

Memorandum



Date: June 18, 2024

Agenda Item No. 8(P)(1)

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Recommendation to Award a Contract for Sleeping Centers at Miami International Airport

Summary

The primary goal of this contract is to provide travelling patrons with an alternative way to relax and rest at Miami International Airport (MIA) without worrying about locating a hotel. The contract provides for a sleep center concession that will offer airport patrons safe state-of-the art, first class private spaces that deliver the right mix of amenities, including but not limited to, a clean, quiet, relaxed, secluded place to rest and work. This item seeks approval of a revenue generating contract to finance, design, construct, manage, operate, and maintain two sleeping center locations at MIA for the Miami-Dade Aviation Department (MDAD). One of the goals of this project is to enhance services offered by expanding travelling hospitality for MIA customers. The sleep centers will be available to the public 365 days, 24 hours, seven days per week. There is no existing or previous contract for this service. Approval of this item will result in a source of revenue to MDAD, while meeting the demands of travelers and other airport patrons. The projected revenue is \$10,000,000 to the County over a ten-year period.

Enhancing the customer experience at MIA is crucial given its status as a top gateway to Latin America and the Caribbean, leading international freight airport, and one of the nation's top three airports for international passenger traffic. The airport's prominent presence in international passenger traffic and cargo activity has fueled a host of other industries, such as tourism, the cruise industry, international banking, and commerce. This initiative aligns with global trends in airport services and underscores MIA's commitment to innovation and customer satisfaction. Moreover, the proposed sleeping center design not only provides functional utility but also contributes to the aesthetic enhancement of MIA's North and South terminals, elevating the airport's overall appeal. Implementing this initiative, positions MIA as a leader in airport hospitality, setting a new standard for passenger and airline crew comfort and convenience while reinforcing its reputation as a premier international hub.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. EVN0000237, Sleeping Centers at Miami International Airport*, to Hotelzo LLC DBA Wait N Rest (Hotelzo LLC) for MDAD in the cumulative amount of \$10,000,000 for an initial five-year term with one, five-year option to renew. There is no existing nor any prior contract for the provision of these services.

Background

A Request for Proposals (RFP) was issued under full and open competition on July 21, 2023. On the closing date of October 26, 2023, the County received two proposals., which were then submitted to the Office of Small Business Development (SBD) on October 27, 2023, for Airport Concession Disadvantaged Business Enterprises (ACDBE) goal compliance review. The proposal submitted by Nap Bar, LLC did not include the ACDBE participation plan required to be submitted with the proposal. On November 7, 2023, SBD notified Nap Bar, LLC they had five days to request an administrative reconsideration. In response to this notification, the County received written notification from Nap Bar, LLC to withdraw their proposal from the solicitation process. On November 8, 2023, SBD determined that the remaining proposer, Hotelzo LLC, was in compliance with the ACDBE goal. An evaluation meeting was conducted on December 7, 2023. Negotiations commenced on January 12, 2024, and concluded on the same day. Per Implementing Order 3-34, the compliance review response from SBD exceeded the 10-calendar day response deadline.

The contract provides for the finance, design, construction, management, operation, and maintenance of two sleep center locations at MIA. One sleep center will be located on the third floor of the South Terminal, and the other sleep center will be located on the third floor of the North Terminal. Services and pricing offered for sale at these locations are subject to MDAD's approval as to type, brands, and price. The contract requires that the vendor provide the County with 25 percent of gross revenues.

To encourage vendor participation, prior to advertisement of the solicitation, a thorough market research was done that included identifying potential vendors, conducting outreach to National Institute of Governmental Purchasing (NIGP) communities, and posting the scope of work on the County's Future Solicitations website for the vendor community to preview. Additionally, an email was sent to 10 vendors identified through market research, when they were notified of the draft scope of services posted on the County's website and surveyed regarding their ability to provide the services and their interest in responding to the solicitation. Four vendors advised that they could provide the services and would participate in the upcoming solicitation.

Scope

Miami International Airport is located within District 6, which is represented by Commissioner Kevin Marino Cabrera; however, the impact of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$5,000,000. Should the County choose to exercise, at its sole discretion, the one, five-year option to renew, the estimated cumulative value will be \$10,000,000. The projected revenue is based on the vendor providing 25% percent of gross revenues.

Department	Projected Revenue	Funding Source	Contract Manager
MDAD	\$10,000,000	Revenue Generating	Sylvia Novela
Total	\$10,000,000		

Track Record/Monitor

Natalya Vasilyeva of the Strategic Procurement Department (SPD) is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to execute the agreement and exercise all provisions of the contract, including any renewal, cancellation, or extensions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

Pursuant to Resolution No. R-477-18, the highest-ranked proposer is recommended in accordance with the method of award per the solicitation and is non-local. Only one of the 10 firms identified through market research and notified of the solicitation was local. The availability of local firms is limited due to the novelty and unique nature of the services requested.

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Hotelzo LLC DBA Wait N Rest	5237 Raymond Drive N Boynton Beach, FL	None	0%	Duilio Sanguinetti
			0%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Vendor Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
Nap Bar, LLC	None	Deemed non-compliant (SBD Compliance attached)

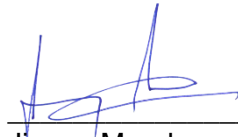
Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Applicability of Ordinances and Contract Measures

- A 20 percent ACDBE goal applies.
- The two percent User Access Program does not apply.
- The Local Preference does not apply.
- The Living Wage Ordinance applies.

Attachment



Jimmy Morales
Chief Operations Officer

DATE: November 8, 2023

Memorandum



TO: Namita Uppal, Director
Strategic Procurement Department

FROM: Gary Hartfield, Division Director
Office of Small Business Development

A handwritten signature in blue ink, appearing to be "G. Hartfield", written over the "FROM" line.

SUBJECT: Compliance Review
EVN0000237, Sleeping Centers At Miami International Airport

Office of Small Business Development (SBD) has completed its review of the subject project for compliance with the 20.00% Airport Concessions Disadvantaged Business Enterprise (ACDBE) Subcontractor Goal.

The Strategic Procurement Department provided a copy of the proposals submitted by each Proposer below. The following is the pre-award compliance status and summary:

FIRMS

1. Hotelzo, LLC
2. Nap Bar, LLC

STATUS:

Compliant
Non-Compliant

SUMMARY:

Hotelzo, LLC (#1), a non-certified ACDBE firm submitted the following documents with its proposal: ACDBE Schedule 1, ACDBE Schedule 1, ACDBE Schedule 2, ACDBE Schedule 3, ACDBE Certification Letter, explanation of participation by the ACDBE Firm in management and day-to-day operation and financial participation by the ACDBE Firm Proposer in gross revenues from this agreement. Hotelzo, LLC submitted the ACDBE Schedule 2 affidavit committing to utilizing Bekka Group Inc, a certified ACDBE firm to perform NAICS 561110 - Office Administrative Services at 17.5% and NAICS 541611 - Administrative Management and General Management Consulting Services at 2.5% to satisfy the 20.00% ACDBE goal.

Hotekzo, LLC is in compliance with the 20.00% ACDBE goal established for this solicitation. Hotelzo, LLC is compliant with Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision Appendix I .

Nap Bar, LLC (#2), a certified ACDBE firm did not submit the following documents with its proposal: ACDBE Schedule 1, ACDBE Schedule 1, ACDBE Schedule 2, ACDBE Schedule 3, ACDBE Certification Letter, explanation of participation by the ACDBE Firm in management and day-to-day operation and financial participation by the ACDBE Firm Proposer in gross revenues from this agreement. As such Nap Bar, LLC did not meet the ACDBE requirements or the 20.00% ACDBE goal established for this solicitation.

Nap Bar, LLC is not in compliance with the 20.00% ACDBE goal established for this solicitation. Nap Bar, LLC is not in compliance with Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision Appendix I .

Please note that SBD's review is specific to the ACDBE Pre-award Compliance process applied to this project. The Stratetgic Procurement Department is responsible for any other issues that may exist. Should you have any questions or need any additional information, please do not hesitate to call Tyrone White, SBD Section Manager at (305) 375-2824 or via email twj@miamidade.gov.

c: Laurie Johnson, SBD
Natalya Vasilyeva, SPD



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: June 18, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(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(P)(1)
6-18-24

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. EVN0000237, SLEEPING CENTERS AT MIAMI INTERNATIONAL AIRPORT TO HOTELZO LLC DBA WAIT N REST IN A TOTAL AMOUNT ESTIMATED TO BE \$10,000,000.00 IN REVENUE FOR AN INITIAL FIVE-YEAR TERM AND ONE FIVE-YEAR OPTION TO RENEW FOR THE MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY, AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY RENEWAL, CANCELLATION, OR EXTENSIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

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

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

Section 1. This Board approves award of Contract No. EVN0000237 to Hotelzo LLC DBA Wait N Rest, in substantially the form attached and made a part hereof, for Sleeping Centers at Miami International Airport for the Miami-Dade Aviation Department in a total amount estimated to be \$10,000,000.00 in revenue for the initial five-year term and one five-year option to renew.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contract, including any renewal, cancellation, or extensions, pursuant to section 2-8.1 of the Code of Miami-Dade County, Florida and Implementing Order 3-38.

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:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

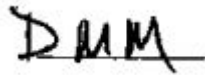
The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of June, 2024. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray

FORM OF AGREEMENT

LEASE AND CONCESSION AGREEMENT

SLEEPING CENTERS

AT

MIAMI INTERNATIONAL AIRPORT

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Attachments

Appendix I: Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision and Schedules 1 through 8, including Small Business Development Project Worksheet

- Exhibit A: Location(s)
- Exhibit B: Scope of Services
- Exhibit C: Payment Security Letter of Credit
- Exhibit D: Surety Performance and Payment Bond (Construction)
- Exhibit E: Retail Concession Design Guidelines (link provided)
- Exhibit F: Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N) and Tenant Airport Construction Reimbursable Procedures (TAC-R) (link provided)
- Exhibit G: Independent Audit Report
- Exhibit H: Executed Affidavits and Certificate of Insurance (from Concessionaire)
- Exhibit I: Monthly Report of Gross Revenues
- Exhibit J: Performance Bond for Rent Requirements
- Exhibit K: Tenant Handbook
- Exhibit L: Standards of Operation
- Exhibit M: Labor Peace Agreement
- Exhibit N: Implementing Order 3-58, First Source Hiring Referral Program
- Exhibit O: Federal Aviation Administration – Special Provisions

DEFINITIONS

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

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

The term “**Agreement**” shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and a part thereof entered into by the County and the Concessionaire.

The term “**Airport**” shall mean Miami International Airport.

The term “**As-Is**” shall mean that the Concessionaire may receive a Location(s) that is not in a “prepared shell” (vanilla box) condition. Assumption of an As-Is space may require demolition and upgrade of infrastructure, at Concessionaire’s sole cost.

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

The term “**Base Building Work**” shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building.

The term “**Beneficial Occupancy**” shall mean the date the Location is turned over by the Department to the Concessionaire for business, or when a Temporary Certificate of Occupancy or Certificate of Occupancy has been issued.

The term “**Board**” shall mean Board of County Commissioners of Miami-Dade County.

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

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

The term “**Common Logistics Fee**” shall mean an amount to be invoiced as a separate line item and collected from the Concessionaire for the purpose of reimbursing, without profit or administrative markup, a County imposed or approved logistics program which the Concessionaire may be reimbursed for actual out-of-pocket expenses incurred excluding any administrative overhead in order to lease off-Airport properties for storage or operate on the Airport and operating a common logistical support service as may be necessary for the efficient operation of the Retail Program. The Concessionaire will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Sub-tenants.

The term “**Concessionaire**” shall mean the person, firm, or entity that enters into this Lease and Concession Agreement with the County.

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

The term “**CBP**” shall mean Customs and Border Protection.

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

The term “**Date of Execution**” shall mean the day upon which the Agreement is executed by the Mayor of Miami-Dade County or designee, and attested by the Clerk of the Board.

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

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

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

The term “**FIS**” shall mean Federal Inspection Station.

The term “**Gross Revenues**” shall mean all monies paid or payable to or consideration of determinable value received by the Concessionaire in operation under the Agreement, regardless of when or where the order therefore is received, or the

goods delivered, or services rendered, whether paid or unpaid, whether on a cash, credit or rebate basis or in consideration of any other thing of value; provided, however, that the term "Gross Revenues" shall not include: (i) any refund given to the customer because of a customer satisfaction issue which must be documented and auditable, or (ii) promotional discount and coupon offers issued to customers as a result of a Departmental approved marketing plan, or (iii) any sums collected for any Federal, State, County and municipal taxes imposed by law upon the sale of merchandise or services or taxes imposed by law, which are separately stated to and actually paid by a customer and directly payable by the Concessionaire to a taxing authority and sales refunds.

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

The term "**Location(s)**" shall mean the concession Location(s) as depicted on Exhibit A, "Location(s)" from which Concessionaire offers goods or services to sell to the travelling public.

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

The word "**Patron**" or "**Patrons**" shall mean visitors to the Airport who will receive services from the Concessionaire.

The term "**Proposal**" shall mean a Proposer's written response to the Request for Proposals.

The terms "**Request for Proposals**" or "**RFP**" shall mean the solicitation document, and all associated Addenda, Exhibits, Forms, Affidavits and Attachments.

The term "**Retail Concession Design Guidelines**" shall mean MIA's distinct design guidelines in the North, Central, and South Terminals as set forth in (link) https://www.miami-airport.com/concessions_program.asp.

The term "**Shell Condition**" shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

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

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

The term "**Subcontractor**" shall mean any person, firm, entity or organization, other than the employees of the Concessionaire, who contracts with the Concessionaire to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Concessionaire

The term "**Support Space**" shall mean those areas under lease by the Concessionaire at the Airport for office or administrative functions, storage of goods and materials, prep areas, or areas not generally accessible to customers, except to the extent such areas are internal to a Location. For example, storage areas internal to a Location are not Support Space, but a storage area outside the footprint of a Location is a Support Space.

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

The term "**Turnover Date**" shall mean the date approved by the Department for the Concessionaire to commence construction of a Location.

**LEASE AND CONCESSION AGREEMENT
FOR SLEEPING CENTERS
AT
MIAMI INTERNATIONAL AIRPORT**

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 20_____, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and Hotelzo LLC, ("Concessionaire"), a Delaware Corporation authorized to do business in the State of Florida.

RECITALS:

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

WHEREAS, the Department desires to create sleeping centers at MIA; and

WHEREAS, the services will enhance the accommodations and conveniences of airline passengers and Airport patrons, and project a positive image of the Airport, Department, and the County to visitors, as further described herein; and

WHEREAS, Expedited Purchasing Program Request for Proposals (EPP-RFP), No. EVN0000237 was issued by the County and in response to the EPP-RFP, the County received proposals and an award has been made to the Concessionaire,

WHEREAS, Concessionaire and the County agree that this Lease and Concession Agreement requires the provision of services directly to Miami-Dade County by Concessionaire, and is also directly related to the provision of goods and services on behalf of or for the benefit of Miami-Dade County,

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

ARTICLE 1 – TERM, EXTENSION AND LOCATION(S)

1.01 TERM

The Department hereby leases to the Concessionaire the Location(s), Exhibit A, commencing upon the Lease Effective Date of this Agreement; and shall expire at 11:59 o'clock P.M. on the fifth (5th) year unless extended or sooner terminated. The County, at its sole discretion, may renew this Contract for one (1), five (5) year term.

1.02 EXTENSION

The County reserves the right to extend the Agreement on a month-to-month basis for so long as may be needed to avoid disruption of concession services to passengers in accordance with Section 2-286.1(8) of the Miami-Dade County Code.

In the event the Concessionaire is in default, pursuant to **Article 12 “Default and Termination by County”** of the Lease and Concession Agreement beyond applicable grace and cure periods, the County may not exercise its rights to extend the Agreement.

1.03 LOCATION(S)

The Department hereby provides to the Concessionaire the “As-Is” Location(s) as depicted in Exhibit A, Location(s).

1.04 SUPPORT SPACE

In addition to the Location(s) provided to the Concessionaire in **Sub-Article 1.03 “Location(s)”**, the Department may provide Support Space which includes administrative and/or storage space if available, to the Concessionaire, upon the request of the Concessionaire. Provision of the Support Space is at the sole discretion of MDAD, and MDAD does not guarantee that Support Space is available, or if available, is suitable for the needs of the Concessionaire. Lack of Support Space shall not excuse the Concessionaire from its obligations under this Agreement. The Concessionaire shall pay monthly rental payments for the spaces as provided for in **Sub-Article 3.06 “Annual Rental”** upon assignment of Support Space.

1.05 STORAGE SPACE

The Department may make available to the Concessionaire storage space outside of Location(s), if available, upon request. Provision of such storage space is at the sole discretion of MDAD, and MDAD does not guarantee that such storage space is available, or if available, is suitable for the needs of the Concessionaire. The Concessionaire shall pay monthly rental payments for such storage space outside of the Location(s) as provided for in **Sub-Article 3.05 “Annual Rental”** upon assignment of storage space.

1.06 NOT USED (COMMON WAREHOUSE SYSTEM)

1.07 ADDITION, DELETION, AND MODIFICATION OF LOCATION(S)

This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Location(s) pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Location(s) in **Sub-Articles 1.03 “Location(s)”**, **1.04 “Support Space”**, and **1.05 “Storage Space”** and total payments due the Department in accordance with **Article 3, “Rentals, Payments and Reports”** and **Article 2 “Use of Location(s)”**.

- A. ADDITION OF LOCATION(S):** If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for concession development comparable to the concept categories in this Agreement, the Department may, but is not required to, offer such additional Location to the Concessionaire upon written notification. The Concessionaire will have thirty (30) Days to submit a written response accepting or rejecting the additional Location.
- B. ADDITION OF TEMPORARY LOCATION(S):** The Department reserves the right to require the Concessionaire to provide, and cause to be operated, temporary locations. Any rents for these locations are subject to the terms of this Agreement. All such concepts, plans, fixtures, equipment and merchandising are subject to review and approval by the Department and, to the extent necessary, other County agencies.
- C. DELETION OR MODIFICATION OF LOCATION(S):** The Department reserves the right, at its sole discretion, to delete or modify any of the Location(s), or any Support Space and storage spaces due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Concessionaire shall be given no less than: (i) thirty (30) Days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) Days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Concessionaire for any inconvenience or loss of business as a result of the deletion or modification of any Location(s) or other space pursuant to this Sub-Article.

1.08 NON-EXCLUSIVITY

This Agreement is non-exclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other Concessionaires and/or others in other locations at the Airport during the Term, and any Extension of this Agreement.

1.09 CONDITION OF THE LOCATION(S)

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

hereby expressly agrees that if any remediation or restoration is required in order to conform the Location(s) to the requirements of applicable law, the Concessionaire assumes sole responsibility for any such work.

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

1.10 CAPITAL IMPROVEMENT PROGRAM

The Capital Improvement Program (CIP) involves the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Location(s), and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Location(s), and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM AND ANY EXTENSION OF THIS AGREEMENT.**

1.11 REQUEST FOR PROPOSAL INCORPORATED

The Concessionaire acknowledges that it has submitted to the County a Proposal, in response to a Request for Proposal EPPRFP No. EVN0000237, that was the basis for the award of this Agreement and upon which the County relied. The RFP and the Proposal are incorporated into this Agreement. **IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP OR THE PROPOSAL, THE TERMS OF SAID AGREEMENT SHALL GOVERN.**

ARTICLE 2 – USE OF LOCATION(S)

2.01 LOCATION(S)

The Location(s), as referenced in Exhibit A, “Location(s) shall be used solely for the assigned and approved concept. Failure to maintain the concept category pursuant to **Article 2 “Use of Location(s)”** may result in Damages as indicated in **Sub-Article 3.23 “Damages.”**

2.02 USE OF LOCATION(S)

The Concessionaire shall have the right, privilege, and obligation to develop, market and manage, operate, and maintain the Location(s), depicted in Exhibit A, “Location(s)”, for the purpose of establishing sleeping centers as approved by the Department.

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

2.03 CONCESSIONAIRE SERVICES AND SALES RIGHTS

The Concessionaire shall not allow any services or the sale of any item or product not specifically covered by the categories approved in this Agreement. Any such sales by the Concessionaire of services, products, or items not specifically approved herein, in writing by the Department, may constitute a violation. In the event of such violation, the Concessionaire shall discontinue the sale or service of the unapproved product immediately, upon written notice

from the Department. Failure by Concessionaire to discontinue such sales within twenty-four (24) hours shall subject the Concessionaire to Damages pursuant to **Sub-Article 3.23 “Damages.”**

2.04 NOT USED (NEW CONCEPTS)

2.05 SCOPE OF SERVICES

Refer to Exhibit B herein.

2.06 ANNUAL MARKETING PLAN SUBMISSION

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

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

2.07 PROHIBITED ACTIVITIES

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

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 NOT USED (MINIMUM ANNUAL GUARANTEE)

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS

The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.06 “Annual Rent”**, and **Sub-Article 3.04 “Percentage Fee to the Department”** are not subject to negotiation or adjustment for any reason, including, but not necessarily limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, and the like, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 21.10 “Force Majeure.”** Nor shall the County be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term, and any Extension of this Agreement. If the Concessionaire's Location(s) are so damaged as to significantly impact the Concessionaire's operations for a period in excess of seventy-two (72) hours, the Department shall provide a proportionate abatement of the Annual Rent for that portion of the Location(s)

rendered unusable for that period of time that the County is unable to make repairs required by **Article 6 “Obligations of the Department.”**

3.03 NOT USED (RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE)

3.04 PERCENTAGE FEE TO THE DEPARTMENT

The Concessionaire shall pay the Department a minimum of **twenty-five percent (25%)** of the total Gross Revenues. The monthly payment payable to the County throughout the term of the Agreement shall be the greater of (a) the percentage of Gross Revenues Concessionaire earns at its respective Location per the Agreement (“percentage fee”) or (b) the prevailing Class VI Terminal rental rates for the lease of the Location(s). The monthly percentage fee shall be due on the tenth (10th) Day of the month following the month during which the monthly gross revenues were received or accrued. Percentage fees are non-taxable.

The Monthly Percentage Fee payments to the Department shall commence upon the beneficial occupancy date.

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

3.05 NOT USED (CONCESSION CATEGORY PERCENTAGE FEE)

3.06 ANNUAL RENTAL

The Concessionaire shall be required to pay the prevailing Class VI Terminal rental rates for the lease of the Location(s), prorated and payable in equal monthly installments in U.S. funds, on the first day of each and every month.

The Concessionaire shall be required to pay the prevailing Class VI Terminal rental rates for Support Space and/or storage space. Payments shall commence on the beneficial occupancy date.

If the Department makes available to the Concessionaire storage space outside of Location(s), Concessionaire shall pay monthly rental payments for such storage space outside of the Location(s) in accordance with the provisions as set forth in this Sub-Article.

3.07 ANNUAL RENTAL RATE ADJUSTMENT

On October 1st of each year of the Agreement, the cost based rental rates, pursuant to **Sub-Article 3.06, “Annual Rental”**, applicable to the Location(s) rented hereunder, shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners, as may be amended from time to time. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Such adjusted rental rates shall be reflected by letter amendment. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten (10) Days of same.

3.08 NOT USED (COMMON WAREHOUSE LOGISTICS FEE)**3.09 CONCESSION MARKETING FEE**

A concession marketing fee of one half (1/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following the first Location opening on the twentieth (20th) of each month to be used for marketing the concessions at the Airport.

3.10 SECURITY PAYMENT

Within thirty (30) Days of the Lease Effective Date of this Agreement, the Concessionaire shall provide the Department a Security Deposit in the form of a Performance Bond (Exhibit J), irrevocable standby letter of credit (Exhibit C) 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 as set forth in **Sub-Article 3.06 "Annual Rental"**. 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 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	B V
\$1,500,001 to \$2,500,000	A VI
\$2,500,001 to \$5,000,000	A VII
\$5,000,000 to \$10,000,000	A VIII
Over \$10,000,000	A IX

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

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

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

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

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

The Bonds shall be delivered to the Department as indicated above.

In the event the Surety on the Bond given by the 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 Contract shall constitute a breach of this Contract. In addition to any other legal remedies, the Department at its sole option may terminate this Contract.

3.11 TAXES

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

3.12 REPORTS OF GROSS REVENUES

On or before the tenth (10th) Day following the end of each month throughout the Term and any Extension of this Agreement, the Concessionaire shall furnish to the Department, a Statement of Monthly Gross Revenues, using Exhibit I "Monthly Report of Gross Revenues". The report shall list each Location under this Agreement, together with any percentage fee due to the Department pursuant to **Sub-Article 3.04 "Percentage Fee to the Department"**. The Concessionaire shall certify as to the accuracy of such Gross Revenues in such form as shall be prescribed by the Department. The Department may modify from time to time, the form of reporting upon not less than thirty (30) Days written notice to the Concessionaire. The statement must be signed by an officer (if the Concessionaire is a

corporation), partner (if a partnership), or owner (if a sole proprietorship) of the Concessionaire and identify all Gross Revenues by Location reported to the Concessionaire during such month. Failure to provide the Monthly Report of Gross Revenues by the tenth (10th) day shall result in a late fee Damage of Fifty Dollars (\$50.00) per Day to a maximum of Seven Hundred Fifty Dollars (\$750) a month, as provided in **Sub-Article 3.23 "Damages."**

3.13 OTHER REPORTS

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

3.14 LATE PAYMENT

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

3.15 DISHONORED CHECK OR DRAFT

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

3.16 ADDRESS FOR PAYMENTS

The Concessionaire shall pay all monies payable and identify the Lease and Concession Agreement for which payment is made, as required by this Agreement, to the following:

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

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

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

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

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

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

3.17 REVENUE CONTROL PROCEDURES

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

3.18 ANNUAL AUDIT

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

3.19 RIGHT TO AUDIT/INSPECT

The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement, to: (1) verify, check, and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Concessionaire for recording or compiling Gross Revenue information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Location(s) located on the Airport, the Department shall give advance notice to the Concessionaire.

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

Further, if such examination establishes that Concessionaire has underpaid percentage fees of Gross Revenues for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Concessionaire.

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

In addition to the foregoing, the Department reserves the right to review any and all fees imposed by the Concessionaire to each Sub-tenant and the basis of such fee and allocation to each Sub-tenant.

3.20 RECORDS AND REPORTS

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

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

1. Concessionaire's bank account statements;
2. A compiled report of transactions by Location showing all Gross Revenues and all exclusions from Gross Revenues, which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Department on the Concessionaire's monthly "Transaction Reports"; and
3. A monthly statement detailing each online transaction, including bookings, amounts, sales etc.
4. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Gross Revenues hereunder. Upon ten (10) business days written notice from the Department, all such books and records, shall be made available, either at the Location(s), or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however,

that any such inspection on the Location(s) will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Concessionaire's business.

3.21 ADDITIONAL FEES DUE

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

3.22 UTILITIES

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

3.23 DAMAGES

If Concessionaire default under any of the covenants or terms and conditions, of this Agreement, Department shall impose the financial Damages described below, as a result of the violation(s), on a daily basis, in addition to any other Damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

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

*Up to \$750 a month

The foregoing is due and payable from the Concessionaire.

3.24 NOT USED

3.25 ACCOUNTS RECEIVABLE ADJUSTMENTS

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Concessionaire to the County, whether under this Agreement or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Concessionaire under this Agreement. Such retained amount shall be applied to the amount owed by the Concessionaire to the County. The Concessionaire shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Concessionaire for the applicable payment due herein.

3.26 PAYMENT CARD INDUSTRY DATA SECURITY STANDARD

Concessionaire must maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS), which is a set of requirements designed to ensure that ALL companies that process, store or transmit credit card information maintain a secure environment.

ARTICLE 4 – IMPROVEMENTS TO THE LOCATION(S)

4.01 IMPROVEMENTS TO LOCATION(S)

Any and all improvements to Location(s) will be performed in accordance with the Exhibit F, “Tenant Airport Construction Non-Reimbursable Procedures TAC-N”.

4.02 DESIGN OF IMPROVEMENTS

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

4.03 REFURBISHMENT OF LOCATION(S):

The Concessionaire shall refurbish facilities/premises mid-term during sixth (6th) year of the Agreement).

Approved improvements for the refurbishment of the Location(s) shall not be less than one hundred fifty dollars per square foot (\$150 per square foot). There will be no reimbursement or amortization of these costs for refurbishment. At the sole discretion of MDAD, the cost of refurbishment may be credited and/or waived for previous documented work performed by the Concessionaire at the Location(s).

4.04 CERTAIN CONSTRUCTION CONTRACT TERMS

All contracts entered into by the Concessionaire for the construction of the improvements shall require completion of the improvements within the schedules submitted pursuant to **Sub-Article 4.02 “Design of Improvements”** and shall contain reasonable and lawful provisions for the payment of actual or Damages to the County in the event the

contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

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

4.05 IMPROVEMENTS FREE AND CLEAR

The improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Location(s) or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provisions to protect the County from the claims of any laborers, subcontractors or material men against the Location(s) or improvements.

4.06 OTHER REQUIREMENTS

The Concessionaire shall apply for and obtain a building permit from the County for all appropriate inspections and a Certificate of Occupancy upon completion. Within sixty (60) Days following the completion of construction of the improvements, the Concessionaire shall furnish to the County the following:

- i) One (1) complete set each of legible prints (black line), of construction drawings in electronic file format and in full compliance with Autodesk's .DWG file format and standard revised as to "as built".
- ii) Based upon submission date, the AutoCad.dwg version must be within two years of the latest release.
- iii) Acceptable transmission methods include CD, DVD, or external hard drive.
- iv) MDAD will not accept the submission of any AutoCad drawing deliverable which contains references to external source drawing files.
- v) The closeout document package should include all pertinent shop and working drawings, copies of all releases of all claims and a copy of the Certificate of Occupancy provided the Concessionaire does not disseminate such information, refer to Transportation Security Regulations (TSR), 49 C.F.R. 1520, et al., Protection of Sensitive Security Information.
- vi) In compliance with the MDAD Technical Support Facility Management Layering System requirements in DWG compiled format, not X-REF. Please refer to the MDAD CAD Standards Guidelines (MDAD Design Guidelines Manual available through the MDAD Project Manager).
- vii) Building Information Modeling (BIM) – A/E shall employ the use of BIM technology utilizing Autodesk Revit software.

The record drawings shall be presented to the Project Manager for transmittal of one copy of each format, through the Commissioning Team, to the designated representatives of the MDAD Division of Technical Support.

4.07 REVIEW OF CONSTRUCTION

The County shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the Final Plans and any changes thereof requested by the Concessionaire and approved by the County. The Concessionaire shall furnish, or shall cause the Sub-tenants to furnish to the Concessionaire and the County, "as-built" drawings in two formats; a) one (1) complete set of legible prints (black line) and b) one electronic file in full

compliance with Autodesk's .DWG file format.

4.08 COST DOCUMENTATION

Within one hundred eighty (180) Days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Articles 4.01 "Improvements to Location"**, and **4.03 "Refurbishment of Location"**, the Concessionaire shall submit to the County a certified audit of the monies actually expended in the design and construction of the approved improvements by Location in accordance with the Final Plans, prepared by an independent certified public accounting firm ("Auditor"), approved in advance by the County (the "Certified Audit"). The Concessionaire, as the case may be, shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the Final Plans and any changes thereto requested by the Concessionaire and approved by the County, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Concessionaire, as the case may be. No non-receipted expenditures will be credited. Concessionaires not submitting certified audits within the allotted time may be billed a Damage of fifty dollars (\$50.00) per Day. Upon reconciliation, any difference due the County shall also include an administrative fee of ten percent (10%) of the monies due the County on the build-out of the Location. In the event of any disputes between the County and the Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference"**. The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Concessionaire in writing that it has approved or disapproved the certified costs for each Location and the common area improvements detailed in the Certified Audit within sixty (60) Days from the date of its receipt of the Certified Audit. If the Concessionaire fails to submit the Certified Audit within the time prescribed above for any Location, then a penalty will be assessed as noted in **Sub-Article 3.23 "Damages"**. The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Concessionaire for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.09 "Amortization Schedule"** shall equal the lesser of Four Hundred dollars (\$ 400.00) per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

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

If the approved total receipted amount for Refurbishment of Location is below the Concessionaire's), the Concessionaire shall be required to pay the Department the difference between the expended amount and the refurbishment amount within one hundred eighty (180) Days from the date of completion of refurbishment.

4.09 AMORTIZATION SCHEDULE

The Concessionaire shall amortize its capital investment for a period not to exceed sixty (60) months using the straight-line depreciation method. If, at any time during the Term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Location at its sole discretion and reimburse the Concessionaire the unamortized balance of approved improvements for that Location.

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

1. Directly contracted costs of construction.
2. Stores displays more than \$500 per display, furniture, fixture, equipment and signage purchased and installed for direct use in the facility.
3. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Concessionaire will be required to confirm the Minimum Investment within one hundred twenty (120) Days of Beneficial Occupancy for each Location. No non-receipted expenditures will be credited. If the approved total receipted amount is below the FOUR HUNDRED DOLLARS per square foot (\$400.00 PSF), the Concessionaire will be required to pay the Department the difference between the Minimum Investment amount and the actual receipted expenditure within ninety (90) Days after billing by the Department.

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

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

4.10 CONSTRUCTION PERMIT FEE

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

4.11 CONSTRUCTION SERVICES

The Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

1) Concessionaire Improvements

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

2) Design and Construction Coordination

a. Concessionaire shall:

1. Be responsible for construction management and coordination of all improvements to the Location and authorized administrative support space)

2. Coordinate meetings MDAD's architects, consultants and others, to review procedures, scheduling site surveys and develop build-out schedules.
3. Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N or TAC-R Procedures, as well as all other applicable codes and regulations.
4. Provide and coordinate access to Location as necessary.
5. Purchase materials and services and coordinate the fabrication and installation of the Concessionaire development requirement, whereby such elements are the designated responsibility of the Concessionaire, if so implemented.

3) Construction

Concessionaire shall:

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

4.12 SUSTAINABLE BUILDINGS PROGRAM

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

4.13 ADDITIONAL REQUIREMENTS

To the extent required by the current terms of the County's Community Business Enterprise (CBE) Program, as of the Effective Date, applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code, the Community Small Business Enterprise (CSBE) Program for construction activities under Section 10-33.02, the Residents First Training and Employment Ordinance under 2-11.17 of the Miami-Dade County Code, the Responsible Wage Ordinance under Section 2-11.16, and any other program of the County made applicable to the Lessee's activities hereunder either through legislation or through incorporation into the TAC-N procedures in effect at the time of construction, Concessionaire agrees to materially comply with such applicable provisions as well as any implementing orders of the County, and other official directives issued by the County, relating to such Programs.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Concessionaire shall comply with the Department's "Tenant Handbook", Exhibit K; the "Standards of Operations", Exhibit L, the "MIA Terminal Standards" (available upon request to MDAD), and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Location(s), which the Concessionaire agrees to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Concessionaire. The Department shall provide the Concessionaire with reasonable prior written notice, not less than thirty (30) Days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

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

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

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

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. Department's Maintenance Obligation: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Location(s). This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all

necessary structural repairs to the Location(s) at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Concessionaire and further provided that the Concessionaire shall reimburse the Department, within ten (10) Days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sub-tenants or invitees. The Concessionaire shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder.

- B. The Concessionaire must ascertain the extent of the existing utility capacities, before designing any new loads to be connected to existing systems and piping. The Department agrees to cooperate in providing access to the Location(s).
- C. All maintenance by the Department may be subject to interruption caused by repair, strikes, lockouts, labor controversies, inability to obtain fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, and other conditions beyond the control of the Department. If the Concessionaire's Location(s) are of such a condition as to significantly impact the Concessionaire's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Concessionaire pursuant to this Agreement, the Department may provide a rent abatement for that portion of the Location(s) rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6 "Department Services."**
- D. No Other Obligation of Department: The Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Location(s) for the Concessionaire's use or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Location(s) or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Location(s) by the Concessionaire.
 - 1. The Concessionaire hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed for Concessionaire to operate from the Location(s) hereunder, that it has done its own projections of the volume of business expected to be generated, that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis, and that the Department has not made any representations or warranties with respect to any such matters.
 - 2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.
 - 3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Location(s) or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.

4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7 – FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES, AND EQUIPMENT

Any equipment, furnishings, fixtures and signs installed in the Location(s) by the Concessionaire shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Concessionaire, as provided in **Sub-Article 4.01 “Improvements to the Location(s)”**, shall, except as provided in **Sub-Article 7.03(B) “Disposal of Furniture, Fixtures, and Equipment”**, be removed from the Location(s) within five (5) Days following the expiration or earlier termination of this Agreement.

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS

The Concessionaire will be responsible, at its cost, for ensuring that the Location(s) and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the “ADA”), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department and those private entities that offer services for the convenience of users of the public entities’ location(s). In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity’s ADA obligations. In most cases the ADA obligations of the Department and the Concessionaire will be the same. However, the Department reserves the right to require the Concessionaire to modify its operations or its physical locations to comply with the Department’s ADA obligations with respect to the Location(s), as the Department in its sole discretion deems reasonably necessary.

7.03 DISPOSAL OF FURNITURE, FIXTURES, AND EQUIPMENT

At least thirty (30) Days prior to the expiration of this Agreement, or upon termination pursuant to **Article 12 “Default and Termination by County”** or **Article 13 “Claims and Termination by Concessionaire”** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Location(s) by the Concessionaire:

- (A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Location(s) within five (5) Days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 “Improvements to Location(s)”**; or
- (B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Concessionaire or any Sub-tenant (personal property as referred to in **Sub-Article 4.01 “Improvements to Location(s)”**) in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Concessionaire).

ARTICLE 8 – MAINTENANCE

8.01 CLEANING

The Concessionaire shall, at its cost and expense, keep the Location(s) clean, neat, orderly, sanitary and presentable at all times. If the Location(s) are not kept clean as provided in the Standards of Operation, Exhibit L, the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective

action may result in Damages being assessed pursuant to **Sub-Article 3.23 “Damages.”**

8.02 REMOVAL OF TRASH

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

The Department reserves the right to charge the Concessionaire retroactively non-discriminatory proportionate share for waste disposal a proportionate share in a non-discriminatory manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR

Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 “Department Services”**, the Concessionaire shall maintain and repair or cause to be maintained and repaired the Location(s). Maintenance for all equipment furnished by the Concessionaire specifically as a result of their operation shall remain the obligation of the Concessionaire. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Location(s) to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Location(s), or with appropriate notice, enter upon the non-public areas of the Location(s), to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of the Concessionaire may be present, except in the case of real or perceived emergencies where no such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to the satisfaction of the Department within seven (7) Days after receipt of such written notice, Department shall have the right to enter upon the Location(s) and perform such maintenance and charge Concessionaire for such services, as provided by **Sub-Article 8.04 “Failure to Maintain.”**

8.04 FAILURE TO MAINTAIN

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

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

8.05 ENVIRONMENTAL RECYCLING

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

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

8.06 FIRE PROTECTION AND SAFETY EQUIPMENT

The Concessionaire must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, for the Term and any Extension of this Agreement or any insurance carrier providing insurance covering any portion of the Location(s).

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT

The Concessionaire shall not assign, transfer, pledge or otherwise encumber this Agreement nor shall the Concessionaire allow others to use the Location(s), without the prior written consent of the Department.

9.02 OWNERSHIP OF THE CONCESSIONAIRE

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

9.03 CHANGE OF CONTROL

If Concessionaire is a corporation the issuance or sale, transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty percent (50%) of the stock) in the Concessionaire to result in a change of control of Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9 “Assignment and Ownership”** and shall be subject to the provisions of **Sub-Article 9.01 “No Assignment”**. If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire (deemed to mean more than fifty percent (50%) of the ownership interest), shall be deemed an assignment of this Agreement for purposes of this **Article 9 “Assignment and Ownership”** and shall be subject to the provisions of **Sub-Article 9.01 “No Assignment”**.

9.04 HOLDOVER

A. With the Department’s Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter continue to pay the percentage of Gross Revenues as outlined in **Sub-Article 3.02 “No Negotiations or Administrative Modifications”** and monthly installment or rent for the Concessionaire’s

Office pursuant to **Sub-Article 3.06 "Annual Rental"** (if Concessionaire remains in such Space), on account of the holdover use and occupancy of the Locations. This provision shall survive the expiration or the termination of this Agreement.

B. Without Department Permission:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Location(s) or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Location(s) a sum, at a rate equal to two times (2x) the amount payable monthly lease rental pursuant to **Sub-Article 3.06 "Annual Rental"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

Concessionaire shall indemnify, defend, and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners principals or subcontractors. Concessionaire shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. Without limiting the preceding, Concessionaire expressly agrees that the provisions and obligations of this section apply to claims, including administrative claims, involving identify theft, data theft, data breaches, commercial fraud, and all other similar claims or causes of action.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF CONCESSIONAIRE: Within thirty (30) Days of the Lease Effective Date of this Agreement, the Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the Term and any Extensions of this Agreement.

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

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

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

Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$5,000,000 combined single limit per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

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

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

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

11.02 CERTIFICATE OF CONTINUITY

The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with **Article 11 "Insurance"** remain in force for the duration of this Agreement, including the Extension, if applicable. If insurance certificates are scheduled to expire during the lease period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Unit at a minimum of thirty (30) Days before such expiration.

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

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

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

11.03 CONCESSIONAIRE LIABLE

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

11.04 CANCELLATION OF INSURANCE OR BONDS

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

11.05 RIGHT TO EXAMINE

The Department reserves the right, upon reasonable notice to examine the original policies of insurance of the Concessionaire (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to permit or cause to permit such

inspection at the offices of the Concessionaire. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire agree to provide copies to the Department, at the Concessionaire's sole cost and expense.

11.06 PERSONAL PROPERTY

Any personal property of the Concessionaire or of others, placed in the Location(s) and support/storage spaces shall be at the sole risk of the Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

11.07 SURVIVAL OF PROVISIONS

The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.

11.08 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED

- A. Indemnification, Bonds and Insurance Required from Construction Contractor: **The following language, including the indemnification clause, shall be included in all construction contracts between the Concessionaire and its general contractor(s) and subcontractors:**

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

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

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

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

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

- a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.
- b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
- c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under Section 31 U.S.C. 9304-9308.
- d) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.
- e) For contracts in excess of \$500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the United States Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- g) The attorney-in-fact or other officer who signs an Exhibit D "Surety Performance and Payment Bond" for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

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

The Bond shall be delivered to the Department upon execution of the contract between the Concessionaire and its contractor or the Sub-tenant and its contractor, as the case may be.

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

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

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

- (b) Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Concessionaire must be shown as an additional insured with respect to this coverage.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than \$500,000* per occurrence for Bodily Injury and Property Damage combined.

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

- D. **Certificate Continuity:** The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Concessionaire and approved by the Concessionaire and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Concessionaire at a minimum of thirty (30) Days before such expiration.
- E. **Insurance Company Rating Requirements:** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to financial strength, and no less than "Class VII" as to financial size, according to the latest edition of Best's Key Rating Guide, published by A.M. Best Company, or its equivalent, subject to the approval of the MDAD Risk Management Office.
- F. **Right to Examine:** The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Concessionaire to agree to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) Days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire agrees to provide copies to the Department, at the Concessionaire's sole cost and expense.
- G. **Personal Property:** Any personal property of the contractor, or of others, placed in the Location(s) shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT

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

- (A) The Concessionaire has violated the terms and conditions of this Agreement;
- (B) The Concessionaire has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the Concessionaire's facilities;
- (C) The Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken

advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;

- (D) The occurrence of any act, which operates to deprive Concessionaire of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;
- (E) Abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;
- (F) Any persistent violation on the part of Concessionaire, its agents or employees of the traffic rules and regulations of local, County, State or Airport or disregard of the safety of persons using the Airports, upon failure by Concessionaire to correct the same;
- (G) Failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use, unless such use is due to strike, lockout, or bona fide labor dispute;
- (H) Failure by Concessionaire to maintain its equipment in a manner satisfactory to the Director;
- (I) The Concessionaire has failed to obtain the approval of the Department where required by this Agreement;
- (J) The Concessionaire has failed to provide adequate assurances as required under **Sub-Article 12.09 "Adequate Assurances"**;
- (K) The Concessionaire has failed in a representation or warranty stated herein; or
- (L) The Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

12.02 PAYMENT DEFAULT

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

12.03 OTHER DEFAULTS

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

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

12.04 HABITUAL DEFAULT

Notwithstanding the foregoing, in the event that the Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Concessionaire may be determined by the Director to be an "habitual violator." At the time that such

determination is made, the Director shall issue to the Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7th) Day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with **Sub-Article 12.11 "Actions at Termination"** hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE

If an Event of Default occurs, the Department shall notify the Concessionaire by sending a notice of default, specifying the basis for such Event of Default, and advising the Concessionaire of the cure period to correct such default or this Agreement with the Department may be terminated.

12.06 NOT USED (UNAMORTIZED INVESTMENT EXTINGUISHED)

12.07 TERMINATION FOR ABANDONMENT

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

12.08 TERMINATION FOR CAUSE

The Department may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (ii) a principal of the Concessionaire is convicted of a felony during the Term or any Extensions thereof if applicable, or (iii) if the Concessionaire is found to have submitted a false certification or to have been, or is subsequently during the term of this Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. The Department may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

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

12.09 TERMINATION FOR CONVENIENCE

The Department, in addition to the rights and options to terminate for cause, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement upon thirty (30) days written notice at its sole option at any time for convenience, without cause, when in its sole discretion it deems such termination is in the best interest of the Department based on the then existing passenger, airline, or community needs or impacts from such existing Concession. In such circumstance, the County will solely be responsible for paying the amortized costs of any improvements constructed by Concessionaire, but the County shall not be responsible for any other costs or damages, including but not limited to lost profits, loss of opportunity, borrowing costs, carrying costs, damage to reputation, loss of goodwill, or loss of income.

12.10 ADEQUATE ASSURANCES

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

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

12.11 ACTIONS AT TERMINATION

The Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

- (A) Stop all work as specified in the notice to terminate;
- (B) Take such action as may be necessary for the protection and preservation of the Location(s) and other Department materials and property;
- (C) Vacate, quit and surrender, all Location(s) and storage/support spaces and account for all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County on or before the date of termination.

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

ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE

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.

13.02 TERMINATION

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

- (A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) Days.
- (B) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the Department to remedy such breach for a period of one hundred eighty (180) Days after receipt of written notice from the Concessionaire of the existence of such breach.
- (C) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Concessionaire's provision of services for a period of one hundred eighty (180) Days.

ARTICLE 14 – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES

14.01 ACDBE REQUIREMENTS

It is the policy of the Department that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the RFP Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations.

The Department has established an ACDBE concession specific goal of twenty (20) percent of the prime concessionaire's portion of gross sales. The ACDBE goal can be achieved either through the Concessionaire being an ACDBE itself, Joint Venture or sub-contracting a percentage of Gross Revenues.

The Concessionaire is required to submit:

- (1) Executed Joint Venture or Sub-concession Agreement prior to submission for Board approval;
- (2) Notarized Monthly Utilization Report (MUR) reflecting ACDBE revenue;
- (3) Notarized Monthly Activity Report (MAR) of ACDBE JV Partner commencing thirty (30) days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.

14.02 COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS

- (1) When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.
- (2) When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract **during the complete contract term**, equal to the clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in Appendix I. "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and ACDBE Joint Venture Guidance by the U. S. Department of Transportation, Federal Aviation Administration (USDOT-FAA) ACDBE Schedule 8.
- (3) Expenditures to an ACDBE Concessionaire toward ACDBE goals, will be counted only if the ACDBE is performing a commercially useful function as defined below:

- (a) An ACDBE performs a commercially useful function when it is responsible for execution of specific quantifiable work of the contract and is carrying out its responsibilities by actually performing, or managing, or supervising the specific identified work.

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

- (b) An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.
- (c) If an ACDBE does not perform or exercise responsibility for at least seventy (70%) percent of its participation or if the ACDBE subcontract's a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.
- (d) When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut this presumption. The Department will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

- (4) The Department's decision on commercially useful function matters are final.

14.03 ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING, IF APPLICABLE

Concessionaire may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in the ACDBE Joint Venture Guidance by the U.S.DOT-FAA; ACDBE Schedule 8. The Joint Venture agreement must specify the following:

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

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

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

- (2) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:
 - a. Details of training sessions, including class rosters and lesson plans.
 - b. Deliverables and work products.
 - c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.
 - d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).
- (3) Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.
- (4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

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

14.04 CERTIFICATION-AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

In order to qualify as ACDBE participation, as an ongoing obligation under this Agreement, firms must be and remain certified by the Florida Unified Certification Program (FLUCP) for the State of Florida as an ACDBE. Only those firms certified as ACDBEs at the time of RFP submittal will be counted towards an ACDBE goal. It is the Concessionaire's obligation to verify ACDBE status prior to RFP submission. Certification as a SBE/CSBE/MWBE or by any other program SHALL NOT count toward achievement of the ACDBE Goal.

Application for certification as an ACDBE may be obtained by contacting the Florida DOT Equal Opportunity Office Located at FLUCP 605 Suwannee Street, MS 65 Tallahassee, Florida 32399-0450 Tel: (850) 414-4747 Facsimile: (850) 414-4879, or their Website: www.dot.state.fl.us/equalopportunityoffice. The Miami-Dade County, Small Business Development Division (SBD) is a certifying member of the Florida Unified Certification Program (FLUCP) and can be contacted for ACDBE certification. SBD is located at 111 N.W. 1st Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111, website: www.co.miamidade.gov/sba/home.asp.

The Florida UCP updates the certification data every 24 hours and revises the database regularly. The database lists the firm's name, address, phone number, date of most recent certification, certifying agency and type of work the firm has been certified to perform.

14.05 AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

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

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

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

"This agreement is subject to the requirements of the US Department of Transportation's Regulations 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23".

"The concessionaire agrees to include the above statements in any subsequent concession agreement covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements".

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

The Concessionaire agrees to include the above statements in any subsequent lease and concession agreements.

14.06 ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM

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

A. Store Operations

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

B. Personnel

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

C. Shop Design and Display

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

D. Loss Prevention

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

E. Books, Records and Reports

- (1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.
- (2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (*i.e.*, income) statement for the preceding month and for the year-to-date.
- (3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Management Divisions, outlining the specific areas of training (*i.e.*, components covered, total number of hours of training, training material covered, etc.).

14.07 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION PLAN

The Concessionaire shall contract with those firm(s) as are listed on the Concessionaire's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor

(iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

The Department shall monitor the compliance of the Concessionaire with the requirements of this provision during the term and/or extension of this agreement.

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

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

ARTICLE 15 - RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS

The Concessionaire shall comply with the Ordinances of the County including Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives (available at <http://www.miami-airport.com/od2.asp>) issued thereunder by the Department, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders, Implementing Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS

The Concessionaire agrees to pay, on behalf of the County, any Damage, assessment or fine issued against the County, or the Department to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Concessionaire, its agents, employees, or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in other agreements which the Concessionaire may enter into related to its activities under this Agreement and that any other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

15.03 PERMITS AND LICENSES

The Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services.

15.04 NOT USED (PROHIBITION ON USING PRODUCTS CONTAINING TRANS-FATS RESOLUTION NO. R-456-07)

15.05 LABOR PEACE REQUIREMENT – RESOLUTION NO. R-148-07

The Concessionaire provided a signed copy of the labor peace agreement for their employees as part of their Proposal to assure that no labor dispute or unrest will disrupt their operations at Miami International Airport (Exhibit M). Furthermore, the County has the right, in the event of a labor disruption, to suspend its obligations under the contract while the labor disruption is ongoing and to use alternative means to provide the service that is affected by the labor disruption. In the event a 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 but no later than five (5) days prior to the date the proposal is due. The Concessionaire and the labor organization shall equally share the costs of arbitration.

15.06 LIVING WAGE

The Concessionaire shall comply with Section 2-8.9 of the Code of Miami-Dade County, and Administrative Order No. 3-30, as amended, requiring the 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 shall also ensure that its subcontractors comply with the order in respect to their employees.

15.07 MIAMI-DADE AVIATION DEPARTMENT OPERATIONAL DIRECTIVE NO. 16-04

Pursuant to the Miami-Dade Aviation Department (MDAD) Operational Directive No. 16-04, Concessionaires and its subtenants, certain business partners, and management agreement operators agree not to provide containers (including but not limited to shopping bags, trash bags, take-out bags, clamshells, or other methods of securing foods, beverage, utensils, cups, straws, or plates which are made of Styrofoam or which are made of petroleum based plastic. Please refer to MDAD Operational Directive No. 16.04, available at <http://www.miami-airport.com/od2.asp>.

ARTICLE 16 – GOVERNING LAW

16.01 GOVERNING LAW; VENUE

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

16.02 NOTICE OF COMMENCEMENT OF CIVIL ACTION

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

16.03 REGISTERED OFFICE/AGENT JURISDICTION

The Concessionaire, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Concessionaire is a natural person, he or she and his or her personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement. If Concessionaire is a joint venture and not a corporation, the parties to the joint venture hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement.

ARTICLE 17 – TRUST AGREEMENT

17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE

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

17.02 ADJUSTMENT OF TERMS AND CONDITIONS

If at any time during the Term or any Extension thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of Location(s) used for similar purposes, are unjustly discriminatory, the County, shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the County to the Concessionaire.

17.03 INSPECTIONS

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

17.04 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW

Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of the Proposal, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Concessionaire shall

make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this Proposal or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Concessionaire's cost/price for this Proposal be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Concessionaire, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the Concessionaire in connection with this Agreement. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the Proposer or third party.

17.05 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one (1) percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. **Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one-quarter (1/4) of one (1) percent in any exempted contract at the time of award.**

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES

The Concessionaire shall pay all taxes lawfully assessed against its interests in the Location(s) and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute an Event of Default, pursuant to **Sub-Article 12.03 “Other Defaults”** hereof.

18.02 ALTERATIONS BY CONCESSIONAIRE

The Concessionaire shall not alter or modify the Location(s), except in accordance with **Article 4 “Improvements to the Location(s)”** herein, without first obtaining written approval from the Department.

18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT

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

18.04 ADMINISTRATIVE MODIFICATIONS

It is understood and agreed to that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.07 “Addition, Deletion and Modification of Location(s)”**, **Sub-Article 18.02 “Alterations by Concessionaire”**, **Sub-Article 21.02 “Right to Amend”**, and **Sub-Article 21.04 “Right to Modify”**.

18.05 SECURITY

The Concessionaire acknowledges and accepts full responsibility for the security and protection of the Location(s). The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for protection of the Location(s) shall be the sole responsibility of the Concessionaire and shall involve no cost to the Department.

18.06 RIGHTS OF DEPARTMENT AT AIRPORT

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

18.07 OTHER DEPARTMENT RIGHTS

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

18.08 FEDERAL SUBORDINATION

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

18.09 NOTICES

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

(1) to the County:

a. to the Project Manager:

Miami-Dade County
Attention: Sarah Abate
Aviation Director - Business Retention and Development
P.O. Box 025504
Miami, FL 33102-5504
Phone: (305) 876-7732
E-mail: sabate@flymia.com

and,

b. to the Contract Manager:

Miami-Dade County
Strategic Procurement Department
Attention: Chief Procurement Officer
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: cpo@miamidade.gov

(2) To the Concessionaire:

Attention: Duilio Patricio Sanguinetti
Phone: 305 798 1289
E-mail: duiliosanguinetti@hotmail.com

Or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) Registered or Certified Mail shall be deemed tendered on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

18.10 SEVERABILITY

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

18.11 RIGHTS RESERVED TO DEPARTMENT

All rights not specifically granted the Concessionaire by this Agreement are reserved to the Department.

18.12 COUNTY LIEN

The County shall have a lien upon all personal property of the Concessionaire in the Location(s) to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

18.13 AUTHORIZED USES ONLY

The Concessionaire shall not use or permit the use of the Location(s) or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Concessionaire under this Agreement.

18.14 NO WAIVER

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

18.15 SECURED AREAS/AIRFIELD OPERATIONS AREA (AOA) STERILE AREAS SECURITY

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

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

The Concessionaire shall be responsible for requesting MDAD to issue identification badges to all employees who the Concessionaire requests to be authorized access to the Secured/AOA/SIDA/Sterile Concourse Areas and any other restricted areas of the airport as may be required and designated in the Airport's Security Plan and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employer of the Concessionaire

or upon final acceptance of the work or termination of this Agreement. The Concessionaire will be responsible for fees associated with lost and unaccounted for badges as well as the fee(s) for fingerprinting and ID issuance.

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

Concessionaire Ramp Permits will be issued to the Concessionaire authorizing vehicle entrance to the Airfield Operations Area (AOA) through specified Miami-Dade Aviation Department vehicle access control gates for the term of any Project. These permits will be issued only for those vehicles that must have access to the site during the performance of the work. These permits will be only issued to company owned vehicles or company leased vehicles (leased from a commercial leasing company). AOA decals, passes, or permits to operate within the AOA will not be issued to privately owned or privately leased vehicles. All vehicles operating within the AOA must have conspicuous company identification signs (minimum of three inch lettering) displayed on both sides of the vehicles.

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

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

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

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

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

The Concessionaire understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by the Concessionaire in areas under the jurisdiction or control of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies who enter such areas are subject to fines, which shall be borne entirely by the persons and/or the Concessionaire.

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

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

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

18.16 INTENT OF AGREEMENT

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

18.17 MODIFICATIONS

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

18.18 RADON DISCLOSURE

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

18.19 TRADEMARKS AND LICENSES

The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program

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

18.20 HEADINGS

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

18.21 BINDING EFFECT

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

18.22 GOVERNMENTAL DEPARTMENT

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

18.23 INDEPENDENT CONTRACTOR

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

18.24 OTHER LIENS

Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Location(s), the leasehold, or the furniture, fixtures and equipment or any portion thereof. Concessionaire shall not permit or suffer any liens, including mechanics', materialmen's and tax liens to be imposed upon the Location(s), or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Concessionaire may in good faith contest any such lien if Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Location(s) or any personal property or trade fixtures in the Location(s), including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless County against

any and all liens and charges of any and every nature and kind which may at any time be established against said Location(s) and improvements, or any part thereof, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Lease.

18.25 FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP")

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the successful Bidder, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the successful Bidder is free to fill its vacancies from other sources. Successful Bidders will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407. (See Exhibit N)

18.26 RIGHT TO REGULATE

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

18.27 U.S. SOCCER FEDERATION 2026 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, unamortized costs 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.

ARTICLE 19 – NOT USED (SUBLEASES)

ARTICLE 20 - WAIVER OF CLAIMS

The Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly

or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Location(s) available to the Concessionaire or by reason of any defects or deficiencies in the Location(s) or in the terminal building including any defect or deficiency in the Location(s) or in the terminal building which substantially impedes the Concessionaire's ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY

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

21.02 RIGHT TO AMEND

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

21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES

A. Covenants Against Discrimination:

1. Concessionaire on behalf of itself, successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Location(s) or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds of-r race, color national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status,

sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking. Should Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Concessionaire will provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its Location(s) as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Location(s) and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including exercise or expiration of appeal rights.
4. Concessionaire assures County that no person shall be excluded on the grounds of- race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking, as applicable, from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Concessionaire also assures County that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Department.
5. Concessionaire further assures County that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking be excluded from participating in any activity conducted at or in connection with its operations at the Location(s). Concessionaire also assures County that it will require its contractors to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-Lease agreements at all tiers which are entered into in connection with Concessionaire's services hereunder.
6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, religion, ancestry, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression or status as victim of domestic violence, dating violence or stalking, as applicable, in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

- b) Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
- 7. County may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Concessionaire agrees that it will adopt such requirements as part of this Agreement.
- 8. In addition to and superseding anything above to the contrary, Concessionaire covenants to comply with the provisions attached hereto as Exhibit O, and such provisions are deemed to be incorporated herein and made part of this Agreement.

21.04 RIGHT TO MODIFY

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

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS

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

21.06 REMEDIES

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

21.07 REGULATIONS OF DEPARTMENT

The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire and the Concessionaire's Sub-tenants of the Location(s) shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's policies and procedures as the same may be amended from time to time.

21.08 INTEREST

Any sums payable to the Department by the Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of **one and one half percent (1 1/2%)** per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.09 MISCELLANEOUS PROVISIONS

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

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any Extension thereto if applicable, all necessary licenses, registrations, certificates, bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Revenues, on its income, on this Agreement and the fees payable to the County hereunder, on the rights and privileges granted to the Concessionaire herein, on the Location(s) and on any and all equipment installed on the Location(s) and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.
2. The Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Concessionaire, officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.
3. The Concessionaire is not authorized to act as the County's agent hereunder and shall have no authority, express or implied, to act for or bind the County hereunder and nothing contained in this Agreement shall be deemed or construed by the County or the Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the County the joint employer of any employee of the Concessionaire.
4. The County shall have the right during the Concessionaire's normal business hours (and at any time during an emergency) to inspect the Location(s) and the property of the Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.
5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
6. Time is expressed to be the essence of this Agreement.
7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.
8. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained herein.
9. Except as otherwise provided herein, if certain action may be taken only with the consent or approval of the County, or if a determination or judgment is to be made by the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the County or the County.
10. The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of Ethics Ordinance. The Concessionaire shall comply with these requirements.

21.10 FORCE MAJEURE

Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods, or acts or decisions of the Federal Aviation Administration, the Department of Transportation, the Transportation Security Administration, or the Environmental Protection Agency. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The parties agree that the commercial impacts of COVID-19 are currently known to the parties, and that commercial impacts related to COVID-19 shall not constitute force majeure events.

In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

21.11 ASPIRATIONAL POLICY REGARDING DIVERSITY

Pursuant to Resolution No. R-1106-15 Miami-Dade County vendors are encouraged to utilize a diverse workforce that is reflective of the racial, gender and ethnic diversity of Miami-Dade County and employ locally-based small firms and employees from the communities where work is being performed in their performance of work for the County. This policy shall not be a condition of contracting with the County, nor will it be a factor in the evaluation of solicitations unless permitted by law.

21.12 PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Concessionaire shall comply with the Public Records Laws of the State of Florida, including but not limited to,; (1) keeping and maintaining all public records that ordinarily and necessarily would be required by Miami-Dade County (County) in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Concessionaire upon termination of the agreement and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of the agreement and shall be enforced in accordance with the terms of the agreement.

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE MIAMI DADE AVIATION RECORDS CUSTODIAN, JORGE MIHAIC (305) 876-0933; JMIHAIC@MIAMI-AIRPORT.COM;

MIAMI-DADE AVIATION DEPARTMENT, RISK MANAGEMENT & SUPPORT SERVICES, P.O. BOX 025504, MIAMI, FLORIDA 33102-5504.

21.13 ENTIRE AGREEMENT

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

21.14 VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Contractor's "County Vendor Number." To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- Payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- Provision of unique identifier in the vendor database used for searching and sorting departmental records

The Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
|--|--|
| <p>1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>2. Miami-Dade County Employment Disclosure Affidavit
(Section 2-8.1(d)(2) of the Code of Miami-Dade County)</p> <p>3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> <p>4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the Code of Miami-Dade County)</p> <p>5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County)</p> <p>6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>7. Miami-Dade County Code of Business Ethics Affidavit
(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)</p> <p>8. Miami-Dade County Family Leave Affidavit</p> | <p>(Article V of Chapter 11 of the Code of Miami-Dade County)</p> <p>9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the Code of Miami-Dade County)</p> <p>10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p> <p>11. Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit
(Section 448.095, of the Florida State Statutes)</p> <p>12. Miami-Dade County Pay Parity Affidavit
(Resolution No. R-1072-17)</p> <p>13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit
(Resolution No. R-919-18)</p> <p>14. Subcontracting Practices
(Section 2-8.8 of the Code of Miami-Dade County)</p> |
|--|--|

15. **Subcontractor/Supplier Listing– Must be submitted via BMWS**
(Section 2-8.1 and 10.34 of the Code of Miami-Dade County)
16. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
17. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.22 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
18. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

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

Contractor

Miami-Dade County

By: _____

By: _____

for

Name: _____

Name: _____

Daniella Levine Cava

Title: _____

Title: _____

Mayor

Date: _____

Date: _____

Attest: _____

Attest: _____

Corporate Secretary/Notary Public

Juan Fernandez-Barquin
Clerk of the Court and Comptroller



EMILIO GALINDO
Notary Public
State of Florida
Comm# HH485166
Expires 3/1/2028

Approved as to form
and legal sufficiency

State of Florida, County Of Miami-Dade

The foregoing instrument was acknowledged before

me this 8th day of February, 2024

by Duilio Patricio Sanguinetti

who is personally known to me or who has produced

U.S. Passport as identification.

Assistant County Attorney



EMILIO GALINDO
Notary Public
State of Florida
Comm# HH485166
Expires 3/1/2028

APPENDIX I

AIRPORT CONCESSION DISADVANTAGED BUSINESS

ENTERPRISE PARTICIPATION PLAN/PROVISION



**Internal Services Department
Small Business Development**

111 NW 1 Street, 19th Floor
Miami, Florida 33128
T 305-375-3111
F 305-375-3160

November 23, 2022

REBECCA FIGUEROA
BEKKA GROUP INC
7490 SW 58 STREET
MIAMI, FL 33143

Approval Date: November 17, 2022 - Airport Concession Disadvantaged Business Enterprise

Anniversary Date: November 30, 2023

Dear REBECCA FIGUEROA,

Miami-Dade County Small Business Development (SBD), a division of the Internal Services Department (ISD), is pleased to notify you that your firm is certified under the Florida Unified Certification Program (UCP). Your firm meets the eligibility requirements for certification as an Airport Concession Disadvantaged Business Enterprise (ACDBE) in accordance with 49 CFR Part 23 and 26.

ACDBE certification is continuous with no expiration date; however, firms are required to attest that there are no changes via the No Change Declaration form, on or before the firm's anniversary date, to remain certified. You will be notified of your annual responsibilities in advance of the Anniversary Date listed above. You must submit the annual No Change Declaration form no later than the Anniversary Date to maintain your eligibility. Your firm will be listed in the UCP DBE Directory which can be accessed through the Florida Department of Transportation's website: <http://www3b.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>.

ACDBE certification is NOT a guarantee of work, but it enables the firm to compete for and perform contract work on all USDOT Federal Aid (FAA, FTA and FHWA) projects in Florida as an ACDBE contractor, sub-contractor, consultant, sub-consultant or material supplier.

If at any time there is a material change in your firm, you must advise this office by sworn affidavit and supporting documentation within thirty (30) days. Changes include, but are not limited to ownership, officers, directors, management, key personnel, scope of work performed, daily operations, on-going business relationships with other firms, individuals or the physical location of your firm. After our review, you will receive instructions as to how you should proceed, if necessary. Failure to comply will result in action to remove your firm's ACDBE certification.

MDC071

It is strongly recommended that you register your firm as a vendor with Miami-Dade County. To register, you may visit: <http://www.miamidade.gov/procurement/vendor-registration.asp>. Thank you for your interest in doing business with Miami-Dade County. If you have any questions or concerns, you may contact our office at 305-375-3111 or sbdcert@miamidade.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanise Cummings-Labossiere". The signature is fluid and cursive, with the first name "Jeanise" being more prominent.

Jeanise Cummings-Labossiere
Section Chief, Small Business Development

NAICS & Industry Title: (Your firm is eligible to compete for and perform work on all USDOT Federal Aid projects throughout Florida and may earn DBE or ACDBE credit for work performed in the following areas.)

NAICS 541611: ADMINISTRATIVE MANAGEMENT AND GENERAL MANAGEMENT CONSULTING SERVICES

NAICS 541618: OTHER MANAGEMENT CONSULTING SERVICES

NAICS 561110: OFFICE ADMINISTRATIVE SERVICES

10/06/2023

HOTELZO LLC
5237 Raymond Dr N
Boynton Beach, FL 33472

BEKKA GROUP, INC.
7490 SW 58 ST
MIAMI, FL 33143

DRAFT SUBCONTRACT AGREEMENT

This document outlines the preliminary terms and conditions governing the collaborative business relationship between Hotelzo LLC, referred to as the "Proposer," and Bekka group, Inc., identified as the "Subcontractor." These terms shall persist until superseded by a formal, definitive agreement, hereinafter termed the "Definitive Agreement," addressing the same transaction and subject matter. The stipulations presented in this draft and the Definitive Agreement are subject, in all respects, to the ensuing conditions:

Hotelzo LLC:

Hotelzo LLC, a duly registered Delaware company, reclassified for operations in the state of Florida, serves as the Proposer for the ongoing bid package responding to the Miami International Airport's (MIA) solicitation for Sleep Centers. The proposal encompasses the construction and operation of 14 rooms in a 1933 sq ft location at Concourse D and 25 rooms in a 3300 sq ft location at Concourse H. Fundamental services offered to MIA passengers include sleeping room accommodations, the retail of sleep-related products, and a bundled food and beverage (FB) offering. The Concourse H location will also feature bathroom and shower facilities. Hotelzo LLC leverages a technological advantage streamlining repetitive procedures, optimizing check-ins and check-outs, and providing monitoring tools for staff to efficiently manage reservations and cleaning processes, maintaining close control over operational performance.

Bekka group, Inc.:

Bekka group, Inc., a Florida registered entity certified as an Airport Concession Disadvantaged Business Enterprise (ACDBE), is contracted to deliver specific services in alignment with the North American Industry Classification System (NAICS they currently possess):

541611: Administrative Management and General Management Consulting Services

In accordance with the tentative provisions outlined in the pre-contractual understanding, Bekka group, Inc. is designated to play a pivotal consulting role for Wait N Rest establishments at MIA. Leveraging their extensive practical knowledge, Bekka group, Inc. shall offer essential guidance on operational intricacies, ensuring meticulous adherence to stringent airport regulations. Of particular note is their crucial involvement in providing advice on general management practices and human resources, thereby significantly contributing to the smooth functioning of Wait N Rest services.

561110: Office Administrative Services

Bekka group, Inc. will be responsible for providing essential day-to-day office administrative services at Wait N Rest MIA locations. This encompasses financial planning, billing, meticulous record keeping of personnel, and the streamlined coordination of physical distribution and logistics. All services will be

delivered on a contractual or fee basis. Day-to-day personnel management will not be a part of Bekka group, Inc. responsibilities and will be covered by Hotelzo LLC.

In consideration of the services rendered by Bekka group, Inc, they shall be entitled to receive 20% of the Gross Revenues generated by our two Wait N Rest locations at MIA. This percentage is calculated based on the anticipated 5-year contract, amounting to approximately 7,772,310 USD. It is important to note that this amount, being a percentage of sales, is contingent upon our sales performance throughout the contract duration.

This document serves as a preliminary agreement from Hotelzo LLC to Bekka group, Inc., delineating the subcontracting arrangement for various activities at Wait N Rest MIA locations. Detailed specifics will be further clarified in the Definitive Agreement, contingent upon Hotelzo LLC being awarded the contract by the Miami-Dade Aviation Department (MDAD). Both parties express their alignment and joint commitment to participating collaboratively in this project.



SIGNATURE
REBECCA FIGUEROA
Bekka Group, Inc.



SIGNATURE
DUILIO SANGUINETI
Hotelzo LLC

Initial list of Activities to be subcontracted from Bekka Group Inc

As previously indicated in the bid submission package, specifically in Section 2, point 5, Bekka Group Inc. holds significant importance throughout both the construction and operational phases of our project. This is attributed to their extensive expertise gained from working at MIA, coupled with their adeptness in navigating regulatory compliance.

In our Draft Subcontract Agreement and the attached ACDBE Schedules within this bid, we have explicitly outlined that Bekka Group Inc. will primarily undertake administrative management, general management consulting services, and office administrative services at Wait N Rest. To delve into a more detailed perspective concerning their role in our core activities, the subsequent paragraphs will provide a comprehensive overview.

Expense Tracking and Improvement Identification:

Keep a meticulous record of daily venue expenses, identifying areas for enhancement. Assist the VP of Operations in sourcing optimal vendors.

Supplier Coordination:

Liaise with product offering suppliers to manage deliveries and procedures. Ensure compliance with vendor policies, emphasizing fair trade and DBE standards.

Airport Authorities Liaison:

Act as a crucial intermediary between airport authorities and Hotelzo, ensuring strict adherence to established procedures based on Bekka Group's extensive airport experience.

Performance Indicator Monitoring:

Monitor key performance indicators related to personnel, offering insight and assistance when necessary, leveraging Bekka Group's consulting experience in managing large groups.

Logistics Coordination:

Coordinate logistics with our laundry supplier and assess the applicability of existing protocols to the unique environment of MIA once operations commence.

Payroll Supervision:

Supervise payroll processes, with a specific focus on timesheet accuracy and payroll payments.

Facility Maintenance Oversight:

Oversee the maintenance of physical facilities, serving as support to the General Manager in resolving related issues, leveraging Bekka Group's construction expertise.

Onboarding and Hiring Support:

Provide counsel in the onboarding and hiring process for the General Manager, supervisors, and staff. Assist in creating evaluation methods aligned with airport regulations for key employee training.

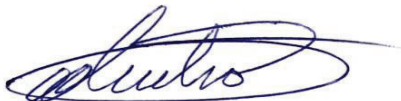
Organizational Planning and Growth Advisory:

Offer counsel on organizational planning, particularly as Wait N Rest expands in the U.S. Leverage Bekka Group's knowledge to advise on growth strategies, emphasizing agility and avoiding redundant functions within large teams.

These outlined functions represent the core responsibilities delineated for the initial stages of our operations. However, as Bekka Group Inc. becomes more immersed in the Wait N Rest culture, we anticipate their learning extending to various other facets. As a youthful company devoid of traditional hierarchies, our team members can glean insights from diverse areas, fostering a highly collaborative work environment.

We are confident that Bekka Group Inc.'s involvement will evolve over time, with Hotelzo LLC actively supporting their growth and collaborative exploration of new ventures. This dynamic synergy is a testament to our commitment to mutual development and continuous improvement within our organizational ecosystem.

In closing, we are very excited about the prospect of exchanging knowledge with Bekka Group and eagerly look forward to the valuable partnerships that will emerge from this collaborative project.



SIGNATURE

DUILIO SANGUINETI

Hotelzo LLC

Schedule 1

ACDBE UTILIZATION FORM

[The ACDBE Utilization Form, Schedule of Participation and Letter of Intent are required as part of the solicitation documents.]


The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

 X The bidder/offeror is committed to a minimum of 20 % ACDBE utilization in this Contract.

_____ The bidder/offeror (if unable to meet the ACDBE goal of _____%) is committed to a minimum of _____% ACDBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: HOTELZO LLC

State Registration No. M23000011516

By: DUILIO SANGUINETI Date: 10/11/2023
(Print Name)
(Signature)  Title: CEO

ACDBE SCHEDULE 1

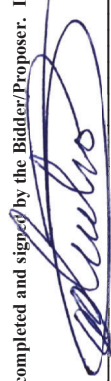
Schedule 2

SCHEDULE OF PARTICIPATION BY ACDBE FIRMS

Listed below is the information pertaining to “certified” ACDBE firms who will be participating in this contract.

NAME OF ACDBE FIRMS	DESCRIPTION OF SERVICES	% OF BID/PROPOSAL
BEKKA group, Inc.	Administrative Office Services	17.5%
BEKKA group, Inc.	Administrative Management and General Management Consulting Services	2.5 %

Form to be completed and signed by the Bidder/Proposer. I certify that the representation contained in this Schedule of Participation are to the best of my knowledge true and accurate.



10-11-2023

Signature of Proposer

Date

DUILIO SANGUINETI

CEO

HOTELZO LLC

Print Name

Title

Company Name

ACDBE SCHEDULE 2

Page 9

Schedule 3

LETTER OF INTENT AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

ACDBE Firm: BEKKA group, Inc.

Project: Wait N Rest Sleeping Centers in MIA

Contract Number: PM-EVN0000237 Total % of Bidder/Proposal: 20%

The undersigned holds ACDBE Certificate No. See attached letter expiring on, 11/30 20 ^(Anniversary date) 23 .

Please Provide ACDBE Certification letter or proof of certification from the Florida Unified Certification Program (FLUCP) or the Miami-Dade County, Small Business Development (SBD), a Division of the Department of Sustainability, Planning and Economic Enhancement (SPEED).


The undersigned intends to perform the following work in connection with the above Bid/Proposal (Describe): _____

Description of Services	% of Bid/Proposal
Administrative Office Services	17.5%
Administrative Management and General Management Consulting Services	2.5%

Total% 20%

Print Name Rebecca Figueroa Title President

ACDBE Firm BEKKA group, Inc.

Signature  Date 10-11-2023
of ACDBE

Schedule 4

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
EXPERIENCE SHEET

ACDBE NAME BEKKA group, Inc.

ADDRESS 7490 SW 58 ST
Miami, FL 33143

NAME OF CLIENT COMPANY NAME AND ADDRESS	DESCRIPTION OF SERVICES PROVIDED TO CLIENT	GROSS REVENUES	CALENDAR YEAR
(A) American Express TRS Co	Administrative Management & General Management Consulting Services Administrative Office Services	\$36,000	2023
(B) CBRE-Heery	Administrative Management & General Management Consulting Services Administrative Office Services	\$328,624	2022
(C) AvAirPros	Administrative Management & General Management Consulting Services Administrative Office Services	\$122,250	2019

NOTES:
USE A SEPARATE SHEET FOR EACH DBE COMPANY.
ADDITIONAL PAGES MAY BE ATTACHED AS NECESSARY

Schedule 6

CONCESSION MONTHLY UTILIZATION REPORT

Reporting Period: _____ Name of Prime Concessionaire: _____ YTD ACDBE Goal:
 From: _____ To: _____ Lease Number: _____ Required _____
 Actual _____

Name and Address	Date of Award	Terms of Agreement	Agreement Amount	Modification Amount
		Starting: _____ Expiration: _____ Options: _____		

Amount of Revenues this Period \$ _____ ACDBE Revenues for this Period \$ _____
 Operational Expenses this Period \$ _____ ACDBE Operational Expenses this Period \$ _____
 Total Revenues to Date \$ _____ Total ACDBE Revenues to Date \$ _____
 Total Operational Expenses to Date \$ _____ Total ACDBE Operational Expenses to Date \$ _____

AIRPORT T CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE) OPPORTUNITIES

Name of ACDBE Firm	ACDBE Goal	Revenue This Period	Revenues to Date	Operational Expenses This Period	Operational Expenses to Date	Concession Opening Date	Actual Opening Date

I attest that the above information is accurate and complete.

Authorized Signature _____ Print Name _____ Title _____ Date _____ (____) Telephone _____

Sworn before me: This _____ day of _____ 20 _____

Notary Public: _____

Additional page (s) may be used if needed.



Small Business Development Division

Project Worksheet

Project/Contract Title: Sleeping Units at Miami International Airport

Received Date: 8/10/2022

Project/Contract No: RQID2100454

Resubmittal Date: 3/14/2023

Funding Source: Revenue Generating

Department: Internal Services

Estimated Revenue: \$100,000.00

Description of Project/Bid: A request for proposal to establish a revenue generating concessions contract for a vendor to finance, design, construct, manage, operate and maintain sleeping units at Miami International Airport (MIA).

Contract Measure		
Measure	Program	Goal Percent
Goal	ACDBE	20.00%
Reason for Recommendation		
<p>This solicitation was resubmitted to be evaluated for ACDBE measures.</p> <p>SBD reviewed this project pursuant to Code of Federal Regulations (CFR) Title 49 Part 23 for ACDBE measures. Project information analyzed included the project's scope of services, estimated project cost, minimum requirements/qualifications and funding source. Additional factors included the verification of availability process to determine availability and assignment of the noted measures. Five (5) SBE firms certified in the work description codes below were contacted through the Verification of Availability process; however, three (3) or more did not respond as being able to provide the good(s) and/or service(s) listed in the solicitation and/or provide experience working on contracts of similar scope and/or size. A 20.00% ACDBE Goal is applicable to this solicitation.</p> <p>Miami-Dade County Living Wage is applicable. The goods and/or services under this solicitation fall under the covered services listed in article (F)(3) of Sec. 2-8.9 of the Code, Living Wage Ordinance.</p> <p>The work description codes assigned based on the scope of services are:</p> <p>NIGP 97130 Hotel and Motel Accommodations, Including Lodges, Resorts, Bed/Breakfast Inns, etc., Rental or Lease, NIGP 97145 Office Space Rental or Lease</p>		

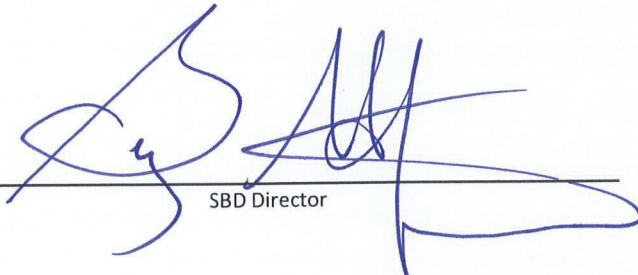
Living Wages: YES ☒ NO ☐

Highway: YES ☐ NO ☒

Heavy Construction: YES ☐ NO ☒

Responsible Wages: YES ☐ NO ☒

Building: YES ☐ NO ☒


SBD Director

4-14-23

Date

EXHIBIT A

Locations

Exhibit A - Map Locations

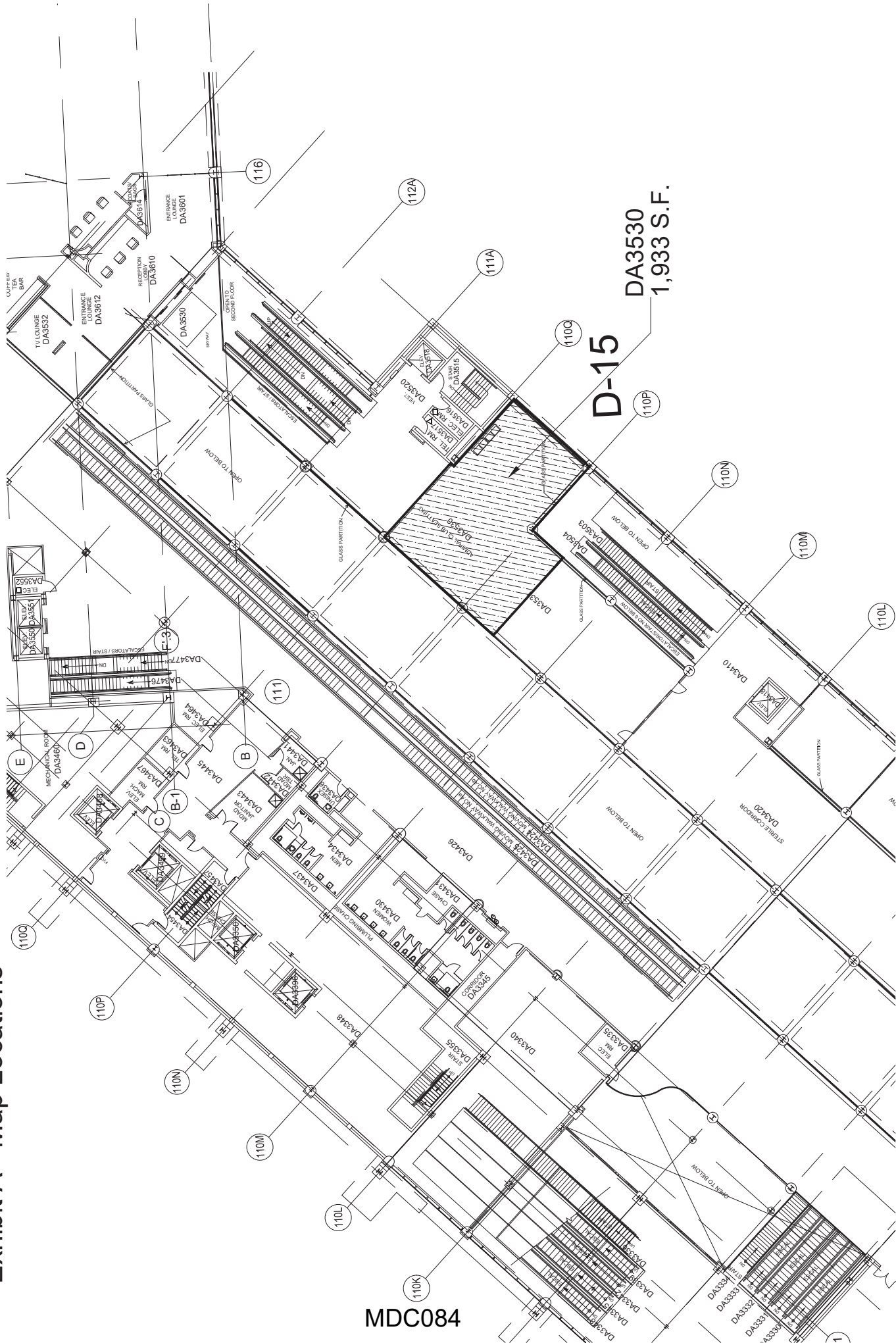


EXHIBIT A
RFP SLEEPING UNITS



Exhibit-A
SLEEPING CENTER
CONCOURSE H - THIRD FLOOR

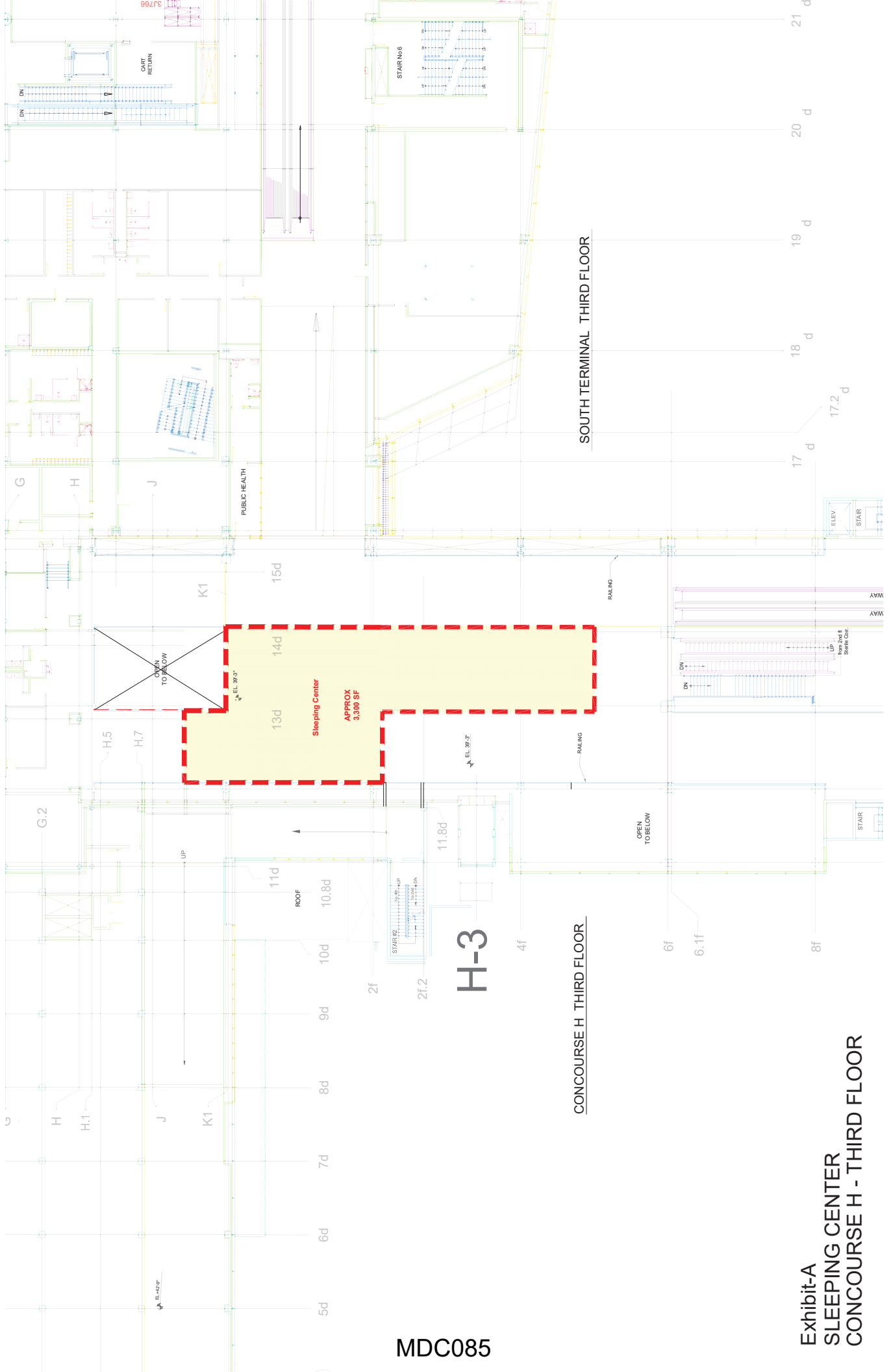


EXHIBIT B
SCOPE OF SERVICES

Exhibit B

Scope of Services

2.1 Background

Miami International Airport (MIA) is the leading economic engine for Miami-Dade County and the State of Florida. Founded in 1928, MIA now offers more flights to Latin America and the Caribbean than any other U.S. airport. Today, MIA enjoys top rankings as the leading international freight airport in the United States and ranks as one of the nation's top three leading airports for international passenger traffic.

MIA's prominent presence in international passenger traffic and cargo activity has fueled a host of other industries, such as: tourism, cruise industry, international banking, and commerce. More than 77% of all exports and 80% of all imports between the United States and the Latin American/Caribbean region flow through MIA. It should also be noted that MIA is the port of entry for about 70% of all international traffic arriving by air to Florida. MIA is the world's largest Latin American/Caribbean gateway, offering 1,290 weekly departures with non-stop service to 73 destinations in the region. With 49% of total passenger traffic being international, MIA is among the top two airports in the U.S. with the highest international to domestic passenger ratios.

2.2 Concession Program Goals and Objectives

MDAD has established concession goals and objectives to better meet or exceed the demands of today and tomorrow's traveling public. The Department's concession goals and objectives for the Airport are to:

- Enhance the image of the Airport as a world-class airport.
- Enhance customer service and satisfaction by improving product choice, price choice, and customer service.
- Optimize sales and revenues.
- Optimize design and location of retail units.
- Present a local and regional identity to the traveling public.
- Provide national and international branded concepts.
- Increase local and Airport Concession Disadvantaged Business Enterprises (ACDBE) participation to the extent possible.

2.3 Scope of Services

The Concessionaire shall finance, design, construct, manage, operate, and maintain Sleep Centers at Miami International Airport (MIA) in the "As-Is" Locations specified in Revised Exhibit A. The Sleep Centers will provide airport patrons with safe state-of-the art, first class private spaces that provides the right mix of amenities, including but not limited to a clean, quiet, relaxed, secluded place to rest and work. The Units will be available to the public three hundred sixty-five (365) days, twenty-four (24) hours, seven (7) days per week. Proposers may propose on any Sleep Unit (e.g., cabin) concept as long as the concept does not hinder the quality, and service requirements specified in this RFP. Stand-alone individual units that are not enclosed within a structure (cabin) shall NOT be permitted pursuant to this RFP.

Sleep Centers must include the following required features:

- Mini Lobby (reception area) will be staffed 24 hours with an attendant for check-in and cleaning
- Sound insulation
- Bed/sofa/reclining seat including blankets, clean fresh linen and pillows
- Air conditioning and heating individually adjustable
- Workspace with multiple data/electric outlets
- Charging Ports
- Adjustable lighting (e.g. warm ambient as well as brighter lighting for work environment)
- WIFI Capable

- Multimedia Entertainment System
- Small storage area
- ADA compliant Sleep Center available
- All units shall be non-smoking
- Unit shall have safety locking, unlocking, including emergency outside opening feature (access must be granted to Miami-Dade Aviation Department)
- Unit shall be fire resistant and compliant with required life safety and security features including but not limited to sprinklers, fire detection devices, smoke detectors, and connected to MIA's emergency public announcement and evacuation system. Any adjustments or necessary upgrades to the fire suppression system is the responsibility of the Concessionaire.
- Units must comply with all applicable laws, rules, and directives.
- Units must comply with any Transportation Security Administration (TSA) security requirements
- Units must be arranged and configured within the established footprint.
- Pre-packaged food and beverages are allowed; however, the MDAD Concessions Section's approval is needed prior to displaying them.

Note: Sleeping Centers will only be located in post security area(s) as specified in Exhibit A – Map Locations.

2.4. Staffing

The Concessionaire shall always employ enough personnel necessary to assure prompt, courteous, and efficient service. Officers, staff, and employees ("Personnel") shall be properly trained, attired, and must wear identification "badges" in accordance with MDAD credentialing requirements (refer to Section 2.7 A). Personnel shall not engage in any "pressure-sales" tactics for any services offered by the Concessionaire or at MIA.

A. General Manager

Concessionaire shall appoint a full-time, experienced and properly trained General Manager, to represent and act on behalf of the Concessionaire in all matters pertaining to the business operation. The General Manager shall be responsible for the proper conduct and appearance of its officers, agents, employees, suppliers, and representatives. The General Manager shall be responsible for the operation and all support/administrative locations.

B. Attendant

Concessionaire will have an on-site Attendant, responsible for administering and recording passenger/customer ingress and egress activities.

C. Employee Customer Service Training

Concessionaire will be required to have all employees dealing directly with the public (passengers, customers, etc.) to complete the **MIA Virtual Customer Service Program**, as part of their vetting process at MIA.

2.5 Managing

The Concessionaire shall, if applicable:

1. Manage the Location(s) in a way that optimizes passenger experience and revenue.
2. Monitor and enforce compliance with the terms and conditions of the Lease and Concession Agreement, including but not limited to use clauses, customer service, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees, rent, and signage.
3. Function as operations liaison between the Department, governmental agencies, and others.
4. Maintain permanent records for Location leased.

5. Maintain computerized records on a commercially available software program acceptable to the Department. Programs and all data collected should be available to the Department on-line (digital or electronic).
6. Develop, maintain, and make available, if requested, all files, to include copies of licenses, permits, insurance certificates, and letters of credit.

2.6 Services and Fees

The Concessionaire shall develop a schedule of services and charges, which needs to be approved by the Department prior implementation. These shall be in English, Spanish, and any other languages, as may be required by the Department. Such schedule shall be posted at each of their locations and on their website for the specified service areas served by the Concessionaire.

The County shall have the sole discretion to approve all proposed charges submitted by the Concessionaire. The Concessionaire shall request changes in writing, justifying such adjustments, which the Department may administratively authorize or adjust to the extent that such adjustments are based upon operational increases. The services and charges submitted with the Proposal upon approval, shall be remain in place for a full year before the Concessionaire may request any change.

2.7 Security Requirements

The Concessionaire shall provide necessary security measures at the Locations to protect the customer and MDAD. As a condition of award, the Concessionaire shall provide a detailed Security Plan to MDAD Safety and Security for review and approval, prior to beginning operations. Security Plan shall include statement complying with terminal evacuation, safety and privacy of the guests and other security controls for the operation.

A. Credentialing

The Concessionaire shall be subject to all Departmental requirements, in addition to Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP) mandates pertaining to the issuance of airport identification badges, including, but not limited to employee completion of Secure Identification Display Area (SIDA) training conducted by MDAD and background checks, as required by the TSA and CBP Unescorted Access Privilege Rule. The Concessionaire shall be required to conduct background investigations and to furnish certain data on such employees before issuance of such ID badges including, but not limited to, fingerprinting of employee applicants for such badges. All employees working need to be badged before work commences. Badges must be displayed at all times.

2.8 Signage

Any and all signage must have prior written approval from the Department and is subject to the terms and conditions of the Agreement. Moving or flashing signs are prohibited. Signage shall only display the name of the Concessionaire with its identifiable logo; all other advertising is prohibited.

2.9 Utilities/Maintenance of Locations

The Concessionaire is responsible for bringing in any new power, communications lines and other utilities that may be needed from the nearest available Airport panels/panel room to the site, at its sole expense. The Concessionaire shall be responsible for all utility costs for operation. The Concessionaire shall comply with all applicable building codes and requirements during any construction, remodeling, installation, and any other related work.

- A. Shared Tenant Services (STS) Program.** The Department has a Shared Tenant Services Program (STS) for the provision of telecommunications, data network and shared tenant services at the Airport. All CMUs and host processor may utilize the MIA Shared Tenant Services Program either with existing infrastructure, existing landlines, wireless access, or cellular access where necessary. Under the STS Program, MDAD will provide data cables to CMU Locations, but the Concessionaire shall be responsible for paying all costs incurred by MDAD to provide such installation. MDAD provides wireless WIFI services, but MDAD does not

provide an established or guaranteed speed for wireless connection. Under the STS Program and for security purposes the use of MDAD's private WIFI is required. Concessionaire must sign the Exhibit P – Airport Rental Agreement, of the Agreement within seven (7) days of the Agreement date of execution. Please refer to Section 3.22(A) of the Agreement for further details.

EXHIBIT C

PAYMENT SECURITY LETTER OF CREDIT FOR RENT REQUIREMENTS

EXHIBIT C

Lease & Concession Agreement

Letter of Credit

(PAYMENT SECURITY)

Irrevocable Standby Letter of Credit

(On bank's letterhead)

Date: _____

L.O.C. No. _____

Miami Dade Aviation Department
Attn: Accounts Receivable Manager
4200 NW 36TH Street Bldg. 5A Suite
300Miami, FL 33122

To Whom It May Concern:

By order of _____ (Name of User) _____, we hereby issue our Irrevocable Standby Letter of Credit No. _____ in your favor in an amount not to exceed \$ _____ in US Funds, effective immediately, and expiring at the close of business on _____, 20____ at our counters at _____.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, identifying your Letter of Credit number. Each such draft(s) must be accompanied by your written statement to be signed by an official of the Miami Dade Aviation Department reading as follows:

"that _____ (Name of User) _____ has failed to comply with the terms of the Agreement entered into with the Miami-Dade Aviation Department", and "we are hereby presenting our draft for payment."

Partial drawings under this Letter of Credit are permitted.

This Letter of Credit shall be valid until _____, 20____ and shall thereafter be automatically renewed without amendment for successive one-year periods upon each anniversary or before the above expiration date unless we notify you in writing by overnight courier at your above address, at least sixty (60) days prior to the above stated expiration date, that we elect not to renew this Letter of Credit.

In the event that we elect not to extend this Letter of Credit and notify you as above then this Letter of Credit shall be available by your draft at sight on us, which need not be accompanied by the above mentioned statement.

We hereby engage with you that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored by us if presented at our counters with this original Letter of Credit while this Letter of Credit is in force and effect.

Except so far as otherwise expressly stated, This Standby Letter of Credit is subject to and governed by the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600).

Issuing Bank

By: _____

Signature

(Print Name)

(Print Title)

Bond No. _____

EXHIBIT D

SURETY PERFORMANCE AND PAYMENT BOND (CONSTRUCTION)

EXHIBIT D

SURETY PERFORMANCE AND PAYMENT BOND

By this Bond, We, [CONCESSIONAIRE], as Principal, whose principal business address is [INSERT ADDRESS], as Developer under the contract dated _____, 20____, between Principal and Miami-Dade County for the development of the [IMPROVEMENTS] (hereinafter referred to as "Lease and Concession Agreement") the terms of which Lease and Concession Agreement are incorporated by reference in its entirety into this Bond, and We, _____, as Co-Principal, whose principal business address is _____, as Contractor under the contract dated _____, 20____, between Co-Principal and [CONCESSIONAIRE], for the construction of the [IMPROVEMENTS] (hereinafter referred to as "Construction Contract") the terms of which Construction Contract are incorporated by reference in its entirety into this Bond and _____, a corporation, whose principal business address is _____, as Surety, are bound to Miami-Dade County (hereinafter referred to as "County") in the sum of _____ (U.S. dollars) \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal or Co-Principal:

1. Performs all the work under the Construction Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Construction Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Construction Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal or Co-Principal with labor, materials, or supplies, used directly or indirectly by Principal or Co-Principal in the prosecution of the work provided for in the Construction Contract; and
3. Pays County all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that County sustains because of a default by Principal or Co-Principal under the Construction Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Construction Contract; and
4. Performs the guarantee of all work and materials furnished under the Construction Contract for the time specified in the Construction Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Construction Contract; then this bond is void; otherwise it remains in full force.

If no specific periods of warranty are stated in the Construction Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue suits directly with the Principal or Co-Principal seeking damages for latent defects in

SURETY PERFORMANCE AND PAYMENT BOND (Cont'd)

materials or workmanship, such actions being subject to the limitations found in Section 95.11, Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Construction Contract or the changes does not affect Surety's obligation under this Bond.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20__.

CONCESSIONAIRE

[CONCESSIONAIRE]

BY:

Venturer) (President) (Managing Partner or Joint

CONTRACTOR

(Contractor Name)

BY:

Venturer) (President) (Managing Partner or Joint

(SEAL)

SURETY PERFORMANCE AND PAYMENT BOND (Cont'd)

COUNTERSIGNED BY RESIDENT
FLORIDA AGENT OF SURETY:

SURETY:

(Copy of Agent's current
Identification Card as issued by
State of Florida Insurance Commissioner must be attached) By: _____

Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

Exhibit E

Retail Concession Guidelines

https://www.miami-airport.com/concessions_program.asp.

EXHIBIT F

Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N)

and

Tenant Airport Construction Reimbursable Procedures (TAC-R)

(LINK)

<http://www.miami-airport.com/resources.asp>

EXHIBIT G
Independent Audit Report

Exhibit G

Sample Management Letter

Independent Auditor's Report

Board of Directors
XYZ Corporation

In planning and performing our audit of the Schedule of Gross Revenues and Percentage Fees Paid to the County of XYZ Corporation for the year ended _____xx, 20xx, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing our opinion of the Schedule of Gross Revenues and Percentage Fees Paid to the County and not to provide assurance on the internal control structure. Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under the standards established by the American Institute of Certified Public Accountants.

A material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the Schedule of Gross Revenues and Percentage Fees Paid to the County being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. However, we noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined above.

This report is intended solely for the information and use of the Board of Directors and management of XYZ Corporation and Miami-Dade County, Florida and should not be used for any other purpose.

ABC & DEF, CPA's
_____xx, 20xx

Sample Audit Report

Independent Auditor's Report

Board of Directors
XYZ Corporation

We have audited the accompanying Schedule of Gross Revenues and Percentage Fees Paid to the County (as defined in the Lease and Concession Agreement between Miami-Dade County Florida and XYZ Corporation) of XYZ Corporation for the year ended _____ xx, 20xx. This schedule is the responsibility of XYZ Corporation's management. Our responsibility is to express an opinion on this schedule base on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Gross Revenues and Percentage Fess Paid to the County is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides basis for our opinion.

In our opinion, the Schedule of Gross Revenues and Percentage Fees Paid to the County referred to above presents fairly, in all material respects, the gross revenues of XZ Corporation for the year ended _____ x, 20xx and the related fees paid, as defined in the Lease and Concession Agreement referred to in the first paragraph.

This report is intended solely for the information and use of the Board of Directors and management of XYZ Corporation and Miami-Dade County, Florida and should not be used or any other purpose.

ABC & DEF, CPA's
_____, xx, 20xx

Sample Compliance Letter

Independent Auditor's Report

Board of Directors
XYZ Corporation

We have audited, in accordance with generally accepted auditing standards, the Schedule of Gross Revenues and Percentage Fees Paid to the County of XYZ Corporation for the year ended _____ xx, 20xx and have issued our report thereon, dated _____ xx, 20xx. We have not performed any substantive audit procedures beyond the date of our report on the Schedule of Gross Revenues and Percentage Fees Paid to the County. Accordingly, this report is based on our knowledge as of that date and should be read with that understanding.

In connection with our audit, nothing came to our attention that caused us to believe that XYZ Corporation failed to comply with the term of the Lease and Concession Agreement with Miami-Dade County, Florida insofar as they relate to the Company's book of accounts, records and reports. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance.

This report is intended solely for the information and use of the Board of Directors and management of XYZ Corporation and Miami-Dade County, Florida and should not be used for any other purpose.

ABC & DEF, CPA's
_____, xx, 20xx

XYZ Corporation
Schedule of Gross Revenues and Percentage Fees Paid to the
County For the Year Ended _____, 20xx

<u>Month</u>	<u>Gross Revenues</u>	<u>Percentage Fee Due</u>	<u>Percentage Fee Paid</u>	<u>Balance Due</u>
--------------	-----------------------	---------------------------	----------------------------	--------------------

	_____	_____	_____	-
TOTAL	_____	_____	_____	

EXHIBIT H

Executed Affidavits and Certificate of Insurance (from Concessionaire)

EXHIBIT I
MONTHLY REPORT OF GROSS REVENUES

Exhibit I
Monthly Report of Gross Revenues

COMPANY NAME

Monthly Gross Revenues

Report due on or before the Tenth (10th) calendar day following the end of the each month

Month of: _____

Year: ____ / ____ / ____

Send Original with payment to:
Miami Dade Aviation Department
Att: Finance Division
P.O. Box 526624
Miami, Florida 33152-6624

Permit Agreement No. _____

Lazier, Porchia B. (305) 876-8497
PLazier@miami-airport.com
LSUGG@MIAMI-AIRPORT.COM

location #1

Gross Revenue by location

_____ \$0.00

Total number of locations reported: ____ 3

Total Gross Revenues:

_____ \$0.00

Effective Concessions Fees:

Total Percentage Fee 15% \$ _____ -

Less: Monthly MAG 12 \$ _____

Less: Monthly Rent [Sq. Ft's*Rent Rate](#) 12 \$ _____

% Fee due in Excess of Monthly Rent Net to MDAD \$ _____

Total Due to MDAD \$ _____

Payment included in Check No. _____ Amount Paid: _____ Date: _____

I hereby certified that the above statement is true and correct:

Signature PRINT NAME

Title

Date

EXHIBIT J

PERFORMANCE BOND FOR RENT REQUIREMENTS

EXHIBIT J
PERFORMANCE BOND FOR RENT REQUIREMENTS

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____
as Principal, and _____ licensed to do business in the State of
Florida as Surety, are held and firmly bound unto Miami-Dade County (Obligee), in the penal sum
of _____ as stipulated on _____, 20____ for the payment of which sum well
and truly to be made, the Principal and Surety bind themselves, their heirs, executors,
administrators, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas by Concession
Agreement awarded by the Board of County Commissioners, Obligee has granted unto said
Principal the right to operate a Concession at Miami International Airport and more fully described
in said Lease and Concession Agreement for a term as set forth in said Agreement or as amended,
a copy of which is attached, which Agreement is made a part hereof and incorporated herein by
reference.

NOW, THEREFORE, if Principal, its executors, administrators, successors, and assigns
shall promptly and faithfully perform the Lease and Concession Agreement, according to the
terms, stipulations of conditions thereof, then this obligation shall become, null and void;
otherwise, to remain in full force and effect.

Provided, however, this bond shall be in full force and effect for the term of the Agreement
But may be renewed annually thereafter by the principal with written consent of the Surety by
issuing a Continuation Certificate, no later than thirty (30) days prior to the renewal date. Provided
further, however, that regardless of the number of years this bond may be in force, the aggregate
liability of the Surety shall not be cumulative and is limited to the stated penal sum.

Provided further, however, that in the event the bond is not renewed, the liability of the
Surety shall be limited to the actual damages sustained by the Obligee due to lack of performance
of the Principal during the effective term of the bond. The Surety shall not be held liable for any
contract period beyond which it consents to in writing.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument
under their several seals, this ____ day of _____ the name and corporate seal
of each corporate party being hereto affixed, and these presents duly signed by its undersigned
representative, pursuant to authority of its governing body.

In The Presence Of:

_____ (Seal)

Witness

By: _____

Witness:

Surety:
_____ (Seal)

By: _____

EXHIBIT K
TENANT HANDBOOK

Exhibit K

**MIAMI-DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
AIRPORT CONCESSION BUSINESS DEVELOPMENT**

**AIRPORT CONCESSION BUSINESS DEVELOPMENT
TENANT HANDBOOK MANUAL**

Revised April 2021

MDC111

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I. WELCOME

The Miami-Dade Aviation Department (MDAD) welcomes you to Miami International Airport (MIA).

MIA is home to more than 30,000 dedicated employees from Miami-Dade County, airlines, and various government agencies, vendors, consultants and concessionaires. We work closely together every day to provide and maintain safety and security; economic viability; customer service; and passenger service.

This standard of operations manual has been created to communicate the responsibilities associated with being a part of the MIA family. Our goal is to provide our passengers and airport patrons with excellent customer service, and your attention to detail is critical to us achieving this goal.

We are looking forward to a continuous business partnership and wish you well in your new business operations at MIA.

II. INTRODUCTION

This Tenant Handbook is constructed so that it addresses the events that will usually transpire as your business embarks on a relationship with the Miami International Airport.

The Lease that exists between the Concessionaire and the County is the primary legal document that defines allowable activities and conditions within the leasehold premises. Review of the Lease is recommended for further definition of activities, concession and public boundaries, and other operating rights.

A. Vision

The MIA concessions program is a world-class retailing experience for its diverse passenger mix of the culturally diverse, cosmopolitan South Florida region, and a multi-continent international gateway by providing a wide variety of international, national and local brands that offer fair and varying price points, and innovative store designs, all within a safe, vibrant shopping environment.

B. Airport Concession Business Development Program Goals

A commitment to balance competitively priced high-quality goods and services with needed passenger services and revenue to the Airport recognizing the investment by the concessionaires and achievement of our ACDBE goals.

C. Airport Concession Business Development Program Objectives

To achieve the mission/vision and goals, Airport Concession Business Development' objectives are to:

- Enhance the image of MIA as a world class airport which reflects the cosmopolitan and international nature of the community
- Enhance customer service and satisfaction by improving product choice, price points, and customer service
- Optimize sales/transactions and revenue to the Airport.
- Integrate design and location of Airport Concession Business Development within the infrastructure of the Airport for passenger convenience
- Balance national, regional and local Airport Concession Business Development and concessions with DBE representation throughout the terminal

D. Terminal Overview

Miami International Airport terminal is configured in a horseshoe with Concourses from D to J. Security checkpoints are arranged at the entryway to each of the concourses.

III. GETTING STARTED AT MIA

While it is exciting and fun to work at Miami International Airport, there are some differences from working in other retail environments. This section will address some of those differences and some of the actions necessary because of those differences. We will guide you through some of the processes needed to get your employees, started working with us at MIA.

Before Beginning Employment

1. Employee Parking

A. Availability

The airport employee parking lot is available to employees of companies that lease space in the terminal building and have been authorized by the Aviation Department to utilize the employee parking facility. Employees may park in the employee parking lot only while on duty at the MIA terminal building.

B. Location and Transportation

The employee parking lot is located approximately 1 ½ miles southeast of the main terminal building. It can be accessed through LeJeune Road at N.W. 14th St. or through Perimeter Road at 15th Street. Shuttle buses provide 24-hour transportation to and from designated locations on the departure level of the terminal building with approximate headways of 5 minutes during peak times and 15 minutes during non-peak times.

C. Parking Decal Information

Employee parking decals are issued in 4, 8, or 12-month increments. Companies that will be paying for employee parking decals can establish an account and be invoiced monthly by contacting the Finance Division. Employees can pay for their parking at the Decal Section. The Decal Section is located on the ground floor of the Dolphin Garage, and is open Monday-Friday except holidays from 8:00 a.m. to 5:00 p.m. Contact the Decal Section for current employee parking rates. To register your company and establish authorized requestors for your company, please obtain sample letters from the Decal Section (tel. number: 305- 876-7567).

D. Parking Lot Safety and Security

- Access to the employee parking lot is restricted to vehicles with a valid employee parking decal and employees with valid MIA identification badges or airport authorized company identification badges. Family members/friends traveling in the same vehicle will be denied entry to the lot if they do not have a valid MIA or company I.D.
- Employees must have a valid MIA or airport approved company identification badge to ride the employee shuttle bus between the employee parking lot and the terminal building. Family members/friends are not allowed to ride the employee shuttle bus.

GETTING STARTED AT MIA (Continued)

- There are emergency telephones located at each bus shelter in the employee parking lot. These phones may be used to report personal safety issues or non-emergency situations such as the need for motorist assistance.

E. Abuse of Parking Privileges

- Employee parking decals must be permanently affixed on vehicle for which it was issued and can only be used by authorized employee.
- Parking in the employee parking lot is a privilege and may be revoked at any time for failure to comply with established procedures.

2. Badging

The Concessionaire shall be subject to all Departmental requirements and FAA mandates pertaining to the issuance of airport identification badges, including, but not limited to employee completion of SIDA training conducted by the Department and background checks, as required by the FAA Unescorted Access Privilege Rule. The Concessionaire shall pay, or cause to be paid, to the Department such nondiscriminatory charges, as may be established from time to time, for lost or stolen ID badges and those not returned to the Aviation Department. The Concessionaire will be required to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data may include the fingerprinting of employee applicants for such badges.

All airport employees working need to be badged before work commences. Our badging office is located under the Dolphin Parking Garage and is generally open during business hours to accommodate users.

Badges must always be displayed. All airside employees must participate in additional training for this access.

The badging department has its own rules and regulations with which the concessionaire must become familiar.

3. Hiring New Employees

From time to time the Department assists concessionaires with their hiring by organizing a job fair. Contact the Employees Relations Department for more information about this opportunity.

The Concessionaire should familiarize itself with the Agreement for any required staffing levels prior to concluding hiring processes.

4. Employee Orientation

All airport employees (including Concessionaires) will need to be scheduled for an employee orientation with the Airport to receive SITA training and customer service training (which is included in the orientation time). Please allow ninety (90) minutes for this training, which must be accomplished prior to the employee beginning work at the Airport.

B. Other

1. Setting up Utilities

The cost of all utilities used or consumed on the Premises shall be borne by the Concessionaire. Unless the Premises are provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for the utilities on the Premises as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. The Department encourages the Concessionaire to provide and install meters for utilities used at the Concessionaire's expense. See your Agreement for further detail on payment to MDAD for utility charges.

Other utilities used by the Concessionaire including telephones and telephone service hook-up, data lines and additional electrical and communications services are to be arranged for and paid by the Concessionaire. The Airport provides these types of services through its Information Technology Shared Tenant Services.

2. Use of Wireless Technologies

Any approval by the Department and subsequent installation by any Concessionaire, of a wireless network would be granted only with the explicit understanding that the Concessionaire agrees that the system be transitioned over to any future network once installed. Note that all costs, both one time and recurring, to be incurred as a result of the required transition to any future network shall be the responsibility of the concessionaire.

3. Banking Procedures

It is critical that Concessionaires implement a policy and provide professional guidance for cash handling, ensuring that those staff tasked with making deposits do so in the safest manner possible.

Concessionaires are responsible for arranging procedures to ensure that all stores have the appropriate amount of change on hand.

4. Hours of Operation

All units have specific hours set that the unit is to be open and serving the public. On site personnel are responsible for knowing what their store operating hours stipulate. In some cases, depending on airline schedules caused by weather or other delays, the store may be required to stay open beyond required hours. Procedures need to be in place to keep the store open and operating during such events.

The store must have all products and services available the moment it opens. This means, for example, that the coffee must be prepared and ready to serve prior to the actual opening time the store must also keep all products available up until the time the store officially closes. It is not acceptable for store employees to begin to remove and clean the store until the actual closing time of the store.

Unstaffed concessions offering services, are required to be open twenty-four (24) hours seven (7) days per week including holidays. Examples of such services include ATM, and luggage cart services.

IV. STANDARD AIRPORT PROCEDURES

A. Improvements to Premises

1. Conditions for Permits

Airport businesses must comply with their contractual requirement to obtain the written consent of MDAD to carry out any alterations to MDAD property. This includes what might be constructed as “minor” additions and deletions like an electrical outlet.

The permit process is designed to ensure that construction is compatible with present and future airport facilities, responsibilities are appropriately assigned, ensure compliance with other jurisdictions' requirements, meet MDAD standards for design, and assist Concessionaires with the timely and safe completion of their projects.

2. Permit Application Procedure

Concessionaire must first contact MDAD's Airport Concession Business Development Division with any plans for site improvements, alterations or construction for preliminary plan approval.

The design criteria manual for each terminal detail the submittal requirements and permit process.

B. Storage

1. Designated Storage Areas

Concession storage space may be leased through MDAD Airport Concession Business Development Division and is designated in the Agreement. These storage areas are provided for activities related to the Concessionaire's doing business at the airport including storage, display, overstock or office uses. MDAD will make every effort to satisfy individual concession storage needs, dependent on the availability of suitable space.

2. Unapproved Storage

Hazardous, combustible or flammable materials, and storage of merchandise outside or adjacent to Concessionaire's retail premises or storage area is not permitted. Storage of materials, products, or trash that blocks access to fire safety equipment, doors and other access points are also prohibited. Concessionaires that consistently abuse storage privileges will be noticed and required to clean premises or will be billed for all associated costs required to clean up or remove the unapproved materials attributed to their business.

3. Fire Safety in Storage Areas

Concessionaires using storage areas must be aware of these common storage problems and must correct them to ensure fire safety:

- Storage too close to sprinkler heads.
- Improper storage of trash, boxes, oily rags, etc. These items are better removed to disposal or recycling receptacles provided for Concessionaires.
- Improper storage of flammable and combustible liquids and aerosols.
- Blocking of exit-ways and fire equipment.

4. Damage to Storage Areas

Storage rooms and the access to those rooms are the property of MDAD. Concessionaires found to be consistently causing damage to MDAD property will be noticed and may be billed for repairs following review and discussion with MDAD as necessary.

C. Changes in Price and Product Offerings

1. Street Pricing

The Concessionaire shall not charge prices in excess of one hundred ten percent of Street Prices as defined in the Agreement. The Concessionaire will be required to submit examples of pricing periodically as indicated in the Lease Agreement. MDAD will monitor Concessionaire prices to ensure compliance.

Concessionaires are required to submit a detailed list of all services and items (and their corresponding prices) offered in their assigned premises.

Prior to adding new items or increasing prices, Concessionaires are required to inform the airport and to seek written approval from the Department.

2. Menu and Product Offerings

MDAD and the Concessionaire agree to offer a set of products and services approved prior to the opening of the location.

Any sales by the Concessionaire of services, products, or items not specifically approved in its Agreement shall constitute a default. In the event of such default, the Concessionaire will discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure to discontinue such sales shall be grounds for termination of the Agreement.

To request that an additional product be sold, the Concessionaire must submit in writing for approval to the Airport Concession Business Development Division the request inclusive of the product name and suggested price along with the required support for the establishment of the proposed price.

D. Terminal Maintenance and Operational Issues

1. Maintenance Services

MDAD's Facilities Division has, as its highest priorities, the repair and upkeep of the airfield, passenger service and common and public areas. While the concessionaire, as delineated in its lease, is responsible for maintaining its premises, MDAD is available to assist Concessionaires with other repairs and maintenance-related activities as much as manpower and work scheduling will allow. The Maintenance Department has established fees for these services, which will be billed directly to the Concessionaire.

2. Maintenance Responsibilities

A. MDAD Responsibilities

MDAD Maintenance Division is responsible for the maintenance, repair and upkeep of the following items found within the Concessionaire's premises:

- Exterior window cleaning on the airfield;
- Emergency spotlights;
- Broken lock or key in storefront rolling grill;
- Electrical system supplied to the store (Concessionaire responsibility begins at outlet);
- And HVAC system

B. Concessionaire Responsibilities

Concessionaires are expected to maintain their premises in good repair and keep them in a clean condition and orderly appearance. Concessionaires are responsible for any other upkeep and repair within their leasehold, including but not limited to windows, both inside and out, flooring, spotlights; display case and spot and window lighting; carpet; fixtures, and any equipment or custom-made features of the premise. Concessionaires must also arrange for their own janitorial service.

Concessionaires also are responsible for their own extermination, which must be coordinated with the Airport

3. Contracting Maintenance Work

Concessionaires who desire maintenance work can do so by:

- Contracting with an outside vendor who can complete the desired maintenance and repair to the satisfaction of MDAD and to the Concessionaire; or
- Contracting with MDAD Facilities Division for those items outside MDAD's regular maintenance responsibilities.

A. Contracting with Outside Vendor Services

Concessionaires may hire service providers such as housekeeping, extermination or telecommunications without prior MDAD approval.

However, prior to any work, a permit must be issued. Concessionaires must contact Airport Concession Business Development to obtain the proper permit forms and approval to hire any contractor who may impact airport operations such as electricians, phone repair, plumbers, etc.

Vendor must meet or exceed the original materials and workmanship and conform to any federal, state or local regulations. All work shall be subject to inspection by MDAD.

B. Contracting with Airport Facilities

Contact the MDAD Facilities (305-876-7311) to request a work order. Requests made 24 hours in advance of need are appreciated. For non-emergency requests, allow a maximum turn-around time of two weeks. Concessions contracting with the Maintenance Department will be billed on an hourly basis for manpower and the cost of supplies.

When requesting maintenance services, Concessionaires should identify the item in need of attention and time frame for completion. Efforts will be made to meet the request in a timely manner, depending on the department's manpower level and workload. Concessionaires should limit their requests to the Maintenance Division for maintenance and repair only, and not for making improvements or involving new construction.

4. Emergency Maintenance

The Facilities Department will respond to emergencies as a priority. Concessionaire should make clear in its request to the dispatch that an emergency exists for immediate attention. Examples of emergency maintenance requests are broken water pipes or any other uncontrollable leakage, broken display window glass, inoperable entry gate, etc.

E. Delivery Procedures

1. Delivery Hours

Airport businesses may take deliveries of products, supplies, etc. from 7:00 A.M. to 8:00 P.M. MDAD reserves the right to schedule deliveries or institute a common warehouse system with a common logistics fee to support the system if it becomes necessary.

2. Terminal Side Delivery

2.A Deliveries Terminal Curbside

- Delivery hours are from 7:00 p.m. to 8:00 a.m.
- Landside staff will determine drop off locations to minimize disruption to traffic.
- All vehicles must be attended. This is a Transportation Security Administration (TSA) mandate.
- Drivers must be able to provide proper identification and manifest of deliveries.

- Vehicle is subject to search.
- Location and delivery times may be subject to change due to security or operational requirements.

b. Vehicle Identification for Delivery Zones

All vehicles utilizing the loading and delivery zones in front of the terminal as described above must be adequately marked with company name and/or logo on both sides of the vehicle.

Painted, exterior magnetic, or interior static cling plastic signs attached to the side windows are acceptable.

Signs should look professional done with minimum dimensions of 8 1/2" by 11".

c. Delivery Zone Parking Restrictions (Time)

Use of loading and delivery zones is restricted to thirty (30) minutes. If a vendor anticipates that they will be actively loading or unloading for more than 30 minutes, they must notify Landside Operations at 305-876-7441.

d. Delivery through Terminal Building

Efforts should be made to avoid using public areas of the terminal for large quantity deliveries during peak hours. If supplies must be transferred through the public portions of the terminal, these pickups/deliveries should be scheduled during non-peak aircraft arrival and departure times.

Common carriers such as Federal Express, UPS or Airborne Express are authorized to bring shipments directly to the units or storage area.

All Concessionaire delivery carts, utility carts and trash collection dumpsters are asked to adhere to the following specifications to avoid damage to the Airport:

- Revolving white rubber, non-marking corner bumpers on platforms or base of carts
- Full encircling rubber bumpers around lower platform base
- Handles, bag holders or other portion carts that can cause damage, are to be protected with 3" revolving, white rubber, non-marking bumpers.
- Base of all carts are to be made of tubular construction.
- 8" x 1.75" Semi-Pneumatic ball bearing wheels are to be used.

Concessionaires found using non-compliant delivery equipment may be barred from future deliveries until which time equipment has been modified or replaced.

e. Airfield Deliveries

1. General

All Concessionaires are bound by the rules set forth by MDAD for operating motor vehicles on the airport's Airside Operation Areas (AOA). The requirements below summarize those rules that are typically applicable to the Concessionaire but in no way are representative of all airfield rules.

Concessionaires requiring AOA deliveries must come in person to the Airside Operations office during normal business hours from 0800 to 1600 a minimum of one business day (24 hours) prior to the delivery date. You must provide the requesting company's name, MDAD ID number, contact phone number, name of company making the delivery, AOA entry point and delivery destination. For deliveries after hours concessionaires must call the on duty Senior Agent at 305-588-7094. Once the delivery company is escorted to the delivery site, the Concessionaire is required to provide continuous escort of delivery personnel while in the Security Display Area (SIDA).

2. Construction

Construction contractors must physically report to the Airside Operations Office located at E-20 Ground Floor, a minimum of one business day prior to the delivery date and submit for approval the Construction Delivery Notification Form. Once the delivery is escorted to the construction site, the contractor is required to provide continuous escort of delivery personnel while in the SIDA area.

Delivery vehicles arriving at an MDAD Access Gate without MDAD approved advance notification will be denied access.

No motor vehicle shall be operated on the Airport except on roadways or areas designated for such purposes.

Motor vehicles and equipment operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of the Aviation Department. In addition, company identification must be conspicuously displayed on such motor vehicles and equipment.

Except as otherwise stated in this handbook or other rules and regulations provided to the Concessionaire, the laws of the State of Florida in regard to the operation of motor vehicles, including traffic regulation, are made applicable also to the operation of motor vehicles on the Airport.

3. Cooking Oil recycling program

The concessionaire is responsible for the maintenance and cleanliness (pressure wash area every two (2) weeks) of the container used and its surroundings. Cooking oil bins must be secured with a padlock and the bin properly identified / labeled with concessionaires name and contact information. Penalties will be assessed by the Department if conditions are not met, ultimately resulting on the removal of the containers from the Tarmac.

4. Grease Traps and grease line maintenance

The concessionaire is responsible for the scheduled maintenance of their grease traps and respective lines. Lines must be jetted periodically every quarterly. Penalties will be assessed by the Department if conditions are not met, ultimately resulting on the removal of the containers from the Tarmac.

f. AOA - Driver Training

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

F. Promotional Events and Public Relations Opportunities

1. Promotional Events

Concessionaires are encouraged to conduct promotional events. Concessionaires are limited to conducting promotional events within the limits of the lease premises unless otherwise approved in writing. Promotional events should be coordinated and approved by the Airport Concession Business Development Division.

Clean up activities associated with any promotion, unless otherwise specified, are the responsibility of the concessionaire organizing the promotion.

Application to conduct promotional activities in the Terminal must be made in writing to Airport Concession Business Development.

2. Public Relations Opportunities

MDAD recognizes the desire of concessionaires to disseminate press releases for marketing and public relations purposes. Prior to sending press releases out regarding MDAD unit events, promotions or news, the releases must be approved by MDAD.

MDAD will not copy edit the release but may make recommendations. This procedure is intended as a means of keeping the appropriate departments aware of airport business activities and a coordination to ensure the varied business activities public relations' efforts are appropriately coordinated.

G. Customer Complaint/Comment Procedures

Concessionaires must make reasonable, respectful efforts to remedy problems and issues raised by Airport patrons. Concessionaire must answer in writing all written customer complaints within two (2) business days after receipt thereof and furnish a copy of the complaint and said answer to the Airport Concession Business Development within the ten-day period.

H. Airport Police

The Miami-Dade County Police Department, located on site, is responsible for the overall safety and security of the airport and is recognized by the State of Florida as officers of the law with jurisdiction over airport activities.

1. Criminal or Suspicious Activity

Concessionaires and their staff should use the following resources should they see or suspect illegal activity.

Concessionaires can call the Police Department at 305-876-7373 to report a crime in progress or other suspicious activity.

I. Concessions Security

1. Employee/Contractor Strike Activities

In the event, that a Concessionaire anticipates a labor strike by its employees or of companies that service the Concessionaire, the Director of Landside Operations must be contacted for specific guidelines for governing strike activities at MIA.

2. Store Security MDAD to Confirm

The Miami-Dade County Police Department routinely patrols the terminal building and individual concessions. Airport Concession Business Development staff meets with concession managers, store owners and staff on a monthly basis to discuss current problems. This meeting should be used to communicate ideas and methods of improving security. Store managers with questions or concerns may contact Airport Concession Business Development.

3. Prosecution of Shoplifters

To maintain a high level of security at the airport, Concessionaires are strongly encouraged to prosecute shoplifters and staff caught stealing by attending court sessions. If a Concessionaire catches a shoplifter or observes a theft, immediately call 305-876-7373. To curb this activity, attending court sessions are critical.

4. Reporting Incidents

Badged staff function as a second set of eyes and ears for Airport Security and the Miami-Dade County Police Department. If a crime or suspicious activity is witnessed, please call the Police Department at 305-876-7373.

5. Loitering

If the Concessionaire notices a problem with airport staff or other people unknown to the Concessionaire, please call the Police Department at 305-876-7373.

J. Emergencies

The Operations Control Room (OCR) emergency communication and dispatch functions for the airport's police, fire, airport operations and maintenance departments. For protective and emergency services call:

Police Emergency: 305-876-7373

Fire/Medical Emergency: 305-876-7070

Operations: 305-876-0125

1. Medical

MDAD Fire Department's fully trained and equipped Emergency Medical Technicians (EMTS) are on duty twenty-four (24) hours per day to handle all medical emergencies, regardless of severity. For Fire and Medical emergency, call 305-876-7070. Patients requiring hospitalization will be transported to the nearest hospital.

2. Fire

In case of fire, Concessionaires are asked to be familiar with, and to instruct new staff in, the following procedure.

- 1) Evacuate the area.
- 2) Call for Fire or Medical assistance at 305-876-7070.
- 3) Attempt to fight the fire with a portable fire extinguisher ONLY if:
 - a. you have been trained in the use of a fire extinguisher;
 - b. the Fire Department has already been notified; or
 - c. you can do so without exposing yourself to injury or the possibility of becoming trapped by the fire.

The Fire Department conducts regular inspections of Concessionaire and concession premises including storage areas, the main terminal, all concourses and all MDAD owned buildings for the purpose of fire prevention and to ensure compliance with fire safety practices.

An inspection report will be issued containing information relating to issues of non-compliance and/or recommendations by the inspector, with a date of re-inspection to ensure that the required corrections have been completed.

a. Fire Safety Compliance

The Fire Department will work with Concessionaires to ensure compliance with fire safety practices and codes. More rigorous regulations may be set for specific Concessionaires through provisions in the Lease. Fines for non-compliance as a result of inspections could occur.

b. Suspected Fire Code Violations

If Concessionaire suspects a fire code problem or if there is a concern about fire safety, questions can be directed at the time of inspection, or by calling the Fire Department.

3. Other Reporting Concerns

It is in the best interest of all airport staff to ensure that MIA is a safe workplace and place to visit. All staff are required, therefore, to assist the DOA with safety by being proactive in reporting any incidents that might threaten the safety of MIA's staff or visitors. This may include the following:

- Spills
- Ceiling / roof leaks
- Roadway potholes
- Non-functioning elevators / escalators
- Buckled carpeting / flooring concerns
- Bare electrical wires
- Pests and birds in the terminal
- Unsafe construction activity

Call Operations Control Room (OCR) at 305-876-0385 to report these problems.

4. After Hours Activity

Concessionaires should notify Operations Control Room (OCR) at 305-876-0385, when Staff will be working in the store / office after normal operating hours. Some activities may need to be approved by MDAD, Security and/ or the airlines. Advance calls will prevent confusion.

5. Access to Premises

a. Keys and Locks Policy

MDAD controls all keying and re-keying of MDAD facilities excluding Concessionaire Leasehold areas. A licensed and bonded locksmith hired by MDAD does keying and lock repair through a work order request.

b. Grand Master Key Policy

The Grand Master (a key that will open all airport locks) is kept by 1) police under "break" glass, 2) each shift commander of the fire department, and 3) the licensed and bonded MDAD locksmith.

No access will be granted using the Grand Master key except under the following conditions:

- a. Fire or fire emergency within the locked area (this does not include access for fire inspections, testing or other regulatory activity);
- b. Life threatening policy emergency or active pursuit of known suspect;
- c. Maintenance, when actively working on an authorized lock request; and
- d. Other emergency conditions as authorized by the Airport Manager.

4. Locked Out Procedure

In the event a concession employee is "locked out", "locked in", "forgotten keys", "lost keys" or is not involved in any of the emergency events listed above, the Grand Master key will not be used to gain access to the premises. A new key must be authorized to cover this situation. Only an authorized representative of the concession can request additional keys to access the premises.

NOTE: Requests should not be forwarded to the Police for purposes of unlocking Concessionaire space in the case of "forgotten keys" or "locked out" events.

K. Trash Removal

1. Refuse Disposal

All concessions are required to handle, recycle or dispose of garbage, papers, or refuse or other material on the Airport in the receptacles provided for that specific type of recyclable or non-recyclable waste. MDAD is not responsible for concession's refuse. MDAD is responsible for the refuse disposal contract for the hauling of solid waste and recyclables away from the terminal building.

Concessionaires must cover trash containers in all areas. Concessionaires are not permitted to use a vehicle used for hauling trash, dirt or any other materials on the Airport unless the vehicle is constructed to prevent the contents from escaping.

Within the Concessionaire premises, Concessionaire must provide suitable waste receptacles for oily wastes, rags and other rubbish and trash. All waste is to be removed daily.

2. Designated Disposal Site

MDAD maintains a solid waste and disposal unit providing trash compactors and recycling bins at designated sites in the Terminal building. Refuse from store operations, deliveries and storage areas shall be contained in this area. No other areas shall be used. All such areas shall always be kept clean and sanitary.

Temporary storage or disposal of refuse in places other than the designated solid waste and recycling bins is not permitted. Dumping of boxes or other materials, particularly in or near storage rooms and access hallways, is considered a fire and safety infraction.

In the event of spillage of trash, grease or any material which may be unsightly or detrimental to the pavement, or which might cause a safety hazard, the Concessionaire is responsible for clean-up.

3. Sanitation Plan

Concessionaire will be required to provide a Sanitation Plan to MDAD Concessions on annual basis. Please refer to Operational Directive 021-01.

L. Airport Information Services

Information centers are located in the center of both the departure/ticketing and baggage claim levels of the terminal. Staffed hours are generally from 5:00 AM to 10:00 PM, Monday through Sunday.

M. Airport Paging

The Airport Paging Center pages individuals for the purpose of delivering messages or giving directions. Concessionaires can use the paging system to locate passengers who have left merchandise or belongings. Paging hours are available 24 hours daily and the center can be contacted at 305-876-7000.

N. Terminal Construction

1. Right to Develop Airport

Construction and alteration of the terminal building, concourses and roadways are ongoing to meet the demands of the traveling public. MDAD reserves the right to develop or improve the airport as it sees fit.

2. Inconveniences during Construction

During construction, remodeling, expansion, relocation, maintenance and repair of the airport Concessionaires should expect some inconveniences during the process including, but not limited to, noise, dust, vibration and changes in access. MDAD will take the necessary actions to ensure the safety and protection of concession staff and merchandise as it is able.

Should Concessionaires experience extraordinary, unworkable conditions related to construction, Concessionaire should contact Airport Concession Business Development immediately. Airport Concession Business Development will assist Concessionaire in its attempt to remedy the situation or minimize construction impact on the concession.

O. Required Monthly Meetings

The Concessionaire shall meet no less than monthly and regularly with the Department to discuss matters relating to its Agreement. In addition, at the Department's request, the

Concessionaire shall attend other meetings with the County, airlines and any other parties designated by the Department.

Concessionaires are also required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may time to time require.

V. KEY CONTACTS

AVIATION PROPERTIES DEPARTMENT

CONTACT INFORMATION

AOC		AOCNotification@FlyMIA.com
BADGES	Ground Transportation Office	<u>305-876-7080</u>
CONFERENCE CENTER	Reservations and Information	<u>305-871-4100</u>
AOA DELIVERIES	Airside/Superintendent Airfield Operations	<u>305-876-0152</u>
LANDSIDE DELIVERIES	Landside /Supervisor Parking Control	<u>305-876-7024</u>
POLICE	Communications Center (24 Hours)	<u>305-876-7373</u>
FIRE/MEDICAL	EMERGENCY	<u>305-876-7070</u>
FIRE SAFETY	Fire Inspection Section	<u>305-876-7070</u>
INFORMATION SERVICES	Information and Paging	<u>305-876-7000 ext. 8</u>
LEASEHOLD PREMISES	Property Manager	<u>305-876-7720</u>
MAINTENANCE	Maintenance Dispatch (24 Hours)	<u>305-876-7311</u>
PARKING	Manager, Parking Systems	<u>305-876-7024</u>
RENT, FEES, AND CHARGES	Aviation Finance Specialist	<u>305-876-8493</u>
SECURITY AND SAFETY	Chief	<u>305-869-4247</u>
SIGNAGE	Chief	<u>305-876-0299</u>
STORAGE	Property Manager	<u>305-876-7753</u>
TRASH/RECYCLING	Maintenance Coordinator	<u>305-876-0483</u>

EXHIBIT L

STANDARDS OF OPERATIONS

SERVICES

**EXHIBIT L
STANDARDS OF OPERATION**

I. OPERATING REQUIREMENTS:

The Concessionaire shall comply with the Department's, **"Tenant Handbook" Exhibit K, "Terminal Standards Manual"** (http://www.miami-airport.com/library/ODs/Standards_Manual.pdf), and the **MDAD Operational Directives** (<http://www.miami-airport.com/od2.asp>) which may be amended from time to time, and the Concessionaire further agrees that its operation under the Agreement is a service to airline passengers and the users of the Airport and that the Concessionaire and/or its Sub-tenants shall conduct its operation in a first-class, businesslike, efficient, courteous, and accommodating manner. The Department shall have the right, in accordance with the provisions of the Lease and Concession Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and conditions of the locations. The Concessionaire and/or its Sub-tenants agree to promptly discontinue or remedy any objectionable practice.

All services / products must be top quality and new and a sufficient quantity of stock /merchandise must be carried on the locations to ensure that the locations will be fully stocked at all times. The Concessionaire's and/or its Sub-tenants shall maintain adequate sales force on the locations and use the utmost skill and diligence in the conduct of the business. All employees, both the Concessionaires and its Sub-tenants shall be courteous and helpful to the public. Employees, interacting with the public, must be able to speak English.

In addition, the Concessionaire understands and agrees that its operation at the Airport necessitates, at a minimum, the rendering of the following services:

A. Conduct of Operations Within Locations:

- 1) Concessionaire and/or its Sub-tenants shall not affix or maintain upon the glass panes or supports of the show windows, doors and the exterior walls of the locations, or any place within the locations if intended to be seen from the exterior of the locations, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items. The Department shall have the right, without giving prior notice to Concessionaire and/or its Sub-tenants and without any liability for damages to the locations reasonably caused thereby, to remove any of same from the locations, except such as shall have first received written approval of the Department as to size, type, color, location, copy, nature and display qualities.
- 2) No awning or other projection shall be attached to the outside walls of the locations or the terminal building without the prior written consent of the Department.
- 3) All loading and unloading of goods shall be done only at such times, in the areas and through the entrances designated for such purposes by the Department. The Concessionaire and/or its Sub-tenants may be required

Concession Services Program

to utilize the services of a delivery /distribution company selected by the Department, if the program is so implemented.

- 4) All garbage and refuse shall be kept in the appropriate containers to minimize the spillage of such garbage and refuse.
- 5) No radio or television antenna shall be erected on the roof or exterior walls of the locations without the prior written consent of the Department. Any such aerial shall be subject to removal without notice at any time, and any damage to the walls or roof caused by such removal shall be the responsibility of the Concessionaire.
- 6) No loudspeakers, televisions, radios, flashing lights or other devices shall be used in a manner to be heard or seen outside the locations without the prior written consent of the Department.
- 7) The outside areas immediately adjoining the locations shall always be kept clear by Concessionaire and/or its Sub-tenants, and Concessionaire and/or its Sub-tenants shall not place any obstructions, garbage, refuse, merchandise or displays in such areas.
- 8) Concessionaire and/or its Sub-tenants shall not permit storage or restocking bins to be visible to the public, except while in the actual process of restocking shelves and display fixtures.
- 9) Concessionaire and/or its Sub-tenants, its employees, or its agents, shall not solicit business in any of the common areas, nor shall Concessionaire, its employees or its agents, distribute any handbills or any other advertising matter in common areas of the Terminal nor in any of the related parking facilities.
- 10) Concessionaire and/or its Sub-tenants shall not carry on any trade or occupation or operate any instrument or apparatus or equipment which emits an odor or causes a noise discernible outside the locations and which may be deemed offensive in nature.
- 11) Concessionaire and/or its Sub-tenants shall cause the locations to operate a minimum of seventeen (17) hours per day, seven days per week, with sufficient personnel to render a high quality of service. The Department may increase or decrease the required operating hours, if, in the discretion of the Department, such a change is desirable in providing the most efficient service.
- 12) Concessionaire and/or its Sub-tenants shall accept all major credit cards.
- 13) Concessionaire agrees that it shall obtain prior written approval from the Department in all the following matters:
 - i. Methods and hours of operation.
 - ii. Uniforms to be used by employees.

Concession Services Program

- iii. The decor of the locations and all signs installed, erected or displayed therein.
- 14) The Concessionaire and/or its Sub-tenants shall properly control the actions of its employees at all times while said employees are working on the Airport, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner and that they maintain a high standard of service to the public.
- 15) The Department reserves the right to request the Concessionaire remove any advertising or promotional signage it deems inappropriate. Alternatively, the signage shall be removed by the Airport at the Concessionaire's expense.
- 16) Point of Sale - The Department requires that all Concessionaire Point of Sale (POS) locations be well maintained and free from unnecessary clutter. Concessionaire shall organize POS counters such that impulse items do not hinder traveler's ability to queue or purchase merchandise.
- 17) Social Distancing / Sanitation Requirements – Please refer to Miami-Dade County, State of Florida Department of Health and CDC guidelines.

B. Property Management:

The Concessionaire will perform the following duties, subject to the terms, conditions, limitations and all other provisions of this Agreement:

- 1) Manage the Locations in a way that maximizes the highest and best use and financial return to the Department.
- 2) Monitor and enforce compliance with the terms and conditions of the lease and concession agreement and, if applicable, the sub-lease concession agreement, including but not limited to use clauses, insurance, pricing, capital expenditures, quality of merchandise, hours of operation, detailed reporting of sales, payment of fees and rent, and signage.
- 3) Function as operations liaison between the Department, governmental agencies, sub-tenants and/or others.
- 4) Maintain, or cause to maintain, the facilities in a first-class manner pursuant to Department standards, which may be promulgated from time to time.
- 5) Ensure Customer Service Program compliance. High quality customer service is the cornerstone to an effective sales program. The Concessionaire is required to submit a customer service program or cause it's Sub-tenants to submit a customer service program within thirty (30) days of the Effective Date of the Agreement or within thirty (30) days of the Effective Date of the Sub-lease Agreement, for MDAD review and approval.
- 6) Direct, coordinate and monitor procedures and practices for deliveries of goods, products, materials and equipment, to and from the locations, as

Concession Services Program

well as the collection and disposal of all waste and refuse related to the locations.

- 7) Remove signage and install temporary barricades in the event a sub-tenant's location(s) is vacated or closes for any reason.
- 8) Ensure Safety Training compliance, i.e. ADA and OSHA wheelchair requirements.

C. Leasing (If applicable under the Lease & Concession Agreement):

The Concessionaire will perform, but is not be limited to, the following:

- 1) Develop, subject to review and approval by MDAD, a standard sub-tenant Lease Agreement, in accordance with Article 19 "Sub-Leases".
- 2) Recruit, secure and retain, throughout the term of the Agreement, the proper tenant mix to meet the Departments proposed newsstand and/or specialty concepts.
- 3) Negotiate leases with potential sub-tenants to include, but not limited to, the following:
 - Negotiate the financial terms with potential sub-tenants in accordance with MDAD approved key business terms and baseline pro-forma.
 - Perform background checks and due diligence on all prospective sub-tenants, including partners, joint ventures, and other key participants.
Prepare and make available, if requested, background check summaries.
 - Prepare an abstract of the potential sub-tenant's entire deal, outlining all business terms for MDAD approval. The outline, unless otherwise instructed, will include, (i) concept summaries, to include, approved service lists and any available photos or renderings, (ii) terminal plans depicting spaces of proposed spaces, (iii) financial and term sheets that will include the economics of the deal, (iv) anticipated sales per enplanement, (v) financial return to MDAD, (vi) sub-tenants projected investment summaries, (vii) amortization schedules, (viii) comparative airport data, and (ix) other pertinent aspects of the deal including local and/or ACDBE participation.
 - If applicable, enter sub-leases for all service operations. The Concessionaire will coordinate its leasing process with the Department, obtaining approval of each rental arrangement, based upon a standard form of sub-lease approved in advance by the Department.
 - Prepare the appropriate Sub-tenant lease agreement.
 - Prepare exhibits to the sub-tenant lease agreement.

Concession Services Program

- 4) Establish and maintain for the Department a potential sub-tenant database, including the preparation of correspondence with potential sub-tenants.

D. Construction Management:

- 1) Tenant Coordination: The Concessionaire will be responsible for the management, administration and coordination of all design and construction associated with the maintenance, repair and/or leasing of the locations including, without limitation, all sub-tenant fixed improvements and/or refurbishments to be constructed in the locations, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the locations or future construction and alterations. The Concessionaire shall be responsible for the supervision and coordination, subject to the prior written approval of the County, of the design of any sub-tenants locations to the extent contemplated in such sub-tenants sub-contract, including without limitation, the design of such sub-tenants storefront and the specifications of such sub-tenants equipment.
- 2) The Department encourages Concessionaires to express their brands and identities creatively within the parameters of the regulations outlined in the Design or Terminal Guidelines. Concessionaires are expected to become familiar with the guidelines in order to expedite the Design Review Process. This shall apply to all phases of Design, from new Construction, to Refurbishments, to Sign Upgrades, etc.
- 3) The Concessionaire shall be responsible for verifying any information contained within the Building drawings and specifications. All site conditions and dimensions must be verified by the Concessionaire and confirmed against the Concession Agreement drawings prior to receiving approval for Final Drawings.
- 4) Any and all improvements to Location(s) will be performed in accordance with the, **“Tenant Airport Construction – Non-Reimbursable Procedures TAC-N and TAC-R” as amended.**

E. Service Category Management:

The Department has the right for final concept of service approval.

F. Special Services

- 1) Monitoring Services: The Department shall have the right, without limitation, to monitor and test the quality of services of the Concessionaire and/or its Sub-Tenants but shall not be required to do so. This monitoring shall include, but not be limited to, personnel, product quality, service, assistance and store neatness, through the use of shopping services, closed circuit T.V., and other reasonable means.

Concession Services Program

- 2) Prohibited Items/Shipping Services: The Transportation Security Administration (TSA) has instituted a security measure that prevents certain items from entering the Airport's sterile areas or post-security checkpoints.

The Department will provide a list of those items, which may change from time to time, to the Concessionaire as depicted on Exhibit J "Prohibited Items List" and the Concessionaire will cause its Sub-tenants to receive and acknowledge receipt of said Exhibit J "Prohibited Items List".

As a result of this restriction, the Concessionaire shall provide consumers shipping services and will cause its Sub-tenants to provide shipping services for those items listed on Exhibit J "Prohibited Items List".

G. Security:

- 1) Security: The Concessionaire acknowledges and accepts full responsibility for the security and protection of the locations, any improvements thereon, its equipment and property on the Airport, and control of access to the Air Operations Area ("AOA") through the locations by persons and vehicles. The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for the protection of said locations, equipment and property and access to the AOA through the locations shall be the sole responsibility of the Concessionaire and shall involve no cost to the County.
- 2) Security Identification Display Areas Access - Identification Badges:
 - 3) AOA – Driver Training: Before the Concessionaire shall permit any employee to operate a motor vehicle of any kind or type on the AOA, the Concessionaire shall require such employee to attend and successfully completed the AOA Driver Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department for any violation of AOA driving rules. Notwithstanding the above, the Concessionaire shall be responsible ensuring that all such vehicle operators possess current, valid, appropriate Florida driver's licenses.
 - 4) Alcohol and Drug Testing: The Concessionaire acknowledges that the County, as a public agency, sponsors under the provisions of the Airport and Airway Improvement Act of 1982, as amended (the "Act"), has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. The Concessionaire acknowledges that Department, on behalf of the County, has the right to require users of the Airport (Concessionaires, Permittees, Licensees, etc.) To establish reasonable programs to further the achievement of the objectives described herein. Accordingly, the Concessionaire shall establish

Concession Services Program

programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport who will as a part of their duties (a) be present on the AOA; (b) operate a motor vehicle of any type on the AOA; or (c) operate any equipment, motorized or not, on the AOA and for the same or similar screening based upon a reasonable suspicion that an employee, while on duty on the AOA, may be under the influence of alcohol or drugs. Notwithstanding the above, the Concessionaire specifically acknowledges that the County, acting through the Department, has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person who it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

- 5) Special Programs: The Concessionaire shall ensure that all employees so required participate in such safety, security and other training and instructional programs, as the Department or appropriate Federal agencies may time to time require.
- 6) Vehicle Permit and Company Identification: Motor vehicles and equipment of the Concessionaire operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of the Department. In addition, company identification must be conspicuously displayed on such motor vehicles and equipment.
- 7) Federal Agencies Right to Consent: The Concessionaire understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services shall not be employed by the Concessionaire in areas under the jurisdiction or control of such federal inspection agencies.
- 8) AOA - Right to Search: The Concessionaire agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the AOA. The Concessionaire further agrees that it shall not authorize any employee or agent to enter the AOA unless and until such employee or agent has executed a written consent-to-search form acceptable to the Department. Persons not executing such consent-to-search form shall not be employed by the Concessionaire at the Airport, in any job requiring access to the AOA.

It is further agreed that the Department has the right to prohibit an individual, agent or employee of the Concessionaire from entering the AOA based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage or other unlawful activities. Any person denied access to the AOA or

Concession Services Program

whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the Director of the Department of his authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reasons for such denial.

The Concessionaire acknowledges and understands that these provisions are for the protection of all users of the AOA and is intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other activities at the Airport.

II Market Pricing Basket Policy:

Concessionaire and/or its Sub-tenants' prices on any specific item may not exceed the average by more than the per cent specified in the Lease & Concession Agreement, or as amended, of those remaining after eliminating the lowest priced-Location. If fewer than three (3) Locations provide a specific service, the maximum permissible price shall not exceed the average by more than per cent specified in the Lease & Concession Agreement, or as amended, of the three (3) highest Locations. If fewer than three (3) Locations provide the service, the maximum permissible price shall not exceed the average price of all Locations carrying the specific item by more than per cent specified in the Lease & Concession Agreement, or as amended. If no other Location provides the service, the Concessionaire shall therefore charge a reasonable price; in which case, the Department reserves the right to determine whether the price is reasonable.

2. **Same Service:** For any or all operations where a Concessionaire currently operates the same or similar service in the Miami-Dade County area, the Concessionaire may not charge more than specified percent in the Lease & Concession Agreement, or as amended, higher charges at the Airport for like or similar merchandise. The Department has the right to survey prices at said store and to use these prices for same or similar merchandise as the primary basis for pricing in leased Locations in all Locations. If no other Location carries the item, the Concessionaire shall therefore charge a reasonable price; in which case, the Department reserves the right to determine whether the price is reasonable.
3. **Price Increases:** The Concessionaire must receive written approval from the Department to increase the price of any item sold or offered by the Concessionaire or its Sub-tenants, and any such request must be accompanied by a price survey. The Department reserves the right to visit said price survey and verify price prior to approval.

Price Check Policy: Prices may be checked periodically to assure compliance with this policy.

Concession Services Program

B. Marketing:

The Concessionaire may be responsible for developing and implementing an internal marketing and promotions program for its Locations. However, the Department will implement a Terminal Wide Marketing Program for the Airport concession program which will be funded by the Concessionaires through the payment of a marketing services fee of one-half of one percent of gross sales.

The Concessionaire shall prepare a marketing plan. The marketing plan shall be submitted to the Department on or before ninety (90) calendar days prior to the commencement of each lease year and shall represent the upcoming fiscal year for the Department (October 1 – September 30). The Department shall have forty-five (45) calendar days after receipt of the foregoing plan to approve or disapprove the same in its reasonable discretion and if MDAD disapproves the Concessionaire shall operate in substantial conformity with all such plans, approved by the Department, as may be modified from time to time.

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

III. MANAGEMENT AND PERSONNEL:

A. Management:

- 1) Personnel: The Concessionaire shall maintain a full-time professional staff during the term of this Agreement of sufficient size, expertise and experience to manage the operations and to serve as a liaison with the Department.
- 2) General Manager: The Concessionaire shall employ, at no cost to the Department, a full time, dedicated, on-site General Manager experienced in management and supervision who has sufficient authority and responsibility to administer and manage the concession program under this Agreement. The General Manager (or his/her authorized representative) shall be immediately available whenever any of the locations are open, the base of operations of the General Manager shall be at the Airport, and the General Manager shall spend substantially all of his working hours at the Airport. In those cases where the General Manager is scheduled to be absent from the post for a period greater than forty-eight (48) consecutive hours, a substitute General Manager must be appointed from the existing staff, and the Department notified in writing.

The Department reserves the right to require Concessionaire to remove and replace any General Manager or Assistant who, in the opinion of the Department, does not perform up to the standards consistent with the fulfillment of Concessionaire's obligations under this Agreement.

Management Responsibilities: In its capacity as the Concessionaire under this Agreement, and not as an agent of the Department,

Concession Services Program

Concessionaire shall manage the locations in accordance with this Agreement, in furtherance of which Concessionaire shall, among other things, (i) visit each Sub-tenants locations daily to monitor compliance with this Agreement; (ii) use reasonable efforts to remedy problems and issues raised by Airport patrons with respect to the operation of the locations, (iii) answer in writing all written customer complaints within ten (10) calendar days after receipt thereof and furnish a copy of the complaint and said answer to the Department within said ten (10) calendar day period; and (iv) promptly furnish the Department with copies of all written notices received by Concessionaire from any governmental authority or any Sub-tenant with respect to the locations or any Subcontract.

- 4) Concessionaire shall cause each sub-lease to include provisions requiring the sub-tenants to maintain an adequate sales and work force at all times, including without limitations, sales, cashiers, management and supervisory personnel on-site to fully meet customer needs at all times and use skill and diligence in the conduct of the business. Concessionaire and the sub-tenants shall always cause their respective employees to be courteous and helpful to the public.

B. Administrative Functions:

- 1) The Concessionaire shall provide or cause its Sub-tenants to provide quality control audits and reports covering compliance with contract requirements, cleanliness of the facility, timeliness of service and quality of the product. (MDAD will establish its own rules and regulations that are subject to its unilateral revision and implementation)
- 2) The Concessionaire shall generate monthly reports to MDAD, including sales by unit, concept and space. Developing annual revenue projections by month, by sub-tenant, concession type, concept, and by space to be updated on a regular basis.
- 3) Generate monthly airport revenue reports, ACDBE Monthly Utilization Reports and such other financial and management reports as are usual and customary in sophisticated airport newsstand and specialty concession management programs. Prepare other reports and analyses as may be requested periodically by MDAD including number of transactions per period, average transaction value and sales per product category.
- 4) Maintain total permanent leasable area records on an actual and leased basis and record changes for either total as they occur.
- 5) Maintain computerized records on a commercially available property management software program acceptable to MDAD. Programs and all data collected should be available to the Department on-line (digital and electronic).
- 6) Respond to customer/passenger complaints on behalf of MDAD.

Concession Services Program

- 7) Implement any new policies and procedures as directed by MDAD.
- 8) Ensure payment of rent to MDAD to include all required rental reports. The Concessionaire is prohibited from waiving any right to receive rents, fees, charges, or other revenues that may be paid or payable by any Sub-tenant, user, or occupant under its sub-lease, without the prior written consent of MDAD, and will similarly be prohibited from granting any rent abatements, extensions, or other modifications without such prior written consent.
- 9) Coordinate and maintain general oversight of deliveries of goods and products from designated on or off-airport storage areas for the locations depicted in Section 1.03 "Locations" and Section 1.04 "Administrative Support Space".
- 10) Develop, maintain and make available if requested, sub-tenant files to include copies of licenses, permits, insurance certificates, letters of credit, annual ACDBE certification and correspondence.
- 11) Develop, manage, and monitor a program to identify and include Local/Small/ACDBE businesses in the concession programs.
- 12) Develop an ACDBE community outreach program for concession opportunities, subject to MDAD approval, and coordinate its implementation with MDAD.

C. Training:

The Concessionaire shall submit a copy of its employee Customer Service Training Program within thirty (30) calendar days of the Effective Date of this Agreement or cause its Sub-tenants to submit their employee Customer Service Training Program within thirty (30) calendar days of the Effective Date of the Sub-lease Agreement. In addition, the Concessionaire shall annually hereafter establish a training program for its employees and the employees of its Sub-tenants and shall submit a summary report of the training areas covered and the number of participants in the following areas:

- I. Services in an airport environment
 - a. Fluctuations in customer activity
 - b. Shipping/handling issues
 - c. Early morning/late evening activity
 - d. Storage/inventory issues
- II. Customer service
 - a. Greeting/approaching customers
 - b. Answering questions
 - c. Shipping/handling
 - d. Complaints resolution
 - e. Establishing priorities
 - f. Handling emergencies

Concession Services Program

III. Product knowledge

- a. Prices
- b. Selection
- c. Warranties/guarantees
- d. Sizes/types/colors available
- e. Shipping/handling

IV. Store operations

- a. Hours of operation
- b. Inventory
- c. Conducting and reporting transactions
- d. Management structure
- e. Hierarchy of decision-making
- f. Attire/appearance standards

D. Staffing:

The Concessionaire and/or its Sub-tenants shall ensure that passengers are provided the highest level of customer service. Adequate staffing levels must always be maintained. Peak passenger activity, the nature of the service operation, and customers' needs shall be considered in determining these staffing levels. The level of staffing shall encompass sales employees, as well as store managers and stock or support staff, as appropriate to the operation.

Employee uniforms and nametags will be required in MIA Service operations. All employees are required to wear a uniform during business, the uniform's design, color and overall appearance should be tasteful and in keeping with the theme of the particular type of operation.

E. Meetings:

The Concessionaire shall meet regularly with the Department to discuss matters relating to this Agreement. In addition, at the Department's request, the Concessionaire shall attend other meetings with the County, airlines and any other parties designated by the Department.

F. Liquidated Damages:

The Department may impose liquidated as specified in the lease and concession agreement.

EXHIBIT M

LABOR PEACE AGREEMENT

EVIDENCE OF SIGNED LABOR PEACE AGREEMENT

HOTELZO LLC has complied with Miami-Dade County's Labor Peace Policy for operations at Miami International Airport by entering into a labor peace agreement with UNITE HERE Local 355 which prohibits UNITE HERE Local 355 from engaging in picketing or other economic interference with the business at those operations covered by the Agreement.

FOR THE EMPLOYER:

HOTELZO LLC

Signature: 

Name: DUILIO SANGUINETI

Date: September 14, 2023

FOR THE UNION:

UNITE HERE Local 355

Signature: 

Name: Wendi A. Walsh

Date: September 14, 2023

EXHIBIT N

Implementing Order 3-58, First Source Hiring Referral Program

Exhibit N

Implementing Order



Implementing Order No.: IO 3-58

Title: FIRST SOURCE HIRING REFERRAL PROGRAM

Ordered: 12/4/2012

Effective: 12/14/2012

AUTHORITY:

Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; and Section 2-2113 of the Code of Miami-Dade County

POLICY:

Except where federal or state laws or regulations mandate to the contrary, this Implementing Order shall require successful bidders of goods and services contracts prior to filling each vacancy arising under said County Contract, to first notify South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy so the contractors may post the vacancy with SFWIB. The contractor shall a) review the resumes and qualifications of the candidates, and b) make a good faith effort as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs under the County Contract from the First Source Register.

The provisions of this Implementing Order shall apply to all such goods and services contracts including concessions and professional services entered into and issued by the County, its departments and agencies, except for: (i) construction, construction management, architectural, engineering, landscape architectural, and land surveying and mapping services; (ii) those covered under the Community Workforce Program ("CWP"); (iii) Section 3 Housing contracts; (iv) those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in Sections 413.032 - 413.037, Florida Statutes (2011); and (v) contracts where the funding source precludes inclusion of this requirement.

I. DEFINITIONS

- A. "Contractor" means any person or entity which enters into a County Contract, as defined below.
- B. "County" or "MDC" refers to Miami-Dade County.
- C. "County Contract" means an agreement for the purchase of goods and/or services, except as specified above.
- D. "First Source Register" means the register of unemployed persons maintained by the Referral Agency in accordance with the provisions of this Implementing Order.
- E. "Implementing Order" or "IO" means the implementing order developed by the Mayor or Mayor's designee and approved by the Board of County Commissioners (the "Board") to give effect to the provisions of this Section.
- F. "Issuing Department" means the County department issuing a solicitation for the purchase of goods and/or services.

- G. "Referral Agency" means the South Florida Workforce Investment Board, through its career centers, or community-based partners and faith-based organizations.
- H. "Referral Period" means the three (3) to five (5) day period following notification to the Referral Agency of employment availability.
- I. "SBD" refers to the Small Business Development under the Business Affairs Division of the Department of Regulatory and Economic Resources.

II. PROGRAM COMPONENTS

A. FIRST SOURCE REGISTER

The SFWIB shall compile and maintain a First Source Register, which shall be a listing of unemployed persons, including graduates of programs funded by the Workforce Investment Act, to be made available to Contractors as a first source for their employment needs. SFWIB does not discriminate on the basis of race, ethnicity, sex, residence, or other protected category or class, in the compilation or maintenance of the First Source Register, or in its referral activities provided for in this Section. SFWIB shall, to the extent allowed by law, maintain a database which identifies the race, ethnicity, sex, and residence of the persons within the First Source Register sufficient to permit adequate analysis of the available work force.

B. IMPLEMENTATION

The roll-out of the First Source Hiring Referral Program ("FSHRP") will be as follows:

1. Miami-Dade Aviation Department (August 2012)
2. Water and Sewer Department, Fire-Rescue, Public Works and Waste Management, Community Action and Human Services Department, Office of Management and Budget, Vizcaya (October 2012 beginning)
3. Internal Services Department, Information Technology Department, Transit, Miami-Dade Police Department, Public Housing and Community Development, Port of Miami, Library, Elections (October 2012 end)
4. Parks, Recreation and Open Spaces, Miami-Dade Corrections and Rehabilitation, Regulatory and Economic Resources, Community Information and Outreach, Cultural Affairs, Juvenile Services, Medical Examiner, Animal Services, Finance, Property Appraiser (November 2012)

C. REFERRAL PROCEDURE

The SFWIB shall be the first source for Contractors to fill jobs created to satisfy the requirements of County Contracts. The following requirements shall be included in all County Contracts, except those covered under the CWP, and except those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in Sections 413.032 - 413.037, Florida Statutes (2011):

1. The Contractor, prior to hiring to fill each vacancy arising under a County Contract, shall first notify the SFWIB of the vacancy by completing a Job Opening Form on the SFWIB First Source Hiring website (<https://iapps.southfloridaworkforce.com/firstsource/>). The job order shall

contain a detailed description of the job responsibilities and qualifications, and be posted during the Referral Period of three (3) to five (5) days.

2. The SFWIB shall provide a list of qualified candidates, if such candidates are available, to the Contractor within twenty-four (24) hours of receiving a notice of vacancy. Thereafter, the Contractor shall (a) review the resumes and qualifications of the candidates, and (b) make a good faith effort, as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs under the County Contract from the First Source Register. If no suitable candidate is identified from the list, the Contractor shall provide an explanation to SFWIB via the FSHRP web portal (<https://iapps.southfloridaworkforce.com/firstsource/>). Notwithstanding the foregoing, if after the Referral Period a suitable employee is not found through the SFWIB, the Contractor is free to fill its vacancies from other sources.
3. A good faith effort to employ candidates from the SFWIB shall constitute, at a minimum, evaluating the qualification of such candidates, and conducting interviews with those candidates who satisfy the minimum competency requirements. The Contractor is not required to hire any individual candidate referred. However, Contractors shall not commit to fill vacancies in any other manner until after the end of the Referral Period, unless SFWIB notifies the Contractor in writing prior to the end of the Referral Period that qualified candidates are not available in sufficient numbers to fill the vacancies. Upon such notification, the Contractor may immediately fill vacancies using other sources.
4. In determining whether a Contractor has made good faith efforts, the County may consider, among other criteria: a) the number, skills and composition of the Contractor's labor force ultimately hired; b) whether minimum requirements were established for available positions beyond reasonable requirements to complete the job; c) the number of referred candidates interviewed for the position; and d) the Contractor's use of the First Source Register to satisfy its labor needs in contracts other than County Contracts. The County's determination as to whether a Contractor has made such good faith efforts is final and binding.
5. All competitive solicitations for County Contracts, except those covered under CWP, shall set forth the requirements of this Section. A link to the FSHRP web portal shall be on the Internal Services Department – Procurement Management Services Division's website.

D. ISSUING DEPARTMENT RESPONSIBILITIES

1. Notify SFWIB of County Contract awards, at both the award recommendation stage, and when the Contractor is notified by the County of the award in writing. Notification should include at a minimum:
 - a. Company Name.
 - b. Company Contact.
 - c. Contract Information.
 - d. Award Amount.
2. Include First Source requirement in applicable bid and contract documents.

E. SFWIB RESPONSIBILITIES

1. Notify prospective and awarded Contractors of the FSHRP.
2. Recruit qualified MDC residents:
 - a. Utilize existing database of job seekers.
 - b. Market new job opportunities to MDC residents.
 - c. Utilize Career Centers closest to the job seekers to recruit qualified residents interested in jobs to create a pool of candidates for FSHRP projects.
3. Create First Source Register:
 - a. Determine and complete candidate eligibility.
 - b. Assess job seekers to determine level of skills and training. Residents must meet all requirements of the Contractor prior to referral.
4. Refer qualified candidates that have requisite skills required by the Contractor.
5. Provide online web portal that allows Contractors the ability to submit required quarterly reports as described below under Section F (c) and (d).
6. Send system generated automated email "report due date" reminders to Contractors.
7. Provide MDC with real-time online access to Contractor quarterly status reports confirming whether the goals have been met and any non-compliance with the requirements of the ordinances and/or first source agreement.
8. Prepare quarterly reports for the Board which shall include: a) dollar amount of each contract; and b) an analysis of the effectiveness of the program during each quarterly reporting period.

F. CONTRACTOR RESPONSIBILITIES

- a. Prior to filling each vacancy under a County Contract, the Contractor shall notify SFWIB of all job openings and list the vacancy via the SFWIB web portal (www.southfloridaworkforce.com). The listing shall contain, at a minimum, a detailed description of the job responsibilities, qualifications, and wage rate. The listing must be posted during the Referral Period. As required, the Contractor shall work with the SFWIB to develop a workforce plan that details such information as (a) the number of individuals to be hired, (b) positions needed, (c) job description(s), and (d) skills needed for the job.
- b. Upon receipt of the list of qualified candidates from the SFWIB, the Contractor shall review resumes and qualifications of the candidates, and make good faith efforts as determined by MDC to fill a minimum of fifty percent (50%) of its employment needs under the County contract from the First Source Register. If none of the candidates are hired, the Contractor shall provide an explanation to SFWIB as to why not via the FSHRP web portal (<https://iapps.southfloridaworkforce.com/firstsource/>).
- c. Contractors shall provide quarterly reports to the SFWIB on-line through the FSHRP web portal (<https://iapps.southfloridaworkforce.com/firstsource/>) indicating: (a) the name and number of employees hired in the previous quarter; (b) the source from which such employees were found; (c) wages paid; and (d)

total number of employee work hours. If none of the candidates referred are hired, an explanation as to why those referred were rejected must be included in the on-line report. Each quarterly report shall be submitted to SFWIB within two (2) weeks of the end of the quarter. Quarterly reports to the SFWIB are required from the Contractors, even if no vacancies are created or filled, for the duration of the contract or as determined by the SFWIB.

- d. Contractors shall retain sufficient records to assist in determining compliance. Records shall include, but are not limited to:
 - a. Notifications to SFWIB;
 - b. referrals from SFWIB;
 - c. job applications received from sources other than SFWIB; and
 - d. the number of candidates hired based on referrals from SFWIB.Said records shall be made available to SFWIB upon request, to the extent allowed by law.

G. MONITORING AND COMPLIANCE

- 1. SFWIB shall monitor quarterly reports submitted by Contractors and review Contractor records, to the extent allowed by law, to ensure compliance with the FSHRP. Referral Agency shall follow up with Contractors to ensure reporting requirements are met.
- 2. SFWIB shall be entitled to perform random, unannounced site visits to applicable project sites to determine whether or not Contractor has filled its vacancies.
- 3. SFWIB shall report to the County any non-compliance with the requirements of this ordinance, any related Implementing Order, or first source agreement between Referral Agency and Contractor.

III. SANCTIONS FOR VIOLATIONS

- A. Each County Contract shall include provisions stating the nature of the sanctions to be imposed on a Contractor that is not in compliance with this Section. Such sanctions shall include, but not be limited to the following:
 - 1. Suspension of contract until Contractor performs obligations, if appropriate.
 - 2. Default and/or termination.
 - 3. Payment of \$1,500 per employee, or the value of wages that would have been earned by employees injured by Contractor's non-compliance, whichever is less.
- B. If any Contractor attempts to comply with the provisions of FSHRP through fraud, misrepresentation or material misstatement, the County, in its sole discretion, may immediately terminate the subject County Contract.

IV. APPEALS PROCESS

- A. Any firm that is issued a determination of non-compliance with the requirements of this IO, its ordinance, or implementing bid documents may be appealed. SBD shall notify the affected party, in writing, setting forth the reasons for the determination and advising of the appeals process.

- B. The affected party may appeal the determination by filing a written appeal with SBD within fifteen (15) business days of receipt of the notice. SBD shall forward the appeal to the SFWIB Director upon receipt.
- C. PROCEDURES FOR ADMINISTRATIVE HEARING:
 - 1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a \$250 nonrefundable filing fee to appeal a determination of non-compliance with the requirements of this Implementing Order, Section 2-2113 of the Code of Miami-Dade County, or implementing bid documents.
 - 2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.
 - 3. MDC shall serve upon the firm, Contractor (or subcontractor) a notice of hearing within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:
 - a. A copy of SBD's determination of non-compliance, as appropriate, outlining alleged prohibited practices upon which it is based; and
 - b. A description of the administrative penalties being considered.
 - 4. An administrative hearing shall be scheduled to be heard before an administrative hearing officer within twenty (20) days after service of the notice. The notice shall also advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.
 - 5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of fact, conclusions, and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii) shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as
to form and legal sufficiency _____

EXHIBIT O
FEDERAL AVIATION ADMINISTRATION (FAA)
SPECIAL CONTRACT PROVISIONS AVIATION
CONTRACTS

FAA SPECIAL PROVISIONS – AVIATION CONTRACT

A). Compliance with Nondiscrimination Requirements

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

1. **Compliance with Regulations:** The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Non-discrimination:** The Concessionaire, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire’s obligations under this Contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Concessionaire’s noncompliance with the Nondiscrimination provisions of this Contract, the sponsor will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Concessionaire under the Contract until the Concessionaire complies; and/or
 - b. Cancelling, terminating, or suspending a Contract, in whole or in part.

6. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contact Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.
7. During the performance of this Contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
- 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 Concessionaires, 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 in education programs or activities (20 U.S.C. 1681 et seq).

- B) All Contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

- C) All Contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.