   The MAG is to be prorated and payable in twelve equal monthly payments in U.S. funds, on the first day of each month in advance and without billing or demand. The monthly payment hereunder shall be referred to herein as the Minimum Monthly Guarantee.

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

4. This Second Amendment shall become effective as of the date first written above and shall be applicable only to events occurring during the term of this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Agreement to be executed by their respective and duly authorized officers, as of the day and year first above written.

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Mayor

(MIAMI-DADE COUNTY SEAL)

Approved as to form
and legal sufficiency: _____
Assistant County Attorney

**NAME OF OPERATOR:**
**Secure Wrap of Miami, Inc.**

By: _____
President

RADAMES VILLALON
Print Name

Attest: _____
Secretary

ENRIQUE RAMOS
Print Name

(CORPORATE SEAL)

**MIAMI-DADE COUNTY**
**BOARD OF COUNTY COMMISSIONERS**
**OFFICE OF THE COMMISSION AUDITOR**

Legislative Notes

**Agenda Item:** 8(A)1(B)

**File Number:** 092679

**Committee(s) of Reference:** Board of County Commissioners

**Date of Analysis:** October 14, 2009

**Type of Item:** Retroactive Second Amendment to Concession Agreement

**Summary**

This resolution authorizes the Retroactive Second Amendment to the Baggage Wrap Services Concession Agreement between Miami-Dade County and Secure Wrap of Miami, Inc. at Miami International Airport (MIA).

This resolution provides for the following:

- Extending the term of the Agreement on a month-to-month basis not to exceed one year, retroactive to August 22, 2009;
- Increasing the monthly percentage fee to twenty percent (20%) of the monthly gross revenues, retroactive to August 22, 2009;
- Authorizes Mayor or designee, to execute the Amendment and exercise any termination provisions;
- Waives competitive bid procedures pursuant to Section 2-8.1 of the Miami-Dade County Code requiring a two-thirds vote of the board members present.

**Background and Relevant Legislation**

On February 13, 2001, R-100-01 awarded the baggage wrap services concession agreement to the current vendor, Secure Wrap of Miami, Inc. for a term of three (3) years with four one (1) year options to renew. Subsequently, R-1220-04 adopted on October 19, 2004, extended the Agreement for one five (5) year term, modified the MAG, and waived competitive bid requirements.

The contract expired on August 21, 2009.

The Office of the Inspector General Memorandum dated September 30, 2008 to MDAD urges MDAD to immediately begin initiating a new RFP or an Invitation to Bid (ITB) process.

However, the resolution authorizing the County Mayor or his designee, to advertise a Request for Proposals (RFP) MDAD-01-09, for the Luggage Wrapping Services at MIA was withdrawn at the June 11, 2009, Airport and Seaport Committee (ASC) meeting. Concerns were raised regarding the RFP subsequent to the deferral of a similar RFP item at the April 16, 2009 ASC meeting.

First, the Transportation Security Administration (TSA) had committed to providing guidelines for luggage wrapping services in July 2009 and the directive to MDAD was that once these guidelines were issued then MDAD would proceed with issuing an RFP under its own authority, pursuant to Sec. 2-8.1(b) of Miami-Dade County Code, along with other directives given at the April ASC meeting.

The Aviation Director and Assistant County Manager confirmed that an RFP process would not be issued until guidelines were received from TSA, based on the statements issued from the Federal Security Director for MIA that the guidelines would be issued promptly. In an e-mail dated June 10, 2009, the Federal Security Director states that, "it seems reasonable to expect that this should conclude in a matter of weeks" referring to creation of federal standards/requirements for baggage wrapping vendors to re-wrap inside TSA screening areas.

- *What is the status of the RFP?*

Another concern raised was the compatibility with the new baggage handling system and that language be included in the RFP as a caveat integrating the luggage wrapping services with the new baggage handling system in the case it was not compatible.

Secure Wrap, through their attorney, requested a five (5) year extension in a letter to MDAD dated December 5, 2007. However, MDAD responded by stating that they would review the request and determine the best course of action as they were aware of other vendors who expect MDAD to allow the opportunity to participate in a public solicitation.

**Budgetary Impact**

Under the current Agreement, which expired on August 21, 2009, the revenue to the County was approximately $1,200,000. However, after discussion at the June 11, 2009, ASC meeting, the Aviation Director stated he would re-negotiate the percentage the County receives for the month-to-month extension period.

The monthly percentage fee was increased to twenty percent (20%) of the monthly gross revenues, to be applied retroactively to August 22, 2009.

- *How much does the retroactive increase in percentage fee amount to for MDAD?*

**Prepared by:** Bia Marsellos