

# MEMORANDUM

Agenda Item No. 8(A)(1)

**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**DATE:** December 1, 2021

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution relating to financial relief at Miami International Airport due to the effects of coronavirus disease 2019 (COVID-19); waiving formal bid procedures pursuant to section 5.03(D) of the Home Rule Charter and non-competitive bid waiver provisions of section 2-8.1(B) of the Code by a two-thirds vote of the Board Members present; amending Lease and Concession Agreements for Duty and Tax-Free concessionaires at Miami International Airport which (1) retroactively tolls the term of the Lease and Concession Agreements from March 1, 2020 until December 31, 2021 and extends the term once tolling ends under certain circumstances, (2) removes the payment obligation of a minimum annual guarantee and replaces it with a tiered annual rent obligation based on enplanement levels within the terminals of the concessionaires' respective locations, (3) modifies the percentage fee of gross revenues, (4) suspends marketing fees retroactive from March 1, 2021 to December 31, 2021, (5) removes provision regarding competitive pricing, (6) incorporates Labor Peace requirements, in accordance with Resolution No. R-148-07, (7) incorporates Living Wage requirements, pursuant to Ordinance No. 18-78 and Administrative Order No. 3-30, (8) prohibits Duty and Tax-Free concessionaires from assigning their locations, and (9) does not entitle Duty and Tax-Free concessionaires to the tolling and extension of term under certain circumstances; waiving Resolution No. R-243-18 relating to claims by concessionaires; authorizing the County Mayor to execute the Amendments, in substantially the form attached hereto, provided that Duty and Tax-Free concessionaires execute the Amendments within 90 days and provided that the Amendments comply with the requirements of the Federal Aviation Administration, Airport Amended and Restated Trust Agreement, and bond covenants, exercise all rights conferred therein, including termination, and perform all acts necessary to effectuate same; and directing the County Mayor to provide the executed Amendments to the Property Appraiser in accordance with Resolution No. R-791-14

**This item was amended from the original version as stated in the County Mayor's memorandum.**

The accompanying resolution was prepared by the Aviation Department and placed on the agenda at the request of Prime Sponsor Chairman Jose "Pepe" Diaz.




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Geri Bonzon-Keenan  
County Attorney

GBK/uw

**Date:** December 1, 2021

**To:** Honorable Chairman Jose “Pepe” Diaz  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor 

**Subject:** Amendment to Lease and Concession Agreement for Duty and Tax-Free  
Concessionaire at Miami International Airport

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At the November 10, 2021 Miami-Dade Chairman’s Council of Policy meeting, the Resolution and the “Amendment to Lease and Concession Agreement by and between Miami-Dade County and Duty and Tax-Free Concessionaires at Miami International Airport for Concession Services” (Duty-Free Amendment) were amended. The revisions to this Duty-Free Amendment are as follows:

### Section 1.01.1. Term

1. Paragraph 1 of Section 1.01.1 - Revises the language to extend the Term of the Agreements for all Concessionaires to four (4) years when tolling ends.
2. Paragraph 2 of Section 1.01.1 - Adds the following provision restricting certain Concessionaires from the tolling and extension of term: “Notwithstanding the foregoing, any Concessionaire awarded a contract during or before the year 2018 and whose Location(s) were not open by December 31, 2019, shall not be entitled to the tolling or extension of the Term of the Agreement, but solely with respect to such unopened Location(s), and solely as to those Location(s), the Agreement shall expire, on the date specified in the Agreement prior to the execution of this Amendment.”
3. Paragraph 4 of Section 1.01.1 - Removes the words “3 or 4 year”.

### Section 3.01. Compensation to the Department

4. Paragraph J of Section 3.01– Revises the language to exempt Concessionaires from complying with the investment requirement if the Concessionaire made an investment in its Location(s) equal to or greater than \$75.00 per square feet during the period between March 1, 2020 and December 31, 2021 and provides proof of such investment to the Aviation Department.
5. Paragraph K of Section 3.01 - Adds provisions with timelines and submittal requirements of financial records, improvement plans, and implementation schedules for the administration of the investment requirement for both the Concessionaires on month-to-month leases and the Aviation Department following approval of this Duty-Free Amendment by the Board of County Commissioners, including the Aviation Department’s right to terminate an Agreement with a Concessionaire on a month-to-month lease upon 30 days notification without any claims of any kind against the County arising out of such action, should the Concessionaire fail to meet the deadlines and requirements.

### **Adds Paragraphs P and Q**

- 6. Paragraph P: “No Assignment” – Adds provision prohibiting the Concessionaire to assign, transfer, pledge, or otherwise encumber the Agreement, nor sublet all or any portion of the Location(s), or allow parties other than Concessionaire, or any sublessee currently operating with the County’s express knowledge and consent, to use the Location(s) for the purposes established in the Agreement without the prior approval of the Board of County Commissioners.**
- 7. Paragraph Q: “Execution” - Adds provision requiring the Concessionaire to execute this Duty-Free Amendment within ninety (90) days of the Board of County Commissioners approval of this Amendment unless, the Board of County Commissioners authorizes additional time for the execution of such Amendment.**

### **Recommendation**

It is recommended that the Board of County Commissioners (Board) waive competitive bidding procedures by two-thirds vote of Board members present pursuant to Section 2-8.1 of the Code of Miami-Dade County (Code) and Section 5.03(d) of the Home Rule Charter; approve the attached standard form agreement entitled “Amendment to Lease and Concession Agreement by and between Miami-Dade County and Duty and Tax-Free Concessionaires at Miami International Airport for Concession Services” (Duty-Free Amendment); waive Resolution No. R-243-18, which requires concessionaires submitting claims seeking financial relief to certify their claims by providing financial records and supporting documentation to the County’s Office of Inspector General and Audit Management Services for review; and authorize the County Mayor or County Mayor’s designee to enter into and execute the attached Duty-Free Amendment with duty and tax-free concessionaires at Miami International Airport (MIA), of which there is currently one, Duty Free Americas Miami, LLC (Concessionaire). The Concessionaire currently operates 20 duty and tax-free concession stores. This Duty-Free Amendment complies with the rules the Airport Amended and Restated Trust Agreement and Bond Covenants and is subject to Federal Aviation Administration (FAA) approval.

It is in the best interest of the County to waive competitive bidding procedures as it is not practicable at this time to pursue open and full competition. This is the most expeditious way of (i) getting all the concessions reopened and (ii) implementing the important County goal of a living wage for the concession workers, which will also make it easier to attract workers in this difficult labor market post-pandemic. By waiving the competitive process, MIA’s existing concessionaires will be provided the necessary financial mechanisms to recover the financial losses they have been subjected to since the onset of the COVID-19 pandemic. The long-term relief being proposed will assist concessionaires in sustaining their business operations and encourage reinvestment in MIA, (which is integral to all of the operational aspects of the airport) and will provide benefits to MIA’s tenants, visitors, and air passengers in the foreseeable future.

The intent of this Duty-Free Amendment is twofold. First, the Duty-Free Amendment deletes certain key terms in the existing duty and tax-free concessionary agreement (which expires on September 13, 2024) with the Concessionaire and replaces them with brand-new business terms that will provide long-term relief and lessen the monetary hardships the Concessionaire is currently experiencing due the COVID-19 pandemic. Second, the Duty-Free Amendment supersedes the current Financial Relief Plan offered

to the Concessionaire, which waives the Minimum Annual Guarantee (MAG) payment and rent and other related fees until September 30, 2021. Upon Board approval, the Duty-Free Amendment will do the following:

- (i) Toll the term of the concessionary agreements commencing on March 1, 2020, until December 31, 2021. Once the tolling ends, the Concessionaire’s remaining term within each agreement shall resume. For those agreements that expire on or prior to September 13, 2024, an additional two (2) years shall be added to the Concessionaire’s resumed term. For those agreements that expire after September 13, 2024, but on or before October 21, 2025, an additional one (1) year shall be added to the Concessionaire’s resumed term. For those agreements that expire after October 21, 2025, no additional years shall be added to the Concessionaire’s resumed term. In the event the Concessionaire’s term is currently on a month-to-month tenancy, the Concessionaire will not have a resumed term upon the conclusion of the tolling period and shall only be entitled to an extension of four (4) years when the tolling ends.
- (ii) Delete the MAG payment requirement and base compensation on tiered annual rent plus percentage fees.
- (iii) Reduce monthly percentage fee payments for all percentage fee tiers (25 percent to 31 percent) from 100 percent of the total percentage fee to 70 percent of the total percentage fee, from March 1, 2021 to December 31, 2021. Thereafter, effective January 1, 2022, the total percentage fee for each tier will be set to 29 percent of gross revenues for the remainder of the agreement term.
- (iv) Allow concessionaires to return space back to MIA without penalty prior to execution of the amendment.
- (v) Require a minimum investment of \$75 per square feet to refresh each respective location. The obligation to invest such amount shall accrue for each location when international enplanements are 100 percent of 2019 international enplanements in the respective terminal of the location as follows: North Terminal – 5,138,381 enplanements, South Terminal – 3,286,313 enplanements, and Central Terminal – 2,561,778 enplanements. Such refreshment shall be completed within two years of such occurrence.
- (vi) Delete competitive pricing provisions.
- (vii) Waive security deposit and performance bond provisions effective March 1, 2021 until December 31, 2022. Commencing on January 1, 2023, concessionaires shall be required to maintain a security deposit equal to 15 percent of total rent and applicable taxes paid the Department in the immediate prior fiscal year. Such security deposit will be adjusted every subsequent fiscal year thereafter, and payment can be in the form of a performance bond, irrevocable standby letter of credit as approved by the Department or cash. If any concessionaire currently has a cash deposit, it will be credited to their account and such credit may be applied against any outstanding invoices.
- (viii) Suspend all marketing fees from March 1, 2021 – December 31, 2021.
- (ix) Incorporate the Living Wage requirement pursuant to Section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30 as amended.
- (x) Incorporate Labor Peace requirements per Resolution No. 148-07.

The Miami-Dade Aviation Department (MDAD) has placed on today’s agenda for Board approval two partner agenda items. Each item consists of a different amendment tailored specifically for the product

type offered by each MIA concession category (duty-free, retail, service, and food and beverage). Board endorsement of these amendments is in the best interest of the County as the new business terms will assist MIA’s concessionaires recover their financial losses and sustain their businesses despite the ongoing decline in passenger traffic. This particular agenda item seeks Board authorization to amend the existing duty and tax-free concessionary agreement with the Concessionaire.

**Scope**

MIA is located primarily within District 6, which is represented by Commissioner Rebeca Sosa. However, the impact of this agenda item is countywide as MIA is a regional asset.

**Delegation of Authority**

The County Mayor or County Mayor’s designee has the authority to exercise all the rights conferred therein in all existing concessionary agreements and any associated amendments, including, in general, the right to terminate, consent to assignment, or exercise dispute resolution procedures.

**Fiscal Impact/Funding Source**

The new business terms delineated in this Duty-Free Amendment propose a fundamental shift in concession fee terms with the purpose of providing MIA’s duty and tax-free concessionaires an innovative compensation strategy that is both balanced and effective for concessionaires and the County. Under the terms of the existing concessionary agreement, the Concessionaire is obligated to pay in addition to fixed costs, a MAG plus rent or an assigned percentage fee of gross revenues, whichever is greater. Those financial obligations have been replaced in this Duty-Free Amendment with payment terms that include customary fixed costs and a tiered pricing structure for annual rent plus percentage fees.

**Tiered Annual Rent**

The tiered rate for annual rent is based on the Board’s approved Terminal Class VI rate at MIA, which is currently \$88.75 per square foot. This rate will be modified as rates are revised and approved by the Board every year. Table 1, as shown below, demonstrates how the tiered pricing structure works for the duty and tax-free concession category. The per square foot rate is represented as a percentage reduction of the current rate approved by the Board, furthermore, the percentage reduction adjusts accordingly to a sliding scale of 2019 international enplanements.

Table 1. Tiered Annual Rent

<b>Percent of 2019 International Enplanements</b>	<b>Percent Rent Reduction</b>	<b>Annual Rental Rate (Based on \$88.75 per square foot)</b>
Less than 55 %	100%	\$0.00
Between 55% and less than 70%	56%	\$39.05
Between 70% and 85%	37%	\$55.91
Greater than 85%	-	\$88.75

This pricing strategy is designed so that the Concessionaire pays a proportional share of annual rent based on the percent of 2019 international enplanements in each respective MIA terminal. The percentage reduction of the current per square foot rate decreases as the percent of 2019 international enplanements increase, or vice-versa, thereby pegging the amount of annual rent to the level of passenger traffic. As can be seen, rent payments are not due until the number of international enplanements equal

55 percent of 2019 international enplanement levels, which gives the Concessionaire the opportunity to re-open stores that have been closed with minimal costs. Once the 85 percent threshold is surpassed, the Concessionaire will resume paying 100 percent of the Board approved passenger per square foot charge for the remainder of the agreement term.

Rent shall be paid as set forth in Table 1 only when duty and tax-free concession stores are open for business. If a store is open for less than an entire year or month, such rental charges relating to the percentage reduction shall be prorated based on the number of days such store is open on a 365-day proration year.

The Concessionaire shall be required by the Department to open its concession stores when international enplanements are 100 percent of 2019 international enplanements for a 90-day period in the respective MIA terminal of the duty and tax-free concession store.

Table 1-1, as exhibited below, shows the total number of 2019 international enplanements by MIA terminal for Calendar Year (CY) 2019 that correspond to the percent of 2019 international enplanements (55 percent, 70 percent, and 85 percent) cited in Table 1 on the previous page. The remaining columns breakdown 2019 annual enplanement numbers into monthly enplanement numbers.

Table 1-1.

International Enplanements January 1, 2019 - December 31, 2019							
Terminal	Total	Percentage of Total Enplanements - Annual			Percentage of Total Enplanements - Monthly <sup>1</sup>		
		55%	70%	85%	55%	70%	85%
North Terminal	5,138,381	2,826,110	3,596,867	4,367,624	235,509	299,739	363,969
South Terminal	3,286,313	1,807,472	2,300,419	2,793,366	150,623	191,702	232,781
Central Terminal	2,561,778	1,408,978	1,793,245	2,177,511	117,415	149,437	181,459
	10,986,472	6,042,560	7,690,531	9,338,501	503,547	640,878	778,209

<sup>1</sup> For example, each month international enplanements in the North Terminal is greater than or equal to 235,509, but less than 299,739 passengers, concessionaire will pay rent of \$39.05 per square foot, based on current rate of \$88.75 per square foot. Rate will increase to \$55.91 per square foot when monthly international enplanements is greater than or equal to 299,739, but less than 363,969 passengers, and full rent of \$88.75 per square foot will be charged each month international enplanements exceeds 363,969 passengers.

Percentage Fee Payment

Per the new business terms of this pricing strategy, the monthly percentage fee payments set forth in the existing concessionary agreement, which consists of a sliding scale of 25 percent to 31 percent of gross revenues, will be reduced from 100 percent of the total percentage fee to 70 percent of the total percentage fee, from March 1, 2021 to December 31, 2021. Thereafter, effective January 1, 2022, the total percentage fee for each tier will be set to 29 percent of gross revenues for the remainder of the agreement term.

Benefits of Pricing Strategy

Tables 2, 2-1 and 2-2 as represented on the next page best illustrate how the Concessionaire will benefit financially from the adoption of the newly proposed pricing strategy. The tables show the financial impact of the percentage rent reductions and percentage fees at work under three different scenarios in which the Concessionaire pays the tiered annual rent fee plus percentage fees based on pre-pandemic CY 2019 gross revenues or estimated gross revenues based on actual revenues reported to MDAD in the first half of 2021. Undoubtedly, the benefits extended through these pricing mechanisms will help the Concessionaire ease its financial burdens. It should also be noted that until countries around the

world lift international travel restrictions related to the COVID-19 virus, the demand for international air travel will mostly likely continue to lag behind the demand for domestic air travel, making the proposed relief package more essential for duty and tax-free concession stores.

Table 2 as depicted below, summarizes the impact of the proposed pricing strategy based on CY 2019 actual “pre-pandemic” gross revenues reported to MDAD for the period January 1, 2019 – December 31, 2019. The first column labeled “Revenue Due Per Existing Agreement” represents actual revenues due to MDAD per existing concession fee terms, not the newly proposed business terms. The remaining columns of Table 2 (going left to right) show the revenue due MDAD and the financial impact of the new pricing strategy with the total percentage fee set to 29 percent for each tier plus total annual rent, 29 percent percentage fee plus 37 percent rent reduction, and 29 percent percentage fee plus 56 percent rent reduction. Under this new pricing structure, the Concessionaire pays monthly the tiered annual rent plus 29 percent percentage fee. As shown in Table 2, the Concessionaire will continue to accrue benefits of over \$4.1 million annually when the number of enplanements exceed the 85 percent threshold of 2019 international enplanements and as such pay total rent.

Table 2.

**Summary of Fiscal Impact of Proposed Amendment**  
**Tiered Annual Rent and 29% Percentage Fee**  
**January 1, 2019 - December 31, 2019**

Lease and Concession Agreement	Revenue Due Per Existing Agreement <sup>1</sup>	Percentage Fee	Proposed Amendment					
			Total Rent		37% Rent Reduction		56% Rent Reduction	
			Revenue Due	Impact Gain/(Loss)	Revenue Due	Impact Gain/(Loss)	Revenue Due	Impact Gain/(Loss)
Duty Free	\$ 31,665,556	\$ 23,066,396	\$ 27,564,595	\$ (4,100,961)	\$ 25,900,261	\$ (5,765,295)	\$ 25,045,604	\$ (6,619,952)
	\$ 31,665,556	\$ 23,066,396	\$ 27,564,595	\$ (4,100,961)	\$ 25,900,261	\$ (5,765,295)	\$ 25,045,604	\$ (6,619,952)

<sup>1</sup> Revenue due per the concession fee terms set forth in existing agreement

Table 2-1 as shown on below, summarizes the impact of the proposed pricing strategy based on actual revenues reported to MDAD in the first half of 2021 and estimated gross revenues for the period July 1, 2021 – December 31, 2021. The first column labeled “Revenue Due Per Existing Agreement” represents revenues due to MDAD per existing concession fee terms, not the newly proposed business terms. The remaining columns of Table 2-1 (going left to right) show the revenue due MDAD and the financial impact under the new pricing strategy with the 70 percent percentage fee plus total annual rent, as well as 37 percent and 56 percent reductions to total rent. Because the new pricing structure calls for relief in the form of reduced monthly percentage fee payments from 100 percent of the total percentage fee to 70 percent of the total percentage fee from March 1, 2021 to December 31, 2021, the percentage fee in this table is set at 70 percent instead of 100 percent. Under this new pricing structure, the Concessionaire pays tiered annual rent fee plus the 70 percent percentage fee. As shown in Table 2-1, the Department may incur losses of up to \$6.6 million if international passenger traffic remains between 70 percent and 85 percent of 2019 enplanement levels.

Table 2-1.



**Summary of Fiscal Impact of Proposed Amendment**  
**Tiered Annual Rent and 70% of Total Percentage Fee (effective March 2021) <sup>1</sup>**  
**January 1, 2021 - December 31, 2021**

Lease and Concession Agreement	Revenue Due Per Existing Agreement <sup>2</sup>	Percentage Fee	Proposed Amendment					
			Total Rent		37% Rent Reduction		56% Rent Reduction	
			Revenue Due	Impact Gain/(Loss)	Revenue Due	Impact Gain/(Loss)	Revenue Due	Impact Gain/(Loss)
Duty Free	\$ 18,263,023	\$ 9,421,009	\$ 12,969,308	\$ (5,293,715)	\$ 11,656,437	\$ (6,606,586)	\$ 10,982,260	\$ (7,280,763)
	\$ 18,263,023	\$ 9,421,009	\$ 12,969,308	\$ (5,293,715)	\$ 11,656,437	\$ (6,606,586)	\$ 10,982,260	\$ (7,280,763)

<sup>1</sup> Concessionaire pay total percentage fee ranging from 25% to 31% on a sliding scale in January and February 2021, and tiered annual rent plus 70% of total percentage fee from March 1, 2021 - December 31, 2021

<sup>2</sup> Revenue due per the concession fee terms set forth in Concessionaire's existing agreement

Table 2-2 as depicted below, summarizes the impact of the proposed pricing strategy based on estimated gross revenues for the period January 1, 2022 – December 31, 2022. The first column labeled “Revenue Due Per Existing Agreement” represents revenues due to MDAD per the existing concession fee terms, not the newly proposed business terms. The remaining columns of Table 2-2 (going left to right) show the revenue due to MDAD and the financial impact under the new pricing strategy with the total percentage fee set to 29 percent for each tier plus total annual rent, as well as 37 percent and 56 percent reductions to total rent. Under this new pricing structure, the Concessionaire pays tiered annual rent plus the 29 percent percentage fee. As shown in Table 2-2, the Department is projecting a financial loss of approximately \$2.4 million or less if international enplanements do not surpass 85 percent of 2019 passenger traffic levels.

Table 2-2.

**Summary of Fiscal Impact of Proposed Amendment**  
**Tiered Annual Rent and 29% Percentage Fee**  
**January 1, 2022 - December 31, 2022**

Lease and Concession Agreement	Revenue Due Per Existing Agreement <sup>1</sup>	Percentage Fee	Proposed Amendment					
			Total Rent		37% Rent Reduction		56% Rent Reduction	
			Revenue Due	Impact Gain/(Loss)	Revenue Due	Impact Gain/(Loss)	Revenue Due	Impact Gain/(Loss)
Duty Free	\$ 28,257,959	\$ 23,216,286	\$ 27,474,245	\$ (783,714)	\$ 25,898,800	\$ (2,359,159)	\$ 25,089,788	\$ (3,168,171)
	\$ 28,257,959	\$ 23,216,286	\$ 27,474,245	\$ (783,714)	\$ 25,898,800	\$ (2,359,159)	\$ 25,089,788	\$ (3,168,171)

<sup>1</sup> Revenue due per the concession fee terms set forth in existing agreement

Although the calculations show revenue losses to the County even under the best of circumstances, these losses will be somewhat offset through relief funds provided via the recently approved Coronavirus Response and Relief Supplemental Appropriations Act of 2021 and the American Rescue Plan Act of 2021 which are discussed in more detail below. The Department will further offset any losses and balance MDAD’s budget through additional revenues received by MIA from new entrants, like Spirit Airlines, Southwest Airlines, Jet Blue Airlines and Emirates Airlines. The presence of these airline carriers increases revenues to the airport by renting gates, ticket counters and cargo building space in addition to aviation fees and charges. The Department will also receive additional revenues from an increase in the number of visitors and air passengers that will use MIA’s vehicle parking facilities and concessions. It is estimated that a total of \$36,761,960 in additional revenues will be received by MIA from the four airlines noted above. Moreover, there are three to four new airlines that will start flying out of MIA later this year and the first and second quarters of 2022 further increasing revenues to the airport.

Mitigation of COVID-19 Pandemic Impacts via Federal Funds

Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020, the County received \$207,255,557 in funds to provide monetary relief to



the County’s airport system. Eight months later, on December 27, 2020, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021 was signed into law making available another \$39,546,980 in relief. Lastly, on March 11, 2021, the American Rescue Plan Act (ARPA) of 2021 was signed into law. The County will be receiving \$160,158,785 in relief from this latest federal COVID-19 bill.

Table 3, as depicted on the next page, shows the dollar amounts of federal funds that have been allocated to the County and the relief dollars earmarked for concessionaires.

Table 3. Federal Relief Dollars Provided to Miami-Dade County

<b>Stimulus Bill Name (Act)</b>	<b>Total Relief Dollars</b>	<b>Relief Dollars Earmarked for Concessionaires</b>
CARES	\$207,255,557	\$0
CRRSAA*	\$39,546,980	\$4,587,827
ARPA	\$160,158,785	\$18,351,308

\* This includes Parking and Rental Cars

From March 2020 through June 30, 2021, MDAD has experienced a revenue shortfall of \$466.4 million due to the impact of the COVID-19 pandemic. The federal funds received through the CARES Act and most of the CRRSAA funds have already been used by MDAD to offset its financial losses by subsidizing debt service payments, payroll costs, and operating expenses. During the same period, MDAD offered a total of \$150.5 million in relief to concessionaires, cargo handlers, general aeronautical service permittees, car rental companies, fixed-base operators and other tenant providing services throughout the County’s airport system. Out of the \$150.5 million offered in relief, \$146.9 million in relief was accepted by MIA’s business partners. In that same period, \$46.5 million in percentage fees was billed, making for a net impact of \$100.4 million to the County.

Revenue streams for fixed-based operators (including Signature Flight Support based at MIA) and rental car companies have rebounded to a point that they are no longer receiving relief dollars.

**Track Record/Monitor**

MDAD’s Division Director of Concessions Sarah Abate will monitor the implementation of the Duty-Free Amendment.

**Background**

The attached Duty-Free Amendment was prepared by MDAD staff in response to a directive issued by the Board via Resolution No. R-1254-20 on December 15, 2020. Due to the changed circumstances created by the COVID-19 pandemic, the County Mayor was directed to strategize and prepare a forward-looking plan for Board approval that provides MIA’s concessionaires prolonged financial relief. As directed by the Resolution, while formulating this plan, MDAD conducted an in depth-review of the business terms in the existing concessionary agreements as well as the impacts of passenger volumes in relation to revenues generated. As a result of these assessments, the Administration is looking to make changes that would benefit concessionaires considering their present-day business situations by proposing a concession pricing strategy and a concession contract term that provides the type of relief

needed. Other factors and applicable County Commission policies that were considered by the Administration while crafting the business terms being proposed are noted below.

- Although overall passenger traffic at MIA has nearly returned to normal in absolute terms, international passenger numbers continue to lag behind domestic passenger numbers. This is critical since historical data indicates that international passengers spend materially more at airport retail and restaurants, certainly represent a major portion of the duty-free customer base, and particularly impact certain terminals and gate areas.
- MIA has a higher percent of small and local businesses than most, if not all, other similarly sized airports in the country, and these businesses have been particularly hit hard by the near complete shut down of air travel during much of the pandemic.
- The current composition of concessionaires includes many that have no current contract and are simply operating on a month-to-month basis at the airport, as compared to many others that have current contracts with expiration dates ranging over the next eight years. A majority of those, however, will be expiring on or before September 13, 2024.
- Pursuant to Ordinance No. 18-78, the Board of County Commissioners amended Section 2-8.9 of the Code of Miami Dade County to extend the living wage provisions thereof to new airport concession agreements and further provided that any additional time extensions of existing concession agreements must be subject to the provisions of the Living Wage ordinance.
- The current labor market has meant that concessionaires find themselves paying higher hourly wages than before the COVID-19 pandemic in order to compete for employees.
- Many major US airports already require a living wage for concession employees, including Denver, Chicago, Los Angeles, Ft. Lauderdale, Houston, San Francisco, both New York City airports, Washington, D.C., and Philadelphia.
- It is important for the future of the airport that concessionaires invest in their businesses, including the aesthetics and maintenance of the concourse areas.
- The Administration also recognizes that we need future competition for concession slots at MIA and that any long-term recovery plan must still provide an opportunity for some competitive procurement in the medium-term.

The goal of the proposed long-term recovery plan is to provide meaningful relief to concessionaires for the losses and lost opportunities they have incurred due to the economic impacts of the COVID-19 pandemic (particularly those still under contract that have lost the benefit of their bargain during the pandemic) while still incentivizing them to agree to term extensions that require a living wage to be paid and investments to be made.

On July 13, 2021, the Administration met with a large group of MIA’s concessionaires to discuss their plight and to consider their proposed business terms for long term recovery. The Administration’s proposal balances the legitimate needs of the concessionaires with the revenue needs of the airport. The critical sticking point is the length of the extension of time. Understandably, the concessionaires wanted as much time as possible to make up for the losses and to assume the costs of implementing a living wage. In that regard, the Administration is recommending the following:

- All contracts, including month-to-month, shall be deemed to be tolled from March 1, 2020 through December 31, 2021.

- With respect to month-to-month concessionaires, if they agree to this relief program, they will be granted a four-year extension, as a contract, starting January 1, 2022.
- For those concessionaires who have current contracts, the 22 months of the tolled period shall be added to the term of their agreement.
- For contracts that expire on or before September 13, 2024, an additional two years shall be added to the term. For contracts that expire after September 13, 2020 but before or on October 21, 2025, an additional one year shall be added to the term. Any contracts expiring after October 21, 2025 shall not have any additional time added other than the tolling period.

Proposed Amendments

Table 4, as shown below, details the differences between the business terms in MIA’s existing duty and tax-free concessionary agreement and those proposed in this Duty-Free Amendment.


Table 4. Business Terms

Business Terms	Existing Business Terms	New Business Terms
Contract Term	Agreement contains a 10-year term that expires on September 13, 2024.	Toll the term of the concessionary agreements commencing on March 1, 2020, until December 31, 2021. Once the tolling ends, the Concessionaire’s remaining term within each agreement shall resume. For those agreements that expire on or prior to September 13, 2024, an additional two (2) years shall be added to the Concessionaire’s resumed term. For those agreements that expire after September 13, 2024, but on or before October 21, 2025, an additional one (1) year shall be added to the Concessionaire’s resumed term. For those agreements that expire after October 21, 2025, no additional years shall be added to the Concessionaire’s resumed term. In the event the Concessionaire’s term is currently on a month-to-month tenancy, the Concessionaire will not have a resumed term upon the conclusion of the tolling period and shall only be entitled to an extension of four (4) years when the tolling ends.
Minimum Annual Guarantee (MAG)	Agreement contains a MAG payment requirement.	No MAG payment. Compensation is based on tiered annual rent plus monthly percentage fees.

Percentage Fee Percent of Gross Revenues	Agreement establishes monthly percentage fees.	Reduce monthly percentage fee payments for all percentage fee tiers (25 percent to 31 percent) from 100 percent of the total percentage fee to 70 percent of the total percentage fee, from March 1, 2021 to December 31, 2021. Thereafter, effective January 1, 2022, set the total percentage fee for each tier to 29 percent of gross revenues for the remainder of the agreement term.
Concession Space	Penalty for returning space.	No penalty for returning space prior to execution of amendment.
Refresh Locations	Agreement contains a refurbishment requirement.	Invest a minimum of \$75 per square foot to refresh each location, such investment will accrue for each location when international enplanements are 100 percent of 2019 international enplanements in the respective terminal of the location as follows: North Terminal – 5,138,381 enplanements, South Terminal – 3,286,313 enplanements, and Central Terminal – 2,561,778 enplanements. Such refreshment shall be completed within two years of such occurrence.
Competitive Pricing	Pricing is set at 15 percent less than comparable stores.	No competitive pricing.
Performance Bonds, Security Deposit	Agreement requires: 1) a performance bond to guarantee 75 percent of MAG and annual rent and applicable taxes, and 2) a security deposit in the form of cash or an irrevocable letter of credit in an initial amount of 25 percent of the MAG and annual rent and any applicable taxes. The security payment will be adjusted to reflect any increases or decreases in annual rent.	Security deposit and performance bond provisions shall be waived effective March 1, 2021 until December 31, 2022. Commencing on January 1, 2023, concessionaires shall be required to maintain a security deposit equal to 15 percent of total rent and applicable taxes paid the Department in the immediate prior fiscal year. Such security deposit will be adjusted every subsequent fiscal year thereafter, and payment can be in the form of a performance bond, irrevocable standby letter of credit as approved by the Department or cash. If any concessionaire currently has a cash deposit, it will be credited to

		their account and such credit may be applied against any outstanding invoices.
Marketing Fees	Agreement contains a marketing fee, which consists of one-half (½) of one (1) percent of gross revenues assessed annually and paid monthly.	Suspension of all marketing fees from March 1, 2021 – December 31, 2021. On January 1, 2022, marketing fees resume.
Living Wage	Agreement does not include Living Wage requirements.	Incorporate the Living Wage requirement pursuant to Section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30 as amended.
Labor Peace	Agreement does not include Labor Peace requirements.	Incorporate Labor Peace requirements per Resolution No. 148-07.

It is anticipated that these new business terms will incentivize the Concessionaire to re-open businesses and/or extend the hours of operations. Since the onset of the COVID 19 pandemic in March 2020, more specifically, from March 1, 2020 – June 30, 2021, international passenger traffic levels (arrivals and departures) have decreased on average by approximately 63.4 percent as compared to levels from March 1, 2019 – June 30, 2020, causing duty and tax-free concession stores to limit their hours of operation or to shut down. Moreover, as of July 31, 2021, out of a total of 20 duty and tax-free concession stores operated by the Concessionaire, only 15 stores are open for business. With Board approval of the attached Duty-Free Amendment, the financial burden currently being experienced by these concession stores will be eased, furthermore and more importantly, it is expected that the newly proposed concession pricing strategy will ultimately deliver long-term relief and benefits to MIA’s duty and tax-free concession businesses, the traveling public, and the County.




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Jimmy Morales  
Chief Operations Officer



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**DATE:** December 1, 2021

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

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

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present , 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(A)(1)  
12-1-21

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO FINANCIAL RELIEF AT MIAMI INTERNATIONAL AIRPORT DUE TO THE EFFECTS OF CORONAVIRUS DISEASE 2019 (COVID-19); WAIVING FORMAL BID PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND NON-COMPETITIVE BID WAIVER PROVISIONS OF SECTION 2-8.1(B) OF THE CODE OF MIAMI-DADE COUNTY BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AMENDING LEASE AND CONCESSION AGREEMENTS FOR DUTY AND TAX-FREE CONCESSIONAIRES AT MIAMI INTERNATIONAL AIRPORT WHICH (1) RETROACTIVELY TOLLS THE TERM OF THE LEASE AND CONCESSION AGREEMENTS FROM MARCH 1, 2020 UNTIL DECEMBER 31, 2021 AND EXTENDS THE TERM ONCE TOLLING ENDS UNDER CERTAIN CIRCUMSTANCES, (2) REMOVES THE PAYMENT OBLIGATION OF A MINIMUM ANNUAL GUARANTEE AND REPLACES IT WITH A TIERED ANNUAL RENT OBLIGATION BASED ON ENPLANEMENT LEVELS WITHIN THE TERMINALS OF THE CONCESSIONAIRES' RESPECTIVE LOCATIONS, (3) MODIFIES THE PERCENTAGE FEE OF GROSS REVENUES, (4) SUSPENDS MARKETING FEES RETROACTIVE FROM MARCH 1, 2021 TO DECEMBER 31, 2021, (5) REMOVES PROVISION REGARDING COMPETITIVE PRICING, (6) INCORPORATES LABOR PEACE REQUIREMENTS, IN ACCORDANCE WITH RESOLUTION NO. R-148-07, (7) INCORPORATES LIVING WAGE REQUIREMENTS, PURSUANT TO ORDINANCE NO. 18-78 AND ADMINISTRATIVE ORDER NO. 3-30, (8) PROHIBITS DUTY AND TAX-FREE CONCESSIONAIRES FROM ASSIGNING THEIR LOCATIONS, AND (9) DOES NOT ENTITLE DUTY AND TAX-FREE CONCESSIONAIRES TO THE TOLLING AND EXTENSION OF TERM UNDER CERTAIN CIRCUMSTANCES; WAIVING RESOLUTION NO. R-243-18 RELATING TO CLAIMS BY CONCESSIONAIRES; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AMENDMENTS, IN SUBSTANTIALLY THE FORM ATTACHED HERETO, PROVIDED THAT DUTY AND TAX-FREE CONCESSIONAIRES EXECUTE THE AMENDMENTS WITHIN 90 DAYS AND PROVIDED THAT THE AMENDMENTS COMPLY WITH THE REQUIREMENTS OF THE FEDERAL AVIATION ADMINISTRATION, AIRPORT AMENDED AND RESTATED TRUST AGREEMENT, AND BOND COVENANTS, EXERCISE ALL RIGHTS CONFERRED THEREIN, INCLUDING TERMINATION, AND PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE THE EXECUTED AMENDMENTS TO THE PROPERTY APPRAISER IN ACCORDANCE WITH RESOLUTION NO. R-791-14



**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board:

**Section 1.** Finds that it is in the best interest of Miami-Dade County to waive, by a two-thirds vote of Board members present, formal bid procedures pursuant to section 5.03(D) of the Home Rule Charter and section 2-8.1 of the Code of Miami-Dade County for the Lease and Concession Agreement between Miami-Dade County and Duty and Tax Free as financial relief for such Concessionaires are warranted due to the effects of coronavirus disease 2019 (COVID-19).

**Section 2.** Approves the Amendment to the Lease and Concession Agreement, in substantially the form attached hereto, between Miami-Dade County and Duty and Tax Free. Such Amendment, among other things:

- 1) Retroactively tolls the term of the Lease and Concession ~~[[for three years]]~~<sup>1</sup> from March 1, 2020 until December 31, 2021. Duty and Tax Free's respective terms within their agreements shall resume after tolling ends and their term extended ~~[[based on original termination dates]]~~<sup>>>for four years<<</sup>;
- 2) Removes the payment obligation of a Minimum Annual Guarantee and replaces it with a tiered annual rent obligation based on enplanement levels within the terminals of Duty and Tax Free's respective locations;

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<sup>1</sup> Committee amendments are indicated as follows: Words stricken through and/or [[double bracketed]] are deleted, words underscored and/or >>double arrowed<< are added.

- 3) Modifies monthly percentage fee payments for all percentage fee tiers (25 percent to 31 percent) from 100 percent of the total percentage fee to 70 percent of the total percentage fee, from March 1, 2021 to December 31, 2021. Thereafter, effective January 1, 2022, the total percentage fee for each tier will be set to 29 percent of gross revenues for the remainder of the agreement term;
- 4) Suspends marketing fee payment obligation from March 1, 2021 until December 31, 2021;
- 5) Removes provision regarding competitive pricing;
- 6) Incorporates Labor Peace provisions, in accordance with Resolution No. R-148-07; [[and]]
- 7) Incorporates Living Wage requirements provided in Ordinance No. 18-78 and Administrative Order No. 3-30[[-]]>>;
- 8) Prohibits Duty and Tax-Free from assigning their Locations without prior approval of the Board of County Commissioners; and
- 9) Does not entitle Duty and Tax-Free to the tolling or extension of the Term of the Agreement if their Location(s) were awarded a contract during or before the year 2018 and such Location(s) were not open by December 31, 2019.<<

**Section 3.** Supersedes Resolution No. R-753-21 which extended the term of relief for certain concessionaires at Miami International Airport on a month-to-month basis from August 1, 2021 to no later than September 30, 2021.

**Section 4.** Waives Resolution No. R-243-18 relating to claims by concessionaires.

**Section 5.** Authorizes the County Mayor or County Mayor's designee to execute the Amendment to the Lease and Concession Agreement, in substantially the form attached hereto,

>>provided Duty and Tax-Free executes the Amendment within ninety (90) days of the effective date of this resolution and<< provided that it complies with the requirements of the Federal Aviation Administration, Airport Amended and Restated Trust Agreement, and bond covenants, exercise all rights conferred therein, including termination, and perform all acts necessary to effectuate same.

**Section 6.** Directs the County Mayor or County Mayor’s designee to provide an executed copy of the Amendment to the Property Appraiser, in accordance with Resolution No. R-791-14.

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

Jose “Pepe” Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 1<sup>st</sup> day of December, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Altanese Phenelus

**AMENDMENT TO LEASE AND CONCESSION AGREEMENT BY AND BETWEEN  
MIAMI-DADE COUNTY AND DUTY AND TAX-FREE CONCESSIONAIRES AT  
MIAMI INTERNATIONAL AIRPORT FOR CONCESSION SERVICES**

THIS AMENDMENT (the “Amendment”) to the Lease and Concession Agreement (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, between Miami-Dade County acting by and through its Aviation Department (“County”, “Department”, or “MDAD”) and \_\_\_\_\_ (“Concessionaire”).

WHEREAS, the coronavirus disease 2019 (COVID-19) has caused a steep decline in flight and passenger travel to and through Miami International Airport (MIA) which has led to a significant reduction in business for the County’s concessionaires at MIA.

WHEREAS, in response to this, the Miami-Dade County Board of County Commissioners (the “Board”) passed Resolution No. R-332-20, which approved the adoption and implementation of financial relief for the County’s business partners at MIA and the General Aviation Airports (GAAs) for an initial term of three months and another three months thereafter, terminating on August 31, 2020.

WHEREAS, the Board then enacted Resolution Nos. R-749-20, R-1254-20, R-379-21, and R-753-21, approving an extension of relief for certain business partners at MIA due to the continued decline in flights and passenger traffic; such extended relief is set to terminate on September 30, 2021.

WHEREAS, because business revenue levels continue to remain low throughout MIA and are forecasted to remain as such, it is vital that concessionaires at MIA are offered relief on a forward-looking basis.

WHEREAS, the Board directed the County Mayor or County Mayor’s designee to strategize and develop a forward-looking plan that at the very least examined the impacts of passenger volumes in relation to revenues generated and explored potential changes to existing concessionaire contracts in order to provide financial assistance to concessionaires at MIA due to the effects of COVID-19.

WHEREAS, the Miami-Dade Aviation Department (MDAD) proceeded as directed and in conjunction with the concessionaires have agreed to remove the Minimum Annual Guarantee and provide relief based on the level of enplanements to ensure that there is a direct correlation between the enplanement volume as compared to enplanements in 2019 and the compensation due from concessionaires to MDAD.

WHEREAS, although rental rates are higher than that which the concessionaire would pay during low enplanement levels, MDAD will offset the remainder of the rent with funds from the Coronavirus Response and Relief Supplemental Appropriation Act, the American Rescue Plan Act of 2021, and any other future federal relief to the extent permitted.

WHEREAS, the County would like all Concessionaires to raise employee wages at

Miami International Airport.

WHEREAS, Concessionaires agree to pay their employees the Living Wage.

WHEREAS, it is in the best interest of the County and the citizens of Miami-Dade County to pay such wages for all Concessionaire employees at Miami International Airport.

NOW THEREFORE, in consideration of the relief provided and the terms and conditions set forth herein, the parties agree as follows:

1. **Recitals.** The Recitals to this Amendment are true and correct and are hereby incorporated into this Amendment.
2. **Amendments to Lease and Concessions Agreement.**<sup>1</sup>

**A. Definitions:**

- a) The term “**Living Wage**” shall mean those wages paid to the Concessionaire’s employees pursuant to section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30, as amended. The Concessionaire shall also ensure that its subcontractors comply with these provisions, with respect to their employees.
- b) The term “**Labor Peace Agreement**” as provided in Resolution No. R-148-07 shall mean the agreement between the Concessionaire and any labor organization(s) that seek to represent Concessionaire’s workforce and that contains, at a minimum, a promise by the labor organization that neither it nor its members shall engage in any strike, picketing, or other economic activity that could disrupt operations at MIA, and a provision giving the County the right, in the event of a labor disruption, to suspend the County’s obligations under the contract while the labor disruption is ongoing.

**B. Term:**

**1.01.1 TERM:** With respect to each Location granted Concessionaire in this Agreement, and to the extent such Agreement is subject to a term, the term of this Agreement, as specified herein, shall be tolled commencing on March 1, 2020, and continuing until December 31, 2021. Once such tolling ends, the Concessionaire’s remaining term within the Agreement as of March 1, 2020 shall resume~~[[. For those agreements that expire on or prior to September 13, 2024, an additional two (2) years shall be added to the Concessionaire’s resumed term. For those agreements that expire after September 13, 2024, but on or before October 21, 2025, an additional one (1) year shall be added to the Concessionaire’s resumed term. For those agreements that expire after October 21, 2025, no additional years shall be added to the Concessionaire’s resumed term]]~~ >>and an additional four (4) years shall be added to the Concessionaire’s

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<sup>1</sup> The amendments set forth herein are specific to the subarticle or matter delineated and are not intended to replace the entire article within the Lease and Concessions Agreement, unless specified.

resumed term<<. In the event the Concessionaire's term is currently on a month-to-month tenancy, the Concessionaire will not have a resumed term upon the conclusion of the tolling period and shall only be entitled to an extension of four (4) years when the tolling ends.

>>Notwithstanding the foregoing, any Concessionaire awarded a contract during or before the year 2018 and whose Location(s) were not open by December 31, 2019, shall not be entitled to the tolling or extension of the Term of the Agreement, but solely with respect to such unopened Location(s), and solely as to those Location(s), the Agreement shall expire, on the date specified in the Agreement prior to the execution of this Amendment.<<

If any Subtenant of a Concessionaire fails to execute an Amendment to such Subtenant's sublease that includes all of the provisions of this Amendment to the Concessionaire's lease, then such Subtenant's lease shall terminate as set forth in such Subtenant's original lease. In the event that the Concessionaire terminates an ACDBE subtenant, the Concessionaire shall use good faith efforts to replace that terminated subtenant with another ACDBE subtenant such that Concessionaire continues to meet his overall ACDBE goal.

In the event that a Concessionaire, for any reason, pays its employees a wage less than that of the then prevailing applicable Living Wage, with or without health benefits, the applicable [~~3 or 4 year~~] extension period provided for above shall cease, effective as of the date that the Concessionaire failed to provide such wages or offer such insurance, unless Concessionaire has cured such failure within thirty (30) days of it receiving notice, from any source, of this failure.

Where required by Title 49 CFR 23.75, this Agreement may be subject to subsequent long term lease approval by the Federal Aviation Administration (FAA); in the event that the FAA (1) determines that this lease is a long-term exclusive lease and (2) such lease is not approved by the FAA, the term of this Lease shall be deemed to be five years from this Amendment's Effective Date, without exception. In the event of such determination by the FAA, the Concessionaire shall have no recourse or claim against the County and the County shall have no liability to the Concessionaire of any kind, including with respect to lost profits, loss of opportunity, loss of investment, loss of goodwill, claims related to costs to construct or build out locations, or any direct or indirect claims of any kind. In no event shall this Agreement afford Concessionaire or any other party any right to use or occupy the Location (or any part thereof) after the expiration, or termination of this Agreement.

**C. Delete Sub-article regarding "Minimum Annual Guarantee"**

**D. Rentals, Payments and Reports:**

- a) **3.01 COMPENSATION TO THE DEPARTMENT:** Commencing on March 1, 2021 until the end of the Term, as consideration for the privilege to engage in



business at Miami International Airport, the Concessionaire shall pay the Department both a percentage fee of 31 percent of Gross Revenues as indicated within this Amendment and the prevailing Class VI Terminal rental rates for the lease of the Location(s) that are open as set forth below: There will be no charge of the prevailing Class VI Terminal rental rates for the lease of the Location(s) that are open when enplanements in the terminal in which such Location is located is below the amount specified in Exhibit A.

- b) Concessionaire shall pay forty-four percent (44%) of the prevailing Class VI Terminal rental rates (a rent reduction of 56% of the prevailing Class VI Terminal rental rates) for the lease of the Location(s) that are open when enplanements in the terminal in which such Location is located is below the amount specified in Exhibit A.
- c) Concessionaire shall pay sixty-three percent (63%) of the prevailing Class VI Terminal rental rates (a rent reduction of 37% of the prevailing Class VI Terminal rental rates) for the lease of the Location(s) that are open when enplanements in the terminal in which such Location is located is below the amount specified in Exhibit A.
- d) Concessionaire shall pay one hundred percent (100%) of the prevailing Class VI Terminal rental rates (no rent reduction) for the lease of the Location(s) that are open when enplanements in the terminal in which such Location is located equals or exceeds the amount specified in Exhibit A.
- e) Monthly enplanements shall be measured using aviation statistics used by the Department's Finance Division, and the Department's measurement of same, if conducted in accordance with the Department's standards, shall be binding on the Concessionaire and shall not be subject to challenge. The Department reserves the right to adjust rental rates when it determines that enplanement levels have been impacted by an event other than COVID-19.
- f) The tiered annual reduced rent thresholds set forth in paragraphs a) – c) above are provided as COVID-19 relief and are intended to be progressive. Any grant funds received by the County to provide relief to airport concessions may be utilized to offset any differential between the payments made by Concessionaires pursuant to paragraphs a) - c) above and the prevailing Class VI Terminal rental rates for the lease of the Location(s). Once Concessionaire pays one hundred percent (100%) of the prevailing Class VI terminal rental rate for a Location as set forth in paragraph d) above, the COVID related rental rate relief for that Location extinguishes and paragraphs a) - c) cease to apply to the Agreement. Concessionaire acknowledges and agrees that in order for the Department to apply rent relief from the federal allocated concession relief funds, the Concessionaire must, to the extent the Concessionaire is able to certify that it has requested or plans to request or has received a second draw or assistance for a covered loan under section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37)) that has been applied toward rent,

and may not apply for a covered loan under 15 U.S.C. 636(a)(37). Concessionaire agrees that if further federal concessions relief funding is allocated to MIA, Concessionaire will take all reasonable efforts to comply with any federal requirements for concessionaire eligibility. Concessionaire shall disclose to the County, upon request, all information and documentation related to compliance with such federal requirements. To the extent the Federal Aviation Administration revises any federal grant relief programs, the Director of the Miami-Dade Aviation Department is delegated the authority to modify this Agreement accordingly.

- g) To the extent Concessionaire has storage, office, or other space which the Concessionaire leases to support its operations at MIA, such space will be billed in the same manner as the tiered annual reduced rent thresholds in paragraphs a) – f) above.
- h) Subject to (i) below, Concessionaire shall pay Annual Rental as set forth above only when Concessionaire has an open Location(s). If any Location(s) is open for less than one month such rental charges relating to the percentage reduction shall be prorated based on the number of days such store is open on a 365-day proration year. For purposes of this section, a Location shall be considered open on any day in which the Location generates gross revenue under this Agreement.
- i) Concessionaire shall be required by the Department to open its Location(s) when enplanements are one hundred percent (100%) of 2019 Enplanements for international passengers in the respective terminal of the Location(s) for a ninety (90) day period. If the Concessionaire refuses to open a Location(s), the Department at its sole discretion, and without recourse to the Concessionaire, may take such Location(s) back from the Concessionaire. Any locations taken back by the Department may be re-leased or re-concessed, either individually or in a package with other locations in the Department's sole discretion. In the event the Department takes a location back, or re-releases or re-concesses such location, Concessionaire shall not have claim of any kind against the County arising out of such action, including but not limited to claims for lost profits, loss of opportunity, loss of investment, loss of goodwill, claims related to costs to construct or build out locations, or any direct or indirect claims of any kind. Should Concessionaire choose to surrender its Location prior to the execution of this Amendment, any penalty that may be assessed under the Agreement shall be waived.
- j) In consideration for the tolling and the applicable extension delineated in Article B above, Concessionaire shall invest a minimum of \$75 per square feet to refresh their respective Location(s). Concessionaire's obligation to invest such amount shall accrue, for each Location, when enplanements are one hundred percent (100%) of 2019 Enplanements for domestic and international passengers in the respective terminal of the Location(s), and shall be completed within two years of such occurrence. The Department shall not be liable for payment of such investment costs in the event the Department takes any Location(s) back from Concessionaire pursuant to (i) above. For any Location(s) where such reinvestment has not

occurred within two years of the accrual date, the Department at its sole discretion, and without recourse to the Concessionaire, may take such Location(s) back from the Concessionaire. Any locations taken back by the Department may be re-leased or re-concessed, either individually or in a package with other locations in the Department's sole discretion. In the event the Department takes a location back, or re-leases or re-concesses such location, Concessionaire shall not have claim of any kind against the County arising out of such action, including but not limited to claims for lost profits, loss of opportunity, loss of investment, loss of goodwill, claims related to costs to construct or build out locations, or any direct or indirect claims of any kind. Notwithstanding the forgoing, the \$75 per square foot investment requirement shall be in the aggregate over all the locations under Concessionaire's Agreement, but only if the Concessionaire submits a plan to MDAD for investment into its locations showing the differential rates of re-investment in the locations, and if such plan is approved by MDAD. >>Concessionaire shall not be subject to this investment requirement to the extent Concessionaire has already made an investment in its Location(s) equal to or greater than \$75 per square feet during the period between March 1, 2020 and December 31, 2021 and provides proof of such investment to the Department.

- k) In addition to the investment requirement in subparagraph (j) above and in consideration of the extension of term, Concessionaires on a month-to-month lease shall: (1) within sixty (60) days of the Board of County Commissioners' approval of this Amendment, submit to the Commission Auditor their financial records for the years 2020 and 2021 which shall reveal, at a minimum, whether such Concessionaire has been operating during 2020 and 2021 and the nature and details of its operations during that time; (2) within ninety (90) days of the Board of County Commissioners' approval of this Amendment, submit to the Department concepts and plans to improve their Location(s); and (3) within 180 days of the Board of County Commissioners' approval of this Amendment, submit to the Department an implementation schedule for the improvements to their respective Location(s). The Department shall make every effort to approve, within ninety (90) days, all required permits for Concessionaires on a month-to-month lease making improvements to their Location(s). The Department shall have the right to terminate this Amendment upon thirty (30) days notice should a Concessionaire on a month-to-month lease fail to meet the foregoing deadlines and requirements, and in the event of such termination, Concessionaire shall not have claim of any kind against the County arising out of such action, including but not limited to, claims for lost profits, loss of opportunity, loss of investment, loss of goodwill, claims related to costs to construct or build out locations, or any direct or indirect claims of any kind.<<

**E. Percentage Fee to the Department:**

**3.04.1 PERCENTAGE FEE TO THE DEPARTMENT:**

Commencing on March 1, 2021 until December 31, 2021, the Concessionaire shall pay seventy percent (70%) of the percentage fees set forth in the Agreement, as specified in

Exhibit B. Overages, if any, shall be applied as a credit only.

The reduction in percentage fee is provided solely as COVID-19 relief. Any grant funds received by the County to provide relief to airport concessions may be utilized to offset any differential between the percentage fee payments made by Concessionaires and the remaining thirty percent (30%) of the percentage fees set forth in the Agreement. Concessionaire acknowledges and agrees that in order for the Department to apply rent relief from the federal allocated concession relief funds, the Concessionaire must, to the extent the Concessionaire is able to, certify that it has requested or plans to request or has received a second draw or assistance for a covered loan under section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37) that has been applied toward rent, and may not apply for a covered loan under 15 U.S.C. 636(a)(37). Concessionaire agrees that if further federal concessions relief funding is allocated to MIA, Concessionaire will take all reasonable efforts to comply with any federal requirements for concessionaire eligibility. Concessionaire shall disclose to the County, upon request, all information and documentation related to compliance with such federal requirements. To the extent the Federal Aviation Administration revises any federal grant relief programs, the Director of the Miami-Dade Aviation Department is delegated the authority to modify this Agreement accordingly.

Commencing on January 1, 2022 through the end of the term of the Concession Agreement, the Concessionaire shall pay a flat percentage fee of twenty-nine percent (29%) of Gross Revenues.

In the event that a Concessionaire, for any reason, pays its employees a wage less than the then prevailing applicable Living Wage, with or without health benefits, Concessionaire shall no longer receive the two percentage point reduction in percentage rent, effective as of the date that the Concessionaire failed to provide such wages or offer such insurance, unless Concessionaire has cured such failure within thirty days of it receiving notice, from any source, of this failure.

**F. Concession Marketing Fee:**

**3.09.1 CONCESSION MARKETING FEE:** Effective March 1, 2021 until December 31, 2021, the payment of a Marketing Fee will be suspended. Commencing January 1, 2022, the Marketing Fee provided in the Agreement shall resume.

**G. Security Deposit:**

**3.10 PERFORMANCE BOND/PAYMENT SECURITY:** Effective March 1, 2021 until December 31, 2022, the security deposit provisions shall be waived. The security deposit provisions shall commence on January 1, 2023.

Commencing on January 1, 2023, the Concessionaire shall provide the Department a Security Deposit in the form of a Performance Bond, irrevocable standby letter of credit or cash security to guarantee payment of the Annual Rent for the Location, and if any, of

rental for the lease of support spaces, and any taxes applicable. If a Performance Bond is chosen, it shall be a surety bond. Concessionaire shall keep such Security Deposit in full force and effect during the Term and any Extension of this Agreement, as applicable, and thereafter until all financial obligations, reports or other requirements of this Agreement are satisfied. Any such form of security instrument shall be endorsed as to be readily negotiable by the Department for the payments required hereunder. Any Performance Bond or other security instrument used shall be effective for the current year of operation with automatic renewal for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Security Deposit shall be equal to **fifteen percent (15%)** of total rent and applicable taxes for the lease of Location(s) and support spaces paid in the immediate prior fiscal year. Thereafter, the amount of the Security Deposit shall be adjusted as necessary to reflect any increase or decrease in the Annual Rent and lease of support space(s).

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

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

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
\$ 500,001 to \$1,500,000	BV
1,500,001 to 2,500,000	AVI
2,500,001 to 5,000,000	AVII
5,000,000 to 10,000,000	AVIII
Over \$10,000,000	AIX

- B. Surety companies not otherwise qualifying with this paragraph may optionally qualify by:
  - 1) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
  - 2) Providing a copy of the currently valid Certificate of Authority

issued by the United States Department of Treasury under ss. 31 U.S.C. 9304-9308.

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

- C. For bonds in excess of \$500,000 the above provisions will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- D. The attorney-in-fact or other officer who signs the bond for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

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

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

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

If any Concessionaire has a cash deposit with the Airport, such cash deposit will be used to pay for any outstanding invoices, and then future billing.

#### **H. Delete Sub-articles regarding Payment Security**

#### **I. Delete Sub-article regarding Market Basket/Competitive Pricing Policy**

#### **J. Administrative Claim Procedures:**

**13.01 ADMINISTRATIVE CLAIM PROCEDURES:** If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) Days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The claim will be accompanied by a certification, in the form provided for in the County's False Claims Ordinance. The Concessionaire shall additionally, at the direction of the Director, provide County staff, Audit and Management Services, and/or the Office of the Inspector General access to documents, records, and/or

financial materials as may be necessary to substantiate such claim, without limitation, and within 30 days of the Director's request. Failure to present and process any claim in accordance with this Sub-Article shall be conclusively deemed a waiver, abandonment, or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

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

#### **K. Labor Peace Requirement**

**LABOR PEACE REQUIREMENT – RESOLUTION NO. R-148-07:** The Concessionaire shall provide the County with either (1) an affidavit, signed by the Concessionaire and the respective unions, which confirms that a Labor Peace Agreement meeting the requirements of this section and Resolution No. R-148-07 is in effect, or (2) an affidavit, signed by the Concessionaire, stating that the Concessionaire has, after reasonable due diligence, concluded that there is no union seeking to represent its workforce. Concessionaires previously covered by Resolution No. R-148-07 shall provide the affidavit required by this section by no later than January 1, 2022. The Labor Peace Agreement shall provide that no labor dispute or unrest will disrupt operations at Miami International Airport (MIA) and that the County has the right, in the event of a labor disruption, to suspend its obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a Concessionaire is unable to reach an agreement with a labor organization regarding the terms of a labor peace agreement, the dispute between the Concessionaire and the labor organization shall be resolved by expedited binding arbitration in which the decision shall be rendered within ten (10) days of the request for arbitration. The Concessionaire and the labor organization shall equally share the costs of arbitration.



## **L. Living Wage**

- (i) The Concessionaire and its Sub-tenants agree to comply with section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30, as may be amended from time to time, requiring payment to covered employees the applicable hourly living wage rate, with or without health benefits and that it shall comply with the administrative and records keeping required of the concessionaire set forth in the Administrative Order. The Concessionaire and its Sub-tenants shall also ensure that its subcontractors comply with the order in respect to their employees.

Each Concessionaire and every sub-tenant are required to submit all certified payrolls and labor compliance documentation electronically by the 10th of every month for the previous month using LCPtracker, a web-based Certified Payroll Management System ([www.lcptracker.net](http://www.lcptracker.net)). The system is managed by Small Business Development (“SBD”), a division of the Internal Services Department. The use of the system is mandatory, pursuant to Miami-Dade County Ordinance No. 18-33.

- (ii) Concessionaire’s compliance with this section and section (K) (“Labor Peace Requirement”) are material conditions to the County’s willingness to: (i) reduce its percentage fee payment obligation from January 1, 2022 to the end of Concessionaire’s term, and (ii) add the applicable three (3) or four (4) years to Concessionaire’s term. Concessionaire also acknowledges that its obligations under this Section are entered into voluntarily. Concessionaire expressly agrees that the County is proffering and agreeing to this Amendment in reliance on Concessionaire’s voluntary representation that it will comply with the above employee wage rates and insurance requirements. Concessionaire and the County further agree that in the event that any Court of competent jurisdiction concludes that this Section is, for any reason, unenforceable or illegal and Concessionaire thereafter ceases payment of the above employee wage rates and insurance requirements, the tolling provided for in section 2B(1.01.1) above, and the reduction in percentage fee payments provided for in section 2E(3.04.1) above, shall terminate thirty days after Concessionaire ceases such payment. In such event, the County shall not be liable to Concessionaire for any lost profits, loss of opportunity, loss of goodwill, claims related to costs to construct or build out locations, or any other direct or indirect costs of any kind.

## **M. Federal Aviation Administration Requirements**

### Equal Employment Opportunity, Nondiscrimination and Affirmative Action

- (a) Equal Employment Opportunity: In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), the

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

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

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

(b) Nondiscriminatory Access to Premises: The Concessionaire, for itself, its sublessees, successors in interest, assigns, and contractors, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination, in, the use of the Premises and improvements hereunder, (2) that in the construction of any improvements on, over, or under the Premises hereunder, and the furnishing of services herein or thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Concessionaire will use the Premises and improvements in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts and Authorities attached hereto as Exhibit C.

(c) Breach of Nondiscrimination Covenants: In the event it has been determined that the Concessionaire has breached any enforceable nondiscrimination covenants contained in Section 15.01 Equal Employment Opportunity and Section 15.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Concessionaire fails to comply with the sanctions

and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Termination of the Agreement section hereof.

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

The Concessionaire will include Section 15.01 Equal Employment Opportunity and Section 15.02 Nondiscriminatory Access to Premises of this Article in the Concessionaire sub- contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Concessionaire shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Concessionaire becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's Department of Procurement Management. Firms claiming exemption must submit, as part of their Lease to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit in accordance with County Code Section 28.1.5. These submittals shall be subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

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

#### **N. World Cup Obligation.**

**WORLD CUP:** The terms of this agreement are subordinate to the terms of the Airport Agreement submitted by Miami-Dade County to the United States Soccer Federation on February 21, 2018. In carrying out its obligations under this Contract, the Concessionaire shall not take or omit any action which is inconsistent with, or in derogation of, the County's obligations under the Airport Agreement. Where the Concessionaire's rights or obligations under this Agreement are in conflict with the County's obligations under the Airport Agreement, and upon notice by the County to the Concessionaire, the terms of this Agreement shall be deemed conformed to the County's obligations under the Airport Agreement. Where such conformance would cause a material change in this Contract, Concessionaire shall have the right, upon written notice to the County within five (5) days of receipt of notice of such a conflict, to terminate this Agreement for convenience; in such termination, the Management shall have no cause of action for money damages of any kind, including but not limited to direct damages, or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the event that the Agreement does not elect to terminate this Agreement within the time specified herein, this Agreement shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same. Agreement between

Miami-Dade County and U.S. Soccer Federation may be downloaded at: [www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180129min.pdf](http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180129min.pdf).

## **O. Compliance with Federal, State, and County laws**

### (A) Rules and Regulations - General:

(1) The Concessionaire shall comply with all Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Miami-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, as well as the County's Art in Public Places ordinance, the Employ Miami-Dade program, Responsible Wages ordinance, and any rules, regulations, and requirements of the County's applicable Small Business Development programs.

(2) During any renovation work to be performed by Concessionaire hereunder, and at any time Concessionaire performs any work on the Premises, Concessionaire shall comply with all design and construction requirements of MDAD, including, but not limited to, MDAD's Tenant Airport Construction Non-reimbursable requirements ("TAC-N"), as they may be amended from time to time. All design and construction work must be approved in advance by MDAD, to the extent set forth in such TAC-N requirements.

### (B) Permits and Licenses:

(1) The Concessionaire, 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 Concessionaire or the Concessionaire's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Concessionaire, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Concessionaire'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 Department of Regulatory and Economic Resources. At the inception of this Agreement, the Concessionaire 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 Concessionaire shall provide to the Department copies of any permits and licenses, and applications therefor, which the Department may request.

(C) Violations of Rules and Regulations: Subject to the County's obligations as confirmed in Article 8 (Environmental Compliance), Concessionaire 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 upon a claim or allegation that the Concessionaire, its agents, employees, invitees, or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 6.01 above or any plan or program developed in compliance therewith. The Concessionaire 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 Concessionaire 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 "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting, or subcontracting.

>>**P. No Assignment**

Concessionaire shall not assign, transfer, pledge, or otherwise encumber the Agreement, nor shall Concessionaire sublet all or any portion of the Location(s), or allow parties other than Concessionaire, or any sublessee currently operating with the County's express knowledge and consent, to use the Location(s) for the purposes established in the Agreement without the prior approval of the Board of County Commissioners.

**Q. Execution**

Concessionaire shall execute this Amendment within ninety (90) days of the Board of County Commissioners' approval of this Amendment. Amendments executed after such time shall be voidable and of no force and effect unless, for good cause shown by Concessionaire, the Board of County Commissioners authorizes additional time for the execution of such Amendment.<<

3. **Full Force and Effect.** Except as expressly amended and modified as set forth in this Amendment, the terms and provisions of the Lease and Concession Agreement remain the same and in full force and effect.
4. **Supersede Temporary Relief.** The terms of this Amendment shall supersede and automatically terminate any such other amendment or agreement still in effect which provides temporary COVID-19 relief from the Department to Concessionaire pursuant to Resolution No. R-848-21.
5. **Compliance with Agreement and Laws.** Notwithstanding any of the terms, provisions, and conditions within this Amendment, it is understood and agreed by the parties hereto that this Amendment and the Agreement are subordinate to and the parties shall comply with: (i) all applicable federal, state, and County rules, regulations, and laws; and (ii) the

provisions of the Amended and Restated Trust Agreement dated as of the 15th day of December 2002, as amended as well as any and all applicable bond covenants and agreements.

6. **No Third Party Beneficiaries.** Except as provided in Section 2L(i), nothing in this Amendment, whether express or implied, is intended to grant to, or confer upon, any person or entity any rights or remedies under, or by reason of, this Amendment other than the parties hereto, and no person or entity shall be deemed a third party beneficiary of this Amendment or any provision hereof. Notwithstanding the foregoing, the terms and conditions of this Amendment will apply to stores subleased by Concessionaire to subtenants in accordance with the Agreement provided that the subtenant also accepts this Amendment in writing. If the subtenant fails to accept this Amendment in writing, then the terms and conditions of this Amendment will not apply to the subtenant's stores and the subtenant's sublease (as previously approved by the Department) as well as the Agreement which will remain unchanged for those subleased stores. The provisions of this Section shall not apply to subtenants whose majority owner is a Concessionaire or any combination of Concessionaires directors or officers, or which share directors or officers with Concessionaire.
7. **Release of Claims.** In consideration of the approval and full execution of this Amendment, Concessionaire agrees to release and forever discharge the County and all of its agents, officers, and employees from any and all actions, claims, causes of action, or debts which the Concessionaire may or could assert related to operations of and decisions as to Concessionaire's Location(s) at Miami International Airport, whether known or unknown, as may have accrued through the date of the execution of this amendment. This includes, but is not limited to, all claims of any kind related to COVID-19, related to changes in passenger traffic, changes in airline usage or mix, or changes in concession mix.
8. **No Oral Agreement.** This Amendment represents the final agreement between the parties and may only be amended in writing and signed by both parties, and may not be contradicted by evidence of prior, contemporaneous, or unwritten oral agreements of the parties.
9. **Severability.** If any portion of this Amendment shall be declared invalid by any law, order, decree, or judgment of a court having jurisdiction over the parties and/or the subject matter hereof, this Amendment shall be construed as if such portion had not been inserted herein.

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IN WITNESS WHEREOF, the parties have executed this Amendment to the Agreement the date and year first above written.

**CONCESSIONAIRE**

\_\_\_\_\_

(Legal Name of Corporation)

**ATTEST:**

Secretary \_\_\_\_\_

(Signature and Seal)

\_\_\_\_\_

(Type Name & Title)

By: \_\_\_\_\_

Authorized Officer - Signature

Name: \_\_\_\_\_

\_\_\_\_\_

(Type Name & Title)

**MIAMI-DADE AVIATION DEPARTMENT**

Approved for Form  
and Legal Sufficiency

By: \_\_\_\_\_

Ralph Cutie, Interim Director

\_\_\_\_\_  
Assistant County Attorney



**Exhibit A to Amendment (Duty Free)**

The tiered rate for annual rent is based on the Board’s approved Terminal Class VI rate at MIA, which is currently \$88.75 per square foot. This rate will be modified as rates are revised and approved by the Board every year.

Table 1. Tiered Annual Rent

<b>Percent of 2019 International Enplanements</b>	<b>Percent Rent Reduction</b>	<b>Annual Rental Rate (Based on \$88.75 per square foot)</b>
Less than 55 %	100%	\$0.00
Between 55% and less than 70%	56%	\$39.05
Between 70% and 85%	37%	\$55.91
Greater than 85%	-	\$88.75

Table 1-1. 2019 Enplanements Chart

**International Enplanements  
January 1, 2019 - December 31, 2019**

<b>Terminal</b>	<b>Total</b>	<b>Percentage of Total Enplanements - Annual</b>			<b>Percentage of Total Enplanements - Monthly <sup>1</sup></b>		
		<b>55%</b>	<b>70%</b>	<b>85%</b>	<b>55%</b>	<b>70%</b>	<b>85%</b>
North Terminal	5,138,381	2,826,110	3,596,867	4,367,624	235,509	299,739	363,969
South Terminal	3,286,313	1,807,472	2,300,419	2,793,366	150,623	191,702	232,781
Central Terminal	2,561,778	1,408,978	1,793,245	2,177,511	117,415	149,437	181,459
	<u>10,986,472</u>	<u>6,042,560</u>	<u>7,690,531</u>	<u>9,338,501</u>	<u>503,547</u>	<u>640,878</u>	<u>778,209</u>

<sup>1</sup> For example, each month international enplanements in the North Terminal is greater than or equal to 235,509, but less than 299,739 passengers, concessionaire will pay rent of \$39.05 per square foot, based on current rate of \$88.75 per square foot. Rate will increase to \$55.91 per square foot when monthly international enplanements is greater than or equal to 299,739, but less than 363,969 passengers, and full rent of \$88.75 per square foot will be charged each month international enplanements exceeds 363,969 passengers.

## XHIBIT B

Ra ge	Perc age Fee	
	Total	70% of Total
Up to \$1,000,000	25%	17.5%
1,000,000 - 2,000,00	27%	18.9%
2,000,000 -3,999,999	29%	20.3%
Greater than 3,999,999	31%	21.7%

## Exhibit C

### Title VI List of Pertinent Non-discrimination Acts and Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Lessees, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123 (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex education programs or activities (20 U.S.C. 1681 et seq.).