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

Memorandum

MIAMI-DADE COUNTY

Date: March 5, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Agenda Item No. 8(A)(5)

Resolution No. R-149-13

Subject: Award Recommendation for the Operation & Maintenance Agreement of the Airport Operation Information System to Air-Transport IT Services, Inc., Project No. I115D

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board): (i) waive competitive bid procedures pursuant to Miami-Dade County Code Section 2-8.1 and Section 5.03D of the Home Rule Charter; (ii) approve the award of an Operations & Maintenance (O&M) Agreement for the Airport Operation Information System (AOIS) for the Miami-Dade Aviation Department (MDAD) to Air-Transport IT Services, Inc. (AirIT) with a value of $14,316,248.89 and a duration of seven years; and iii) authorize the County Mayor or the Mayor's designee to execute the Agreement substantially in the form attached hereto.

SCOPE

The impact of this item is countywide as it relates to Miami International Airport (MIA), the General Aviation Airports, PortMiami, certain Metrorail locations, Miami area hotels and the Miami Beach Convention Center.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 relating to identifying delegation of Board authority contained within the subject Agreement, the Aviation Director or designee has the authority to terminate the Agreement.

FISCAL IMPACT/FUNDING SOURCE

The amount of the Agreement is $14,316,248.89, including the Inspector General (IG) audit account. The proposal for this recommended Agreement keeps pricing static for seven years. The source of funding is the MDAD Information Systems operating budget.

TRACK RECORD/MONITOR

The track record for AirIT has been satisfactory according to MDAD Information Systems and Telecommunications Division Director Maurice Jenkins, who will monitor the Agreement.

DUE DILIGENCE

Pursuant to Resolution No. R-187-12, due diligence was conducted to determine the responsibility of AirIT, including verifying corporate status and any performance or compliance issues. The lists reviewed included: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to responsibility for AirIT.

BACKGROUND

This contract is for the operation and maintenance of the Airport Operation Information System (AOIS) at MIA. The AOIS was procured through an open and competitive process in 2002; however, it is a proprietary system, and support for the system is only available through AirIT.

This Board in 2007 approved a prior bid waiver contract with AirIT for the provision of these same O&M services in 2007, recognizing the proprietary nature of the software.

This AOIS contract term extension will allow MDAD to develop new strategies for potential replacement of the AOIS and/or some of its functional components. By aligning the new AOIS contract term with those of other contracts for mission-critical systems, MDAD can re-scope the AOIS contract in an effort to relieve dependency on a single source vendor. This approach maximizes the value of the investment that has been made in the existing AOIS while facilitating multiple procurement strategies that are possible when paired with other mission-critical systems.

AOIS was developed to centralize information to help manage airport operations. The software suite is a proprietary group of modules, tightly integrated to ensure stable and reliable operations. It interfaces with virtually every mission critical system within the airport and is the cornerstone of MDAD's total airport management system. It integrates multiple systems and processes into one complete framework that enables MDAD to work as a single unit with unified objectives.

The elements of the system include the Airport Operational Database, Interface Management, Information Management, Resource Management System and Visual Information Display software. Collectively, they not only link the AOIS system but also are imbedded in the hardware controllers that drive all displays and electronic signage throughout the airport.

In addition to AOIS, AirIT has full care, management and control of the Propworks™ Enterprise Resource Planning interface to PeopleSoft (Oracle) and all interface modules that link to a myriad of external systems including baggage handling, building maintenance, Sabre, air traffic, flight tracking, and others.

Specifically, AOIS is integrated with the following core systems:

- PROPworks
- PeopleSoft
- North and South Terminal Baggage Handling Systems
- Flight, Gate, Baggage and Ticket Counter Information Display Systems
- Make-up Belts and Staff Information Display Systems
- Visual Paging – ADA requirement
- Telephone Information System – ADA requirement
- Paging and Cable TV Systems
- Web and Off-airport Flight Information Display Systems
- Crystal Report – Enterprise Reporting System
- Data Archive and Retrieval
- Wayfinding Displays
- Web-based Flight Tracking
- Advertising Displays
- Aerial View System
- Baggage Input Consoles

- Emergency Messaging
- American Airlines - FliteSource
- American Airlines – Baggage Information
- Delta Airlines Flight Information System

PROJECT:	Operation and Maintenance of the AOIS for MDAD
PROJECT LOCATION:	MIA, the General Aviation Airports, PortMiami, certain Metrorail locations, Miami area hotels, the Miami Beach Convention Center and other areas as deemed necessary.
COMPANY NAME:	Air-Transport Services, Inc.
COMPANY PRINCIPALS:	Betros Wakim, Chief Executive Officer
GENDER, ETHNICITY AND OWNERSHIP BREAKDOWN:	Owned by publicly held corporation Fraport AG
LOCATION OF COMPANY:	5950 Hazeltine National Drive, Suite 210, Orlando, FL 32822
YEARS IN BUSINESS:	11 years
PREVIOUS AGREEMENTS WITH THE COUNTY:	Existing agreement totaling $11,452,371.19; initial agreement totaling $11,979,819.31
TERM OF AGREEMENT:	Seven years
OPTION(S) TO RENEW:	None
AMOUNT OF AGREEMENT:	$14,316,248.89, including General Allowance Account (10%), IG Audit Account
CONTRACT MEASURES:	13% Small Business Enterprise (SBE) Goal
SBE SUBCONTRACTORS:	Advanced Total Systems, Inc. – 13% ($1,687,701.07)
INSPECTOR GENERAL:	Provisions for Inspector General and Independent Private-Sector Inspector General are included in the Agreement
USER DEPARTMENT:	MDAD

Jack Osterholt, Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 5, 2013

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

SUBJECT: Agenda Item No. 8(A)(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 Mayor's report for public hearing**
_____	**No committee review**
✓	**Applicable legislation requires more than a majority vote (i.e., 2/3's ✓, 3/5's ____, unanimous _____) to approve**
✓	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(5)
3-5-13

RESOLUTION NO. R-149-13

RESOLUTION AUTHORIZING AWARD OF MIAMI-DADE COUNTY PROJECT NO. I115D OPERATIONS AND MAINTENANCE AGREEMENT FOR THE AIRPORT OPERATION INFORMATION SYSTEM FOR THE MIAMI-DADE AVIATION DEPARTMENT, IN THE AMOUNT OF $14,316,248.89, FOR A TERM OF SEVEN (7) YEARS, TO AIR-TRANSPORT IT SERVICES, INC.; FINDING A WAIVER OF COMPETITIVE BIDS TO BE IN THE BEST INTERESTS OF MIAMI-DADE COUNTY; BY TWO-THIRDS VOTE OF THE MEMBERS PRESENT, WAIVING THE REQUIREMENTS OF 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY; WAIVING THE REQUIREMENTS OF SECTION 5.03(D) OF THE HOME RULE CHARTER; AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE TERMINATION PROVISIONS THEREOF

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby, pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8.1 of the Code, (i) waives competitive bidding by vote of two-thirds of the members of the County Commission present, (ii) finds such waiver to be in the best interests of Miami-Dade County and (iii) awards to Air-Transport IT Services, Inc. the agreement for Miami-Dade County Project No. I115D, relating to the operations and maintenance of the Airport Operation Information System for the Miami-Dade Aviation Department in the amount of $14,316,248.89, and for a term of seven (7) years, in substantially the form attached hereto and made a part hereof, and authorizes County Mayor or Mayor's designee to execute same and to exercise the rights and privileges contained therein, including the termination provisions thereof, on behalf of Miami-Dade County.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of March, 2013. 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.

David M. Murray

NON-EXCLUSIVE OPERATION AND MAINTENANCE AGREEMENT FOR THE AIRPORT OPERATION INFORMATION SYSTEM FOR MIAMI-DADE AVIATION DEPARTMENT PROJECT NO. I115D

THIS NON-EXCLUSIVE AGREEMENT, made and entered into as of the _____day of_____, 20_____ by and

Between the County:	**Miami-Dade County Florida,** a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the "County", which shall include its officials, successors, legal representatives, and assigns.
And	
Contractor:	**Air-Transport IT Services, Inc.** **5950 Hazeltine National Drive, Suite 210** **Orlando, FL 32822** **(407) 370-4664** authorized to do business in the State of Florida; which term shall include its officers, partners, employees, successors, legal representatives, and assigns.
Description of the Project:	The County, as represented by the Miami-Dade Aviation Department (MDAD), has engaged Contractor to operate and maintain the Airport Operation Information System (AOIS) at Miami International Airport, the General Aviation Airports, the Port of Miami, certain Metrorail locations, Miami area hotels, the Miami Beach Convention Center and other areas as deemed necessary.

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EXHIBITS:

Exhibit A:	AOIS Technical Specifications
Exhibit B:	Schedule of Pricing
Exhibit C	Small Business Enterprise (SBE) Implementing Order 3-41 and SBE documents – Schedule of Intent; Agreement with ATS
Exhibit D	Subcontractor Payment Report
Exhibit E	Executed Affidavits

NON-EXCLUSIVE OPERATION AND MAINTENANCE AGREEMENT FOR THE AIRPORT OPERATION INFORMATION SYSTEM FOR MIAMI-DADE AVIATION DEPARTMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 2013, by and between Miami-Dade County, Florida (the "County"), a political subdivision of the State of Florida and Air-Transport IT Services, Inc. ("Contractor"), a Delaware corporation authorized to do business in the State of Florida.

WITNESSETH:

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

WHEREAS, the County owns Miami International Airport (MIA), and operates the Airport through the Miami-Dade Aviation Department.

WHEREAS, the Department, desires to engage a Contractor to ensure the continuing operation and maintenance of the Airport Operation Information System (AOIS) at Miami International Airport, the General Aviation Airports, the Port of Miami, certain Metrorail locations, Miami area hotels. the Miami Beach Convention Center and other areas as deemed necessary.

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

DEFINITIONS

- **AGREEMENT:** The Agreement and all attachments hereto and a part hereof entered into by the County and the Contractor, including all of its terms and conditions, attachments, exhibits, and amendments.

- **ALLOWANCE ACCOUNT(S):** Account(s) in which stated dollar amount(s) are included in the Agreement for the purpose of funding portions of the Work which are unforeseeable at the time of execution of the Agreement, for adjustments of quantities, for unit price work items or for special work deemed desirable by the County to be incorporated into the Agreement. Performance of work, if any, under Allowance Account(s) will be authorized by written Work Order(s) issued by the County.

- **AMENDMENT:** A written modification to this Agreement executed by Contractor and the County covering changes, additions, or reductions in the terms and conditions of this Agreement.

- **CODE:** The Code of Miami-Dade County, Florida.

- **COUNTY:** Miami-Dade County owns the Miami International Airport (MIA) and operates the Airport through the Miami-Dade Aviation Department.

- **DAYS:** Calendar days.

- **DEPARTMENT:** Miami-Dade Aviation Department ("MDAD"), which is a department of Miami-Dade County and represented by and acting through its Director or his/her designee(s).

- **DIRECTOR:** The Director of the Miami-Dade Aviation Department or authorized representative(s) designated in writing with respect to a specific matter(s) concerning the Services.

- **DOCUMENTATION:** Is defined as all records, procedures, schematics, diagrams, and manufacturer and Contractor's manuals customized or created specifically for the County.

- **EFFECTIVE DATE:** The date that appears in the first paragraph of the Agreement.

- **FISCAL YEAR:** The period of time which commences on October 1st of a particular year and concludes on September 30th, of the ensuing year.

- **MAINTAIN:** Preventive maintenance, repair or replacement, as deemed appropriate in Contractor's reasonable business judgment, of any installed equipment with the understanding that the Contractor will provide the labor and the County will supply the equipment.

- **NOTICE TO PROCEED:** A written notice to proceed issued by the Project Manager authorizing Contractor to proceed with the work described in this Agreement.

- **CONTRACTOR:** An independent firm, company, joint venture, corporation, partnership, or individual approved to oversee the operations of the AOIS.

- **PROJECT MANAGER:** The person designated by the Department to administer the terms and conditions of this Agreement documents on behalf of the County.

- **SERVICES:** Those services that Contractor shall perform in accordance with the terms and conditions of this Agreement as directed and authorized in writing by the County.

- **WORK ORDER:** A written order, authorized by the Director or designee, directing the Contractor to perform work under a specific Allowance Account, directing the Contractor to perform a change in the work that does not have a monetary impact, including but not limited to, extending the contract time without increasing the maximum contract amount.

ARTICLE 1
Term

1.01 Term:

The County hereby engages Contractor and Contractor hereby shall perform the work described in Exhibit A, "AOIS Technical Specifications", and agrees to operate and maintain the AOIS for a term of seven (7) years (the "Term"). The Term of this Agreement commences on the date shown on the Notice to Proceed.

ARTICLE 2
Scope of Services

2.01 Services:

A. Contractor shall provide all services listed in the Technical Specifications attached as Exhibit A, as well as all appurtenant work, or work necessary to accomplish same.

B. The Contractor may be required, at the direction of the Department, to perform Additional or Extra work. This work will be funded from the General Allowance Account in this Agreement. Contractor will diligently, upon written direction of the Department, perform such work in accordance with the requirements of this Agreement.

ARTICLE 3
Accounting Records and Audit Provisions

3.01 Accounting Records and Audit Provisions:

The Department and the auditors of the County (internal and external) shall have the right, without limitation, at anytime, to audit, check, inspect and review all operating procedures of Contractor hereunder and all books of account, records, financial reports, financial statements, operating statements, inventory records, copies of Federal income and State

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sales tax returns, work papers and supporting documents relating to operations of Contractor hereunder, and other pertinent information as may be determined to be needed or desirable by the Department.

Such audit may take place during reasonable business hours for the period of the performance of this Agreement and for three (3) years after final payment under this Agreement. The Contractor shall maintain, as part of its regular accounting system, records of a nature and in a sufficient degree or detail to enable such audit to determine the personnel hours and personnel costs and other expenses associated with the Agreement. It is further agreed that said compensation provided for in this Agreement shall be adjusted to exclude any significant costs where the County determines that the payment for Services was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs. All such adjustments in compensation paid or payable to Contractor under this Agreement shall be made within three (3) years from the date of final billing or acceptance of the Services by the County, whichever is later. The Contractor shall pay for all audit-related expenses where the audit findings aggregate to greater than or equal to three percent (3%) of the correct amount the County should have paid or been invoiced. The three percent (3%) audit-related expense threshold only applies to the amount(s) audited, and not all of the Contractor's billings. Any overpayment amount(s) discovered by audit shall be reimbursed to the County within fifteen (15) calendar days of notice of the audit results to the Contractor.

ARTICLE 4
Allowance Accounts

4.01 Allowance Accounts

Certain portions of work which may be required to be performed by the Contractor under this Agreement are either unforeseeable or have not yet been designed, and the value of such work, if any, is included in the Agreement as a specific line item(s) entitled General Allowance Account,

General Allowance Account

The General Allowance Account shall be used to reimburse the Contractor for the actual costs for furnishing all labor, materials, equipment and services necessary for modifications or Extra Work required to complete the Project because of unforeseeable conditions; or for making adjustments to quantities specified in the Technical Specifications to conform to actual quantities installed resulting from changes in the Work.

These values, if any, included in the Total Agreement Amount, are not chargeable against the Total Agreement Amount unless and until the Contractor is directed to perform work contemplated in the Allowance Account(s) by a written Work Order(s) issued by the County. Any unused monies in any allowance account shall remain property of the County.

At such time as work is to be performed under the Allowance Account(s), if any, the work shall be integrated into the Agreement as a part of the Contract as awarded.

The Work Order for the required work will be issued by the County upon receipt from the Contractor of a satisfactory proposal for performance of the work, and the acceptance thereof by the County. Pricing shall be in accordance with the requirements for the Technical Specifications related to Additional or Extra Work.

No Work Orders shall be issued against an Allowance Account if such Work Orders in the aggregate exceed the authorized amount of that Allowance Account, provided however that such excess may be authorized by amending the Agreement. No Work Order issued may modify the terms, conditions, or covenants of this Agreement unless subsequently approved by the Board of County Commissioners.

At Agreement closeout, the Agreement amount shall be decreased to reflect unexpended amounts under the Allowance Account.

ARTICLE 5
Not Used

ARTICLE 6
Compensation to Contractor

6.01 Compensation to Contractor:

The County shall pay to Contractor as consideration for operating and maintaining the AOIS and providing the services required herein, for the price as provided in Exhibit B, Schedule of Pricing.

A. For the Term of the Agreement, the monthly payment shall be the seven (7) year amount as provided in Exhibit B divided by eighty-four (84). The monthly payment shall be deemed to include all work required to operate and maintain the AOIS as specified in Exhibit A during each such month for the Term of the Agreement.

B. Compensation to the Contractor for any Additional or Extra work shall be made in conformance with these contract documents. The Contractor will be compensated for actual costs incurred in the performance of the Additional or Extra work, plus mark-up at the contractually stipulated rates.

C. In accordance with Miami-Dade County Code Section 2-8.8, as a condition of final payment under this Agreement, the Contractor shall identify all subconsultants/subcontractors used for the Services, the amount of each subcontract, and the amount paid and to be paid to each subconsultant/subcontractor. (Refer to Exhibit D).

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ARTICLE 7
Personnel

7.01 Restricted Area Access – Identification Badges:

Contractor shall be responsible for requesting the Department to issue identification badges to all employees and other personnel under its control who require access to restricted areas on the Airport as a part of their regularly assigned duties, and shall return the identification badges of all personnel transferred or terminated from the employ of Contractor or Airport assignment and upon termination of this Agreement. Contractor shall promptly report to the Department the names of all persons who were employed by Contractor from whom they were unable to obtain the return of Department issued identification badges. In the event that an identification badge is not returned because of a failure by Contractor, Contractor shall pay, from its own funds, the Department's established charge for lost or stolen identification badges. The Department shall have the right to require Contractor to conduct background investigations, criminal history checks and to furnish certain data on such employees before the issuance of such identification badges, to include the fingerprinting of employee applicants for such badges.

7.02 AOA – Right to Search:

It is understood that the Department has a strong interest in maintaining good Airport security and intends to implement increased security measures for companies having access to the Air Operations Area ("AOA") of the Airport. Contractor agrees that its vehicles, cargo, goods and other personal property are subject to being searched when entering or leaving the AOA. Contractor further agrees, when required by the Department, that it shall not authorize any employee requiring regular access to the AOA as part of his/her regular duties, to enter the AOA unless and until such employee has executed a written consent to search form acceptable to the Department. Persons not executing such consent to search form shall not be employed by Contractor pursuant to this Agreement.

It is further agreed that the Department has the right to prohibit an individual, agent or employee of Contractor from entering the AOA, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage, or other unlawful activities. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before a designated Contractor representative of the Department within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reasons for such denial. Persons denied such access shall not be employed by Contractor hereunder.

Contractor acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other unlawful activities.

7.03 AOA – Driver Training:

Before Contractor shall permit any employee to operate a motor vehicle on the AOA, Contractor shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course

conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

7.04 **Federal Agencies Right to Consent:**

Contractor understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies and any bonding requirements as may be imposed by such agencies. Persons not approved or consented to by the Federal Inspection Services agencies may not be employed by Contractor on the Airport.

7.05 **Relationship of Parties:**

Officers, agents, and employees of Contractor shall not be deemed to be employees of the County for any purpose whatsoever.

7.06 **Employment Eligibility Verification (E-Verify):**

Contractor is required to enroll in the United States Citizenship and Immigration Services E-Verify system, and to utilize that system to verify the employment eligibility of all persons performing work for Contractor under this Agreement. Contractor shall incorporate this requirement into all of its subcontracts as well.

7.07 **Alcohol and Drug Testing:**

Contractor acknowledges that the County has the obligation to establish a drug free workplace, and to establish policies and programs to ensure Airport safety and security. Contractor acknowledges that the Department has the right to require users of the Airport, including but not limited to lessees, permitees, licensees, and management companies, to establish reasonable programs to further the achievement of the obligations described herein. Accordingly, Contractor shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport and for the same or similar screening, based upon reasonable suspicion that an employee, while on duty at the Airport, may be under the influence of alcohol or drugs. Further, to the extent permitted by law, Contractor shall establish a program for the random alcohol and drug screening of all employees who are authorized, pursuant to this Agreement, to operate any type or kind of vehicle on the airfield operations area ("AOA"). Contractor shall make good faith efforts to negotiate amendments to any existing Agreement(s), which may serve as a bar to Contractor's implementation of its obligations hereunder. Notwithstanding the above, Contractor specifically acknowledges that the Department has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person whom it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

7.08 **Employee Training:**

Operator shall, on an ongoing basis, provide effective customer service training programs for all personnel having public contact.

7.09 **Use of Public Facilities:**

Contractor acknowledges and agrees that the County has provided certain facilities, such as, but not limited to, seating areas, holdrooms and restrooms in the Terminal Building, public parking and other conveniences for the use of the traveling public and has also provided special facilities solely for the use of the employees of Airport tenants and commercial users. Contractor shall not permit its employees to use the public areas provided by the County for use by the traveling public, except those employees normally required to be in contact with the traveling public, those providing passenger services and those doing so as part of regular assigned duties.

7.10 **Employee Covenants Violations:**

In the event Contractor violates the covenants in Sub-Article 7.09 above for failure to properly control its employees or by permitting its employees to improperly use facilities provided by the County for the use and convenience of the traveling public, the Department shall have the right to (i) confiscate the employee's Airport identification, (ii) require Contractor to terminate from employment at the Airport those employees who have individually violated the covenants of Sub-Article 7.09, and (iii) take action pursuant to Article 18 thereof.

7.11 **Other Business Activity:**

Contractor and its employees shall conduct no other business activity within the facilities of the Airport, except as specifically authorized herein.

7.12 **First Source Hiring Referral Program:**

Pursuant to Section 2-21 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB") (the designated Referral Agency) of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three (3) to five (5) days, the successful Bidder is free to fill its vacancies from other sources. Successful Bidders will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of $1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at https://apps.southfloridaworkforce.com/firstsource/ or by contacting the SFWIB at (305) 594-7615, Extension 407.

ARTICLE 8
Duties and Obligations of Contractor

8.01 Injury or Damage:

In the event of any injury to any person or loss or damage to any property in the facilities, Contractor shall immediately notify the Department and promptly furnish copies of relevant reports in connection therewith. Contractor shall indemnify and defend the County against any claims arising out of any injury or damage, in conformance with the provisions of this Agreement.

8.02 Complaints:

Contractor shall respond promptly and courteously to all complaints received and shall provide the Department with copies of all written complaints and Contractor's response thereto. Partial or full refunds, in response to complaints, shall only be made in accordance with Department approved policies and procedures.

8.03 Contracts/Agreements:

Any and all contracts or agreements to be entered into by Contractor solely to support operations, hereunder shall be approved in advance by the Department and shall contain a provision that any such contracts or agreements shall be assignable, upon notice from the Department, to the County or to another party as designated by the Department.

ARTICLE 9
Rights Reserved to the County

9.01 Rights Reserved to County:

All rights not specifically granted Contractor by this Agreement are reserved to the County.

9.02 Rights of County at Airport:

The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport, inclusive of the facilities covered under this Agreement. The County shall, in the exercise of such right, be free from any, and all liability to Contractor for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole active negligence of the County, its employees, or agents. Nothing herein shall obligate or mandate that the County utilize Contractor to perform work related to the facilities.

9.03 Rights to be Exercised by Department:

Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

9.04 **Right to Regulate:**

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate Contractor or its operations.

9.05 **Other County Rights:**

Contractor shall be liable for any physical damage caused to the facilities by Contractor, its employees, agents, contractors, subcontractors, vendors, or suppliers. The liability shall encompass: (i) Contractor's repair of the facilities, or if the facilities cannot be repaired, payment to the County of the fair market value replacement cost of the facilities; and (ii) any other such damages to the County or the Airport arising from the physical damage caused by Contractor. The County may also initiate an action for specific performance, injunctive relief, or any other cause(s) of action pursuant to applicable law.

ARTICLE 10
Maintenance by Contractor

10.01 **Cleaning of Facilities:**

Contractor shall maintain and keep the office and administrative locations clean at all times. If the respective office and administrative locations are not properly maintained and kept clean, in the opinion of the Department, Contractor will be so advised and shall take immediate corrective action.

10.02 **Repair of Damage:**

Contractor shall repair all damage to the facilities, office and administrative locations caused by Contractor, its employees, agents, independent contractors or patrons. The Department may, at its option, choose to do the work with its own forces or by contract or to require Contractor to perform or contract the work, as per 10.04 below.

10.03 **Garbage and Trash Disposal:**

Contractor shall remove from the facilities, office and administrative locations all garbage, trash and refuse of any nature whatsoever which might accumulate and arise from any operations hereunder. Such garbage, trash refuse shall be stored and disposed of only in the manner approved by the Department.

10.04 **Extraordinary Maintenance:**

Contractor shall consult with the Department before undertaking any maintenance work. The Department may, at its option, choose to have the work done by its own forces or by contract or to require Contractor to perform or contract the work.

10.05 Alterations and Signs:

Contractor shall not alter the facilities in any way whatsoever, erect any signs nor permit any advertising of any nature without prior written approval from the Department.

ARTICLE 11
Damage or Destruction to Facilities

If the facilities or a substantial portion thereof are rendered, unfit, or unusable for the use and purpose for which this Agreement is granted, without fault on the part of Contractor, its employees, agents, or independent contractors, either party shall have the option, without liability to the other party, upon five (5) days notice in writing, to terminate this Agreement.

ARTICLE 12
No Assignment, Subletting or Sale of Controlling Interest

12.01 No Assignment:

Contractor shall neither assign, transfer, pledge, or otherwise encumber this Agreement, nor allow others to use the facilities, without the prior written consent of the Department.

12.02 Ownership Structure of Contractor:

Contractor shall take no actions which shall serve to transfer or sell majority ownership, or change the Contractor or control of the business entity of Contractor without the prior written consent of the Department.

12.03 Change of Control:

If Contractor is a corporation, the issuance or sale, transfer or other disposition of a sufficient number of shares of stock in Contractor which results in a change of control Contractor, shall be deemed an assignment of this Agreement for purposes of this Article 12. If Contractor is a partnership, transfer of any interest in the partnership, which results in a change in control of Contractor, shall be deemed an assignment of this Agreement for purposes of this Article 12.

12.04 Authority:

If Contractor signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Agreement on behalf Contractor does hereby covenant and warrant that (i) Contractor is a duly authorized and existing entity, (ii) Contractor has and is duly qualified to do business in State of Florida, (iii) Contractor has full right and authority to enter into this Agreement, and (iv) each and all of the persons signing on behalf of Contractor are authorized to do so. Upon the Department's request, Contractor shall provide the Department evidence reasonably satisfactory to the Department confirming the foregoing representations and warranties.

ARTICLE 13
Not Used

ARTICLE 14
Indemnification

Contractor shall indemnify, defend, and hold harmless the County, including its successors and assigns, and its officers, employees, consultants, sub-consultants, agents, bond trustees, and instrumentalities (collectively the "Indemnitees"), from any and all liability, loss, claim, damage or cost, including attorney's and expert fees and cost of defense, which the County or its officers, employees, consultants, sub-consultants, agents, bond trustees, or instrumentalities may incur in whole or in part (i) out of any injury, loss, theft, damage or cost to any person or property while on or about the facilities, or out of any condition on the facilities, or out of any breach of any Agreement covenant, warranty or representation by Contractor or persons acting under Contractor or from any act or omission anywhere by Contractor or persons acting under Contractor, or (ii) as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals, contractors, vendors or suppliers, except to the extent caused directly by the negligent act or willful misconduct of County. Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's and expert's fees which may issued thereon. This provision shall survive termination of this Agreement.

ARTICLE 15
Insurance

15.01 **Insurance Required:**

Within twenty (20) calendar days of the Effective Date of this Agreement, Contractor shall obtain all insurance required under this Article and submit it for approval to:

Miami-Dade Aviation Department
c/o Risk Management
P.O. Box 025504
Miami, Florida 33102-5504

All insurance shall be maintained throughout the term of the Agreement and any extensions thereof.

The limits for each type of insurance may be revised upon MDAD Risk Management's review and approval of the Contractor's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable. Also note: The Department will not accept self-insurance.

Certificate(s) of insurance from Contractor must show coverage has been obtained that meets the requirements as outlined below during the provision of Services at the facilities:

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

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

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

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than $500,000* per occurrence for bodily injury and property damage combined.

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

15.02 **Certificates of Insurance:**

Contractor shall furnish certificates of insurance to the MDAD Risk Management prior to commencing any operations under this Agreement, which certificates shall clearly indicate:

A. the Contractor has obtained insurance in the type, amount and classifications as required for strict compliance with this Article;

B. the County is named as an additional insured; and

C. no material change or cancellation of said insurance shall be effective without thirty (30) days prior written notice to the County. The County reserves the right to require Contractor to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to Contractor.

15.03 **Certificates of Renewal:**

Contractor shall furnish certificates evidencing renewal or replacement of required insurance coverage, thirty (30) days prior to expiration or cancellation. The Department reserves the right to reasonably amend the insurance requirements or to assume direct responsibility for carrying all or any of the required insurance coverage by the issuance of notice in writing to Contractor. In the event the Department exercises its right to assume direct responsibility for any of the required insurance coverage, Contractor shall be named as an additional insured, where applicable provided the Department does not self-insure. Compliance with the foregoing requirements shall not relieve Contractor of its liability and obligation under any other portion of this Agreement.

15.04 **Certificates of Continuity:**

Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Article 15, "Insurance" remain in force for the duration of the Agreement, including any and all Extensions, if applicable. If insurance certificates are scheduled to expire during the Agreement period, Contractor, shall be responsible for submitting new or renewed insurance certificates to the MDAD Risk Management Office at a minimum of thirty (30) calendar days before such expiration.

15.05 **Insurance Company Rating Requirements**

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

> The company must be rated no less than "A-" as to financial strength, and no less than "Class VII" as to financial size, according to the latest edition of Best's Key Rating Guide, published by A.M. Best Company, or its equivalent, subject to the approval of the MDAD's Risk Management Office.

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

15.06 **Cancellation of Insurance:**

Cancellation of any insurance or non-payment of any premiums for any insurance policies required by this Agreement shall constitute a breach of this Agreement.

15.07 **Other Insurance Indemnification:**

Contractor represents and warrants that any insurance protection required by this Agreement or otherwise provided by its contractors and subcontractors shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, consultants, agents and instrumentalities as herein provided.

15.08 **Contractor Liable:**

Compliance with the requirements of this Article 15 "Insurance" shall not relieve Contractor from its liability under any other portion of this Agreement.

15.09 **Right to Examine:**

The Department reserves the right, and upon reasonable notice, to examine the original policies of insurance (including, but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. Contractor agrees to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) days from the date of request, unless such longer period is agreed to by the Department) Contractor agrees to provide copies to the Department, at Contractor's sole cost and expense.

15.10 **Personal Property:**

Any personal property of Contractor, or of others, placed in the facilities shall be at the sole risk of Contractor or the owners thereof, and the Contractor shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

15.11 **Survival of Provisions:**

The provisions of this Article 15, "Insurance" shall survive the expiration or earlier termination of this Agreement.

ARTICLE 16
Trademarks and Licenses

The County may, from time to time, permit Contractor to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the County in the performance of this Agreement, which patents, copyrights, trademarks, trade names, logs computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by Contractor and the Department, on behalf of the County, granting Contractor the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. The County may likewise license from Contractor the use of certain trademarks which Contractor has previously created, without a requirement for the payment of any additional fees or compensation to Contractor for such license. Failure of the parties to execute a formal license agreement shall not vest neither title nor interest in such patent, copyright, trademark, trade name, logo, computer software or intellectual property shall vest in the using party.

A. The Contractor warrants all deliverables furnished hereunder, including but not limited to: Equipment, programs, Documentation, Software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

B. The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trademarks, trade secrets or any other third party proprietary rights, by the use or supplying of any of the Contractor's or Contractor Subcontractor's provided programs, Documentation, Software, analyses, applications, methods, ways, processes, and the like, used in the course of performance or completion of, or in any way connected with, the Work or the County's continued use of the deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

C. In the event any deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to use its best efforts to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or at Contractor's sole option (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

D. The Contractor shall not knowingly infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Services.

ARTICLE 17
Force Majeure

Strictly in relation to the obligations of each party to the other under this Agreement and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by: (i) strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, acts of God, work stoppages or slowdowns, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, provided however, this clause (i) does not apply to such actions related to employees, temporaries, contractors, subcontractors or suppliers of Contractor; or (ii) embargo's, general shortages of labor, equipment, facilities, materials or supplies in the open market, acts of God, acts of a public enemy, acts of governmental authority, including, without limitation, the Federal Aviation Administration ("FAA"), Department of Transportation ("DOT"), Transportation Safety Administration ("TSA"), Environmental Protection Agency ("EPA"), civil and defense authorities, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

ARTICLE 18
Cancellation or Termination of Agreement

18.01 Cancellation by the County

18.1.01 The County may at its option and discretion cancel the Agreement at any time without any default on the part of the Contractor by giving a written Notice of Cancellation to the Contractor at least ten (10) days prior to the effective date of such cancellation.

18.1.02 In the event of cancellation by the County, the County shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its Sub-contractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Project Manager. The Contractor will be paid for:

A. The final value of all work completed under the Agreement, based upon the approved Schedule of Pricing (Exhibit B),

B. The final value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,

C. The final value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the County to a site or location designated by the County prior to release of payment for such materials and equipment.

D. No claims for loss of anticipated profits or for any other reason in connection with the cancellation of the Agreement shall be considered.

18.1.03 In the event of cancellation under this Article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such cancellation.

18.1.04 In the event of cancellation under this Article, the County does not waive or void any credits otherwise due County at the time of cancellation, including liquidated damages, and back charges for defective or deficient work.

18.1.05 Upon cancellation as above, the Project Manager shall prepare a certificate for Final Payment to the Contractor.

18.02 **Termination by Default of Contractor**

18.2.01 The Agreement may be terminated by the County for failure of the Contractor to comply with any requirements of the Agreement including but not limited to:

A. Failure to begin the work under the Agreement within the time specified in the "Notice to Proceed", or

B. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Agreement, or

C. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Project Manager, or

D. Discontinues the prosecution of the work, or

E. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or

F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or

G. Allows any final judgment to stand against him unsatisfied for a period of ten (10) days, or

H. Makes an assignment for the benefit of creditors, or

I. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

J. The County may terminate this Agreement if the Contractor is found to have submitted a false certification or to have been, or is subsequently during the term of this Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

18.2.02 Before the Agreement is terminated, the Contractor will be notified in writing by the Project Manager of the conditions which make termination of the Agreement imminent. The Agreement will be terminated by the County ten (10) days after said notice has been given to the Contractor. Unless a satisfactory effort acceptable to the County has been made by the Contractor to correct the conditions, the County may declare the Agreement breached and send a written Notice of Termination to the Contractor.

18.2.03 The County reserves the right, in lieu of termination as set forth in this Article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied.

18.2.04 The Contractor shall immediately upon receipt communicate any Notice of Termination for Default issued by the County to the affected Sub-contractors and suppliers at any tier.

18.03 **Termination for National Emergencies**

18.3.01 The County shall terminate the Agreement or portion thereof by written notice when the Contractor is prevented from proceeding with the Agreement as a direct result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.

18.3.02 When the Agreement, or any portion thereof, is terminated before completion of all items of work in the Agreement, payment will be made for the actual number of units or items of work completed at the Agreement price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits or for any other reason in connection with the termination of the Agreement shall be considered.

18.04 **Implementation of Cancellation or Termination**

18.4.01 If the County cancels or terminates the Agreement, the Contractor shall stop all work on the date specified in the Notice of Cancellation or Termination and shall:

A. Cancel all orders and Subcontracts which may be terminated without costs;

B. Cancel and settle other orders and Subcontracts where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed, subject to prior approval of the Project Manager,

C. Transfer to the County, in accordance with directions of the Project Manager, all materials, supplies, work in progress, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;

D. Deliver to the Project Manager As-Built Documents, complete as of the date of cancellation or termination, Plans, Shop Drawings, Sketches, Permits, Certificates, Warranties, Guarantees, Specifications, three (3) complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated by the Contractor for use in the performance of the work.

E. The Contractor shall perform all work as may be necessary to preserve the work then in progress and to protect materials, plant and equipment on the site or in transit thereto.

F. Cancellation or termination of the Agreement or a portion thereof shall neither relieve the Contractor of its responsibilities for the completed work G. In arriving at the amount due the Contractor under this Article, there will be deducted, (1) any claim which the County may have against the Contractor in

connection with this Agreement and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Contractor or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the County.

ARTICLE 19
Termination by Contractor

19.01 Termination by Contractor:

Contractor shall have the right, upon one hundred eighty (180) calendar days written notice to the Department to terminate this Agreement (note: The Department must acknowledge receipt of the notice), without liability to the County, at any time after the occurrence of one (1) or more of the following events:

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

B. A breach by the County of any of the material terms; covenants or conditions contained in this Agreement required to be kept by the County and failure of the County to remedy such breach for a period of three hundred sixty five (365) calendar days after receipt of written notice from Contractor of the existence of such breach.

C. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the Airport premises or any substantial part, or parts thereof, in such a manner as substantially to restrict the Contractor's operations for a period of one hundred eighty (180) calendar days.

D. Suspension of all scheduled passenger flight operations, whether such suspension is due to governmental action, an act of God, the public enemy, or other circumstances for a period of one hundred eighty (180) calendar days.

E. If the facilities are rendered unfit for the use and purpose for which this Agreement is granted, without fault on the part of Contractor, its employees, agents, contractors, subcontractors, vendors, or suppliers for a period of ninety (90) days.

ARTICLE 20
Equal Employment Opportunity, Nondiscrimination and Affirmative Action

20.01 Equal Employment Opportunity:

In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), Contractor shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for

employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. Contractor shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship.

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. Contractor shall comply with all applicable provisions of the Civil Rights Act of 1964, Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, revised order No. 4 issued December 1, 1951, as amended, and the Americans with Disabilities Act. The Age Discrimination in Employment Act effective June 12, 1968, Executive Order 13166 issued August 11, 2000, Improving Access to Services for persons with Limited English Proficient (LEP), the rules, regulations and relevant orders of the Secretary of Labor, Florida Statues §112.041, §112.042, §112.043 and the Miami-Dade County Code Sections 11A1 through 13A1, Articles 3 and 4.

Contractor shall assign responsibility to one of its officials to develop procedures that will assure that the policies of Equal Employment Opportunity and Affirmative Action are understood and implemented.

20.02 **Nondiscriminatory Access to Premises:**

Contractor, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; (3) the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation as amended from time to time; and (4) the Contractor shall obligate their Subcontractors and sub-consultants to the same nondiscrimination requirements imposed on the Contractor and assure said requirements are included in those sub-agreements.

20.03 **Breach of Nondiscrimination Covenants:**

In the event it has been determined that Contractor has breached any enforceable nondiscrimination covenants contained in Sub-article 20.01 Equal Employment Opportunity and Sub-article 20.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and Contractor fails to comply with the sanctions and/or remedies which have been

prescribed, the County shall have the right to terminate this Agreement pursuant to the Termination of the Agreement section hereof.

20.04 **Nondiscrimination:**

During the performance of this Agreement, Contractor agrees as follows: Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. Contractor shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Contractor's books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, this Agreement may be canceled, terminated, or suspended in whole or in part in accordance with the Termination of Agreement section hereof and Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

20.05 **Disability Non-discrimination Affidavit:**

By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, Contractor attests that this is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If Contractor or any owner, subsidiary or other firm affiliated with or related to Contractor is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution, such violation shall render this Contract terminable in accordance with the Termination of Agreement section hereof. This Agreement shall be void if Contractor submits a false affidavit pursuant to this Resolution or Contractor violated the Act or the Resolution during the term of this Contract, even if Contractor was not in violation at the time it submitted its affidavit.

Contractor will include Sub-article 20.01 Equal Employment Opportunity and Sub-article 20.02 Nondiscriminatory Access to Premises of this Article in the Contractor sub-contracts in excess of $10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. Contractor shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

20.06 **Affirmative Action/Nondiscrimination of Employment Promotion and Procurement Practices:**

In accordance with the requirements of County Code Section 2-8.1.5, all firms with annual gross revenues in excess of $5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Internal Services Department/Procurement Management Division (ISD/DPM). Said firms must also submit, as a part of their Agreement to be filed with the Clerk of the Board, an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit.

Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's ISD?DPM. Firms claiming exemption must submit, as part of their Agreement to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit in accordance with County Code Section 2-8.1.5. These submittals shall be subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

It will be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the County Code section. Those firms that do not exceed $5 million annual gross revenues must clearly state so in their Agreement.

20.07 **Contract Measure:**

This Agreement will adhere to all Miami-Dade County ordinances with special attention to all ordinances that relate to the Small Business Enterprise ("SBE") Participation program.

The following has been established according to the SBE program:

Contract Measure: 13% Goal

The Contractor is directed to and is required to adhere to the attached Miami-Dade County Florida, Small Business Development ("SBD") Division/Department of Regulatory and Economic Resources, SBE Implementing Order 3-41, included within this Agreement as Exhibit C which delineates the requirements of this County program and the requirements for attaining the SBE contract measure.

ARTICLE 21
Security/Airfield Operations Area/Sterile Areas Security

21.01 **Secured Areas/Airfield Operations Area (AOA)/Sterile Areas Security:**

The Contractor acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Homeland Security, Transportation Security Administration's (TSA) Code of Federal

Regulations 49 CFR Part 1542 et all, Federal Aviation Administration FAA, Customs and Border Protection CBP, the MDAD Airport Security Plan and applicable Security Directives issued by TSA and the Aviation Department as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Contractor must obtain MDAD photo identification badges for all the Contractor employees who are authorized access to the Secured/AOA/Security Identification Display Area (SIDA),Sterile Concourse Areas or any other restricted areas of the Airport as may be required and designated in the Airport's Security Plan. All Contractor employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

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

All employees of the Contractor who must work within MDAD Secured/AOA/SIDA/Sterile Concourse areas or any other restricted areas at MIA shall be supplied with MDAD identification badges as specified above, which must be worn at all times while within the referenced secured areas. Badges shall be worn/displayed on outer garments above the waist so as to be clearly visible in order to distinguish, on sight, employees assigned to a particular company area. Each employee must complete the Security Identification Display Area SIDA training program conducted by the MDAD Security Division Credentialing Office before any ID badge is issued to such employee and comply with all other TSA, Homeland Security, FAA, CBP and MDAD requirements as specified by the MDAD at the time of application for the ID badge before an ID badge is issued.

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

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

Only Contractor staff with proper access zone pictured MDAD SIDA ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Contractor

shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course, Reoccurring AOA Driver and Movement Area Driver training programs conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

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

The Contractor acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts cargo tampering, aircraft sabotage, and other unlawful activities at the Airport and to maximize compliance with TSA, Homeland Security, FAA/Federal Inspection Services agencies and MDAD access control and security policies and procedures as may be required and designated in the Airport Security Plan and the Miami-Dade Aviation Department Rules and Regulations Chapter 25.

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

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

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

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

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

ARTICLE 22
Rules and Regulations and Permits

22.01 **Rules and Regulations:**

Contractor shall comply with: (i) the ordinances of the County including the rules and regulations of the Department; (ii) Chapter 25 of the Code; (iii) operational directives issued hereunder; (iv) all additional laws, statutes, ordinances, regulations and rules of the federal, state and local governments, and any and all plans and programs developed in compliance therewith; (v) any County administrative orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement; (vi) federal air and safety laws and regulations; and (vii) federal, state, and County environmental, hazardous wastes and materials, and natural resources laws and regulations; and this Agreement itself is subject to the Independent Private Sector Inspector General Review provisions of Administrative Order 3-20, as such Administrative Order may be amended from time to time.

22.02 **Violations of Rules and Regulations:**

Contractor represents and agrees to pay, on behalf of the County, any penalty assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, state or local governments based in whole or substantial part upon a claim or allegation that Contractor, its agents, employees, contractors, subcontractors, suppliers, or invitees, have violated any law, ordinance, regulation or rule described in Sub-Article 20.01 or any plan or program developed in compliance therewith. Contractor further represents that the substance of Sub-Article 20.01 shall be included in every contract and other agreements, which Contractor may enter into related to its operations and activities under this Agreement and that any such contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary, of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

22.03 **Permits and Licenses:**

Contractor covenants, represents, and warrants that it shall be strictly liable and responsible to obtain, maintain current, fully comply with, and make available to the Department upon request, all permits, licenses, and governmental authorizations and approvals, however designated and as may be required by any federal, state, or County governmental entity or judicial body having jurisdiction over Contractor or its operations and activities, for any activity of Contractor on the facilities and for any actions of Contractor at the Airport, including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Contractor's operations and activities under this Agreement and Airport have been obtained and are in compliance.

ARTICLE 23
Civil Actions

23.01 **Governing Law-Venue:**

This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any action or claim arising from this Agreement shall be in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court in and for the Southern District of Florida.

23.02 **Registered Office/Agent Jurisdiction:**

Contractor, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If Contractor is a natural person, both Contractor and his or her personal representative(s) hereby submit themselves to the jurisdiction of the courts of the State of Florida for any cause of action based in whole or in part on the alleged breach of this Agreement.

ARTICLE 24
Actions at Termination

24.01 **Surrender of Facilities:**

On or before the termination date of this Agreement and any exercised extensions, whether by lapse of time or otherwise, in accordance with the provisions contained herein, Contractor shall vacate, quit and surrender and shall account for the facilities, all furnishings, fixtures, equipment, vehicles, records, funds, inventories, commodities, supplies and other property of the County in as good order and condition as they were upon the Effective Date of this Agreement or date of subsequent acquisition, reasonable and normal wear and tear excepted.

24.02 **Amounts Due and Payable:**

Upon termination of this Agreement and any exercised extensions, all amounts due and owing between the parties shall become immediately due and payable and any outstanding orders or contracts for goods and services, which cannot be cancelled, shall be assigned by Contractor to the County or such other party as the Department shall designate.

24.03 Removal of Personal Property:

On or before the termination date of this Agreement and any exercised extensions, except in instances of termination pursuant to Article 19.01 hereof, in which event Contractor shall be allowed up to five (5) calendar days, Contractor shall remove all of its personal property from the facilities. Any personal property of Contractor not removed in accordance with this Article may be removed by the Department for storage at the cost of Contractor. Failure on the part of Contractor to reclaim its personal property within thirty (30) days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever use and disposition is deemed to be the best interests of the County.

ARTICLE 25
Other Provisions

25.01 Payment of Taxes:

Contractor shall pay any taxes lawfully assessed against Contractor arising out of its operations hereunder; provided, however, that Contractor shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute a default, pursuant to Article 18.

25.02 No Possessory Interests:

No clause, phrase, sentence, paragraph or article of this Agreement shall vest any possessory or leasehold interest in any real property, the facilities, the improvements or the personal property of the County described herein in Contractor nor shall such be construed as creating any landlord and tenant or partnership or joint venture relationship between the County and Contractor.

25.03 Rights to be Exercised by Department:

Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

25.04 Administrative Modifications:

It is understood and agreed that the Department, upon written notice to Contractor, shall have the right to modify administratively technical requirements hereof, and the exhibits hereto; provided, however, such revisions shall not have a materially adverse effect on the right of Contractor to be reimbursed for costs and expenses incurred on a timely basis or to receive reasonable compensation for its services hereunder or on the security of the funds and assets of the County.

25.05 Approvals:

Wherever in this Agreement approval by the County or Department is required, the County or the Department may approve or disapprove same without providing a stated cause for such action.

25.06 Security:

Subject to recommendation from Contractor as to reasonable and prudent security measures needed and approved by the Department, Contractor shall be responsible for the security and protection of the facilities, and the equipment, furnishings, commodities and supplies provided herein.

25.07 Rights of County at Airport:

The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport. The County shall, in the exercise of such right, be free from any and all liability to Contractor.

25.08 Federal Subordination:

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

25.09 Severability:

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

25.10 Authorized Uses Only:

Notwithstanding anything to the contrary herein, Contractor shall not use or permit the use of the facilities or the Airport for any illegal or unauthorized purpose nor for any purpose which would invalidate any insurance policies of the County or any policies of insurance written on behalf of Contractor under this Agreement.

25.11 No Waiver:

There shall be no waiver of the right of the County to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there by any waiver of any breach, default or non-performance hereof by Contractor, unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the County to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence or of any subsequent breach, default or non-performance hereof by Contractor.

25.12 No Estoppel or Waiver

No acceptance, order, measurement, payment, or certificate of or by a party or its employees or agents shall estop the other party from asserting any right of the ensuing Agreement. There shall be no waiver of the right of a party to demand strict performance

of any of the provisions, terms and covenants of this Agreement, nor shall there be any waiver of any breach, default or non-performance hereof by the other party unless such waiver is explicitly made in writing by the party. No delay or failure to exercise a right under the ensuing Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under the Agreement.

25.13 **Entirety of Agreement:**

This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Contractor hereby affirms the completeness and accuracy of the information submitted by Contractor to the Department in connection with the award of this Agreement.

25.14 **Inspections:**

The authorized employees and representatives of the County and of any applicable Federal or State agencies having jurisdiction hereof shall have the right of access to the facilities at all reasonable times for the purposes of inspection and audit to determine compliance with the provisions of this Agreement. This right of inspection and audit shall impose no duty on the County to inspect and audit and shall impart no liability upon the County should it not make any such inspections or audits.

25.15 **Headings:**

The headings of the various articles 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.

25.16 **Binding Effect:**

The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

25.17 **Performance:**

The parties expressly agree that time is of the essence in the performance of this Agreement and that the failure by Contractor to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the County of any obligation to accept such performance.

25.18 **Conflict of Interest/Code of Ethics Ordinance:**

In connection with the terms and conditions of this Agreement, the Contractor agrees to adhere to and be governed by the County, Florida Conflict of Interest Code of Ethics Ordinance (Section 2-11.1 of the Code). Notwithstanding the provisions of any federal, state or County law governing the activities of the Contractor hereunder, commencing as

of the effective date of this Agreement and continuing for the term hereof, the Contractor shall not knowingly enter into any contract or other financial arrangement with any person, corporation, municipality, authority, county, state, country, or any tenant or airline, which would constitute a conflict with interest of the County hereunder or with the Services provided by the Contractor to the County hereunder. The Miami-Dade County Ethics Commission shall make determination(s), binding upon the Parties, as to whether conflicts exist or will exist, and if such relationship will be serious enough to constitute a conflict hereunder.

The Contractor represents that no officer, director, employee, agent, or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

The Contractor also represents that, to the best of its actual knowledge:

A. There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other Contractor of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) Is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, supplies or Work, to which this Agreement relates or in any portion of the revenues; or

   ii) Is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

B. Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided however, that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

C. The provisions of this article are supplemental to, not in lieu of, all applicable laws with respect to conflicts of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

D. In the event the Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter

cooperate with the County's review and investigation of such information, and comply with the instructions the Contractor receives from the Project Manager in regard to remedying the situation.

25.19 Notices:

Any notices given under the provisions of this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested to:

TO THE COUNTY:
Director
Miami-Dade Aviation Department
Post Office Box 025504
Miami, Florida 33102-5504

TO CONTRACTOR, IN CARE OF :
Betros Wakim, CEO
5950 Hazeltine National Drive, Suite 210
Orlando, FL 32822

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by registered or certified mail shall be deemed given on the delivery date indicated on the return receipt from the United States Postal Service.

25.20 Non-exclusive Agreement

Notwithstanding any other provision of this non-exclusive Agreement, the County is not precluded from retaining or utilizing any other contractor(s), staff, or a combination of contractor(s) and staff to perform any services within the contract limits defined in the Agreement. The County may elect to competitively procure and contract any staff, hardware, infrastructure or system additions and changes, including, but not limited to 1) additional or replacement on-site staff to support or maintain the AOIS or FIDS, 2) additional or replacement AOIS or FIDS hardware, 3) outside plant extensions, 4) major changes in network architecture, and 5) other information systems or telecommunications infrastructure changes. The Contractor shall have no claim against the County as a result of the County electing to retain or utilize such other contractor(s) to perform any such services, provided that the County shall instruct all other contractor(s) that they shall not act in a way that would disrupt or interfere with Contractor's performance of its duties, and take all other reasonably possible steps to avoid any such disruption or interference.

25.21 Governmental Authority

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

25.22 Independent Contractor

The Contractor shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the County. All personnel provided by the Contractor in the performance of this Agreement shall be considered to be, at all

times, the sole employees of the Contractor under its sole discretion, and not employees or agents of the County.

25.23 **Intent of Agreement**

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

25.24 **Modifications**

This Agreement may be modified and revised by written Amendment duly executed by the Parties hereto. Neither electronic mail nor instant messaging shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the terms of the Agreement. Any oral representation or modifications concerning this Agreement shall be of no force or effect.

25.25 **Ownership of Documents**

Any and all reports, photographs, surveys, provided or created in connection with this Agreement are and shall remain the property of the County. In the event of termination of this Agreement, any software database, all electronic files associated with work performed, any reports; such as traffic, inventory, switch audit, service and or MAC logs and photographs, surveys, prepared by the Contractor, whether finished or unfinished, shall become the property of the County, and the Contractor shall immediately remit same to the County.

Contractor further acknowledges and agrees that Contractor shall not have ownership interest of any kind in any original materials, either written or readable by machine, prepared by Contractor for County, or prepared jointly by Contractor and County, constituting an original, a modification to, enhancement of derivative work based on such materials. Contractor shall be permitted to create and use such Documentation and Materials solely for the purpose of providing services to County.

25.26 **Prior Agreements**

The Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

25.27 **Solicitation**

Except as provided by Section 2-11.1(s) of the Code, the Contractor warrants that: 1) it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement; and 2) it has not paid, or agreed to pay any company or other person any fee, or commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty

makes this Agreement voidable by the County without liability to the Contractor for any reason.

25.28 Survival

Any obligations of the Contractor and the County which by their terms would continue beyond the termination, cancellation or expiration of this Agreement or any service order shall survive with such termination, cancellation or expiration.

25.29 Third Party Beneficiaries

Neither the Contractor nor the County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement, and that no third party shall be entitled to assert a claim against either of the Parties based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third party or entity under this Agreement. Contractor represents and warrants that it shall use access to and knowledge of Software, Systems and related Documentation solely to provide Services to County, and not for the use or benefit of any other third person nor shall Contractor disclose such materials to any third person, and shall limit disclosure to its employees who have a need to know for the performance of Services hereunder.

25.30 Independent Private Sector Inspector General Review:

Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of the Proposal, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's cost/price for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Proposer or third party.

25.31 Miami-Dade County Inspector General Review:

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) contracts for legal services; (b) contracts for financial advisory services; (c) auditing contracts; (d) facility rentals and lease

agreements; (e) concessions and other rental agreements; (f) insurance contracts; (g) revenue-generating contracts; (h) professional service agreements under $1,000; (i) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

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

25.32 ACCOUNT TO PAY FOR IG SERVICES

An Audit Account is hereby established to pay for mandatory random audits by the County's Inspector General. The amount for the Inspector General (IG) Audit Account is hereby set at $35,701.37. The Contractor shall have no entitlement to any of these funds. The County retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from these audit accounts remain the property of the County.

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

CONTRACTOR

Air-Transport IT Services, Inc.
(Legal Name of Corporation)

ATTEST:

Secretary
(Signature and Seal)

By:
Contractor - Signature

CHRISTOPHER B. KELLER
(Type Name & Title)
PRESIDENT / COO

Name: Betros Wakim

Chief Executive Officer
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

Legal Name

By:
Signature

(Type Name & Title)

Legal Name

By:
Signature

(Type Name & Title)

Attest:

Name of Managing Joint Venturer:

Witness:

By:
Signature of Authorized Representative of the Joint Venture

Corporate Seal

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

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Approved for Form
and Legal Sufficiency

Attest: Harvey Ruvin, Clerk

_____
Assistant County Attorney

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____

EXHIBIT B

SCHEDULE OF PRICING

(All prices in U.S. Dollars)

PROJECT: Airport Operation Information System Operation and Maintenance (AOIS O& M)

PROJECT NO.: I115D

The Contractor shall submit Applications for Payment on a monthly basis, pursuant to the following schedule:

ITEM NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	EXTENDED PRICE
1	Seven (7) Years: Labor, Software License and Maintenance, and Hardware Maintenance*	84	MO.	$154,551.38	$12,982,315.92
	SUB-TOTAL				$12,982,315.92
2	General Allowance Account				$1,298,231.60
3	Inspector General Audit Account				$35,701.37
	TOTAL AMOUNT				$14,316,248.89

* *Total Payment for the seven (7) year Term to be paid in eighty-four (84) equal amounts.*