

Date: November 8, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(F)(5)

From: Carlos A. Gimenez
Mayor



Subject: Resolution Authorizing Execution of Supplemental Agreements No. 2, 3 and 4 to the Overtown Transit Village Restaurant Development and Operating Agreement with Food Line Services, Inc.

Resolution No. R-897-12

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) authorize the execution of the attached Supplemental Agreements No. 2, 3 and 4 to the Overtown Transit Village Restaurant Development and Operating Agreement (Operating Agreement) with Food Line Services, Inc. (Contractor). These Supplemental Agreements address several issues with our existing Operating Agreement and are described in detail in the Background section of this memorandum. In summary, these Supplemental Agreements will:

- adjust the Monthly Guaranteed Rent to offset construction costs that were not the Contractor's responsibility as specified in the original Request for Proposals for this project;
- exercises two Option-to-Renew periods;
- provides up to an additional 435 square feet of space for use by the Contractor in the Overtown South building lobby to operate a food kiosk/beverage cart, and, increase the gross sales percentage due the County as a result of this increased space.

SCOPE

The property is located at 701 and 601 NW 1 Court, Miami, FL in Commission District 3, but has a countywide impact.

FISCAL IMPACT/FUNDING SOURCE

The Contractor incurred approximately \$41,500 worth of construction expenses that were not specified as its responsibility in the Request for Proposals (RFP). As a settlement of these charges, the County is agreeing in Supplemental Agreement 2 to abate fifteen months of rent at \$2,500 per month for a total of \$37,500. This abatement covers the period from September 1, 2010 through November 30, 2011.

Additionally, in Supplemental Agreement No. 3, the County is agreeing to reduce the Monthly Guaranteed Rent due from \$2,500 per month to \$625 per month for the period of December 1, 2011 to June 20, 2013 to better reflect the reality of the limited sales capacity of the vendor in this location. As a result, the County will be reducing the revenue it receives by \$36,625 for this period to compensate the lessee for lost revenue due to the delayed opening of the Overtown South building.

TRACK RECORD/MONITOR

The County has no record of negative performance issues with Food Line Services, Inc. Elva Marin, Manager of the Real Estate Development Division in the Internal Services Department, is the project's monitor.

DELEGATION OF AUTHORITY

Authorizes the County Mayor or the County Mayor's designee to execute these Supplemental Agreements for and on behalf of Miami-Dade County; and authorizes the County Mayor or the County Mayor's designee to exercise any and all other rights conferred therein.

BACKGROUND

On February 2, 2008, the County issued RFP 609 to solicit a developer/operator for a first-class restaurant for the Overtown North and South buildings. Food Line Services Inc. was awarded the Agreement to develop and operate this restaurant. The Operating Agreement became effective July 1, 2008 (attached) and the restaurant began operating 14 months later in September 2009. In October 2009, through Supplemental Agreement 1 (Attachment 2), the Contractor was granted an abatement of the Monthly Guaranteed Rent for the first 12 months of the Operating Agreement to offset the \$30,000 of impact fees required to be paid by the Contractor. These fees are normally the responsibility of the property owner, which in this case is the County. Below is a detailed summary of the proposed Supplemental Agreements:

Supplemental Agreement No. 2 - Authorizes the County to exercise its option-to-renew for the period commencing June 23, 2013 and ending June 22, 2015 and to abate the Monthly Guaranteed Rent and percentage rent for the period commencing September 1, 2010 and ending November 30, 2011. The proposed rental abatement of \$35,000 contained in this Supplemental Agreement is to offset the additional costs incurred by the Contractor which were not specified as the Contractor's responsibility in RFP 609. A list of those expenses totaling \$41,500 is attached (Attachment 3). Additionally, since the Contract term commenced a full 14 months prior to the Contractor being able to open for business, Supplemental Agreement No. 2 proposes that the County exercise the first option-to-renew the term extending the contact from June 23, 2013 to June 22, 2015.

Supplemental Agreement No. 3 - Proposes that the County exercise its option-to-renew for the period commencing June 23, 2015 and ending June 22, 2017 to allow the Contractor sufficient time to recoup lost revenue due to the late opening and staffing of the Overtown South building (now taking place), which was referred to in the RFP as an additional customer base. Additionally, Supplemental Agreement No. 3 provides for the following rental schedule:

- From December 1, 2011 through June 22, 2013, a Monthly Guaranteed Rent of \$625 per month (plus tax) plus two percent of gross sales exceeding \$375,000.
- From June 23, 2013 thru June 22, 2015 a Monthly Guaranteed Rent of five percent of gross sales for the 12 month period ending June 23, 2013, plus five percent of annual gross sales in excess of the break point*.
- From June 23, 2015 thru June 22, 2017 a Monthly Guaranteed Rent of five percent of gross sales for the 12 month period ending June 23, 2015 plus five percent of annual gross sales in excess the break point*.
- In addition to the five percent adjustment required on July 1, 2016 and July 1, 2017, the Contractor shall pay an additional amount equal to two percent of any gross sales in excess of \$750,000.

** Break Point is the amount derived by dividing the minimum annual rent by the percentage rent charged (i.e. $\$625 \times 12 = \$7,500 / 2\% = a \text{ Break Point of } \$375,000$)*

The proposed changes establish a new Monthly Guaranteed Rent structure by deleting the original rate of \$2,500 per month plus two percent of gross sales and including a new rate of \$625 per month plus two percent of annual gross sales exceeding \$375,000. This change is based on the fact that the sales reported by the Contractor, which average for 2010 and 2011, approximately \$361,000. However, given the additional space contemplated in Overtown South along with the increased customer base when the building is full, the Contractor will be responsible for an additional two percent of any sales in excess of \$750,000 commencing June 23, 2015.

Supplemental Agreement No. 4 - Authorizes the County to include in the Property Description an area of approximately 435 square feet in the lobby of the Overtown South Building to operate a food and beverage kiosk/cart. Initially, the Contractor may only use the kiosk area (approximately 156 square feet) after the approval of this Supplemental Agreement. However, at any time until June 22, 2013 the Contractor may request the additional 279 square feet. During the construction period but no later than June 22, 2012, the Contractor will pay two percent of gross sales as Monthly Guaranteed Rent and five percent thereafter for this additional space. Additionally, the Contractor will be additionally responsible for two percent of any sales in excess of \$750,000 reported on July 1, 2016 and July 1, 2017. Now that the Overtown South building is open and being occupied, the Contractor is requesting to set up a kiosk in the lobby of the building to provide snack services to the tenants as well as the public frequenting the Courts and offices of the State Attorney's Office. The space for this kiosk and its potential expansion is covered in Supplemental Agreement No. 4. This Supplement also includes a description of the condition under which the County is to provide the space, the Contractor's responsibilities in regard to the work it must provide, and a modified rental structure for this additional space of two percent of gross sales during any construction period up until June 22, 2012 and five percent of gross sales thereafter. The requirement of paying two percent of sales in excess of \$750,000 shall become effective June 23, 2015.

The attached Supplemental Agreements No. 2, 3 and 4 have been prepared by the Internal Services Department.

Additional property details are as follows:

COMPANY PRINCIPALS:

Maria Delgado, Owner

USE:

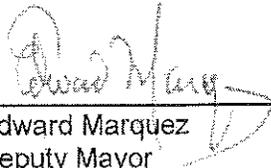
Restaurant and snack bar

EFFECTIVE DATES
OF AMENDMENT:

Commencing on the first day following the passage of this Resolution by the Board (the Commencement Date) and terminating as provided for in the Supplemental Agreements.

CURRENT CONTRACT:

The current Contract was approved by the County in 2008 for a term of five years with two options to renew of two years each. The Contract currently permits the Tenant, to operate the restaurant at the Overtown North office building.



Edward Marquez
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 8, 2012

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

SUBJECT: Agenda Item No. 8(F) (5)

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

Agenda Item No. 8(F)(5)

Veto _____

11-8-12

Override _____

RESOLUTION NO. R-897-12

RESOLUTION AUTHORIZING EXECUTION OF SUPPLEMENTARY AGREEMENTS NO. 2, 3, AND 4 WITH FOOD LINE SERVICES, INC., A FLORIDA CORPORATION, TO AMEND AND EXTEND CERTAIN TERMS AND CONDITIONS TO THE OVERTOWN TRANSIT VILLAGE RESTAURANT DEVELOPMENT AND OPERATING AGREEMENT FOR PREMISES BEING AND TO BE UTILIZED FOR A RESTAURANT AND A SNACK BAR WITH A TOTAL NEGATIVE FISCAL IMPACT TO THE COUNTY NOT TO EXCEED \$74,125 FOR THE REMAINING FIVE-YEAR TERM OF THE AGREEMENT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

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 Supplemental Agreements No. 2, 3, and 4 to amend and extend certain terms and conditions to the Overtown Transit Village Restaurant Development and Operating Agreement between Miami-Dade County and Food Line Services, Inc., a Florida Corporation, for premises being and to be utilized by Food Line Services, Inc., as a restaurant and snack bar, with a total negative fiscal impact to Miami-Dade County not to exceed \$74,125 for the remaining five-year term of the Agreement, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or the County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or the County Mayor's designee to exercise any and all other rights conferred therein.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of November, 2012. 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: **Christopher Agrippa**
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

SUPPLEMENTAL AGREEMENT NO. 2

Contract Number: RFP 609

Contract Title: Overtown Transit Village Restaurant Development and Operating Agreement

Contractor: Food Line Services, Inc.
 150 West Flagler Street, No. 175
 Miami, Florida 33130

In accordance with the above-referenced Agreement, this Supplemental Agreement, when properly executed, shall modify the Agreement as follows:

A. Add the following Article 77 to the Agreement:

Notwithstanding anything in this Agreement to the contrary, the County agrees to abate the \$2,500 Monthly Guarantee and the 2 % percent of monthly gross receipts due as Monthly Guarantee and Percentage of Monthly Gross receipts, as described in Articles 11 and 12 of the Agreement, for the period commencing on September 1, 2010 and ending on or about November 30, 2011. Said abatement shall be deemed to offset any and all charges paid by the Contractor described on the attached Invoice dated 8/27/09 from Buildex Corp.

All terms, covenants and conditions of the original Agreement shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement No. 2 to County Contract No. RFP 609.

Contractor 
 By: Food Line Services Inc

Miami-Dade County

By: _____

Name: MARIA DELGADO

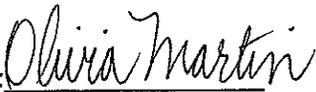
Name: _____

Title: OWNER

Title: _____

Date: AUG 28TH / 12

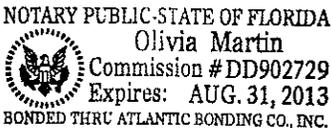
Date: _____

Attest: 
 Corporate Secretary/Notary

Attest: _____
 Clerk of the Board

Corporate Seal/Notary

Approved as to form and legal sufficiency



Assistant County Attorney

SUPPLEMENTAL AGREEMENT NO. 3

Contract Number: RFP 609

Contract Title: Overtown Transit Village Restaurant Development and Operating Agreement

Contractor: Food Line Services, Inc.
150 West Flagler Street, No. 175
Miami, Florida 33130

In accordance with the above-referenced Agreement, this Supplemental Agreement, when properly executed, shall modify the Agreement as follows:

A. As provided for in Article 10 Option to Renew, the County hereby exercises its Option to Renew this Agreement for the period commencing June 23, 2015 and ending June 22, 2017.

B. Change Article 11 Monthly Guarantee of the Agreement as follows:

" Contractor, in consideration of the use and operation of the Restaurants, does hereby covenant and agree with the County to pay to the County without deduction or set off of any kind:

(i) for the period commencing December 1, 2011 and ending June 22, 2012 and for the period commencing June 23, 2012 and ending June 22, 2013, a Monthly Guarantee rent of six hundred and twenty-five and no/100 dollars (\$625.00) (plus tax) per month on the first day of each month without billing. By July 1, 2012 and again by July 1, 2013, the Tenant shall submit a full accounting of gross receipts ("Statement") from the Restaurant for the applicable period. If this Statement when multiplied by two percent (2%) exceeds the amount of Monthly Guarantee rent paid for the period ("Annual Adjustment"), the difference shall be paid immediately by the Tenant to the County. There shall be no adjustment if the Statement when multiplied by two percent (2%) (plus tax) is less than the amount of Monthly Guarantee rent paid for the period.;

(ii) for the period commencing June 23, 2013 and ending June 22, 2015, a Monthly Guarantee rent equal to the total gross receipts for the 12 month period ending June 22, 2013 multiplied by five percent (5%) and divided by twelve (12). By July 1, 2014 and again by July 1, 2015, the Tenant shall submit a full accounting of gross receipts ("Statement") from the Restaurant for the applicable period. If this Statement when multiplied by five percent (5%) exceeds the amount of Monthly Guarantee rent paid for the period ("Annual Adjustment"), the difference shall be paid immediately by the Tenant to the County. There shall be no adjustment if the Statement, when multiplied by five percent (5%) (plus tax), is less than the amount of Monthly Guarantee rent paid for the period;

(iii) for the period commencing June 23, 2015 and ending June 22, 2017, a Monthly Guarantee rent equal to the total gross receipts for the 12 month period ending June 22, 2015 multiplied by five percent (5%) and divided by twelve (12). By July 1, 2016 and again by July 1, 2017, the Tenant shall submit a full accounting of gross receipts ("Statement") from the Restaurant for the applicable period. If this Statement when multiplied by five percent (5%) exceeds the amount of Monthly Guarantee rent paid for the period ("Annual Adjustment"), the difference shall be paid immediately by the Tenant to the County. There shall be no adjustment if the Statement, when multiplied by five percent (5%) (plus tax), is less than the amount of Monthly Guarantee rent paid for the period."

C. Change Article 12 of the Agreement as follows:

"In addition to the Annual Adjustment, for the period commencing June 23, 2015 and ending June 22, 2017, the Contractor agrees to pay to the County at the time of the Annual Adjustment, an amount equal to two percent (2%) of gross receipts in excess of seven hundred and fifty thousand and no/100 dollars (\$750,000)."

All terms, covenants and conditions of the original Agreement shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to County Contract No. RFP 609.

Contractor
 By: *Maria Delgado*
 Name: MARIA DELGADO
 Title: OWNER
 Date: AUG 28TH / 12
 Attest: *Olivia Martin*
 Corporate Secretary/Notary

Miami-Dade County
 By: _____
 Name: _____
 Title: _____
 Date: _____
 Attest: _____
 Clerk of the Board

Corporate Seal/Notary

Approved as to form and legal sufficiency

NOTARY PUBLIC-STATE OF FLORIDA
 Olivia Martin
 Commission # DD902729
 Expires: AUG. 31, 2013
 BONDED THRU ATLANTIC BONDING CO., INC.

 Assistant County Attorney

SUPPLEMENTAL AGREEMENT NO. 4

Contract Number: RFP 609

Contract Title: Overtown Transit Village Restaurant Development and Operating Agreement

Contractor: Food Line Services, Inc.
150 West Flagler Street, No. 175
Miami, Florida 33130

In accordance with the above-referenced Agreement, this Supplemental Agreement, when properly executed, shall modify the Agreement as follows:

Replace Article 8 **Property Description**, as follows:

The Overtown Transit Village Restaurant site located at 701 NW 1 Court 1st Floor, Miami, Fl. 33136 as shown on Appendix B, attached hereto and incorporated herein by reference; and, an area of approximately 435 SF in the lobby of the Overtown Building South as shown on Appendix B1, attached hereto and incorporated herein by reference, both hereinafter referred to as the "Restaurant". The area as shown on Appendix B1 is to be used by the Contractor to operate and maintain a food and beverage kiosk /cart (Kiosk Area.)

Add to Article 22 **New Construction**, as follows:

The Kiosk Area as shown on Exhibit "A" (approximately 156 square feet) is to be "AS IS" with the exception that the County will provide a store front to consist of a roll-down overhead door and one 220v outlet on the north wall. Provided that the Contractor is not in default of any of its obligations under this Agreement, and provided that it does so prior to June 22, 2013, the Contractor may at any time request that the County prepare at its cost the Expanded Area shown on Exhibit "B" (approximately 435 square feet) which will include floor to ceiling walls, a suspended acoustical ceiling, fluorescent light fixtures on the standard building grid, building standard air conditioning, and one electrical outlet on each drywall. The overhead rolling door shall be left "AS IS" at the entrance.

The Contractor is to supply any and all other improvements at their expense. These improvements shall include, but shall not be limited to, the self contained equipment to operate the kiosk/cart. Before the Contractor acquires the kiosk/cart, it must be approved by the County as to its size, construction, design, and usability. The Contractor is to operate this kiosk/cart at all times in a way that will not interfere with the flow of visitors and patrons' traffic throughout the lobby of the building.

During any period that the Contractor cannot operate in its Premises due to construction of the Expanded Area, Monthly Guarantee Rent shall be suspended and the Contractor shall only be responsible to pay to the County 2% of gross sales per month, or partial month until June 22, 2012 and 5% per month for any month or partial month thereafter.

All terms, covenants and conditions of the original Agreement shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to County Contract No. RFP 609.

Contractor

By: *[Signature]*

Name: MARIA SELGA DO

Title: OWNER

Date: Aug 28th / 12

Attest: *[Signature]*
Corporate Secretary/Notary

Miami-Dade County

By: _____

Name: _____

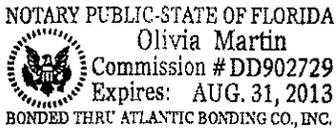
Title: _____

Date: _____

Attest: _____
Clerk of the Board

Corporate Seal/Notary

Approved as to form and legal sufficiency



Assistant County Attorney

**OVERTOWN TRANSIT VILLAGE RESTAURANT DEVELOPMENT AND OPERATING
AGREEMENT**

THIS AGREEMENT made and entered into as of this 23rd day of JUNE, 2008 by and between Food Line Services, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 150 W. Flagler Street, No.175, Miami, Fl 33130 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, the County owns Overtown Transit Village ("OTV") for the use of Overtown Transit Village patrons, tenants, employees and visitors which facilities are administered for the County by its Director of the General Service Administration Department, or designee (the "Department"); and,

WHEREAS, the Contractor has offered to develop and operate the Overtown Transit Village Restaurant ("Restaurant") at the OTV in a manner that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposals (RFP) No. 609 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated February 2, 2008, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the proposal of the Contractor is recommended as being in the best interest of the County, and formed the basis for award of this Agreement,

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

1. **Use:** The County hereby grants unto the Contractor, and the Contractor hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth to develop and operate the restaurant at the OTV. Contractor shall use the Restaurant only for the use permitted. The Contractor shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of the Department, and any sales by the Contractor of services or items not specifically authorized in writing by the Department shall constitute a default. The unapproved services or items shall be discontinued immediately by the Contractor, as per directed by the Project Manager or upon written notice from the Department. Contractor shall conduct its business at all times in accordance with this Agreement.
2. **Operations:** Contractor shall continuously and uninterruptedly use and operate for purposes outlined herein all of the Restaurant other than such minor portions thereof as are reasonably required for storage and office purposes, and such storage and office space shall only be used in connection with the business conducted by Contractor in the Restaurant; and will have on the premises adequately trained uniformed personnel for efficient service to customers.
3. **Limitations on Use:** Subject to Contractor's right to use the Restaurant for the purposes specified in this Agreement, Contractor shall not suffer or permit the Restaurant or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Restaurant or OTV or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Restaurant or OTV; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Restaurant or OTV or the proper and economic functioning of any other common service facility or common utility of the Restaurant or OTV; (vi) impair or interfere with the physical convenience of any of the occupants of the Restaurant or OTV; or (vii) impair any of the Contractor's other obligations under this Agreement.
4. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Contractor's business in the Restaurant, or any part thereof, and if failure to

secure such license or permit would in any way adversely affect the County, the Contractor at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Contractor shall at all times comply with the terms and conditions of each license and permit.

5. **Exclusivity/Non-exclusivity:** This Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services, products or items by other concessionaires or others in other premises owned and operated by the County or from authorizing other unrelated concession services within OTV. The Contractor shall have no rights to operate any other location or concession that may be made available by the County.
6. **Request for Proposal Incorporated:** The Contractor acknowledges that it has submitted to the County a proposal ("Contractor's Proposal") that was the basis for the award of this Agreement and upon which the County has relied and is incorporated herein by reference.
7. **Appendixes:** The Appendixes listed in this Paragraph and attached to this Agreement are hereby incorporated in and made a part of this Agreement:
 - Appendix A: Scope of Services
 - Appendix B: Restaurant Floor Plan
 - Appendix C: Construction Rider
 - Appendix D: Rules & Regulations
 - Appendix E: Menu and Prices
8. **Property Description:** The Overtown-Transit Village Restaurant site located at 701 NW 1st Court, 1st Floor, Miami, Fl 33136 as shown on Appendix B, attached hereto and incorporated herein by reference, hereinafter referred to as the "Restaurant."
9. **Term:** The County hereby grants an Operating Agreement to the Contractor for a term of five (5) years, the premises described in this Agreement to be operated as a Restaurant. The term and Commencement Date of this Agreement shall begin on the 1st day of the month following execution of this Agreement or on the date the Contractor's operation is open for business as approved by the Department, whichever occurs first.

10. **Option to Renew:** The County, at its sole option, can renew the Agreement for two (2) additional two (2) year periods.
11. **Monthly Guarantee:** Contractor, in consideration of the use and operation of the Restaurant, does hereby covenant and agree with the County to pay to the County without deduction or set off of any kind the sum of \$30,000 (plus applicable tax) per annum as Monthly Guarantee in monthly installments of \$2,500 (plus tax) on the first day of each month without billing effective as of the first date of operation.
12. **Percentage of Monthly Gross Receipts:** In addition to the Monthly Guarantee, Contractor agrees to pay to the County, monthly, an amount equal to 2% (plus tax) of monthly gross receipts, hereinafter referred to as "Percentage of Monthly Gross Receipts" effective as of twelve months from the first day of operations.
13. **Sales Tax:** The Contractor shall be liable for the prevailing State of Florida Sales and Use Tax imposed on payment (currently at the rate of 7%) on the amounts payable to the County, including Monthly Gross Receipt payments, under this Agreement. This Sales and Use Tax shall be payable to the County, when payment is due, which in turn County will remit same, less authorized handling deductions, to the State. Said tax is applicable to Monthly Guarantees unless otherwise determined by the State of Florida.
14. **Additional Taxes:** If at any time during the term of this Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on the Monthly Guarantee (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, against the County on account of the payment or percentage fees payable herein, such tax, charge, capital levy, or excise on the Monthly Guarantee or other taxes shall be deemed to constitute real estate taxes on the Restaurant and the premises for the purposes of this Paragraph.
15. **Taxes on Contractor's Personal Property:** Contractor shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed against any occupancy interest or

personal property of any kind, owned by or placed in, upon or about the Restaurant by Contractor.

16. **Late Payment Charge:** In the event that the Contractor fails to make any payments on time, as required to be paid under the provisions of this Agreement, a penalty at the rate of 1.5% per month or any portion of a month shall accrue from the due date, against the delinquent payment(s) until same are paid or a charge of \$100.00, whichever is greater. The right of the County to require payment of such late payment charge and the obligation of the Contractor to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.
17. **Application of Payments:** Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Monthly Guarantee and Percentage of Monthly Gross Receipts and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
18. **Worthless Check or Draft:** In the event that the Contractor delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Contractor shall incur and pay a service charge of \$25.00 or five percent (5%) of the face amount of the check, whichever is greater. This amount will be in addition to any late fee's that might apply. For each such dishonored check, such payment to be made within not more than five (5) days from written notice of such default. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department. A second such occurrence of dishonored check during the Agreement term will be a breach of contract and, at the County's option, will constitute a default allowing termination.
19. **Payment of Fees:** The Monthly Guarantee payable by the Contractor to the County herein shall be payable in twelve (12) equal monthly installments on the first day of each month during the term of this Agreement. Such payments, as well as other amounts payable by Contractor to the County under the terms of this Agreement, all of which shall be deemed to be additional payment for the purposes of collection only herein, shall be paid promptly when due, without notice for any reason

whatsoever and without abatement, except as hereinafter provided. The Percentage of Monthly Gross Receipts shall become effective as of twelve months from the first day of operations and shall be paid to the County thereafter on or before the 10th day following the end of each month throughout the term of this Agreement on or before the 10th day of the month following the expiration or earlier termination of the term. All rental and percentage fees provided for in this Agreement shall be paid or mailed to:

Miami-Dade County
General Services Administration
Retail Leasing Manager
111 NW 1st Street, Suite 2460
Miami, FL 33128.

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

20. **Accord and Satisfaction:** No payment by Contractor or receipt by County of a lesser amount than any payment of Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts herein stipulated shall be deemed to be other than on account of the earliest stipulated Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts or pursue any other remedy provided in this Agreement, at law or in equity.

21. **Gross Receipts:**

A. Agreement Year Defined: "Agreement Year" means a twelve-month period beginning on the effective date of this Agreement.

B. Gross Receipts Defined: "Gross Receipts" means all receipts from the sale of services or merchandise by Contractor, concessionaires of Contractor and sub-Contractor(s) of Contractor, sold in, upon or from the Restaurant, including such sales as shall in good faith be credited by Contractor,

its concessionaires, and sub-Contractors in the regular course of its or their business to personnel employed at the time of sale at the Restaurant, including sub-concession agreements or contract employee payments to the Contractor and mail and telephone orders received at the Restaurant and off-premises sales and including catering service and sales; but shall not be deemed to mean or include the following: amounts credited by Contractor or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment or other property used by Contractor or its concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Contractor, or its concessionaires, whichever of such events shall first occur.

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

D. Examination of Contractor's Books and Records: Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross Receipts payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Contractor's business hours, at County's expense and in such manner as not to interfere unreasonably

with the conduct of Contractor's business. All information obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except in connection with any mortgage or assignment of this Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Contractor's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of each Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Contractor. Contractor shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Contractor shall keep, for at least three (3) years following the end of each Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Contractor's Gross Receipts.

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

F. Audit of Contractor's Business Affairs and Records: County shall have the right to cause, upon five (5) days' written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County. Contractor shall make all such records available for said examination at the Restaurant or at some other mutually agreeable location. If the result of

such audit shall show that Contractor's statement of Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payment. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Agreement for financing purposes.

G. If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, then Contractor shall be deemed to be in default of this Agreement.

22. **New Construction:** The Department's approval is required prior to all construction, all installation and all use of facilities. The Contractor shall bear all costs associated with such construction, installation and use. Contractor shall spend approximately \$194,086 for immediate improvements and other such development amounts, as represented in the Proposal. All improvements shall become the property of the County. All construction shall be accomplished in accordance with the Construction Rider.
23. **Security Deposit:** Prior to the start of the Contract, the Contractor shall furnish a Security Deposit in cash equal to three (3) months Monthly Guarantee or \$5,000.00 whichever is greater. Redeemable at the end of the Agreement term except for such conditions pertinent thereto, additionally, if the County must draw-upon any portion of the form of security provided, Contractor hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon. In the event the Contractor abandons its performance, the County will retain the security deposit.
24. **County Approval:** The Contractor agrees that it will obtain prior written approval from the Department in all of the following matters:

- A. Changes from originally approved specifications, pricing, activities, signage, menus and graphics.
- B. Equipment Contractor plans to install requiring any building modifications.
- C. Aesthetics of the Restaurant.
- D. Any use of the County's, OTV's name.
- E. Hours of Operation
- F. Uniforms to be used by employees which shall be consistent with or better than those normally used by professionally operated Restaurant.

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

25. **Public Contact of Contractor's Employees:** Contractor's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the County to demand his or her removal from duties in the Restaurant. Contractor's employees will not be considered agents of the County.
26. **Hours of Operation:** The Restaurant shall be required to operate five (5) days a week Monday thru Friday from 7:00AM to 4:00PM. The Contractor shall provide sufficient staff to provide customer service. The County may require a change in hours of operation, if, in the reasonable discretion of the County, such a change is desirable in providing the best service to the public.
27. **Pricing:** Contractor shall maintain the pricing schedule submitted with its Proposal for the first two years of this Agreement. If the Contractor wishes to change its standard prices, Contractor will provide to the County a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date, for approval or disapproval, at any time during the Agreement when price changes are contemplated. Pricing for special events or services shall be expeditiously approved by the Department. The Contractor shall be allowed to increase prices by a percentage not to exceed the annual increase in the Consumer Price Index for all urban consumers, U.S. City

average, all items (1982-84=100) as published by the Bureau of Labor Statistic, U.S. Department of Labor, over the immediately preceding twelve (12) month period.

28. **Personnel:** The Contractor shall provide the Department with the name and telephone number of a management person of the Contractor who will be on call, at all time, for emergencies or other matters related to the operations under this Agreement. The Contractor shall ensure that all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. The Contractor shall ensure that all employees having public contact are able to understand and communicate in spoken English.
29. **Signs:** The nature, size, shape and installation of Contractor's business signs within the Restaurant or in, on or adjacent to the Restaurant or OTV must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction over the Restaurant. All signs shall be removed by the Contractor at the termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Contractor. Signage must be maintained in good condition and appearance.
30. **On-Site Manager:** The Contractor shall employ a qualified full-time on-site manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Contractor under this Agreement and to accept service of all notices provided for herein.
31. **Quality of Contractor's Service:** The Contractor shall conduct its operations in an orderly manner and so as not to annoy, disturb, or be offensive to customers, patrons, or others in the immediate vicinity of such operations.
- The Contractor shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, and upon objection of the County concerning the conduct, demeanor or appearance of any such person, Contractor shall immediately take all necessary steps to correct the cause of such objection.

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

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

32. **Monitoring Services:** The Department shall have the right, without limitation, to monitor and test the quality of services of the Contractor, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means.

33. **Services/Equipment Provided by County:** The County shall provide access to the following:

- A. Electrical as existing.
- B. Water facilities as existing.
- C. Sewage collection facilities as existing.

34. **Equipment and Services Provided by Contractor:** The Contractor, at its sole cost, shall provide at the Restaurant:

- A. Janitorial service within the Restaurant.

The Contractor shall keep the Restaurant and equipment clean at all times. If the Restaurant and equipment are not kept clean in the opinion of the Department, the Contractor will be so advised and if corrective action is not immediately taken, the Department will cause the same

to be cleaned and the Contractor shall assume responsibility and liability for such cleaning.

B. Pest extermination, The Contractor shall follow the guidelines of the County's Integrated Pest Management program.

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

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

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

Contractor shall not alter or modify any portion of the Facility, the Restaurant or the improvements constructed therein without first obtaining written approval from the County.

36. **Security and Protection:** The Contractor acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Restaurant or OTV, outside of standard security measures supplied by the County in general. Contractor may provide its own specialized security for the Restaurant, subject to the County's written approval.

37. **Hurricane Preparedness:** The Contractor shall follow the County's emergency evacuation and hurricane plan as set forth for OTV in conjunction with the Restaurant emergency evacuation and hurricane plan.

38. **Maintenance Responsibilities of Contractor, Appearance of Facility:** Contractor shall, at its sole cost and expense, keep and maintain the Restaurant in a clean and good condition. The provision of janitorial services and all interior maintenance within the Restaurant are the sole and exclusive responsibility of the Contractor. Upon failure of the Contractor to maintain the Restaurant as required in this Paragraph, the Department may, after fifteen days written notice to the Contractor, enter upon the Restaurant and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall constitute additional rental(s), and shall be billed to and paid by the Contractor.
39. **Utility Services:** The County has caused all necessary utility lines and services to be brought to the Restaurant. Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of OTV as determined either by the public utility providing such service or by the Department in the exercise of reasonable judgment. Contractor shall make all repairs caused by Contractor's negligence.
40. **Payment of Utility Services:** Contractor agrees to pay for all charges for utility service used or consumed in or upon the Restaurant including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such charges are separately measured by metering or otherwise, Contractor agrees to pay the actual cost thereof, without addition or surcharge by the County.
41. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Contractor may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Contractor or for any limitation of supply resulting from governmental orders or

directives. No diminution or abatement of payment or other charges, nor damages, shall be claimed by Contractor by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Contractor's obligations hereunder be affected or reduced thereby.

42. **Damages:** Contractor shall repair all damages to the Restaurant or OTV caused by the Contractor, its employees, agents, or independent contractors.
43. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all the Restaurant, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Contractor shall be required to make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of this Agreement.
44. **Right of Entry:** The County shall have the right to enter upon the Restaurant at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Restaurant as the County deems necessary, but the County assumes no obligation to make repairs in the Restaurant other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Contractor and that the County will diligently proceed therewith to completion. The County or the County's agents shall also have the right to enter upon the Restaurant at reasonable times to show them to actual or prospective mortgagees, operators, or Contractors of OTV. During the one hundred and eighty (180) days prior to the expiration of the term of this Agreement, the County may show the Restaurant to prospective operators. If, during the last ninety (90) days of the term of this Agreement, Contractor shall have removed all or substantially all of Contractor's property there from, the County may immediately enter, alter, renovate, and redecorate the Restaurant without elimination or abatement of payment or other compensation and such action shall have no effect upon this Agreement.

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

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

46. **County's Repair, Facility Repairs, Alterations and Additions by the County:** The County, as its responsibility, and at its expense (except if the damage is caused by Contractor), shall make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair the foundations, roofs and structural soundness of floors and walls of the Restaurant and the Common Areas of OTV. There shall be no allowance to Contractor for a diminution of monthly guarantee value for interruption of business and no liability on the part of the County by reason of inconvenience, annoyance, or injury to business arising from the County, Contractor or others making any repairs, alterations, addition, improvements, restorations, or replacements, in or to any portion of the Restaurant or OTV, or to fixtures, appurtenances, or equipment thereof. The County shall have the absolute right to make repairs, alterations, and additions to any structures and facilities, including the Restaurant under this Agreement, free from any and all liability to the

Contractor for loss of business or damages of any nature whatsoever during the making of such repairs, alterations, and additions. In making such repairs, alterations, and additions, the County shall take such reasonable measures as are necessary to minimize interference with Contractor's operations of the Restaurant, for short term disruption of one week or less to Contractor's business where adequate accommodations can be made to minimize the inconvenience and injury to Contractor's business. If the Contractor's business is interrupted for more than one week, a pro rata adjustment of the Monthly Guarantee payable hereunder for the period of such interruption shall be made.

47. **Diminution for County's Repair:** Except as elsewhere specifically provided in this Agreement, there shall be no allowance to Contractor for a diminution of monthly guarantee value and no liability on the part of the County by reason of inconvenience, annoyance or interference with Contractor's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Restaurant, OTV or the building or buildings contained within OTV, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Contractor's use of the Restaurant.
48. **Performance of Obligations:** Contractor covenants at all times during the term of this Agreement to perform promptly all of the obligations of Contractor set forth in this Agreement.
49. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Restaurant, Contractor, his agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.
50. **Assignment, and Successors in Interest:**

A. Contractor shall not assign this Agreement or any portion thereof, nor any property associated with this Agreement without prior written approval of the County. Unapproved assignment shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as

may be approved by the County.

- B. Contractor shall not enter into any sub-agreement for services required to be provided under this Agreement without prior written approval of the County. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on any sub-Contractors, including percentage payments on gross receipts as defined in this Agreement. Contractor shall be liable for acts and omissions by any sub-Contractor affecting this Agreement. The County reserves the right to require the removal of any sub-Contractor of the Contractor for any cause for which Contractor may be terminated.

Any sub-agreement for Agreement services must be made available and accounted for through the Contractor so as to provide seamless service to the public as if provided directly by the Contractor.

51. **Ownership of Contractor:** The ownership of the Contractor is very important to the County. Therefore, the County reserves the right to terminate this Agreement at any time if more than 10% of the ownership of the Contractor has not been specifically approved by the County. The County may withhold approval of any proposed new owner for any reason it believes is in the best interests of the public. Contractor agrees to provide on 24-hour notice to the County an accurate list of all owners of the Contractor, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. If Contractor's stock is listed on a major stock exchange, Contractor may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

52. **County's Property Insurance:** Any insurance the County may maintain shall not cover Contractor's improvements and betterments, contents, or other property of Contractor. Contractor shall not violate, or permit the violation of, any condition imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Restaurant which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Restaurant is located or the property therein over the rate which would otherwise then be in effect (unless Contractor pays the resulting increased amount of premium as

provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the County. If, by reason of any act or omission on the part of Contractor, the rate of property insurance on the Restaurant or OTV or equipment or other property of the County shall be higher than it otherwise would be, Contractor shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of Contractor, which sum shall be deemed additional payment for purposes of collection only.

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

A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.

B. Public Liability Insurance on a comprehensive basis, including 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 must be shown as an additional insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

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

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

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

Or

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

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

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

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

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period; including any and all option years that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed

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

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

54. **Release and Indemnification:** Contractor will be responsible for and will and does hereby release and relieve the County and hold and defend it harmless from and against any and all liabilities, obligations, damages, penalties, claims, cost, charges, and expenses which may be imposed upon or incurred by the County by reason of loss of life, personal injury, and/or damages to property occurring in any part of the Restaurant or OTV, or business losses, occasioned in whole or in part by the negligence of Contractor, its agents or employees. Contractor shall defend, indemnify, and save harmless Miami-Dade County and its agents and employees against and from all liabilities, obligations, damages, penalties, claims, costs, expenses, and attorney's fees which may be imposed upon or incurred by or asserted against Miami-Dade County and/or its agents arising from Contractor's use of the Restaurant, including any period of time that Contractor may have been given access to or possession of all or any part of the Restaurant. The County shall not be liable for any damages or injury which may be sustained by any party or person on the Restaurant, other than the damage or injury caused solely by the negligence of the County subject to all limitations of Florida Statutes Section 768.28.

55. **Liability for Damage or Injury:** The County shall not be liable for damage or injury which may be sustained by any party or persons on the Restaurant other than the damage or injury solely caused by the negligence or intentional actions of the County, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes.

56. **Termination by County:** The occurrence of any of the following may cause this Agreement to be terminated by the County upon the terms and conditions also set forth below:

A. Automatic Termination:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor.
- ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days.
- iii. Assignment by Contractor for the benefit of creditors.
- iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.
- v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement
- vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County.
- vii. Failure to cease any activity which may cause limitation of County's use of OTV.

B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Restaurant and by certified or registered mail to any known address of Contractor set forth in this Agreement hereof for doing any of the following:

- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Monthly Guarantee and additional payment and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.
- ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

C. Termination after fourteen (14) days from receipt by Contractor of written notice having either been posted on or at the Restaurant or by certified or registered mail to the address of the Contractor set forth in this Agreement:

- i. Non-performance of any covenant of this Agreement other than non-payment of payment or performance fees and others listed in A and B above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
 - ii. A final determination in a court of law in favor of the County in litigation instituted by the Contractor against the County or brought by the County against Contractor.
- D. Revenue Control and Audit Defaults: The inability or failure of the Contractor to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Contractor. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the Security Deposit required in this Agreement.
- E. Habitual Default: Notwithstanding the foregoing, in the event that the Contractor has repetitively defaulted (4) four times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Contractor, regardless of whether the Contractor has cured each individual condition of breach or default as provided herein above, the Contractor may be determined by the Director of the Department to be an "habitual violator". At the time that such determination is made, the Department shall issue to the Contractor a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Contractor that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach (es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may terminate this Agreement upon the giving of written notice of termination to the

Contractor, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Contractor shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Contractor shall discontinue its operations at OTV, and proceed to remove all its personal property in accordance with this Agreement.

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

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

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

58. Cessation of Operation: At the expiration or earlier termination of the term of this Agreement, Contractor shall peaceably cease all operations at the Restaurant and shall ensure the Restaurant is in as good a condition as the Restaurant was on the Commencement Date of this Agreement, ordinary wear and tear and damage by condemnation, fire or other casualty excepted. Contractor shall deliver all keys for the Restaurant to the County at the place then fixed for the payment and

shall notify the County in writing of all combinations of locks, safes and vaults, if any, in the Restaurant. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Contractor's property or trade fixtures into or out of the Restaurant. Contractor's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this Agreement.

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

61. **Unauthorized Operations:** If Contractor continued to use and operate the Restaurant after the expiration of the term of this Agreement, or any option period, without a new Agreement reduced

to writing and duly executed and delivered (even if Contractor shall have paid, and County shall have accepted, payment in respect to such unauthorized operations), Contractor shall be deemed to be operating and using the Restaurant only as an Contractor from month-to-month, subject to all covenants, conditions, and agreements of this Agreement. If Contractor fails to surrender the Restaurant upon the termination of this Agreement, then Contractor, in addition to any liabilities to County accruing there from, shall indemnify and hold harmless the County and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Contractor on such failure. The County Manager is granted authority to negotiate changes in contracts, permits and concessions that are about to expire to assure that the County does not lose revenue opportunities due to delays in obtaining a successor contract, permit or concession. Where Commission approval or action is required in order to effectuate such changes, the Manager shall submit same to the Commission at the next available Commission meeting.

62. **Lien:** The County shall have a lien upon all personal property of the Contractor on the Restaurant to secure the payment to the County of any unpaid money accruing to the County under the terms of this Agreement.
63. **Limiting Legislative or Judicial Action:** In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of OTV for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of OTV for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the County deems the Agreement null and void by function of this Paragraph, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability under this Agreement.

64. **Non-Discrimination:** Contractor does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:

- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Restaurant, except as provided by law.
- ii. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except as provided by law.
- iii. That the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Agreement and re-enter and repossess said Restaurant thereon and hold the same as if said Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.

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

65. **No Waiver of Right to Enforce:** The waiver by County of any breach of any term, covenant, or

condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Agreement, other than the failure of Contractor to pay the particular Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Monthly Guarantee or additional payment or Percentage of Monthly Gross Receipts. No covenant, term, or condition of this Agreement shall be deemed to have been waived by County, unless such waiver is in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Contractor.

66. **Rules and Regulations:** The Contractor will observe, obey, and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Contractor's operations under this Agreement. Failure to do so will constitute a breach of the Agreement.
67. **Notices:** Any notices submitted or required by this Agreement shall be sent by registered or certified mail addressed to the parties as follows:

1. To the County:

- a) To the Project Manager:
Miami-Dade County
General Services Administration
111 NW 1st Street, Suite 2460
Miami, Florida 33128
Attn: Director

And

- b) To the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Director
Phone: (305) 375-5548
Fax: (305) 375-2316

2. To the Contractor:

Food Line Services, Inc.
150 W. Flagler Street #175
Miami, FL 33130
Attention: Maria T. Delgado
Phone: (305) 381-6337
Fax: (305) 381-7763
Email: mdelgado01@hotmail.com

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

68. Authority Of The County's Project Manager

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the

Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

69. **Interpretations:** This Agreement and the appendixes and attachments hereto, and other documents and agreements specifically referred to herein, constitute the entire, fully integrated Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may be amended only by written document, properly authorized by both parties and executed. This Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida.

70. **Rights Reserved to County:** All rights not specifically granted to the Contractor by this Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.

71. **Entirety of Agreement:** The parties hereto agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

72. **Headings:** The headings of the various Paragraphs and Sections 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.

73. **Waiver:** Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

74. No Partnership or Agency: The County and the Contractor are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Agreement does not constitute and shall not be represented to constitute a partnership between the County and the Contractor.

75. Choice of Venue: Any litigation between the County and the Contractor relating in any way to this Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida.

76. Survival: The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

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

Contractor

Miami-Dade County

By: Food Line Services, INC.

Name: MARIA DELGADO

Title: OWNER

Date: May 27th 08

Attest: [Signature]
Corporate Secretary

By: [Signature]

Name: RITA SILVA

Title: Senior Contracting Officer

Date: June 23, 2008

[Signature]
Approved by County Attorney as to Form and Legal Sufficiency



[Signature]
Deputy Clerk

Appendix A

SCOPE OF SERVICES

2.1 Objective

The Contractor shall develop the Restaurant and provide food and beverage services in a manner that provides a high-level of service and quality to employees and County patrons. At a minimum, food and beverage services shall be provided on a set schedule, during the regularly scheduled operating hours of the Overtown Transit Village, subject to approval by the County. The Contractor shall have the use of the completed operational Restaurant as shown on the attached building plan (see Appendix B). No nightclub type activities will be permitted under this contract.

2.3 Requirements and Services to be Provided

The Restaurant is provided in as-is condition. The Contractor shall perform all Restaurant improvements, in compliance with the Florida Building Code, with all necessary permits, and County's approval, obtained prior to starting construction of the Restaurant improvements and pursuant to the County's then current Construction Rider. The total cost of the construction, as defined per Florida Statute 255.20, for the Restaurant improvements shall not exceed \$200,000 and for electrical work the total cost shall not exceed \$50,000. The threshold amount for each (construction cost and electrical cost) may be adjusted by the percentage change in the Consumer Price Index from January 1, 1994 to January 1 of the year in which the project is scheduled to begin. There are no exceptions allowed to exceed the stated construction cost. Prior to finalizing the Construction Rider (Appendix C), the Contractor shall submit for approval to the Department the estimated cost of the construction certified by a Certified Public Accountant (CPA) pursuant to the Generally Accepted Accounting Principles (GAAP).

The Contractor shall bear all costs associated with all improvements to the Restaurant and all such improvements shall be the property of the County.

The Contractor shall:

- a) Create a first class food service Restaurant. The Restaurant shall provide quality of product and customer service, with an emphasis in appearance and ambiance, and in its competitiveness with other food and beverage destinations in the downtown area.
- b) Operate a fast food/casual deli-style restaurant and snack bar with the purpose to serve Overtown Transit Village employees and the public, with top quality food at fair prices. The Contractor shall also provide take-out, delivery and a catering program. The approved prices are provided as Appendix E.
- c) Create a visually exciting and inviting restaurant environment, through a creative high-impact store design, including product displays, signage, graphic and lighting.

- d) Maintain a complementary menu that is reflective of current trends in the fast/casual food industry and the local consumer market. Original menu, menu pricing, and future changes, must be approved by the County.
- e) Operate the restaurant at a minimum, five (5) days a week, Monday through Friday, 7:00 AM to 4:00 PM, except on County holidays. Sufficient attendants shall be available to provide service to Restaurant patrons. Any changes in the hours of operation require the express written agreement of both parties.
- f) At its sole cost and expense, make improvements to comply with the Americans with Disabilities Act (ADA), and any other County, State, federal requirements that may become applicable.
- g) Not assign or sublet nor otherwise encumber the Agreement without prior written County approval.
- h) Obtain all permits/licenses that are necessary for the operation of the restaurant as required by the City, County and or State.
- i) Be in full operation within 180 days following the award of the Agreement.
- j) Provide seating and tables for the dining area. Operate and maintain the entire premises in a first-class manner and condition. Contractor shall provide ample tables and chairs for the dining room/seating area and shall maintain the area and keep it clean at all times
- k) Provide security for the Restaurant at its own discretion. The County is not responsible for the Contractor's furnishing, fixtures, equipment, soft goods, mobile concession unit(s), or supplies.
- l) Take good care of Restaurant and shall use the same in a careful manner and shall, at its own cost and expense, repair County property or facilities damaged by Contractor's operations under any Agreement issued as a result of this Solicitation.
- m) Employ a qualified full-time on-site manager having experience in the management of this type of operation. The Contractor and employees shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Contractor's employees and not as employees of the Department.
- n) Provide all other related services necessary to operate the Restaurant in accordance with the terms and conditions of this Agreement.

Additionally, the Contractor may be required to provide related services as follows:

- o) Operate and maintain food and beverage kiosk and/or carts throughout the two buildings as may be requested by the County.

Appendix C
CONSTRUCTION RIDER

Premises: Overtown Transit Village

Restaurant: Restaurant

This Construction Rider is attached to and hereby made a part of the Agreement covering certain premises at the location above (the "OTV") as provided in Appendix B of the Agreement, Overtown Transit Village Restaurant (the "Restaurant"). Words and phrases used in this Construction Rider shall have the same meaning as in the Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Construction Rider and the provisions of the terms and conditions of the Agreement, the terms and conditions of the Agreement will prevail.

I. CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES

For the purposes of this Construction Rider, Improvements shall mean the structure or public utility or any other installation or physical change made to the Restaurant to increase its value and utility or to improve its appearance. The Improvements the Contractor constructs at the premises shall be constructed in accordance with the provisions of this Agreement and such Improvements shall not exceed \$_____ in construction costs.

A. Conceptual Plans. The Department shall have 60 days from receipt of the Conceptual Plan to review the Conceptual Plans and to solicit input from other government agencies in order to provide feedback to the OTV regarding the general aesthetics, layout, traffic and pedestrian flow, site orientation and design of the proposed Improvements.

B. Sustainable Buildings Program. The Contractor shall cooperate and shall cause its subcontractors and subconsultants to cooperate with the County's Sustainability Manager incorporating green building practices into the planning and design of the Restaurant, pursuant to County Ordinance Number 07-65 concerning the County's Sustainable Buildings Program.

The Contractor shall cause each of its subcontracts to include a provision that the subcontractor and/or sub consultant:

1. shall comply with all requirements of the County's Sustainable Building Program;
2. shall comply with all requirements of the County's Community Workforce Program;
3. will maintain all files, records, accounts of expenditures for contractor's or consultant's portion of the Project;
4. that such records shall be maintained within Miami-Dade County; and
5. that County shall have access thereto as provided in this Agreement.

C. Preliminary Plans and Specifications. Within 90 days after the Department notifies Contractor that the Department has approved the Conceptual Plan or provided notification to Contractor detailing required modifications, Contractor, at its cost, shall prepare and deliver to the Department five (5) "Preliminary Plans," including one Mylar set (A CADD file may be submitted in lieu of the Mylar set) for the construction of the Improvements, reference as the Restaurant at Overtown Transit Village, at the Premises prepared by an architect or engineer licensed to practice as such in Florida; which Preliminary Plans shall include

and show, without limitation, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from the OTV, curbs, gutters, parkways, lighting, design and locations for outdoor signs, storage areas, landscaping, and structures all sufficient to enable reasonably accurate cost estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect the Restaurant shall have on the OTV. Such Preliminary Plans shall be based on Conceptual Plans previously submitted by Contractor to the Department. Additionally, such Preliminary Plans of the improvements shall be in strict adherence to Article 7 of the Miami-Dade County Home Rule Charter. The Project shall be constructed within the exterior property lines of the Premises; provided that required work beyond the Premises or utilities, access and conditional use requirements will not violate this provision. The Restaurant shall be aesthetically and functionally compatible with the setting of the OTV.

Within 60 days after the Department receives Preliminary Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Contractor specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Contractor shall exercise reasonable diligence in attempting to resolve any objections by the Department to the Preliminary Plans.

If the parties are unable to resolve any objections by the Department to the Preliminary Plans within 30 days after Contractor has received the Department's objections, the Department shall have the right to terminate the Agreement upon notice to the other party, the parties being thereafter relieved of any liability hereunder and under the Agreement.

D. Final Plans. Within 90 days after the Preliminary Plans and specifications are approved between the parties, the Contractor, at its cost, shall prepare and deliver to the Department five (5) sets of Final Plans, including one Mylar set or CADD file, and specifications and working drawings ("Final Plans") covering the Project, which Final Plans must be consistent with the approved Preliminary Plans and signed and sealed by an architect or professional engineer licensed to practice as such in Florida. The Final Plans and all associated addenda and attachments shall be incorporated to the Agreement by reference.

E. Permits. Not later than the date that Contractor receives the Department's approval of the Final Plans as required in this Section, Contractor shall commence seeking from all governmental agencies having jurisdiction over the OTV and the Restaurant all such required permits, and Contractor shall exercise due diligence in attempting to obtain such permits.

Subject to the timing requirements contained in the next paragraph, the obtaining of any such permits shall not be considered as complete until any review and/or appeal is final by the highest body authorized to determine same or until the time for such appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any permit, the obtaining of the permits shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal there from shall have expired, or if any appeal has been taken, until the appeal has final determinations.

If Contractor is unable to obtain such permits within 120 days from the date Contractor delivers copies of the Final Plans to the Department as herein required, the Department shall have the right to terminate the Agreement upon notice to the other party. If Contractor is unable to obtain such permits within such period of time due solely to delays beyond the reasonable control of Contractor including, without limitation, acts of God, inclement weather, and like matters as mutually agreed between the Contractor and the Department, such period of time may be extended by the Department up until such permits have been obtained. However, if such permits are not obtained within 270 days from the date Contractor delivers copies of the Final Plans to the Department, notwithstanding the reason therefore, or by such deadline as parties may reasonably agree the Department shall have the right to terminate the Agreement upon notice to the other party.

When Contractor obtains all such permits it shall deliver copies of them to the Department.

F. Commencement and Completion of Construction of the Project. Within 30 days from the date that the Department receives copies of the permits and authorizations regarding construction of the Project, which permits and authorizations shall be delivered to the Department within 3 business days of receipt by the Contractor, the Department shall deliver a Notice to Proceed with Construction and shall turn over possession of the Restaurant to Contractor, and Contractor shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Project shall be in accordance with the Final Plans. The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

All work in connection with the construction of the Project shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws. Contractor will permit unobstructed inspection by the Department's staff to determine compliance with the approved plans and specifications throughout construction.

The Contractor nor its subcontractors shall discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to his/her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except where based on a bona fide occupational qualification; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts between the Contractor and its subcontractors shall include the above non-discrimination provisions.

Contractor agrees that construction of the Project shall be completed within _____ of the date Contractor was provided possession of the Restaurant for construction. However, both parties agree that Contractor's obligation to commence construction of the Project and diligently pursue completion thereof is subject to delays resulting from causes beyond the reasonable control of Contractor including, without limitation, acts of God, inclement weather, and like matters.

Upon completion of construction of the Project, Contractor shall, at its cost, obtain a survey of the Restaurant and deliver to the Department "as built" drawings, including copies all of CADD drawing, accurately reflecting the Project at the OTV. Both parties agree to execute and attach to the Agreement, a new Exhibit B showing the exact location of the Restaurant at the OTV.

G. Provisions Applicable during Construction of Project In addition to the other provisions of the Agreement, the following provisions shall be applicable during the period of time that Contractor constructs Project:

1. Contractor shall notify the Department of Contractor's intention to commence construction of the Project at least twenty (20) days before the delivery of the Notice to Proceed by the Department.
2. All construction shall be performed by licensed contractors approved by the Department. Contractor shall furnish the Department with a true copy of Contractor's contract with the general contractor showing a breakdown of costs. Such contract shall give Contractor the right, but not the obligation, to assume the general contractor's obligations and rights under that contract if the general contractor should default.

3. During the construction of the Improvements, the Department or its designee shall periodically inspect the construction to ensure conformity with the approved improvement documents, and any changes thereto requested by the Contractor and approved by the Department in writing.

H. Construction Bonds:

1. At least ten (10) days prior to any construction work on the Premises is commenced, or prior to the purchase of any materials, equipment or supplies for construction, the Contractor shall deliver to the County and record in the public records of Miami-Dade County, Florida, a payment and performance bond with a surety insurer authorized to do business in the State of Florida as a surety in the full amount of the construction cost of the Improvements. Such bond shall be in the form provided and attached hereto as part of the Construction Rider, and shall name the Contractor as the principal and the County as the obligee.

2. Surety Bond Qualifications: The following specifications shall apply to bid, performance, payment, maintenance, and all other types of bonds.

A. 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:

<u>Bond Amount</u>	<u>Best's Rating</u>
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
5,000,001 to 10,000,000	A VIII
Over 10,000,000	A IX

On bond amount of 500,000 or less, the 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:

1. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued,
2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

B. 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.

C. The attorney-in-fact or other officer who signs a Contract Bond for a surety company must file with such bond a certified copy of his power of attorney authorizing him to do so. The Contract bond must be countersigned by the surety's resident Florida Agent.

The Contractor may in lieu of a surety bond, submit a cash bond, conditioned upon the faithful performance of the work in strict accordance with this Contract and with the Plans

and Specifications and the completion of the same free from all liens and within the time limit herein specified; the said Bond shall be so worded as to make the Contract a part thereof and shall contain a clause providing the right of suit or action for whose benefit said bond shall be executed as disclosed by the text of said Bond and Contract to the same extent as if he or they were the obligee or obligee therein specifically mentioned, and all such persons shall be held or deemed to be obligee thereof.

Florida Statutes 255.05 provide for the following conditions to be made in all Performance and Payment Bonds relating to public projects:

"A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection."

"A claimant who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment."

"No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies."

3. The bonds shall provide the following, without limitation:

a. That a payment bond in an amount not less than the cost of construction of the Project is obtained that is conditioned to secure the completion of the Project free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen in substantially the form attached hereto;

b. That a performance bond in an amount not less than the cost of construction of the Project is obtained that insures that the construction work shall be effected by the general contractor or, on their default, the surety in substantially the form attached hereto; and,

c. That the surety will defend and indemnify Miami-Dade County and Contractor against all loss, cost, damage, expense and liability arising out of or connected with the construction of the Project, up to the maximum bond requirement amount.

4. In the event that, for any reason, either or both of the Contractor's Payment and Performance bonds lapse or are held to be no longer valid or enforceable before the satisfaction of any and all claims by material men, laborers, subcontractors, or any suppliers of any kind, the Contractor shall pay all such claims, and indemnify, defend, and hold the County harmless against such claims.

I. Prior to the commencement of construction, Contractor shall provide or cause its subcontractors to provide an original policy for Builders Risk/Installation Floater on an "All Risk" basis in an amount not less than one hundred percent (100%) of the insurable value of the building(s) or structure(s) or material(s). The policy shall be in the name of Miami-Dade County and the Contractor as their interests may appear. This insurance is to be maintained until substantial completion of the work, as determined by the Department.

(This insurance is in addition to the insurance required elsewhere).

1. No liens shall be attached to the OTV or any part thereof.
2. Prior to the commencement of any work, Contractor shall demonstrate to the Department's satisfaction that all construction financing is in place.
3. Contractor shall work closely with the Department in scheduling and engaging in Contractor's construction activity so as not to disrupt OTV events, including but not limited to Special Events. Where conflict may occur, the Department shall solely make the determination as to Contractor's right to continue work and the desirability of temporarily halting or continuing activity by Contractor.
4. Contractor shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by Contractor's failure to cease work after written notice from the Department.

II. THE DEPARTMENT'S CONSTRUCTION OBLIGATIONS

A. Conditions of Premises. The Department shall deliver physical possession of the Premises to Contractor in an "as is" condition so that Contractor may commence construction.

B. Reasonable Access. The Department shall provide reasonable access to allow Contractor to have utilities brought to the Premises and to have constructed the approved improvements described in this Agreement.

C. Liquidated Damages. N/A

Appendix D

RULES AND REGULATIONS

Contractor will abide by all provisions of the Agreement and, in the event of any conflict between the terms of these Rules and Regulations and the Agreement, the provisions of the Agreement shall prevail.

1. Contractor shall maintain available a substantial stock of goods, wares, and merchandise adequate to insure successful operation of Contractor's business. Contractor shall store and stock in the Restaurant only such inventories as Contractor intends to sell at retail at, in, from, or upon the Restaurant, and, unless otherwise agreed by County, Contractor shall use for office, storage, or other non-selling purposes only such space in the Restaurant as is reasonably required to maintain Contractor's retail sales therein.

3. Contractor agrees to keep Restaurant in a clean and tidy condition at all times and to keep in an orderly manner all racks, shelves, and other devices used for display and sale of merchandise. Contractor shall take care to present at all times merchandise that is fresh in appearance and neatly and safely displayed.

5. No awnings or other projections shall be attached to the exterior surface of the walls enclosing the Restaurant. No curtains, blinds, shades, or screens shall be attached to or hung in, or used in connection with, any window or door of Contractor's space without the prior written approval of County as to the quality, type, design, color, and manner of attaching the same. No protective screen, grating, shade, or other enclosing device shall be used on the part of the Restaurant abutting the Common Area, courts, or public corridors without County's prior written approval as to the quality, type, design, color, and manner of attaching the same, to the end that all storefronts facing the said Common Area will be compatible in appearance.

7. Contractor shall, at Contractor's expense, maintain the Restaurant in a clean, orderly, and sanitary condition and free of insects, vermin, rodents, and other pests. No refuse, trash, or garbage shall be suffered by Contractor to remain in the Restaurant at night after normal working hours. During normal working hours all refuse, trash, and garbage and containers of types approved by County for the same will be so placed in the Restaurant as to be not visible from the exterior of the Restaurant or from the interior areas of the Restaurant normally used by the public. Boxes will be flattened by Contractor before being put in Center trash containers.

8. Nothing shall be thrown or swept out of doors or windows of the Restaurant onto sidewalks, entrances, passages, courts, elevators, escalators, plazas, vestibules, stairways, corridors, halls, or the Common or Public Areas. Contractor will promptly repair at Contractor's expense any damage to the Restaurant or elsewhere in OTV caused by the delivery to or removal from the Restaurant of any merchandise or other property or the removal there from of trash, refuse, or garbage, unless such damage is caused by County or its agents, employees, or contractors. In default of such repairs by Contractor, County may make the same and Contractor agrees to pay the cost thereof to County promptly on demand. any repairs shall be made only according to plans and specifications and by persons approved by County.

9. The bathrooms and other plumbing fixtures shall not be used for any purpose other

than those for which they were constructed, and no sweeping, rubbish, rags, or other substances shall be thrown therein. All damage resulting from any misuse of such features shall be borne by Contractor who, or whose servants, employees, agents, guests, or licensees shall have caused the same.

10. No bicycles, vehicles, or animals of any kind shall be brought into or kept or permitted in or about the Restaurant, the Public Areas, or the Common Areas.

11. Contractor shall not permit, allow, or cause any public or private auction or any fire, smoke, "going out of business," bankruptcy, sheriff, or receiver sales in the Restaurant, nor shall Contractor solicit business nor distribute any handbills or other advertising matter in the Common Areas, nor shall Contractor use or permit the use of advertising media such as flashing lights, loudspeakers, phonographs, public address systems, sound amplifiers, radios, or broadcasts within the Common Area, nor shall Contractor use or permit any use of Contractor's Restaurant except in a manner consistent with the highest standards of advertising services. Contractor shall not make, or permit or suffer to be made on the Restaurant, any unreasonable or disturbing noises or vibrations either by persons or machines, of any types, including TV's, radios, and internal sound systems, and shall not interfere with the occupancy of any other part of OTV, and the building or structures containing OTV, or their guests or invitees or persons using the Common Areas. Canvassing, soliciting, and peddling are totally prohibited, and each Contractor shall cooperate to prevent the same.

12. No Contractor, nor any of Contractor's servants, employees, agents, guests, or licensees, shall at any time bring or keep upon OTV or the Restaurant any flammable, combustible, highly toxic, corrosive or explosive fluid, chemical, or substance to be used for resale purposes without County's prior approval, nor shall such material be kept in the Restaurant except to the extent permitted by law and then only with prior written consent of County.

13. County reserves the right to exclude from OTV any time, commencing one hour after Contractor closes or is required to close its Restaurant for business with the public and ending one hour before Contractor opens or is required to open its Restaurant for business with the public, any person who does not present a pass issued by County, unless Contractor or its authorized representative is present at OTV and specifically requests the guard to admit any particular person. Contractor will be responsible for the conduct of any person admitted to the OTV during such hours for which Contractor requested a pass or requested the guard to admit to OTV.

14. Contractor shall use such name as shall be designated by County in its address on all stationery, billheads, invoices, envelopes, and local advertising in lieu of a street address. County reserves the right to prohibit any advertising which, in County's opinion, tends to impair the reputation of OTV or its desirability as a location for stores or offices; and upon request of County, Contractor shall immediately discontinue such advertising.

15. Contractor, when closing the Restaurant, shall see that all windows and exit doors from Contractor's Restaurant are closed and locked. Contractor will furnish County "after-hours" emergency telephone numbers for the sole use of County at its discretion.

16. County reserves the right to close and keep locked any and all entrances and exit doors of OTV and gates of doors closing any parking areas thereof during such hours as County may deem to be advisable for the adequate protection of OTV and Contractors therein.

17. County may limit weight, size, and position of all safes, fixtures, and other equipment used in

the Restaurant. In the event Contractor shall require extra heavy equipment, which exceeds live load factor, Contractor shall notify County of such fact and shall pay the cost of structural bracing to accommodate same. All damage done to the Restaurant, OTV by putting in, or taking out, or maintaining extra heavy equipment shall be repaired at the expense of Contractor.

18. County reserves the right to exclude or expel from OTV any person who, in the judgment of County, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of the Rules and Regulations of OTV.

19. Contractor shall not suffer, permit, order, or allow deliveries to be made except pursuant to the following conditions:

- (i) Deliveries shall be made only between 7:00 a.m. - 4:00 p.m.
- (ii) All deliveries shall be made to Contractor space.
- (iii) No delivery person shall be allowed to enter OTV who does not meet, in the sole judgment of County or its Truck Dispatcher, reasonable standards of dress and decorum;
- (iv) County shall not be responsible for watching or safekeeping any items delivered to Contractor.

20. County reserves the right to waive any rule in any particular instance or as to any particular person or occurrence, and further, County reserves the right to amend or rescind any of these rules or make, amend, and rescind new rules to the extent County, in its sole judgment, deems suitable for the safety, care, and cleanliness of OTV and the conduct of high standards of advertising therein. Contractor agrees to conform to such new or amended rules upon receiving written notice of same.

21. Whenever any notice, approval, consent, request, or election is given or made pursuant to these Rules and Regulations, it shall be in writing. No consent or waiver, expressed or implied, by County or Contractor to or of any breach of any Rule or Regulation shall be construed as a consent or waiver of any other breach of the same or any other rule or duty. Whenever any approval or consent by County or Contractor is expressly required by these Rules and Regulations, the approval of consent shall not be withheld unreasonably.

APPENDIX E Menus and Prices

Lunch

Contractor shall offer a Buffet service with the following:

2 Daily Soups

2 Complete platters (customers can choose one with two sides). This will change daily, because there is the possibility that the same public will be visiting regularly. Example,

Monday:	Meat loaf Pollo en salsa de hongos Pasta Florentina
Tuesday:	Pork Chop en salsa de pina Pollo Barbecue Pasta Marinara
Wednesday:	Pollo Teriyaki Carna asada Pasta Alfredo
Thursday:	Pollo Parmegiana Strogonoff de carne Lasagna
Friday:	Black beans, carna esmechada Milanesa de pollo Pasta Bolognesa

The price will range between \$5.50 and \$6.00. Restaurant patrons will have the ability to grab and go the following items:

Salads:

Cobb Salad	\$ 7.00
Caprese	\$ 6.50
Waldorf Chicken	\$ 6.75
Tuna Salad	\$ 6.75
Caesar	\$ 5.75
W/ chicken	\$ 6.75

Same salads but in smaller sizes.....between \$4.25 and \$5.00

Note:

-One special salad weekly.*

- Taco salad
- Mediterranean Salad
- Santa Fe

- Etc.

Sandwiches or wraps: priced between \$4.75 and 5.50.
 With fruit, fries or pasta salad, add \$ 1.50.

Tuna Salad Wrap
 Hawaiian Chicken Wrap
 Chicken Caesar Wrap

Turkey Sandwich
 Tuna Salad
 Hawaiian Chicken

Grilled Chicken (hot)
 Reuben (hot)
 BLT (hot)

Note: Contractor shall provide a weekly special sandwich or wrap.*

- Mediterranean Wrap
- Grilled Chicken Wrap
- Turkey Club Wrap
- Skirt Steak
- Turkey Club
- Pork sandwich
- Tuna Melt
- Etc.

Desserts

Variety of 2 weekly desserts \$ 3.00
 Fruit Platter

Combo:

A small soup or small house salad
 ½ sandwich (tuna, turkey or ham and cheese) \$ 5.50

Food to be prepared at the moment (including the hot sandwiches) :

- Chicken and fries	\$ 5.50
- Buffalo Chicken	\$ 5.50
- French fries	\$ 2.00
- Sirloin Burger	\$ 3.75
- Turkey burger	\$ 3.75
- Veggie burger	\$ 3.75

Beverages:

There will be a "free refill" soda station, fresh tea (prepare daily), flavored tea (prepare daily) and lemonade. \$1.25 - \$1.75

Natural fruit shakes.	\$ 2.50
Mineral Water	\$ 1.00
Perrier Water	\$ 1.25

Hot Tea
American Coffee reg./decaf
Café Latte
Hot Chocolate
Espresso

Snack bar service (Chips, candies, granola bars, gums, etc)

We will be adjusting the menu depending on the majority of the customer preferences.

Contractor uses 0% grams trans-fat products to cook.

Our products are fresh.

Breakfast in Overtown

From 7:00 to 10:00 am

American

Eggs of your choice, toast (White, wheat, croissant or bagel),
Bacon or sausage, hash brown \$3.75

Breakfast Wrap

Hand rolled tortillas, stuffed with your choice of four ingredients * \$3.00

Scrambles and omelets

Eggs with your choice of four ingredients*, served with banana bread
And white or wheat toast \$3.25

Egg Sandwich

Omelet over your choice of white or wheat toast or bagel \$3.25

Pancakes

Four medium homemade pancakes served with Maple Syrup, honey,
Butter \$2.50
With bacon or sausage \$3.25

French Toast

Served with powdered sugar and Maple Syrup \$2.50
With bacon or sausage \$3.25

Bagels

Plain, sesame or raisin, served with cream cheese, butter, jelly \$1.75

Muffins

Morning Glory / Cappuccino / Cranberry / Blueberry / banana \$1.50

***Ingredients to choose for your Breakfast Wrap, omelet or scrambles:**

-Ham	-Spinach	-Turkey	-Bacon	-Green peppers	-mushroom
-Sauce	-Onions	-Cheddar Cheese		-Tomatoes	-Swiss cheese

Sides:

Bacon	\$1.35
Sausage	\$1.35
Banana bread 2x	\$0.75
Small fruit salad	\$1.35

Beverages:

Regular and decaf coffee	\$1.00
Café con leche	\$1.25
Cappuccino (cream)	\$3.00
Hot Chocolate	\$2.00
Orange Juice	\$1.50
Kiwi tea	\$1.25
Regular tea	\$1.25

A selection of pastelitos and Cuban sandwiches will be in the menu as well.

SUPPLEMENTAL AGREEMENT NO. 1

Contract Number: RFP 609

Contract Title: Overtown Transit Village Restaurant Development and Operating Agreement

Contractor: Food Line Services, Inc.
150 West Flagler Street, No. 175
Miami, Florida 33130

In accordance with the above-referenced Agreement, this Supplemental Agreement, when properly executed, shall modify the Agreement as follows:

A. Add the following language to Appendix A: Scope of Services, as paragraph 2.2:

2.2 Impact Fees

The Contractor shall pay the following applicable Miami-Dade County fees:

1. Water and Sewer Impact Fees
2. Miami-Dade County Impact Fees
 - a. Road Fees
 - b. Fire Fees
 - c. Police Fees
3. Permitting and Construction Fees of any required grease interceptor that will be specified by the appropriate government agency.

B. Add the following language to Article 11 of the Agreement.

The County and Contractor agree to abate the Monthly Guarantee for the first 12 months of operation in consideration of the Contractor's payment of the impact fees as described in paragraph 2.2 of the Scope of Services.

All terms, covenants and conditions of the original Agreement shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to County Contract No. RFP 609.

Contractor

Miami-Dade County

By: Food Line Service, Inc

By: [Signature]

Name: Yarek Delgado

Name: Amos C. Roundtree

Title: Owner

Title: Director, Purchasing Division

Date: Oct 27 / 08

Date: 10/9/08

Attest: [Signature]
Corporate Secretary/Notary

Attest: [Signature]
Clerk of the Board

Corporate Seal/Notary

Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney



ATTACHMENT 3

Invoice CGC08272009

Date 08/27/2009

Tou -
PLEASE REVIEW!
Slow ok. If you
WANT
THANKS!
MJK



General Contractors, Electrical Contractors, Plumbing Contractors, Construction Management

Buildexz Corp.

7390 SW 116 Terrace Miami, Florida 33156

Telephone: 305 251 9114

Fax: 305 251 9338

Job & Billing Info

The Village Café 701 NW 1 CT Miami

Florida zip 33136

T: (305) 371-4216

F: (305) 371-4239

ATT: Maria Delgado

RE: Change Orders

The following items are deviation from the plans and are consider change orders.

1. Demolition Price: \$ 12,500.00 ✓

A. Demolition of existing offices, including doors, frames, carpet, drywall, metal partitions, electrical lines, plumbing lines, a/c ductwork, fire alarm insulation, and remove all debris from site.

2. Grease Trap \$ 20,000.00 ✓

A. Grease trap tanks to existing building parking installation of area instead of original location.

B. Cut and remove concrete slab to fit tanks.

C. Locate existing plumbing lines to restaurant, adjust and install new tanks.

D. Install new rebar and epoxy to existing concrete slab, and pour, finish concrete slab on top of new tanks.

E. Removal and replacement of metal fence for tank installation access.

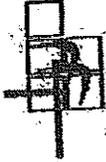
3. Interior Plumbing: \$ 3,300.00 ✓

A. Cut concrete slab adjacent to existing bathroom floor to excavate and locate existing plumbing lines for new connection, existing lines were not according to existing plans.

B. Installation of additional pipe and fittings.

Invoice CGC08272009

Date 08/27/2009



C. Additional backfill, compaction, concrete placement and finishing, including labor and materials.

4. Exhaust Fan relocation: \$ 2,750.00 ✓

A. Additional metal framing and stucco to cover exterior duct work. Matching existing conditions and dimension.

5. Acoustical Ceilings: \$ 2,950.00

A. Install new acoustical ceilings at dining area, due to falling debris from existing insulation application directly to concrete slab.

TOTAL INVOICE PRICE (Forty One Thousand Five Hundred and not cents)

INVOICE PRICE: _____ \$ 41,500.00

Signature: Thomas Plummer Print name: Thomas Plummer

Title: Asst. Physical Plant mgr Date: 4/2/10

Invoice respectfully prepared by: H.B.

Please make check payable to **BUILDEXZ CORP**
Mail Payment to 7390 SW116 Terrace Miami Florida 33156

I agree with all of the additional items.
item 1 - I thought demolition was included? the extent of demolition was most likely more than expected. Price seems high.
item 2 - removal of the metal fence was a mobilization error. Price seems high.

