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

# Memorandum

MIAMI-DADE COUNTY

**Date:** June 2, 2015

Agenda Item No. 8(A)(1)

**To:** Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez
Mayor

**Subject:** Award recommendation for Non-Exclusive Operator Agreement for Baggage Handling System Operation & Maintenance at Miami International Airport, RFP No. MDAD-11-14, to John Bean Technologies Corporation - JBT Airport Services, in the amount of $163,280,939.00

Resolution No. R-475-15

## RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the award of a Non-Exclusive Operator Agreement for Baggage Handling System Operation and Maintenance (BHS O&M) at Miami International Airport (MIA) to John Bean Technologies Corporation - JBT Airport Services (JBT) in the amount of $163,280,939.00 and authorize the Mayor or the Mayor's designee to execute the Agreement attached hereto, with the exhibits on file with the Clerk of the Board.

## SCOPE

MIA is located primarily within Commissioner Rebeca Sosa's District 6; however, the impact of this agenda 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 Aviation Director or designee has the authority to exercise all provisions contained therein, including but not limited to termination and extension provisions.

## FISCAL IMPACT/FUNDING SOURCE

The source of funding for this Agreement is the Miami-Dade Aviation Department's (MDAD) Operating Budget and the Transportation Security Administration (TSA). The total contract amount for operating and maintaining the BHS System for the initial five-year term and five (5) one-year renewal options is $163,280,939.00. A total of $133,280,939.00 will be funded by the MDAD operating budget, and $30,000,000.00 will be funded by the TSA.

## TRACK RECORD/MONITOR

JBT has performed satisfactorily as the current operator under the existing Baggage Handling System Operation and Maintenance Contract (ITN-MDAD-01-06). The MDAD staff member responsible for monitoring this project is MDAD's Facilities Superintendent Neil Wyatt.

## DUE DILIGENCE

Pursuant to Resolution No. R-187-12, due diligence was conducted to determine JBT's responsibility, including verifying corporate status and that no performance or compliance issues exist. The following searches revealed no adverse findings for the proposing entity: Small Business Development database, convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties list.

**BACKGROUND**

A Request for Proposals was advertised on October 2, 2014, to solicit proposals from interested parties to operate, maintain, and repair all specified inbound and outbound automated and manual sortation Baggage Handling Systems and their related equipment located in the following concourses at MIA:

- Concourse D (Inbound Only)
- Concourse E (Inbound and Outbound)
- Concourse F (Inbound and Outbound)
- Concourse G (Inbound and Outbound)
- Concourse H (Inbound and Outbound)
- Concourse J (Inbound and Outbound)

On December 5, 2014, proposals were received from the following three (3) firms:

- Elite – Webb Joint Venture
- Oxford Electronics, Inc. d/b/a Oxford Airport Technical Services
- John Bean Technologies Corporation - JBT Airport Services

The Evaluation/Selection Committee held a Prescreening Meeting on January 22, 2015, and reviewed the submitted proposals. The Committee recommended oral presentations from all responsive proposers.

The Committee invited the firms to a Public Hearing on February 12, 2015, and heard presentations from the following responsive firms:

- Elite – Webb Joint Venture
- Oxford Electronics, Inc. d/b/a Oxford Airport Technical Services
- John Bean Technologies Corporation - JBT Airport Services

After the oral presentations by the firms, the Committee undertook an evaluation and ranking process. Upon concluding the technical proposal ranking, the price proposals were reviewed and read aloud. As a result, the Committee recommended John Bean Technologies Corporation - JBT Airport Services for negotiations for the Non-Exclusive Operator Agreement for the Baggage Handling System Operation and Maintenance. The overall ranking is reflected below:

| OVERALL RANKING | | | | | |
|---|---|---|---|---|---|
| PROPOSER | TECHNICAL CRITERIA POINTS | TOTAL PRICE POINTS | OVERALL SCORE (Technical & Price) | PROPOSED PRICE AMOUNT | OVERALL RANKING |
| JBT | 366 | 94 | 460 | $163,844,707.00 | 1 |
| Elite – Webb | 313 | 100 | 413 | $154,443,599.00 | 2 |
| Oxford | 286 | 88 | 374 | $176,261,592.00 | 3 |

Subsequently, the appointed Negotiation Committee successfully negotiated an Agreement with the top-ranked firm, John Bean Technologies Corporation - JBT Airport Services.

**PROJECT:** Baggage Handling System Operation and Maintenance at MIA

**PROJECT NO.:** RFP NO. MDAD-11-14

**COMPANY NAME:** John Bean Technologies Corporation - JBT Airport Services

**COMPANY PRINCIPAL(S):** Thomas W. Giacomini, Chairman, President, CEO

**LOCATION OF COMPANY:** 1805 West 2550 South
Ogden, Utah 84401

**GENDER/ETHNICITY OWNERSHIP:** Publicly Traded (NYSE)

**YEARS IN BUSINESS:** 20

**CONTRACT AMOUNT:** $163,280,939.00

| | AMOUNT |
|---|---|
| Total Payment for the five-year Term* | $34,820,769.00 |
| First one-year Extension* | $7,588,560.00 |
| Second one-year Extension* | $7,811,120.00 |
| Third one-year Extension* | $8,040,231.00 |
| Fourth one-year Extension* | $8,276,084.00 |
| Fifth one-year Extension* | $8,518,879.00 |
| **SUBTOTAL** | **$75,055,643.00** |
| General Conditions | $21,511,407.00 |
| Dedicated Allowance Account for Additional Services | $5,000,000.00 |
| Dedicated Allowance Account for Parts | $10,000,000.00 |
| Dedicated Allowance Account for Training | $2,000,000.00 |
| Dedicated Allowance Account for Reimbursement of Rent | $4,500,000.00 |
| Dedicated Allowance Account for TSA funded Work | $30,000,000.00 |
| **SUBTOTAL** | **$148,067,050.00** |
| General Allowance Account (10% of Sub-total) | $14,806,705.00 |
| **SUBTOTAL** | **$162,873,755.00** |
| Inspector General Audit Account | $407,184.00 |
| **TOTAL CONTRACT AMOUNT**** | **$163,280,939.00** |

***Costs include furnishing all labor, supervision, routine maintenance, software/network support, consumables, expendables, equipment, and tools to adequately operate and maintain the Baggage Handling System at MIA.***

****The recommended total contract amount is $5,108,008.00 below MDAD's total ten (10) year contract estimate which totaled $168,388,947.00.***

**CONTRACT MEASURES:** Community Small Business Enterprise (CSBE) 32.32 percent Goal
Small Business Enterprise (SBE) Goal 3.02 percent

**CONTRACT MEASURES ACHIEVED AT AWARD:** SBE Construction 32.34 percent ($8,508,952.17)
SBE Goods and Services 3.02 percent ($18,058.39)

**SBE CONSTRUCTION**

| | |
|---|---|
| **SUBCONTRACTORS:** | Systems Integration & Maintenance, Inc. |
| **SBE GOODS & SERVICES SUBCONTRACTORS:** | Safety Source International, Inc.<br>Sirely Uniforms Inc.<br>A&B Hardware Inc. d/b/a A&B Hardware – Lumber Inc.<br>Barlop Inc.<br>Cenoffi Inc. d/b/a Best Office Products |
| **RESPONSIBLE WAGES:** | Yes (Building) |
| **COMMUNITY WORKFORCE PROGRAM (CWP):** | Ten (10) percent |
| **PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:** | Baggage Handling System Operation & Maintenance Contract (ITN-MDAD-01-06) |
| **TERM:** | Five (5) years |
| **OPTION(S) TO RENEW:** | The County reserves the right to extend the Agreement for up to five (5) separate one-year periods at the County's sole discretion, on the same terms and conditions. Notwithstanding the preceding, the County reserves the right to terminate the Agreement as described in the Agreement. |
| **USING AGENCY:** | Miami-Dade Aviation Department |
| **INSPECTOR GENERAL:** | Provisions included |

Jack Osterholt, Deputy Mayor

# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

**DATE:** June 2, 2015

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

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

**Please note any items checked.**

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)
6-2-15

RESOLUTION NO. R-475-15

RESOLUTION APPROVING AWARD OF NON-EXCLUSIVE OPERATOR AGREEMENT FOR BAGGAGE HANDLING SYSTEM OPERATION & MAINTENANCE AT MIAMI INTERNATIONAL AIRPORT, RFP NO. MDAD-11-14, TO JOHN BEAN TECHNOLOGIES CORPORATION – JBT AIRPORT SERVICES, IN THE AMOUNT OF UP TO $163,280,939.00 FOR A TERM OF FIVE YEARS WITH FIVE ONE-YEAR RENEWAL OPTIONS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN, INCLUDING BUT NOT LIMITED TO TERMINATION AND EXTENSION PROVISIONS

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, copies of which are 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 Non-Exclusive Operator Agreement For Baggage Handling System Operation & Maintenance at Miami International Airport, RFP No. MDAD-11-14, to John Bean Technologies Corporation – JBT Airport Services, in the amount of up to $163,280,939.00 for a term of five years with five one-year renewal options, in substantially the form attached hereto, exclusive of exhibits which are on file with and available from the Clerk of the Board, and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute the agreement and to exercise all provisions contained therein, including but not limited to termination and extension provisions.

The foregoing resolution was offered by Commissioner **José "Pepe" Diaz** , who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **aye**

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

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray

# NON-EXCLUSIVE OPERATOR AGREEMENT FOR THE BAGGAGE HANDLING SYSTEM OPERATION & MAINTENANCE AT MIAMI INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE OPERATOR AGREEMENT, made and entered into as of the _____day of _____, 2015 by and

**Between the County:** **Miami-Dade County Florida,** a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the "County", which shall include its officials, successors, legal representatives, and assigns.

**And**

**Operator:** **John Bean Technologies Corporation - JBT Airport Services** a Corporation (Operator, Contractor, or Operator Company) authorized to do business in the State of Florida; which term shall include its officers, partners, employees, successors, legal representatives, and assigns.

**Description of the Project:** The County, as represented by the Miami-Dade Aviation Department (MDAD), has engaged Operator to operate, maintain, and repair all specified inbound and outbound automated and manual sortation Baggage Handling Systems (BHSs) at Miami International Airport.

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**EXHIBITS:**

**Exhibit A:** BHS O&M Technical Specifications
**Exhibit B:** Not Used
**Exhibit C:** Tenant Airport Construction Reimbursable (TAC-R) Procedures
**Exhibit D:** Performance Bond for Baggage Handling Systems O&M at MIA
**Exhibit E:** Airport Customs Security Area Bond
**Exhibit F:** Community Small Business Enterprise (SBD Worksheet, I.O. 3-22, executed SOI(s))
**Exhibit G:** Community Workforce Program
**Exhibit H:** Miami-Dade County Responsible Wages & Benefits (website)
**Exhibit I:** Procedures for Requesting Construction Related Records
**Exhibit J:** CSBE Expedited Payment Process
**Exhibit K:** Ten (10) Year Operations & Maintenance Cost Schedule
**Exhibit L:** Disadvantaged Business Enterprise (DBE) Participation Provisions and Davis Bacon Wage Rates
**Exhibit M:** Subcontractor Payment Report
**Exhibit N:** Small Business Enterprise Program (SBD Worksheet, Implementing Order 3-41, SBE Program and executed forms)
**Exhibit O:** Executed Affidavits and Licenses

# NON-EXCLUSIVE OPERATOR AGREEMENT FOR THE OPERATION OF THE BAGGAGE HANDLING SYSTEM OPERATION & MAINTENANCE AT MIAMI INTERNATIONAL AIRPORT

THIS OPERATOR AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 20____, by and between Miami-Dade County, Florida (the "County"), a political subdivision of the State of Florida and _____ ("Operator", "Contractor", or "Operator Company"), a Corporation authorized to do business in the State of Florida.

---

## WITNESSETH:

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

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

**WHEREAS,** the Department, desires to engage an Operator to ensure the safe operation and maintenance of the BHS at Miami International Airport.

**WHEREAS,** a Request for Proposal, RFP No. 11-14 was issued by MDAD on October 2, 2014, and in response to the Request for Proposal, the County received proposals and an award has been made to Operator.

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

# DEFINITIONS

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

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

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

- **BAGGAGE HANDLING SYSTEM (BHS):** The BHS consists of the automated baggage sortation system, operation and supporting and equipment at the Miami International Airport as referenced in Exhibit A.

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

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

- **DAYS:** Calendar days.

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

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

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

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

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

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

- **MONTHLY OPERATOR FEE:** The fee paid to Operator for operating and maintaining the Facilities.
- **NOTICE TO PROCEED:** A written notice to proceed issued by the Project Manager authorizing Operator to proceed with the work described in this Agreement.
- **OPERATION:** The ongoing process of sustaining the performance of the BHS according to design intent, the Owner's changing needs, and optimum efficiency levels.
- **OPERATOR:** An independent firm, company, joint venture, corporation, partnership, or individual approved to oversee the operations of the BHS O&M operation.
- **PROJECT MANAGER (PM):** The person designated by the Department to administer the terms and conditions of this Agreement documents on behalf of the County.
- **SERVICES:** Those services that Operator shall perform in accordance with the terms and conditions of this Agreement as directed and authorized in writing by the County.
- **WORK ORDER**: A written order, authorized by the Director, directing the Operator to perform work under a specific Allowance Account, directing the Operator to perform a change in the work that does not have a monetary impact, including but not limited to, extending the Contract Time without increasing the maximum Contract amount.

## ABBREVIATIONS

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

| ABBREVIATION | EXPLANATION OF ABBREVIATED TERM |
|---|---|
| BHS | Baggage Handling System |
| EDS | Explosives Detection System |
| O&M | Operations and Maintenance |

# ARTICLE 1
## Term and Facilities

### 1.01 Term:

The County hereby engages Operator and Operator hereby shall perform the work described in Exhibit A, "BHS Technical Specifications", and agrees to operate and maintain the BHS located at Miami International Airport (the "Airport" or "MIA"), as described in Sub-Article 1.04 and commencing after completion of the Training Period, but in no event later than ninety (90) days after, _____, 2015, and continue for a term of five (5) years (the "Term") thereafter.

### 1.02 Extensions:

This Agreement may be extended at the sole discretion of the Department for a maximum of five (5) separate, one (1) year extensions, given no existing event of default. Each extension shall be exercised by the Department providing notice of said extension to Operator, no later than ninety (90) days prior to the expiration date of the Agreement or the applicable Extension Period. In the event the Department does not give notice, this Agreement shall terminate accordingly. Operator may, within thirty (30) days following the receipt of notice from the Department reject any such extension by written notice to the Department and, if so rejected, this Agreement shall terminate at the end of the term, or upon the termination of any exercised extension thereof as appropriate. Failure of Operator to respond to the Department within the thirty (30) day notice period shall automatically constitute acceptance of the extension.

### 1.03 Not Used

### 1.04 Facilities:

The Operator shall hereby perform the work described in Exhibit A, "BHS Technical Specifications", and agrees to operate and maintain the BHS's located in the following concourses at Miami International Airport

- Concourse D (Inbound Only)
- Concourse E (Inbound & Outbound)
- Concourse F (Inbound & Outbound)
- Concourse G (Inbound & Outbound)
- Concourse H (Inbound & Outbound)
- Concourse J (Inbound & Outbound)

## ARTICLE 2
## Scope of Services

### 2.01 Services:

a) Operator shall provide all services listed in the Technical Specifications attached as Exhibit A, as well as all appurtenant work, or work necessary to accomplish same, for the firm fixed yearly price proposed in the proposal. Therefore, this price shall include all necessary manpower, services, equipment, inventory, materials, software, hardware, travel and lodging, and other direct costs, as well as all indirect costs, including but not limited to home office expenses, management expenses, sales general and administrative expenses (SG&A), carrying costs, travel, and opportunity costs, as well as all profits, for the management of all necessary construction services, the purchase of parts and materials, inventory control, and all related work required to maintain, operate, and operate the BHS as specified in Exhibit A. These services will be inclusive in the base Agreement amount.

The Operator shall be responsible for all staffing costs associated with the BHS. The County does not warrant or guarantee that the system can be operated or maintained with the staffing proposed by the Operator, and the Operator shall be solely responsible for maintaining sufficient staffing as to ensure compliance with its contractual requirements for system availability. Operator acknowledges that it has inspected the facilities and pertinent documents prior to entering into this agreement.

b): The Operator may be required, at the direction of the Department, to perform additional or extra work. This work will be funded from the Allowance Accounts in this Agreement. Operator will diligently, upon written direction of the Department, perform such work in accordance with the requirements of this contract. The Operator will be compensated for actual costs incurred in the performance of this additional or extra work, plus mark-up and profit at the contractually stipulated rates.

### 2.02 Design and Construction-General:

As authorized pursuant to Section 125.012(24), Florida Statutes, when requested by the Department, Operator shall contract for the design and construction for the BHS in accordance with Exhibit C. All design and construction expenses shall be provided in accordance with the procedures of the Department. Operator shall be entitled up to a maximum of ten percent (10%) of the direct costs for mark-up and profit, which amount shall be full compensation to the Operator of all direct and indirect costs for the management or performance of such work.

### 2.03 Award of Construction Contracts:

Operator shall, following approval by the Department and Operator of plans and specifications, solicit a not-to exceed price for construction of the improvements called for by approved plans and specifications and bid documents ("Improvements"). The construction contracts for the Improvements let by Operator shall be subject to prior approval by the Department before they are executed by Operator, and shall incorporate the MDAD General Covenants and Conditions. If the not-to-exceed price of work is excessive, in the opinion of the Department, the proposed contract shall be rejected. If

directed by the Department, the Operator shall solicit sealed competitive bids, any or all of the Work.

All design and construction deliverables shall be in accordance with the procedures as specified in Exhibit C, Tenant Airport Construction Reimbursable Procedures (TAC-R).

**2.04 Certain Construction Contract Terms:**

All contracts entered into by Operator for the construction of the Improvements shall require completion of the Improvements within a specified time period following the award of the bid and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages and the retention of up to ten percent of construction costs until completion of the contracted work. 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.

**2.05 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. Operator agrees that any contract for construction, alteration or repairing of 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 provision to protect the County from the claims of any laborers, subcontractors or material men against the Facilities or Improvements.

**2.06 Right to Audit Construction Improvements:**

The County, through its auditors, internal, external or special, shall have the right to audit the costs of construction of the Improvements, which shall include any Department-approved changes.

**2.07 Contracts Assignable:**

All design and construction contracts entered into by Operator shall be assignable by Operator to the County or others as designated by the Department, upon the request of the Department. Upon such assignment, Operator shall be relieved from any further responsibility to the County under such design and construction contracts.

## ARTICLE 3
## Rentals

**3.01 Annual Rental:**

The Operator shall be required to pay rent at the prevailing Class III Terminal rates for the lease of the Facilities in Exhibit A pertaining to Commercial Areas, prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Article 3.02, "Address for Payments"**.

The Operator shall be required to pay rent for the administrative and support space at the prevailing Class III Terminal rates which will be prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand. Payments shall commence on the beneficial occupancy date.

The Terminal Class III rental for office and administrative space post security ramp area (+/-500 sq. ft.) at $79.92 per square foot based on rates in effect as of October 1, 2013.

**3.02 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, FL 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, 305-876-7711.

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

## ARTICLE 4
## Allowance Accounts

**4.01 Allowance Accounts**

Dedicated Allowance Accounts

Certain portions of work which may be required to be performed by the Operator under this Contract are either unforeseeable or have not yet been designed, and the value of such work, if any, is included in the Contract as a specific line item(s). The County may, at its sole discretion, utilize the Allowance Accounts, either dedicated or general, to pay for additional or extra work.

- Dedicated Allowance Account for Additional Services
- Dedicated Allowance Account for Parts *(Includes shelving & bins to store parts)*
- Dedicated Allowance Account for Reimbursement of Rent
- Dedicated Allowance Account for Training
- Dedicated Allowance Account for TSA funded Work

General Allowance Account

A. The General Allowance Account shall be used to reimburse the Operator for the actual costs of permit fees, license fees, impact fees and inspection fees paid to any governmental entity in connection with the operation or maintenance of the BHS, or any construction authorized hereunder for furnishing all labor, materials, equipment and services necessary for modifications or Additional or Extra Work required to complete the Project because of unforeseeable conditions; for performing minor construction changes required to resolve: oversight in design, Owner oversight, unforeseen conditions, revised regulations, technological and product development, operational changes, schedule requirements, program interface, emergencies and delays; Operator claims for damages; and for making final adjustment to estimated Services shown on the Price Proposal Form to conform to actual Services performed. Operator shall be entitled up to a maximum of ten percent (10%) of the direct costs associated with the Services performed under the General Allowance Account, such amount being full compensation to the Operator for all indirect costs, mark-up, and profit.

B. Other allowance account(s) may be used as specified in the Contract Documents.

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

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

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

The Operator shall solicit not less than three (3) competitive bids from appropriate sub-contractors and materials suppliers when so directed by the County, for performance of the work in accordance with such Plans and Specifications as may be required and as may be furnished by the County. The Operator shall submit the solicited bids to the County for approval or rejection. If the bids are rejected by the County, the Operator shall solicit additional bids for submittal.

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

At Final Acceptance, the Contract Price shall be decreased to reflect unexpended amounts under the Allowance Accounts.

## ARTICLE 5
## Reimbursement of Rent

**5.01 Reimbursement of Rent:**

The County shall reimburse the Operator the cost of Terminal Class III rental for office and administrative space post security ramp area (+/-500 sq. ft.) as described in Article 3. Operator shall request reimbursement in writing, and submit documentation to the County, including copies of checks, evidencing rental payments to the County.

# ARTICLE 6
## Compensation to Operator

### 6.01 Compensation to Operator:

The County shall pay to Operator as consideration for operating and maintaining the BHS at Miami International Airport for the BHS locations specified in Sub-article 1.04, "Facilities", and providing the services required herein, as follows:

A) The amount bid for the Base Term of this Agreement shall be divided by sixty (60) months to arrive at an average monthly payment to the Operator of **$580,346.15**. Subsequent years may be adjusted based in increases in staffing costs as otherwise allowed in this Agreement. This monthly payment shall be deemed to include all necessary manpower to operate and maintain the BHS as specified in Exhibit A during such month. Payment of this amount shall commence following completion of any training period as authorized by the County and issuance of the Second Notice to Proceed.

B) For any extension year as authorized by the County, the monthly payment shall be the amount bid divided by twelve. This monthly payment shall be deemed to include all necessary manpower, services, equipment, inventory, materials, software, hardware, travel and lodging, and other direct costs, as well as all indirect costs, including but not limited to home office expenses, management expenses, SG&A, carrying costs, travel, and opportunity costs, as well as all profits, for the management of all necessary construction services, the purchase of parts and materials, inventory control, and all related work required to maintain, operate, and operate the BHS as specified in Exhibit A during each such month during the extension period.

C) Compensation to the Operator for any additional or extra work shall be made in conformance with these contract documents. The Operator will be compensated for actual costs incurred in the performance of this additional or extra work, plus mark-up and profit at the contractually stipulated rates. Under no circumstances may the Operator include, as a component of any hourly rate for manpower or materials, home office expenses, SG&A, or other indirect costs; payment for manpower shall be made solely on the basis of the hourly rate to the worker, plus benefits, plus the contractually stipulated mark-up and profit.

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

E) The Operator shall submit as attachments to each invoice Certified Payroll forms for all employees on the job, at every tier, for job classifications identified with the applicable Responsible Wages and Benefits. The data on the Certified Payroll forms will be checked against the required wages and benefits prescribed in the Miami-Dade County Responsible Wages & Benefits – Building.

F) The County may review and approve increases for the individual yearly salaries of Operator's staff, whose job functions are not covered under the County's Responsible Wages Ordinance. Salary adjustments will be reviewed in accordance with the County's annual Responsible Wages, and will mirror the percentile change in the Responsible Wage, but shall not exceed three percent (3%) of the prior year's salary. In no event shall salary increases provided hereunder, result in the County paying Operator in excess of $6,964,153.80 for the initial term of this agreement.

| **BHS O&M TEN (10) YEAR PRICING** | |
|---|---|
| **1) BHS – (Concourses D, E, F, G, H, J): Furnish all labor, supervision, routine maintenance, software/network support, consumables, expendables, equipment, and tools to adequately operate and maintain the Baggage Handling Systems listed above, at Miami International Airport, per the Contractual requirements for a yearly lump sum of:** | |
| **Average Annual payment for the Five (5) year Term (Annual payment will be in 12 equal amounts)** | **$6,964,153.80** |
| **Annual payment for the First (1st) one (1) year Extension** | **$7,588,560.00** |
| **Annual payment for the Second (2nd) one (1) year Extension** | **$7,811,120.00** |
| **Annual payment for the Third (3rd) one (1) year Extension** | **$8,040,231.00** |
| **Annual payment for the Fourth (4th) one (1) year Extension** | **$8,276,084.00** |
| **Annual payment for the Fifth (5th) one (1) year Extension** | **$8,518,879.00** |
| **2) General Conditions** | **$21,511,407.00** |
| **3) Dedicated Allowance Account for Additional Services** | **$5,000,000.00** |
| **4) Dedicated Allowance Account for Parts** *(Includes shelving and bins to store parts)* | **$10,000,000.00** |
| **5) Dedicated Allowance Account for Training** | **$2,000,000.00** |
| **6) Dedicated Allowance Account for Reimbursement of Rent** *(Class III rental rate for office/administrative space post security ramp area)* | **$4,500,000.00** |
| **7) Dedicated Allowance Account for TSA funded Work** | **$30,000,000.00** |
| **8) General Allowance Account** *(Ten percent (10%) of the sum of Items 1 through 7)* | **$14,806,705.00** |
| **9) Inspector General Audit Account** *(One quarter of one percent (.0025%) of the sum of Items 1 through 8)* | **$407,184.00** |
| **TOTAL CONTRACT AMOUNT:** | **$163,280,939.00** |
| ***One Hundred Sixty Three Million Two Hundred Eighty Thousand Nine Hundred Thirty-Nine Dollars*** *(Total Contract Amount in Words)* | |

# ARTICLE 7
## Personnel

### 7.01 Secured Areas/Airfield Operations Area (AOA) Sterile Areas Security:

The Contractor acknowledges and accepts full responsibility for compliance with all applicable Federal, State, and Local laws, rules and regulations including those of the Homeland Security, Transportation Security Administration's (TSA) Code of Federal Regulations 49 CFR Part 1542 et all, Federal Aviation Administration FAA, Customs and Border Protection CBP, the MDAD Airport Security Plan and applicable Security Directives issued by TSA and the Aviation Department as set forth from time to time relating to Contractor's activities at the Miami International Airport (MIA).

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

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

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

Contractor Ramp Permits will be issued to the Contractor authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department vehicle access control gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. These permits will be only issued to company owned vehicles or company leased

vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

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

Only Contractor staff with proper access zone pictured MDAD SIDA ID badges shall be allowed to operate a motor vehicle on the AOA without a MDAD escort. The Contractor shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course, Reoccurring AOA Driver and Movement Area Driver training programs conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

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

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

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

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

agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Contractor.

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

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

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

**7.02 Restricted Area Access – Identification Badges:**

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

**7.03 AOA – Right to Search:**

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

written consent to search form acceptable to the Department. Persons not executing such consent to search form shall not be employed by Operator pursuant to this Agreement.

It is further agreed that the Department has the right to prohibit an individual, agent or employee of 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. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before a designated Operator representative of the Department within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reasons for such denial. Persons denied such access shall not be employed by Operator hereunder.

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.

**7.04 AOA – Driver Training:**

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

**7.05 Federal Agencies Right to Consent:**

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 and any bonding requirements as may be imposed by such agencies. Persons not approved or consented to by the Federal Inspection Services agencies may not be employed by Operator on the Airport.

**7.06 Employment Related Examinations:**

The Department shall have the right to require Operator to use properly validated and lawful tests and procedures as a pre-employment screening mechanism for all or designated classifications of employees to assist Operator in determining the accuracy of employment applications and the integrity of employment applicants. The Department may likewise require the use of shopping services, undercover operatives and other investigatory techniques for determining the honesty of employees. In addition, the Department may require Operator to have polygraph examinations administered in individual instances, fully in compliance with the requirements and limitations of Federal law.

**7.07 Tips and Gratuities:**

No employee of Operator shall be permitted directly or indirectly to solicit tips or request any form of gratuity from anyone unless under a program approved by the Department which may include the method to be used for distribution of such tips or gratuities.

**7.08 Relationship of Parties:**

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

**7.09 Language Requirements:**

Operator shall ensure that all employees in regular contact with the public, as part of their regular duties, are able to understand and communicate in clearly understandable spoken English. English and Spanish must be spoken at least one employee at each of the Facilities, unless otherwise approved by the Department.

Operator shall utilize such tests or procedures satisfactory to the Department to ensure compliance with this provision.

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

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

**7.11 Alcohol and Drug Testing:**

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

**7.12 Employee Training:**

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

**7.13 Use of Public Facilities:**

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

**7.14 Passenger Referrals:**

Operator shall not permit its employees to enter into any agreements, understanding, arrangements or contracts, whether written or oral, relative to the referral of passengers and other Airport users to hotels, restaurant, shops or services off the Airport. The acceptance by an employee of any form of compensation, whether in cash or in kind, from airport employees and business and the possession of referral cards for such business shall be *prima facie* evidence of a violation of this provision.

**7.15 Employee Covenants Violations:**

In the event Operator violates the covenants in Sub-Articles 7.13 or Sub-Article 7.14 above for failure to properly control its employees or by permitting its employees to improperly use facilities provided by the County for the use and convenience of the traveling public, the Department shall have the right to (i) confiscate the employee's Airport identification, (ii) require Operator to terminate from employment at the Airport those employees who have individually violated the covenants of Sub-Article 7.13 and/or Sub-Article 7.14, and (iii) take action pursuant to Article 18 thereof.

**7.16 Other Business Activity:**

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

## ARTICLE 8
## Duties and Obligations of Operator

**8.01 Policy and Procedures Manuals:**

Unless such already exist, in which case Operator shall comply with their requirements, Operator shall develop and submit to the Department for its review and approval such policy and procedures manuals, which when approved, shall become the property of the County, as are necessary and appropriate to govern the operation and maintenance of the Facilities and the provision of services hereunder. Such manuals, without limiting the scope thereof, shall cover at least the following:

(a) Employee Training Manuals

(b) All manuals and procedures related to equipment and systems.

(c) Facilities maintenance and cleanliness programs

(d) Customer Complaints

Once any policy and procedure manual required herein is approved by the Department, it shall not be modified or amended without the further approval of the Department. The manuals required pursuant to this Article 8.03, shall be developed based on the operation of Operator at the Airport pursuant to this Agreement.

**8.02 Injury or Damage:**

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

**8.03 Complaints:**

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

**8.04 Permits and Licenses:**

Operator shall be responsible for obtaining all necessary permits and licenses required for installation and operation of the BHS. Operator shall cooperate and comply with any inspections required by all OSHA, Federal, State, and County codes, ordinances, statutes, and laws.

Operator must possess and maintain throughout the term of the Agreement and any Extensions thereof, the following licenses or qualifier, and provide proof of such to the County:

a) State of Florida Certified General Contractor License and;
b) Master Transporting Assembly Install License

Any work not under the scope of work of the Operator's license must be sub-contracted to an appropriate licensed contractor.

Any fines levied by the above mentioned authorities because of inadequacies to comply with this requirement shall be borne solely by Operator.

**8.05 Accounting Records and Audit Provisions:**

The County reserves the right to audit the accounts and records of the Contractor supporting all payments for Services hereunder and all Reimbursable Expenses including, but not limited to, payroll records and federal tax returns. The County shall have unrestricted access to all of the Contractor's books and records that pertains to the Contractor's operation under this Agreement. In addition, the County shall have unrestricted right to audit, either by County staff or an audit firm chosen by the County. Such audit may take place during reasonable business hours for the period of the performance of this Agreement and for three (3) years after final payment under this Agreement. The Contractor shall maintain, as part of its regular accounting system,

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

**8.06 Right to Audit:**

The Department and the auditors of the County (internal and external) shall have the right, without limitation, at any time, to audit, check, inspect and review all operating procedures of Operator hereunder and all books of account, records, financial reports, financial statements, operating statements, inventory records, copies of Federal income and State sales tax returns, work papers and supporting documents relating to operations of Operator hereunder, and other pertinent information as may be determined to be needed or desirable by the Department.

**8.07 Contracts/Agreements:**

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

## ARTICLE 9
## Rights Reserved to the County

**9.01 Rights Reserved to County:**

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

**9.02 Rights of County at Airport:**

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

**9.03 Not Used**

**9.04 Not Used**

**9.05 Other County Rights:**

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

## ARTICLE 10
## Maintenance by Operator

**10.01 Cleaning of Facilities:**

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

**10.02 Repair of Damage:**

Operator shall repair all damage to the Facilities, office and administrative locations caused by Operator, its employees, agents, independent contractors or patrons. The Department may, at its option, choose to do the work with its own forces or by contract or to require Operator to perform or contract the work, as per 10.06 below.

**10.03 Garbage and Trash Disposal:**

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

**10.04 Maintenance of Utilities:**

Operator shall operate and maintain all the components of the electrical distribution, air conditioning, ventilating, fire protection, hot and cold water, and industrial and sanitary sewerage systems and facilities within the boundaries of the Facilities, unless otherwise directed by the Department. The Department reserves the right to make arrangements for emergency maintenance and repair of said systems and facilities, using its own or contract employees, during nights, weekends and holidays.

**10.05 Maintenance and Repair:**

Operator shall maintain and repair the interior of the Facilities (excluding the BHS), and shall make all repairs as required in and about the Facilities, including, but not limited to, painting, doors, windows, fixtures, furnishings, appurtenances, replacement of light bulbs, ballasts and tubes 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, subject to ordinary wear and tear.

**10.06 Extraordinary Maintenance:**

Operator shall consult with the Department before undertaking any maintenance work. The Department may, at its option, choose to have the work done by its own forces or by contract or to require Operator to perform or contract the work in accordance with Sub-Article 8.15, Purchasing.

**10.07 Alterations and Signs:**

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

## ARTICLE 11
## Not Used

## ARTICLE 12
## No Assignment, Subletting or Sale of Controlling Interest

**12.01 No Assignment:**

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

**12.02 Ownership Structure of Operator:**

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

**12.03 Change of Control:**

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

**12.04 Authority:**

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

## ARTICLE 13
## Bonds

**13.01 Performance Bond:**

Within twenty (20) calendar days of the Effective Date of this Agreement, Operator shall provide the County with a performance bond (refer to Exhibit D) which shall be kept in full force and effect during the terms and conditions of this Agreement and, thereafter, until all financial obligations, reports or other requirements of the Agreement thereunder are satisfied, or an irrevocable letter of credit, or other form of security acceptable to the Department and so endorsed as to be readily negotiable by the County, in an annual amount equal to Operator's annual compensation for O&M services, plus any state sales taxes as may be applicable and required by law. Such performance bond shall be kept in full force throughout the term of this Agreement and any Extension Periods. The Department, without prior notice to Operator, may draw upon such performance bond, given's failure to perform or breach of this Agreement. The Department may require the Operator to increase or decrease the amount of the performance bond during the term of this Agreement or any Extension Periods.

**13.02 Not Used**

**13.03 Surety Bonds:**

(a) All bonds shall be written through surety insurers authorized to do business in the State of Florida, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

| Bond Amount | Best 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) On contract amounts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

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

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

(c) For contracts in excess of $500,000, the provisions of this Sub-Article must be adhered to, plus the company must have listed for at least three (3) consecutive years, or holding a valid Certificate of Authority of at least $1.5 million dollars on a Treasury list.

(d) Surety bonds guaranteed through the Small Business Administration or Contractors Training and Development Inc., will also be acceptable.

(e) The attorney-in fact or other officer who signs a contract company must file with such bond a certified copy of his power of attorney authorizing him to do so. The contract bond must be counter signed by the surety's resident Florida agent.

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, Florida Statutes.

The bonds shall be delivered to the Department upon execution of the contract between the Operator and the County.

**13.04 Cancellation of Bonds:**

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

## ARTICLE 14
## Indemnification

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

## ARTICLE 15
## Insurance

### 15.01 Insurance Required:

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

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

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

The limits for each type of insurance may be revised upon MDAD Risk Management's review and approval of the 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. Also note: The Department will not accept self-insurance and all policies must be separate policies insuring the Facilities at Miami International Airport alone.

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

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

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

   The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the 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 Operator allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Risk Management Office.

**15.02 Certificates of Insurance:**

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

a) the Operator has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article;

b) the County is named as an additional insured; and

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

**15.03 Certificates of Renewal:**

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

**15.04 Certificates of Continuity:**

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

**15.05 Insurance Company Rating Requirements:**

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

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

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

**15.06 Cancellation of Insurance:**

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

**15.07 Other Insurance Indemnification:**

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

**15.08 Operator Liable:**

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

**15.09 Right to Examine:**

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

**15.10 Personal Property:**

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

**15.11 Survival of Provisions:**

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

## ARTICLE 16
## Trademarks and Licenses

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

## ARTICLE 17
## Force Majeure

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

## ARTICLE 18
## Cancellation Or Termination of Contract

**18.01 Cancellation by the County:**

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

**18.1.02** In the event of cancellation by the County, the County shall pay the Operator for all labor performed, all materials and equipment furnished by the Operator and its Sub-contractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the PM and approved by the Architect/Engineer and the Consulting Engineers. The Operator will be paid for:

A. The final value of all work completed under the Contract, based upon the approved Schedule of Values and/or Unit Prices,

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

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

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

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

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

**18.1.05** Upon cancellation as above, the PM shall prepare a certificate for Final Payment to the Operator.

**18.02 Termination by Default of Operator:**

**18.2.01** The Contract may be terminated by the County for failure of the Operator to comply with any requirements of the Contract Documents including but not limited to:

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

B. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance with the terms of the Contract, and the approved Progress Schedule, or

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

D. Discontinues the prosecution of the work, or

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

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

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

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

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

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

K. A principal of the Operator is convicted of a felony during the Term or any Extensions thereof if applicable.

**18.2.02** Before the Contract is terminated, the Operator and its Surety will be notified in writing by the PM of the conditions which make termination of the Contract imminent. The Contract will be terminated by the County ten (10) days after said notice has been given to the Operator and its Surety. Unless a satisfactory

effort acceptable to the County has been made by the Operator or its Surety to correct the conditions, the County may declare the Contract breached and send a written Notice of Termination to the Operator and its Surety.

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

**18.2.04** In the event the County exercises its right to terminate the Contract for default of the Operator as set forth herein, the Surety shall complete the Contract in accordance with its terms and conditions. If the Surety takes over, the time or delay between Notice of Default and start of work by the Surety is a Non-Excusable Delay. If the Surety fails to act promptly, but no longer than thirty (30) calendar days, or after such takeover fails to prosecute the Work in an expeditious manner, the County may exercise any of its other options including completing the Work by whatever means and method it deems advisable. No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

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

## 18.03 Termination for National Emergencies:

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

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

## 18.04 Implementation of Cancellation or Termination:

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

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

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

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

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

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

F. Cancellation or termination of the Contract or a portion thereof shall neither relieve the Operator of its responsibilities for the completed work nor shall it relieve its Surety of its obligation for and concerning any just claim arising out of the work performed.

G. In arriving at the amount due the Operator under this Article, there will be deducted, (1) any claim which the County may have against the Operator in connection with this Contract and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Operator or sold, pursuant to the provisions of this Article, and not otherwise recovered by or credited to the County.

## ARTICLE 19
## Termination by Operator

**19.01 Termination by Operator:**

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

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

(B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the County to remedy such breach for a period of three hundred sixty five (365) calendar days after receipt of written notice from 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 operations for a period of one hundred eighty (180) calendar days.

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

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

## ARTICLE 20

## Equal Employment Opportunity, Nondiscrimination and Affirmative Action

### 20.01 Equal Employment Opportunity:

In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), Operator shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. Operator shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship.

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

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

### 20.02 Nondiscriminatory Access to Premises:

Contractor, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A,

Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; (3) the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation as amended from time to time; and (4) the Contractor shall obligate their Subcontractors and sub-consultants to the same nondiscrimination requirements imposed on the Contractor and assure said requirements are included in those sub-agreements.

**20.03 Breach of Nondiscrimination Covenants:**

In the event it has been determined that Operator has breached any enforceable nondiscrimination covenants contained in Sub-article 20.01 Equal Employment Opportunity and Sub-article 20.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and Operator fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Termination of the Agreement section hereof.

**20.04 Nondiscrimination:**

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

**20.05 Disability Non-discrimination Affidavit:**

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

Resolution or Operator violated the Act or the Resolution during the term of this Contract, even if Operator was not in violation at the time it submitted its affidavit.

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

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

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

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

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

## ARTICLE 21
## Damage or Destruction to Facilities

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

## ARTICLE 22
## Rules, Regulations and Permits

**22.01 Rules and Regulations:**

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

**22.02 Violations of Rules and Regulations:**

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

**22.03 Permits and Licenses:**

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

## ARTICLE 23
## Civil Actions

**23.01 Governing Law-Venue:**

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

**23.02 Registered Office/Agent Jurisdiction:**

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 Operator is a natural person, both Operator and his or her personal representative(s) hereby submit themselves to the jurisdiction of the courts of the State of Florida for any cause of action based in whole or in part on the alleged breach of this Agreement.

## ARTICLE 24
## Actions at Termination

**24.01 Surrender of Facilities:**

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

**24.02 Amounts Due and Payable:**

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

**24.03 Removal of Personal Property:**

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

## ARTICLE 25
## Other Provisions

**25.01 Payment of Taxes:**

Operator shall pay any taxes lawfully assessed against Operator arising out of its operations hereunder; provided, however, that 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 a default, pursuant to Article 18.

**25.02 No Possessory Interests:**

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

**25.03 Rights to be Exercised by Department:**

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

**25.04 Administrative Modifications:**

It is understood and agreed that the Department, upon written notice to Operator, shall have the right to modify administratively and to revise the budget, reimbursement, replenishment and payment procedures, contained in Articles 3, 4 and 5, other technical requirements hereof, and the exhibits hereto; provided, however, such revisions shall not have a materially adverse effect on the right of Operator to be reimbursed for costs and expenses incurred on a timely basis or to receive reasonable compensation for its services hereunder or on the security of the funds and assets of the County.

**25.05 Approvals:**

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

**25.06 Security:**

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

**25.07 Rights of County at Airport:**

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

**25.08 Federal Subordination:**

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

**25.09 Severability:**

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

**25.10 Authorized Uses Only:**

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

**25.11 No Waiver:**

There shall be no waiver of the right of the County to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there by any waiver of any breach, default or non-performance hereof by 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 County to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence or of any subsequent breach, default or non-performance hereof by Operator.

**25.12 Right to Regulate:**

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

**25.13 Entirety of Agreement:**

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

**25.14 Inspections:**

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

**25.15 Headings:**

The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

**25.16 Binding Effect:**

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

**25.17 Performance:**

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

**25.18 No Estoppel or Waiver**

No acceptance, order, measurement, payment, or certificate of or by a party or its employees or agents shall estop the other party from asserting any right of the ensuing Agreement. There shall be no waiver of the right of a party to demand strict performance of any of the provisions, terms and covenants of this Agreement, nor shall there be any waiver of any breach, default or non-performance hereof by the other party unless such waiver is explicitly made in writing by the party. No delay or failure to exercise a right under the ensuing Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under the Agreement.

**25.19 Conflict of Interest/Code of Ethics Ordinance**

In connection with the terms and conditions of this Agreement, the Contractor agrees to adhere to and be governed by the County, Florida Conflict of Interest Code of Ethics Ordinance (Section 2-11.1 of the Code). Notwithstanding the provisions of any federal, state or County law governing the activities of the Contractor hereunder, commencing as of the effective date of this Agreement and continuing for the term hereof, the Contractor shall not knowingly enter into any contract or other financial arrangement with any person, corporation, municipality, authority, county, state, country, or any tenant or airline, which would constitute a conflict with interest of the County hereunder or with the

Services provided by the Contractor to the County hereunder. The Miami-Dade County Ethics Commission shall make determination(s), binding upon the Parties, as to whether conflicts exist or will exist, and if such relationship will be serious enough to constitute a conflict hereunder.

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

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

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

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

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

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

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

(d) In the event the Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, the Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions the Contractor receives from the Project Manager in regard to remedying the situation.

**25.20 Notices:**

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

TO THE COUNTY:

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

To Operator, in care of the Operations Manager, or to:

**John Bean Technologies Corporation - JBT Airport Services**
**1805 West 2550 South, Ogden, UT 84401**
**Brent Ahlstrom, General Manager**
**Email: brent.ahlstrom@jbtc.com**

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

**25.21 Non-exclusive Agreement:**

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

**25.22 Governmental Authority:**

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

**25.23 Independent Contractor:**

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

**25.24 Intent of Agreement:**

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

**25.25 Modifications:**

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

**25.26 Ownership of Documents:**

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

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

**25.27 Prior Agreements:**

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

**25.28 Solicitation:**

Except as provided by Section 2-11.1(s) of the Code, the Contractor warrants that: 1) it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement; and 2) it has not paid, or agreed to pay any company or other person any fee, or commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the County without liability to the Contractor for any reason.

**25.29 Survival:**

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

**25.30 Third Party Beneficiaries:**

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

**25.31 Independent Private Sector Inspector General Review:**

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

**25.32 Miami-Dade County Inspector General Audit Account:**

An Audit Account is hereby established to pay for mandatory random audits by the County's Inspector General. The amount for the Inspector General Audit Account is hereby set at **$408,590.00.** The Operator shall have no entitlement to any of these funds. The County retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from this audit account remain the property of the County.

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 Implementing 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 26
## Claims for Additional Compensation

**26.01 Claims and Damages:**

**26.01.01** Should the Operator suffer injury or damage to person or property because of any act or omission of Owner or of any of its employees, agents or others for whose acts the Owner is legally liable, a claim shall be made in writing to the Owner within ten (10) days after the first observance of such injury or damage.

**26.01.02** Each claim must be certified by the Operator as required by the Miami-Dade Code, False Claims Act (see Code Section 21-255, et seq.), and accompanied by a certified final bid tabulation in accordance with Miami-Dade County Code Section 21-257. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:

A. The claim is made in good faith;
B. The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
C. The amount of the claim accurately reflects the amount that the claimant believes is due from the County; and
D. The certifying person is duly authorized by the claimant to certify the claim.

**26.01.03** No claims for additional compensation, time extension or for any other relief under the Agreement shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Agreement.

**26.01.04** Each and every claim shall be made in writing and delivered to the PM as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such claim, however, in no event later than ten (10) days after the event or occurrence, or in the case of non-occurrence, within ten (10) days after the time when performance should have occurred. Verbal, telephone or facsimile notice shall be given in those instances where delay in presenting the claim would result in the conditions causing the claim to change, thereby requiring an immediate need to examine the job site or other conditions to ascertain the nature of the claim before the condition(s) disappear or become unobservable. Any such oral or facsimile notice shall be followed, at the earliest practicable time, but in no event more than ten (10) days after the event causing the claim, by written confirmation of the claim information.

**26.01.05** Each and every claim shall state:

A. The date of the event or occurrence giving rise to the claim. In the case of a claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.

B. The exact nature of the claim, including sufficient detail to identify the basis for the claim, including by way of example only, such detail as drawing numbers, specification sections, job site location, affected trades, Agreement clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the claim.

C. The claim shall clearly state whether additional monies are part of the claim. If known, the dollar value associated with the claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the claim amount.

D. The dollar value associated with the claim, along with all supporting documentation, shall be delivered within thirty (30) days after completion of the work that is subject of the claim. It shall be broken down into Direct and Indirect Costs. The Direct Costs shall be calculated as if it were additional or extra work. Indirect costs shall be limited to those permitted for additional or extra work as per the Agreement and Technical Specifications.

E. Any claim for additional monies that also involve a request for an Agreement time extension shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the claim. Scheduling references shall include a month-by-month time impact analysis (TIA) using the approved monthly progress schedules and demonstrating the effect of the delay or change on the Agreement completion date for each monthly update period that the change or delay affects.

**26.01.07** The County and its agents shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within sixty (60) days after a claim has been received, the claim shall either be recognized or if the claim is not recognized within sixty (60) days it shall be deemed denied. If the claim is recognized, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties

fail to reach an agreement on a recognized claim, the Owner shall pay to the Operator the amount of money it deems reasonable, less any appropriate retention, to compensate the Operator for the recognized claim.

Failure of the Operator to make a specific reservation of rights regarding any such disputed amounts in the body of the change order which contains the payment shall be construed as a waiver, abandonment, or relinquishment of all claims for additional monies resulting from the claims embodied in said change order, however, once the Operator has properly reserved rights to any claim, no further reservations of rights shall be required until the final payment under the Agreement. at such time the Operator shall specify all claims which have been denied and all claims for which rights have been reserved in accordance with this section. Failure to so specify any particular claim shall be constructed as a waiver, abandonment, or relinquishment of such claim.

**26.01.08** No reservation of rights will be effective to preserve any claims that are not fully documented and submitted in accordance with requirements of these Agreement Documents. Failure of the Operator to make a specific reservation of rights regarding any such disputed amounts on the Operator's Affidavit and Release of Claim for each pay application and on the Operator's Affidavit and Release of All Claims, within the Request for Final Payment, shall be construed as a waiver, abandonment and relinquishment of all claims for additional monies resulting from the claim.

**26.01.09** The Operator shall not cease work on account of any denied claim or any recognized claim upon which an agreement cannot be reached.

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**

**John Bean Technologies Corporation - JBT Airport Services**
(Legal Name of Corporation)

**ATTEST:**

Secretary _____
(Signature and Seal)

James Murvin
(Type Name & Title)
EVP, General Counsel and Secretary

By: _____
Operator - Signature

Name: Brent Ahlstrom

Vice President / General Manager
(Type Name & Title)

CORPORATE SEAL

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

By: _____
Mayor

Approved for Form
and Legal Sufficiency

_____
David M. Murray
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____