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

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2014

Agenda Item No. 8(A)(2)

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

From: Carlos A. Gimenez
Mayor

Resolution No. R-1039-14

Subject: Award Recommendation for a Non-Exclusive Lease and Operating Agreement for Hotel MIA Food and Beverage Operations at Miami International Airport, RFQ No. MDAD-13-04

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the award of a Non-Exclusive Lease and Operating Agreement for Hotel MIA Food and Beverage Operations at Miami International Airport, RFQ No. MDAD-13-04, with IMCMV Holdings, Inc. and authorize the Mayor or designee to execute the agreement with the exhibits on file with the Clerk of the Board.

SCOPE

Miami International Airport (MIA) is located primarily within Chairwoman Rebeca Sosa's District 6; however, the impact of this item is countywide as MIA is a regional asset.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the Miami-Dade Aviation Department (MDAD) Director or designee has the authority to exercise the renewal options and to terminate the agreement.

FISCAL IMPACT/FUNDING SOURCE

IMCMV is expected to generate $2.5 million in sales in its first year of operation. The vendor shall pay a Minimum Annual Guarantee (MAG) of $360,000.00 prorated and payable monthly, or a percentage of gross revenues from sales, whichever is greater. The percentage fees are 13% of gross revenues from the sale of food and merchandise and 18% for alcohol.

TRACK RECORD/MONITOR

IMCMV Holdings, Inc. does not have any prior contracts with Miami-Dade County, but International Meal Company (IMC) is the leading, multi-brand, casual restaurant chain in Brazil. It currently operates 67 restaurants in seven (7) Brazilian airports, one Margaritaville at the Sao Paulo airport, and twelve (12) Margaritavilles in U.S. cities. Outside of Brazil, IMC operates in Central America, South America, the Caribbean, Puerto Rico, the Dominican Republic, Panama, Mexico, and Colombia. In total, it has more than 380 company owned stores with approximately 13,000 employees. MDAD received favorable comments from the IMCMV business partners during reference checks. The monitor for the Agreement will be MDAD Chief of Commercial Operations Ray Diaz.

DUE DILIGENCE

Pursuant to Resolution R-187-12, due diligence was conducted to determine the responsibility of IMCMV 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 IMCMV.

BACKGROUND

The Top of the Port Restaurant at MIA requires a complete renovation. The new operator will be required to spend $5 million to demolish the entire facility down to the shell and rebuild it into a

renowned dining destination, as well as retrofit the Lobby Bar and Sushi Bar spaces to suit operational needs. The Conference Center catering kitchen will utilize the existing restaurant equipment as an interim solution and IMCMV will relocate and maintain the equipment to keep the catering kitchen operational.

A Request for Qualifications was advertised April 3, 2014, for qualified firms who operate restaurants that appeal to South Florida and Brazilian travelers to propose on the opportunity to operate and maintain the MIA Hotel Restaurant on a 24-hour basis. The Selection Committee met on July 30, 2014, to review the sole Qualification Statement submitted by IMCMV. IMCMV proposed the following concepts: the concept for the 7th floor restaurant space is a Viena Restaurant which includes European and Brazilian cuisines; the other concept is a Margaritaville brand bar and grill to be built in the hotel lobby. The Margaritaville brand concept, a bar-and-grill style restaurant, was inspired by Jimmy Buffett's famous song.

The Committee met on August 7, 2014, to hear IMCMV's presentation. The Committee subsequently requested authorization from the Mayor to proceed with an award and received approval.

PROJECT:	Privately Financed Restaurant Initiative for Hotel MIA Food and Beverage Operations
PROJECT LOCATION:	Miami International Airport
TERM OF CONTRACT:	Eight (8) years
OPTION(S) TO RENEW:	The initial term of the Agreement will automatically extend for a maximum of seven (7) one-year terms unless otherwise terminated by either party.
CONTRACT MEASURES:	Because the Airport has exceeded its overall goal for concession measures, ACDBE participation was voluntary.
CONTRACT MEASURES ACHIEVED:	The proposer did not select an ACDBE partner for this agreement.
PAYMENTS TO THE COUNTY:	The greater of a $360,000.00 Minimum Annual Guarantee, paid monthly, or 13% of gross revenues from the sale of food and merchandise and 18% for alcohol.
COMPANY NAME:	IMCMV Holdings, Inc.
COMPANY PRINCIPAL(S):	Francisco Javier Gavilan Julio Millan
GENDER, ETHNICITY AND OWNERSHIP BREAKDOWN:	Publicly traded company
LOCATION OF COMPANY:	999 Brickell Avenue, Suite 700 Miami, FL 33131

PREVIOUS AGREEMENTS WITH THE COUNTY IN LAST FIVE (5) YEARS:	None
INSPECTOR GENERAL:	Provisions included
USER DEPARTMENT:	Miami-Dade Aviation Department

Jack Osterholt, Deputy Mayor

MEMORANDUM

(Revised)

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

DATE: December 2, 2014

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

SUBJECT: Agenda Item No. 8(A)(2)

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)(2)
12-2-14

RESOLUTION NO. R-1039-14

RESOLUTION APPROVING AWARD OF A NON-EXCLUSIVE LEASE AND OPERATING AGREEMENT WITH IMCMV HOLDINGS, INC., FOR PRIVATELY FINANCED RESTAURANT INITIATIVE FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS AT MIAMI INTERNATIONAL AIRPORT, RFQ NO. MDAD-13-04, IN THE GREATER AMOUNT OF A MINIMUM ANNUAL GUARANTEE OF $360,000.00, OR PERCENTAGE OF GROSS REVENUES AND FOR A TERM OF EIGHT YEARS, WITH SEVEN ONE- YEAR OPTIONS; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND TO EXERCISE RENEWAL AND TERMINATION PROVISIONS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the award of a Non-Exclusive Lease and Operating Agreement with IMCMV Holdings, Inc. for privately financed restaurant initiative for Hotel MIA food and beverage operations at Miami International Airport, RFQ No. MDAD-13-04, in substantially the form attached hereto, providing for payment to the County of the greater of a Minimum Annual Guarantee of $360,000.00, prorated and payable in monthly installments, or a percentage fee of 13% of the gross revenues generated by the sale of food and merchandise, and 18% of the gross revenues derived from the sale of alcohol, for a term of eight (8) years, with seven one-year options, all as more particularly set forth in the attached memorandum from the Mayor. This Board authorizes

the County Mayor or Mayor's designee to execute the Agreement, for and on behalf of the County, and to exercise the renewal and termination provisions contained therein.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 2014. 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

LEASE AND OPERATING AGREEMENT FOR
PRIVATELY FINANCED RESTAURANT INITIATIVE
FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS
BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

IMCMV HOLDINGS, INC

OPERATOR

AT

MIAMI INTERNATIONAL AIRPORT

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Exhibit E – Retail Concessions Design Guidelines
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Exhibit G – Independent Audit Report
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Exhibit I – Monthly Report of Gross Revenues
Exhibit J – List of Prohibited Items
Exhibit K – Tenant Handbook
Exhibit L – Food Service Standards of Operation
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Exhibit N - Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision and Executed Forms, If Applicable (This is not applicable, did not provide forms)
Exhibit O - Implementing Order 3-58, First Source Hiring Referral Program

DEFINITIONS

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

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

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

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

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

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

The terms **"Aviation Director"** or **"Director"** shall mean the Director of the Miami-Dade Aviation Department or his or her designee.

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

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

The term **"Central Terminal"** shall refer to the area of the terminal building and concourses, within the central part of the terminal area, landside or airside, which is known as Concourses E-G.

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

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

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

The term **"Complementary Breakfast Program"** refers to the program offered by the Hotel, to their Hotel guest with food and beverages for same produced/provided by the Hotel F&B Operator and billed in accordance with Sub-article 2.06.C.2 entitled Hotel Support, as such support is essential to the hotel guest experience.

The term **"Comps and Discounts"** refers to, (a) in the case of Comps, refund given to the customer because of a customer satisfaction issue such as: did not like the food, wrong item ordered, server was rude, and/or generally dealing with performance or quality issues, and (b) in the case of discounts, a reduction of the published rate in response to a restaurant marketing campaign, generally designed to entice new or repeat business, or as a lost leader program to increase traffic to a location, and or loyalty program.

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

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

The term **"Date of Execution"** shall mean the day upon which the Agreement is executed by the Mayor of Miami-Dade County or designee, after attestation by the Clerk of the Board.

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

The terms **"Department" or "MDAD"** shall mean the Miami-Dade Aviation Department. Wherein in this Agreement, rights are reserved to the County, MDAD may exercise such rights.

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

The term **" Enplanement"** shall mean airline passenger(s) who departs MIA from the North Terminal, Central or South Terminal to a destination including international and domestic travelers.

The terms **"Facilities or Facility"** shall mean the restaurant and food and beverage Facilities as depicted in Exhibit A, "Facilities".

The term **"Gross Revenues"** shall mean all monies paid or payable to or consideration of determinable value received by the Operator in operation under the Agreement, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a

Departmental approved marketing plan, or (iii) any sums collected for any Federal, State, County and municipal taxes imposed by law upon the sale of merchandise or services.)

The term **"Hurricane/Disaster"** refers to any of the following (i) the time period during which a weather bureau has declared a hurricane watch or warning (ii) during the duration of a declaration of emergency, issued by either the State of Florida, the Federal Government, or Dade County, and covering all or some of Dade County, or (iii) when an occurrence inflicts destruction and distress on Miami International Airport, which may or may not require a response activating an Emergency Response Center staffed by federal/state/local/airport/aviation personnel/first responders, such as police and or firefighters.

The term **"Labor Peace Agreement"** shall refer to the agreement to be entered between the Successful Respondent and labor organization(s) pursuant to Sub-Article 15.05 of this Agreement.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the Date of Execution by the Mayor and attestation by the Clerk of the Board of this Agreement.

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

The terms **"Minimum Annual Guarantee" or "MAG"** shall mean as ascribed in Sub-Article 3.01 entitled "Payments to County".

The terms **"Minimum Monthly Guarantee" or "MMG"** shall mean as ascribed in Sub-Article 3.01 entitled "Payments to County".

The term **"Non-exclusivity"** shall mean as ascribed in Sub-Article 1.08 of this Agreement.

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

The term **"Operator"** shall mean the person, firm, or entity that enters into this Agreement with the County.

The term **"Percentage Fee(s)"** shall mean the fee as defined in Sub-Articles 3.04 and 3.05.

The term **"Qualification Statement"** shall mean a Respondent's written response to the solicitation document.

The terms **"Request for Qualifications" or "RFQ"** shall mean the solicitation document, and all associated addenda and attachments.

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

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

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

LEASE AND OPERATING AGREEMENT FOR PRIVATELY FINANCED RESTAURANT INITIATIVE FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND OPERATING AGREEMENT is made and entered into as of this _____ day of _____, 20__, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and IMCMV Holdings, Inc, ("Operator"), a Corporation organized under the laws of the State of Florida.

RECITALS:

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

WHEREAS, the Department desires to create a Privately Financed Restaurant Initiative program in support of Hotel MIA; and

WHEREAS, the Privately Financed Restaurant Initiative will enhance the accommodations and conveniences of the Hotel Guest, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

WHEREAS, Request for Qualifications, RFQ No. MDAD-13-04 was issued by the County and in response to the Request for Qualifications, the County received Qualification Statements and an award has been made to the Operator; and

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

ARTICLE 1 – TERM, EXTENSION AND FACILITIES

1.01 TERM: The Department hereby leases to the Operator the Facilities commencing upon the Lease Effective Date of this Agreement; and shall expire at 11:59 o'clock P.M. on the eighth (8th) year unless extended or sooner terminated. In no event shall this Agreement afford Operator or any other party any right to use or occupy the Facilities (or any part thereof) after the expiration, or termination of this Agreement.

1.02 EXTENSION: The initial Term will extend automatically for a maximum of seven (7) one (1) year terms unless otherwise terminated by either party.

In the event the Department elects not to extend the Agreement, the Operator shall be notified, in writing, no less than one hundred twenty (120) Days prior to the expiration of

the Term. The Operator may elect not to agree to the extension, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department to extend the Agreement. In the event the Department does not give such notice, the Agreement shall expire accordingly.

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

1.03 **FACILITIES:** The Department hereby provides to the Operator the Facilities as depicted in Exhibit A, Facilities.

1.04 **SUPPORT SPACE: NOT USED**

1.05 **STORAGE SPACE:** The Department may allow storage space outside of the Facilities only if it's available.

1.06 **COMMON WAREHOUSE SYSTEM: NOT USED**

1.07 **ADDITION, DELETION AND MODIFICATION OF FACILITIES:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Facilities pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Facilities in **Sub-Articles 1.03 "Facilities", and 1.05 "Storage Space"** and total payments due the Department in accordance with **Article 3, "Payments and Reports"** and **Article 2 "Use of Facilities".**

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

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

The Department shall not be held liable to the Operator (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.09 "Amortization Schedule"** for any

inconvenience or loss of business as a result of the deletion or modification of any Facilities or other space pursuant to this Sub-Article.

1.08 **NON-EXCLUSIVITY:** This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for competitive services, products or items by others in other premises at the Airport during the Term, and any Extension of this Agreement.

1.09 **CONDITION OF THE FACILITIES: OPERATOR SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING FACILITIES TO THE OPERATOR ON AN "AS IS" BASIS AND THAT THE OPERATOR IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE FACILITIES** including; (i) the quality, nature, adequacy and physical condition and aspects of the Facilities, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Facilities; (iii) the development potential of the Facilities, the use of the Facilities, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Facilities for any particular purpose; (iv) the zoning or other legal status of the Facilities or any other public or private restrictions on use of the Facilities; (v) the compliance of the Facilities or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Facilities; (vii) the quality of any labor and materials used in any improvements on the Facilities; (viii) the condition of title to the Facilities; (ix) the agreements affecting the Facilities; and (x) the Qualification Statement submitted by Operator to the Department, including any statements relating to the potential profitability of such Qualification Statement. Operator represents and warrants that it has made an independent investigation of all aspects of its Qualification Statement contemplated by this Agreement. Except as specifically provided in this Agreement, the Operator has satisfied itself as to such suitability and other pertinent matters by the Operator's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Operator accepts the Facilities in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Facilities to the requirements of applicable law, the Operator assumes sole responsibility for any such work.

Without limiting the preceding, the Operator is additionally advised the passenger traffic, terminal utilization, and airline premises at Miami International Airport may change over the course of this Agreement. The County shall not be liable for any decrease in profitability or increase in costs to the Operator on account of same, nor shall such causes relieve the Operator of its obligations under this Agreement.

1.10 **FACILITIES CONCEPTS:**

The Facilities as referenced in Exhibit A, "Facilities" shall be used solely for their assigned and approved concept. Failure to maintain the concept category may result in damages as indicated in **Sub-Article 3.23 "Damages"**. The five (5) Facilities are as follows:

Concept #1

Facility: E7014, 9,783 SF, Central Terminal-Concourse E-Seventh Floor

The concept for this space is a Viena brand Restaurant.

Concept #2

Facility: E2113, 1,182 SF, Central Terminal-Concourse E-Second Floor

The concept for this space is Jimmy Buffet's Margaritaville Bar & Grill.

Concept #3

Facility: E2110, 1,087 SF, Central Terminal-Concourse E-Second Floor

The concept for this space is Jimmy Buffet's Margaritaville Bar & Grill.

Concept #4

Facility: E7138, 655 SF, Central Terminal-Concourse E-Seventh Floor

This location is reserved for a temporary kitchen to be utilized during the renovation phase of the restaurant.

Concept #5

Facility: E2111, 319 SF, Central Terminal-Concourse E-Second Floor

The concept for this space is Jimmy Buffet's Margaritaville Bar & Grill..

1.11 **REQUEST FOR QUALIFICATION STATEMENT INCORPORATED:** The Operator acknowledges that it has submitted to the County a Qualification Statement, in response to a Request for Qualifications (RFQ), that was the basis for the award of this Agreement and upon which the County relied. The RFQ and the Qualification Statement are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND OPERATING AGREEMENT AND THE RFQ OR THE QUALIFICATION STATEMENT, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

ARTICLE 2 – USE OF FACILITIES

2.01 USE OF FACILITIES: The Operator shall manage, operate and maintain the restaurant and food and beverage Facilities in a first class manner 365 days a year. The Operator shall have the right, privilege, and obligation to develop, market and manage, operate and maintain the Facilities, depicted in Exhibit A, for the purpose of establishing high quality, state of the art restaurant and food and beverage program as approved by the Department.

If Operator is in violation of any law, rule, or regulation, the County may require the Operator to comply with same, irrespective of the failure of an Authority Having Jurisdiction to issue a citation, notice to cure, or other advisory document.

All concession activities are reserved for the County. The County may approve the sale of certain amenities, within the Facilities upon written request by the Operator and payment of Percentage Fees as required in Article 3. Permitted amenities shall include (1) food & beverage sales, under the conditions specified in this Agreement, (2) Liquor sales, and Gift Specialty merchandise. Third party advertising, displayed on the Facilities, may be provided by the Operator upon written notice to the Operator, however, the Operator shall be entitled to display advertising within the Facilities pertaining to marketing programs arising out of written agreements between the Operator and affiliated marketing partners under system-wide agreements, upon the submission to the Department of a copy of the agreement or relevant portions thereof and approval of the advertising by the Department, which shall not be unreasonably denied.

2.02 INSTALLATION OF EQUIPMENT: The Operator, upon written request, approved in writing by the Department, shall have the right to install, maintain, repair, replace and operate, at its sole cost and expense, on and off the Facilities, and between the Facilities and other premises leased or used by the Operator, along such rights-of-way as may be approved by the Department, such computer equipment, communications and facilities, together with required conduits, tubes and power lines, as may be necessary and convenient in the opinion of the Operator to operate its facility.

2.03 COUNTY'S RESERVATION OF RIGHTS: County specifically reserves the right to develop, install and generate revenues from telecommunications equipment, systems and capabilities within all Airport facilities. Notwithstanding the Operator's exclusive use of the Facilities leased to the Operator hereunder from time to time, County shall be entitled to make use of the Facilities for the installation and use of telecommunications equipment, provided such installation and use does not unreasonably interfere with the Operator's use of the Facilities or diminish the value of the Facilities for the purposes set forth in this Article 2. County reserves the general right to make use of the Airport and its facilities and to generate revenues there from, except to the extent specifically granted to the Operator hereunder.

If the Operator is in violation of any law, rule, or regulation, the County may require the Operator to comply with same, irrespective of the failure of an Authority Having Jurisdiction to issue a citation, notice to cure, or other advisory document.

2.04 **OPERATOR SERVICES AND SALES RIGHTS:** The Operator shall not allow any services or the sale of any item or product not specifically approved in this Agreement. Any such sales by the Operator of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Operator shall discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by the Operator to discontinue such sales within twenty-four (24) hours shall subject the Operator to Damages pursuant to **Sub-Article 3.23 "Damages"**.

2.05 **NEW CONCEPTS:** The Operator and the Department may modify, by mutual agreement, the concept as agreed to by the Department and the Operator, which will be reflected in a revision to this Agreement with a revised Percentage Fee as applicable for the category as provided for in **Article 3 "Payments and Reports"**, and a revised **Article 2 "Use of Facilities"**.

2.06 **SCOPE OF SERVICES:** The Operator shall design, construct, operate, and maintain the restaurant and food and beverage Facilities in a first class manner 365 days a year.

A. Construction

The Top of the Port Restaurant requires a complete renovation. The Operator will be required to spend $5 million to demolish the entire facility down to the shell and rebuild the facility into a renown dining destination, as well as retrofit the areas previously designated as the Lobby and Sushi bar to suit operational needs. The Conference Center catering kitchen will utilize the existing restaurant equipment as an interim solution and the Operator will only be required to relocate and maintain the equipment to keep the catering kitchen operational. There is an additional expense for asbestos abatement above and beyond the $5 million for construction, for which MDAD will allow rental credits. However, rental credits cannot exceed the annual Minimum Annual Guarantee (MAG). Construction shall be in accordance the Tenant Airport Construction-Non-Reimbursable Projects (TAC-N), and Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures.

B. General

The Operator, on a twenty-four (24) hour basis shall: (i) operate and maintain the Facilities in a neat, clean, and first-class manner and condition; (ii) provide sufficient and trained personnel; (iii) provide safe and secure Facilities for guests; (iv) provide prompt, courteous and exceptional customer service; (v) operate in such a manner to maximize sales.

C. Manage

1. Food and Beverage: The Operator shall comply with the requirements of the multiple agencies (both State and Local) overseeing food safety in Florida.

2. Hotel Support: The Operator shall cooperate with the Hotel operator and support hotel food and beverage services, including provision of room service. Specifically, the Operator shall cooperate with the complementary breakfast meal program as required by the Hotel billable at food cost plus a ten (10) percent mark-up. Such support shall also include, but is not limited to, establishment of hours of operations, hotel guest charges, intercompany accounting and interfacing with the hotel property management system. Cooperation is essential to the hotel guest experience such that cooperation may not be unreasonably withheld, in the sole determination of the Department, whose decision is final in all matters pertaining to supporting the hotel. Room service and catering food service are at fair market value plus the allowable ten (10) percent mark-up.

3. Marketing: The Operator shall develop a marketing plan to submit along with the annual budget which shall analyze the competitions in the surrounding airport area and develop an action plan. The Operator will cross-market the Facilities at their other existing locations.

4. Hurricane/Disaster Response: The Operator shall assist/participate in providing food and beverage and personnel as warranted in the event of a hurricane, or mass migration, natural, or manmade disaster(s) preparedness, and/or response. Such costs are billable at food cost plus a ten (10) percent mark-up.

D. Operate

1. Hours of Operations: The Operator shall operate the restaurant a minimum of eighteen (18) hours daily, commencing with meal service at 6:00 a.m. until closing at midnight. The remainder Facilities may be adjusted to meet demand, as approved in advance by the Department.

2. Meal Service: The Operator shall operate food and beverage services as assigned, including a meal service for each day-part, from at least two locations, special or catered events, room service, purchasing of food, preparation of meals and general oversight of deliveries of goods and products for the operations.

3. Customer Service: The Operator shall provide exceptional customer service emphasizing customer satisfaction and respond to customer/passenger complaints on a timely basis. The Operator will submit their customer service-training program within thirty (30) Days of the Lease Effective Date, for the Department's review and approval, in lieu of an established branded concept customer service program, which will be taken at face value.

   The Operator shall participate in MDAD customer service program(s) and airport-wide customer service program(s) implemented by the Department.

E. Maintain

1. Brand: The Operator shall maintain and protect the brand name and trade dress and cooperate with brand concept requirements at all times.

2. Maintenance: The Operator shall maintain or cause to maintain the Facilities pursuant to Department standards, as may be promulgated from time to time.

3. Control: The Operator shall plan, organize and control in accordance with the annual sales budget submitted to the Department.

2.07 **ANNUAL MARKETING PLAN SUBMISSION:** The Department may request a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) Days prior to the upcoming fiscal year for the Department (October 1 – September 30). The Department shall have ninety (90) Days after receipt of the foregoing plan to approve or disapprove the same at its discretion. If MDAD disapproves the plan, the Operator shall operate in substantial conformity with all such plans approved by the Department as may be modified from time to time.

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

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

ARTICLE 3 –PAYMENTS AND REPORTS

3.01 Payments to County: The Operator shall pay to the County a Minimum Annual Guarantee, and Percentage Fees as follows:

(A) Minimum Annual Guarantee: As consideration for the privilege to engage in business at Miami International Airport, the Operator shall pay the Department a fee of $360,000.00 annually.

The Minimum Annual Guarantee ("MAG") payment shall be in U.S. funds, prorated and payable in twelve equal monthly payments ("Minimum Monthly Guarantee" or "MMG") on or before the first day of each month, in advance, without billing or demand, plus applicable taxes as may be required by law at the offices of the Department as set forth in **Sub-Article 3.16 "Address for Payments."**

The MAG shall commence upon the Beneficial Occupancy of the seventh floor restaurant.

3.02 **NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS:** The Operator understands and agrees, as a condition precedent to the County's consideration of the Qualification Statement, that the terms and conditions of **Sub-Article 3.01 Payments to County and Sub-Article 3.04 "Percentage Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 21.10 "Force Majeure"**. Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term, and any Extension of this Agreement. If the Operator's Facilities are so damaged as to significantly impact the Operator's operations for a period in excess of seventy-two (72) hours, the Department shall provide a proportionate abatement of the MMG for that portion of the Facilities rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

3.03 **RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE:** The Minimum Annual Guarantee shall be recalculated as of the first day of the month immediately following the anniversary of the Beneficial Occupancy date and every year thereafter to reflect the change in the Consumer Price Index ("CPI") for all urban consumers ("CPI-U") in the South Region: All Items, for the published, preceding twelve-month period.

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

Monthly Percentage Fee payments to the Department payable on any unreported Gross Revenues, determined by the annual audit required pursuant to **Sub-Article 3.18 "Annual Audit"**, are considered as having been due on the tenth (10th) Day of the month following the month during which the unreported Gross Revenues were received or accrued.

3.05 **CONCESSIONS CATEGORY FEE:** The Operator shall pay the Department the Percentage Fee of applicable Gross Revenues for the corresponding category.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
Food	13%
Beer, Liquor & Wine	18%
Merchandise	13%
Other	To be negotiated

3.06 ANNUAL RENTAL: NOT USED

3.07 ANNUAL RENTAL RATE ADJUSTMENT: NOT USED

3.08 **COMMON WAREHOUSE LOGISTICS FEE:** In the event the Department initiates a Common Logistics Program the actual costs incurred to rent any such off-Airport properties for storage and the actual costs incurred in the operation of the common logistical support service program (including the purchase or renting of any equipment needed to operate such program), as may be determined by the Department and/or the Operator from time to time, shall be included in the Common Logistics Fee. The Department reserves the right to approve and review the basis of the actual costs and allocation thereof should the Operator elect to implement a common logistics support service program. The Department also reserves the right to either itself impose or require that the Operator impose the Common Logistics Fee in a non-discriminatory manner within store categories. In the event the County elects to implement such fee, the Operator shall be notified, in writing, no less than forty-five (45) Days prior to the implementation of such fee. The Operator may elect not to agree to the fee by opting out of the Agreement in its entirety, and, if so, must notify the Department thirty (30) Days after receipt of written notification by the Department. In the event the Operator does not give such notice, the fee will be implemented accordingly.

3.09 CONCESSION MARKETING FEE: NOT USED

3.10 **MAG PERFORMANCE BOND:** Within thirty (30) Days of the Lease Effective Date of this Agreement, the Operator shall provide the Department a Performance Bond to guarantee payment of the MAG for the Facilities, and if any, of rental for the lease of storage spaces. Operator shall keep such Performance Bond in full force and effect during the Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond. In the alternative, an irrevocable letter of credit, or other form of security acceptable to the Department may be furnished. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond or other security instrument shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond or other security instrument shall initially be in an amount equal to seventy-five percent (75%) of the MAG

amount for the Facilities, provided for in **Sub-Article 3.01, "Payments to County"**, which is equal to **$270,000**, the amount of the Performance Bond shall be adjusted as necessary to reflect any increases in the MAG and lease of storage spaces.

The Department may draw upon such form of security instrument, if the Operator fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Upon notice of any such draw, Operator shall immediately replace the Performance Bond with a new Performance Bond in the full amount of the Performance Bond required hereunder. A failure to renew the Performance Bond, or increase the amount of the Performance Bond, or other forms of security instrument, if required due to such draw, shall (i) entitle the Department to draw down the full amount of such Performance Bond, and (ii) be a default of this Agreement entitling Department to all available remedies. Provided the Operator is not in default and fully complies with all the payment requirements of this Agreement, the payment security instrument will be returned to the Operator within one hundred eighty (180) Days after the end of the Term or any Extension of the Term.

A. All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Key Rating Guide, published by A.M. Best Company, or its equivalent, subject to the approval of MDAD Risk Management:

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

B. Surety companies not otherwise qualifying with this paragraph may optionally qualify by:

1) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
2) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under ss. 31 U.S.C. 9304-9308.

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

C. For bonds in excess of $500,000 the above provisions will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three

consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

D. The attorney-in-fact or other officer who signs the bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required bonds shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes. The Bonds shall be delivered to the Department as indicated above.

In the event the Surety on the Bond given by the Operator becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law the Operator must provide a good and sufficient replacement bond.

Cancellation of any bond, or non-payment by the Operator of any premium for any bond required by this Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Department at its sole option may terminate this Contract.

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

3.12 **REPORTS OF GROSS REVENUES:** On or before the tenth (10th) Day following the end of each month throughout the Term and any Extension of this Agreement, the Operator shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall list each Facilities under this Agreement, together with any Percentage Fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Operator shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Operator. The statement must be signed by an officer (if the Operator is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Operator, and identify all Gross Revenues by Facilities reported to the Operator during such month. Failure to provide the Monthly Report of Gross Revenues by the tenth (10th) Day shall result in a late fee Damage of fifty dollars ($50.00) per Day to a maximum of $750 a month, as provided in **Sub-Article 3.23 "Damages"**.

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

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

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

3.16 **ADDRESS FOR PAYMENTS:** The Operator shall pay all monies payable and identify the Agreement for which payment is made, as required by this Agreement, to the following:

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

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

By Mail:
Miami-Dade Aviation Department
Finance Division
P.O. Box 526624
Miami, Florida 33152-6624

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

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

By Credit Card: Miami-Dade Aviation Department
Finance Division- Cashier's Office
305-876-0652

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

3.18 **ANNUAL AUDIT:** Within ninety (90) Days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) Days following expiration or earlier termination of this Agreement, the Operator shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly Gross Revenues and Percentage Fees separately stating its Gross Revenues, containing an opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in Exhibit G "Independent Audit Report", shall include a schedule of monthly Gross Revenues and Percentage Fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards. The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department. If such schedules indicate that the Percentage Fees for such period audited have been underpaid, the Operator shall submit payment therefore within forty-five (45) Days after the completion of the reports to the Department as stated in **Sub-Article 3.16 "Address for Payments"** together with interest on any underpaid Percentage Fees at the rate set forth in **Sub-Article 3.14 "Late Payment"**.

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

determined to be needed or desirable by the Department. Prior to entering the Facilities, the Department shall give advance notice to the Operator.

If it is established that the Percentage Fees have been underpaid to the Department, the Operator shall forthwith, pay the difference with interest thereon at the rate set forth in **Sub-Article 3.14 "Late Payment"** from the date such amount or amounts should have been paid.

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

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

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

The Operator shall account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions which support the amounts reported to the Department in the Operator's monthly schedules. At a minimum, the Operator's accounting for such receipts shall include the following:

1. The Operator's bank account statements (separate bank accounts shall be maintained for receipts from ' payments to the Operator and no receipts from any other source shall be deposited in such accounts);
2. A compiled report of transactions by Facilities showing all Gross Revenues and all exclusions from Gross Revenues by category, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Operator's monthly "Revenue Reports"; and

3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Operator's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

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

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

3.22 **UTILITIES:** The cost of all utilities used or consumed on the Facilities shall be borne by the Operator; provided, however, except with respect to the Operator's storage space as defined in **Sub-Article 1.05 "Storage Space"** at the Airport. The Department requires the Operator where such capability exists, to provide and install meters for utilities used at its expense. If the Facilities are not provided with separate electric, gas, and/or water meters, the Operator agrees to pay for such utilities in the Facilities as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the Terminal building or (ii) at the option and expense of the Operator on actual usage measured by temporary meters, arranged and paid for by the Operator. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. The Operator hereby agrees to pay the same within thirty (30) Days after it has received the Department's invoice thereof. The Operator shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

3.23 **DAMAGES:** If the Operator default under any of the covenants or terms and conditions, of this Agreement, Department shall impose the financial Damages described below, as a

result of the violation(s), on a daily basis, in addition to any other Damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation	Fee
Violation of Permitted Use of the Facilities	$ 100 per Day/per Facility
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Facility
Failure to Submit Required Documents and Reports*	$ 50 per Day/per Report*
Unauthorized Advertising/Product Sale	$ 50 per Day/per Facility
Failure to maintain Facilities clean	$ 50 per Day/per Facility
Failure to maintain Competitive Pricing or to conduct the surveys as required	$ 50 per Day/per Facility
Installation of Unapproved Items in the Facilities	$ 50 per Day/per Facility
Violations of other terms and conditions	$ 75 per Day/per Facility

*Up to $750 a month

The foregoing is due and payable from the Operator; however, it shall not be construed as prohibiting the Operator from imposing the financial Damages described above, on a daily basis, as applicable, in addition to any other Damages permissible by law.

3.24 **PAYMENT SECURITY:** Within thirty (30) Days of the Lease Effective Date of this Agreement, the Operator shall provide the Department with an irrevocable standby letter of credit in the format approved by the Department or cash for the payments required by this Sub-Article in an initial amount equal to twenty-five percent (25%) of the MAG amount which is equal to **$90,000**, the amount of the payment security shall be adjusted as necessary to reflect any increases in the MAG, and lease of storage spaces, if applicable. The payment security shall be kept in full force throughout the Term and any Extension(s) of this Agreement thereof. The Department may draw upon such payment security instrument if the Operator fails to make the payments secured by this Sub-Article. Upon notice of any such draw, the Operator shall immediately replace the payment security with a new payment security in the full amount of the payment security required hereunder. A failure to renew the payment security, or increase the amount of the payment security, if required pursuant hereto, shall (i) entitle the Department to draw down the full amount of such payment security, and (ii) shall constitute a default of this Agreement as set forth in **Sub-Article 12.02 "Payment Default"**, entitling Department to all available remedies.

ARTICLE 4 – IMPROVEMENTS TO THE FACILITIES

4.01 **IMPROVEMENTS TO FACILITIES:** The Operator shall be required to invest a minimum of **$5,000,000.00** for approved improvements for the design, construction, furniture, fixtures and equipment excluding interior signage and inventory for all Facilities listed in Exhibit A and any additional premise taken by the Operator pursuant to **Sub-Article 1.07(A) "Addition of Facilities)"**. Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for the Facilities, the maximum proportion of soft costs permitted to be included as approved improvements

shall be no more than fifteen percent (15%) of the total design and engineering cost. All improvements shall be subject to review and approval by the Department. The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Operator to build such improvements in compliance with MDAD Exhibit E "Retail Concessions Design Guidelines", Exhibit F "Tenant Airport Construction Non-Reimbursable Projects (TAC-N) or "Tenant Airport Construction Reimbursable Projects (TAC-R) Design and Construction Procedures.

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

Improvements not constituting approved improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.08 "Cost Documentation"**, and (iii) can be removed without damage to the Facilities. The Operator is liable and shall indemnify the Department for any damage to the Facilities which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Facilities, as stated in **Article 4 "Improvements to the Facilities"** or as an extension of this Agreement, and costs incurred by either the Operator to provide such storage space shall not constitute approved improvements.

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

4.03 **ASBESTOS ABATEMENT:** Operator shall undertake all approved asbestos abatement(s) as approved pursuant to the guidelines of this Article 4 with its own funds. MDAD will allow rental credits until such expenditures are recovered by the Operator. The credit is limited to the extent of the monthly payment(s) of the Operator to MDAD at the time that each payment occurs.

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

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

4.05 **IMPROVEMENTS FREE AND CLEAR:** The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever, other than the County's obligation to reimburse the Operator for the unamortized value of the approved improvements as provided in this Agreement. The Operator agrees that any contract for construction, alteration or repairing of the improvements or Facilities or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County (and the Operator for contracts entered into by) from the claims of any laborers, subcontractors or material men against the Facilities or improvements.

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

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

4.07 **REVIEW OF CONSTRUCTION:** The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Operator.

4.08 **COST DOCUMENTATION:** Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01 "Improvements to Facilities"**, the Operator shall submit to the County a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Facilities in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit"). The Operator, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Operator and approved by the County, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Operator, as the case may be. No non-receipted expenditures will be credited. Operators not submitting certified audits within the allotted time may be billed a penalty of fifty dollars ($50.00) per Day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten per cent (10%) of the monies due the County on the build-out of the Facilities. In the event of any disputes between the County and the Operator as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Operator in writing that it has approved or disapproved the certified costs for each of the Facilities and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Operator fails to submit the Certified Audit within the time prescribed above for any of the Facilities, then a penalty will be assessed as noted in **Sub-Article 3.23 "Damages"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Operator for un-amortized improvement costs for such Facilities pursuant to **Sub-Article 4.09 "Amortization Schedule"** shall equal the lesser of five hundred dollars ($500.00) per square foot or the square footage rate of improvement costs for such Facilities certified by the Auditor.

If the approved total receipted amount is below the Operator minimum investment and is depicted as such in the results of the Certified Audit, the Operator shall be required to pay to the Department the difference between the expended amount and the minimum investment, within one hundred eighty (180) Days from the date of Beneficial Occupancy of the corresponding Facilities.

4.09 **AMORTIZATION SCHEDULE:** The Operator shall amortize its capital investment for a period not to exceed ninety-six (96) months using the straight-line depreciation method. If, at any time during the Term of the Agreement, excluding any extension, the Department

requires the deletion and/or modification of any premise, the Department may designate new Facilities at its sole discretion and reimburse the Operator the unamortized balance of approved improvements for that premise.

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

1. Directly contracted costs of construction.
2. Furniture, fixture, equipment and signage purchased and installed for direct use in the facility exceeding $1,000 per item.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Operator will be required to confirm the minimum investment within one hundred twenty (120) Days of Beneficial Occupancy for the Facilities. No non-receipted expenditures will be credited. If the approved total receipted amount is below the Five hundred dollars ($ 500) per square foot minimum, the Operator will be required to pay the Department the difference between the minimum investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

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

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

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

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

1) Operator Improvements

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

2) Design and Construction Coordination

a. Operator shall:

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

3) Construction

Operator shall:

1. Attend pre-construction meetings, construction meetings, coordinate construction with if applicable, monitor schedule, and coordinate Facilities development with the Department as required, pursuant to the TAC-N procedures.
2. Adhere to and or cause to adhere to MDAD's TAC-N or TAC-R procedures.

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

4.12 **SUSTAINABLE BUILDINGS PROGRAM:** The Operator shall meet required LEED Green Building Rating System, as established by the U.S. Green Building Council (USGBC) and inform the Department of any other/additional opportunities in the project elements to meet LEED certification requirements and/or create other opportunities associated with green building practices.

ARTICLE 5 –STANDARDS OF OPERATION

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

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Facilities, which the Operator agrees to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Operator. The Operator shall distribute such rules

and regulations and operating performance standards to its employees. The Department shall provide the Operator with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Operator shall implement and comply with all amended requirements, within fifteen (15) Days of receipt of an amendment to Exhibit L "Food Service Standards of Operation". The Operator shall immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

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

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

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

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

The Operator who are not in compliance with the provisions of this Sub-Article shall be given seven (7) Days after notice of such non-compliance pursuant to **Sub-Article 18.09 "Notices"** to bring all products into compliance. Failure to do so shall constitute a default under this Agreement and shall subject the Operator to Damages pursuant to **Sub-Article 3.23 "Damages".**

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

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

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

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

D. No Other Obligation of Department: The Operator acknowledges that the Department has made no representations or warranties concerning the suitability of the Facilities for the Operator's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to

repair, maintain, renovate or otherwise incur any cost or expense with respect to the Facilities or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Facilities by the Operator.

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

ARTICLE 7 – FURNITURE, FIXTURES AND EQUIPMENT

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

7.02 **AMERICANS WITH DISABILITIES ACT REQUIREMENTS:** The Operator will be responsible, at its cost, for ensuring that the Facilities and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities' Facilities. In some circumstances, the public entity must ensure that the operations of the private entity

comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Operator will be the same. However, the Department reserves the right to require the Operator to modify its operations or its physical premises to comply with the Department's ADA obligations with respect to the Facilities, as the Department in its sole discretion deems reasonably necessary.

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

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

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

ARTICLE 8 – MAINTENANCE

8.01 **CLEANING:** The Operator shall, at its cost and expense, keep the Facilities clean, neat, orderly, sanitary and presentable at all times. If the Facilities are not kept clean as provided in the Food Service Standards of Operation, Exhibit L, the Operator will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in Damages being assessed pursuant to **Sub-Article 3.23 "Damages"**.

8.02 **REMOVAL OF TRASH:** The Operator shall, at its cost and expense, remove or cause to be removed from the Facilities and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Operator enters into agreements for the janitorial and trash removal or any service within the Facilities, such service providers must have permits issued by the Department to do business at the Airport. Trash shall not be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained may result in Damages being assessed pursuant to **Sub-Article 3.23 "Damages"**.

The Department reserves the right to charge the Operator retroactively non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory

manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

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

8.04 **FAILURE TO MAINTAIN:** Upon failure of the Operator to maintain the Facilities as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Facilities and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Operator, in addition to any Damages imposed by the Department pursuant to **Sub-Article 3.23 "Damages"**.

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

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

Proper disposal of contaminated and/or regulated materials generated by the Operator is the sole responsibility of the Operator. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other Federal or local regulatory agency.

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

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

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

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

9.03 CHANGE OF CONTROL: If the Operator is a corporation, the issuance of sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Operator to result in a change of control of the Operator shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership".** If the Operator is a partnership, transfer of any interest in the partnership, which results in a change in control of such Operator (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership".**

9.04 HOLDOVER:

A. With the Department's Permission:

If the Operator (or anyone claiming through the Operator) shall remain in possession of the Facilities or no less than seventy percent (70%) of the square footage of the Facilities thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Operator shall thereafter continue to pay the Minimum Monthly Guarantee; as such Minimum Monthly Guarantee is subject to an annual Consumer Price Index adjustment. Such adjustment will be calculated by dividing the most recent Consumer Price Index published immediately prior to the expiration of the

Agreement and the most recent Consumer Price Index published one year immediately prior to the termination date and multiplying such amount by the Minimum Annual Guarantee. The recalculated Minimum Annual Guarantee will be used as the basis for calculating the Minimum Monthly Guarantee. Notwithstanding the adjustment, in no event will any adjustment by the Consumer Price Index cause the Minimum Annual Guarantee for any year to be lower than the amount of such Minimum Annual Guarantee for the Term. If the Consumer Price Index is discontinued or revised during the Term, any such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

In addition, the Operator shall pay Monthly Percentage Fee (if Operator remains in such Space), on account of the holdover use and occupancy of the Facilities. This provision shall survive the expiration or the termination of this Agreement.

B. Without Department Permission:

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

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF OPERATOR: The Operator shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Operator or its employees, agents, servants, partners, principals or any other persons. The Operator shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of

the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

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

ARTICLE 11 – INSURANCE

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

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

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

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

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

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

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

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

11.02 CERTIFICATE OF CONTINUITY: The Operator shall be responsible for assuring that the insurance certificates required in conjunction with **Article 11 "Insurance"** remain in

force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Operator shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

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

11.03 INSURANCE COMPANY RATING REQUIREMENTS: All insurance policies required above from the Operator 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 Department's Risk Management Office.

11.04 OPERATOR LIABLE: Compliance with the requirements as to carrying insurance in **Article 11 "Insurance"** shall not relieve the Operator from liability under any other provision of this Agreement.

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

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

11.07 PERSONAL PROPERTY: Any personal property of the Operator or of others, placed in the Facilities and storage spaces shall be at the sole risk of the Operator or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

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

11.09 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. **Indemnification, Bonds and Insurance Required from Construction Contractor:** The following language, including the indemnification clause, shall be included in all

construction contracts between the Operator and its general contractor(s) and subcontractors:

Indemnification: The Contractor shall defend, indemnify, and save harmless the County, the Consulting Engineers, the Architect/Engineer, the Field Representative, the Operator of the Facilities, and their officers (elected or otherwise), employees, and agents (collectively "Indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the Contractor or its contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The Contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the Contractor's obligation to indemnify or hold harmless the Indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any Indemnitee arising from the contract or its performance shall be limited to the greater of $1 million or the Contract Amount. Further, this indemnification requirement shall not be construed so as to require the Contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the Indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

The Bond shall be delivered to the Department upon execution of the contract between the Operator and its contractor, as the case may be.

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

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

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

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

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

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

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

E. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to 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 Risk Management Office.

F. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Operator to agree to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer

period is agreed to by the Department) the Operator agrees to provide copies to the Department, at the Operator's sole cost and expense.

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

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

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

(A) The Operator has violated the terms and conditions of this Agreement;

(B) The Operator has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the Operator's Facilities;

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

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

(E) Abandonment or discontinuance of operations by Operator of its business by any act(s) of the Operator;

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

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

(H) Failure by the Operator to maintain its equipment in a manner satisfactory to the Director;

(I) The Operator has failed to obtain the approval of the Department where required by this Agreement;

(J) The Operator has failed to provide adequate assurances as required under **Sub-Article 12.10 "Adequate Assurances"**;

(K) The Operator has failed to comply with **Article 14 "Airport Concession Disadvantaged Business Enterprises-Voluntary"**;

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

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

12.02 PAYMENT DEFAULT: Failure of the Operator to make MAG/MMG payments and Percentage Fee payments and other charges required to be paid herein when due and fails to cure the same within five (5) Days after written notice shall constitute a default, and the County may, at its option, terminate this Agreement after five (5) Days notice in writing to the Operator.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) Days written notice to the Operator to terminate this Agreement upon the occurrence of any act of default unless the same shall have been corrected within thirty (30) Days after written notice; provided, however, that the Department may, but is not required to, extend the time for cure as individual circumstances may warrant such extension not be construed as a waiver of any of the Department's rights hereunder. In the event of a specific provision of this Agreement provides for a shorter cure period in the event of a specific default, that shorter time period shall take precedence over this section.

The notice of default shall specify the Termination Date by when the Operator shall discontinue the services.

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

accordance with **Sub-Article 12.11 "Actions at Termination"** hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Department shall notify the Operator by sending a notice of default, specifying the basis for such Event of Default, and advising the Operator that such default must be cured immediately or this Agreement with the Department may be terminated.

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

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Operator of the Facilities or the discontinuance of the Operator's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, and the failure to cure the same within three (3) Days after written notice unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Operator from providing services on the Facilities for the purposes authorized in **Article 2 "Use of Facilities"**. Such termination shall constitute an event of default, and the County shall be entitled to all remedies for such default provided for in this Agreement.

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

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

12.09 TERMINATION FOR CONVENIENCE: The Department, in addition to the rights and options to terminate for cause, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement upon thirty (30) Days written notice at its sole option

at any time for convenience, without cause, when in its sole discretion it deems such termination is in the best interest of the Department. In such circumstance, the County will solely be responsible for paying the unamortized costs of any improvements constructed by the Operator, but the County shall not be responsible for any other costs or damages, including but not limited to lost profits, loss of opportunity, borrowing costs, carrying costs, damage to reputation, loss of goodwill, or loss of income.

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

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

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

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

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

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

(D) in case of termination without cause by the County or if the Operator terminates with cause, the County may execute an agreement assigning to the County the Operator's right and duties under all Lease agreements then in effect (Assignment Agreement); and

(E) in cases of termination with cause by the County or if the Operator terminates without cause, refer to **Sub-Article 12.07 "Termination for Abandonment"**, the County reserves the right to not execute an Assignment Agreement to assume those agreements.

(F) If directed by the County, provide sufficient assignments/licenses for the County to assume operations, either directly or through an agent, of any branded food operation then in place pursuant to this Agreement. Such assignments/licenses shall fully convey all rights necessary for operations of such branded food operation through the term of the Lease, inclusive of option years, remaining at the time of termination. In the event such

assignment/license is accepted by the County, the County shall be responsible for any franchise fees or royalty payments to any third parties as may have been in effect at the time the brand became operational pursuant to this Lease, except that the County shall not be responsible for any franchise fees or royalty payments to any subsidiary of the Operator, or any firm with common ownership as the Operator. Notwithstanding, the County shall have the right to decline such assignment/license, in which event the Operator shall, at its sole cost and expense, remove all branded elements from the property, except to the extent such elements were fixtures of the location.

If terminated for cause, the Operator shall be liable to the County for all damages, direct and indirect, incurred by the County as a result of such termination, including but not limited to loss of future MAG payments, loss of revenue, loss of passengers, loss of opportunity, or loss of goodwill. The existence of a bond or letter of credit supplied pursuant to **Article 3 "Payments and Reports"** of this Agreement shall not serve as a limitation on damages beyond the penal sum of the bond or letter of credit, and the County may avail itself of the bond or letter of credit, or both, and also all remedies as may be available at law or equity against the Operator.

ARTICLE 13 – CLAIMS AND TERMINATION BY OPERATOR

13.01 **ADMINISTRATIVE CLAIM PROCEDURES:** If the Operator has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Operator at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) Days from the date of receipt of such copy, the Operator mails or otherwise furnishes to the Department a written appeal addressed to the Mayor. The decision of the Mayor, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) Days of the Operator's receipt of such decision, the Operator files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Operator shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Operator shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the Mayor shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the Operator to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

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

(A) Issuance by any court of competent jurisdiction of any injunction substantially

restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.

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

ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES-VOLUNTARY

14.01 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) REQUIREMENTS:

ACDBE REQUIREMENTS: ACDBE participation is voluntary, but not required for this Agreement. ACDBE goal can be achieved either through the Operator being an ACDBE itself, a partner or joint venture, or subcontracting a percentage of gross revenues.

The Operator did not commit to a percentage of ACDBE participation.

If the Operator elects to participate at a later date, they may contact the Minority Affairs Division for further instruction.

14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

1. When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.

2. When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract **during the complete contract term,** equal to the clearly defined portion of the **work of the contract that the ACDBE** performs will be counted toward ACDBE goals as outlined in Exhibit N "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and ACDBE Joint Venture Guidance by the U. S. Department of Transportation, Federal Aviation Administration (USDOT-FAA) ACDBE Schedule 8.

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

   (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its

responsibilities by actually performing, or managing, or supervising the specific identified work.

(b) MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the sub-concession agreement or other agreements in accordance with industry practices.

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

(d) If an ACDBE does not perform or exercise responsibility for at least seventy (70%) percent of its participation or if the ACDBE subcontract's a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.

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

4. MDAD's decision on commercially useful function matters are final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:

Respondentss may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in the ACDBE Joint Venture Guidance by the U.S.DOT-FAA; ACDBE Schedule 8.

The Joint Venture Agreement must specify the following:

(1) Each ACDBE joint venture ("**JV**") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner as specified in the Joint Venture Guidance by U.S. DOT-FAA (Schedule 8).

The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and locations or as a distinct element of work be specified.

The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the Facilities. Such "minimum amount of aggregate time" is defined as ten hours per week.

(2) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:

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

b. Deliverables and work products.

c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.

d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).

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

(4) Each ACDBE JV partner must perform work that is commensurate with the Agreement.

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

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

ACDBE firms must maintain their certification throughout the term of this Agreement.

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:

The Operator acknowledges that the provisions of 14 CFR Part 152, Affirmative Action Employment Programs, Provisions of Title VI of the Civil Rights Act of 1964, and 49 CFR Part 23, Airport Concession Disadvantaged Business Enterprise Programs, are applicable to the activities of the Operator under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, U.S. Department of Transportation and the Federal Aviation Administration.

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

The Operator shall include the following nondiscrimination language in contracts with MDAD which is an assurance and clarification clause requested by the DOT and approved by the Miami Dade Aviation Director:

> *"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23".*
>
> *"The concessionaire agrees to include the above statements in any subsequent concession agreement covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements".*

The provisions of this Section shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964 applies.

The Operator agrees to include the above statements in any subsequent agreements.

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:

Consistent with the goal of providing ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Sub-Article 14.01 "Airport Concession Disadvantaged Business Enterprise (ACDBE) Requirements"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

A. Store Operations

(1) Passenger profile analysis
(2) Cash handling/sales audit
(3) Enhancing sales
(4) Selling to the customer
(5) Staffing to meet customer levels
(6) Opening and closing procedures

B. Personnel

(1) Employment practices
(2) Compliance with wage and hour laws
(3) Compliance with County and Airport requirements
(4) Designing compensation and benefits plans
(5) Management and staff training to enhance product knowledge and customer service
(6) Warehousing packaging and sales reporting of merchandise

C. Shop Design and Display

(1) Retail layout
(2) Merchandising techniques
(3) Visual display techniques

D. Loss Prevention

(1) External and internal theft
(2) Shop security

E. Books, Records and Reports

(1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.

(2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Opertor shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this Agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.

(3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:

The Operator shall contract with those firm(s) as are listed on the Operator's ACDBE Participation Plan in the Qualification Statement documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The MDAD shall monitor the compliance of the Operator with the requirements of this provision during the term and/or extension of this Agreement.

The MDAD shall have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records, records of expenditures, agreements between the Operator and the ACDBE Participant, and other records pertaining to ACDBE Participation Plan.

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

ARTICLE 15 - RULES, REGULATIONS AND PERMITS

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

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Operator agrees to pay, on behalf of the County, any Damage, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Operator, its agents, employees, or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program

developed in compliance therewith. The Operator further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every Sub-Lease and other agreements which the Operator may enter into related to its activities under this Agreement and that any such Sub-Lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

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

15.04 **PROHIBITION ON USING PRODUCTS CONTAINING TRANSFATS – RESOLUTION NO. R-456-07:** The Operator shall not market or distribute at the designated Facilities under this Agreement any pre-packaged, prepared or other foods, including catered foods, derived from or containing trans-fats. The Operator shall, periodically review existing inventories and projected products, to assure that only trans-fat free products are being offered for public consumption.

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

15.05 **LABOR PEACE REQUIREMENT – RESOLUTION NO. R-148-07:** The Operator provided a signed copy of the labor peace agreement for their employees as part of their Qualification Statement to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). See Exhibit M. Furthermore, the County has the right, in the event of a labor disruption, to suspend it's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Operator is unable to reach an agreement with a labor organization regarding the terms of a Labor Peace Agreement, the dispute between the Operator and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) Days of the request for arbitration but no later than five (5) Days prior to the date the Qualification Statement is due. The Operator and the labor organization shall equally share the costs of arbitration. The Operator shall ensure that all sub-tenants also sign a Labor Peace Agreement.

ARTICLE 16 – GOVERNING LAW

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

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

16.03 **REGISTERED OFFICE/AGENT JURISDICTION:** The Operator, 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 the Operator is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement. If Operator is a joint venture and not a corporation, the parties to the joint venture hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement.

ARTICLE 17 – TRUST AGREEMENT

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

17.02 **ADJUSTMENT OF TERMS AND CONDITIONS:** If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Operator or by other operators under other agreements of the Department for the lease or use of Facilities used for similar purposes, are unjustly discriminatory, the County, shall have the right to modify such terms

and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Operator and others shall not thereafter be unjustly discriminatory to any user of like premises and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Operator.

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

17.04 **INDEPENDENT PRIVATE 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 Qualification Statement, 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 Operator shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement 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 Operator's cost/price for this Agreement be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Operator, 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 Operator 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 Respondents or third party.

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

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.

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Operator shall pay all taxes lawfully assessed against its interests in the Facilities and any storage spaces and its services hereunder, provided however, that the Operator shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 "Other Defaults"** hereof.

18.02 ALTERATIONS BY OPERATOR: The Operator shall not alter or modify the Facilities and or any storage spaces, except in accordance with **Article 4 "Improvements to the Facilities"** herein, without first obtaining written approval from the Department.

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

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Operator, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.07 "Addition, Deletion and Modification of Facilities", Sub-Article 18.02 "Alterations by Operator", Sub-Article, 21.02 "Right to Amend"**, and **Sub-Article 21.04 "Right to Modify"**.

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

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

18.07 OTHER DEPARTMENT RIGHTS: The Operator shall be liable for any physical damage caused to the Facilities by the Operator, its employees, agents, contractors,

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

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

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

To the County:
(Mailing Address)

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

or (physical address):

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

To the Operator:
IMCMV Holdings Inc.
Francisco Javier Gavilan
President
999 Brickell Avenue, Suite 700
Miami, FL 33131

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated

on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

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

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

18.12 **COUNTY LIEN:** The County shall have a lien upon all personal property of the Operator in the Facilities to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

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

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

18.15 **SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY:** The Operator 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 Operator's activities at the Miami International Airport (MIA).

In order to maintain high levels of security at MIA, the Operator must obtain MDAD photo identification badges for all the Operator 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 Operator employees will be required to obtain photo identification badges and will be subject to fingerprint-based criminal history records checks.

The Operator shall be responsible for requesting MDAD to issue identification badges to all employees who the Operator 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 Operator or upon final acceptance of the work or termination of this Agreement. The Operator 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 Operator 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.

Operator Ramp Permits will be issued to the Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator.

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 Operator 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.

Operator 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 Operator 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 Operator sub-consultants, suppliers, and their individual employees for a violation of applicable security provisions. The Operator 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.

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

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

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

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

18.20 **HEADINGS:** The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this

Agreement or any part or parts of this Agreement.

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

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

18.23 **INDEPENDENT CONTRACTOR:** The Operator shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Operator in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Operator under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Operator represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Operator to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Contractor for any reason.

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

18.25 **FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP")**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the successful Bidder, 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 to five days, the Operator 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://iapps.southfloridaworkforce.com/firstsource/ or by contacting the SFWIB at (305) 594-7615, Extension 407. (Refer to Exhibit O)

18.26 **RIGHT TO REGULATE:** Nothing in this Agreement shall be construed to waive or limit the governmental authority of the Department, as a political subdivision of the State of Florida, to regulate the Operator or its services.

ARTICLE 19 - DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES

Operator shall not sub-lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Operator hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion.

ARTICLE 20 - WAIVER OF CLAIMS

The Operator hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Operator hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Facilities available to the Operator or by reason of any defects or deficiencies in the Facilities or in the terminal building including any defect or deficiency in the Facilities or in the terminal building which substantially impedes the Operator's or its' ability to operate a concession at the Facilities or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Operator hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

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

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

21.03 OPERATOR COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. The Operator on behalf of itself, its , successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Facilities or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that the Operator shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, the Operator shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should the Operator authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, the Operator shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. The Operator shall furnish the original or a true copy of such agreement to Department.

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

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

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

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

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

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

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

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

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

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

21.07 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Operator hereunder and the occupancy and use by the Operator and the Operator's of the Facilities shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's policies and procedures as the same may be amended from time to time.

21.08 INTEREST: Any sums payable to the Department by the Operator under any provisions of this Agreement, which may be amended from time to time, which are not paid when due

shall bear interest at the rate of **one and one half percent (1 1/2%)** per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

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

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

2. The Operator agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Operator or any of its , officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.

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

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

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

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

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

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

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

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

21.10 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Operator, embargo's, general shortages of labor, equipment, premises, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the EPA, the DOJ, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

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

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

OPERATOR

inc. MV Holdings inc
(Legal Name of Corporation)

ATTEST:

Secretary _____
(Signature and Seal)

By: _____
Operator - Signature

FRANCISCO JAVIER GAVILAN, SECRETARY
(Type Name & Title)

Name: FRANCISCO JAVIER GAVILAN

PRESIDENT
(Type Name & Title)

MV Holdings, Inc. 2013 Florida

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)

LIMITED LIABILITY COMPANY

_____
Name of Company

By:_____ Print Name:_____
President

By:_____ Print Name:_____
Member

By:_____ Print Name:_____
Member

WITNESSES TO ABOVE SIGNATURE:

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

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: _____

LEASE AND OPERATING AGREEMENT FOR
PRIVATELY FINANCED RESTAURANT INITIATIVE
FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS
BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

IMCMV HOLDINGS, INC

OPERATOR

AT

MIAMI INTERNATIONAL AIRPORT

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Memorandum

MIAMI-DADE COUNTY

Date: September 5, 2014

To: Lenora Allen-Johnson, Chairperson
Evaluation/Selection Committee
Miami-Dade Aviation Department

From: Carlos A. Gimenez
County Mayor

Subject: Request for Qualifications for Privately Financed Restaurant Initiative for Hotel MIA Food and Beverage Operations, RFQ No. MDAD-13-04

With reference to your report of August 13, 2014 (copy attached) concerning the above captioned subject, this is to advise you that pursuant to Implementing Order 3-38, I hereby authorize the Department to proceed with execution of the Agreement for the above referenced project with the following firm: IMCMV Holdings, Inc.

The Request for Qualifications, Section 4 entitled "Evaluation Process", Sub-section 4.3, second paragraph states that….."If there is only one (1) responsive, responsible Respondent, the Committee may, following evaluation of the Qualification Statement, recommend to award or negotiate an Agreement with that Respondent or to reject the Qualification Statement." The Committee has determined that negotiations are not necessary. Therefore, the Department is authorized to proceed to obtain execution of the advertised Agreement with the firm above. The Department will transmit with the signed agreement, a cover memorandum to include the below listed information:

1. A general description of the services.
2. The Minimum Annual Guarantee.
3. The term of the Agreement.
4. A brief description of the selection process.

Attachments

c: Clerk of the Board of County Commissioners
EVALUATION / SELECTION COMMITTEE
Lenora Allen-Johnson, MDAD (Non-voting, Chairperson)
Ray Diaz, MDAD
Melvin Payne, MDAD
Claudio Cury, Wells Fargo Capital Finance, SCF
William D. Talbert, III, Greater Miami
Convention and Visitors Bureau
Charlotte Horne, ISD

The Committee then recommended to proceed with a request to the County Mayor for approval for an award of the agreement to IMCMV.

Attached are the following items to substantiate the actions taken to date:

1. Summary Minutes of the Prescreening Meeting
2. Summary Minutes of the Public Hearing

c: Clerk of the Board of County Commissioners

EVALUATION/SELECTION COMMITTEE:
Lenora Allen-Johnson, MDAD (Non-voting, Chairperson)
Ray Diaz, MDAD
Melvin Payne, MDAD
Claudio Cury, Wells Fargo Capital Finance, SCF
William D. Talbert, III, Greater Miami
Convention and Visitors Bureau
Charlotte Horne, ISD

RECEIVED
AUG 14 2014
OFFICE OF MAYOR

Memorandum

MIAMI-DADE COUNTY

Date: August 13, 2014

To: The Honorable Carlos A. Gimenez
County Mayor

From: Lenora Allen-Johnson, Chairperson
Evaluation/Selection Committee
Miami-Dade Aviation Department

Subject: Evaluation/Selection Committee Report -
Request for Qualifications for Privately Financed Restaurant Initiative for Hotel MIA Food and Beverage Operations, RFQ No. MDAD-13-04

As authorized by Implementing Order 3-38 and your memorandum dated June 16, 2014, the designated Evaluation/Selection Committee ("Committee") met and conducted the selection process for the subject project on July 30, 2014 for the prescreening meeting, and August 7, 2014 for the public hearing. This process was conducted in accordance with the procedures specified by the Request for Qualifications (RFQ) as described in the attached summary minutes.

PRESCREENING MEETING OF JULY 30, 2014 (2:30 PM)

As announced in the Metro Calendar, the Committee met on July 30, 2014 at the Miami-Dade Aviation Department (MDAD), 4200 NW 36th Street, Bldg. 5A, 4th Floor, Conference Room F, Miami, Florida and undertook a review of the sole Qualification Statement submitted by the following respondent: IMCMV Holdings, Inc.

The Committee was advised that Airport Concession Disadvantaged Business Enterprises (ACDBE) participation established for the project was voluntary. The Committee was also informed that IMCMV Holdings, Inc. (IMCMV) did not provide for any ACDBE participation, and that MDAD Minority Affairs advised that IMCMV was not eligible for any evaluation points relating to ACDBE participation. The Committee was also informed that IMCMV was deemed responsive by the County Attorney's Office. Concern was raised regarding the references provided by IMCMV with their Qualification Statement, and staff was directed to get additional references. The Committee then made a motion to invite IMCMV to the August 7th public hearing.

PUBLIC HEARING OF AUGUST 7, 2014 (2:30 PM)

As advertised in the Metro Calendar, a public hearing was held on August 7, 2014 at the Miami-Dade Aviation Department, 4200 NW 36 Street, Bldg. 5A, 4th Floor, Conference Room F, Miami, Florida. The Committee heard the presentation from IMCMV, and afterwards, presented them with a series of questions. The Committee also addressed the additional references received and the absence of the labor peace agreement from IMCMV's Qualification Statement. The Committee was reminded that they were responsible for determining responsibility. After a brief discussion regarding the issues raised, the Committee found IMCMV responsible.

MIAMI-DADE AVIATION DEPARTMENT
REQUEST FOR QUALIFICATIONS
FOR PRIVATELY FINANCED RESTAURANT
INITIATIVE FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS

RFQ NO. MDAD-13-04

SUMMARY OF MINUTES
PRESCREENING MEETING
JULY 30, 2014

As authorized by the Mayor's memorandum dated June 16, 2014, the individuals listed below met on Wednesday, July 30, 2014, at the Miami-Dade Aviation Department (MDAD), 4200 NW 36th Street, Bldg. 5A, 4th Floor, Conference Room F, Miami, Florida, to review the materials submitted by the sole responding firm to the public notice for the subject project as follows: IMCMV Holdings, Inc.

EVALUATION/SELECTION COMMITTEE

Lenora Allen-Johnson, MDAD (Non-voting, Chairperson)
Ray Diaz, MDAD
Melvin Payne, MDAD
Claudio Cury, Wells Fargo Capital Finance, SCF
William D. Talbert, III, Greater Miami
Convention and Visitors Bureau
Charlotte Horne, ISD

SUPPORT STAFF

David Murray, CAO
Marie Clark-Vincent, MDAD
Victor Novoa, MDAD

Lenora Allen-Johnson, the Chairperson (Contracting Officer) opened the meeting with introductions and an overview of what to expect during the meeting. Prior to proceeding with the meeting, each of the Committee members provided an executed neutrality disclosure form and no conflicts were noted. The Committee was reminded that there was only one responding firm, IMCMV Holdings, Inc. (IMCMV). Committee member Ray Diaz discussed the scope and business terms for the benefit of the Committee. The Committee members received a copy of the Request for Qualifications (RFQ), sole Qualification Statement, the County Attorney's Office responsiveness opinion, draft inventory, compliance reviews, draft schedule, response list, and additional information received from the respondent prior to the scheduled meeting. The Committee members were asked to review these documents prior to the scheduled meeting. These documents along with the additional information received at the meeting were discussed in detail.

The Contracting Officer advised the Committee that the Airport Concession Disadvantaged Business Enterprises (ACDBE) participation established for this project was voluntary and that the firm did not provide for any ACDBE participation (see Attachment A).

The Committee was further advised that IMCMV was deemed responsive by the County Attorney's Office regarding their non-submission of the labor peace agreement with their Qualification Statement, and as stated in Attachment B, IMCMV must now provide the labor peace agreement as a condition of award. IMCMV has been notified of this fact and is in the process of complying with the condition of award requirement.

The financial analysis prepared by the MDAD Professional Compliance Division was also addressed. The analysis the Committee received with the initial Committee package was replaced with a revised analysis supplied at the subject meeting (see Attachment C). After discussing the revised analysis, the Committee did not have any questions.

The review of the findings prepared by the Commercial Operations Division regarding the minimum qualifications and reference checks were also discussed pursuant to the findings in Attachment D. No questions were received regarding the minimum qualifications. Discussions pursued regarding the shortage of years confirmed by the various companies in their responses during the reference checks. Most of the companies confirmed that they had a business relationship of approximately three (3) years or less with IMCMV (see Attachment E). It was also discussed that the requirement for customer references was for three (3) years or ongoing as provided in the RFQ. The Committee received clarification regarding the term "on-going". Committee member William Talbert requested that staff follow up by requesting references older than three (3) years. The Committee also discussed having the respondent make a presentation and provide additional information regarding IMCMV's experience during the presentation.

The Committee proceeded with the following action:

Moved: William D. Talbert, III

Motion: To proceed with the August 7th public hearing meeting and to invite the sole responding firm IMCMV Holdings, Inc. to make a presentation at this meeting.

Seconded: Melvin Payne

Action: Unanimously adopted

The Committee also discussed proceeding with an oral presentation as follows: thirty (30) minutes for IMCMV's oral presentation, and an open session for questions and answers. Staff will also build in fifteen (15) minutes for set-up.

Lenora Allen-Johnson
Chairperson (Non-voting)

Attachment A

MDAD Minority Affairs ruling

Memorandum

MIAMI-DADE COUNTY

Date: June 3, 2014

To: Lenora Allen-Johnson,
MDAD Contracts Administration Division

From: Milton Collins
MDAD-Minority Affairs Division

Subject: Compliance Review of the Voluntary ACDBE Participation for Privately Financed Restaurant Initiative for the Hotel MIA Food & Beverage Operations.
RFQ No. MDAD-13-04

The Minority Affairs Division has completed its compliance review of the above-referenced project for compliance with the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program as per the requirements of the Code of Federal Regulations (49 CFR Part 23). The contract measure applicable to this project is voluntary ACDBE participation.

On June 3, 2014, the Minority Affairs Division received from the MDAD Contracts Administration Division Bid documents for one (1) firm for ACDBE Compliance Review.

1) **IMCMV Holdings, Inc.:**
- IMCMB Holdings, Inc. is not ACDBE certified firm in Florida.
- It did not submit ACDB Utilization Form, SOP and Letter of Intent (LOI).
- IMCMB Holdings, Inc. provided a brief note on good faith efforts to contact ACDBE firms by e-mail and telephone calls.
- IMCMB Holdings, Inc. is not eligible for the 5 points noted in the Evaluation Process, Section 5.3, on page RFQ-39.

Please note that Minority Affairs staff only reviewed and addressed compliance with the ACDBE Program.

Should you have any questions or need additional information, please contact me at (305) 876-7221 or Abebe Tecle at (305) 876-7386.

Enclosures:

cc:
- A. Tecle
- File

Attachment B

Responsiveness Opinion

COUNTY ATTORNEY
MIAMI-DADE COUNTY, FLORIDA

David M. Murray
dmmurray@miami-airport.com

AVIATION DEPARTMENT
P.O. BOX 025504
MIAMI, FLORIDA 33102-5504
Phone: (305) 876-7040
Fax: (305) 876-7294

MEMORANDUM

TO: Lenora Allen-Johnson, Contracting Officer
MDAD Contracts Administration

FROM: David M. Murray
Assistant County Attorney

DATE: June 23, 2014

SUBJECT: Responsive Opinion for Privately Financed Restaurant Initiative for the HOTEL MIA Food and Beverage Operations
MDAD RFQ No. MDAD-13-04

You have asked whether the proposal submitted by IMCMV Holdings ("IMCMV") is responsive. The proposal is responsive, even though IMCMV did not provide evidence of a labor peace agreement with any applicable union.

The County's Labor Peace resolution, R-148-07, requires a proposer to, where a union seeks to represent their workforce, provide a labor peace agreement with the proposal. This office has in the past treated certain labor peace issues as matters of proposer responsibility, rather than responsiveness, and has permitted non-compliance to be cured as a condition of award. *See e.g.* Exhibit A. In situations where a proposer affirmatively referenced an existing labor peace agreement, but did not include the agreement, those proposals were responsive. Also, where the solicitation allowed vendors to self-certify whether or not a union sought to represent their work force, in such cases, the County accepted the representation of a vendor that a labor union was not—to their knowledge—seeking to represent their workforce and therefore such labor peace agreement was not required at this time. Conversely, in solicitation where the RFQ informed proposers that a specific union sought to represent a work force, this office has held that the failure to include a labor peace agreement renders a proposal non-responsive. *See* Exhbit B. Thus, responsiveness is conditioned on the actual language of the solicitation document.

Here, the RFQ reads as follows:

> Pursuant to Resolution No. R-148-07, the Respondent shall provide, as Appendix J to their Qualification Statement, and to the extent that a labor organization(s) seeks to represent the Respondent's employees, a signed copy of the Labor Peace Agreement for their employees as part of their Qualification Statement to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport ("MIA"). Furthermore, the County has the right, in the event of a labor disruption, to suspend its obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Respondent is unable to reach an agreement with a labor organization regarding the terms of a Labor Peace Agreement, the dispute between the Respondent and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration but no later than five (5) days prior to the date the Qualification Statement is due. The Respondent and the labor organization shall equally share the costs of arbitration. The Respondent shall ensure that all sub-tenants also sign a Labor Peace Agreement. *If, after reasonable diligence on the part of the Respondent, there are no labor organizations seeking to represent the Respondent's employees, the Respondent will indicate this on the returned form (Appendix J). In the event a Respondent subsequently learns of a labor union, Respondent must execute and submit a Labor Peace Agreement as a condition of award. (emphasis added)*

In its response, IMCMV provided neither a labor peace agreement nor an indication no union seeks to represent its work force. It is therefore unclear whether or not a union seeks to represent IMCMV's workforce, or whether IMCMV took reasonable efforts to engage with potential unions. IMCMV does, however, indicate that it will "submit any required affidavits not included in this qualification statement but required as conditions of award within seven (7) days of notification of the intent to recommend for award." *See* IMCMV proposal at Appendix E-1. As the RFQ contemplates that in certain circumstances labor peace may be dealt with as a condition of award, IMCMV's representation is sufficient to render its proposal responsive. Moreover, the RFQ does not state that the failure to provide the Appendix J form renders the proposal non-responsive, and in fact the RFQ states that the failure to provide documents does not render a proposal non-responsive unless this failure indicates precludes the proposer from legally entering into the proposed contract. *See* RFQ Section 5.1. Here, that is not the case, as IMCMV indicates it will provide all condition of award affidavits, including presumably, a labor peace agreement.

Note however that IMCMV's remains obligated to provide a labor peace agreement as a condition of award, and its failure to provide such an agreement within seven days will render it ineligible for award.

DMM:ram
Attachments

EXHIBIT A

Memorandum

MIAMI-DADE COUNTY

Date: October 9, 2008

To: Maryse Georges
Contracts Administration

From: David M. Murray
Assistant County Attorney

Subject: Responsive Opinion on Request for Proposals for Retail Concessions Program 2008 No. MDAD-04-07

You have asked whether HMS Host's failure to provide executed copies of its labor peace agreement renders its proposal non-responsive. The answer is no. Host's proposal may be considered responsive; however, the County must demand executed labor peace agreements as a condition of award.

Pursuant to Resolution 148-07, solicitations for concessions at Miami International Airport "shall require the proposer to sign a labor peace agreement with the labor organization(s) that seeks to represent the proposer's employees and submit such agreement as part of its proposal." While requiring that these agreements be provided, the Resolution does not explicitly make inclusion of the agreements an issue of responsiveness. Moreover, as an analytical matter, the ability of the proposer to keep peace with its workforce goes to the issue of the proposer's relative capacity to perform the work of the proposal; it is, in other words, more properly an issue of responsibility. The fact that the Resolution does not specify the precise terms the County would require in any labor peace agreement gives further support to treating provision of the agreements as a matter of responsibility.

As a matter of responsibility, therefore, the fact that the proposal incorrectly refers to provision of the agreements as a matter of responsiveness is of no consequence. A proposal cannot turn a matter of responsibility into one of responsiveness.

Therefore, I conclude that HMS Host's bid is responsive, irrespective of its failure to provide signed copies of its various labor peace agreements. However, HMS Host must provide these agreements as a condition of any award of this proposal.

DMM:ram

EXHIBIT B

COUNTY ATTORNEY
MIAMI-DADE COUNTY, FLORIDA

David Murray
dmmurray@miami-airport.com

AVIATION DEPARTMENT
P.O. BOX 025504
MIAMI, FLORIDA 33102-5504
Phone: (305) 876-7040
Fax: (305) 876-7294

MEMORANDUM

TO: AnaMaria Saks
Aviation Senior Procurement
Contract Officer
MDAD Contracts Administration

DATE: August 7, 2013

FROM: David M. Murray
Assistant County Attorney

SUBJECT: Request for Responsiveness Opinion
Shoe Shine Concession Services
MDAD-07-11 Package One and Package Two

You have asked whether proposals submitted by Goodfellows Shoeshine ("Goodfellows") and/or CTN Service Agency ("CTN") are responsive. CTN is not responsive.

You have identified three potential issues with respect to CTN's proposal. First, their complete proposal was received a day after proposals were due. Second, they did not include a proposal guarantee with their initial submittal, though that guarantee was included in their late complete submittal. Third, they did not comply with the RFP requirement to provide a labor peace agreement; instead, they indicate that a labor peace agreement is not applicable at this time. As this latter issue renders them non-responsive, it is not necessary to address CTN's defenses to its other identified issues.

The County's Labor Peace resolution requires a proposer to, where a union seeks to represent their workforce, provide a labor peace agreement with the proposal. The RFP in this case informed CTN that UNITE Here sought to represent their workers; thus, a labor peace agreement between CTN and UNITE Here was required with the proposal. As CTN did not provide this agreement, their bid is non-responsive.

This office has in the past treated certain labor peace issues as matters of proposer responsibility, rather than responsiveness, and has permitted non-compliance to be cured as a condition of award. Those prior opinions arose out of two distinct fact patters, neither of which obtains here. First, in situations where a proposer affirmatively referenced an existing labor peace agreement, but did not include the agreement, that those proposals were responsive. Second, in situations where the solicitation allowed vendors to self-certify whether or not a union sought to represent their work force. In such cases, the County accepted the representation of a vendor that a labor union was not—to their knowledge—seeking to represent their workforce and therefore such labor peace agreement was not required at this time. Here, unlike the prior referenced

solicitations, CTN along with all of the other proposers were specifically advised in the solicitation that UNITE Here sought to represent their workers and there is no evidence of any existing labor peace agreement. Bidders to this solicitation are thus unable to avail themselves of a claim that no labor peace agreement is required at the time of bid as the solicitation explicitly contradicts this assertion. To allow CTN to continue forward, irrespective of their knowing and subsequent non-compliance is to, in effect, allow it to submit a conditional bid, which is not permitted. In sum, on the basis of the language of this specification and the absence of any indicia of compliance with the Resolution, CTN's bid is non-responsive.

Similarly, Goodfellows is also non-responsive. Goodfellows did not include a labor peace agreement, but did, in its table of contents, include a header for "Labor Peace Agreement, Exhibit M." This is not an affirmative representation that a labor peace agreement is in effect, though not provided, and accordingly Goodfellows cannot avail itself of prior opinions which found firms responsive that represented that a labor peace existed but failed to include an executed copy of this agreement with the proposal.

DMM:ram

Statement non-responsive.

3.8 ORDINANCES, RESOLUTIONS AND/OR ADMINISTRATIVE ORDERS

To request a copy of any ordinance, resolution and/or administrative order cited in this solicitation, the Respondent must contact the Clerk of the Board at (305) 375-5126.

3.9 RULES, REGULATIONS AND LICENSING REQUIREMENTS

The Respondent shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, especially those applicable to conflicts of interest and collusion. The Respondent is presumed to be familiar with all federal, state and local laws, ordinances, codes, rules, regulations, operational directives and other Department procedures that may in any way affect the goods or services offered. The Respondent shall also comply with Executive Order No. 11246 entitled "Equal Employment Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Regulations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of Florida Statutes and any and all other local, state and federal directives, ordinances, rules, orders, and laws relating to people with disabilities.

3.10 NON-EXCLUSIVITY

This RFQ is nonexclusive in character and in no way prevents the County from entering into an Agreement with any other parties for the sale or offering of competitive services, products or items by others during the term of the Agreement.

3.11 LABOR PEACE

Pursuant to Resolution No. R-148-07, the Respondent shall provide, as Appendix J to their Qualification Statement, and to the extent that a labor organization(s) seeks to represent the Respondent's employees, a signed copy of the Labor Peace Agreement for their employees as part of their Qualification Statement to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (MIA). Furthermore, the County has the right, in the event of a labor disruption, to suspend it's obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Respondent is unable to reach an agreement with a labor organization regarding the terms of a Labor Peace Agreement, the dispute between the Respondent and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for

arbitration but no later than five (5) days prior to the date the Qualification Statement is due. The Respondent and the labor organization shall equally share the costs of arbitration. The Respondent shall ensure that all sub-tenants also sign a Labor Peace Agreement. If, after reasonable diligence on the part of the Respondent, there are no labor organizations seeking to represent the Respondent's employees, the Respondent will indicate this on their returned Appendix J document. In the event a Respondent subsequently learns of a labor union seeking to represent the Respondent's employees, Respondent must execute and submit a Labor Peace Agreement as a condition of award.

3.12 COLLUSION

A firm recommended for award as a result of a competitive solicitation for any County purchase of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.) purchase, lease, permit, concession or management agreement shall, in accordance with the Code of Miami-Dade County Sections 2-8.1.1 and 10-33.1 shall submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the firm is not related to any of the other parties proposing in the competitive solicitation or identifying all related parties, as defined in this Section, which proposed in the solicitation; and attesting that the firm's Qualification Statement is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the firm has not, directly or indirectly, induced or solicited any other Respondent to put in a sham Qualification Statement, or any other person, firm, or corporation to refrain from proposing, and that the Respondent has not in any manner sought by collusion to secure to the Respondent an advantage over any other Respondent. In the event a recommended firm identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended firm shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of Sec. 2-8.1.1. Failure to provide a Collusion Affidavit within 5 business days after the recommendation to award has been filed with the Clerk of the Board shall be cause for the Respondent to forfeit their Qualification Statement Guarantee Deposit, if applicable, and the Respondent shall be ineligible for contract award.

Attachment C

Revised - Financial Compliance Review

PROJECT NAME: REQUEST FOR NON-EXCLUSIVE MANAGEMENT AGREEMENT FOR THE OPERATION OF THE HOTEL MIA, RELATED AMENITIES AND FOOD AND BEVERAGE FACILITIES

RFQ No.: MDAD-13-04

FINANCIAL COMPLIANCE REVIEW

PROPOSER: IMCMV Holdings Inc.

	Submitted?	Reviewer Notes/Comments
Company Information:		
All Respondents must provide information on: • Financial Relationships and responsibilities with regard to parent, subsidiary, or related companies.	Yes	IMCMV Holdings Inc. is an indirect subsidiary of International Meal Company Holdings, S.A., a Brazilian corporation. (Reference page 111)
• The percentage of equity of any partnerships formed for the proposal.	N/A	
• Depicted Hierarchal relationship of parent, subsidiaries or related companies.	Yes	Hierarchal relationship of parent are depicted on page 112.
Capital Investment:		
Respondent should submit a Financial Plan, which will indicate: • The available funding for this project and the source of that funding for start-up costs and capital improvements (note: Minimum Qualification, Section 1.4 indicates Respondent should demonstrate its ability to fund in excess of $5 million for construction and asbestos abatement).	Yes	The Respondent states it has $21,996,141 in its operating account with Bank of America. The Respondent further states the balance is intended for funding new units and general corporate purposes. (Reference page 113)
• The amount of working capital and reserves the Respondent determines will be required to maintain operations.	Yes	The Respondent states that it has enough resources to fund the working capital needs of operations and that its operational expertise allows for the project to have sustainable working capital. Additionally the Respondent provided information on its projected Working Capital (F&B Inventory + Account Receivable-Accounts Payable) which indicates net working capital of $30K after year one (monthly estimates provided) and $47K after year two. (Reference page 113)

PROJECT NAME: REQUEST FOR NON-EXCLUSIVE MANAGEMENT AGREEMENT FOR THE OPERATION OF THE HOTEL MIA, RELATED AMENITIES AND FOOD AND BEVERAGE FACILITIES

RFQ No.: MDAD-13-04

FINANCIAL COMPLIANCE REVIEW

PROPOSER: IMCMV Holdings Inc.

	Submitted?	Reviewer Notes/Comments
Additional information will include, but not be limited to: • Estimated costs for improvements.	Yes	The Respondent's estimated cost of improvements totals $5,539,463; consisting of: Design Costs– $417,500; Overhead Costs - 275,000; Site Costs - $92,000; Building Costs - $3,233,750; Furniture, Fixtures and Equipment of $1,478,213; and Signage - $43,000.
• Projected expenses for leasehold improvements and/or furniture, fixtures, and equipment.	Yes	The Respondent's estimated cost for furniture, fixtures and equipment (FF&E) is $1,478,213 and is included in the total costs for improvements of $5,539,463. The FF&E costs consist of Kitchen and Bar Equipment - $472,210; Small Wares - $65,000; Furnishing, Fixtures, and Decor - $407,418; P.O.S. System - $120,870; Pager and Table Management System $25,000; Sound/Video Systems - $116,263; Alarm System - $55,000; Office Equipment - 25,000; Equipment Install - $50,000; and Freight and Storage - $141,452. (Reference page 115)
References:		
The Respondent should list three (3) business references related to its business operations during the past three (3) years. Respondent shall provide for each reference a contact name, title, phone number, fax number and email address.	Yes	References were provided. (Reference page 116)

PROJECT NAME: REQUEST FOR NON-EXCLUSIVE MANAGEMENT AGREEMENT FOR THE OPERATION OF THE HOTEL MIA, RELATED AMENITIES AND FOOD AND BEVERAGE FACILITIES

RFQ No.: MDAD-13-04

FINANCIAL COMPLIANCE REVIEW

PROPOSER: IMCMV Holdings Inc.

	Submitted?	Reviewer Notes/Comments
Financial Background Information:		
The following historical financial information should be submitted by either the proposing corporate entity or the majority equity owners: • Audited or reviewed comparative financial statements for the last three (3) fiscal years prepared in accordance with generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS), reflecting current financial conditions; if there are no audited or reviewed financial statements available, then provide federal income tax returns filed with the Internal Revenue Service (IRS) during the previous three (3) fiscal periods.	Yes	Audited comparative financial statements were provided for the years ended December 31, 2013, 2012 and 2011 for International Meal Company Holdings S.A. (Reference pages 122-126 and addendums sent via email).
• An interim balance sheet and income statement for any period of time in excess of six months of the financial statements submitted reflecting any significant financial events occurring subsequent to the closing date; if no significant events occurred, please state that fact.	N/A	
Requested Information from Subsidiaries:		
• Respondent should state whether this company operates as a subsidiary of another company and state whether the parent company guarantees the Minimum Annual Guarantee and the Agreement for the subsidiary company. If so, provide a letter form the appropriate agent of the parent company verifying the parent company's intent to guarantee the Minimum Annual Guarantee and Agreement.	Yes	The Respondent provided a letter from the Parent to guarantee the performance of the Agreement and the Minimum Annual Guarantee. (Reference page 127)

Mindy Eisenberg

Mindy Eisenberg, Professional Compliance Division
Miami-Dade Aviation Department

June 27, 2014
Date

The Financial Compliance Review verifies RFP documentation under the Technical Proposal Section titled "Financial Capacity to Perform", is submitted as required. Submitted financial information is reviewed for compliance to the proposal. This review is not intended to make representations as to the creditworthiness of the proposer's financial position.

Attachment D

Minimum Qualification Review

PROJECT NAME: REQUEST FOR PRIVATELY FINANCED RESTAURANT INITIATIVE

FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS

RFQ No.: MDAD-13-04

MINIMUM QUALIFICATIONS REVIEW

PROPOSER: IMCMV HOLDINGS, INC.

Company Information	Submitted?	Review Notes/Comments
1) The Respondent should have a minimum of five (5) years of experience in the last ten (10) years operating nationally and internally recognized restaurant chain operations which appeal to the South Florida and the Brazilian traveler. The Respondent should demonstrate its ability to design, construct, operate and maintain a branded restaurant of approximately 10,000 (9,783) square feet.	Yes	Respondent did not demonstrate to have the minimum five (5) years of experience operating nationally and internationally recognized restaurant chain operations. However, through its parent company, (IMC), and the proffered joint experience of the officers and others employees retained from the acquisition of Margaritaville Restaurants, this qualification requirement may be considered to have been met. See Page 8.
2) The Responder should demonstrate its ability to fund in excess of $5 million for construction, as well as asbestos abatement. The Respondent should also indicate the source of funds proposed for the project.	Yes	See pages 17 and 113, "Estimated Working Capital".
3) If the Respondent is an individual or partnership, the individual and/or partner, who shall be responsible for the operation of the Agreement, should have met the specified minimum qualifications. If the Respondent is a Joint Venture, then at least one (1) of the Joint Venture Partners should satisfy all of the foregoing Minimum Qualifications Requirements. A Respondent, whether a Joint Venture or otherwise, may proffer the experience of its corporate parent, sister, or subsidiary ("an affiliated	Yes	Respondent is a corporation subsidiary of IMC Holdings S.A. IMC created IMCMV Holdings Inc. to acquired Margaritaville Restaurants in 2013. IMCMV Holdings Inc. is proffering the experience of the officers and other employees it retained from the Margaritaville restaurants acquisition to meet the minimum five (5) year requirement. See Executive Summary pages 1-4 and Minimum

PROJECT NAME: REQUEST FOR PRIVATELY FINANCED RESTAURANT INITIATIVE

FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS

RFQ No.: MDAD-13-04

MINIMUM QUALIFICATIONS REVIEW

PROPOSER: IMCMV HOLDINGS, INC.

company") in meeting these minimum qualifications. However, given the unique nature of individual corporate relationships, Respondents seeking to rely on the experience of an affiliated company should be advised that the selection Committee shall have the discretion to determine what weight, if any, it wishes to give such proffered experience on a case-by-case basis, and may base such decision on the relationship between the Respondent and the affiliate, as evidenced by whatever documentation is provided in the submission or otherwise presented at the request of the Selection Committee.		Qualifications pages 5-8.
4) Must be authorized to do business in the State of Florida by the time of award.	Yes	IMCMV Holdings Inc. filed for incorporation in the State of Florida on October 22, 2013. A search of the Respondent's current status was conducted in the Florida Department of State – Florida Corporations (sunbiz.org) on July 28, 2014, which resulted in finding Respondent's status as Active.
5) Respondents who are less qualified than is suggested above may be considered for award. However, such Respondents may receive less points or no points from the Selection Committee, or may be found non-responsive.	N/A	

Victor F. Novoa, Special Projects Administrator II
Miami-Dade Aviation Department

July 28, 2014
Date

Attachment E

References

Allen-Johnson, Lenora (Aviation)

From: Dan Leonard [dleonard@margaritaville.com]
Sent: Friday, July 11, 2014 6:20 PM
To: Allen-Johnson, Lenora (Aviation)
Cc: Clark-Vincent, Marie (Aviation); 'CLERKBCC@miamidade.gov'
Subject: Re: Dan Leonard - Revised Request Business/Customer Reference for IMCMV Holdings Inc. (RFQ MDAD 13-04)

Lenora

My apologies for the delay in getting back to you. Below please find my feedback.

If I can be of any other assistance my cell phone number is 321-229-0415 or office 407-224-3212

Sincerely

Dan Leonard
President
Margaritaville

From: <Allen-Johnson>, "Lenora (Aviation)" <LALLEN-JOHNSON@miami-airport.com>
Date: Tuesday, July 8, 2014 3:10 PM
To: Dan Leonard <dleonard@margaritaville.com>
Cc: "Clark-Vincent, Marie (Aviation)" <MClark@miami-airport.com>, "'CLERKBCC@miamidade.gov'" <CLERKBCC@miamidade.gov>
Subject: FW: Dan Leonard - Revised Request Business/Customer Reference for IMCMV Holdings Inc. (RFQ MDAD 13-04)

Good afternoon,

Please see the request below from Mrs. Betty Ortiz and let me know if you have any questions. It would help greatly if we could receive your response by Friday, July 11th. Thanks.

From: Ortiz-Valdes, Betty (Aviation)
Sent: Tuesday, June 24, 2014 10:47 AM
To: 'dleonard@margaritaville.com'
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: Dan Leonard - Revised Request Business/Customer Reference for IMCMV Holdings Inc. (RFQ MDAD 13-04)

Dear Mr. Leonard,

IMCMV Holdings Inc. has provided your name as a business/customer reference. They have submitted a proposal for a Privately Financed Restaurant for Hotel MIA Food and Beverage Operations (RFQ- MDAD 13-044) at Miami International Airport.

Can you respond to the following questions:

What is your business relationship with the above company. **DL:** ***We have a strategic alliance and a licensee/licensor relationship.***

How many years within the last 10 years have you had a business relationship? When? **DL:** ***4 years, Since 2010***

Explain the type of business that they provided. **DL:** ***Licnesee's/Operators of Margaritaville & LandShark Restaurants***

Is this business relationship ongoing or has it been completed. **DL:** ***Ongoing***

Was or is this project in an airport environment. **DL:** ***Yes, in an airport environment***

Thank you in advance.

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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Allen-Johnson, Lenora (Aviation)

From: Lyerly, Ned [NLyerly@CKR.com]
Sent: Thursday, June 26, 2014 5:45 PM
To: Ortiz-Valdes, Betty (Aviation)
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: RE: Ned Lyerly - Revised Request Business/Customer Reference for IMCMV Holdings Inc. (RFQ MDAD 13-04)

Dear Betty,

We enjoy a very successful relationship with IMCMV Holdings Inc. Please find my responses below.

1. Business Relationship:

CKE Restaurants Holdings Inc. has enjoyed a long, prosperous relationship with IMCMV Holdings, Inc. We are the franchisor of the Carl's Jr. brand of premium quick service restaurants and IMCMV Holdings owns and operates Carl's Jr. franchise restaurants in five countries. We also have plans for expansion into another three countries in the coming years.

2. Time in Business:

While I have worked with their CEO, Mr. Javier Gavilan for more than 10 years, our formal relationship with IMCMV started in December, 2011 and continues today.

3. Type of Business

IMCMV Holdings is a successful operator of restaurants across a board category of venues ranging from quick service, to casual and fine dining. They are experts in the airport catering field and they operate in other captured audience and traditional venues. In addition to being quality restaurant operators, IMCMV is also a vertically integrated food service company that operates central kitchens and is involved in airline catering services.

4. Length of Business Relationship

Our business relationship is very positive, ongoing and we anticipate being in business with IMCMV for the next 30+ years.

5. Airport Operations

Yes

From: Ortiz-Valdes, Betty (Aviation) [mailto:BORTIZ@miami-airport.com]
Sent: Tuesday, June 24, 2014 7:44 AM
To: Lyerly, Ned
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: Ned Lyerly - Revised Request Business/Customer Reference for IMCMV Holdings Inc. (RFQ MDAD 13-04)

Dear Mr. Lyerly,

IMCMV Holdings Inc. has provided your name as a business/customer reference. They have submitted a proposal for a Privately Financed Restaurant for Hotel MIA Food and Beverage Operations at Miami International Airport.

Can you respond to the following questions:

1) What is your business relationship with the above company.

2) How many years within the last 10 years have you had a business relationship? When?

3) Explain the type of business that they provided.

4) Is this business relationship ongoing or has it been completed.

5) Was or is this project in an airport environment.

Thank you in advance.

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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Allen-Johnson, Lenora (Aviation)

From: Kim Lopdrup [KLopdrup@darden.com]
Sent: Monday, June 23, 2014 4:56 PM
To: Ortiz-Valdes, Betty (Aviation)
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Subject: RE: Kim Lopdrup - Request Business/Customer Reference for IMCMV Holdings Inc.

Betty:

This confirms that we have a business relationship with International Meal Company (IMC). They are the franchisee for our Red Lobster, Olive Garden and LongHorn brands in Brazil, Colombia and the Dominican Republic. They currently operate a franchised Red Lobster and an Olive Garden in Guarulhos Airport near Sao Paulo and they intend to open additional airport locations. We have had a business relationship with them for approximately two years and it is an ongoing relationship.

Does that give you what you need?

Kim

KIM A. LOPDRUP
Chief Executive Officer, Red Lobster
P 407-245-5989 | F 407-241-6882
klopdrup@darden.com

DARDEN.

From: Ortiz-Valdes, Betty (Aviation) [mailto:BORTIZ@miami-airport.com]
Sent: Monday, June 23, 2014 3:59 PM
To: Kim Lopdrup
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Subject: Kim Lopdrup - Request Business/Customer Reference for IMCMV Holdings Inc.
Importance: High

Dear Ms. Lopdrup,

IMCMV Holdings Inc. has provided your name as a business/customer reference. They have submitted a proposal (RFP- MDAD 06-14) to manage the hotel at Miami International Airport.

Can you respond to the following questions:

1) What is your business relationship with the above company.

2) How many years within the last 10 years have you had a business relationship? When?

3) Explain the type of business that they provided.

4) Is this business relationship ongoing or has it been completed.

5) Was or is this project in an airport environment.

Thank you in advance.

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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Allen-Johnson, Lenora (Aviation)

From: Valladares, Leyanee (Aviation)
Sent: Monday, July 28, 2014 10:44 AM
To: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Cc: Novoa, Victor F. (Aviation)
Subject: FW: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

Good morning Lenora, as per Betty's request see below:

1. IMC INTERNATIONAL MEAL COMPANY- IMC COLOMBIA S.A.S has a business relationship with SACSA (this is the management company for the Rafael Núñez International Airport in Cartagena) through concession agreements with GRUPO RA CATERING, a subsidiary of IMC COLOMBIA S.A.S.
2. Our business relationship with IMC COLOMBIA S.A.S-GRUPO RA CATERING started in 2011.
3. RA Catering operates two businesses called PRESTO (fast food) and BLACK COFFEE (coffee shop).
4. We have two contracts that expire in 2018.
5. The occupied spaces were leased by SACSA and is part of the airport terminal.

If you need more information, please contact us.

From: Ortiz-Valdes, Betty (Aviation)
Sent: Thursday, July 24, 2014 8:58 AM
To: Valladares, Leyanee (Aviation)
Cc: Allen-Johnson, Lenora (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

Can you translate the response below and forward to Lenora.

Thanks!

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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From: Allen-Johnson, Lenora (Aviation)
Sent: Thursday, July 24, 2014 8:39 AM
To: Ortiz-Valdes, Betty (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

Good morning,

Thanks Betty, are you providing an interpretation?

From: Ortiz-Valdes, Betty (Aviation)
Sent: Wednesday, July 23, 2014 4:12 PM
To: 'JEFE COMERCIAL'
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

Muchas Gracias!

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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From: JEFE COMERCIAL [mailto:mccampuzano@sacsa.com.co]
Sent: Wednesday, July 23, 2014 1:37 PM
To: Ortiz-Valdes, Betty (Aviation)
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV
Importance: High

Buenas tardes, Cordial saludo.

Damos respuesta seguidamente a su solicitud: :

1. El grupo IMC INTERNATIONAL MEAL COMPANY- IMC C OLOMBIA S.A.S, tiene relaciones con SACSA (empresa administradora del Aeropuerto Internacional Rafael Núñez de Cartagena), mediante Contratos de Concesión de Espacios, formalizados con el GRUPO RA CATERING, subsidiaria de IMC COLOMBIA S.A.S.
2. Nuestra relación comercial con IMC COLOMBIA S.A.S-GRUPO RA CATERING, inició en el año 2011.
3. El Grupo RA Catering, opera dos establecimientos comerciales denominados PRESTO (cadena de comidas rápidas) y BLACK COFFE (cafetería).
4. Mantenemos dos contratos, con vigencia hasta el año 2018.
5. Los espacios que ocupan fueron entregados en concesión, por SACSA y hacen parte del Terminal de Pasajeros.

Estamos a su disposición de requerir mayor información, Atentamente,

Sociedad Aeroportuaria de la Costa S.A.

María Cristina Campuzano G.
Jefe Comercial

Crespo, Aeropuerto Internacional Rafael Núñez, piso 3.
Cartagena de Indias - Colombia
Tel. +57 (5) 656 9200 Ext. 2728

De: Ortiz-Valdes, Betty (Aviation) [mailto:BORTIZ@miami-airport.com]
Enviado el: viernes, 11 de julio de 2014 02:55 p.m.
Para: JEFE COMERCIAL
CC: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Asunto: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

Estimado Señora Campuzano:

IMCMV Holdings Inc nos ha dado su nombre de referencia cómo cliente. Ellos hán sometido una propuesta para ún "Privately Financed Restaurant for Hotel MIA Food and Beverage Operations at Miami International Airport". Que traducido significa "un restaurante privado y financiado para las operaciones del Hotel MIA de comida y bebida en el Aeropuerto Internacionál de Miami.

Favor de contestar las siguientes preguntas:

1. ¿Cúal es su relación comercial con la compañía IMCMV Holdings Inc?
2. En los últimos 10 años, ¿cuántas veces ha tenido relación comercial con ésta compañia?
3. Explique la clase de comercio que ellos le suministraron.
4. ¿Esta relación de comercio se mantiene, ó ha terminado el los últimos 3 años?
5. ¿Este proyecto es ó fué suministrado en areas de un Aeropuerto?

Gracias,

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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Allen-Johnson, Lenora (Aviation)

From: Antonio Miguel Marques [antonio.marques@gru.com.br]
Sent: Saturday, July 12, 2014 6:07 AM
To: Ortiz-Valdes, Betty (Aviation)
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: Re: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

I'm The CEO of São Paulo/Guarulhos International AirPort and The answers are below.

Regards

Antônio Miguel Marques

Enviada do meu iPad

Em 11/07/2014, às 16:52, "Ortiz-Valdes, Betty (Aviation)" <BORTIZ@miami-airport.com> escreveu:

Estimado Señor Marques:

IMCMV Holdings Inc nos ha dado su nombre de referencia cómo cliente. Ellos hán sometido una propuesta para ún "Privately Financed Restaurant for Hotel MIA Food and Beverage Operations at Miami International Airport". Que traducido significa "un restaurante privado y financiado para las operaciones del Hotel MIA de comida y bebida en el Aeropuerto Internacionál de Miami.

Favor de contestar las siguientes preguntas:

1. ¿Cúal es su relación comercial con la compañía IMCMV Holdings Inc?

Guarulhos International AirPort (GRU) hás several commercial contracts with IMC. They have food and beverage operations in terminals 1,2,3 and 4 and also in The Air side to The AirPort and airlines crew.

2. En los últimos 10 años, ¿cuántas veces ha tenido relación comercial con ésta compañía?

GRU AirPort hás bebendo established in 2012 and since then we have commercial relationship with IMC.

3. Explique la clase de comercio que ellos le suministraron.

Food and Beverage in general - Restaurants, Cafeterias, delicatesses, ice-cream shops, etc

4. ¿Esta relación de comercio se mantiene, ó ha terminado el los últimos 3 años?

The relationship continues.

5. ¿Este proyecto es ó fué suministrado en areas de un Aeropuerto?

Yves.

Gracias,
Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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Allen-Johnson, Lenora (Aviation)

From: Valladares, Leyanee (Aviation)
Sent: Wednesday, July 16, 2014 8:13 AM
To: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Cc: Ortiz-Valdes, Betty (Aviation)
Subject: FW: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

Mr. Solá responded that the business relation between IMC and Aerostar began on February 27, 2013.

From: Manuel Martin Gutierrez Sola Aguilera [mailto:manuel.gutierrez@aerostarairports.com]
Sent: Tuesday, July 15, 2014 7:21 PM
To: Valladares, Leyanee (Aviation)
Cc: Ortiz-Valdes, Betty (Aviation); Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

Leyanee Valladares

La relación contractual entre IMC y Aerostar inicio el 27 de Febrero del 2013

Buenas tardes y me reitero a sus órdenes.

Manuel Gutiérrez Solá

AEROSTAR
AIRPORT HOLDINGS LLC

Chief Commercial Officer
☎787.289.7240
787.289.7241
manuel.gutierrez@aerostarairports.com
****
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Before you print this E-mail, ask if it's really necessary. Our environment concerns us all...

From: Valladares, Leyanee (Aviation) [mailto:LValladares@miami-airport.com]
Sent: Tuesday, July 15, 2014 4:01 PM
To: Manuel Martin Gutierrez Sola Aguilera
Cc: Ortiz-Valdes, Betty (Aviation); Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Subject: FW: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

Muy Buenas tardes Señor Sola. Permíteme presentarme, yo soy la secretaria del departamento de Commercial Operations y trabajo con Betty Ortiz-Valdes. Si es tan amable de contestar una pregunta más:
Usted indica que IMC tiene un trato firmado con Aerostar Holding Airports en el aeropuerto LMM San Juan Puerto Rico vigente hasta el 2031 y que mantienen muy buena relación comercial. ¿Desde cuándo mantiene esta relación comercial?

Muchas Gracias

Leyanee Valladares, Airport Secretary
Commercial Operations
Miami-Dade Aviation Department
☎: 305-876-7763
🖷: 305-876-7615
lvalladares@miami-airport.com
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From: Ortiz-Valdes, Betty (Aviation)
Sent: Tuesday, July 15, 2014 9:38 AM
To: Allen-Johnson, Lenora (Aviation); Valladares, Leyanee (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

Leyanee,

Need your help.

Lenora,
Will get back to you.

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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From: Allen-Johnson, Lenora (Aviation)
Sent: Tuesday, July 15, 2014 8:49 AM
To: Ortiz-Valdes, Betty (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

Hello Betty,

Can you confirm when the business relationship started?

From: Ortiz-Valdes, Betty (Aviation)
Sent: Tuesday, July 15, 2014 8:19 AM
To: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Cc: Novoa, Victor F. (Aviation); 'Manuel Martin Gutierrez Sola Aguilera'; Valladares, Leyanee (Aviation)
Subject: RE: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

FYI...attached is the Translation for Mr. Manuel Gutierrez Sola.

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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From: Ortiz-Valdes, Betty (Aviation)
Sent: Monday, July 14, 2014 10:26 AM
To: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation)
Cc: Novoa, Victor F. (Aviation); 'Manuel Martin Gutierrez Sola Aguilera'; Valladares, Leyanee (Aviation)
Subject: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV - Mr. Manuel Gutierrez Sola - English Translation

Good morning all.

Below, Mr. Sola submitted the customer reference for IMCMV in Spanish and the responses have been translated in English (see attached).

I want to thank Leyanee Valladares for her assistance.

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

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From: Manuel Martin Gutierrez Sola Aguilera [mailto:manuel.gutierrez@aerostarairports.com]
Sent: Friday, July 11, 2014 8:03 PM

To: Ortiz-Valdes, Betty (Aviation)
Cc: Allen-Johnson, Lenora (Aviation); Clark-Vincent, Marie (Aviation); Novoa, Victor F. (Aviation)
Subject: Re: Solicitud de Referencia - Hotel f and B, RFQ No MDAD-13-04-IMCMV

Buenas tardes Betty Ortiz-Valdés

Doy respuesta a las preguntas solicitadas sobre IMC

1. ¿Cúal es su relación comercial con la compañía IMCMV Holdings Inc? IMC tiene un on trato firmado con Aerostar Holding Airports en el aeropuerto LMM San Juan Puerto Rico Vigente con vencimiento hasta el 2031, trabajando gratamente con ellos con una muy buena relación comercial entre ambas partes.

2. En los últimos 10 años, ¿cuántas veces ha tenido relación comercial con ésta compañía? Al menos 20 veces

3. Explique la clase de comercio que ellos le suministraron. Ellos operan Alimentos y Bebidas en el aeropuerto LMM con diferentes marcas como Carls Jr, Margaritaville, Mangos, Dominós Pizza, Black Coffe, Quiznos, Pink berry, Viena entré otros

4. ¿Esta relación de comercio se mantiene, ó ha terminado el los últimos 3 años? Esta relación se mantiene y estará así hasta el 2031

5. ¿Este proyecto es ó fué suministrado en areas de un Aeropuerto? Este contrato esta suministrando todas las terminales lado aire y lado tierra del aeropuerto LMM

A sus órdenes siembre, y puedo decirles que trabajamos muy de la mano con IMC, muy receptivos, siempre dispuestos a mejorar y crecer conjuntamente con Aerostar persiguiendo el objetivo mutuo de dar el mejor servicio al pasajero y maximizar los ingresos del aeropuerto

Buenas tardes.

Que tenga un buen fin de semana

Manuel Gutiérrez Sola

El 11/07/2014, a las 15:54, "Ortiz-Valdes, Betty (Aviation)" <BORTIZ@miami-airport.com> escribió:

> Estimado Señor Sola:
>
> IMCMV Holdings Inc nos ha dado su nombre de referencia cómo cliente. Ellos hán sometido una propuesta para ún "Privately Financed Restaurant for Hotel MIA Food and Beverage Operations at Miami International Airport". Que traducido significa "un restaurante privado y financiado para las operaciones del Hotel MIA de comida y bebida en el Aeropuerto Internacionál de Miami.

Favor de contestar las siguientes preguntas:

1. ¿Cúal es su relación comercial con la compañía IMCMV Holdings Inc?
2. En los últimos 10 años, ¿cuántas veces ha tenido relación comercial con ésta compañia?
3. Explique la clase de comercio que ellos le suministraron.
4. ¿Esta relación de comercio se mantiene, ó ha terminado el los últimos 3 años?
5. ¿Este proyecto es ó fué suministrado en areas de un Aeropuerto?

Gracias,

Betty Ortiz-Valdes, CFE
Special Projects Administrator II
Miami-Dade County Aviation Department
Commercial Operations
Miami International Airport (MIA)
Office: (305) 876-7382
Fax: (305) 876-7615
Email: bortiz@miami-airport.com

"Delivering Excellence Every Day"

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Email Scan by McAfee Email Gateway

Email Scan by McAfee Email Gateway

MIAMI-DADE AVIATION DEPARTMENT
REQUEST FOR QUALIFICATIONS
FOR PRIVATELY FINANCED RESTAURANT
INITIATIVE FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS

RFQ NO. MDAD-13-04

SUMMARY MINUTES OF PUBLIC HEARING
THURSDAY, AUGUST 7, 2014

The following Evaluation/Selection Committee members met on Thursday, August 7, 2014 at the Miami-Dade Aviation Department (MDAD), 4200 NW. 36th Street, Bldg. 5A, 4th Floor, Conference Room "F" to hear a presentation from the sole respondent to the subject project as follows: IMCMV Holdings, Inc.

EVALUATION/SELECTION COMMITTEE

Lenora Allen-Johnson, MDAD (Non-voting, Chairperson)
Ray Diaz, MDAD
Melvin Payne, MDAD
Claudio Cury, Wells Fargo Capital Finance, SCF
William D. Talbert, III, Greater Miami Convention and Visitors Bureau
Charlotte Horne, ISD

SUPPORT STAFF

David Murray, CAO
Marie Clark-Vincent, MDAD
Victor Novoa, MDAD

Ms. Lenora Allen-Johnson, Chairperson (Contracting Officer), opened the Evaluation/Selection Committee (Committee) meeting with introductions. The Committee received a copy of the invitation letter, schedule of presentations, and the additional references provided by IMCMV Holdings, Inc. (IMCMV) as part of their meeting packages. These documents were briefly addressed by the Contracting Officer prior to IMCMV's presentation.

IMCMV made their presentation, and also responded to questions received from the Committee. IMCMV had thirty (30) minutes for their presentation, and no time limit was set for the question and answer period for the Committee. All of the representatives for IMCMV were listed on the revised Appendix D, Lobbyists Registration Affidavit pursuant to the requirements of Section 2-11.1(s) of the Miami-Dade County Code. See the attached revised Appendix D.

Discussions proceeded regarding the additional references requested and received from IMCMV (see Attachment E1). The Committee was informed that attempts to follow up with the

companies provided as additional references failed because they did not respond to the emails sent to their attention. However, it was also discussed that although the additional reference letters received from IMCMV were not confirmed, the reference letters themselves provided by IMCMV confirmed a business relationship. The Committee then wanted to know if the other references received with the Qualification Statement were okay. The Committee was then reminded that confirmation was received from some of the companies listed in IMCMV's Qualification Statement for the required periods (see Attachment E with the prescreening minutes). Also, it was discussed that the original request received from Committee member William Talbert at the prescreening meeting was to request references from IMCMV beyond the three (3) years required by the Request for Qualifications. After a brief discussion, the Committee stated that they were satisfied with the responses received.

Committee member William Talbert also asked IMCMV to explain why the labor peace agreement was not provided with their Qualification Statement. IMCMV stated that they were confused with the response they received to one of their follow-up questions regarding labor peace. It was then confirmed that labor peace is now a condition of award, and that IMCMV is working to get the labor peace agreement finalized.

The Committee was then directed to the RFQ, Section 4.0 by the Contracting Officer to the language pertaining to their mandate as Committee members to determine if IMCMV is responsible. The Committee was then asked to determine whether IMCMV was responsible based on everything they heard and read. When questions pursued regarding this issue, Assistant County Attorney David Murray reconfirmed the Committee's responsibilities. After another brief discussion, the Committee determined that IMCMV was responsible based on what they heard and read.

The Committee also discussed whether to recommend award or negotiation of an agreement with IMCMV, the following motions were made:

Moved:	Ray Diaz
Motion:	To find the sole responding firm IMCMV Holdings, Inc responsible.
Seconded:	Melvin Payne
Action:	Unanimously Adopted

Moved:	Ray Diaz
Motion:	To recommend to the County Mayor for award of the Lease and Operating Agreement to IMCMV Holdings, Inc.
Seconded:	William D. Talbert, III
Action:	Unanimously Adopted

Also, the Contracting Officer explained the next steps in the process including final approval. The Committee was then reminded that the Cone of Silence was back in effect.

Lenora Allen-Johnson
Chairperson (Non-voting)

Appendix D

Revised
Lobbyist Registration For Oral Presentation Affidavit and Sign-in

APPENDIX D
AFFIDAVIT OF MIAMI-DADE COUNTY
LOBBYIST REGISTRATION FOR ORAL PRESENTATION

2014 AUG 6 PM 2:55
CLERK OF THE BOARD

(1)Project Title: Request For Qualifications For Privately Financed Restaurant Initiative For Hotel MIA Food and Beverage Operations
Project No.: RFQ No. MDAD-13-04
(2) Department: Miami Dade Aviation Department
(3) Firm/Respondent's Name: International Meal Company Margaritaville Holdings
Address: 999 Brickell Ave, Suite 700, Miami FL Zip: 33131
Business Telephone: (786) 431-4200

(4) List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.
Francisco Javier Gaytan	CEO	IMC	
Julio Millan	CFO	IMC	
Mario Abal	CDO	IMC	
Jose Agoto	Country Manager	IMC	
Nestor Nova	Director	IMC	
Renato Rodriguez	President	Factor Z	
Mark Rogers	COO	IMCMV	

(ATTACH ADDITIONAL SHEET IF NECESSARY)
The individuals named above are registered and the Registration Fee is not required for the Oral Presentation ONLY. Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the Qualification Statement with the Clerk of the Board at least two (2) days prior to the oral presentation. Any person not listed on the revised affidavit may not participate in the oral presentation.

Other than for the oral presentation, Respondents who wish to address the county commission, a county board or county committee concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: _____
Title: President
STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 6 day of August, 2014 by Francisco Javier Gaytan, who is (Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership) personally known to me or who has produced _____ as identification and who did/did not take an oath.

Martha U Ugalde Cadena
Signature of person taking acknowledgement

Martha Marina Ugalde Cadena
(Name of Acknowledger typed, printed or stamped)

Notary Public State of Florida
Martha Marina Ugalde-Cadena
My Commission FF126633
Expires 06/16/2018

(Title or Rank) (Serial Number, if any)

3-06

MIAMI-DADE AVIATION DEPARTMENT

REQUEST FOR QUALIFICATIONS FOR PRIVATEY FINANCED RESTAURANT INITIATIVE FOR HOTEL MIA FOOD AND BEVERAGE OPERATIONS

PUBLIC HEARING PARTICIPANTS

PROJECT RFQ No. MDAD-13-04 DATE: August 7, 2014

Please Print Your Name Under Appropriate Firm	Signature	Registered Lobbyists* Yes	No
PRIME:IMCMV Holdings, Inc.			
Francisco Javier Gavilan, CEO		√	
Julio Millan, CFO		√	
Mario Abal, CDO		√	
Jose Agote, Country Manager		√	
Nestor Nova, Director		√	
Mark Rogers, COO		√	
TEAM MEMBERS:			
Renato Rodriguez, President, Factor Z		√	

If not included in the Lobbyist Registration for Oral Presentation, Appendix D of the Request for Proposals, the representative must register with the Clerk of the Board of County Commission prior to the Public Hearing and must file a principal authorization form with the Clerk of the Board. A copy must be submitted to the coordinator at the public hearing meeting.

Attachment E1

Additional References

Radicado Nº: 000973
Código Asunto: 0020602239
IMC -INTERNACIONAL MEAL COMPANY
002-04-01-239-
Señores: IMC AIRPOT SCHOPPES
Fecha: 14/05/2014 Hora: 16:21
AIRPLAN - OFICINAS ADMINISTRATIVAS - STAFF

002-06-02-239/2014

A QUIEN PUEDA INTERESAR:

JULIANA VÉLEZ CHAVARRIAGA, mayor de edad, identificada con cédula de ciudadanía número 1.128.268.781, actuando en calidad de Abogada de la Sociedad Operadora de Aeropuertos Centro Norte S.A. - Airplan S.A. con NIT 900.205.407-1, certifico que IMC AIRPORT SHOPPES S.A.S con nit: 900.430.148 tiene operación en los aeropuertos José María Córdova de Rionegro y Los Garzones de Montería, por virtud de los contratos de subconcesión comercial celebrados el 5 de mayo de 2011.

Los locales comerciales entregados en subconcesión a IMC AIRPORT SHOPPES están destinados a establecimientos de alimentos y bebidas.

La presente certificación se expide por solicitud de IMC SHOPPES, a los 14 días del mes de mayo de 2014.

Cordialmente,

Juliana Vélez C.

JULIANA VÉLEZ CHAVARRIAGA
Abogada

[*Letterhead and logo that translate to the following:*]
airplan AIRPORTS OPERATOR, NORTH CENTER

002-06-02-239/2014

TO WHOM IT MAY CONCERN:

JULIANA VÉLEZ CHAVARRIAGA, of legal age, identified by citizenship identification card number 1.128.268.781, acting in the capacity of Corporate Attorney of Operadora de Aeropuertos Centro Norte S.A. – Airplan S.A. [Airports Operator North Center, Inc. – Airplan, Inc.] with TIN 900.205.407-1 certified that IMC AIRPORT SHOPPES S.A.S. with TIN: 900.430.148 operates in the airports of José María Córdova of Rionegro and Los Garzones of Montería , by virtue of the business sub-concession contracts signed on May 5, 2011.

The business locations handed over to IMC AIRPORT SHOPPES as a sub-concession are intended to be food and beverage establishments.

The present certification is issued at the request of IMC SHOPPES on May 14, 2014.

Sincerely,

[*Signature of Juliana Vélez C.*]
JULIANA VÉLEZ CHAVARRIAGA
Attorney

Calle 10 B No 37 – 69, Medellín, Telephone: 444 18 28, Fax 354 28 42

Allen-Johnson, Lenora (Aviation)

From: nnova@imcmv.com
Sent: Thursday, July 31, 2014 4:46 PM
To: Allen-Johnson, Lenora (Aviation)
Cc: Mario Abal; Jose Agote
Subject: RE: Hotel Food and Beverage RFQ, RFQ No. MDAD-13-04
Attachments: Airplan Colombia Original and Translation.pdf

Dear Lenora – Please find the additional information in response to your email below and to our phone conversation.

1. Regarding Section 6.3 Business References on page 116 of our RFQ Response.
   a. Kim Lopdrup CEO Elect, Red Lobster Darden stated that the relationship with IMC was less than 3 years. Please use the following two additional references in lieu of Mrs. Lopdrup:

      Adriano Pimenta
      Sales Director Brasil
      The Coca Cola Company
      Tel 55 21 98264-5968
      Apimenta@coca-cola.com

      Francisco Prisco
      Sales Director
      Ambev
      Tel 55 11 98689-7123
      Francisco.prisco@ambev.com.br

   b. Ned Lyerly EVP Global Franchise Development for Carl Karcher Enterprises, Inc. stated that the relationship with IMC started on 12/2011. Mr. Lyerly has clarified his recollection of our first store in Panama that opened in May 2011. Although we have provided two additional references above to suffice the requirement, feel free to reach out to him to ratify him as a reference.

2. Regarding Section 4.6.2 Tocumen International Airport, Panama as a Customer Reference. Please be advised that Mr. Juan Carlos Pino is no longer the contact person. As of June 30th the incoming new government appointed Mr. Joseph Findanque III as the new General Manager. He has assumed this new role on July 15th and his contact information is +(507) 238-2703. Please let us know if you have challenges getting in touch with him.
   a. Additionally, I am attaching a Customer Reference from the Colombian Company Airplan relationship that dates back to May 2011. Please note that I am including the original letter and its translation. The translation certificate included in the RFQ Section 4.6.6 page 97 applies to this document as well.

Please let me know if I can provide additional information.

Nestor Nova, MBA MS
Director of Financial Planning & Analysis
Phone (407) 224-3128 Fax (407) 224-3229
6800 Lakewood Plaza Drive • Orlando, FL 32819

PLEASE NOTE MY EMAIL ADDRESS HAS CHANGED
nnova@imcmv.com.

From: Allen-Johnson, Lenora (Aviation) [mailto:LALLEN-JOHNSON@miami-airport.com]
Sent: Thursday, July 31, 2014 9:45 AM
To: 'jagote@jmcmv.com'; 'mabal@imcglobal.us'
Cc: Clark-Vincent, Marie (Aviation); 'clerkbcc@miamidade.gov'
Subject: FW: Hotel Food and Beverage RFQ, RFQ No. MDAD-13-04

FYI

From: Allen-Johnson, Lenora (Aviation)
Sent: Thursday, July 31, 2014 8:48 AM
To: 'Javier Gavilan'
Cc: Clark-Vincent, Marie (Aviation); 'clerkbcc@miamidade.gov'
Subject: Hotel Food and Beverage RFQ, RFQ No. MDAD-13-04

Good morning,

The first Committee meeting was held yesterday and the Committee requested that you provide references dating back to more than three (3) years. Please provide this information by no later than Monday, August 4th.

Let me know if you have any questions. Thanks.

Allen-Johnson, Lenora (Aviation)
Aviation Senior Procurement Contract Officer
Miami-Dade Aviation Department
Contracts Administration

P. O. Box 025504
Miami, Florida 33102-5504
(305) 876-8065 Work
(305) 876-8068 Fax
LALLEN-JOHNSON@miami-airport.com

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