



Miami-Dade Board of County Commissioners
Office of the Commission Auditor

Tourism & Ports (TAPS) Committee Meeting

March 13, 2019
9:30 A.M.
Commission Chambers

Yinka Majekodunmi, CPA
Commission Auditor
Office of the Commission Auditor (OCA)
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Miami, FL 33128
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Research Notes

Item No. 1G1
File No. 183003

Researcher: LE Reviewer: TD

ORDINANCE RELATING TO AIRPORT ZONING REGULATIONS; CREATING ARTICLE XXXVII OF CHAPTER 33 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING AIRPORT ZONING REGULATIONS APPLICABLE TO LAND IN AND AROUND ALL MIAMI-DADE COUNTY AIRPORTS; DELETING IN THEIR ENTIRETY ARTICLES XXXVII, MIAMI INTERNATIONAL AIRPORT (WILCOX FIELD) ZONING; XXXVIII, OPA LOCKA AIRPORT ZONING; XXXIX, HOMESTEAD GENERAL AVIATION AIRPORT ZONING; AND XL, KENDALL TAMAMI EXECUTIVE AIRPORT ZONING, OF CHAPTER 33; DELETING SECTION 33-303.2; AMENDING SUBSECTION 33-314; ADOPTING NEW AIRPORT ZONING REGULATIONS FOR DEVELOPMENT ON AIRPORT PROPERTY AND FOR DEVELOPMENT ON SURROUNDING PROPERTIES IN DESIGNATED LAND USE AND NOISE COMPATIBILITY RESTRICTION ZONES AND IN AIRPORT HEIGHT RESTRICTION AREAS; ADOPTING PROCEDURE FOR REVIEW OF APPLICATIONS FOR DEVELOPMENT PERMITS AND PERMITS FOR TEMPORARY STRUCTURES, CRANES, AND EVENTS WITHIN LAND USE AND NOISE COMPATIBILITY RESTRICTION ZONES AND AIRPORT HEIGHT RESTRICTION AREAS; ADOPTING PROCEDURE TO OBTAIN VARIANCES FROM CERTAIN AIRPORT ZONING REGULATIONS; PROVIDING LEGISLATIVE INTENT, FINDINGS, PURPOSE, AND APPLICABILITY IN THE INCORPORATED AND UNINCORPORATED AREAS; PROVIDING DEFINITIONS; PROVIDING AIRPORT LAND USE MAPS AND FIGURES; PROVIDING FOR ENFORCEMENT; DIRECTING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TERMINATE CERTAIN INTERLOCAL AGREEMENTS REGARDING MIAMI INTERNATIONAL AIRPORT (WILCOX FIELD) ZONING; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

ISSUE/REQUESTED ACTION

Whether the Board should create Article XXXVII of Chapter 33 of the Code of Miami-Dade County to provide airport zoning regulations applicable to land in and around all Miami-Dade County airports; deleting the entirety Article XXXVII, Miami International Airport (Wilcox Field) Zoning, XXXVIII Opa Locka Airport Zoning; XXXIX, Homestead General Aviation Airport Zoning, and XL, Kendall Tamiami Executive Airport Zoning of Chapter 33; deleting Section 33-303.2; and amend Subsection 33-314.

APPLICABLE LEGISLATION/POLICY

Resolution No. R-148-05, adopted February 1, 2005, approved an interlocal agreement with the City of Doral to delegate certain zoning regulatory authority over schools in proximity to Miami International Airport.

<http://intra/gia/matter.asp?matter=050036&file=true&yearFolder=Y2005>

Resolution No. R-146-05, adopted February 1, 2005, approved an interlocal agreement with the City of Miami to delegate certain zoning regulatory authority over schools in proximity to Miami International Airport.

<http://intra/gia/matter.asp?matter=043093&file=true&yearFolder=Y2004>

Resolution No. R-1204-07, adopted November 6, 2007, approved an interlocal agreement between Miami-Dade County and the City of Miami related to the City's acceptance of building height restrictions and other provisions in the County's zoning code applicable to Miami International Airport.

<http://intra/gia/matter.asp?matter=072966&file=true&yearFolder=Y2007>

Section 33-303.2 of the Miami-Dade County Code establishes the Airport Developmental Impact Committee Executive Council. The Council reviews and makes recommendations to the board on all applications for exceptions, variances, and appeals of decisions on applications for site plan approval.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33ZO_ARTXXXVIZOPR_S33-303.2AIDEIMCO

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Article XXXVII of Chapter 33 of the Miami Dade County Code relates to the Miami International Airport (Wilcox Field) zoning.

[https://library.municode.com/fl/miami -
dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33ZO_ARTXXXVIIIMIINAIWIFIZO](https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33ZO_ARTXXXVIIIMIINAIWIFIZO)

Ordinance No. 18-40, adopted May 1, 2018, revised regulations for Miami International Airport (Wilcox Field) Zoning to provide an exception to the prohibition on applications for variances from height limitations where the proposed structure or use meets federal standards and has been approved by the Federal Aviation Administration (FAA).

<http://intra/gia/matter.asp?matter=180909&file=true&yearFolder=Y2018>

Section 333.03 of the Florida Statutes delineates the requirement to adopt airport zoning regulations and for counties to coordinate airport zoning regulations with municipalities.

[http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute
&Search_String=section+333.03&URL=0300-0399/0333/Sections/0333.03.html](http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=section+333.03&URL=0300-0399/0333/Sections/0333.03.html)

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Rebeca Sosa, District 6

Department/Requester: Regulatory and Economic Resources

The proposed ordinance has no procedural history.

ANALYSIS

The proposed ordinance seeks to create article XXXVII of Chapter 33 of the Miami-Dade County Code to provide airport zoning regulations applicable to land in and around all County airports; delete in its entirety articles XXXVII, XXXVIII, XXXIX, and XL of Chapter 33; delete Section 33-303.2; amend subsection 33-314; adopt new airport zoning regulations for development on airport and surrounding properties, noise compatibility restriction zones, and airport height restriction areas; adopt procedure for review of certain applications; adopt procedure to obtain variances from certain airport zoning regulations; provide airport land use maps and figures; and terminate certain interlocal agreements regarding Miami International Airport (Wilcox Field) Zoning.

There is no fiscal impact. The proposed ordinance has a countywide scope and impact.

The use of home-rule authority provides clarity and certainty in coordinating zoning regulations around the County's airports. The proposed ordinance uses the home-rule authority to require that municipalities meet the minimum standards instead of using interlocal agreements, as previously done with the existing regulations with certain municipalities. In addition, the following will be provided: 1) revised definitions; 2) revised land use regulations in accordance with Chapter 333 of the Florida Statutes, FAA's Airport Design Advocacy Circular and Interim Guidance on Land Uses Within a Runway Protection Zone, and other administrative interim guidance determinations; 3) revised height and airspace regulations; and 4) revised airport land use and height maps. The regulations will reflect the revised height contours for the Downtown Miami area while retaining the height variance eligible area that was established through Ordinance No. 18-40, particularly pertaining to Miami International Airport.

The ordinance would also apply to Miami-Dade County School Board facilities because of its accordance with 1) section 1013.33 of the Florida Statutes, requiring public educational facilities' location to be consistent with the County's CDMP and zoning regulations; 2) the interlocal agreement between the County and Miami-Dade County School Board for Public Schools Facility Planning.

Article XXXVII, Miami International Airport (Wilcox Field) Zoning; Article XXXVIII, Opa Locka Airport Zoning; Article XXXIX, Homestead General Aviation Airport Zoning; and Article XL Kendall Tamiami Executive Airport Zoning contain land use and height/airspace regulations for each airport. Since they have been deemed as repetitive and duplicative of one

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another, the proposed ordinance will consolidate the individual regulations into a single airport code in a similar manner of the County's Standard Urban Center District Regulations. The new regulations will establish airport zoning regulations applicable to all Miami-Dade County airports and delete the individual articles.

Section 33-303.2 will be entirely deleted and Section 33-314 will be amended. The Airport Development Impact Committee (Airport DIC) will be deemed no longer necessary because MDAD will complete relevant reviews in consultation with the applicable zoning department while MDAD appeals will be heard before the Board.

The table below showcases the comparisons between current and proposed code relating to land use and noise compatibility restriction zones.

Current Code	Proposed Code	Description
Inner Safety Zone	Runway Protection Zone (RPZ)	<ul style="list-style-type: none"> • Most critical safety zone located 200 ft. beyond each end of a runway. • No schools or buildings of public assemblage allowed in these zones. • Variances within the RPZ not permitted. • The code will remain essentially the same but will be renamed and subject to the recent FAA Interim (Land Use) Guidelines that will limit allowable uses, subject to review and approval by MDAD, following FAA review.
Outer Safety Zone	Outer Safety Zone (OSZ)	<ul style="list-style-type: none"> • Second most critical safety zone located beyond each runway protection zone. • No schools or buildings of public assemblage allowed in these zones. • For MIA, variances within the OSZ not permitted. • Will remain the same as the current code.
Additional Limitations (10,000 feet)	Critical Approach Zone (CAZ)	<ul style="list-style-type: none"> • Zone extends 10,200 feet from the end of each runway. • No new schools, hospitals, or similar facilities permitted. • No landfills, smoke/gas emitting uses, or uses that may create electrical and radio interference with airport operations allowed. • Will remain the same as the current code.
No School Zone (Critical Approach)	RPZ, OSZ, and CAZ	<ul style="list-style-type: none"> • No new educational facilities shall be permitted in the areas that comprise the RPZ, OSZ, and CAZ surrounding airports. • Florida legislature removed the requirement for "no school" zones around airports in 2016 statutory revision, but proposed ordinance will retain the prohibition within the new land use and noise compatibility restriction zones.
Inner Land Use Zone	75 DNL Zone	<ul style="list-style-type: none"> • Area inside the 75 decibel or greater noise contour. • No residential and schools allowed in this zone.

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		<ul style="list-style-type: none"> • Mostly located within airport boundaries. • Proposed changes will reflect noise studies for Miami International Airport, Miami Executive Airport, and Miami-Opa Locka Executive Airport.
Outer Land Use Zone	65 to 74 DNL Zone	<ul style="list-style-type: none"> • Area between the 65 and 74 decibel noise contours. • Certain structures located within the zone must incorporate sound-proofing in design and construction. • A noise study has not been conducted for Miami Homestead General Aviation Airport resulting in general Florida law requirements to apply to that facility.
	Airport property allowable uses	<ul style="list-style-type: none"> • Ordinance will provide for the uses that are allowed at each County airport in accordance to the CDMP.
	Land use regulations	<ul style="list-style-type: none"> • Regulates land use and noise compatibility restriction zones around each County airport in accordance with Florida law and FAA guidelines.
	Height/airspace regulations	<ul style="list-style-type: none"> • Establishes airport height restriction zones around each airport and retains variance-eligible area for Miami International Airport.
	Nonconforming uses	<ul style="list-style-type: none"> • Allows existing uses not in compliance with new regulations and retains provisions of existing code to allow continued use and expansion of educational facilities.
	Permit review procedures	<ul style="list-style-type: none"> • MDAD and RER will be responsible in reviewing and enforcing in unincorporated areas.
	Variance procedures	<ul style="list-style-type: none"> • Establishes procedures, requirements, and restrictions for variances from aforementioned airport regulations. Provides for variances to be decided by MDAD.
	Enforcement	<ul style="list-style-type: none"> • Specifies manner and extent of enforcement allowed and delegates authority to MDAD and RER for appropriate legal action.

The interlocal agreement between Miami-Dade County and the City of Doral, and the County and the City of Miami regarding Miami International Airport (Wilcox Field) Zoning, will be terminated as those regulations will be addressed by the proposed ordinance.

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Item No. 3A

File No. 190429

Researcher: PGE Reviewer: TD

RESOLUTION APPROVING TERMINAL BUILDING LEASE AGREEMENT BETWEEN AMERICAN AIRLINES, INC. AND MIAMI-DADE COUNTY FOR THE CONSTRUCTION, EXPANSION, AND LEASE OF VIP CLUB SPACE AT MIAMI INTERNATIONAL AIRPORT NORTH TERMINAL GATES D-15 AND D-30 FOR A TERM OF 10 YEARS AND AN ANNUAL RENTAL AMOUNT OF \$8,002,330.98 IN THE INITIAL YEAR AND ADJUSTED EACH YEAR THEREAFTER IN ACCORDANCE WITH RESOLUTION NO. R-1054-90, COMMENCING UPON THE COMPLETION OF CONSTRUCTION AND EXPANSION; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL RIGHTS CONFERRED THEREIN, INCLUDING TERMINATION AND TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE THE COUNTY PROPERTY APPRAISER A COPY OF SAID LEASE

ISSUE/REQUESTED ACTION

Whether the Board should approve a Terminal Lease Agreement between the County and American Airlines, Inc. for the lease of VIP Club space at Miami International Airport north terminal gates for a 10-year term at an annual rental amount of \$8,002,330.98 for the initial lease year and adjusted annually thereafter in accordance with Resolution No. R-1054-90.

APPLICABLE LEGISLATION/POLICY

Section 125.35 of the Florida Statutes (County authorized to sell real and personal property and to lease real property) provides that the board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0125/Sections/0125.35.html

Section 2-8.6.5 of the County Code sets forth the County's policy relating to the purchase, sale and lease of real property.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.6.5PUSALEREPR

Resolution No. R-333-15, adopted by the Board on April 21, 2015, establishes the County policy requiring disclosure of market value or market rental in legislative items authorizing the conveyance or lease of County-owned property to promote public disclosure and fiscal responsibility.

<http://intra/gia/matter.asp?matter=150446&file=true&yearFolder=Y2015>

Resolution No. R-380-17, adopted by the Board on April 4, 2017, establishes a Board policy relating to County-owned real property, requiring the County Mayor to provide written notification to the district commissioner in which the County-owned property lies no less than four weeks prior to placing any item on the Board agenda or any committee of the Board requesting approval of the sale, lease or surplus of the property.

<http://intra/gia/matter.asp?matter=170414&file=true&yearFolder=Y2017>

Resolution No. R-791-14, adopted by the Board on September 3, 2014, directs the County Mayor to provide the Miami-Dade County Property Appraiser a copy of all lease and operating agreements involving County-owned property.

<http://intra/gia/matter.asp?matter=141723&file=true&yearFolder=Y2014>

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Resolution No. R-1054-90, adopted by the Board on September 27, 1990, authorized the Aviation Department to recalculate, publish and implement annually the rental rates applicable to Terminal Building Class I through Class V rental properties and concourse use and related charges. (The resolution is attached to this research note as a link was not available on the Legislative Information System.)

Resolution No. R-487-93, adopted by the Board on April 27, 1993, authorized the County Mayor to execute certain standard form Aviation Department leases; and authorized the Aviation Director to execute certain administrative leases, issue default notices and implement termination provisions of Aviation Department leases. (The resolution is attached to this research note as a link was not available on the Legislative Information System.)

Administrative Order No. 8-4 sets forth the County policy relating to the authority to sell, lease or otherwise dispose of County-owned property. Before action is taken on any proposed sale or lease of County-owned real property, unless expressly excluded herein, a recommendation will be requested from the Planning Advisory Board, to indicate whether such proposal is in the public interest and also recommending proper land use classification if applicable. Should a recommendation not be received from the Planning Advisory Board within the time period provided within this administrative order, the Planning Department Director will provide a recommendation on the proposal.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO8-4.pdf>

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Rebeca Sosa, District 6

Requester/Department: Internal Services

This item has no procedural history.

ANALYSIS

This item authorizes a Terminal Building Lease Agreement between the County and American Airlines, Inc. (AA) for Gate 15 and Gate 30 in Concourse D of the North Terminal of Miami International Airport (MIA) for continued use as a VIP Club for 10 years at an annual rental amount of \$8,002,330.98. The rental rate is subject to recalculation and adjustment on October 1 of each year per Resolution No. R-1054-90, which approved the utilization of new procedures for the computation of terminal building rentals at MIA. The proposed lease increases the square footage amount leased for each gate and allows the construction of improvements in order to modernize the AA VIP Club and address overcrowding issues.

The annual rental amount includes 18 percent of the monthly gross revenues generated from liquor sales and 10 percent of the monthly gross revenues generated from the sale of all other amenities not obtained through the Aviation Department's concessionaires or permittees. More specifically, the County may approve the sale of certain amenities within the premises upon written request by AA and payment of the required fees. Permitted amenities include: (1) VIP Club Conference room rentals; (2) food and beverage sales; (3) liquor sales; and (4) facsimile, e-mail, internet and wireless services. Additionally, a 35 percent opportunity fee will be charged to AA for non-member passengers who purchase a day pass to the VIP Club.

The mayoral memorandum indicates that the current lease agreement with AA was administratively approved pursuant to Resolution No. R-487-93 in 2011 for a five-year term with month-to-month extensions for an additional four years. The rental rate and associated fees, such as an opportunity fee or MAG, under the current lease are not disclosed in the agenda item.

It is important to note that under the proposed lease agreement, AA is authorized to construct improvements to the premises, provided that all design and construction work is approved by the Aviation Department. AA shall use the premises as a VIP Club on an exclusive basis for its passengers who are club members, their immediate family members and passengers of any

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other airlines with whom AA has entered into a code-sharing marketing agreement that includes the provisions of VIP Club services by AA to the other airline.

RESOLUTION NO. R-1054-90

RESOLUTION APPROVING NEW PROCEDURES FOR COMPUTATION OF TERMINAL BUILDING RENTALS, MIAMI INTERNATIONAL AIRPORT; ESTABLISHING CLASS I THROUGH CLASS VI TERMINAL BUILDING PROPERTIES; ESTABLISHING CLASS I THROUGH CLASS V RENTAL RATES; ESTABLISHING NEW CONCOURSE USE CHARGES; AUTHORIZING IMPLEMENTATION ON OCTOBER 1, 1990 AND AUTHORIZING ANNUAL ADJUSTMENTS BY AVIATION DEPARTMENT IN ACCORDANCE WITH APPROVED NEW PROCEDURES

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

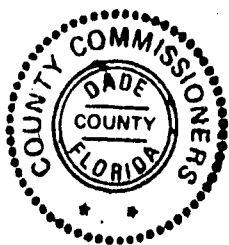
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board hereby approves the utilization of new procedures for the computation of Terminal Building rentals at Miami International Airport as set forth in the attached memorandum from the County Manager and the attachment thereto entitled "Procedures for the Calculation of Cost Based Terminal Rental Rates, Miami International Airport"; this Board hereby establishes Class I through Class VI Terminal Building property classifications and Class I through Class V rental rates, and new concourse use charges, all as more particularly shown in the said memorandum and attachment thereto, which said rental rates and concourse use charges are hereby determined to be fair, reasonable and nondiscriminatory for the use of the facilities described in the memorandum, to become

effective October 1, 1990; this Board authorizes the Aviation Department to implement the said rental rates and concourse use charges and to make annual adjustments thereto in accordance with the new procedures for calculation of cost-based Terminal Building rentals as set out in the Procedures report.

The foregoing resolution was offered by Commissioner Harvey Ruvin, who moved its adoption. The motion was seconded by Commissioner Stephen P. Clark (Mayor), and upon being put to a vote, the vote was as follows:

Barbara M. Carey	aye
Charles Dusseau	aye
Joseph M. Gersten	aye
Larry Hawkins	absent
Harvey Ruvin	aye
Barry D. Schreiber	aye
Jorge E. Valdes	absent
Sherman S. Winn	aye
Stephen P. Clark	aye

The Mayor thereupon declared the resolution duly passed and adopted this 27th day of September, 1990.



DADE COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

TONY COTARELO, CLERK

By: **RAYMOND REED**

Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. AP

MEMORANDUM

enda Item No. 5(d)(6)

107 07-17A "RETROGRADE" MAT 40"

TO: Honorable Mayor and Members
Board of County Commissioners

DATE: September 27, 1990
--September-25, 1990-

SUBJECT: Approval of
Procedure for
Calculation of
Terminal Rentals,
Miami International
Airport R-1054-90

FROM: *José G. Aviño*
Joaquín G. Aviño, P.E., P.L.S.
County Manager

RECOMMENDATION

It is recommended that the Board approve the attached document, entitled "Procedures for the Calculation of Cost Based Terminal Rental Rates, Miami International Airport" and authorize the Aviation Department to recalculate, publish and implement annually the rental rates applicable to Terminal Building Class I through Class V rental properties and the Concourse Use and related charges, in accordance with said document.

BACKGROUND

Commencing almost two years ago, the Aviation Department, with the assistance of the John F. Brown Co., Inc., the Traffic Engineers under the 1954 Trust Agreement, as amended, in cooperation with a subcommittee of the Majority-In-Interest Airlines, began an intensive effort to develop a systematic approach to the development of rental rates and related use fees and charges in the Terminal Building based on costs. A secondary objective of this effort was to try to simplify the Airport's fees and charges structure, by eliminating separate charges for the use of equipment and services, wherever reasonably possible.

As a result of 14 separate meetings over the two year period and extensive research and give and take, Department staff and the airlines agreed to a cost based approach to Terminal Building rental rate setting as described in the attached document. The described methodology results in a full compensatory rental rate, reflecting a recovery of all applicable costs, direct and indirect, including the allocation of all applicable debt service.

The recommended system classifies all Terminal space into six classes, each with different value weightings and with Class III representing the base line value of 1.0. Classes I through V are those applicable to airline usages. Class VI, which will be subject to annual review and adjustment with County Commission approval, is applicable to concession space and other non-airline uses and, per the agreements with the airlines, must, on average, yield at least as much as Class III space.

This system, in addition to resulting in the automatic, annual recalculation of the Terminal rental rates, also generates the annual Concourse Use Charges for arriving and departing domestic and international aircraft operations. However, separate non-formula charges, requiring annual Board approval, will be continued only for curbside baggage conveyors. A number of separate fees and charges, applicable to airline leases and uses, such as public address system and baggage claim area usage, baggage scales and ticket counter conveyor rentals, and the like, are being eliminated.

For the first year of this process, effective October 1, 1990, the following summarizes the applicable rental rates and use charges:

- Class I (2.0 weighting factor) - Special service facilities such as ticket counters - \$62.80/sq. ft./yr.
- Class II (1.5 weighting factor) - Terminal offices, VIP rooms, baggage service offices - \$47.10/sq. ft./yr.
- Class III (1.0 weighting factor) - Holdrooms, concourse offices, baggage claim areas - \$31.40/sq. ft./yr.
- Class IV (0.5 weighting factor) - Non-air-conditioned, enclosed or semi-enclosed space - \$15.70/sq. ft./yr.
- Class V (0.25 weighting factor) - Open space created by the Terminal shadow - \$7.85/sq. ft./yr.

Concourse Use Charges are based on a charge per seat for the various types of aircraft, based on standard configurations. The following are the new and current rates per seat:

Domestic arrival - \$1.15 new; \$1.05 current

International arrival - \$2.46 new; \$1.71 current

All departures - \$0.92 new; \$0.96 current

Inasmuch as the annual adjustment of these rates fees and charges is based upon a fixed procedure and is subject to review by the airlines, it is recommended that the Aviation Department be authorized to annually recalculate, publish, for the benefit of the users, and administratively implement them. More frequent review and adjustment of these rates, fees and charges would only occur if required pursuant to the rate covenants of the 1954 Trust Agreement and/or the ADF Bond Resolution, with Board approval.

Attachment

PROCEDURES FOR CALCULATION
OF
COST BASED TERMINAL RENTAL RATES
MIAMI INTERNATIONAL AIRPORT

The following summarizes agreements reached by the airline committee, Dade County Aviation Department ("DCAD") staff and representatives from the John F. Brown Co., Inc., Traffic Engineers under the 1954 Trust Agreement, as amended, relative to philosophies, policies and procedures for the establishment and calculation of cost based Terminal rental rates at Miami International Airport:

GENERAL APPROACH:

As an approach to this joint effort, it was agreed that the initial focus would be on basic concepts, philosophies and approaches rather than on detailed numbers and computations, it being understood that once agreement was reached on the broad issues, the detailed work resulting in final rental rates should generally require little discussion. The primary goal of the study is to develop a rational, simplified system of Terminal rental rates, based on the costs of developing, operating and maintaining the facilities, which ultimately will be applicable to all leases and uses of the Terminal Building at Miami International Airport. As part of the simplification effort, it was also agreed that separate usage charges would be eliminated wherever reasonably possible.

IMPLEMENTATION:

It was agreed that efforts would be made to implement this program as of October 1, 1990 and that the Aviation Department would not do a Terminal Building rental rate review and adjustment as of March 1, 1990. This was subsequently approved by the Dade County Board of Commissioners. It was also agreed that the principles of Terminal Building cost based rate setting, at least as they apply to the Terminal Building, will be included in subsequent discussions with the airlines relating to a possible new Airport Use Agreement.

DEFINITION OF TERMINAL BUILDING:

The Terminal Building shall be defined as everything from the outer walls, including the exterior surfaces thereof, inward and shall specifically include the following:

- The upper drive canopy.
- The upper drive sidewalk/curb.
- Conveyor housings on the upper drive.
- For space without exterior walls, the shadow line of the floor above, specifically excluding the sidewalk on the lower drive.
- The air-conditioned portions of the SkyRide system, including the doors.
- The four floors of the International Satellite, the STS guideway, Central Chiller West, Central Chiller East and the facilities connecting it to the Terminal Building, the "D" Satellite, the Interim J Terminal and connecting walkway, and the office tower, including the seventh floor Executive Conference Center.

Specifically excluded are the third through the seventh and the new eighth floors of the Hotel.

In determining whether an individual facility is terminal or non-terminal, it is not material whether it is a Port Authority Property ("PAP") or Non-Port Authority Property ("NPAP").

MAINTENANCE AND OPERATION ("M&O") EXPENSES:

Based on comparisons with a number of other selected airports, recognizing the problems with such comparisons, it has been agreed that the Terminal M&O costs at MIA - \$13.60 per sq. ft. for FY '89 - are reasonable.

Based on the reasonableness determination above, it has been agreed that the methodology used for determining direct M&O costs and allocating indirect General and Administrative ("G&A") costs, as shown in the April 11, 1989 package distributed by the John F. Brown Company, will be accepted as the interim approach until implementation of a cost accounting system. The interim method for calculating and distributing direct M&O costs between terminal and non-terminal was based on interviews conducted by the consultants with the various managers of organizations, services and facilities which constitute direct M&O (Police, Fire, Maintenance, Operations, Utilities, etc.). Indirect G&A costs are allocated based on the ratio of the collectively allocated direct M&O costs to the two cost pools. Pending the completion of an acceptable cost accounting system, which will accurately establish the actual distribution of M&O costs amongst the various cost centers, the M&O costs distribution developed in 1988 will be re-examined in FY '91 for the FY '92 rates, and every three to five years thereafter.

In calculating the rental rates for subsequent fiscal years, the current year's M&O cost projections, consisting of partial year actuals and estimates for the balance, adjusted for any substantial budgetary changes projected for the subsequent year, shall be used.

CAPITAL COSTS DEFINED:

All capital costs paid from bonds, including Series A and B, shall be included in the capital pot for purposes of calculating capital cost allocations to the cost pools. In addition, costs paid from non-debt sources of funds, including rental credit property costs, should be included at amortization and interest rates based on that specified in the agreement or matching Department debt placed at approximately the same time. Interest on internally and externally generated funds used for Terminal Building capital shall be at a rate matching that on Department debt placed at approximately the same time (a year or so) or as estimated, as appropriate for the time, by the Department's Financial Advisors.

Reserve Maintenance Fund expenditures shall not be included. As to coverage, only the incremental annual amount shall be included.

CAPITAL COSTS ALLOCATIONS:

Capital costs shall, to the maximum extent possible, be allocated to the cost pools, for the purpose of determining the ratios to be used in distributing debt service, based on the actual use of funds. For so called below the line, non distributed costs, as reflected on the reports from the Consulting Engineers, Howard, Needles, Tammen & Bergendoff ("HNTB"), items referred to as "Land Acquisitions", "Buses", and "Utility Relocations" will be moved above the line as non-terminal costs; "Participation" and "Contingencies" will be ignored as not representing real costs; "A/E Fees" and "Miscellaneous" will be distributed based on the ratio of direct use of capital funds.

DEBT SERVICE DISTRIBUTION:

Current and future debt shall be distributed to the cost pools based on the percentage of historical use of capital costs in the cost pool determined in the same manner as is used for Capital Costs Allocations, above. Annually, prior to the annual review and adjustment of rental rates at Miami International Airport, the Department shall recalculate the historical percentage attributable to each pool based on projects completed in the prior year. Project completion shall be determined not based on occupancy or use, but when a project is transferred to Fixed Assets, for accounting purposes.

TERMINAL SPACE CLASSIFICATIONS:

All space in the Terminal Building will be classified into one of six separate classes, as follows:

- Class I All airline regular and special passenger service facilities, including, but not necessarily limited to, ticket counter space, interline counters, passenger service centers, advance ticketing facilities and the like.
- Class II Airline club rooms, where alcoholic beverages are dispensed, and all air-conditioned office space in the main Terminal Building, including the office tower, baggage service rooms, and excluding the concourses out board of security screening.
- Class III All other air-conditioned operating space, including, but not necessarily limited to, baggage claim areas, hold rooms, group rooms, employee canteens, concourse office space, and the like.
- Class IV All enclosed or semi-enclosed, non-air-conditioned operating space, including, but not necessarily limited to, baggage make-up rooms, equipment and parts storage, and the like.
- Class V Leased space created as part of the building shadow-line, included in the Terminal pursuant to the definition of Terminal Building herein.
- Class VI This class includes all other classes of space and includes all other leasable revenue producing and concession space. It shall specifically include space leased by airlines for concession-type activities. A single rental rate for this class will not be established, provided that the overall revenues produced for this class shall average per square foot at least the rate established for Class III space.

SPACE CLASSIFICATIONS WEIGHTINGS:

-	Class I	2.00
-	Class II	1.50
-	Class III	1.00
-	Class IV	0.50
-	Class V	0.25
-	Class VI	Variable, not to average less than Class III space on a Terminal wide basis

The square footage attributable to each class of space shall be multiplied by the appropriate weighting factor in order to develop a weighted calculation of total revenue producing square footage divisor, necessary for the establishment of the Class III rental rate.

EQUIPMENT TYPES AND TREATMENT:

- Ticket Counter Conveyor: No separate charge.
- Curbside Conveyor: This will continue as a separate charge, based on linear feet of leased counter. The charge should be reasonable, and not necessarily based on cost.
- Curbside Check-in Counter: Per position charge shall be based on an average footprint of 100 square feet at the Class II rate.
- Scales: No separate charge.
- Baggage Claim Devices: Separate cost based use charge, per seat, based on aircraft size.
- Flight Information Display Systems: No separate charge.
- Baggage Information Display Systems: No separate charge.
- Chilled Water Supplied to Non-Air-conditioned Space: Continue separate charge based on cost.
- Laser Sort Baggage Makeup Systems: For the time being, individual negotiated arrangements, with charges based on costs, going interest rates and a ten year amortization.

RESOLUTION NO. R-487-93

RESOLUTION AUTHORIZING COUNTY MANAGER TO
EXECUTE CERTAIN STANDARD FORM AVIATION
DEPARTMENT LEASES; AUTHORIZING AVIATION
DIRECTOR TO EXECUTE CERTAIN ADMINISTRATIVE
LEASES; AUTHORIZING AVIATION DIRECTOR TO
ISSUE DEFAULT NOTICES AND TO IMPLEMENT
TERMINATION PROVISIONS OF AVIATION DEPARTMENT
LEASES

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board hereby authorizes the County Manager or his designee to execute standard Aviation Department leases for the use and occupancy of real property at the County Airport System facilities for aviation and aviation related purposes, at rental rates established by this Board, and for such term(s) as may be appropriate, with use and occupancy not to extend beyond five years under the authority of this Resolution, as set forth in the accompanying memorandum from the County Manager; and further, this Board authorizes the Aviation Director or his designee to execute administrative leases for the use and occupancy of real property at the County Airport System facilities for aviation and aviation related purposes, at rental rates established by this Board for term(s) of month-to-month, with use and occupancy not to extend beyond six months under the authority of this Resolution, as set forth in the said memorandum; and further, this Board authorizes the

years, it is being recommended that the Aviation Director be authorized to issue, when necessary, default termination letters under all Aviation Department leases and to institute appropriate termination/eviction actions for tenants which fail to correct their defaults on a timely basis following required notice.

These matters are being brought forward for Board consideration at this time to keep the Board apprised of current Airport leasing practices and because of the number of newly elected Commissioners now on the Board.

Aviation Director to issue default notices and to implement the termination provisions contained in all Aviation Department leases; and further, all prior resolutions of this Board granting or delegating authority to the County Manager or the Aviation Director to execute leases for the use and occupancy of real property at County Airport System facilities inconsistent with the grants of authority contained herein are superseded hereby.

The foregoing resolution was offered by Commissioner Alexander Penelas , who moved its adoption. The motion was seconded by Commissioner Larry Hawkins , and upon being put to a vote, the vote was as follows:

James Burke	aye	Miguel Diaz de la Portilla	aye
Betty T. Ferguson	aye	Maurice A. Ferre	aye
Larry Hawkins	aye	Bruce Kaplan	aye
Natacha A. Millan	aye	Dennis C. Moss	aye
Alexander Penelas	aye	Pedro Reboredo	aye
Javier D. Souto	aye	Sherman S. Winn	absent
Arthur E. Teele, Jr.	aye		

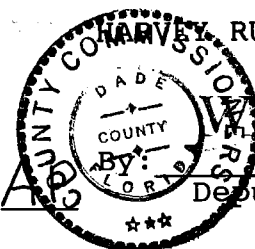
The Chairperson thereupon declared the resolution duly passed and adopted this 27th day of April, 1993.

DADE COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

WILLIAM G. OLIVER

Approved by County Attorney as
to form and legal sufficiency.



Deputy Clerk

**INDEX OF ARTICLES
STANDARD FORM FIELD LEASE
WITH PERCENTAGE OF GROSS REVENUES
MIAMI INTERNATIONAL AIRPORT**

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MEMORANDUM

Agenda Item No. 5(d)(3)

107.07-17A METRO-DADE/GSA-MAT. MGT.

TO: Honorable Members
Board of County Commissioners

FROM: *Joaquin G. Avino*
Joaquin G. Avino, P.E., P.L.S.
County Manager

DATE: April 27, 1993

SUBJECT: Authority to Execute
Certain Standard Form
Aviation Department
Leases and to Issue
Certain Termination
Notices

RECOMMENDATION:

It is recommended that the Board re-authorize certain members of County staff, as described below, to execute certain standard form Aviation Department leases for the use of the County Airport System facilities for aviation and aviation related purposes only. It is further recommended that the Board authorize the Aviation Director to issue for cause default notices, in accordance with the terms of all Aviation Department leases, and to take necessary termination actions for failures to correct defaults on a timely basis.

BACKGROUND:

Since the early 1970's the County's Aviation Director has been delegated the authority by the Board of County Commissioners to issue and execute month-to-month, not to exceed six months, Administrative Leases. This enables the Aviation Department to promptly obtain occupancy of facilities, benefitting both the tenant and the Department's revenue stream, while formal leases and other required documents are being prepared and processed.

Also since the 1970's, the County Manager, or a Board approved delegate staff member from the County Manager's Office, has been executing standard form Aviation Department leases for aviation and aviation related uses, with month-to-month, year-to-year, or fixed terms of five years or less. All leases, including month-to-month and year-to-year, where the term can be expected to exceed five years or which will involve the direct or indirect (such as through rental credits) expenditure of Department capital funds, are and will continue to be submitted to this Board for its consideration.

In all the instances described above, the forms of leases being used by the Aviation Department have been reviewed by the Assistant County Attorneys assigned to the Airport. Further, as to the individual lease agreements to be signed by the County Manager, and attested to by the Clerk of the Board, each one is individually reviewed and approved as to form and legal sufficiency by one of such Assistant County Attorneys, before being submitted to the County Manager.

If all such leases, excluding Administrative Leases, with terms not expected to exceed five years, had to be submitted to the Board of County Commissioners for approval, it can reasonably be expected that this would add over 150 items to the Board's already heavy Agenda workload. In the next couple of years, this amount will likely be somewhat higher, because of the new five year term leases being prepared for the tenants in the new air cargo facilities, the first of which will be ready for occupancy this summer.

Because of the variances between the different kinds of terms (month-to-month, year-to-year and fixed), the different operational constraints and requirements between the County's four airports with leased properties, the different areas of Miami International Airport (i.e., Terminal, MIAD cargo, N.W. 36th Street maintenance, etc.) ("MIA"), and the different aspects of the various aviation and aviation related businesses (i.e., airlines, Fixed Base Operators, cargo handlers, aircraft maintenance companies, etc.), the Aviation Department utilizes upwards of 20 different lease forms, some with only slight variations. Attached is a sample of one of these forms, which would apply to an aircraft maintenance operator leasing space at MIA, on a month-to-month basis, and paying the County a percentage of revenues.

It is also not considered practical to request the Board to separately approve each form of lease because of the number of them that are used. Further, it is not uncommon for the boiler plate language in some or all of the forms to be changed many times during a year. This can occur for a number of reasons such as new laws or ordinances (i.e., the County's Drug-Free Workplace Ordinance, the Federal Americans with Disabilities Act, etc.). Some changes in the boilerplate result from negotiations with a tenant, which identifies a need to make similar changes in the standard form leases. Others occur because of changes in operational circumstances.

As to the rental rates used in these standard leases for all rental properties, except for the Terminal Building, annually, the Board of County Commissioners receives recommendations as to adjustments which should be made so that the rates reflect a fair market value. These recommendations are based on a detailed report prepared for the Aviation Department by a State certified real estate appraiser under contract to the County. Adjustments at MIA are effective as of each October 1, while the general aviation airports rates are revised as of each April 1. The Terminal Building rental rates are recalculated annually based on a compensatory cost recovery formula previously approved by the Board and agreed to by the airlines Airport Affairs Committee.

Since all of the Aviation Department leases contain limited termination conditions, primarily related to defaults in lessee performance, in the interest of efficiency and speed of action, and in accordance with what has been a standard practice over the

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Lease No. _____
Cust. No. _____
Doc.Name _____ .MFL

LEASE AGREEMENT BETWEEN DADE COUNTY,
FLORIDA, AS LESSOR, AND _____, AS
LESSEE, MIAMI INTERNATIONAL AIRPORT

THIS LEASE AGREEMENT ("Agreement"), made and entered into as of the ____ day of _____, 199_, by and between DADE COUNTY, a political subdivision of the State of Florida ("County"), and _____, (a Florida corporation) (a _____ corporation, authorized to do business in the State of Florida) (a foreign air carrier) ("Lessee").

W I T N E S S E T H:

FOR, and in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1
Term and Premises

1.01 Term: The County hereby leases to the Lessee, and the Lessee hereby leases from the County, for a term of month-to-month, commencing on the ____ day of _____, 199_, cancellable by either party at any time upon 30 days advance written notice to the other party, the premises described in Article 1.02 (Premises) hereof, for the purposes and uses set forth in Article 2 (Use of Premises) hereof. This Agreement is a tenancy at will, pursuant to the provisions of Sections 83.02 and 83.03, Florida Statutes.

1.02 Premises: The premises leased herein are located in the _____ Area of Miami International Airport ("Airport"), and are more particularly described as follows and as shown on Exhibit A, dated _____, 19__, attached hereto and made a part hereof ("Premises"):

Building _____:

Hangar Space	_____	square feet
Air Conditioned Office Space	_____	square feet
Land	_____	square feet
Aircraft Pavement	_____	square feet
Vehicular Pavement	_____	square feet

1.03 Suitability of Premises: The Lessee acknowledges that the Premises are suitable for the Lessee's proposed use and that, except as specifically set forth in an exhibit to this Agreement,

the County has no obligation to perform or cause to be performed any maintenance, repairs, clean-ups, painting, or the like; provided, however, that if an exhibit provides that the County shall perform any such tasks, the County's performance and completion thereof are not a condition precedent to the Lessee's obligations hereunder, and in no event shall the County be liable for any damages, direct or indirect, arising out of the County's failure to commence or to complete such tasks. The Lessee's obligation under this Agreement, such as in Article 6.01(C) (permits and Licenses), to obtain all operating permits required of the Lessee, shall not require the County to take any action or perform any tasks within the Premises to enable the Lessee to obtain such permits, including, but not limited to, certificates of occupancy, which shall remain the Lessee's exclusive obligation to perform in order to obtain such permits.

1.04 Relocation of Premises: The Premises are subject to relocation, modification or deletion, at the sole discretion of the Aviation Department of the County ("Department") and this Agreement may be administratively revised to reflect such relocation, modification, or deletion upon 30 days written notice to the Lessee by the Department. Relocated space may not be similar in size, configuration or location to the Premises leased herein.

ARTICLE 2 Use of Premises

The Lessee shall use the Premises for the following purposes only:

_____.

Aircraft in non-flyable condition shall not be parked or stored on the leased Premises for a period in excess of 90 days without the prior written approval of the Department.

ARTICLE 3 Rentals and Payments

3.01 Monthly Rental: As monthly rental for the lease of the Premises, the Lessee shall pay to the County, commencing on _____, 19__, the sum of \$ _____, in U.S. funds, on the first day of each and every month in advance and without billing, at the offices of the Department as set forth in Article 3.06 (Address for Payments). Said rental is computed as follows:

<u>DESCRIPTION</u>	<u>SQ. FT.</u>	<u>RATE</u>	<u>ANNUAL</u>	<u>MONTHLY</u>
<u>Building</u> :				
Hangar Space		\$	\$	\$
A/C Office Space				
Land				
Aircraft Pavement				
Vehicular Pavement				
TOTAL:		\$	\$	\$

plus applicable State sales taxes, as required by law.

3.02 Opportunity Fee: The Lessee shall pay to the County the amount by which % of the monthly Gross Revenues, as defined in Article 3.10 (Gross Revenues), generated from its activities under this Agreement, exceeds the monthly rentals, as adjusted from time to time, under Article 3.01 (Monthly Rental). The Lessee shall pay such amount to the County by the tenth day of the month following the month in which the Gross Revenues were received or accrued. The percentage fees payable on any unreported Gross Revenues, determined by the annual audit required pursuant to Article 3.13 (Annual Report Required) are considered, for the purposes of Article 3.08 (Late Payment Charge), as having been due on the tenth day of the month following the month during which such unreported Gross Revenues were received or accrued.

3.03 Advance Rental: Prior to occupancy of the Premises, the Lessee shall pay to the County an amount equal to two times the required total monthly rental as determined pursuant to Article 3.01 (Monthly Rental) above, plus applicable State sales tax thereon, as payment of rent in advance for the last two months of this Agreement. Said payment shall be in addition to any rental payments required hereunder, and the Department shall be entitled to apply such payment to any debt of the Lessee to the Department that may then exist, as permitted by law, including but not limited to the rentals required hereunder. In lieu of the advance rental payment being made in cash, the Department, in its sole discretion, may authorize the Lessee to provide an irrevocable Letter of Credit, in a form provided by the Department, in like amount. The amount of the advance rental payment is subject to adjustment by the Department at anytime there is a change in the monthly rentals pursuant to the terms of this Agreement; provided further, that the Department shall have the right to demand up to an additional four months advance rental payments to provide the Department with adequate assurance of the Lessee's payment of its obligations, which assurance is required because of the Lessee's defaults in the timely payment of rents and charges due hereunder, or because the Department has reason to believe, based on published reports, that the Lessee's future ability to pay such rentals, fees and charges, on a timely basis, is in jeopardy.

3.04 Rental Rate Review: In the event the Lessee is in possession of the Premises by virtue of this Agreement on October 1, 19__ (or any annual anniversary thereafter), the rental rates stated in Article 3.01 (Monthly Rental) above shall be subject to review and adjustment as set forth hereafter. When such rental rate adjustments are approved by the Board of County Commissioners, and new or revised rental rates applicable in whole or in part to the Premises are established by said Board, the Department shall notify the Lessee in writing of such rates and this Agreement shall be considered and deemed to have been administratively amended to incorporate the revised rental rates effective as of such October 1 date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten calendar days of same.

3.05 Double Rental: In the event that the Lessee remains in possession of the Premises beyond the expiration or termination of this Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement. However, during any such possession of the Premises as a holdover tenant after the County has demanded the return of the Premises, the Lessee shall be liable for double rentals for so long as the Lessee remains in possession after such demand, such rentals to be based upon the rental rates applicable from time to time in whole or in part to the Premises.

3.06 Address for Payments: The Lessee shall pay, by mail, all rentals, fees and charges required by this Agreement to the following:

Dade County Aviation Department
Accounting Division
P. O. Box 592616
Miami, Florida 33159

Payments may be made by hand-delivery to the offices of the Department during normal working hours.

3.07 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten days after same shall become due, interest at the rates established from time to time by the Board of County Commissioners of Dade County, Florida (currently set at 1½% per month), shall accrue against the delinquent payment(s) from the original due date until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

3.08 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service charge of TEN DOLLARS or FIVE PERCENT of the face amount of such check, whichever is greater. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.

3.09 Utilities: Unless the Premises are separately metered and billed directly by the power company, the Lessee hereby agrees to pay monthly, upon billing by the Department, for electric consumption in the Premises. This monthly charge will be based on a survey conducted by the Department of the electric consumption by the Lessee and current nondiscriminatory rates charged others at the Airport. This monthly charge may also be adjusted and billed retroactively, from time to time, based on changes in consumption and rates. Lessee shall pay for all other utilities used by it. In the event the Premises are metered and billed to the Department, the Lessee shall pay for electric consumption based on the metered charge. The County shall have no obligation to provide utilities to the Premises other than those existing as of the effective date of this Agreement.

3.10 Gross Revenues: The term "Gross Revenues", as used in this Agreement means all moneys paid or payable to, or considerations of determinable value received by, the Lessee for aircraft parking, repair, maintenance and/or ground handling of aircraft at the Airport, other than those owned or leased and operated by the Lessee as a scheduled or non-scheduled airline, and from the subleasing of office space or other portions of the Premises, regardless of when or where the order therefor is received, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value; provided, however, that any taxes imposed by law which are separately stated to and actually paid by a customer and directly payable by the Lessee to a taxing authority and sales refunds shall be excluded therefrom.

3.11 Records and Reports: The Lessee shall keep in Dade County, during the term of this Agreement, all books of account, records and reports used in its operation necessary to report Gross Revenues and to calculate the percentage opportunity fees payable hereunder and as may, from time to time, be required by the Department to document its activities pursuant to this Agreement. All Gross Revenues hereunder shall be accounted for in accordance with generally accepted accounting principles. The form of all such books of account, records and reports shall be subject to the approval of the Department and/or the auditors of the County (one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, the County's Department of Audit and Management Services or auditors of the State of Florida). Recommendations for changes, additions or deletions to such books

of account, records and reports by the auditors of the County shall be complied with by the Lessee when requested by the Department. The auditors of the County shall be permitted, during normal working hours, to audit and examine all books of account, records and reports relating to the operations of the Lessee hereunder, including, but not limited to, balance sheets, profit and loss statements, deposit receipts, Florida State Sales Tax Reports and such other documents as may be determined by the Department to be necessary and appropriate; provided, however, that the Lessee shall not be required to retain such records in Dade County, Florida, for more than three years following termination of this Agreement.

3.12 Monthly Report of Gross Revenues: On or before the tenth day following the end of each calendar month throughout the term of this Agreement, the Lessee shall furnish to the Department a statement of monthly Gross Revenues for the preceding calendar month and certify as to the accuracy of such Gross Revenues in the form prescribed by the Department. In the event there are no Gross Revenues a monthly report will be submitted stating such.

3.13 Annual Audit Required: Within sixty days of each anniversary of the commencement date of this Agreement and within sixty days following termination of this Agreement, the Lessee shall, at its sole cost and expense, provide to the Department on an annual (or portion thereof) basis an audit report of monthly Gross Revenues, containing an unqualified opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. Said accounting firm shall be approved in writing by the Department prior to being engaged. The report shall include a schedule of Gross Revenues and percentage opportunity fees paid to the County under this Agreement, prepared in accordance with the comprehensive basis of accounting defined under terms of this Agreement and reported in the format as subsequently prescribed by the Department. The audit shall be conducted in accordance with generally accepted auditing standards and include issuance of a management letter, which will contain the findings discovered during the course of the examination, such as recommendations to improve internal controls and other significant matters related to this Agreement. In addition, the audit shall include comprehensive compliance procedures to determine whether the books of account, records and reports were kept in accordance with the terms of this Agreement for the period of examination. The auditor shall report such procedures and findings in a separate letter report to the Department. The last such report shall include the last day(s) of operations. All reports and letters required pursuant to this Article 3.13 (Annual Report Required) shall be submitted to and discussed with the Department in draft form, before being issued in final form. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

3.14 Right to Inspect: The Department and the auditors of the County shall have the right, without limitation, to enter upon the Premises at anytime during normal operating hours of the Lessee to: (1) inspect, review, verify and check all or any portion(s) of the Lessee's procedures for recording or compiling Gross Revenue information by day or month; and (2) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, copies of Federal income and State sales tax returns, and work papers relating to the operation of the Lessee, and other pertinent information as may be determined to be needed or desirable by the Department.

3.15 Other Fees and Charges: The Lessee acknowledges that the Board of County Commissioners has or will establish or direct the establishment, from time to time, of various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to or specifically provided to the Lessee hereunder, and procedures relating to the payment of same. The Lessee shall pay, upon billing, for its use of such facilities, equipment and services those fees and charges which are billed monthly. For other fees and charges which are based on usage, the Lessee shall, unless otherwise directed by the Department in writing, report its uses of applicable facilities, equipment and services and pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department.

ARTICLE 4

Maintenance And Repair by Lessee

4.01 Cleaning: The Lessee shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep the Premises clean, neat, orderly, sanitary and presentable.

4.02 Removal of Trash: The Lessee shall, at its sole cost and expense, remove from the Premises all trash and refuse which might accumulate and arise from its use of the Premises and the business operations of the Lessee under this Agreement. Such trash and refuse shall be stored temporarily and disposed of in a manner approved by the Department.

4.03 Maintenance and Repairs: The Lessee shall repair, except for those items for which the County is responsible pursuant to Article 5 (Maintenance by County), and maintain in good condition the Premises and all improvements or alterations thereto. Such repair and maintenance shall include, but not be limited to, painting, hangar & personnel doors, windows, pavement, equipment, protection bumpers attached to building, furnishings, skylights, fixtures, appurtenances, replacement of light bulbs, ballasts and tubes and the replacement of all broken glass, and shall at all times be based on a standard of care

reflecting prudent property management. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises in good order and condition. The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants or invitees. Prior to or at termination of this Agreement, injury done by the installation or removal of furniture and personal property of the Lessee shall be repaired so as to restore the Premises to their original state, and to quit and surrender up the Premises in the same good order and condition as it was at the commencement of this Agreement, reasonable wear and tear excepted.

4.04 Excavation of Land: No excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required for environmental monitoring purposes, pursuant to Article 6.02 (Environmental Protection).

4.05 Water and Sewerage System: The Lessee shall, at its sole cost and expense, operate and maintain all the components of the existing water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises. The Lessee shall not make any alterations or modifications to such facilities without the advance written approval of the Department.

4.06 Industrial Waste Facilities: The Lessee shall be fully responsible for all industrial wastes exiting the Premises and in response thereto shall provide, operate and maintain adequate facilities on the Premises for separating, neutralizing and treating industrial waste and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.

4.07 Modifications or Access to Roof: The Lessee covenants that it shall not install, attach, suspend or in any manner modify the roof, its members or structures nor shall it permit any person to walk on the roof or its members without the prior written consent of the Department. In the event Lessee violates this covenant, the duty of the County to pay for maintaining, repairing or replacing the roof or any portion thereof shall be null and void, and any expense for such maintenance, repair or replacement shall be the sole and exclusive obligation of the Lessee.

4.08 Grassed Areas and Shrubbery: The Lessee shall cause grassed areas and shrubbery on the leased Premises to be mowed and trimmed regularly so as to maintain the Premises in a neat, orderly and attractive condition. Any land areas not grassed or paved shall be stabilized by the Lessee and the Premises shall be so utilized that use of the same will not cause dust, debris or waste to be blown about or raised so as to be ingested by

aircraft or otherwise interfere with or disturb the use or enjoyment of others of their premises. All landscaping maintenance required hereunder shall be performed in accordance with landscape maintenance standards, as published from time to time by the Department.

4.09 Loading Dock/Platform: If the Premises include a loading dock/platform, the Lessee shall keep such loading dock/platform adjacent to the Premises clean and clear at all times and shall not use the loading dock/platform for the storage of cargo, equipment or other materials.

4.10 Inspections: The Department and/or its designated representatives shall have the right, during normal working hours, to inspect the Premises to identify those items of maintenance, repair, replacement, modification and refurbishment required of the Lessee or the County, pursuant to Article 5, to keep the Premises in good order and condition. The Lessee shall perform all corrective work required of it, identified in such inspection(s) within 30 days of receipt of written notice from the Department. Trash and debris problems shall be corrected within 24 hours following receipt of such notice.

4.11 Failure to Maintain: If it is determined by the Department that the Lessee has failed to properly clean, remove trash and refuse, maintain, repair, replace and refurbish the Premises as required by this Article 4 (Maintenance and Repair by Lessee), the Department shall provide to the Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the Department, following 10 days further notice to the Lessee, may enter upon the Premises and perform all work, which, in the judgment of the Department, may be necessary and the County shall add the cost of such work, plus 25% for administrative costs, to the rent due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Department, the Lessee shall not undertake performance of such repairs or cleanup without specific prior written authorization from the Department.

ARTICLE 5 Maintenance by County

5.01 County Maintenance: The County shall operate and maintain in good condition all components of the existing water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises. The County shall maintain the roof, its structural supports and exterior walls of the building. If any of such facilities are damaged or destroyed by the operations of the Lessee, the Department shall make the

necessary repairs or replacements and shall bill the Lessee for the costs of same, plus 25% for administrative costs, in the manner specified in Article 4.11 (Failure to Maintain) hereof. The County shall not maintain any doors, including personnel, overhead and hangar doors, or any windows.

5.02 County Maintenance Subject to Certain Conditions:
Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain, fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages or abatement of rent for failure to furnish or to furnish in a timely manner any such maintenance. The County shall exercise reasonable diligence to remedy and/or cure any such interruptions, to the extent such interruptions are within the County's control.

ARTICLE 6 Regulations, Licenses and Permits

6.01 Rules and Regulations - General:

- (A) The Lessee shall comply with all Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Metropolitan Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws.
- (B) The Lessee agrees to permit the entry, at all reasonable times, of inspectors of the Department, the County's Department of Environmental Resources Management ("DERM"), or any Federal, State or County agency having jurisdiction over any law or requirement referenced in Article 6.01(A) (Rules and Regulations - General) above, to make inspections of the Premises to determine the Lessee's compliance therewith.
- (C) Permits and Licenses:
 - (1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and

other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises have been obtained and are being fully complied with.

- (2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required Industrial Waste or Operating Permits from DERM. Prior to occupancy of the Premises and commencement of operations under this Agreement, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and Occupancy and, as applicable, the appropriate operating Waste Permit(s). Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefor, which the Department may request.
- (D) Violations of Rules and Regulations: Subject to the provisions of Article 6.02(D(1)), the Lessee 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 County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, invitees, or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 6.01 (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of this Article 6.01 (Rules and Regulations - General) above shall be included in every sublease, contract and other agreement, which the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that "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 subcontracting.

6.02 Environmental Protection:

- (A) Lessee's Obligations: At all times during the term of this Agreement, the Lessee shall comply with the following:
- (1) Disposal of Wastes: The Lessee shall dispose all industrial, domestic, hazardous, and solid wastes in accordance with applicable Federal, State and County laws, rules and regulations, it being the responsibility of the Lessee to determine the approved method of disposal of its wastes and take action accordingly.
 - (2) Aircraft Washing and Stripping: If permitted under Article 2 (Use of Premises), the Lessee shall perform aircraft washing and stripping only in those facilities holding valid permits for such activity issued by DERM.
 - (3) Records: The Lessee shall maintain such records as are reasonably necessary to adequately assess environmental compliance in accordance with Federal, State and County laws, rules and regulations.
 - (4) Monitoring Equipment: The Lessee agrees at its expense, to the extent required by applicable environmental law, rule, regulations, or permits, the Department, or DERM, to install monitoring equipment in a number and type sufficient to monitor the Lessee's activities in its use of the Premises, and to assign appropriate personnel to monitor such equipment and provide periodic reports to the Department and DERM.
- (B) Lessee's Failure to Comply with Environmental Laws: The Lessee acknowledges that non-compliance with its obligations under Article 6.02 (Environmental Protection) constitute material breaches of this Agreement, and that illegal discharges and violations of Chapter 24, Code of Metropolitan Dade County, Dade County, may result in penalties, issuance of civil violation notices and penalty orders, which are also subject to Article 6.01(D) (Violations of Rules and Regulations) above, and termination of this Agreement, pursuant to Article 12.03 (Other Defaults) hereof.

(C) County Responsibility for Pre-Occupancy Environmental Events:

- (1) Responsibility: The County shall be responsible for any illegal discharge or other violations of said Chapter 24 or any other violation of law, regulation or ordinance (a) which results from any environmental condition which existed prior to the commencement date of this Agreement, and (b) which is caused by any environmental condition which has its origins outside of the leased premises and, in the case of (a) or (b), was not caused by any action or inaction of the Lessee.
- (2) Remediation: The County, through the Department, agrees that it will take appropriate steps to cause the remediation required by law of all pre-occupancy events on or beneath the Premises which is not caused by the Lessee, its agents, employees, contractors, invitees or trespassers.
- (3) Lessee's Obligations during Pre-Occupancy Remediation Efforts by County: The Lessee agrees to cooperate with the County in such remediation steps by: (a) assigning appropriate personnel of Lessee to coordinate the remediation steps with the party or parties actually performing the remediation, provided the foregoing shall not entail any additional expense to the Lessee except as to such personnel; and (b) permitting the County personnel and personnel of such party or parties performing the remediation access to and use of the portion of the Premises involved in such remediation steps.
- (4) No Liability to Lessee: The Lessee acknowledges that remediation steps taken to correct any environmental contamination may extend over a number of years and may cause inconvenience and business interruption to the Lessee. The County shall not be liable to the Lessee in any manner for such inconveniences and disruption, but will exercise reasonable efforts to minimize them to the extent reasonably possible.

(D) Environmental Indemnities:

- (1) The County agrees that the Lessee shall have no liability for, and provided the Lessee demonstrates that an event was a pre-occupancy event for which Lessee is not liable hereunder, that the County will indemnify and hold the Lessee harmless from, all costs and expenses (including, without limitation, all attorneys' fees and costs)

associated with any environmental contamination of the premises arising out of a pre-occupancy event which was not caused by the Lessee.

- (2) Notwithstanding the foregoing, such environmental indemnity shall not extend to, and the Lessee shall be solely responsible for all such costs and expenses which arise out of environmental contamination for which County may be held liable caused by the Lessee, the Lessee's agents, employees, contractors, invitees, or trespassers, including, but not limited to, any environmental contamination committed by the Lessee, its agents, employees, contractors, invitees or trespassers during any prior or current tenancy or occupancy of the Premises or any portion thereof.
- (3) The parties' responsibilities, obligations and liabilities pursuant to this Article 6.02(D) (Environmental Indemnities) shall survive the expiration or early termination of this Agreement.
- (E) No waiver by County: Nothing in this Agreement or otherwise shall be deemed to be a waiver of the County's right to take action against responsible parties for remediation of or payment for environmental deficiencies on the Premises, nor be deemed to be an assumption by the County of the responsibility for such remediation or payment, except as may be imposed on the County as a matter of law.

6.03 Aircraft Noise Abatement Regulations Compliance: The Lessee hereby specifically acknowledges its awareness that the noise generated by aircraft, while on the ground and in flight, may cause annoyance to residential areas in proximity to the Airport and/or under or near flight corridors serving the Airport and that the County, as proprietor of the Airport, may, therefore, from time to time adopt certain lawful policies, procedures and/or regulations, not inconsistent with aircraft safety, intended to abate the effects of aircraft noise. Said policies, procedures and/or regulations may deal with, but are not necessarily limited to, nighttime engine run-ups, preferential runway usage, aircraft arrival and departure patterns, use of displaced runway thresholds, and the like. The Lessee specifically understands and agrees that a violation of such noise abatement policies, procedures and/or regulations may result in the arrest or citation of the offending party, with the imposition of fines, and that a violation of same shall constitute a material breach hereunder and may result in termination of this Agreement pursuant to the provisions hereof.

ARTICLE 7
Alteration of Premises and Erection of Signs

7.01 Alteration: The Lessee shall not alter the Premises in any manner whatsoever without the prior written approval of the Department. In the event the Lessee is given approval to make alterations to the Premises, the Lessee shall comply with the terms and conditions of such approval, as contained in the Department's approval letter, and a failure to do so shall constitute a default pursuant to Article 12.03 (Other Defaults) hereof.

7.02 Signage: The Lessee shall not erect, maintain or display any identifying signs or any advertising matter, of any type or kind which is visible to the public, without prior written approval of the Department. In the event the Department changes the graphics system for the identification of lessees at the Airport, the Lessee agrees, if required by the Department, to change, at its sole cost, any of its identification signs necessary to comply with such graphics system.

ARTICLE 8
Assignment and Subletting

The Lessee shall not assign, transfer, pledge or otherwise encumber this Agreement, nor sublet all or any portion of the Premises, nor allow others to use the Premises for any commercial purpose.

ARTICLE 9
Indemnification and Hold Harmless

Subject only to the limitations contained in Article 6.02(D) (Environmental Indemnities), the Lessee shall protect, defend, using attorneys reasonably acceptable to the County, and hold the County and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees, through all levels of trial and appellate proceedings), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the leased Premises or the acts or omissions of officers, agents, employees, contractors, subcontractors, licensees, or invitees of the Lessee regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole active negligence of the County. The County shall give to Lessee reasonable notice of any such claims or actions. The provisions of this section

shall survive the expiration or early termination of this Agreement.

ARTICLE 10
Insurance

10.01 Insurance Required: In addition to such insurance as may be required by law, the Lessee shall maintain, without lapse or material change, for so long as it occupies the Premises, the following insurance:

- (A) Public Liability Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises and operations, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.

Coverages shall be for each occurrence, with either no aggregate or an annual policy aggregate of no less than twice the amount of coverage required for each occurrence. In the event that the Lessee's available coverage falls below the per occurrence amount shown above, the Lessee shall secure a new certificate of insurance evidencing the required coverage. The County reserves the right to not accept policies with aggregate limits or substantial deductibles.

- (B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles (including ground or mobile equipment) used by the Lessee in connection with its operations under this Agreement in an amount not less than:
 - (1) \$5,000,000 combined single limit per occurrence for bodily injury and property damage covering all vehicles and ground and mobile equipment used by the Lessee on the Air Operations Area of the Airport ("AOA");
 - (2) \$300,000 combined single limit per occurrence for bodily injury and property damage covering such vehicles and ground and mobile equipment when being used by the Lessee off of the AOA.

The insurance coverages required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee under this Agreement. All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "B" as to management,

and no less than "VIII" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of the County Risk Management Division.

10.02 Insurance Certificates Required: Prior to the commencement of operations hereunder and annually thereafter, the Lessee shall furnish or cause to be furnished certificates of insurance to the Department which certificates shall clearly indicate that:

- (A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;
- (B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County; and
- (C) The County is named as an additional insured with respect to the Lessee's public liability policies.

On said insurance certificates, unless specifically shown to be excluded thereon, comprehensive public liability coverage shall include contractual liability, and notification of cancellation shall include notification of material changes in the policies.

The County reserves the right to require the Lessee to provide such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 30 days after such notice.

10.03 Compliance: Compliance with the requirements of this Article 10 (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

10.04 Right to Examine: The Department reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection at the offices of the Department.

10.05 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Airport shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the sole active negligence of the County, as limited by Section 768.28, Florida Statutes.

ARTICLE 11
Use of Public Facilities

The County grants to the Lessee, in common with all others desiring to use the Airport, and only to the extent necessary or reasonably desirable, so long as such use does not conflict with the County's operation of the Airport, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the runways, taxiways, roads of egress and ingress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Airport; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other charges established by the County. Nothing herein contained shall grant to the Lessee the right to use any leasable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

ARTICLE 12
Termination

12.01 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein when due shall constitute a default, and the County may, at its option terminate this Agreement after five calendar days notice in writing to the Lessee unless the default be cured within the notice period.

12.02 Insurance Defaults: The County shall have the right, upon 5 calendar days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 10 hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period.

12.03 Other Defaults: The County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed within such 30-day period, in the sole discretion of the Department, the Lessee has commenced substantial corrective steps within such 30-day period and diligently pursues same to completion:

- (A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.

- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein, by the Lessee.

12.04 Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, in the sole opinion of the County and regardless of whether the Lessee has cured each individual condition of breach or default as provided in Articles 12.01 (Payment Defaults), 12.02 (Insurance Defaults) and 12.03 (Other Defaults) hereinabove, the Lessee shall be determined by the Director to be an "habitual violator." At the time that such determination is made, the Department shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breach(es) or default(s) and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may cancel this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon the tenth day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder.

12.05 Termination for Abandonment: This Agreement shall be automatically terminated upon the abandonment by the Lessee of the Premises or the voluntary discontinuance of operations at the Airport for any period of time exceeding 15 consecutive calendar days, unless such abandonment or discontinuance has been caused by casualty or governmental order that prevents the Lessee's use of the Premises for the purposes authorized in Article 2 (Use of Premises) above.

12.06 Actions at Termination: The Lessee shall vacate, quit, surrender up and deliver the Premises to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises in the condition required under Article 4.03 (Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Department all keys to the Premises upon surrender. On or before the termination date of this Agreement, except in the instance of termination pursuant to Article 12.05 (Termination for Abandonment), in which event the Lessee shall be allowed up to five calendar days from date of termination, and provided that the Lessee is not in default in the payment of any rentals, fees or charges required to be paid herein, the Lessee shall remove all of its personal property from the Premises. Any personal

property of the Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.

The Lessee shall, at its expense, take all actions required by Federal, State and local laws, regulations or codes to remove from the Premises any hazardous substance or environmental contaminant, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like. All such substances and contaminants shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.

If the County advises the Lessee that it has reason to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, during the term of this Agreement or during the terms of any prior leases between the Lessee and the County for the same or substantially the same Premises, then the Lessee at its sole cost and expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. The Lessee shall comply with the recommendations and conclusions, contingent upon County approval, of such consultant regarding environmental clean up efforts that may be required, and shall comply with any other clean up requirements imposed on the Lessee by Federal, State or local law, regulations or codes.

Notwithstanding any other provisions of this Agreement, the Lessee shall have no liability to the Aviation Department for any violation of environmental law which is attributable to the acts or omissions of any person other than the Lessee, its agents, employees, invitees, contractors or trespassers (nor shall such violations constitute a default or breach of this Agreement). Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or local law.

12.07 Lien Upon Personal Property: In the event of termination for default or upon termination of this Agreement by its term, the County shall have a lien upon all personal property of the Lessee to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

12.08 Right to Show Premises: At any time after the Lessee has been given notice of termination or default, pursuant to Article 12 (Termination) hereof, the County shall have the right to enter on the Premises for the purpose of showing the Premises to prospective tenants or users.

ARTICLE 13
Special Conditions

13.01 Quality of Services: The Lessee shall furnish the services required and authorized, pursuant to Article 2 (Use of Premises) hereof, on a good, prompt and efficient basis and on a fair, equal and not unjustly discriminatory basis to all users thereof.

13.02 Nondiscriminatory Prices: The Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of sale or service; provided, however, that the Lessee may make reasonable, customary and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers of the Lessee's services.

13.03 County's Obligations: The Lessee, in recognition of the County's obligation, pursuant to Section 22 of Part V of the Federal Aviation Administration's standard grant assurances, to enforce the provisions of Articles 13.01 (Quality of Services) and 13.02 (Nondiscriminatory Prices) above, agrees that the Department may, from time to time, promulgate standards, methods and procedures for and monitor and test the provision of services hereunder and may require the Lessee to provide copies of schedules of service charges and the bases for discounts, rebates and similar types of price reductions. Should the Department determine that the Lessee is not in compliance with the provisions of Articles 13.01 (Quality of Services) and 13.02 (Nondiscriminatory Prices) above, the first such occurrence shall be considered a curable default, pursuant to Article 12.03 (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the County to the remedies provided in this Agreement or by law.

ARTICLE 14
Nondiscrimination

14.01 Employment Discrimination: The Lessee shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry or disability. The Lessee shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

14.02 Nondiscriminatory Access to Premises and Services: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a 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, color, sex,

national origin 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 in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the improvements; and (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.

14.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Articles 14.01 (Employment Discrimination) and 14.02 (Nondiscriminatory Access to Premises and Services) above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee 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 Article 12.03 (Other Defaults) hereof.

14.04 Affirmative Action and Disadvantaged Business Enterprise Programs: The Lessee agrees that in the event the provisions of 49 CFR Part 23, Disadvantaged Business Enterprises (DBE) and 14 CFR Part 152, Affirmative Action Employment Programs, are applicable to the Lessee under this Agreement, it shall comply with all requirements of the Department, the Federal Aviation Administration and the U. S. Department of Transportation. These requirements may include, but be not limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, keeping of certain records of good faith compliance efforts, and the submission of various reports, including, if directed by the Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. Failure to comply with these requirements shall constitute a default hereunder and be grounds for termination of this Agreement. In the event it has been determined, in accordance with applicable regulations, that the Lessee has defaulted in the requirement to comply with this section, and the Lessee thereafter fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Lessee to terminate this Agreement pursuant to Article 12.03 (Other Defaults) hereof.

ARTICLE 15 Security and Special Provisions

15.01 Security: The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises, any improvements thereon, its equipment and property on the

Airport and control of access to the Air Operations Area ("AOA") through the Premises by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, equipment and property and access to the AOA through the Premises shall be the sole responsibility of the Lessee and shall involve no cost to the County. All such security measures by the Lessee shall be in accordance with FAR 107 and the Airport Security Plan.

15.02 Security Identification Display Areas Access - Identification Badges: The Lessee shall be responsible for requesting the Department to issue identification badges to all employees who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, designated in the Airport's security program and shall be further responsible for the return of the identification badges of all personnel transferred from Airport assignment or terminated from the employ of the Lessee or upon termination of this Agreement, including the payment of fees for lost badges. The Department shall have the right to require the Lessee to conduct background investigations and to furnish certain data on such employees before the issuance of such identification badges, which data may include the fingerprinting of employee applicants for such badges.

15.03 AOA - Driver Training: Before the Lessee shall permit any employee to operate a motor vehicle of any kind or type on the AOA, the Lessee shall require such employee to attend and successfully complete the AOA Driver Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department for any violation of AOA driving rules. Notwithstanding the above, the Lessee shall be responsible for ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses.

15.04 Alcohol and Drug Testing: The Lessee acknowledges that the County, as a public agency sponsor under the provisions of the Airport and Airway Improvement Act of 1982, as amended, has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. The Lessee acknowledges that the Department, on behalf of the County, has the right to require users of the Airport (Lessees, Permittees, Licensees, etc.) to establish reasonable programs to further the achievement of the objectives described herein. Accordingly, the Lessee 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 a 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 and/or contract, the Lessee shall establish a program for the random alcohol and drug screening of all its employees who are authorized, pursuant to

other provisions of this Agreement, to operate any type or kind of motor vehicle on the AOA. The Lessee shall make reasonable good faith efforts to try to negotiate amendments to any existing contract(s) which may serve as a bar to the Lessee's implementation of its obligations hereunder. Notwithstanding the above, the Lessee specifically acknowledges that the County, acting through the Department, has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person who it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

15.05 Drug-Free Workplace Certification: Notwithstanding the provisions of Article 15.04 (Alcohol and Drug Testing) above and in addition thereto, the Lessee, in its execution of this Agreement, hereby certifies and agrees, pursuant to County Ordinance No. 92-15, adopted on March 17, 1992, as such may be amended from time to time, that it will provide drug-free workplace(s) for all its employees. In providing such drug-free workplace(s), as a minimum, the Lessee shall do the following:

- (A) Provide each employee with a written statement notifying the employee that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, as defined in Section 893.02(4), Florida Statutes in the Lessee's workplace(s) is prohibited and specifying the actions the Lessee will take against employees for violation of such prohibition. Such written statement shall also inform the employee about the following:
 - (1) The dangers of alcohol and drug abuse in the workplace.
 - (2) The Lessee's policy of maintaining a drug-free environment at all its workplaces, including, but not limited to, all locations where employees perform any task relating to its operations under this Agreement.
 - (3) Any available alcohol and drug counseling, rehabilitation and employee assistance programs available to employees with an alcohol or drug problem.
 - (4) The penalties that may be imposed by the Lessee on employees for alcohol or drug abuse violations.
- (B) Require each employee to sign a copy of the written statement required pursuant to Section (A) above to acknowledge the employee's receipt of same and advice as to the specifics of such policy. The Lessee shall maintain copies of the statements signed by its employees. The Lessee shall also post in prominent places at all of its workplaces a written statement of

its drug-free workplace policy containing at least all of the elements contained in Paragraphs (1) through (4) of Section (A) above.

- (C) Notify each employee, in the written statement required pursuant to Section (A) above, that as a condition of employment, the employee will (i) abide by the Lessee's drug-free workplace policy contained in the written statement; and (ii) notify the Lessee of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- (D) Notify the Department within ten days after receiving notice under Section (C) above from such employee or otherwise receiving actual notice of such conviction.
- (E) Impose appropriate personnel action, up to and including termination, for any employee convicted for violation of a criminal drug statute; or, require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program, approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency.
- (F) Make a good faith effort to continue to maintain a drug-free workplace through implementation of Sections (A) through (E) above.

Annually, as of the annual anniversary date of the effective date of this Agreement, the Lessee shall provide a certification, in a form to be prescribed by the County, that it will continue to provide for drug-free workplace(s) in the same manner as described herein.

This Agreement shall be terminated, upon fifteen days written notice to the Lessee, and without liability to the County, if the Department or the County Manager determines any of the following:

- (G) That the Lessee has made a false certification in its execution of this Agreement or in accordance with the annual re-certification required above;
- (H) That the Lessee has violated its original or renewal certification by failing to carry out any of the requirements contained in Sections (A), (B), (C), (D), (E) or (F); or
- (I) That such a number of employees of the Lessee have been convicted of violations in workplace (s), as to indicate that the Lessee has failed to make a good faith effort to provide a drug-free workplace as required herein.

15.06 Special Programs: The Lessee shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may from time to time require.

15.07 Vehicle Permit and Company Identification: Motor vehicles and equipment of the Lessee operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of the Department. In addition, company identification must be conspicuously displayed thereon.

15.08 Federal Agencies Right to Consent: The Lessee 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 Lessee in areas under the jurisdiction or control of such federal inspection agencies.

15.09 AOA - Right to Search: The Lessee agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the AOA. The Lessee further agrees that it shall not authorize any employee or agent to enter the AOA unless and until such employee or agent 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 the Lessee at the Airport.

It is further agreed that the Department has the right to prohibit an individual, agent or employee of the Lessee 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 the Director of the Department or his authorized designee 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.

The Lessee 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.

15.10 Right of Flight: There is hereby reserved to the County, its successors and assigns, for the use and benefit of the County and the public, a right of flight for the passage of aircraft in the air space above the surface of the premises herein leased, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air,

using said air space or landing at, taking off from or operating on Miami International Airport.

15.11 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the leased premises to such a height so as to comply with Federal Aviation Regulations, Part 77 and with the Code of Metropolitan Dade County, whichever is more restrictive.

ARTICLE 16 Control of Employees

The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner and that they maintain a high standard of service to the public.

ARTICLE 17 Civil Actions

17.01 Governing Law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Dade County, Florida, and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

17.02 Notice of Commencement of Civil Action: In the event that the County or the Lessee commence a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the County and the Lessee agree to waive the procedure for initial service of process. The County and the Lessee agree to submit themselves to the jurisdiction of the court in which the action has been filed whenever service has been made in the following manner:

- (A) Upon the County: by Certified Mail, Return Receipt Requested, sent to (i) the party indicated in Article 19.07 (Notices) on behalf of the County and (ii) with a copy to the County Attorney, Aviation Division, P.O. Box 592075, Miami, FL 33159.
- (B) Upon the Lessee: by personal service or by Certified Mail, Return Receipt Requested, upon the party indicated in Article 19.07 (Notices) on behalf of the Lessee, with a copy to whatever attorney the Lessee has designated in writing, if any.

In the event that the County and/or the Lessee raise an objection to service of initial pleadings as provided for herein,

and the trial court overrules such objection, the objecting party shall pay liquidated damages (attorney's fees) in the amount of \$250.00 to plaintiff in such action, prior to answering the complaint.

17.03 Registered Office/Agent; Jurisdiction:

Notwithstanding the provisions of Article 17.02 (Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 18

Trust Agreement and Bond Resolution

18.01 Incorporation of Trust Agreement and Bond Resolution by Reference: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Trust Agreement dated as of the 1st day of October, 1954, as amended, by and between the County and the Chase Manhattan Bank (now the Chase Manhattan Bank, National Association) as trustee and the First National Bank of Miami (now First Union National Bank of Florida) as co-trustee, (the "Trust Agreement") and Resolution No. R-1654-84 adopted by the County on December 4, 1984, securing Dade County Aviation Facilities Revenue Bonds (the "Bond Resolution"), which Trust Agreement and Bond Resolution are incorporated herein by reference thereto, shall prevail and govern in the event of any conflict or inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. Copies of the Trust Agreement and Bond Resolution are available for inspection in the offices of the Department during normal working hours.

18.02 Adjustment of Terms and Conditions: If, at any time during the term of this Agreement, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the County by the Lessee or by other Lessees under other Agreements of the County for the lease or use of facilities used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals, fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that the rentals, fees and charges payable by the Lessee and others shall not thereafter be unjustly

discriminatory to any user of like facilities and shall not result in any violation of the Trust Agreement and/or bond resolution or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement and/or bond resolution. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment of rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

ARTICLE 19 Other Provisions

19.01 No Representation: The County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that County will not be responsible for any loss, damage or costs which may be incurred by the Lessee by reason of any such physical condition.

19.02 Headings: Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

19.03 Interference: The Lessee further expressly agrees to prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an airport hazard.

19.04 Authorized Uses Only: The Lessee shall not use or permit the use of the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate, any insurance policies of the County or any policies of insurance written on behalf of the Lessee under this Agreement.

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

19.06 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, or assumption of control by, the United States of America shall be suspended.

19.07 Notices: All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the County or Aviation Department:

Director
Dade County Aviation Department
Post office Box 592075
Miami, Florida 33159

As to the Lessee:

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representative of the Lessee.

19.08 Rights Reserved: Rights not specifically granted the Lessee by this Agreement are reserved to the County.

19.09 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 the Lessee 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.

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

19.11 No Waiver: There shall be no waiver of the right of either 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 either party, unless such waiver is explicitly made in writing by

the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

19.12 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 the Lessee or its operations.

19.13 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.

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

19.15 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, its improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Lessee shall constitute a default.

19.16 Quiet Enjoyment of Others: The Lessee shall control the actions of its employees, agents, invitees and those doing business with it, so as to not annoy, disturb or be offensive to others and to provide the service hereunder so as to not unreasonably create a nuisance or thing which may disturb the quiet enjoyment of any other users of the Airport.

19.17 Radon Disclosure: In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made:

"Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have

been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

19.18 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 6, the County's right and obligation to make certain repairs, alterations, and additions under Articles 5 (Maintenance by County) and 19.09 (Rights of County at Airport), which, for purposes of this clause includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Airport, and the reservation of easement rights to the airspace under Article 15.10 (Right of Flight), all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises for the term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Airport, third parties, or when any department or agency of the County is acting in its governmental capacity, or by Acts of God.

19.19 Interpretation of Agreement: This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of or against any of the parties hereto.

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

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

BOARD OF COUNTY COMMISSIONERS
OF DADE COUNTY, FLORIDA

By: _____
County Manager

ATTEST: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

(SEAL)

LESSEE: _____

By: _____
President

Print Name

ATTEST:

Secretary

Print Name

(CORP. SEAL)

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Research Notes

Item No. 3C
File No. 190419

Researcher: IL Reviewer: TD

RESOLUTION APPROVING CONTRACT AWARD TO PAC COMM, INC. FOR CRUISE TERMINAL J SEAWALL REPAIRS, CONTRACT NO. 2015-051.03, IN AN AMOUNT NOT TO EXCEED \$8,151,960.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

ISSUE/REQUESTED ACTION

Whether the Board should award a Construction Contract between the County and Pac Comm, Inc., (PCI), for Cruise Terminal J Seawall repairs at Port Miami, in the amount of \$8,151,960.00 for a term of 365 days.

APPLICABLE LEGISLATION/POLICY

Chapter 287 of the Florida Statutes, Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties, will govern how each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. [287.017](#) for CATEGORY FIVE or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. [287.017](#) for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0200-0299/0287/Sections/0287.055.html

Section 2-8.1 of the County Code (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by I.O. and approved by the Board.

https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4ACPRARENLAARLASUMASE

Section 2-10.4 of the County Code provides, the rules and regulations associated with the procurement of professional, architectural, engineering, landscape architectural or land surveying and mapping services. Requires a public announcement, submission of qualifications, certification committee, competitive selection committee, and competitive negotiations.

https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4ACPRARENLAARLASUMASE

Ordinance 14-79 (Sea Level Rise), adopted on September 3, 2014, amending Section 2-1 of the Code of Miami-Dade County, Florida, to require that in all agenda items related to planning, design and construction of County infrastructure a statement be included that the impact of sea level rise has been considered; providing severability, inclusion in the code, and an effective date.

<http://www.miamidade.gov/govaction/matter.asp?matter=141211&file=true&fileAnalysis=false&yearFolder=Y2014>

Resolution No. R-1001-15, adopted November 3, 2015, requires contracts with small business measures to meet at least 85 percent of the small business goals applicable to the portion(s) of the contract work performed to date before a change order or contract amendment be considered for Board approval.

<http://intra/gia/matter.asp?matter=151746&file=true&yearFolder=Y2015>

Resolution No. R-525-17, adopted May 2, 2017, amended Resolution No. R-1001-15 to except non-compensatory time extensions from the requirement that contracts with small business measures meet at least 85 percent of the small business

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goals applicable to the portion of the contract work performed to date before a change order or contract amendment be considered for Board or mayoral approval.

<http://intra/gia/matter.asp?matter=170595&file=true&yearFolder=Y2017>

Resolution No. R-421-16, adopted May 17, 2016, requires (1) the County Mayor to attach to all items recommending design and/or construction contract awards of \$1,000,000 or greater a list of all County contracts awarded in the previous three years to the recommended contractor and a summary of County evaluations of the recommended contractor's work; and (2) all County departments to complete contractor evaluations before closing out a contract and making final payment to a contractor.

<http://www.miamidade.gov/govaction/matter.asp?matter=160124&file=true&fileAnalysis=false&yearFolder=Y2016>

Administrative Order No. 3-39 sets forth the County's standard process for construction of capital improvements, acquisition of professional services, construction contracting, change orders and reporting.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO3-39.pdf>

Implementing Order (I.O.) 3-32, (Small Business Enterprise Architecture And Engineering Program): It is the policy of Miami-Dade County that not less than 10% of the County's total annual expenditures of all project specific contracts for professional architectural, landscape architectural, engineering, and surveying and mapping services, shall be expended with CBE-A/E's certified under the CBE-A/E ordinance.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-32.pdf>

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Port Miami

There is no procedural history for this item.

ANALYSIS

This item requests an award of a Construction Contract between the County and Pac Comm, Inc., (PCI), for the Cruise Terminal J Seawall repairs at Port Miami, in the amount of \$8,151,960.00 for a term of 365 days.

The fiscal impact of this project is \$8,151,960.00 to be funded through budget code 646300-South Bulkhead – Rehabilitation Book page 144 (FEMA Reimbursement) and budget code 646300 – South Bulkhead – Rehabilitation Book page 144 (FEMA Reimbursement).

The project worksheets for this project indicated no small business enterprise measure is appropriate for this contract due to the funding source. This project is funded by FEMA.

The work consists of construction work including but not limited to:

- A. Maintenance of Traffic
- B. Temporary fencing, barriers and gates to define the work area; demolition, excavation, removal of existing bulkhead and extending down to 3.0 feet (Mean low tide); backfilling and compacting excavated areas; installation of double-bitt deck fittings (marine bollards)
- C. Foam-filled fender system; extending the potable water and fire protection distribution system, providing fire hydrant and potable water stations, with concrete enclosures; and paving apron area providing pavement markings and signage.

The project was advertised on August 23, 2018 and nine proposals were received by October 11, 2018. The lowest bid received was by PCI in an amount of \$7,192,000. The original base estimate of \$8,683,711.16 included within the Request to Advertise, was revised downward to \$8,612,421.57 during the bidding process due to a quantity adjustment by Jacobs, Inc., the Engineer of Record (EOR). The revised base estimate, \$8,612,421.57, is .82 percent lower than the original base estimate.

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OCA conducted a review of the following commodity codes; 968-42 (General Construction) 47, 237110 (Water and Sewer Line and related structures construction) 375, 237310 (Highway, Street, and Bridge Construction) 96, 238910 (Site preparation contractors) 375 on the Business Management Workforce System (BMWS) on March 12, 2019 and found approximately 893 SBE Firms under these commodity codes.

Pac Comm, Inc., maintains an active status on Sunbiz.org, the official website of the Division of Corporations for the State of Florida, with a principal address of 2900 N.W. 39 Street, Miami, FL 33142. Additionally, Pac Comm, Inc., has an active account with the Miami-Dade County Tax Collector's office. Lastly, Pac Comm, Inc., possesses a series of licenses in: Construction, Certified General Contractor, and Constructional Financial Officer with no complaints on the Department of Business and Professional Regulation's website.

Pursuant to Resolution No. R-421-16, a Performance Record verification was conducted by OCA in the Capital Improvements Information System (CIIS) on March 8, 2019. There are 0 performance evaluations in the Capital Improvements Information Systems Database for Pac Comm, Inc.

ADDITIONAL INFORMATION

Pac Comm, Inc., was awarded a contract with the City of North Miami, for design-build services for the North Bayshore Park Fishing and Viewing Pier.

http://www.northmiamifl.gov/Docs/AgendasMinutes/TABF04082014_1.pdf

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Research Notes

Item No. 3D
File No. 190421

Researcher: JFP Reviewer: TD

RESOLUTION APPROVING CONTRACT WITH JVA ENGINEERING CONTRACTOR, INC., FOR SEABOARD MARINE CARGO TERMINAL REDEVELOPMENT PHASE II (5 OF 5), CONTRACT NO. 2016-058.02, IN AN AMOUNT NOT TO EXCEED \$5,578,699.26; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE CONTRACT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

ISSUE/REQUESTED ACTION

Whether the Board should approve the contract with JVA Engineering Contractor, Inc. for Seaboard Marine Cargo Terminal redevelopment Phase II (5 of 5), in the amount of up to \$5,578,699.26 for a total contract period of 240 days.

APPLICABLE LEGISLATION/POLICY

Section 287.055, Florida Statutes, sets forth the Consultants' Competitive Negotiation Act, governing the processes for the acquisition of professional architectural, engineering, landscape architectural or surveying and mapping services.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0200-0299/0287/0287.html

Section 2-10.4 of the County Code governs the County's acquisition of professional architectural, engineering, landscape architectural or land surveying and mapping services.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4ACPRARENLAARLASUMASE

Section 2-10.4.01 of the County Code sets forth the County's Small Business Enterprise Architecture and Engineering Program.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4.01SMBUENARENPR

Section 2-8.1 of the County Code requires that the award recommendation memorandum presented to the Board identify each dedicated allowance, contingency allowance and additional services allowance including the specific purpose for each and the dollar amount that shall be available for each and the corresponding percentage of each dedicated allowance, contingency allowance and additional services allowance in relation to the actual contract price.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.3 of the County Code (County Mayor's Recommendation) states that whenever a competitive process is utilized for selection of a contractor, vendor, consultant, tenant or concessionaire, the County Mayor shall review the responses to the solicitation and recommend to the County Commission award or other appropriate action. Such recommendation shall be in writing and shall be filed with the Clerk of the Board, with copies mailed to all participants in the competitive process, no later than 10 days prior to any Commission meeting at which such recommendation is scheduled to be presented. Such recommendation shall be accompanied by a memorandum from the County Mayor that clearly identifies any and all delegations of Board authority contained in the body of the proposed contract.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.3MARE

Section 2-8.5 of the County Code provides a definition for "local business/firm" as well as sets forth the procedure for application of a preference to local business in County contracts.

https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.5PRPRPRLOBUCOCO

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Implementing Order No. 3-32 sets forth the County's procedures for the Community Business Enterprise Program for the purchase of professional architectural, landscape architectural, engineering or surveying and mapping services.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-32.pdf>

Implementing Order No. 3-34 establishes procedures for the formation and performance of selection committees in the competitive procurement process, including competitive selection committees utilized in the acquisition of architectural and engineering professional services.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-34.pdf>

Administrative Order No. 3-39 establishes the County's policies and procedures for user departments for the construction of capital improvements, acquisition of professional services, construction contracting, change orders and reporting.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO3-39.pdf>

Resolution No. R-187-12, adopted February 21, 2012, directs the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://intra/gia/matter.asp?matter=120287&file=true&yearFolder=Y2012>

Resolution No. R-421-16, adopted May 17, 2016, requires the County Mayor or the County Mayor's designee to attach to all items recommending design and/or construction contract awards of \$1,000,000 or greater a list of all County contracts awarded in the previous three years to the recommended contractor and a summary of County evaluations of the recommended contractor's work.

<http://intra/gia/matter.asp?matter=160124&file=true&yearFolder=Y2016>

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Port of Miami

This item has no procedural history.

ANALYSIS

This item is requesting Board approval to award a contract to JVA Engineering Contractor, Inc. for upgrades to existing infrastructure and pavement for approximately seven acres to improve the efficiency of cargo operations at PortMiami. The contract arises out of PortMiami's agreement to the redevelopment of the Seaboard Marine Cargo Terminal as part of the amended and approved Terminal Agreement between the County and Seaboard Marine, LTD for marine terminal operations at PortMiami. The contract amount is not to exceed \$5,578,699.26 for a contract period of 240 days with a contingency period of 24 days.

This final phase of the project will include the following improvements:

- mobilization/demobilization;
- demolition and removal of existing materials;
- furnish and installation of heavy duty asphalt pavement;
- new catch basins and related drainage system;
- utility adjustments; and
- any supportive ancillary tasks to successfully complete all phases of the project.

Five bids were received by the submittal deadline of July 26, 2018. JVA Engineering Contractor, Inc. (JVA), a local firm, submitted the lowest bid in the amount of \$4,963,902 which is 12.92% lower than the base estimate of \$5,669,463.82 included in the Request to Advertise. JVA was found to be the lowest responsive and responsible bidder.

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JVA was listed on the August 3, 2018 SBD Violations report, as found in PortMiami's due diligence search pursuant to Resolution No. R-187-12. JVA paid \$3,000 to the City of Miami in remedy. JVA has held 22 contracts with the County for a total value of \$46,034,198.15, including change orders approved by the Board totaling \$37,929.11.

Per sunbiz.org, the official State of Florida Division of Corporations website, JVA is an active, local, Florida for-profit corporation, with a principal address of 6600 NW 32nd Avenue, Miami, FL 33147.

Pursuant to Resolution No. R-421-16, a performance record verification was conducted in the Capital Improvements Information System on March 12, 2019, finding that JVA has 53 evaluations with an average evaluation rating of 3.6 out of 4.0.