

This document is a Supplemental Agreement for a non-competitive contract Miami-Dade County anticipates entering into and is subject to change without notice.

This is not an advertisement.

Miami-Dade County, Florida

Project Title: Operation of the MIA Hotel and Related Amenities

DRAFT

SUPPLEMENTAL AGREEMENT NO. 1

Contract Number: **BW-10100**

Contract Title: **Operation of the MIA Hotel and Related Amenities**

Contractor: **Driftwood Hospitality Management II, LLC**

In accordance with the above referenced Agreement, this Supplemental Agreement, when properly executed, shall become part of the Contract as follows:

In accordance with Article 25.04. Administrative Modifications, this Agreement may be modified and revised by written Amendment and; in consideration of the premises contained herein, the parties hereto agree to the following modifications to the Contract:

1. Article 1.01, Term, has been modified in part to include contract extension language as follows:

Pursuant to the authority delegated to the County Mayor or Designee by Implementing Order 3-38 to extend expiring contracts for the purposes of completing procurement (for ninety (90) days or such longer period as may be necessary to prevent the suspension of interruption of an essential County service provided such longer extension in no event exceeds 180 days following expiration) the County reserves the right to extend the Agreement for a total of one hundred-eighty (180) calendar days beyond the current contract expiration, inclusive of notification to the Contractor in writing of the extension.

This Agreement may be extended beyond the initial one hundred-eighty (180) day extension period upon mutual agreement between the County and the Contractor upon approval by the Board of County Commissioners.

2. Article 25.25, Federal Aviation Administration (FAA) Provisions, has been replaced in its entirety with the following:

A. General Civil Rights Provisions

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
11. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

C. Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
 4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
 6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- D. All Contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.
- The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division
- E. All Contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their Subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to

a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

- F. Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

3. Article 25.28, Kidnapping, Custody Offenses, Human Trafficking and Related Offenses has been added as follows:

By entering into, amending, or renewing this Contract, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the "Contract"), as applicable, the Contractor is obligated to comply with the provisions of Section 787.06, Florida Statutes ("F.S."), "Human Trafficking," as amended, which is deemed as being incorporated by reference in this Contract. All definitions and requirements from Section 787.06, F.S., apply to this Contract.

This compliance includes the Contractor providing an affidavit that it does not use coercion for labor or services. This attestation by the Contractor shall be in the form attached to the Solicitation as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit (the "Affidavit") and must be executed by the Contractor and provided to the County when entering, amending, or renewing this Contract.

This Contract shall be void if the Contractor submits a false Affidavit pursuant to Section 787.06, F.S., or the Contractor violates Section 787.06, F.S., during the term of this Contract, even if the Contractor was not in violation at the time it submitted its Affidavit.

All other terms, covenants and conditions of the original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to BW-10100, Operation of the MIA Hotel and Related Amenities.

Contractor

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Corporate Secretary/Notary

Miami-Dade County

By: _____

for

Name: Daniella Levine Cava

Title: Mayor

Date: _____

Attest: Juan Fernandez-Barquin

Clerk of the Court and Comptroller

By: _____

(Deputy Clerk Signature)

Print Name: _____

Corporate Seal/Notary

Approved as to form
and legal sufficiency

Assistant County Attorney