

Date: November 12, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving a Fifth Amendment to Development Lease Agreement No. C-634
with AAR Aircraft Services, Inc. at Miami International Airport

Agenda Item No. 8(A)(2)
(11-19-20)

Resolution No. R-1178-20

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution amending Development Lease Agreement No. C-634 ("DLA No. C-634") with AAR Aircraft Services, Inc. ("AAR") at Miami International Airport (MIA). DLA No. C-634 was entered into in 1998 to authorize the construction of a new aircraft hangar for use and occupancy by AAR at MIA. The terms of DLA No. C-634 have been amended four previous times with respect to AAR's leasehold at MIA, making the proposed amendment, the fifth amendment to DLA No. C-634 ("Fifth Amendment"), a copy of which is attached to this memorandum.

Scope

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

Fiscal Impact/Funding Source

Approval of the Fifth Amendment to DLA No. C-634 will have a positive fiscal impact to the County. Per the terms and conditions of the Fifth Amendment, AAR will make a one-time payment of \$500,000 to the County no later than ten days after execution and Board approval of the Fifth Amendment. Furthermore, for the opportunity fee being calculated annually, the opportunity fee will be based on the gross revenue earned under all of AAR's leases, not only DLA No. C-634, which will result in a larger opportunity fee.

Track Record/Project Monitor

MDAD's Division Director for Real Estate Management, Michele Raymond, will monitor the implementation of the Fifth Amendment.

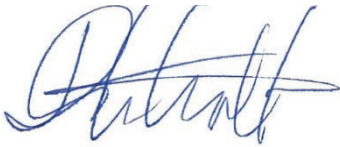
Background

In 1998, the Board adopted Resolution No. 392-98 authorizing Professional Modification Services, Inc. to enter into DLA No. C-634 to construct a new aircraft hangar for their use and occupancy at MIA, which is now known as Building 850. As mentioned earlier, DLA No. C-634 has had four amendments, including an amendment to reflect a change in the Lessee's name to Avborne Heavy Maintenance, Inc., an amendment to extend the term, an amendment to expand the Lessee's permitted use of the premises, and an amendment to reflect a change in the Lessee's name to AAR.

Under the terms of DLA No. C-634, in addition to land rent, AAR is required to pay an annual opportunity fee equal to the amount by which three percent of its gross revenue exceeds certain of AAR's costs, including construction financing amortization and land rent costs. DLA No. C-634 also provides for a reduction of \$225,000 to AAR's amortization costs, increasing the opportunity fee by \$225,000, depending upon whether AAR made a profit on parts in the relevant year. Subsequent to entry into DLA No. C-634, AAR entered into additional land rental leases at MIA that were used in conjunction with the land leased under DLA No. C-634, including a lease for aircraft pavement, for the operation of a wash rack, and for vehicle parking (collectively known as the "Other AAR Leases").

In 2018, the County's Audit and Management Services Department prepared an audit report finding that AAR owed \$2,751,546 in additional opportunity fees for the years ended 2013 through 2017. The finding was based on interpretations of the opportunity fee and gross revenue provisions of DLA No. C-634 that differed from AAR's interpretations of those provisions. Among other things, the parties disagreed about whether, in reporting its gross revenue, AAR was permitted to allocate some of its revenue to the Other AAR Leases based on the square footage of the Other AAR Leases relative to DLA No. C-634, which allocation had the effect of reducing the revenue, thereby reducing the opportunity fee under DLA No. C-634. The parties also disagreed about whether certain revenue, including parts revenue, should be included in the definition of gross revenue under DLA No. C-634. In light of the difference in interpretation, the parties seek to execute a Fifth Amendment to DLA No. C-634 to clarify the provisions that the parties interpret differently, and to require AAR to make a one-time payment of \$500,000 to the County no later than ten days after the Board approves the Fifth Amendment and the Fifth Amendment is fully executed.

The Fifth Amendment provides that gross revenue will include the revenue earned under not only DLA No. C-634 but also under the Other AAR Leases. It also provides that AAR's land rental cost deduction will include the land rent paid under the Other AAR Leases, and that maintenance expendables (nuts, rags, bolts, grease) will not be included as gross revenue. Finally, the Fifth Amendment deletes the provision that allows AAR to include an additional \$225,000 cost expense in the event that it did not make a profit on parts, which results in a \$225,000 increase to the opportunity fee. The Fifth Amendment clarifies that all revenue earned on parts is included in gross revenue.



Jack Osterholt
Deputy Mayor

**FIFTH AMENDMENT
TO
LEASE AGREEMENT No. C-634 WITH
AAR AIRCRAFT SERVICES, INC.,
AT MIAMI INTERNATIONAL AIRPORT.**

THIS FIFTH AMENDMENT to Lease Agreement No. C-634 between **Miami-Dade County** as **Lessor** and **AAR Aircraft Services Inc.** as **Lessee** is made and entered into as of this _____ day of _____, 2020.

WITNESSTH:

WHEREAS, Lessor and Lessee are parties to that certain Development Lease Agreement dated June 29, 1998, Lease C-634, which Lease Agreement has been amended four times (the initial lease agreement and its four amendments collectively being referred to as the "Lease Agreement") with respect to that certain real property located at Miami International Airport more particularly described in Article 2.2 of the Lease Agreement (the "Premises"); and

WHEREAS, the Lease Agreement contains an Opportunity Fee provision that is based, in part, on Lessee's Gross Revenues, which Lessee is required to report to Lessor through monthly reports and an annual audit report; and

WHEREAS, Lessor and Lessee are also parties to additional lease agreements (the "Other Lease Agreements") for real property at Miami International Airport, and the Other Lease Agreements are part of Lessee's business operations and revenue generation under the Lease Agreement; and

WHEREAS, Lessor and Lessee desire to restate and clarify the terms upon which the Opportunity Fee is to be calculated;

NOW THEREFORE, in consideration of the abovementioned premises and Lessee's payment of \$500,000.00 to the County, which payment shall be due to the County no later than ten days after this Fifth Amendment is fully executed and approved by the Board of County Commissioners, and intending to be legally bound hereby, the parties agree as follows:

1. Article 4.2 of the Lease Agreement is hereby amended as follows:¹

4.2 Opportunity Fee: The Lessee shall pay to the County an opportunity fee calculated in the manner provided in this section and payable annually at the times provided herein:

A....

The base amount on which the opportunity fee is calculated shall include amortization costs, as described below, 35% of such amortization costs, and the amount of land rental as adjusted annually or fair market rentals of the land and Improvements constructed herewith. The determination of the amount of opportunity fee paid to the County shall be as follows:

1. PMS's imputed amortization costs based on its cost of financing during the construction phase and cost of financing the debt thereafter, shall be \$1,500,000 annually for the 10th through 25th year of the lease. To this annual amount shall be added ~~\$525,000~~ **\$300,000** representing ~~35%~~ **20%** of such imputed amortization cost and other expenses, and to this shall be added the land rental paid by PMS for the 12-month period for which the opportunity fee is being calculated. Starting with the 10th year of the term of this lease, PMS shall pay County annually an amount by which 3% of its gross revenues exceeds the total of these three components. ***For purposes of this section, the land rental component of the base amount shall include all rent paid by Lessee to Lessor (for the 12-month period for which the opportunity fee is being calculated) in connection with all of Lessee's leased premises at Miami International Airport that are used by Lessee as part of its business operations under the Lease Agreement.***
2. ~~In the event that PMC changes its operational procedures such that it charges its customers for "parts" required to be installed in or on aircraft that are being worked on by PMS, in lieu of its present policy of offering such "parts" at cost, and therefore not a profit center or a revenue, the aforesaid \$525,000 component~~

¹ Words stricken through shall be deleted. Words in ***italicized bold face*** constitute the added language. Remaining provisions are now in effect and remain unchanged.

~~of the items applied against the 3% opportunity fee shall be reduced to \$300,000.~~

- B. Starting with the twenty-sixth year of the term of this Agreement and continuing through the remaining term or occupancy beyond the term by the Lessee as a holdover tenant, PMS shall pay as an opportunity fee the amount by which 3% of its Gross Revenue for the prior 12 month period generated from its activities under this Agreement exceeds the fair market rentals for land and Improvements pursuant to 4.1(A) and 4.1(C) hereof. ***For purposes of calculating the fair market rentals under this section, Lessee shall be entitled to include all rent paid by Lessee to Lessor for the prior 12-month period in connection with all of Lessee's leased premises at Miami International Airport that are used by Lessee as part of its business operations under the Lease Agreement.***

2. Article 4.12 of the Lease Agreement is hereby amended as follows:

- 4.12 Gross Revenues: The term "Gross Revenues", as used in this Agreement means all monies paid or payable to, or considerations of determinable value received by the Lessee for sales made, transactions had, or services rendered in the operation of its business under this Agreement ***and the Other Lease Agreements for all of Lessee's leased premises at Miami International Airport that are used by Lessee as part of its business operations under the Lease Agreement***, and from the subleasing of office space or other portions of the Premises, regardless of when or where the order therefor is received, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value, ***including any revenue from "parts" sold to Lessee's customers or required to be installed in or on aircraft being worked on by Lessee; provided, however, that for purposes of calculating the Opportunity Fee under Article 4.2, the following shall be excluded from the definition of gross revenues:***

- (A) Any taxes imposed by law which are separately stated to and actually paid by a customer and directly payable by the Lessee to a taxing authority. ***Despite such taxes being excluded from gross revenues for purposes of calculating the Opportunity Fee, Lessee shall report these amounts as separate line items in its reporting under Articles 4.14 and 4.15.***
- (B) All sales refunds ***or volume discounts offered by Lessee to its customers in the form of a credit against future billings. Despite such refunds or volume discounts being excluded from gross revenues for purposes of calculating the Opportunity Fee, Lessee shall report these amounts as separate line items in its reporting under Articles 4.14 and 4.15.***

- (C) *All customer reimbursements for expendables, which means common commercial low value hardware and other items purchased in bulk that typically have a per unit value of less than \$20.00, which may be carried as floor stock and where individual issue or control is not considered practical or economical. Expendables are commonly used for aircraft maintenance and/ or repair and are unsuitable for reuse. Typical expendable items include, but are not limited to, screws, nuts, washers, bolts, rivets, drill bits, taps, batteries, masks, gloves, eye protection, bags, containers, tape, rags, towels, hand cleaners, wipes, scrappers, glue, adhesives, chemicals, cleaning solvents, lubricants, and grease. Despite customer reimbursements for expendables being excluded from gross revenues for purposes of calculating the Opportunity Fee, Lessee shall report this amount as a separate line item in its reporting under Articles 4.14 and 4.15.*

3. Article 21 of the Lease Agreement is hereby amended as follows:

21.24 Mutual acknowledgment of no claims as of date of Fifth Amendment.
The parties acknowledge that, as of the date of the Fifth Amendment to this Lease Agreement, they have no causes of action or claims of any kind against one another and forever release and discharge the other from any causes of action or claims that may have existed prior to the execution of the Fifth Amendment.

The remainder of the Lease Agreement remains in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to be executed by their respective representatives as of the date first above written.

MIAMI-DADE COUNTY

BY: _____

Print Name

Date: _____



Approved as to Form and Legal
Sufficiency – Ryan Zagare

AAR AIRCRAFT SERVICES INC.

BY:  _____

BRIAN Loomer

Print Name

Date: 9-1-2020

ATTEST: Harvey Ruvin, Clerk

By: _____

Deputy Clerk

Date: _____

(SEAL)



MEMORANDUM

(Revised)

TO: Honorable Vice Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 19, 2020

FROM: 
Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Agenda Item No. 8(A)(2)

Please note any items checked.

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(2)
11-19-20

RESOLUTION NO. _____ R-1178-20

RESOLUTION APPROVING FIFTH AMENDMENT TO DEVELOPMENT LEASE AGREEMENT C-634 BETWEEN THE COUNTY AND AAR AIRCRAFT SERVICES INC., CLARIFYING CERTAIN PROVISIONS CONCERNING THE OPPORTUNITY FEE PAYMENT REQUIREMENT TO THE COUNTY AND PROVIDING FOR A ONE-TIME PAYMENT OF \$500,000.00 TO THE COUNTY; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH FIFTH AMENDMENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN

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 this Board:

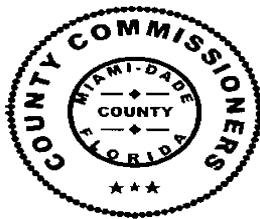
Section 1. Approves the Fifth Amendment to Development Lease Agreement C-634 between the County and AAR Aircraft Services, Inc. in substantially the form attached to the accompanying memorandum.

Section 2. Authorizes the County Mayor or County Mayor's designee to execute the Fifth Amendment and to exercise all rights contained therein, including the receipt of a \$500,000.00 payment from AAR Aircraft Services Inc. within ten days of execution of the Fifth Amendment.

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

	Rebeca Sosa, Vice Chairwoman	aye	
Jose "Pepe" Diaz	aye	Sen. René García	aye
Oliver G. Gilbert, III	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Eileen Higgins	aye
Joe A. Martinez	aye	Kionne L. McGhee	aye
Jean Monestime	aye	Raquel A. Regalado	aye
Sen. Javier D. Souto	aye	District 8 - Vacant	vacant

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of November, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Ryan C. Zagare