

MEMORANDUM

Agenda Item No. 8(P)(1)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

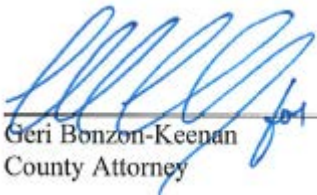
DATE: April 1, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution, in accordance with section 125.35, Florida Statutes, approving of the award and authorizing the County Mayor to execute a Lease Agreement between Miami-Dade County, as the Landlord, and Mandich Group LLC, as the Tenant, for a Phytosanitary Treatment and Cold Chain Processing Facility with an initial lease term of 35 years with two, five-year options to renew, and projected revenue totaling approximately \$318,300,000.00 for a long term lease of approximately 14.61 acres of County-owned property for the Seaport and Miami-Dade Aviation Department; and authorizing the County Mayor to execute the Lease Agreement and to exercise all provisions contained therein, including termination and amendment provisions

Resolution No. R-320-25

The accompanying resolution was prepared by the Strategic Procurement Department and placed on the agenda at the request of Prime Sponsor Commissioner Kevin Marino Cabrera.


Geri Bonzon-Keenan
County Attorney

GBK/jp

MDC001

Date: April 1, 2025

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Recommendation to Award a Lease Agreement for a Phytosanitary Treatment and Cold Chain Processing Facility

Summary

This item is recommending award of a revenue-generating lease agreement (Lease) between Miami-Dade County (County or Landlord) and Mandich Group, LLC (Tenant) for the design, permitting, construction, commissioning, financing, management, operation and maintenance of a new phytosanitary treatment and cold chain processing facility. This project is for the Seaport (PortMiami) and Aviation (MDAD) Departments and will be located on vacant MDAD property southwest of Miami International Airport (MIA). This project will allow for increased international trade to and from MIA and PortMiami, which act as the principal United States trade gateways to Central and South America and the Caribbean. The facility will support the safe flow of agricultural and food products free of pests and diseases, domestically and internationally, and further the treatment requirements per the Code of Federal Regulation (7 CFR 305.5-305, Phytosanitary Treatments). The facility will provide an option to offload perishables at MIA and PortMiami that are presently diverted to Northeast U.S. ports and trucked back to South Florida.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive Lease award, *Contract No. EVN0002820, Phytosanitary Treatment and Cold Chain Processing Facility*, to Mandich Group, LLC (Tenant) with anticipated revenue to the County of \$206,810,000 for the initial 35-year term and should the two five-year options to renew be exercised, the estimated cumulative revenue to the County is projected at \$318,300,000.

The resolution does the following:

- 1) Authorizes the lease of County-owned property, consisting of approximately 14.61 acres, equivalent to 636,392 square feet of land; and
- 2) Authorizes the initial lease term of 35 years, with two, five-year options to renew. The Lease is subject to the review and approval of the Federal Aviation Administration (FAA). To comply with MDAD's bond covenants, a Section 707 review and approval of MDAD's bond engineer and traffic engineer is also required.
- 3) Authorizes the County Mayor or County Mayor's designee to exercise all provisions in the Lease that are not reserved by the Board, as described below in the Delegated Authority section.

Background

A Request for Proposals (RFP) was issued under full and open competition on September 22, 2023. The deadline to receive the proposals was extended to allow additional time for questions and answers, revisions to the RFP, and to encourage vendor participation. Two proposals were received on the closing date of February 7, 2024. The Competitive Selection Committee (Committee) held four meetings, including oral presentations with both proposers on May 28, 2024.

The Committee recommended that the County enter into negotiations with the highest-ranked proposer, Mandich Group LLC, based on their qualifications, extensive experience, past performance, financial capability, offered technology and robust proposal. The firm has the experience and capability to provide

the design, permitting, construction, financing, management, operation and maintenance of a phytosanitary and cold chain processing facility. A copy of the Coordinator's Report is attached. Negotiations commenced in June 2024 and concluded in January 2025. Multiple negotiations meetings took place as this is a complex project.

The facility will have two functions: phytosanitary treatment and cold chain processing. The phytosanitary portion of the facility will be constructed, configured, equipped, commissioned and licensed to simultaneously process multiple pallets from multiple refrigerated cargo containers (or the equivalent of such from air cargo pallets) under one USDA Agricultural Quarantine Inspection (AQI) Treatment Monitoring User Fee (as applicable). The cold chain processing portion of the facility will be constructed, equipped, configured, commissioned, and licensed to provide value-added services, including, without limitation, cold storage, warehousing, distribution, repackaging, cross docking, pick and pack services, perishable product mixing and packaging, and storing of perishable goods. The Lease requires for the facility to be LEED-certified.

Scope

The development site is located in County Commission District 6, which is represented by Commissioner Kevin Marino Cabrera, and less than half a mile from County Commission District 12, which is represented by Commissioner Juan Carlos Bermudez; however, the impact of this item is countywide in nature. In accordance with Resolution No. R-1097-24, written notice of the lease was provided to the District Commissioners.

Fiscal Impact/Funding Source

There will be a positive fiscal impact to the County for the initial 35-year term in the estimated amount of \$206,810,000. Should the two, five-year options to renew be exercised, the estimated cumulative revenue to the County is projected at \$318,300,000.

Department	Projected Revenue	Funding Source	Contract Manager
PortMiami	\$318,300,000	Revenue Generating	Frank Ramirez
MDAD		Revenue Generating	Sylvia Novela

The total design and construction costs of the project, which a portion is funded by the Tenant, are estimated to be \$141,000,000. PortMiami has been awarded a U.S. Department of Transportation Maritime Administration (MARAD) grant through the Federal Port Infrastructure Development Program Grant (PIDP Grant) (MARAD FY 2019 PIDP Grant No. 693JF72040023) that can be used to reimburse some of the construction costs of the Tenant. Provided the Tenant complies with all terms and conditions of the PIDP Grant and Lease, the Tenant will be eligible to apply for reimbursable amounts of: (a) PIDP Grant funds up to the lesser of \$33,500,000 or 59.7% of eligible project construction costs and (b) PortMiami funds up to the lesser of \$9,032,410 or 16.1% of eligible project construction costs. The County project contribution will be funded out of PortMiami's unrestricted cash, commercial paper program, or future financing funds. The Tenant will also be eligible to receive reimbursement from MDAD for verifiable costs incurred to remediate the site if required by the County's Department of Regulatory and Economic Resources.

The Tenant shall pay the County ground rent, additional rent, and an operating fee. The ground rent is equivalent to the square footage rate approved by the Board in the MDAD Rates, Fees Charges (currently of \$3.60 per square foot) times the total gross land area of the site, plus applicable taxes. The per square foot rate is subject to annual County adjustments, as appraised yearly by an MIA appraiser and approved by the Board through the County's annual budget process. The ground rent shall compensate MDAD for use of the site. Using an estimated four percent annual escalation, the ground rent (pre-taxes) equates to approximately \$168,700,000 in the initial term, \$48,900,000 in the first option to renew, and \$59,500,000 in the second option to renew.

Once the facility is operational, estimated to be within 26 months, the Tenant shall pay the County monthly an additional rent of \$69,420, plus applicable taxes, and a \$300,000 annual operating fee. The additional rent is effective through the initial term and equates to over \$28,170,000. The additional rent shall be distributed to PortMiami to cover the Port's expenses, including the match of the PIDP Grant. The operating fee will be divided between PortMiami and MDAD. The operating fee will provide \$9,900,000 in the initial term of the Lease, \$1,500,000 in the first option to renew, and \$1,500,000 in the second option to renew.

Track Record/Monitor

Jonathan Desverguñat of the Strategic Procurement Department (SPD) is the Procurement Contracting Manager. Alissa Peñaloza, Chief Seaport Strategy Officer, PortMiami will manage the overall terms and conditions of the Lease.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to execute the Lease between the County and Tenant, and exercise all provisions in the Lease that are not reserved by the Board, including, but not limited to, termination provisions and the following: (a) execute the Lease, and all amendments, renewals, or extensions thereof; (b) review and approve documents, plans, applications, Lease assignments and requests required or allowed by Tenant to be submitted to the County pursuant to the Lease; (c) consent to actions, events, and undertakings by the Tenant for which consent is required by the County; (d) make appointments of individuals or entities required to be appointed or designated by the County in the Lease; (e) execute any and all documents on behalf of the County necessary or convenient to the foregoing approvals, consents, and appointments; (f) execute on behalf of Miami-Dade County any and all consents, agreements, applications or other documents, needed to comply with applicable regulatory procedures or other approvals needed to accomplish the construction and all improvements of the facility; and (g) amend the Lease to correct any typographical or non-material errors, to address revisions or supplements thereto of a non-material nature or to carry out the purposes of the Lease.

Vendor Recommended for Award

The highest-ranked proposer is recommended for award and is non-local.

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Mandich Group, LLC	4000 Hollywood Boulevard Suite 650-N Hollywood, FL	None	3	Michael Mandich
			1.1%	

*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
AFCO MIA Import Facility, LLC	No	Evaluation Scores/Ranking

Due Diligence

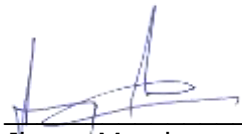
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet 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

- The two percent User Access Program does not apply.
- The Small Business Enterprise measures and Local Preference do not apply.
- A 19% Disadvantaged Business Enterprise participation goal applies.
- The Living Wage Ordinance does not apply.
- Davis-Bacon Wages apply.

Attachment



Jimmy Morales
Chief Operating Officer

Memorandum



Date: June 6, 2024

To: Namita Uppal, C.P.M.
Director and Chief Procurement Officer
Strategic Procurement Department

Thru: Rita A. Silva, CPPO *RS*
Division Director
Strategic Procurement Department

From: Alejandro Garcia
Procurement Contracting Officer II *Alejandro Garcia*
Selection Committee Coordinator

Subject: Report of Competitive Selection Committee for (RFP No.) EVN0002820,
Phytosanitary Treatment and Cold Chain Processing Facility

The Strategic Procurement Department issued a competitive Request for Proposals on September 22, 2023, on behalf of the Seaport Department (Seaport), to obtain proposals from qualified firms to provide for the design, permitting, construction, financing, management, operation and maintenance of a phytosanitary and cold chain processing facility. The County anticipates awarding a Lease for a thirty-five-year term, with two, five-year options to extend.

On February 7, 2024, two proposals were received in response to the solicitation. The Competitive Selection Committee (Committee) has completed the evaluation of proposals following the guidelines published in the solicitation. *Implementing Order No. 3-34, Formation and Performance of Competitive Selection Committees* and *Implementing Order No. 2-13, Guidelines and Procedures Regarding Legal Opinions*, establishes certain timeframes for the completion of reviews and receipt of information during the evaluation phase. Compliance with timeframes is included for each section below where applicable.

Competitive Selection Committee meeting dates:

April 12 and 15, 2024 (Kick-off)

May 15, 2024 (Evaluation, Scoring and Recommendation of Oral Presentations)

May 28, 2024 (Oral Presentations, Scoring and Recommendation)

Verification of compliance with contract measures:

No contract measures were assigned to this solicitation due to federal funding.

Verification of compliance with minimum qualification requirements and responsiveness:

The solicitation did not have any minimum qualification requirements.

On February 22, 2024, the proposals were forwarded to the County Attorney's Office (CAO) for review to determine if the proposals were responsive. Mandich Group, LLC (Mandich) took several exceptions with the most significant being to the ground rent, additional rent, agreement term, exclusivity, and eligible costs for the grant and County contribution. AFCO MIA Import Facility, LLC (AFCO) checked "No" in the box for joint venture but alludes to a joint venture and included information for AFCO, Gateway America, Perez & Perez and Lemartec.

The CAO provided a written opinion on April 2, 2024 and deemed the proposals responsive and indicated that the selection committee, when scoring, may take into consideration the fact that any of Mandich's exceptions that materially change the requirements cannot be negotiated. This information was communicated to the Committee during their meetings. A copy of the CAO's opinion is attached.

Submitting the request for CAO opinion took longer than 10 calendar days because of the complexity of the project and the nature and extent of the exceptions taken. Staff required the additional time to determine which items first required discussion with the CAO, and then to hold the discussion. Similarly, the CAO needed more than 30 calendar days to consider, research and discuss the referred items in order to respond to the request. It should be noted that the CAO provided a verbal response within the 30 calendar day due date so that staff could move forward.

Local Certified Veteran's Business Enterprise Preference:

Not applicable due to federal funding.

Office of the Inspector General (OIG) and/or Commission on Ethics and Public Trust (COE) Reports, Findings and/or Enforcement Documentation for Proposer and Subcontractor(s):

Staff submitted a request to OIG on February 26, 2024. A response was received on February 27, 2024. No reports or findings.

Staff submitted a request to COE on February 23, 2024. A response was received on March 1, 2024. No reports or findings.

Office of the Commission Auditor (OCA) Background Check:

On March 28, 2024, staff provided Committee members with the Neutrality Affidavits, along with the list of proposers and subcontractor, to complete. This was not within 10 calendar days from the receipt of proposals. The time was needed for staff to identify the proposers, and their multiple team members and subcontractors, while working through the responsiveness considerations in order to determine which proposals to include in the affidavit. Staff submitted Committee member's completed Neutrality Affidavits and resumes to OCA on April 9, 2024. A response was received from OCA on April 19, 2024, which was not within five-calendar days. No conflicts of interest were identified.

Summary of scores:

The Committee conducted scoring in accordance with the criteria outlined in the solicitation. The preliminary scores are as follows:

Pre-Oral Presentations

Proposer	Technical Score (max. 3000)	Financial Score (max. 2000)	Total Combined Score (max. 5,000)
1. Mandich Group, LLC	2375	1445	3820
2. AFCO MIA Import Facility, LLC	2035	1745	3780

The Committee decided to hold oral presentations.

The final scores are as follows:

Post-Oral Presentations

Proposer	Technical Score (max. 3000)	Financial Score (max. 2000)	Total Combined Score (max. 5,000)
1. Mandich Group, LLC	2570	1525	4095
2. AFCO MIA Import Facility, LLC	1990	1695	3685

Upon review of the initial scores (pre-oral presentations), SPD staff identified that the scores of three of the Committee members for AFCO on *Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)*, and for Mandich on *Financial Criteria 2 - Economic Return to County* varied in excess of 33 percent from the average score provided by all members for that criterion. As a result, the Committee members were given the opportunity to provide a reason for their score and, after discussions were held by the Committee, one member chose to reconsider her score, and the other two members decided to maintain their scores. The committee members that decided not to change their score stated that based on their independent evaluations and the discussion held, the score given is fair and it will remain unchanged. At the conclusion of addressing the variances, the resulting scores did not change the ranking.

Upon review of the final scores (post-oral presentations), SPD staff did not identify any variance in excess of 33 percent from the average score provided by all members for any criterion.

Local Preference:

Not applicable due to federal funding.

Administrative Leave Eligibility:

The following County employees served as scoring members of the Committee and timely completed all committee-related duties, including submittal of the Neutrality Affidavit within three business days; initial scoring within 30 calendar days of Selection Committee Coordinator's completion of required reviews; and final scoring at any additional meetings required within 15 calendar days of initial scoring meeting, and are hereby entitled to one day of paid administrative leave pursuant to Implementing Order No. 3-34.

Employee's Name	Employee's Department
Chris Hudtwalcker	Seaport Department
Sebastian Yavar	Seaport Department
Helga Sommer	Seaport Department
Dimitrios Jimmy Nares	Miami-Dade Aviation Department
Ammad Riaz	Miami-Dade Aviation Department

Negotiations:

The Committee recommends that the County enter into negotiations with Mandich Group, LLC, the highest ranked proposer. The following individuals will participate in the negotiations:

- Alejandro Garcia, Procurement Contracting Officer, Strategic Procurement Department
- Alissa Peñaloza, Chief Strategy Officer, Seaport Department
- Dory Gomez De Rosas, Senior Aviation Property Manager, Miami-Dade Aviation Department

Pursuant to the RFP, Section 1.3, General Proposal Information, amended via Addendum No. 2, the Proposer's exceptions are being treated as requests to negotiate. The County is not bound to accept any exception and will address the exceptions taken by the recommended Proposer during negotiations. As noted in the CAO responsiveness opinion, the County will not negotiate terms which materially change the requirements.

Technical and operational assistance and feedback will be requested from appropriate staff as needed during the negotiation process.

Consensus Statement:

The Committee recommends that the County enter into negotiations with Mandich Group LLC, based on their qualifications, extensive experience, past performance, financial capability, offered technology and

robust proposal. Based on the evaluations conducted, the firm was recommended for experience, capacity, and capability to provide the design, permitting, construction, financing, management, operation and maintenance of a phytosanitary and cold chain processing facility.

Copies of the score sheets are attached for each Committee member, as well as a composite score sheet. Your approval of the Committee's recommendation is requested.

Approved

Namita Uppal

Digitally signed by Namita Uppal
DN: cn=Namita Uppal, o=Miami
Dade County, ou=Chief
Procurement Officer,
email=uppaln@miamidade.gov,
c=US
Date: 2024.06.22 23:59:27 -04'00'

Namita Uppal, C.P.M.
Director and Chief Procurement Officer

Date

**COUNTY ATTORNEY
MIAMI-DADE COUNTY, FLORIDA**

MEMORANDUM

DATE: April 2, 2024

TO: Jonathan Desvergunat
Procurement Contracting Officer
Strategic Procurement Department

FROM: Eduardo W. Gonzalez
Assistant County Attorney

SUBJECT: Request for Responsive Opinion Determination - RFP No. EVN0001011-
Phytosanitary Treatment and Cold Chain Processing Facility

You have asked whether the proposals submitted by Mandich Group, LLC (Mandich) and AFCO MIA Import Facility, LLC (AFCO) are legally responsive. This opinion is provided in response to your initial memorandum requesting a responsiveness opinion dated February 22, 2024, documentation you provided to our office on March 8, 2024, and our meeting on March 12, 2024, where you provided us further information.

For the reasons set forth below, the proposals by Mandich and AFCO are responsive.

MANDICH RESPONSIVENESS ISSUES

I. Exceptions

Addendum No. 2, Changes No. 4 replaced Section 1.3 of the RFP, General Information to provide:

“In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its Proposal. ***The County shall treat the Proposer’s inclusion of exceptions, assumptions, or alternate terms in the Proposal as requests to negotiate project elements, and the inclusion of same shall not result in the Proposal being deemed non-responsive.*** The County is not bound to accept any exceptions, assumptions or alternates during negotiations, and the County shall consider a Proposal submitted to be an offer to supply goods or services in strict compliance with the terms of the Solicitation.”

(emphasis added)

Ground Rent Exception. Mandich's proposal provided the following exceptions on the issue of Ground Rent: first, although the Solicitation requires that Ground Rent commence on the effective date of the lease, Mandich proposed that such rent would not commence until the first day of the Operating Term, which is after the expiration of the approximately two-year Development Term; or over two years later than the Solicitation requires; second and third, although the Solicitation provides that Ground Rent shall commence at \$3.25 per gross SF of the 14.6 acre Premises, Mandich proposes paying only \$1.50 per SF (including sales tax) of the SF of the built facility -- not the overall leasehold site; and fourth, although the Solicitation provides that the Ground Rent rate can be increased by the Aviation Department annually (based on annual appraisal process and without any annual cap), Mandich's proposal caps escalations at ten percent every five years and at 20% or CPI for the life of the Lease. Combined, these four Ground related exceptions reduce the Ground Rent offered by Mandich to less than one-third of what was required in the Solicitation.

In Addendum No. 2, Question 1 asked: "Can Ground rent be adjusted to building square footage rather than total premises square footage?" the County's answer was: "**No**, the ground rent will not be changed to building square footage as Ground Rent is for the entire premises and not just the building." (emphasis added).

Additional Rent Exception. Mandich also took exceptions to the Solicitation's Additional Rent requirements, by offering only \$35,822.83 per month (including sales tax) instead of the required rate of almost \$70,000 per month plus sales tax, an amount less than one-half of the Additional Rent required.

Term Exception. Mandich exception no. 6 seeks a 50-year initial term plus five 10-year options, for a total potential term of 100 years, which term would not start until the to-be-developed facilities were completed. Per Solicitation Addendum No. 3, Section A, Item 1, the maximum Lease term if all extensions are exercised is 45 years, which term commences when the Lease is signed.

In Addendum No. 3, Section C, Question 1 asked "is the current term length negotiable?" the County's answer was: "**No**. The current term length is not negotiable."

Exclusivity Exception. Mandich took exception to the Solicitation's provision in Section 4.03 of the proposed Lease that the development and use rights being conferred to the selected proposer would be non-exclusive. More specifically, Mandich's exception is that it be granted a 5-mile area of exclusivity within which the County could not allow competing cold [chain] facilities.

Exception of Grant and County Contribution Related "Eligible Costs" Definition. Mandich took exception to the Solicitation's definition of "Eligible Costs", which restricts which project costs are eligible to receive partial reimbursements from the County and/or a certain federal MARAD grant. More specifically, in Exception no. 2 (to Lease section 1.46), Mandich attempts to expand

the Solicitation's definition of Eligible Costs "to include all improvements, equipment, HVAC, cold chain, systems, utilities, etc." This expanded definition of "Eligible Costs" would make a greater proportion of overall project and facility costs available for federal and County cost sharing and thereby potentially reduce Mandich's responsibility to fund 100% of all facility and project costs excluded from the Solicitation's more restricted definition of Eligible Costs.

II. Confidentiality Designation

Mandich included a note in its proposal stating, "CONFIDENTIALITY NOTE: This proposal is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution or copying of this proposal or the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the proposal to the intended recipient, is prohibited." Mandich, however, signed the Acknowledgement of Waiver of Confidentiality and Trade Secret Treatment of Proposal in the solicitation.

III. Other Issues

Mandich submitted the proposal package and checked the "Joint Venture" box in the Submittal Form. Additionally, the Proposal is titled, "Mandich Group in partnership with Reveam" and states, "Prepared by: The Mandich Group, with teaming partner Reveam, Inc." However, from the face of the proposal submittal form, Mandich is identified as the sole proposer and lists the correct corresponding FEIN number. Additionally, Mandich failed to provide a letter from a surety as evidence of its bonding capacity.

Conclusion – Mandich is Responsive

By the express terms of the solicitation the inclusion of exceptions shall not render a proposer nonresponsive:

"The County shall treat the Proposer's inclusion of exceptions, assumptions, or alternate terms in the Proposal as requests to negotiate project elements, and the inclusion of same shall not result in the Proposal being deemed non-responsive. The County is not bound to accept any exceptions, assumptions or alternates during negotiations, and the County shall consider a Proposal submitted to be an offer to supply goods or services in strict compliance with the terms of this Solicitation."(emphasis added.).

Mandich's exceptions are thus properly read as requests to negotiate terms. The County cannot negotiate terms which materially change the solicitation document or requirements. The amount of ground rent and the term of the lease are material elements. Furthermore, the addenda to the solicitation clearly provided that the ground rent cannot be changed to building square footage and that the length of the term cannot be negotiated. Mandich ignores these clear requirements

and submits, among other exceptions, requests to base the ground rent on building square footage and renegotiate the length of the term. Although responsive, the selection committee, when scoring Mandich, may take into consideration the fact that Mandich's requests cannot be negotiated or granted by the County. Mandich's assertion of exceptions clearly barred by the solicitation may also be taken into consideration when determining if Mandich is a responsible vendor.

Mandich's signature of the Acknowledgement of Waiver of Confidentiality and Trade Secret Treatment of Proposal controls over any reservation in the proposal to the contrary, and thus the fact that proposers indicate that portions of their proposals are confidential is waived and of no consequence. The issue of whether Mandich has sufficient bonding capacity to post the requisite payment and performance bond is an issue of responsibility not responsiveness. Furthermore, there is no ambiguity that Mandich is the vendor entity that submitted the proposal.

AFCO RESPONSIVENESS ISSUES

AFCO's issue is like Mandich's in that parts of its proposal allude to a joint venture. AFCO'S Proposal included information for AFCO, Gateway America, Perez & Perez and Lemartec. Additionally, Exhibit D of the Proposal lists AFCO MIA Import Facility, LLC and the legend states "Joint Venture/Equity Members." Like Mandich's proposal, however, it is clear from the proposal submittal that AFCO is the sole proposer with the correct corresponding identifying information including the correct FEIN number. AFCO is responsive.

/s/ Eduardo W. Gonzalez

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - Initial Scoring

5/15/2024

COMPOSITE

EVALUATION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	1500	1020	1180
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	1500	1015	1195
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	1000	910	910
Financial Criteria 2 - Economic Return to County		200	1000	835	535
TOTAL POINTS		1000	5000	3780	3820
Ranking				2	1

Signature:  Print Name: Alejandro Garcia

Coordinator

Print Name:

Jonathan Desverguia

Reviewer

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME - AMMAD RIAZ

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	255	275
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	260	270
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	180	180
Financial Criteria 2 - Economic Return to County		200	180	160



SIGNATURE

5/15/24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME: CHRIS HUDTWALCKER

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	175	250
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	150	250
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	175	175
Financial Criteria 2 - Economic Return to County		200	150	~~100~~ 125


SIGNATURE

5/15/24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: Sebastian Yaver

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	150	250
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	180	250
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	180	180
Financial Criteria 2 - Economic Return to County		200	180	100

5/15/2027

SIGNATURE

DATE

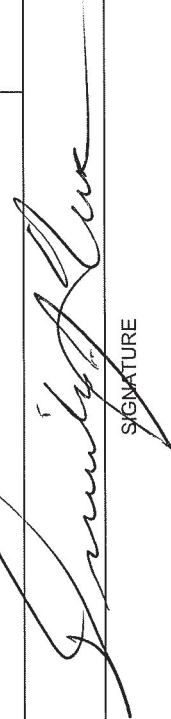
RFP NO. EVN0002820

TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY

EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME - DIMITRIOS JIMMY NARES

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	250	150
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	225	175
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	200	200
Financial Criteria 2 - Economic Return to County		200	175	50



SIGNATURE

5/15/2024

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - Initial Scoring

COMMITTEE MEMBER NAME - HELGA SOMMER

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	~~100~~ 190 ⁴⁵	~~165~~ 255 ⁴⁵
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	200	250
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	175	175
Financial Criteria 2 - Economic Return to County		200	150	100



SIGNATURE

5/15/24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - INITIAL SCORING

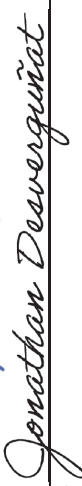
Evaluation of scores

FIRM'S NAME	EVALUATION CRITERIA	Maximum Points Per Member	CHRIS HUDTWALCKER	SEBASTIAN YAVAR	HELGA SOMMER	DIMITRIOS JIMMY NARES	AMMAD RIAZ	Average	Low Disparity	High Disparity
AFCO MIA Import Facility, LLC	Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)	300	175	150	190	250	255	204.00	136.68	271.32
	Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)	300	150	180	200	225	260	203.00	136.01	269.99
	Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution	200	175	180	175	200	180	182.00	121.94	242.06
	Financial Criteria 2 - Economic Return to County	200	150	180	150	175	180	167.00	111.89	222.11
Mandich Group, LLC	Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)	300	250	250	255	150	275	236.00	158.12	313.88
	Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)	300	250	250	250	175	270	239.00	160.13	317.87
	Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution	200	175	180	175	200	180	182.00	121.94	242.06
	Financial Criteria 2 - Economic Return to County	200	125	100	100	50	160	107.00	71.69	142.31

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - Post Orals

COMPOSITE

EVALUATION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	1500	990	1285
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	1500	1000	1285
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	1000	860	860
Financial Criteria 2 - Economic Return to County		200	1000	835	665
TOTAL POINTS		1000	5000	3685	4095
Ranking				2	1

Signature:  Coordinator  Reviewer	Print Name: Alejandro Garcia Date: 5/28/2024 Print Name: Jonathan Desverguinat Date: 5/28/2024
--	---

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: Post Oral's Dinitrios Jimmy Nares

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	250	230
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	240	220
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	150	150
Financial Criteria 2 - Economic Return to County		200	180	120

[Signature]
SIGNATURE

5/28/2024
DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS
Post Orals

COMMITTEE MEMBER NAME: Amjad Riaz

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	250	275
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	260	270
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	180	180
Financial Criteria 2 - Economic Return to County		200	175	170



SIGNATURE

4-28-24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS
Post Orals

COMMITTEE MEMBER NAME: Christopher Hudtwaucher

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	150 ~~175~~ CH	275
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	150	275
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	175	175
Financial Criteria 2 - Economic Return to County		200	150	125


 SIGNATURE

5/28/24
 DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

Post Orals

COMMITTEE MEMBER NAME: Sebastian Jover

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	~~150~~ 150 ST	~~250~~ 250 ST
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	150	270
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	180	180
Financial Criteria 2 - Economic Return to County		200	180	~~180~~ 100 ST

SIGNATURE

DATE

5/28/2024

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

Post Orals

COMMITTEE MEMBER NAME: Helga Sommer

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	190	255
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	200	250
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	175	175
Financial Criteria 2 - Economic Return to County		200	150	150 ^{#5}

Helga Sommer
SIGNATURE

5/28/24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - POST VARIANCE

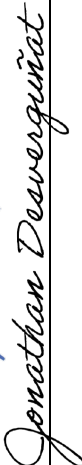
Evaluation of scores

FIRM'S NAME	EVALUATION CRITERIA	Maximum Points Per Member	CHRIS HUDTWALCKER	SEBASTIAN YAVAR	HELGA SOMMER	DIMITRIOS JIMMY NARES	AMMAD RIAZ	Average	Low Disparity	High Disparity
AFCO MIA Import Facility, LLC	Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)	300	150	150	190	250	250	198.00	132.66	263.34
	Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)	300	150	150	200	240	260	200.00	134.00	266.00
	Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution	200	175	180	175	150	180	172.00	115.24	228.76
	Financial Criteria 2 - Economic Return to County	200	150	180	150	180	175	167.00	111.89	222.11
Mandich Group, LLC	Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)	300	275	250	255	230	275	257.00	172.19	341.81
	Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)	300	275	270	250	220	270	257.00	172.19	341.81
	Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution	200	175	180	175	150	180	172.00	115.24	228.76
	Financial Criteria 2 - Economic Return to County	200	125	100	150	120	170	133.00	89.11	176.89

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - Post Orals

COMPOSITE

EVALUATION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	1500	990	1285
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	1500	1000	1285
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	1000	860	860
Financial Criteria 2 - Economic Return to County		200	1000	835	665
TOTAL POINTS		1000	5000	3685	4095
Ranking				2	1

Signature:  Coordinator  Reviewer	Print Name: Alejandro Garcia Date: 5/28/2024 Print Name: Jonathan Desverguinat Date: 5/28/2024
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RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

COMMITTEE MEMBER NAME: Post Oral's Dinitrios Jimmy Nares

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	250	230
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	240	220
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	150	150
Financial Criteria 2 - Economic Return to County		200	180	120

SIGNATURE *[Signature]*

DATE 5/28/2024

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS
Post Orals

COMMITTEE MEMBER NAME: Amad Riaz

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	250	275
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	260	270
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	180	180
Financial Criteria 2 - Economic Return to County		200	175	170



SIGNATURE

4-28-24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

Post Orals

COMMITTEE MEMBER NAME: Christopher Hudtwaucher

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	150 ~~175~~ ^{CH}	275
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	150	275
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	175	175
Financial Criteria 2 - Economic Return to County		200	150	125


SIGNATURE

5/28/24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

Post Orals

COMMITTEE MEMBER NAME:

Sebastian Jover

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	~~150~~ 150 ST	~~250~~ 250 ST
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	150	270
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	180	180
Financial Criteria 2 - Economic Return to County		200	180	~~180~~ 100 ST

SIGNATURE

DATE

5/28/2024

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS

Post Orals

COMMITTEE MEMBER NAME: Helga Sommer

EVALUATION CRITERIA	PROPOSERS	Maximum Points	AFCO MIA Import Facility, LLC	Mandich Group, LLC
Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)		300	190	255
Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)		300	200	250
Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution		200	175	175
Financial Criteria 2 - Economic Return to County		200	150	150 ^{#5}

Helga Sommer
SIGNATURE

5/28/24

DATE

RFP NO. EVN0002820
TITLE: PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY
EVALUATION OF PROPOSALS - POST VARIANCE

Evaluation of scores

FIRM'S NAME	EVALUATION CRITERIA	Maximum Points Per Member	CHRIS HUDTWALCKER	SEBASTIAN YAVAR	HELGA SOMMER	DIMITRIOS JIMMY NARES	AMMAD RIAZ	Average	Low Disparity	High Disparity
AFCO MIA Import Facility, LLC	Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)	300	150	150	190	250	250	198.00	132.66	263.34
	Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)	300	150	150	200	240	260	200.00	134.00	266.00
	Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution	200	175	180	175	150	180	172.00	115.24	228.76
	Financial Criteria 2 - Economic Return to County	200	150	180	150	180	175	167.00	111.89	222.11
Mandich Group, LLC	Technical Criteria 1 - Related Qualifications, Capabilities, and Comparable Facilities (Proposer, Team Members, Key Personnel, and Subcontractors)	300	275	250	255	230	275	257.00	172.19	341.81
	Technical Criteria 2 - Proposed Project Scope (Facility Design) and Approach (Business Plan)	300	275	270	250	220	270	257.00	172.19	341.81
	Financial Criteria 1 - Financial Qualifications, Facility Design and Construction Price/Budget Worksheet (per Form B), and Financial Solution	200	175	180	175	150	180	172.00	115.24	228.76
	Financial Criteria 2 - Economic Return to County	200	125	100	150	120	170	133.00	89.11	176.89



MEMORANDUM

(Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: April 1, 2025

FROM: 
Glen 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 ____, majority plus one ____, 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) ____, 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 Daniella Levine Caron Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)
4-1-25

RESOLUTION NO. R-320-25

RESOLUTION, IN ACCORDANCE WITH SECTION 125.35, FLORIDA STATUTES, APPROVING OF THE AWARD AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, AS THE LANDLORD, AND MANDICH GROUP LLC, AS THE TENANT, FOR A PHYTOSANITARY TREATMENT AND COLD CHAIN PROCESSING FACILITY WITH AN INITIAL LEASE TERM OF 35 YEARS WITH TWO, FIVE-YEAR OPTIONS TO RENEW, AND PROJECTED REVENUE TOTALING APPROXIMATELY \$318,300,000.00 FOR A LONG TERM LEASE OF APPROXIMATELY 14.61 ACRES OF COUNTY-OWNED PROPERTY FOR THE SEAPORT AND MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN, INCLUDING TERMINATION AND AMENDMENT PROVISIONS

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, in accordance with section 125.35, Florida Statutes, approves the award of and authorizes the County Mayor or County Mayor's designee to execute a Lease Agreement ("Lease"), between Miami-Dade County ("County"), as Landlord, and Mandich Group LLC ("Tenant"), in substantially the form attached hereto and incorporated herein by reference, with an initial lease term of 35 years with two, five-year options to renew, and projected revenue totaling approximately \$318,300,000.00, for the Seaport Department and Miami-Dade Aviation Department pursuant to Solicitation No. EVN0002820, Phytosanitary Treatment and Cold Chain Processing Facility.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to execute the Lease between the County and Tenant, and exercise all provisions in the Lease that are not reserved by the Board, including, but not limited to, termination provisions and the following: (a) execute the Lease, and all amendments, renewals, or extensions thereof; (b) review and approve documents, plans, applications, Lease assignments and requests required or allowed by Tenant to be submitted to the County pursuant to the Lease; (c) consent to actions, events, and undertakings by the Tenant for which consent is required by the County; (d) make appointments of individuals or entities required to be appointed or designated by the County in the Lease; (e) execute any and all documents on behalf of the County necessary or convenient to the foregoing approvals, consents, and appointments; (f) execute on behalf of Miami-Dade County any and all consents, agreements, applications or other documents, needed to comply with applicable regulatory procedures or other approvals needed to accomplish the construction and all improvements of the facility; and (g) amend the Lease to correct any typographical or non-material errors, to address revisions or supplements thereto of a non-material nature or to carry out the purposes of the Lease.

Section 3. This Board directs the County Mayor or County Mayor's designee to provide to the Property Appraiser's Office executed copies of the ground leases, sub-ground leases and operating agreements within 30 days of their execution.

Section 4. This Board directs the County Mayor or County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public record the lease or memorandum of lease, sub-ground leases or memoranda of sub-ground leases, covenants, reverters and mortgages creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board further directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Roberto J. Gonzalez** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of April, 2025. 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: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in dark ink, appearing to read "DMM", is written over a horizontal line.

David M. Murray

LEASE AGREEMENT

BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA, AS COUNTY,

AND

MANDICH GROUP LLC., AS TENANT,

FOR THE PHYTOSANITARY AND COLD CHAIN PROCESSING FACILITY

THIS LEASE AGREEMENT ("Agreement" or "Lease") is made and entered into as of the _____ day of _____, 2025, ("Effective Date") by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County") and Mandich Group LLC, ("Tenant").

W I T N E S S E T H:

WHEREAS, County operates the Seaport ("Port" or "PortMiami") and Airport ("MIA" or "Airport") through the Miami-Dade County Seaport Department and the Miami-Dade Aviation Departments ("MDAD"), respectively, which are departments of County;

WHEREAS, County owns certain lands located in Miami-Dade County, Florida, managed by the Airport;

WHEREAS, County desires to lease certain Airport lands, more specifically identified and defined in **Exhibit A (Boundary Survey)** attached hereto and incorporated by reference herein ("Project Site" or "Premises") for the development and operation of a new phytosanitary and cold chain processing facility ("Facility") by Tenant and County is willing to lease the Premise to the Tenant for purposes of Tenant designing, developing, financing, constructing, commissioning, operating, securing, and maintaining the Facility in compliance with all terms and requirements hereof;

WHEREAS, County, pursuant to an advertised, open, and competitive RFP selection process, selected the Tenant based on their Proposal subject to the scope as detailed in Exhibit H, to develop the Project and operate, maintain, and secure the Facility in accordance with the terms

and requirements hereof, and in compliance with Applicable Laws and the terms and conditions of the 2019 Port Infrastructure Development Program Grant No. 693JF72040023 (a copy of which is attached hereto and incorporated herein as **Exhibit B (First Amended and Restated Grant Agreement)**);

WHEREAS, the Tenant submitted a written proposal in response to County RFP No. EVN0002820, which proposal is dated February 7, 2024 (hereinafter referred to as the “Tenant’s Proposal” or “Proposal”), which Proposal contains, among other things, Tenant’s proposed Temporary Master Plan and Facility Conceptual Plan delineating Tenant’s proposed development of the Facility in compliance with the Facility Minimum Requirements and all other applicable requirements hereof (for identification purposes, a genuine copy of Tenant’s Proposal is incorporated herein by reference);

WHEREAS, County through the Port, was awarded the PIDP Grant, and executed an agreement with the federal government, through MARAD, for partial funding of the construction of a Phytosanitary and Cold Chain Processing Facility pursuant and subject to the terms, conditions, and limitations set forth, referenced, and/or incorporated therein;

WHEREAS, the PIDP Grant requires certain matching funding be provided by the County and Tenant in amounts delineated therein;

WHEREAS, the PIDP Grant requires the Project be completed within the timelines delineated therein;

WHEREAS, County has agreed to lease Tenant the Premises in accordance with the terms and conditions contained in this Lease;

WHEREAS, Tenant has agreed to develop the Project in accordance with the terms and conditions contained in the PIDP Grant agreement and in this Lease, including, without limitation, Tenant agreeing to fund all costs of designing, constructing, and commissioning the Facility not covered by component 2 of the PIDP Grant or the County Contribution (as defined and limited herein per the PIDP Grant Maximum Contribution and County Contribution Cap, respectively);

WHEREAS, Tenant acknowledges and agrees that all such development activity must occur in strict compliance with requirements of U.S. federal agencies including but not limited to the Federal Aviation Administration (“FAA”), the Transportation Security Administration, U.S. Customs and Border Protection, U.S. Department of Agriculture, U.S. Department of Transportation and with all regulatory requirements of the State of Florida and the County and that this Agreement is expressly subject to such regulatory approvals in accordance with the provisions of this Agreement;

WHEREAS, Tenant has agreed to operate, secure, and maintain the Premises, the Project, and Phytosanitary and Cold Chain Processing Facility, in accordance with the terms and conditions contained in this Lease;

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the Parties hereto do hereby mutually covenant, agree and bind themselves as follows:

ARTICLE 1

Definitions

The following words shall have the following definitions:

1. “Additional Improvement(s)” shall mean any improvements or facilities that Tenant may, at its sole cost, construct or cause to be constructed on the Premises, other than and in addition to the Facility, pursuant to the terms, conditions, and limitations of subsection 7.12 hereof (if and to the extent allowed and approved by the County and FAA).
2. “Additional Rent” shall mean an amount of annual additional rent due County from Tenant, distinct from and in addition to the Base Ground Rent and the Operating Fee, as defined in Article 5.02 hereof.
3. “Affiliates” shall mean any entity controlled by, under common control with, or which controls any other person, as may be applicable and warranted by the context in which it is used, by possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of such entity whether through the beneficial ownership of voting or equity securities, by contract or otherwise.
4. “Agent” shall mean the financial institution selected by the Parties to act as an escrow agent under the Revenue Collection and Disbursement Agreement.
5. “Agreement” shall have the same meaning as “Lease”.
6. “Airport” or “MIA” shall mean Miami International Airport.
7. “Airport Director” shall mean the Director of the Miami-Dade County Aviation Department, or his/her (or their) designee.

8. “Applicable Laws” shall mean: (a) any federal, State, County or local law, statute, ordinance, code, tariff, regulation, MDAD or other operational directive, or administrative, implementing, or other order, including, without limitation, PortMiami Tariff No. 010, applicable aviation rates and charges as approved by the BCC, all as may be amended from time to time; (b) permits and approvals and all terms, requirements, and conditions contained therein; (c) Environmental Laws; (d) PIDP Grant Requirements; (e) all statutes, regulations, rules executive orders, and specific assurances listed, referenced, or incorporated by reference in Exhibit A to the PIDP Grant; and (f) any formally adopted and generally applicable rule, requirement, determination, standard, design guidelines and standards, policy or other order of any Governmental Authority having jurisdiction, all as may be amended from time to time.
9. “APHIS” shall mean the Animal and Plant Health Inspection Service, United States Department of Agriculture (USDA).
10. “Aviation Department” shall mean the Miami-Dade County Aviation Department and shall have the same meaning as “MDAD.”
11. “Aviation Department Design Guidelines” shall mean a manual provided by MDAD which comprises design standards and guidelines for use by the Tenant’s architects and engineers and other design professionals for the design of the Facility and any other improvements that may be authorized and permitted on the Premises in the County’s discretion, as such design guidelines may be amended from time to time in the County’s discretion. A copy of the current Aviation Department Design Guidelines is attached as **Exhibit F (Aviation Department Design Guidelines)** hereto and hereby incorporated herein by reference.
12. “Baseline Audit” shall have the definition set forth in Article 12.03 (Baseline Audit) of this Agreement and shall have the same meaning as “ESAs Original.”
13. “Basis of Design Report” or “BODR” shall mean a document that provides a comprehensive description of the design criteria, specifications, and other fundamental principles that will be used to guide the design and construction of the Project and Facility. The BODR serves as the foundation for the design of the Facility, outlining the Facility's requirements and other important considerations that will be taken into account during the design process. The report shall include information about the Facility's purpose, scope, and objectives, as well as details about the Premises on which it will be constructed, the industrial processes that will be used, the equipment and materials that will be used, and the electrical, mechanical, and structural systems that will be installed. The BODR also shall provide information about the environmental, sustainability, LEED, sea level rise,

and safety considerations that will be taken into account during the design process, including waste management, pollution control, and emergency response planning. The Basis of Design Report shall serve as a critical document that outlines the Facility's design specifications and requirements and provides a roadmap for the successful design and construction of the Facility.

14. "Builder" shall mean the Tenant's Project Contractor that will be responsible for all construction activities related to the Project, including the general contractor and any Subcontractors, and which are duly authorized to perform this work in the state of Florida.
15. "Business Day" shall mean any day of the week, excluding Saturdays, Sundays and legal and Miami-Dade County holidays, during which the Miami-Dade County civil courts are open.
16. "Capital Maintenance Reserves" shall mean revenue or monies placed and set aside in a segregated maintenance reserve account by Tenant during the Term for future capital requirements needed or anticipated for maintenance, refurbishment, and capital replacement costs relating to or arising from one or more elements or systems of the Facility and all improvements associated therewith.
17. "Casualty" shall mean the damage or destruction of all or any part of Facility by fire or other casualty.
18. "Casualty Termination Date" shall mean the termination date specified in the Casualty Termination Notice, which date shall be no more than ninety (90) days after the date of delivery of the Casualty Termination Notice.
19. "Casualty Termination Notice" shall mean Tenant's written notice to County of its intention to terminate this Lease in accordance with Section 24.19 (B)(ii) of this Lease.
20. "Certificate of Occupancy (CO)" shall mean that certificate of occupancy issued by the applicable governmental entity for the Facility or Improvements.
21. "Common Carrier/Contracted Carrier" shall mean a person, firm, or corporation that undertakes for hire, as a regular business, to transport persons or commodities from place to place, offering their services to all such as may choose to employ the common carrier and pay their charges.

22. “Completed Required Remediation” shall mean the proper completion of the DERM Site Remediation Requirements by or on behalf of Tenant in conformance with the requirements and directives issued by the Miami-Dade County Environmental Resources Management division or agency (“DERM”) and with Applicable Laws and permits and which has been evidenced as properly completed by the issuance of a signed and sealed written certification of completed remediation executed and sealed by a Florida licensed environmental engineer.
23. “Completion Deadline” shall mean the date that is twenty-six (26) months from the Effective Date, subject to any potential extensions that the parties may mutually agree upon in writing, and subject to Unavoidable Delays, but in no event later than the earlier of the expiration of the term of the PIDP Grant or any Facility related construction deadline contained, incorporated, or referenced therein.
24. “Conceptual Schedule” shall mean that conceptual schedule of critical milestones to complete the Project, attached as **Exhibit C (Conceptual Schedule)**.
25. “County” shall mean Miami-Dade County, a political subdivision of the State of Florida.
26. “County Assumption of Restoration Insurance Deficiency” shall mean, in connection with Article 24.19(A)(2)(ii) hereof only, and subject to a future County election therefore in the exercise of the County’ sole discretion, that County shall assume the sole cost and expense of any actual insurance proceeds deficiency that may arise after Tenant fully restores Facility using all insurance proceeds available to Tenant and any subtenant, or any other third party that may be liable to Tenant or Subtenant’s, contractors (of any tier), or invitees for all or part of such casualty loss, other than and excluding any insurance deficiency caused or contributed to by the failure of Tenant or any Subtenant, affiliate, contractor, or subcontractor (of any tier) to procure and maintain all insurance coverages required under this Lease, as further detailed in Section 15 of the Lease.
27. “County Code” shall mean County Code of Ordinances of Miami-Dade County, Florida.
28. “County Contribution Cap” shall mean the lesser of (i) \$9,032,410, (ii) 16.1% of the total amount of Facility Construction cost proposal amount included in Tenant’s Proposal to the subject RFP at Form B thereto (excluding design costs reflected on item 2 of Form B (Design)) which amount is \$139,000,000.00, (iii) 16.1% of total Tenant incurred actual and verifiable Facility construction costs (expressly excluding design costs, financing costs, other soft costs, and the costs of compliance with any DERM Site Remediation Requirements (which are reimbursable to Tenant per terms of Article 3.10 hereof)); or (iv) the actual amount of verifiable construction costs incurred by Tenant to construct the building shell, concrete truck bay area, landscaping (Xeriscape), and civil/site work

elements of the Facility (expressly excluding design costs, financing costs, other soft costs, and the costs of compliance with any DERM Site Remediation Requirements (which are reimbursable per terms of Article 3.10 hereof), and all Non-Eligible Costs). The lesser of (i), (ii), (iii), or (iv) above shall be the not-to-exceed “County Contribution Cap”.

- 29. “County Default Termination Notice” shall mean a written notice of termination to County as provided by Tenant under Article 16.14 (County Defaults) of this Lease.
- 30. “County Events of Default” shall mean the events of default by County set forth in Article 16.14 (County Defaults) of this Lease.
- 31. “County Indemnified Parties” shall mean County, its officers, directors, employees, Affiliates, agents, successors and assigns.
- 32. “County’s Fee Simple Interest” shall mean the County’s fee simple interest in the Premises, which County interest may not be liened, assigned, hypothecated, or otherwise encumbered.
- 33. “CPI” or “CPI-U” shall mean the Consumer Price Index (U.S. – all Urban Areas).
- 34. “Departments’ Project Managers” shall mean the Seaport and Aviation Department Directors, or duly authorized representatives designated to manage the Project.
- 35. “Construction Documents” shall mean documents submitted by the Proposer that defines the work to be performed and shared amongst the contractors and architects for the Project.
- 36. “Date of Beneficial Occupancy” or “DBO” shall have the meaning set forth in section 5.05 hereof.
- 37. “Department” shall mean the Miami-Dade Seaport Department.
- 38. “DERM” or “Miami-Dade Division of Environmental Resources Management” shall mean the Division of Environmental Resources Management (within the Regulatory and Economic Resources Department of Miami-Dade County) or its successor agency or division.

39. “DERM Response to Soil Sampling Plan Implementation Report” shall mean the existing or to-be-issued (as applicable) written report, review, directive, notice, or letter issued by DERM in response to the Soil Sample Monitoring Plan Implementation Report (Ex. E-2 hereof) (delineating the results of soil and ground water sampling of the Premises pursuant to a DERM approved soil and sampling plan), which DERM response may impose Premises related environmental remediation requirements and/or Premises development, use, and/or construction limitations, restrictions, and conditions.
40. “DERM Site Remediation Requirements” shall have the meaning provided in Article 3.10 hereof, and shall include, without limitation, except as otherwise provided herein, (i) the removal and transportation of, and the disposal at a class 1 lined landfill, of on-Site debris piles identified as MDAD-1 through MDAD-7 in the SCS Engineers’ Report of November 21, 2023 (Exhibit E-2), (ii) the removal and transportation of, and disposal of in the manner required by DERM, of the On-Site MDAD Concrete stockpile (identified in the aforementioned SCS Engineers’ Report), (iii) compliance with all other applicable on-Site contaminant removal and disposal requirements set forth in the DERM Letter Re: Limited Phase II Environmental Site assessment Report (LSAR) dated November 21, 2023 (Exhibit E-3), and (iv) compliance with all other DERM required or imposed pre-existing (pre-Effective Date) on-Site contaminant removal and disposal requirements.
41. “DERM Site Restrictions and Conditions” shall have the meaning provided in Article 3.10 hereof.
42. “Design and Construction Documents” shall mean the non-final Facility design and construction documents, drawings, plans, budgets, and specifications prepared by Tenant’s Designer(s), including, without limitation, all design and construction documents submitted to the County by or on behalf of Tenant for County’s review and approval at the 30%, 60%, 90%, and 100% milestones pursuant to the requirements of Section 7.02 hereof.
43. “Designer(s)” shall mean the Tenant’s Project Contractor(s) (of all tiers) that will be responsible for any or all tasks related to the design of the Improvements. This reference includes, without limitation, the personnel, partnerships, firms, and other business entities retained by or on behalf of Tenant to provide architectural, landscape architecture, engineering, planning, surveying or mapping, and/or other professional services (governed by Florida Statute Section 287.055) in connection with the Project.
44. “Development Term” shall have the meaning provided in Section 3.02(A) hereof.

45. “Directors” shall mean the Director of the Miami-Dade County Seaport Department and Aviation Department, or his/her (or their) designee.
46. “Due Diligence Period” shall mean the period from the Effective Date through and including the first Notice to Proceed Date.
47. “Effective Date” shall mean the date of execution of this Lease Agreement between the County and the Tenant. This date will be the date written by the County after approval by the County through its Board of County Commissioners (BCC) and execution by the Mayor or the Mayor’s designee.
48. “Eligible Costs” shall mean, with respect to the PIDP Grant Maximum Contribution and County Contribution Cap, only those capital costs of constructing the Facility, which are incurred by the Tenant, on or after the Lease Date, which are eligible for reimbursement from component 2 of the PIDP Grant in accordance with the terms, limitations, and conditions set forth, referenced, and/or incorporated in the PIDP Grant, the general conditions thereto, and any exhibits or attachments thereto or associated therewith. Eligible Costs are limited to the actual and verifiable (hard) construction costs incurred by Tenant to procure, install, and construct the building shell, concrete truck bay area, landscaping, and civil/site work portions of the Facility. Notwithstanding the foregoing, Eligible Costs do not include, and expressly exclude, without limitation, the following costs: Facility or Additional Improvements’ architectural, engineering, or other design costs (other than Tenant contractor or construction manager incurred shop drawing costs relating to the Facility building shell, concrete truck bay area, landscaping, or civil/site work related shop drawing costs); administrative, legal, and financing costs; any costs of designing, procuring, installing, constructing, commissioning, operating, repairing, maintaining, upgrading, refurbishing or replacing any phytosanitary or cold chain processing or cold storage processing equipment or HVAC equipment, systems, utilities, or components thereof; compliance with any DERM Site Remediation Requirements (which are reimbursable per terms of Article 3.10 hereof); any non-capital costs; any Facility or Additional Improvements’ operating, maintenance, repair, replacement, capital replacement or promotion related costs; any design, construction, and/or development costs incurred for or in connection with any Additional Improvements; the cost of any and all Tenant Property; any costs incurred prior to the Lease Date or after the date of Facility Final Completion; and any Facility construction costs that exceed, in aggregate, the sum of (i) the PIDP Grant Maximum Contribution plus (ii) the County Contribution Cap.
49. “Environmental Claims” shall mean any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Tenant with respect to its operations at the Site or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made by any person against

Tenant with respect to its operations at the Site or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any applicable Environmental Requirement.

50. “Environmental Laws” shall mean any applicable federal, state or local law, statute, ordinance, code, rule, or regulation, or license, authorization, decision, order, injunction, or decree, any of which may be issued by a judicial or regulatory body of competent jurisdiction, or rule of common law including, without limitation, actions in nuisance or trespass, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C § 9601 *et seq.* (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act 42 U.S.C. § 7401 *et seq.*; the Toxic Materials Control Act 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; Chapters 403, 376 and 373, Florida Statutes; Chapters 24 and 25 of Miami-Dade County Code; environmental laws and regulations by the US Environmental Protection Agency (EPA), Florida Department of Environmental Protection (FDEP), South Florida Water Management District (SFWMD), and Miami-Dade County Department of Regulatory and Economic Resources – Division of Environmental Resources Management (DERM); Section P-160 of MDAD Standard Technical Specifications which provides guidelines for the proper handling of contaminated soil/groundwater during construction; the DERM Site Restrictions and Conditions; and any other applicable local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated or issued under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
51. “Environmental Permits” shall mean the Permits and Approvals issued by any Governmental Authority in connection with the environmental condition of the Premises or the conservation of wildlife on or about the Premises.
52. “Environmental Requirement” shall mean any Environmental Law, or any agreement or restriction entered into or applicable by law (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

- 53. “ESAs Original” shall mean the existing Environmental Site Assessment (ESA) reports, including the 2015 Phase I, 2018 Phase II and 2023 Environmental Site Investigation reports, of the Project Site and have the same meaning as “Baseline Audit.”
- 54. “ESA Update” shall mean a future to be conducted Soil Sampling Plan Implementation Report and DERM Response to Soil Sampling Plan Implementation Report of the Project Site, if conducted at the County’s sole election, and have the same meaning as “Baseline Audit Update.”
- 55. “FAA” shall mean the Federal Aviation Administration.
- 56. “Facility” shall mean a state-of-the-art phytosanitary and cold chain processing facility built by or on behalf of Tenant on the Premises in compliance with the Facility Minimum Requirements and all other applicable terms and requirements herein. The Facility shall include any and all buildings; structures; materials; parking areas; roadways; gates and fencing; lighting; landscaping; loading docks and facilities; refrigerated container plugs; HVAC equipment and infrastructure; electrical and plumbing equipment; infrastructure and connections; lighting; equipment; machinery; infrastructure, fixtures, utilities and connections; controls; generators; and building management systems associated therewith or ancillary thereto, and shall include any other improvements, fixtures, or equipment identified or described within the Final Design and Construction Documents, but excluding Tenant Property.
- 57. “Facility Conceptual Plan” shall mean the conceptual plans for the Project contained within Tenant’s Proposed Temporary Master Plan.
- 58. “Facility Minimum Requirements” see definition of “Minimum Requirements”.
- 59. “Fees” shall mean any and all fees charged by any Governmental Authority in connection with any of the activities contemplated in this Lease, including but not limited to fees related to the issuance of Permits and Approvals, impact fees, recordation or registration fees, and documentary taxes.
- 60. “Florida Statutes” shall mean the codified, statutory laws of the State of Florida.
- 61. “Final Approval” shall mean County’s approval of the Final Master Plan in accordance with Article 7.02 (Design of Facility) hereof.
- 62. “Final Completion” shall mean the final completion of the Facility with a permanent certificate of occupancy for all portions of same.

- 63. “Final Design and Construction Documents” shall mean the 100% Design and Construction Documents approved by the County and FAA, and for which a building permit has been issued, as may be amended subject to the written approval of MDAD’s and the Seaport Department’s respective directors.
- 64. “Final Master Plan” shall mean the Basis of Design Report for the Facility for which Final Approval has been given by the County.
- 65. This term was intentionally deleted.
- 66. “Financial Close” shall mean the date all binding financial and lender agreements are signed.
- 67. “Financial Close Period” shall mean the period commencing on the Effective Date and expiring at 11:59 p.m. EST on the 120th calendar day from (and including) the Effective Date.
- 68. “Financial Close Deadline” shall have the meaning set forth in Article 3.01(B) (Financial Close).
- 69. “Financial Close Security” shall have the meaning set forth in Article 3.01 (Financial Close).
- 70. “Fixtures” shall mean equipment, machines, appliances, materials or other items installed, attached, appended or otherwise connected to elements of the Project that are necessary, or which contribute to the functionality thereof, and which shall be the sole property of County upon the expiration or earlier termination of this Lease.
- 71. “Force Majeure Event” shall mean those events set forth in Article 24.18 (Force Majeure).
- 72. “Governmental Authority” shall mean the government of Florida, Miami-Dade County, and the United States of America and any department, division, or agency thereof.
- 73. “Gross Revenues” shall mean all monies paid or payable to, or considerations of determinable value received by or on behalf of the Tenant for sales made, transactions had,

or services rendered in the operation of its business under this Lease or in connection with the Facility, any of the Additional Improvements, or the Project Site, including, without limitation, all revenues generated from the subleasing of warehouse space or other portions of the Facility, regardless of when or where the order therefor is received, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value: provided, however, that the following shall be excluded from the definition of gross revenues (i) any taxes imposed by law which are separately stated to and actually paid by a customer and directly payable by the Tenant to a taxing authority; and (ii) all documented sales refunds. For all exclusions from Gross Revenues, sufficient documentation must be maintained to support the nature of the revenues, including, but not limited to (i) contracts and agreements; (ii) bills of lading and other shipping documentation; (iii) payroll and personnel records (for location of employees); and (iv) documentation of refunds made or credited.

- 74. "Ground Rent" shall mean the fee paid by the Tenant to the County for use of the Premises and is further described in Article 5 (Rentals and Payments) herein.
- 75. "Hazardous Material" shall mean any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a hazardous substance, a hazardous waste or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any applicable Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance on the Premises, any adjacent Premises or a hazard to the environment or to the health or safety of persons on the Premises or Other Airport Property.
- 76. "Impact Fees" shall mean those fees payable to the County's Department of Regulatory and Economic Resources (Planning, Building, Zoning, and Environment divisions) or to another jurisdiction by the Tenant when making permit application for the construction of the Facility.
- 77. "Land Permits" shall mean revocable licenses or permits that may be approved in writing by County, as described in Article 24.29 hereof, in connection with the Project Site or portions thereof.
- 78. "Lease" shall mean this Lease Agreement by and among Tenant and County, including 1) collectively these terms and conditions and all amendments hereto authorized by the parties in writing in accordance with the requirements hereof, 2) Exhibits hereto, 3) Attachments hereto; 4) RFP Event No. EVN0002820 and all associated addenda (incorporated herein by reference); and 5) the Tenant's Proposal (incorporated herein by reference). The Agreement shall include the **Financial Close Security, surety performance bond and surety payment bonds** (when due and in a form acceptable to the County) as attachments.

In the event of any conflict, ambiguity or inconsistency among the Lease documents that cannot be resolved by application of the most stringent standard set forth below, the order of precedence shall be in the order that the documents are listed above in this paragraph. Where more than one standard applies to any particular performance obligation of the Tenant hereunder, each such applicable standard shall be complied with. In the event there are different levels of stringency among such applicable standards, the most stringent of the applicable standards shall govern.

- 79. “Lease Date” shall mean the Effective Date hereof.
- 80. “Leasehold Mortgage” shall mean a first priority charge, mortgage, deed of trust, or other lien on all rights title and interest of Tenant in this Lease, which shall be negotiated by the Parties and approved by the Board of County Commissioners in the manner set forth in this Lease, as further set forth, conditioned, and limited by the terms set forth in Article 14.05 hereof.
- 81. “Leasehold Mortgage Ceiling” shall have the meaning set forth in Article 14.05(A) hereof.
- 82. “Lease Termination Date” shall mean the date of termination of this Lease pursuant to the expiration of the Operating Term, a Tenant Default Termination Notice or a County Default Termination Notice, whichever is earlier.
- 83. “Lease Year” shall mean the consecutive twelve (12) month period commencing on the Effective Date, and each consecutive twelve (12) month period thereafter during the Operating Term (such that all Lease Years run concurrently after each other).
- 84. “Legal Proceeding” shall mean a proceeding authorized or sanctioned by law and brought or instituted in a court of legal tribunal, for the acquiring of a right or the enforcement of a remedy.
- 85. “MDAD” shall mean the Miami-Dade County Aviation Department.
- 86. “MARAD” shall mean the United States Department of Transportation Maritime Administration.

87. “Minimum Phytosanitary Processing Capacity” shall mean the Facility has a minimum phytosanitary processing capacity of 7,000 TEUs per year and 200 TEUs per week, which required minimum capacity shall increase 4% per year compounded commencing at the start of year two of the Operating Term and increasing 4% per year thereafter through the remainder of the Operating Term. Such minimum annual phytosanitary capacities shall drop to 1,000 TEUs per year and 60 TEUs per week (subject to the foregoing Minimum Phytosanitary Processing escalator) if and when the U.S. Department of Agriculture determines that asparagus imported from Peru no longer requires phytosanitary treatment. Notwithstanding the foregoing, during the Lease term, the County may in its reasonable discretion determine and approve an increase of the minimum phytosanitary processing capacity of less than 4% per year, based upon a request and credible factual showing by Tenant that the then-current market demand for phytosanitary services in Miami-Dade County would not support such 4% annual increase in phytosanitary service capacity in the upcoming Lease Year. Such requests must be made by Tenant in writing no later than 60 days prior to the expiration of the preceding Lease Year.
88. “Minimum Requirements” or “Facility Minimum Requirements” shall mean Tenant’s obligation to design, construct, complete, and commission on the Premises a fully operational state-of-the-art phytosanitary and cold chain processing Facility of no less than 246,141 refrigerated square feet, which must meet the Minimum Phytosanitary Processing Capacity, with paved, lighted and secured parking area, site security fencing, refrigerated loading dock area, one or more diesel or natural gas powered emergency generators with combined capacity to provide sufficient standby and auxiliary power to power entire Facility’s and Additional Improvements’ electrical loads for no less than 12 hours without refueling by means of automatic transfer switches with manual bypass/isolation, and all associated equipment, utilities, and infrastructure needed to service and support the Facility and the foregoing requirements. The Facility must be LEED certified Silver or higher (in the version most recently adopted by the U.S. Green Building Code), and comply with all Applicable Laws, the terms of the PIDP Grant, the requirements of County Implementing Order 8-8 ([IO 8-8](#)) and County Code Sections 9-71 through 9-75 (County’s Sustainable Buildings Program requirements [Sustainable Buildings Program](#)) and incorporated by reference herein, and the applicable requirements and guidelines included, referenced, or incorporated in the Project Definition Document prepared by EXP US Services, dated March 23, 2023 (“PDD”). The Facility shall be designed so that the Facility’s structure shall have a design service life of no less than 75 years. The cold chain processing portion of the Facility must be constructed, equipped, configured, commissioned, and licensed to provide value-added services, including, without limitation, cold storage, warehousing, distribution, repackaging, cross docking, pick and pack services, perishable product mixing and packaging, and storing of perishable goods. The phytosanitary portion of the Facility must be constructed, configured, equipped, commissioned and licensed to simultaneously process multiple pallets from multiple refrigerated cargo containers (or the equivalent of such from air cargo pallets) under one USDA Agricultural Quarantine Inspection (AQI) Treatment Monitoring User Fee (if applicable).

89. “Mortgage Lender” shall mean any lender that receives a Leasehold Mortgage from Tenant.
90. “Non-Eligible Costs” shall mean any and all costs to design, construct, oversee, test, and fully commission the Facility and Additional Improvements not included within, or which are expressly excluded from, the definition of Eligible Costs. In addition, any costs deemed or determined by the County or MARAD, at any time, to be ineligible for reimbursement from the PIDP Grant, regardless of cause, shall be deemed within the definition of “Non-Eligible Costs” and may not be considered an Eligible Cost hereunder.
91. “Nondiscrimination Acts and Authorities” shall mean those acts and authorities listed or referenced in Section 19.07 hereof.
92. “Notice to Proceed Date” shall mean the date County issues a Notice to Proceed to Tenant for all or a portion of the Project.
93. “Operating Expenses” shall mean the actual operating expenses incurred by Tenant in connection with the operation of Facility.
94. “Operating Fee” shall mean the Minimum Annual Guaranteed payment made by the Tenant to the County as further described in Article 5.03 (Operating Fee) herein.
95. “Operating Reserves” shall mean revenue held by Tenant to cover Working Capital Advances and other revenue shortfalls during the Term.
96. “Operating Term” shall have the meaning provided in Section 3.02(B) hereof.
97. “Operating Term Commencement Date” shall mean the first calendar day immediately following the expiration of the Development Term.
98. “Operations and Maintenance Provider” shall mean the Tenant’s Project Contractor that will be responsible for the ongoing operations and maintenance component of the Facilities following completion of the design and construction.
99. “Other Airport Property” shall mean all property at the Airport other than the Premises, whether used or not used by Tenant, and which is not subject to a lease, sublease or other legal agreement governing the terms of Tenant’s occupation, use or operations at such

property.

- 100. "Parking Area" shall mean the parking lot or garage with adequate parking spaces on the Premises as required by local ordinance.
- 101. "Party" and "Parties" shall refer to County or Tenant, or both, as applicable.
- 102. "Permits and Approvals" shall mean any and all approvals, permits or similar authorizations that must be obtained from a Governmental Authority in connection with the design, development, building, or operation of any aspect of the Project, the Facility, or the Additional Improvements.
- 103. "Permitted Uses" means airport and seaport public purpose uses ("Port Uses") as they relate to and are in furtherance of the design, construction, commissioning, operation, maintenance, and use of the Facility and the Premises as a state-of-the-art open-to-the-public phytosanitary and cold chain processing facility, which meets the Facility Minimum Requirements hereof, and any other use ancillary or related thereto that is expressly permitted by the MDAD and Seaport Department Directors in writing and which is not prohibited by the terms hereof, by Applicable Laws, by the terms of the PIDB Grant, or by any covenant or Project Site restriction or condition imposed by Miami-Dade County DERM or the FAA. Notwithstanding and prevailing over the foregoing and any other term, provision, or implication in this Lease, no use or activity shall be deemed to be a Permitted Use if same would be in violation of or precluded by Applicable Law, any term of the PIDP Grant, or any applicable deed restrictions relating to all or any portion of the Project Site.
- 104. "Person" shall mean any individual or entity.
- 105. "Phytosanitary Revenue Fund" shall mean an escrow account established in the name of the Tenant pursuant to Section 14.06 of the Agreement in a federally insured financial institution which is reasonably satisfactory to the Parties. The revenues collected in connection with the Project shall be paid into the Phytosanitary Revenue Fund and shall be distributed in accordance with Section 14.07 of the Agreement.
- 106. "PIDP Grant" shall have the meaning provided in the fourth recital clause to this Lease.
- 107. "PIDP Grant Maximum Contribution" shall mean the lesser of: (i) \$33,500,000; (ii) 59.7% of total amount of Facility construction cost proposal amount included in Tenant's Proposal to the subject RFP at Form B thereto (excluding design costs reflected on item 2 of Form B (Design)) which amount is \$139,000,000.00, (iii) 59.7% of the total Tenant incurred and

verifiable Facility construction capital costs (expressly excluding design costs, financing costs, other soft costs, and costs of compliance with any DERM Site Remediation Requirements (which are reimbursable per terms of Article 3.10 hereof)); or (iv) the actual amount of verifiable construction costs incurred by Tenant to construct the building shell; concrete truck bay area; landscaping (Xeriscape); and civil/site work elements of the Facility, (but expressly excluding design costs, financing costs, other soft costs, the costs of compliance with any DERM Site Remediation Requirements (which are reimbursable per terms of Article 3.10 hereof) and all Non-Eligible Costs). The lesser of (i), (ii), (iii), or (iv) above shall be the not-to-exceed "PIDP Grant Maximum Contribution. Notwithstanding the foregoing, in the event any Facility related liquidated damages are paid or owed by Tenant to County or are paid or owed by any Builder or supplier to Tenant, then the PIDP Grant Maximum Contribution shall be reduced by the sum of such paid or owed liquidated damages.

108. "PIDP Grant Requirements" shall mean all terms, conditions, and requirements included, listed, referenced, or incorporated in the PIDP Grant, any attachment or exhibit thereto, or in the general conditions associated therewith, including, without limitation, all such terms, conditions, and requirements applicable to the County, as a grant recipient, or to any subrecipient(s) (of any tier) of PIDP Grant funds, or applicable to any facility funded in whole or in part, directly or indirectly, with any PIDP grant funds or applicable to any operator or user thereof.
109. "Port" shall mean the Dante B. Fascell Port of Miami-Dade County, Florida.
110. "Port Director" shall mean the Director of the Miami-Dade County Seaport Department, or his/her (or their) designee.
111. "Possession" shall mean actual, exclusive possession by Tenant of the Premises under this Lease.
112. "Possession Date" shall mean the earlier of the Notice to Proceed Date or the date Tenant takes actual Possession of the Premises or any portion thereof under this Lease.
113. "Post Construction Mortgage Ceiling" shall mean a maximum loan to value ratio of sixty-five percent (65%), with the value of the Facility determined by an appraisal of the Facility conducted by a licensed MAI appraiser from a nationally recognized third-party firm selected by the Tenant and subject to the reasonable approval of the Landlord ("Post Construction Appraisal").

114. “Premises” or “Site” shall mean the land rented by County to Tenant under this Lease which is located at a County-owned property at 7333, 7445 and 7449 NW 12th St. The land is owned by the MDAD and is adjacent to the property boundaries of Miami International Airport. The leasehold site is approximately 14.61 acres and is more particularly described in Article 3.04 (Premises) and **Exhibit A (Boundary Survey)** to this Lease.
115. “Project” shall mean Tenant’s design, development, financing, construction, commissioning, operation, and maintenance of a state-of-the-art phytosanitary and cold chain processing Facility on the Premises, which Facility Tenant shall design, develop, operate, secure, and maintain in compliance with the terms hereof, all Applicable Laws, and the PIDP Grant, including all labor, materials, tools, equipment, services, methods, procedures, and all matters and things required to be done by the Tenant or its Project Contractors (of any tier) to design, build, construct, finance, operate, secure, and maintain the Facility and Additional Improvements in accordance with the provisions of this Lease.
116. “Project Contractors” shall mean the Tenant’s Designer(s), Builder(s), and Operations and Maintenance Provider(s).
117. “Project CPM Schedule” shall mean the critical path method (CPM) schedule prepared by or on behalf of Tenant using Primavera scheduling software (or a reasonable equivalent CPM scheduling software approved by the Department) in compliance with the CPM schedule requirements set forth in subsection 7.04 hereof, including showing Tenant obtaining TCO no later than the Completion Deadline. Upon Tenant’s Project CPM Schedule being approved by the Seaport Department, it shall be deemed the “Baseline Schedule”.
118. “Project Master Schedule” shall mean the schedule prepared by the Tenant, and approved by the County, setting forth the commencement and completion deadlines and interim milestones for the design, permitting, construction, and commissioning of the Facility and Additional Improvements, and also setting forth the commencement and completion deadlines for any Project Site remediation that may be required by DERM, a copy of which schedule is [or will be upon availability] attached hereto and incorporated as **Exhibit G (Project Master Schedule)** hereof.
119. “Recognized Environmental Condition” shall have the meaning set forth in ASTM E 1527-05, Section 1.1.1, as such provision may be amended or superseded from time to time.
120. “Record Drawings (As-built Drawings)” shall mean reproducible drawings showing the final completed Facility and Additional Improvements as built, including any changes to

the Facility and/or the Additional Improvements performed by Tenant's Builder that Tenant's Designer considers significant, based on marked-up as-built prints, drawings and other data furnished by Tenant's Builder.

- 121. "Rent" shall mean Ground Rent and Additional Rent, both as may be adjusted annually as provided in Articles 5.01 and 5.02, respectively.
- 122. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.
- 123. "Remediation" shall mean any investigation, clean-up, removal action, remedial action, restoration, repair, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure, or post-closure in connection with the suspected, threatened, or actual release of Hazardous Materials.
- 124. "Request for Proposals" or "RFP" shall mean County RFP No. EVN0002820, entitled "Phytosanitary Treatment and Cold Chain Processing Facility", issued on September 22, 2023.
- 125. "Revenue Collection and Disbursement Agreement" shall mean that agreement entered into by County, Tenant, and Agent that provides for collection and disbursement of the revenues from the Project out of the Phytosanitary Revenue Fund.
- 126. "Reversionary Interest" shall mean the County's reversionary possessory and legal interest and title in and to the Facility and the Additional Improvements that shall automatically revert and convey to the County without cost or charge and without any lien or encumbrance of any kind upon the earlier of the (a) the construction, installation or placement of either on or upon the Premises or (b) expiration or earlier termination of this Lease.
- 127. "Seaport Department" shall mean the Miami-Dade County Seaport Department.
- 128. "Site" shall have the meaning of Premises set forth herein.
- 129. "Site Ingress/Egress" shall mean the ingress and egress access to the Premises as further described in Article 4.01 (General Privileges, Uses and Rights).

130. “Specifications” shall mean the applicable specifications for the design, development or construction of the applicable segment of the Premises as set forth in the Final Design and Construction Documents.
131. “Subcontractor” shall mean any person, firm, entity or organization, other than the employees of the Tenant, who contracts with the Tenant or a Project Contractor to furnish labor, or labor and materials, in connection with the Services, whether directly or indirectly, on behalf of the Tenant.
132. “Substantial Completion” or “Substantially Completed” shall mean the completion of the Facility with a temporary certificate of occupancy such that same can be used for their intended purpose.
133. “Subtenant” shall mean any entity leasing and operating portions within the facility from the Tenant in the value-added portions of the facility. The term Subtenant shall not be construed to allow the Tenant to sublease the entirety of the Project or the Phytosanitary portion of same.
134. “Survey” or “Boundary Survey” shall mean a Boundary Survey of the Premises conducted by Triangle Surveying and Mapping, Inc., dated December 22, 2010, a copy of which is attached hereto and incorporated by reference herein as **Exhibit A (Boundary Survey)**.
135. “Surveyor” shall mean a surveyor licensed in the State of Florida.
136. “Taking” shall mean the taking of all or portion of the Premises through the power of eminent domain exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding.
137. “Taxes” shall mean all transfer taxes required to be paid in connection with the execution, recordation or effectiveness of this Lease, ad valorem (property) taxes, water and sanitary taxes, sales taxes, assessments, liens, licenses and permit fees or any other taxes imposed, assessed or levied against or in connection with the Premises or the Project, and its use and operation, including any subleases, and all other charges, impositions or burdens of whatever kind and nature, whether or not particularized by name, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time during the Term (or any extension or renewal thereof) may be created, assessed, confirmed, adjudged, imposed or charged upon or with respect to the Premises or the Project.

138. “Temporary Certificate of Occupancy (TCO)” shall mean that temporary Certificate of Occupancy (and/or use or completion) issued under South Florida Building Code or otherwise by the Miami-Dade County Regulatory and Economic Resources Department (or its successor entity, if applicable) authorizing the temporary occupancy or use of the Facility.
139. “Temporary Master Plan” shall mean the Facility drawings, diagrams, and Facility detailed scope and descriptions included in the Tenant’s Proposal, a copy of which is attached as **Exhibit D (Temporary Master Plan)** hereto, including, without limitation, the Facility Conceptual Plan. These shall be further developed by Tenant, at Tenant’s sole cost, pursuant to the Facility design and review requirements and procedures set forth in Article 7 hereof and in accordance with the Project Master Schedule.
140. “Tenant” shall mean Mandich Group LLC., and its permitted successors.
141. “Tenant Default Termination Notice” shall mean a written notice of termination to Tenant as provided by County under Article 16.06 (Tenant Default Notice) of this Lease.
142. “Tenant Event of Default” shall mean the events of default set forth in Article 16.05 (Tenant Default) of this Lease.
143. “Tenant Indemnified Parties” shall mean Tenant, its officers, directors, employees, Affiliates, agents, successors and permitted assigns.
144. “Tenant Property” shall mean movable office partitions, unattached office equipment furniture, and personal computers not used or related to any building management, control, monitoring, or operation functions; and promotional signage unique to Tenant (excluding safety, way-finding, parking, and non-promotional information signage), provided Tenant Property shall **not** include building components, fixtures, security system components, or building, HVAC, cooling, cold storage, freezer, loading, or phytosanitary equipment, systems or associated infrastructure, any components of the Facility building management or monitoring system, any other Facility element, component, or equipment that is part of or associated with the Facility Minimum Requirements, or any Facility or Additional Improvement component, equipment, accessory, or article the costs of which was paid or reimbursed, in whole or in part, with PIDP Grant funds or any County funds.
145. “Term” shall consist of the Development Term and the Operating Term.
146. “Termination Date” shall mean the date that this Lease is terminated in accordance with

the terms and conditions contained herein.

147. “Trespassers” shall mean third parties who have entered the Premises without the actual or implied consent of the Lessor, Tenant, or Subtenant. Notwithstanding the foregoing, for purposes of this Lease, Trespassers shall not include those third parties whose actions took place off of the Premises and which resulted in the presence of Hazardous Materials on the Premises due to the migration of Hazardous Materials from that off-Premises location.
148. “Trust Agreement” shall have the meaning provided in Article 23.01 hereof.
149. “Unavoidable Delays” shall mean delays beyond the control of a party required to perform (and also beyond the control of such party’s employees, agents, partners, and contractors (of all tiers)), such as, delays due to strikes; acts of God; hurricanes; floods; fires; epidemics or pandemics (other than the COVID-19 pandemic which shall not constitute an Unavoidable Delay); civil disturbance; sabotage; or formal administrative challenges by third parties that prevent or materially impair the completion of the Facility (except to the extent such challenges arise from any Tenant breach of one or more obligations hereunder). Notwithstanding the foregoing, and for avoidance of doubt, delay in, or refusal by, a governmental authority to grant or issue a permit or other needed governmental or regulatory approval or consent shall not constitute an Unavoidable Delay. Notwithstanding the foregoing, in no event may any actual or asserted Unavoidable Delays extend the Completion Deadline beyond the expiration of the term of the PIDP Grant or any Facility construction deadline contained therein.
150. “Working Capital Advance” shall mean payment by Tenant of sufficient funds to the Phytosanitary Revenue Fund to meet any shortfall as may be necessary to satisfy the payment obligations for the prior calendar quarter.

ARTICLE 2

Recitals And Exhibits

2.01 Recitals; Exhibits; Attachments. The Recitals contained herein are incorporated into and made a part of this Lease. This Lease is composed of this document and, except as otherwise provided herein, all of its exhibits and attachments identified in this document, whether attached or included by reference, all of which constitute an integral part of this Lease, including, without limitation, the following:

Exhibit A –Boundary Survey of Premises by Triangle Surveying and Mapping, Inc., dated December 22, 2010;

Exhibit B – First Amended and Restated Grant Agreement;

Exhibit C – Conceptual Schedule;

Exhibit D – Temporary Master Plan;

Exhibit E1A – Phase I November 2015;

Exhibit E1B – Phase II April 2018;

Exhibit E1C – Environmental Site Investigation June 2023;

Exhibit E-2 – Soil Sampling Monitoring Plan Implementation Report;

Exhibit E-3 – DERM Response to Soil Sampling Plan Implementation Report;

Exhibit F – Aviation Department Design Guidelines;

Exhibit G – Project Master Schedule (once available);

Exhibit H – Scope; and

Attachment A-1 (County provided list of Premises related environmental assessments, test/monitoring results, and remediation action plans or requirements) (see Section 12.02);

Attachment A-2 (Tenant provided list of hazardous material Tenant or Tenant’s operator intends to use on the Premises) (see Section 12.06) (once available);

Attachment A-3 (INTENTIONALLY OMITTED);

Attachment A-4 (Tenant verified Common Carrier or Contracted Carrier Attestation form required by Florida Statute Section 908.111 and Florida Administrative Code Section 60A-1.020 (Form PUR 1808), which form is verified as provided in section 92.525, Florida Statutes);

Attachment A-5 Financial Close Security (in a form acceptable to County) (once available);

Attachments A-6 and A-7 (Tenant Performance and Payment Bonds, respectively (when due and both in a form acceptable to the County) (once available);

Attachment A-8 (a copy of the current Davis-Bacon prevailing wage determination construction) issued by the Department of Labor for Miami-Dade County;

Attachment A-9 Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit; and

Attachment A-10 Business Plan, per Exhibit H (Scope) Section 2.7 (Business Plan).

Except as otherwise set forth herein, the capitalized terms used throughout this Lease shall have the meanings prescribed in **Article 1 (Definitions)**.

2.02 Interpretation. In this Lease, unless the context expressly otherwise requires:

- (A) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Lease, refer to this Lease, and the term “hereafter” means after, and the term “heretofore” means before the Effective Date.
- (B) All references to Articles, Sections, Schedules, Attachments or Exhibits shall, unless otherwise indicated, refer to the Articles, Sections, Schedules, Attachments or Exhibits in this Lease.

- (C) The captions of the Sections, and Subsections of this Lease are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of the articles, sections, exhibits, definitions, or other provisions hereof.
- (D) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (E) All notices to be given hereunder and responses thereto shall be given within a reasonable time, unless a certain number of days is specified.
- (F) Unless otherwise indicated, all non-regulatory approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, delayed or conditioned.
- (G) All references to days shall mean calendar days unless the context specifies otherwise. The time periods set forth herein are to be strictly complied with, provided, however, that notwithstanding the foregoing, in the event that any time period set forth herein expires on a Saturday, Sunday or any date which is a national holiday in Miami-Dade, Florida, or the United States of America, then such time period shall automatically extend to the first Business Day in Miami-Dade, Florida thereafter.
- (H) All amounts referred to and payable hereunder shall be payable in the legal tender of the United States.
- (I) Each reference to a statute or other Applicable Laws, includes any statute or Applicable Laws which amend, extend, consolidate or replace the statute or Applicable Laws after the Effective Date.
- (J) Conflicts/Priority. To the extent any term or provision of this Lease conflicts with the terms of any exhibit hereto, other than with respect to the location and dimensions of the Project Site as set forth in **Exhibit A (Boundary Survey of Premises)** hereto and Exhibit B, (First Amended and Restated Grant Agreement), the terms and provisions of this Lease shall prevail and control.

2.03 Representations by Tenant. Tenant represents to County that:

- (A) Tenant is a duly organized and validly existing registered company under the laws of the place of its incorporation and has all requisite power and authority for the ownership and operations of its properties and for the carrying on of its business as now conducted and as now proposed to be conducted. Tenant is duly qualified, in good standing and is authorized to do business in Florida wherein the nature of the activities conducted by it makes such qualification or authorization necessary;
- (B) Tenant has duly authorized the execution, delivery and performance of this Lease and has obtained all required internal corporate approvals in connection herewith, and, assuming due authorization, execution and delivery of this Lease by County, this Lease will be a valid, binding and enforceable agreement of the Parties;
- (C) The execution and delivery of this Lease by Tenant does not, and the performance by Tenant of its obligations under this Lease will not:

- (1) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Tenant;
 - (2) Conflict with or result in a violation or breach of any term or provision of any law, order, permit, statute, rule, or regulation, applicable to Tenant; or
 - (3) Result in a breach of, or default under (or give rise to right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which Tenant may be bound or which are necessary for County to enforce the terms of this Lease.
- (D) To the best of Tenant's knowledge, there is no Legal Proceeding before any court or by any Governmental Authority pending or overtly threatened or publicly announced against Tenant or Tenant's Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the ability of Tenant to perform its obligations hereunder.
- (E) To the best of Tenant's knowledge, Tenant is in compliance in all material respects with Applicable Laws pertaining to Tenant's business.
- (F) Tenant does not unlawfully discriminate against any employee or applicant for employment because of age, ancestry, color, creed, disability, domestic partner or marital status, medical condition, national origin, race, religion, sex, sexual orientation, or any other basis prohibited by Applicable Law.

2.04 Representations by County. County represents to Tenant that:

- (A) County is a duly organized and validly existing political subdivision of the State of Florida;
- (B) Under the laws of Florida, County is duly authorized to enter into, execute and deliver this Lease, to undertake the obligations contemplated by this Lease, and to carry out its obligations hereunder.
- (C) By duly adopted resolution, County has duly authorized the execution and delivery of this Lease and this Lease constitutes a legal, valid and binding obligation of County, enforceable against County in accordance with its terms and in accordance with the laws of Florida.
- (D) As of the date hereof, County has received no citation or similar official notice of any civil or criminal violation which affects the Premises in a material way.

ARTICLE 3

Term and Premises

3.01 Financial Close.

- (A) Within 5 days of the Effective Date, the Tenant shall provide security for the performance of its obligations to achieve Financial Close by delivering to the County one or more irrevocable unconditional direct pay letters of credit or bonds meeting the requirements set forth in this section and in a form acceptable to the County (the “Financial Close Security”). The Financial Close Security shall be:
- (1) Issued or confirmed by a bank or financial institution having long-term, unsecured debt ratings of not less than “A/A2” from two of the major national ratings agencies (i.e., Fitch Ratings, Moody’s Investor Service, Standard & Poor’s Ratings Group, and Kroll Bond Rating Agency) or an Eligible Surety pursuant to RFP No. EVN0002820;
 - (2) In substantially in the form set forth in RFP No. EVN0002820 and with an expiration date no earlier than 120 calendar days following the Effective Date, provided however that it can be terminated with notice from the Tenant 5 Business Days following the actual date of the Financial Close provided such Financial Close occurs in a timely manner and in accordance with all requirements hereof; and
 - (3) In an aggregate amount equal to \$1,000,000.00.
- (B) The County shall have the right to draw upon the Financial Close Security in the full stated amount thereof should the Tenant fail to achieve Financial Close by the Financial Close Deadline, which is 120 calendar days from (and including) the Effective Date (“Financial Close Deadline”). The parties acknowledge and agree that the County’s rights to retain for its own account the proceeds of a drawing on the Financial Close Security under the circumstances specified herein are in the nature of liquidated damages for the County’s loss of goodwill, loss of opportunity, and other damages not capable of precise calculation as of the Effective Date, and are not a penalty.
- (C) The County shall return the Financial Close Security to the Tenant after the Financial Close, provided Tenant first provides the County with documentary evidence, in a form reasonably acceptable to the Port Director, demonstrating that Tenant has fully and timely achieved the Financial Close by the Financial Close Deadline.

3.02 Term. The County hereby leases to the Tenant, and the Tenant hereby leases from the County, subject to all terms, conditions and requirements set forth herein, the Premises for the purposes and uses set forth in Article 4 (Use of Premises) and Article 7 (Facility Improvements), with the right and obligation of Tenant to design and construct or cause to be constructed and thereafter occupy, operate, secure, maintain, and make use of the Facility and (if applicable) the Additional Improvements, structures, and facilities described in Article 7 (Facility Improvements) hereof, for a combined Development and Operating Term of thirty-five (35) years, unless terminated earlier as provided for herein; the 35 years does not include option years as provided for below. The Term consists of an initial Development Term to be followed by an Operating Term as described below, subject to an initial (potential) five-year extension term at Tenant’s option and a potential second five-year extension term subject to and contingent upon the Parties’ mutual written consent (provided both extension options are subject to the required condition that Tenant has no payment or performance defaults or deficiencies under the Lease at the time of exercise) pursuant to the terms and conditions set forth in below subsections 3.02 (A), (B), and (C).

- (A) Development Term. The Development Term shall commence on the Effective Date and expire upon the earlier of (i) the expiration of a 26-month period therefrom, (ii) the day the Facility first achieves Substantial Completion, or (iii) the first day a Temporary Certificate of Occupancy is issued for the Facility or any usable increment thereof, unless sooner terminated in accordance with the terms and provisions of this Lease. Tenant shall design, construct, complete, and commission the Facility, and obtain a TCO for same, by the Completion Deadline and prior to the Operating Term Commencement Date.
- (B) Operating Term. The Operating Term shall commence on the Operating Term Commencement Date and terminate upon the expiration of a thirty-two (32) year and ten (10) month period therefrom, unless sooner terminated in accordance with the terms and provisions of this Lease or extended in accordance with the terms of subsection 3.02(C) hereof.
- (C) Extension Terms. Prior to the expiration or earlier termination of the Operating Term, there shall be an initial option to extend the Operating Term (under the same Lease terms and conditions) by a single period of five (5) years exercisable by Tenant in writing no later than 12 months prior to the expiration of the Operating Term, provided such Tenant extension option cannot be exercised in the event there are any existing Tenant payment or performance defaults or deficiencies under the Lease. A second extension five year extension, under the same lease terms and conditions, and if Tenant has no pending payment or performance defaults or deficiencies under the Lease, may be provided solely upon the mutual written consent of County and Tenant exchanged no later than 30 days prior to the expiration of the first extension period, which written consent, as to the County, must be provided by the County Mayor or the County Mayor's designee.

3.03 Facility Completion Deadline. The Tenant shall complete the design and construction of the Facility by the Completion Deadline and shall obtain a Certificate of Occupancy or a Temporary Certificate of Occupancy for the Facility by such deadline. If Tenant fails to complete construction of the Facility within this period, County shall have the remedies set forth in Article 3.07 (Development Schedule and Failure to Develop). This period may be extended by County in its sole discretion as specified in Article 3.07 (Development Schedule and Failure to Develop).

3.04 Premises. In consideration of, and subject to, all payment and performance obligations undertaken by Tenant herein, County does hereby lease unto Tenant and Tenant does hereby hire, lease and accept from County, upon the terms, limitations, reservations, and conditions hereinafter set forth, the Premises.

The Premises are identified and delineated in the Survey, a copy of which is attached hereto as **Exhibit A (Boundary Survey)**. The Parties hereby mutually stipulate that the measurement of the Premises as determined by the Survey shall be controlling for all purposes hereof. The Premises leased herein is generally located at 7333, 7445 and 7449 NW 12th Street in Miami, Florida. The total land area of the Premises is 636,392 Square Feet (approximately 14.61 acres),

shall not include any subsurface rights (except to the extent required for Tenant to construct and maintain the Facility and its associated infrastructure), and the Premises shall be limited to the area that is the lesser of 150 feet extending vertically from ground level of the 636,392 Square Feet floor area of the Premises or any applicable lower height restriction imposed or promulgated by the FAA or any other Governmental Agency (having jurisdiction) on all or any portion of the Premises. The County controls and shall have all possessory and all other rights to and in the air space above the lesser of (i) the 150 feet height limitation of the Premises or (ii) any applicable lower height restriction imposed or promulgated by the FAA or other Governmental Agency.

3.05 Suitability of Premises. The Tenant acknowledges that: (a) the County has made no representations or warranties regarding the physical condition of the Premises or its potential suitability or adequacy for any use, purpose, or obligations contemplated or undertaken herein by Tenant, nor has the County made any representation or offered any warranty with respect to the condition of title of the Premises; (b) the Tenant has made sufficient investigation into the condition of title of the Premises and regarding the applicable zoning, height, and use restrictions applicable thereto and Tenant has independently determined, without reliance on the County or any County employee, agent, contractor or consultant, that the Premises are suitable and adequate for the Tenant's proposed uses and intended purposes; (c) the County has no obligation to perform or cause to be performed any maintenance, repairs, renovations, improvements, clean-ups, remediation, painting, or the like of the Premises, of its soils, or any soils or groundwater thereunder, or of or to any existing facilities or structures thereon, and Tenant acknowledges and accepts that the leased Premises are leased in an "as-is" condition, except to the limited extent of certain environmental remediation cost reimbursement obligations of County for Completed Required Remediation as set forth in Section 3.10 hereof; (d) Tenant has made whatever site inspections and investigations it deems necessary or desirable so as to be apprised of the size, dimensions, location, accessibility, soil type and conditions, geotechnical conditions, environmental conditions, and other conditions of the Premises and has made its own independent determination and conclusion that the Premises are suitable for Tenant's intended uses of same; (e) Tenant has reviewed, or has had access to, all publicly available documents and those provided by the County or its agents applicable to the Premises and the adjacent areas, including, without limitation, Exhibits A, E-1, E-2, E-3, F hereto and Attachments A-1, , the PDD, the RFP and all exhibits, attachments, and forms attached or appended thereto or otherwise included therewith; (f) Tenant has otherwise satisfied itself, based on its own inspections and investigations of the Premises and its independent review and evaluation of publicly available information relating to the Premises, that the conditions of and relating to the Premises, and the existing utilities thereto, in their current state are satisfactory to the Tenant; and (g) Tenant fully assumes the risk that one or more conditions or characteristics of the Premises may be unsuitable, inadequate, and/or incompatible with all or any portion of Tenant's proposed use and/or development thereof and Tenant shall hold the County harmless for and from any claims, damages, or liabilities arising from or relating to any actual, purported, or asserted defect, deficiency, or unsuitable characteristic or condition in or associated with the Premises.

The Tenant's obligation under this Agreement, such as in Section 10 (Regulations, Licenses, and Permits), to obtain all land use, construction and operating permits and approvals required of the Tenant, and to pay all applicable permit, impact, and use fees, at the Tenant's sole cost and expense, shall not require the County to take any action or perform any tasks within the Premises

to enable the Tenant to obtain such permits and approvals, including, but not limited to, certificates of occupancy, which shall remain the Tenant's exclusive obligation to take or perform in order to obtain such permits and approvals. The Tenant further acknowledges that, by executing this Agreement, the Tenant at its own cost, risk, and expense must make the necessary investments to design, develop, construct, install, complete and commission the Facility and (if applicable) all Additional Improvements to the Premises, including all infrastructure and utilities necessary for Tenant's construction and use of either the Facility or any Additional Improvements, to make the Premises suitable for the Tenant's use and/or to satisfy the County's building, life, safety, fire, and occupancy requirements, and that the County shall have no obligation to compensate or reimburse Tenant for any of such costs, risks, expenses, investments, or improvements (other than with respect to certain limited environmental remediation reimbursement obligations set forth in Section 3.10 hereof and with respect to certain limited and conditioned Eligible Cost reimbursement rights of Tenant set forth in Article 7.04 hereof).

MDAD controls the system for water and sewer services at the Airport and reserves the right to require Tenant to make system upgrades, at Tenant's sole cost, to ensure the Facility and (if applicable) the Additional Improvements do not diminish current or future water, wastewater or stormwater capacity.

3.06 Title to Improvements. Title to the Facility and all Additional Improvements (if applicable), including any and all components thereof and materials and equipment associated therewith, shall vest in the County upon the earlier of (i) the issuance of a TCO (ii) the construction, installation, or other incorporation of same (or any element or portion of same) on, upon, or into the Facility or the Premises, or (iii) the acquisitions of same by Tenant. Tenant shall ensure that such title is free and clear of any liens, asserted liens or encumbrances. For the purposes of this sub article, encumbrance shall not mean: (i) general real estate taxes and assessments not yet due; (ii) the claims of materialmen or mechanics for labor, materials, supplies or rentals incurred in the ordinary course of business but not for this specific Project, which in each case, are not at the time required to be paid or discharged under the terms of this Agreement; (iii) encumbrances in the nature of zoning restrictions, easements, customary declarations, rights or restrictions of record or otherwise imposed by an applicable governmental authority on the use of the real property; and (iv) mortgage in favor of Tenant's Mortgage Lender for construction or such other Mortgage Lender thereafter as permitted by the Agreement.

In the event there are any liens or encumbrances on the Premises, the Facility, the Additional Improvements, or any portion thereof, Tenant shall immediately take all steps, and pay all amounts, necessary to remove, extinguish, or satisfy same without any cost or charge to the County. If at any time during the Development Term or the Operating Term, Tenant discovers that any lien or encumbrance has been placed on any portion of the Premises, the Facility, or the Additional Improvements by the Tenant or any employee, agent, affiliate, contractor (of any tier), customer, or guest of Tenant, or by any Tenant subtenant (of any tier) or any agent, employee, customer, guest, invitee, or contractor (of any tier) of any Tenant subtenant (of any tier), then Tenant shall, within twenty (20) days discovery or notice of same, take all steps to remove, extinguish, or satisfy (by payment or otherwise) same without any cost or charge to the County. Upon any occurrence of (i), (ii) or (iii) above, and upon the request of County, Tenant shall, without charge or fee, execute, acknowledge and deliver to County a deed in registerable form and in a form acceptable to the County, confirming that all of Tenant's right, title, and interest in or to

the Facility and the Additional Improvements has expired, and that title to such Facility and Additional Improvements has fully and completely vested in County without lien or encumbrance.

3.07 Development Schedule and Failure to Develop. County has granted this Agreement for a term as described herein, on the basis of Tenant's assurance that Tenant will obtain a TCO for the Facility by the Completion Deadline and obtain a CO by the deadline set forth in the Project Master Schedule. If Tenant fails to obtain CO or TCO for the Facility as so required, the County may terminate this Agreement or grant an extension to the date specified herein, at County's sole discretion and in accordance with Section 7.05 (County Extension to Complete Improvements).

If Tenant fails to obtain a CO or TCO for the Facility by the aforementioned deadlines, or if County grants said completion period extension and Tenant fails to obtain a CO or TCO for the Facility within the extension period, County shall be entitled to take, in addition to any other remedies the County has hereunder or otherwise, any or all of the following actions at its discretion:

- (A) Reduce the length of the Term of this Agreement;
- (B) Begin charging the Additional Rent and the Operating Fee as of the Completion Deadline; and/or
- (C) Terminate the Agreement.

3.08 Review by FAA. This Agreement is subject to the review of the Federal Aviation Administration (FAA). If the FAA indicates that any portion of this Agreement is not consistent with the requirements of federal law or grant assurances, or else raises an objection to any portion of this Agreement, the Department shall have the right in its sole discretion to either declare this Agreement to be null and void or else to change the terms of this Agreement so as to overcome the reasons for the FAA's statements or objections and submit to the Tenant this Agreement as so changed. In the latter event, Tenant shall respond to such proposed changes promptly, and in any case not later than sixty (60) calendar days from the date of submission by the Department. If the Tenant accepts such changes, the parties will execute a new Agreement as changed, subject again to FAA review. If Tenant rejects such changes, this Agreement shall terminate. At any time following the FAA's initial review of this Agreement in which the FAA made statements or else raised concerns about the terms of the Agreement, the Department may determine that it is in the best interests of the County to lease the Premises to another party on terms that would be acceptable to the FAA, and upon such determination, whatever rights Tenant may have hereunder shall cease upon Tenant's receipt of such statement of determination. No compensation of any sort shall be payable to Tenant in the event that (i) the Department declares this Agreement to be null and void, (ii) the Department makes a determination to lease the Premises to another party, or (iii) the parties are unable to agree to the terms of a revised Agreement that will overcome the concerns raised by the FAA.

3.09 Project Funding Sources.

(A) PIDP Grant Funds. County has been awarded certain federal funds through the PIDP Grant that can be used to reimburse the Tenant for certain incurred Eligible Costs of Facility construction not to exceed the lesser of \$33,500,000 or the PIDP Grant Maximum Contribution, subject to the conditions, limits, and procedures set forth in Article 7.04 hereof.

(B) County Contribution. Under the terms of the PIDP Grant, the County is anticipated to reimburse the Tenant for certain incurred Eligible Costs of Facility construction not to exceed the lesser of \$9,032,410 or the County Contribution Cap, subject to the conditions, limits, and procedures set forth in Article 7.04 hereof.

(C) Tenant Contributions. Notwithstanding the foregoing, Tenant shall be responsible to fund all Project and Facility costs necessary or required to design, permit, construct, equip, develop, complete, and fully commission the Facility by the Completion Deadline, and to thereafter operate and maintain the Facility throughout the Term at Tenant's sole cost, subject only to Tenant's rights hereunder to seek reimbursement for: (i) certain expended Eligible Costs of Facility construction pursuant to the terms, conditions, limits, and requirements set forth in subsection 7.04 hereof, not to exceed, in aggregate, the sum of (a) the PIDP Grant Maximum Contribution Amount and (b) the County Contribution Cap; and (ii) Tenant's expended, reasonable, and verifiable costs of properly and timely completing and satisfying the DERM Site Remediation Requirements in accordance with the terms, limits, and conditions set forth in Article 3.10 hereof. The Tenant shall also be solely responsible for and shall pay, without entitlement to reimbursement from the County or from the PIDP Grant, for (y) any and all Project, Facility, and Additional Improvements' development, design, construction, commissioning, and other costs that exceed the sum of the PIDP Grant Maximum Contribution and the County Contribution Cap (except as otherwise provided in Article 3.10 hereof with respect to certain Tenant reimbursement rights in connection with its expended and verifiable costs of satisfying the DERM Site Remediation Requirements in accordance with the terms and conditions of Article 3.10 hereof), and (z) all Non-Eligible Costs.

3.10 Tenant Remediation Requirements; MDAD Reimbursement for Verified Completed Required Remediation Costs. County undertook environmental assessments of the Project Site (ESAs Original) and, more recently, undertook (or will undertake prior to the Lease Date) an update of the ESAs Original or additional soil and ground water sampling pursuant to a DERM approved soil sampling plan for the Premises and DERMs response to the SSP ("ESA Update"). The ESAs Original reports and the ESA Update reports or the DERM Approved Soil Sample Plan Results ("SSP Results") (if available) are or will be attached hereto as **Exhibit E1A (Phase I November 2015), Exhibit E1B (Phase II April 2018), Exhibit E1C (Environmental Site Investigation June 2023), Exhibit E-2 (Soil Sampling Plan Implementation Report), and Exhibit E-3 (DERM Response to Soil Sampling Plan Implementation Report)** (once available), respectively.

Once the results of the implemented DERM Approved SSP are received and reviewed by DERM, it is anticipated that DERM will, or may, issue one or more reports, orders, or directives (i) directing that certain remediation be undertaken to all or portions of the Premises (in aggregate, "DERM Site Remediation Requirements") and/or (ii) imposing restrictions, conditions, and/or prohibitions on how all or portions of the Premises may be used or developed (if applicable, and combined with other applicable Environmental Laws, the "DERM Site Restrictions and Conditions"). The Tenant shall fund, perform, and complete the full scope of environmental

remediation of the Premises required by the DERM Site Remediation Requirements and shall do so within the applicable timeframes and deadlines set forth in the Project Master Schedule. [REMEDATION COMPLETION DEADLINE TO BE DETERMINED BY COUNTY ONCE DERM APPROVED SSP RESULTS ARE AVAILABLE] Such remediation work shall be coordinated in advance with MDAD and shall be performed in conformance with the DERM Remediation Requirements and all Applicable laws and permits. Upon the County's acceptance and approval of Tenant's Completed Required Remediation, Tenant shall be entitled to quarterly or upon completion, reimbursement from the County for the reasonable, necessary, and documented costs of completing same upon Tenant's presentment to MDAD of a written invoice therefor accompanied by backup documentation and a signed and sealed certification from a Florida registered environmental engineer certifying that all DERM Site Remediation Requirements have been properly completed, all in a form reasonably acceptable to DERM and MDAD, including, without limitation, the removal and transportation of, and the disposal at a class 1 lined landfill, of on-Site debris piles identified as MDAD-1 through MDAD-7 in the SCS Engineers' Report of November 21, 2023 (Exhibit E-2), the removal and transportation of, and disposal of in the manner required by DERM, of the On-Site MDAD Concrete stockpile (identified in the aforementioned SCS Engineers' Report), and compliance with all other applicable on-Site contaminant removal and disposal requirements set forth in the DERM Letter Re: Limited Phase II Environmental Site assessment Report (LSAR) dated November 21, 2023 (Exhibit E-3). For avoidance of doubt, and notwithstanding and prevailing over any contrary term or implication contained herein, DERM Site Restrictions and Conditions shall **not** be considered DERM Site Remediation Requirements subject to potential Tenant conditioned reimbursement rights (from County) under this subsection 3.10 unless and to the limited extent such DERM Site Restrictions and Conditions expressly require Tenant to remove and dispose of pre-existing (pre-Effective Date) contaminated soils, structures, or tanks from the Site.

Notwithstanding the foregoing, any contamination or environmental conditions released onto, within, or under, or otherwise arising on, within, or under, the Premises on or after the Lease Date will be subject to the environmental terms and provisions set forth in Article 12 hereof, Tenant's indemnity, hold harmless, and duty to defend obligations set forth in Section 6.04 hereof, applicable Tenant insurance obligations hereunder, and all applicable Tenant default and County remedy (including termination) provisions herein.

3.11 DERM Required Plans; DERM Site Restrictions and Conditions. Consistent with the requirements of Addendum No. 3 to the RFP, Tenant shall at its cost, and without right of reimbursement under subsection 3.10 hereof, be responsible to prepare or cause to have prepared the following plans and reports (referenced in the DERM Letter of November 21, 2023 (Exhibit E-3)) in connection with the Site:

- (a) Contaminated Soil Management Plan;
- (b) Dust Control Plan;
- (c) Air Monitoring Plan;
- (d) Health and Safety Plan;
- (e) Engineering Control Plan'

- (f) Engineering Control Maintenance Plan;
- (g) Engineering Control Implementation Plan; and
- (h) Soil Reuse Request.

Items 3.11 (a) – (h) above shall be prepared by Tenant or Tenant's Builder, at Tenant's cost and without any right of reimbursement from County under Article 3.10 hereof or otherwise. Such plans, reports, and requests shall be submitted by Tenant to DERM for its review and approval. Any revisions or resubmittals required by DERM shall be timely undertaken by Tenant (or Tenant's Builder) at Tenant's cost without any right of potential County reimbursement under Article 3.10 of the Lease or otherwise. Once the Contaminated Soil Management Plan (SMP) is approved by DERM, the approved SMP shall be incorporated by reference in the scope of work of all construction drawings and specifications including excavation activities at the Site and Tenant and Tenant's Builder and contractors (of all tiers) shall be required to comply with all terms and conditions of said approved SMP.

Required Drainage Installation Coordination. Tenant's proposed drainage installations shall be required to be submitted in advance to the DERM Pollution Remediation Section (PRS) for its review and approval.

Required Dewatering Activity Coordination. Tenant shall be required to obtain, at its cost, dewatering permits from DERM for all Site related dewatering activities and shall coordinate all dewatering activities with the PRS of DERM prior to commencement of same.

The costs of complying with the above dewatering activity coordination and permit requirements and drainage installation coordination requirements shall be considered costs of DERM Site Restrictions and Conditions (as defined in Article 3.10), the costs of which are deemed Facility construction costs and not costs associated with DERM Site Remediation Requirements and are not reimbursable under Article 3.10 hereof. Nonetheless, in the event Tenant, in implementing the Site related SMP or the Engineering Control Plan, is required by DERM to remove and dispose of pre-existing (pre-Effective Date) contaminated soils or debris piles other than the eight debris piles referenced in subparagraph B-1 of Addendum No. 3 to the RFP, such additional DERM required on-Site contaminated soil and debris pile removal and disposal costs shall be deemed subject to Tenant's conditioned remediation cost reimbursement rights under Article 3.10 hereof.

ARTICLE 4

Use of Premises

4.01 General Privileges, Uses and Rights. The County hereby grants to the Tenant the following general privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants set forth herein or otherwise applicable to Tenant's use of any portion of the Site, and all of which shall be non-exclusive on the Site. The Premises shall solely be used for the Permitted Uses. Tenant acknowledges that County does not warrant the title or represent any set of facts concerning the title to the Premises, nor does County warrant fitness of the Premises for any particular use or purpose. Tenant understands that cargo volumes are Miami International

Airport and the Port of Miami are not guaranteed by the County, and that the County shall be under no obligation to ensure any level of cargo throughput at MIA or the Port of Miami, nor to take any action with respect to cargo operations or leases. Tenant acknowledges that the Premises are not connected to or adjacent to any runway or taxiway.

Nothing herein contained shall be construed to grant to the Tenant the right to use any other space or area improved or unimproved outside of the Premises, which is leased to any third party, or which the County has not specifically leased to the Tenant.

4.02 Permitted Use of Premises; Public Nature of Facility; Prohibited Discrimination. The Tenant shall solely use the Premises leased herein to design, build, finance, operate, maintain, and secure an open to the public phytosanitary treatment and cold chain processing facility of no less than 100,000 refrigerated square feet, of which at least ten percent (10%) shall be phytosanitary, and which must be constructed, equipped, configured, licensed, commissioned, and available for the provision of phytosanitary services, and for other associated Permitted Uses. The Project must comply with all Applicable Laws and Miami-Dade Seaport and Aviation Department Design Guidelines. The Project should be consistent with world-class standards for phytosanitary and cold storage facilities and capable of accommodating both the present and the future needs of the County, including, without limitation, the needs of current and future Seaport and MIA cargo customers and shippers of refrigerated cargo who require phytosanitary services and/or cold storage or cold chain processing facilities and services. As to the phytosanitary portion of the Facility, Tenant shall continually operate same, at Tenant's expense, throughout the Operating Term, and at least five days per week (excluding legal holidays), as a facility open and available to the public for for-hire phytosanitary services in compliance with Applicable Laws, permits, and the terms of the PIDP Grant. As to the cold storage/cold chain processing portions of the Facility, Tenant shall continually operate same, at Tenant's expense, throughout the Operating Term as a facility open to the public, which must be marketed and available to, among others, MIA and PortMiami cargo customers and shippers of refrigerated cargo. Neither Tenant, nor any other Project Contractor or other operator or manager of the Facility may operate any portion of the Facility in a manner that discriminates against similarly situated customers or Facility users or in any manner precluded by or inconsistent with Applicable Laws. Tenant can sublease 100% of the refrigerated cold chain or cold storage portions of the Facility; however, Tenant may not sublease more than 25% of the refrigerated cold chain or cold storage portions of the Facility to any one subtenant without obtaining the prior written approval of the Port Director, which approval may not be unreasonably withheld, delayed, or conditioned; it being understood that the primary purpose of the Facility and this Lease is to maximize the amount of refrigerated cargo throughput transiting PortMiami and MIA. Tenant may not make use of the Premises for any purpose other than those specifically authorized above; accordingly, and without limiting the preceding, Tenant may not use Premises for non-cold chain storage or warehousing, general cargo operations, ground storage, commissary, retail commercial, commercial food and beverage, commercial office, or advertising purposes.

4.03 Tenant's Rights Not Exclusive. Notwithstanding and prevailing over anything herein contained that may be, or that may appear to be, to the contrary, it is expressly understood and

agreed that the rights granted under this Agreement to develop and operate a phytosanitary and cold chain processing facility are non-exclusive and County reserves the right to grant similar privileges and rights and similar leases to other County tenants, developers or operators in other parts of the County, not including the Premises, and to take any and all actions (including the leasing of property for any lawful purpose) that County is permitted to take under federal, state, and local law pertaining to Airport and Seaport facilities.

4.04 Inspection by County of Property. County and its authorized representatives, upon reasonable written notice (delivered not less than one (1) business day prior to the anticipated inspection) and in the presence of a representative of Tenant (and a permitted Subtenant, if the Subtenant's space is to be inspected) if a representative is made available for such purpose, shall have the right to enter the Premises at reasonable times during normal business hours for the purpose of inspecting the same to assure itself of Tenant's compliance with the provisions of this Lease; provided that no such notice or accompaniment restrictions shall apply in the event of an emergency or perceived emergency or danger.

4.05 Tenant Duty to Maximize Amount of Refrigerated Cargo Throughput at MIA and PortMiami. Throughout the Term, Tenant shall exercise due diligence to develop, market, and operate the Facility and Project in a manner that attempts to maximize the amount of refrigerated cargo transiting PortMiami and MIA, subject to Tenant's reasonable discretion and control as to final approval over terms and conditions for customers, warehouse agreements and subleases.

4.06 Potential Additional Site and Use Restrictions and Conditions. Tenant acknowledges and accepts that certain pre-existing environmental conditions on all or part of the Premises (i) may give rise to the imposition of conditions and/or restrictions on the future use and development of all or portions of the Premises and/or the manner that Facility proposed thereon may be designed, constructed, and/or operated, (ii) that the scope and design of any Facility proposed to be developed or erected on the Premises may be subject to the prior review and approval by DERM, and (iii) that if approval of the sought scope and/or design of such proposed Facility is granted by DERM, it could be subject to DERM imposed restrictions and/or conditions. In addition, if DERM's review of the ESI Update and/or any additional investigation or review of the Premises that DERM may elect to undertake results in the issuance by DERM of one or more "No Further Action with Conditions", then Tenant, its lender, and/or County may be required to execute a (Premises related) restrictive covenant relating to same. In the event DERM issues any Premises related site restrictions, conditions, and/or prohibitions via the issuance by DERM of one or more No Further Action with Conditions or otherwise ("Additional DERM Restrictions"), all such Additional DERM Restrictions will become part of and incorporated into this Lease upon issuance of same by DERM and, for avoidance of doubt, shall also be deemed to be included within the scope of the definition of Applicable Laws. Moreover, if DERM's assessment of the ESI Update or DERM Approved SSP (or the results thereof) results in DERM requiring a DERM approved soil management plan (SMP), a dust control plan (DCP), an air monitoring plan (AMP), and/or a health safety plan (HSP) prior to or in connection with DERM's review and approval of any Tenant proposed Facility or other Additional Improvements or the construction plans therefore, then Tenant shall be required to at its cost prepare and submit, or at its cost have one or more Tenant

Project Contractors prepare and submit, such SMP, DCP, AMP, and HSP, as may be required by DERM, and to thereafter comply, and require its Project Contractors (of all tiers) to comply, with the terms, requirements, and conditions set forth therein as may be modified by DERM.

ARTICLE 5

Rentals and Payments

5.01 Ground Rent. From the Effective Date and during the entire Development Term and Operating Term of the Lease (as may be extended upon the terms and conditions set forth in Article 3.02.C (Extension Terms)), Tenant shall pay annual Ground Rent equivalent to the square footage rate at the time of the Effective Date, \$3.60 per square foot [as of Oct. 1, 2024] times the total gross land area of the Premises (636,392 square feet); this rate shall be, subject to annual County square footage rate adjustments, as appraised yearly by an MIA appraiser and approved by the Board of County Commissioners in the MDAD Rates, Fees Charges approved through the County's annual budget process, and Tenant shall be responsible for payment of Ground Rent on the basis of the per square foot rate approved in each annual budget, without limitation.

5.02 Additional Rent. Effective on the first day of the Operating Term and extending throughout the remainder of the Term of the Lease, excluding any exercised extension term pursuant to Section 3.02(C) (Extension Terms), Tenant shall pay to the County an Additional Rent in the amount of sixty-nine thousand, four-hundred and twenty dollars (\$69,420) per month, plus applicable sales tax thereon, due on the first of every month of the Operating Term.

5.03 Operating Fee. Effective on the first day of the Operating Term and throughout the remainder of the Operating Term of the Lease, as may be extended upon the terms of subsection 3.02(C) hereof, Tenant shall also pay the County an Operating Fee (defined below) for operating on the Premises. Tenant's Operating Fee payment obligation to County shall commence on the first day of the month following the Operating Term Commencement Date and shall continue each month until the month following expiration of the Operating Term (as may be extended per the terms of subsection 3.02(C) hereof). The Operating Fee shall be:

A Minimum Annual Guarantee (MAG) of Three Hundred Thousand Dollars (\$300,000.00), due monthly in 12 equal monthly installments of Twenty-Five Thousand Dollars (\$25,000.00) (the "Minimum Monthly Guarantee" or "MMG"), provided that for years 1 and 2 of the Operating Term, the Tenant shall pay only 50% of the MMG per month as part of a temporary "ramp-up" period. Commencing in year 3 of the Operating Term and continuing through each year and month of the Operating Term thereafter, the MAG and MMG due the County shall be 100% of the amounts afore-stated in this subsection 5.03(B) as adjusted annually per the CPI-U as further set forth in this subsection below.

The MAG and associated MMG are subject to increase adjustments based on the applicable CPI-U on an annual basis, with the first annual adjustments to the MAG and MMG becoming effective at the commencement of the second year of the Development Term and adjusting further at the start of each Lease year thereafter during both the Development Term and Operating Term (as may be extended in accordance with the terms of Section 3.02.C hereof), provided the MAG and MMG may not increase by more than five percent (5%) in any given (single) Lease year. The CPI-U means the percentage increase in the Consumer Price Index for All Urban Consumers; U.S. City Average; All items, not seasonally adjusted, 1982-1984 = 100 reference base for the applicable base Lease Year.

All Ground Rents and Additional Rents shall be payable monthly in U.S. funds, plus applicable state sales tax, as required by law, on the first day of each and every month as provided in subsection 5.04 below and without billing, at the offices of the Department as set forth in Article 5.09 (Method of Payment).

5.04 Rent and Operating Fee Payments; Tenant Provision of Gross Revenues Monthly Summaries. Tenant shall pay the County Ground Rent on a monthly basis (1/12 of the annual Ground Rent), payable on the first day of each month of the Development Term and the Operating Term (as may be extended per the terms of Article 3.02.C). Commencing on the Operating Term Commencement Date, and continuing thereafter throughout the Operating Term, Tenant shall also pay the County the Additional Rent monthly on the first day of each month throughout the Operating Term, except that Additional Rent shall not continue or be due during any extension term exercised under subsection 3.02(C) (Extension Terms).). In addition, the Tenant shall pay the County the Operating Fee each month of the Operating Term (as may be extended upon the terms and conditions set forth in Article 3.02.C hereof) in arrears, to be due County from Tenant within ten (10) calendar days of the first day of the following month. Tenant shall furnish the County by the fifteenth (15th) of each month of the Operating Term (as may be extended per the terms of subsection 3.02(C)), and also by the fifteenth (15th) of the month immediately following the expiration or earlier termination of the Operating Term, a written summary of the prior month's total Gross Revenues (paid and payable) together with breakdowns of all monthly Gross Revenues by category (i.e., phytosanitary revenues, cold chain processing rents and fees, cold storage rents and fees, other rents and fees, container storage fees and hookup charges, etc.). Tenant shall promptly furnish County, without charge, copies of any Gross Revenues related support or backup documentation that the County may request of Tenant. In the event Tenant discovers that any monthly Gross Revenues summary previously supplied to County was incomplete or inaccurate, Tenant shall as soon as practicable provide County with a corrected Gross Revenues summary for the subject month together with an explanation (and backup documentation in a form acceptable to County) of any changes or updates contained therein.

5.05 Date of Beneficial Occupancy. The DBO is defined to be the earliest of (i) the date on which Substantial Completion of the Facility has occurred and the appropriate building department or agency has issued a Certificate of Occupancy or a Temporary Certificate of Occupancy that enables the Tenant to occupy or utilize the Facility or any usable increment thereof in any manner for its intended use, (ii) the date on which the Tenant commences the use of any portion of the

Facility or other Additional Improvement for its intended use (with or without a TCO or CO), or (iii) the date on which Substantial Completion of the Facility would have occurred and on which the appropriate code enforcement agency would have issued a Certificate of Occupancy or Temporary Certificate of Occupancy but for the occurrence of Tenant's delays, all as determined in the sole reasonable discretion of the County.

5.06 Sales Taxes and Other County Charges. Tenant shall pay to the County, in addition to the foregoing rents and fee, all applicable State sales taxes as well as all federal, state or local taxes arising out of Tenant's use of the Premises, and all other charges imposed by the County on the Tenant's use of the Premises provided that such tenant charges are applicable to all similarly-situated tenants.

5.07 Security Deposit. Unless previously deposited with the County, within three (3) calendar days after the date this Agreement is fully executed, Tenant will deposit with the County an amount equal to two times the required total monthly Ground Rent as determined pursuant to Article 5.01 (Ground Rent) above, plus applicable State sales tax thereon, as security for the payment of the Tenant's obligations hereunder. Said deposit shall be in addition to any rental payments required hereunder, and the Department shall be entitled to apply such payment to any debt of the Tenant to the Department that may then exist, as permitted by law, including but not limited to the rentals required hereunder. In lieu of the Security Deposit being made in cash, the Department, in its sole discretion, may authorize the Tenant to provide an irrevocable Letter of Credit, in a form provided by the Department, in like amount. The amount of the Security Deposit is subject to adjustment by the Department at any time there is a change in the annual or monthly rentals pursuant to the terms of this Agreement; provided further, that the Department shall have the right to demand an increase in the security deposit requirement of up to an additional four months rental to provide the Department with adequate assurance of the Tenant's payment of its obligations, which assurance is required because of the Tenant's defaults in the timely payment of rents, fees and charges due hereunder, or because the Department has reason to believe, based on published reports, that the Tenant's future ability to pay such rentals, fees and charges, on a timely basis, is in jeopardy.

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

5.09 Method of Payment. The Tenant shall pay, by mail, hand delivery or electronic funds transfer (via wire transfer or Automated Clearing House ("ACH"), at County's election), all rentals, fees and charges required by this Agreement to the following:

By Mail: Miami-Dade Seaport Department
Finance Division
1015 North America Way
2nd Floor
Miami, Florida 33132

By Wire Transfer or ACH: In accordance with Wire Transfer or ACH payment instructions provided by PortMiami's Finance Division at 305-960-5432.

By Online Payment: Via the MIA-Pay website (www.miami-airport.com) by setting up user and password with an accurate invoice number.

5.10 Late Payment Charge. In the event the Tenant fails to make any payments required to be paid under the provisions of this Agreement, within ten (10) calendar days after the same shall become due, interest shall be due and payable on the unpaid payments in the amount of one and one-half percent (1.5%) per month against the delinquent payment from the original due date until the County actually receives the payment. Such interest rate shall apply unless the Board of County Commissioners has established a different rate or a specific provision of federal or state law requires otherwise. The right of the County to require payment of such interest and the obligation of the Tenant to pay same shall be in addition to, and not in lieu of, the rights of the County to enforce other provisions herein, including the termination of this Agreement, and to pursue other remedies provided by law.

5.11 Dishonored Check or Draft. In the event that the Tenant delivers a dishonored check or draft to the County in payment of any obligation arising under the terms of this Agreement, the Tenant shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less, THIRTY DOLLARS, if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00, or FORTY DOLLARS, if the face value of the dishonored check or draft is \$300.00 or more, or Five Percent of the face value of such dishonored check or draft, whichever is greater. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.

5.12 Utilities. The Tenant shall pay for all utilities it uses or consumes at or on the Premises, the Facility, or in connection with any Additional Improvements, and shall pay all utility related fees, costs, assessments, sur charges, connection charges, and any other charges that are imposed on or charged to Tenant by any utility service provider as a matter of law. The County shall have no obligation to provide utilities or utility related infrastructure, equipment, or service to, or in support of, the Premises, the Facility, or any Additional Improvements thereon. County shall have no obligation to maintain, repair, upgrade, replace, relocate, or remove any utilities that exist on

the Premises as of the Effective Date or which may exist on the Premises in the future, and Tenant shall be exclusively responsible, at Tenant's sole cost and expense, for (i) providing all needed utilities and utility related infrastructure and equipment needed or required to support or in connection with the Premises, the Facility, and any Additional Improvements; (ii) all fees, costs, assessments, and charges of any kind that may be imposed by any utility to provide service to the Facility or to any Additional Improvements or for connecting either to existing or future utility infrastructure or services; and (iii) for all maintenance and repair of utilities on the Premises in accordance with its obligations under utility agreements or as otherwise required under Applicable Laws or utility tariffs or regulations.

5.13 Other Fees and Charges. The Tenant acknowledges that the Board of County Commissioners has or may establish or direct the establishment, from time to time, of various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to, leased to, or specifically provided to the Tenant hereunder, and procedures relating to the payment of same. The Tenant shall pay, upon billing, for its use of such facilities, equipment and services those fees and charges, which are billed monthly. For other fees and charges which are based on usage, the Tenant shall, in writing, report its uses of applicable facilities, equipment and services and simultaneously pay the applicable fees and charges at such frequency and in such manner as may be prescribed by the Department. Notwithstanding the absence of any identification in this Agreement of particular charges to be paid by Tenant for its use of the Premises and the Airport, Tenant agrees to pay whatever charges are imposed by the County on all tenants and users of the Airport.

Tenant shall be solely responsible for payment of all fees and charges applicable to its development and use of the Premises, the Facility, and/or any Additional Improvements, including, but not necessarily limited to, all concurrency fees, Impact Fees, offsite improvements made necessary or desirable by Tenant's development activities or improvements, and for all security fees or charges imposed by or made necessary by federal, state, or local security requirements, as they may be imposed or amended from time to time.

The Parties hereto hereby covenant and agree that County shall receive the Ground Rent, Additional Rent, Operating Fee, and all other sums payable by Tenant to County as provided hereunder as minimum net income from the Premises, without any abatement, reduction, set-off, counterclaim, defense or deduction whatsoever.

ARTICLE 6

Ownership of Project and Premises

6.01 Initial Title of Improvements; No Encumbrances of Fee Simple Title. The Premises, the Facility, the Additional Improvements, and all alterations, additions, equipment and fixtures built, made, or installed by or on behalf of Tenant in, on, under, or to the Premises, shall be the sole property of the County, free and clear of any mechanics or other liens or encumbrances of any kind, other than Tenant Property. If at any time during or following the Development Term or Operating Term, any portion of the Premises, the Facility, or the Additional Improvements are subject to any lien or encumbrances, Tenant shall immediately take all actions and pay all fees and

costs to remove, discharge, or satisfy same. Notwithstanding the foregoing, it is expressly provided however that the County's fee simple interest in the Premises, including any addition or extension of such land undertaken as part of the Project, shall at all times remain solely the property of County and neither Tenant nor any Tenant agent, employee, partner, affiliate, lender, mortgagee, customer, invitee, subtenant, or Project Contractor may at any time pledge, lien, hypothecate, or otherwise encumber the County's interest in the Premises, the Facility, or the Additional Improvements.

The County shall not be obligated to encumber County's fee simple interest in the Premises, nor any portion of the County's ownership interest in the Facility or the Additional Improvements, or any other County-owned real property, and Tenant is expressly prohibited from taking any actions or authorizing any third parties from taking any actions, that would have the effect of encumbering, pledging, hypothecating, or placing any lien upon the County's fee simple interest in the Premises, the County's interest in the Facility or the Additional Improvements, or any other County-owned real property, and any attempt by Tenant, or any other third party acting on Tenant's behalf or pursuant to Tenant's authority, to encumber, pledge, hypothecate, or lien the County's fee simple interest in the Premises, or any portion of the County's interest in the Facility or the Additional Improvements, or any other County-owned real property shall be deemed void ab initio and deemed a Tenant default hereunder.

6.02 Personal Property. Tenant Property shall be and remain solely Tenant's property, except to the extent that County retains a right to lien items of property specifically excluded from the definition of Tenant Property in accordance with Article 6.03 (Liens Against Tenant Property) below. Tenant shall have the right to install in the Premises Tenant Property and if installed by Tenant, to remove any or all such Tenant Property from time to time during and upon termination or expiration of this Lease. In connection herewith, Tenant shall at its sole expense repair all damage caused or contributed to by Tenant or any employee, agent, contractor (of any tier), subtenant (of any tier), customer, invitee, or guest of Tenant in connection with removing any applicable Tenant Property. Notwithstanding and prevailing over the foregoing, Tenant may not remove any property, infrastructure, controls, structures, materials, or equipment from the Facility, Project, or the Additional Improvements that (i) constitute improvements or (ii) would interfere with or impair the Facility's operability or functionality as a fully commissioned and operational phytosanitary and cold chain processing facility in the reasonable judgement of the Port Director or his or her designee.

6.03 Liens Against Tenant Property; County Reversionary Interest in Facility and Additional Improvements. Notwithstanding and prevailing over any contrary term or implication contained in this Lease, the County reserves and retains its right to lien any and all improvements erected, constructed, installed, or placed upon or within the Premises or the Facility, all of which shall become the sole property of the County, without lien or transfer fee of any kind, upon the earlier of (i) the issuance of a TCO, (ii) the construction, installation, or other incorporation of such improvements upon or into the Facility or Premises, or (iii) the acquisitions of same by Tenant or any contractor of Tenant (of any tier).

6.04 Tenant Indemnification, Hold Harmless, and Duty to Defend. With the exception of those claims, demands, suits, causes of actions or proceedings caused solely by the negligence or willful misconduct of County and its employees, Tenant shall defend, indemnify and hold harmless the County Indemnified Parties from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense at all levels (including appellate), which County Indemnified Parties may incur as a result of any third-party claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of Tenant's use, occupancy, construction, maintenance, or environmental condition (excluding the cost of remediating Pre-Existing Environmental Conditions governed by or within the scope of subsection 3.10 hereof) of the Premises or relating to or resulting from the performance or non-performance of, or violation of any term or restriction of, this Lease by Tenant and/or its employees, agents, servants, partners, principals, subtenants, invitees, contractors or subcontractors (of any tier). Tenant 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 County Indemnified Parties, where applicable, including any and all appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant, shall in no way limit the responsibility to indemnify, keep and save harmless and defend County Indemnified Parties as herein provided. The provisions of this Article 6.04 shall survive any termination or expiration of this Lease.

ARTICLE 7

Tenant Obligations to Design, Construct, Commission, and Operate Facility and Additional Improvements

7.01 Facility Improvements.

(A) Tenant shall design, finance, construct, complete, fully commission and pay for the Facility and any other permitted Additional Improvements to the Premises as may be requested by Tenant and approved by the County (as hereinafter provided), provided such Additional Improvements shall be necessary to make the Premises suitable for Tenant's use and occupancy for the purposes and uses described in Article 4 (Permitted Use of Premises) hereof and comply with all terms and conditions set forth in Article 7 hereof. The Facility, as well as any other Tenant sought Additional Improvements of the Premises that the County may approve in its sole discretion, must be Permitted Uses and must comply with all applicable FAA, Seaport and Aviation Department requirements, with and all building, fire and environmental codes, the Americans with Disabilities Act, and other Applicable Laws, and (as to the Facility) with the Facility Minimum Requirements and the Project Definition Document., and all other applicable requirements hereof.

(B) The Tenant hereby agrees to invest a minimum amount that is necessary to fund, undertake and complete the design, construction, development, and commissioning of the Facility and other (County approved) Project elements identified in Tenant's Proposal by the Completion Deadline, which amount shall be no less than the "Grand Total Value of Design and Construction Work" included in Form B of Tenant's Proposal which amount is \$141,000,000.00, and to be only

partially reimbursed by County for certain Eligible Costs, subject to Tenant's compliance with the terms, limits, exclusions, and conditions hereof and in the PIDP Grant and in accordance with and subject to the terms, limits, and conditions of Article 7.04 hereof. Expenditures that satisfy such minimum Tenant investment requirement shall be limited to actual expenditures made by Tenant prior to the issuance of the CO that relate directly to the design and construction of the Facility and Additional Improvements as reasonably determined by the County under Article 7.09 (Final Improvement Costs). Notwithstanding the amount of Tenant's minimum investment obligations, Tenant fully assumes the risks of, and shall be solely responsible for, (i) all Facility and Project costs and cost overruns, regardless of cause or amount, whether foreseeable or unforeseeable and (ii) all Project costs that exceed, in aggregate, the sum of the County Contribution Cap and the PIDP Grant Maximum Amount.

(C) The Tenant shall bear and be solely responsible for all costs arising out of the development of the Facility and any other County approved Additional Improvements (if any), including, but not limited to, all costs of the following:

- (1) land use approvals, development fees, concurrency fees, permit fees, and other regulatory fees for or in connection with the design, construction, and/or subsequent use of the Facility and other County approved Improvements (if applicable) and associated infrastructure;
- (2) design and construction of the Improvements, Facility, and associated infrastructure, including but not limited to utilities, equipment, roads, parking lots and landscaping; Tenant will be required to provide its own separate electrical and water and sewer service wherever possible;
- (3) financing, construction bonding and insurance, building permits, impact and concurrency fees, utility installations and/or hook-ups or other infrastructure, as may be required to make the Premises suitable for the use of the Facility and/or any Additional Improvements;
- (4) and construction of the Facility and (if applicable) any Additional Improvements;
- (5) consultants, accountants, financing charges, legal fees, furnishings, equipment, Tenant Property and other personal property of the Tenant; and
- (6) All other direct or indirect costs associated with the approvals, design, procurement, construction, installation, testing, commissioning, and financing of the Improvements, and their subsequent use, operation, and maintenance.

Tenant acknowledges that the County shall have no maintenance, repair, or capital replacement responsibility for any portion of the Facility or the Additional Improvements, utilities or infrastructure to be constructed, installed, managed, or used by or on behalf of Tenant.

7.02 Design of Facility; Development and Review of Facility Design and Construction Drawings

- (A) Within 14 days of the Effective Date, County and Tenant shall hold a preliminary meeting, coordinated through the Departments' respective Project Managers, to commence development and review of the Final Master Plan and the Basis of Design Report.

Departments Project Managers shall also provide guidance on project design, safety, QA/QC plans, Hurricane Preparedness plans, processes and procedures for RFI, payment, and change order submittals, permitting and project closeout processes, Small Business Development (SBD) (if applicable), and Arts in Public Places (AIPP) review, and determine the date for the pre-design meeting to be held per this Article 7.02(C).

- (B) The County and Tenant shall hold a pre-design meeting to be coordinated through the Departments' respective Project Managers with the participation from all parties deemed by County to be necessary for such meeting, for discussions regarding Facility Minimum Requirements, DERM Site Remediation Requirements (if applicable), County sustainable building program requirements, LEED requirements, utilities, grading drainage, airside, security, existing as-built drawings, compliance with the Airport Master Plan, site related height restrictions, other site restrictions, storm water master plan requirements, utility master plan requirements, and the terms of the Agreement and any other related item(s). Tenant acknowledges its obligation to assure that FAA approval is obtained, even though Seaport and MDAD must be involved in such process, and that such FAA approval is communicated to Tenant in writing prior to the commencement of construction of the Facility or any Additional Improvement. The Tenant and its Designer have the responsibility to ensure that the Project design shall be in accordance with all Applicable Laws, codes, regulations, and other requirements of County, State and/or Federal authorities having jurisdiction over the construction of the Facility or any Additional Improvements by law or by contract with the County, including all then current requirements of the County as they relate to Tenant Airport Construction, reimbursable/non-reimbursable projects (TAC-R/TAC-N projects). The MDAD Procedures for TAC-N can be found at <http://www.miami-airport.com/resources.asp>. The Tenant shall be responsible for obtaining and confirming as-built drawings and information pertaining to the design of the facilities.
- (C) Tenant shall at its sole cost design the Facility Design and Construction Documents and, if applicable, the Design and Construction Documents for any other County approved Additional Improvements, in compliance with the Facility Minimum Requirements, other requirements hereof, Applicable Laws, PIDP Grant requirements, and the design and permitting deadlines set forth in the Project Master Schedule. In compliance with the Project Master Schedule, Tenant shall provide ten (10) copies of the Facility Design and Construction Documents for the County's review and approval at the following five design development milestones: Basis of Design Report and 30%, 60%, 90%, and 100% design development milestones. Tenant shall at its cost prepare and provide copies of the following permit application packages to the Seaport Department and MDAD for their respective approvals prior to submitting same to the applicable building department or other permitting authority and in compliance with the applicable submission deadlines set forth in the Project Master Schedule: demolition, foundation, dewatering, core and shell, interior build out, DERM, refrigerated container yard, and application packages for any

other permit that may be required for construction or in connection with the Facility or any Additional Improvements.

- (D) Tenant acknowledges that before the Regulatory and Economic Resources Department may issue any permit for any improvement on County-owned property, the Aviation Department must issue a "Letter of Concurrence" that constitutes the owner's authority for the Tenant to apply for and obtain the building permit. The Aviation Department shall not be required to issue the Letter of Concurrence until such time as Tenant has complied with all obligations in this Agreement as to the design and construction of the Facility and any Additional Improvement, including compliance with the Aviation Department's TAC-N procedures, submission of approved Design and Construction Documents per Article 7.02(E), and compliance with the regulatory provisions of the County's other departments having jurisdiction over the construction, such as, but not limited to, the Fire Department and DERM.
- (E) As described in subsection (1) below and in accordance with the submission deadlines set forth in the Project Master Schedule, the Tenant shall submit to the respective Seaport and MDAD Project Managers for their respective review and approval, the Facility Design and Construction Documents at the following stages of project development: Basis of Design Report and at the 30%, 60%, 90%, and 100% design development milestones. In no event shall the Departments review hereunder be unreasonably withheld, conditioned or delayed. The Departments failure to submit modifications and/or comments within fifteen (15) Business Days from the date the complete Design and Construction Documents (at the respective required milestones) are submitted by the Tenant to the Departments shall cause the Development time schedule required herein to be extended for a period equal to the time taken by County after the 15th Business Day to submit modifications and/or comments provided, however, that if the Departments have requested changes on such Design and Construction Documents, Tenant shall not go forward with the Project until it has incorporated such changes and resubmitted to the Departments (in the following design submission due hereunder) for confirmation that the changes in the Design and Construction Documents have been made.

Additionally, the Departments reserve the right to require and hold progress meetings with the Tenant and Tenant's design team and/or contractor prior to and/or following each or any phase submittal or the County's issuance of comments in response to same. Design meetings shall be conducted to ensure all minimum design requirements have been met per Deliverables Requirements Manual and that the design intent as originally approved by PortMiami and MDAD is consistent throughout all phases of design.

- (1) At each of the design stage submissions (e.g., Basis of Design Report, and 30%, 60%, 90%, and 100% milestones), Tenant shall submit to the Departments ten (10) sets of the Design and Construction Documents consisting of: i) Plans and specifications; ii) a CPM construction schedule in native electronic format using

Primavera CPM scheduling software (or a substantial equivalent CPM scheduling if approved by County in its discretion) based upon calendar days with dates for the design, bid, permitting, and construction showing compliance with the Completion Deadline, hereinafter referred to as "Project CPM Schedule"; iii) updated cost estimates for the Facility and any Additional Improvements, prepared by an architect/engineer registered in the State of Florida; and iv) updated LEED checklist. The Department may, from time to time, reasonably request that other documents be submitted by Tenant as part of the Design and Construction Documents for the Facility or any Additional Improvement, and Tenant shall comply with such request. Tenant acknowledges that failure to comply with Tenant's obligations to submit complete Design and Construction Documents may delay the Departments' review of the Design and Construction Documents, which may cause the Tenant to miss other design or construction deadlines contained herein or desired by Tenant. Tenant further acknowledges that it shall not be entitled to any time extensions for the time it takes Tenant to address or incorporate comments received from the County or any of its designated representatives, nor shall Tenant be entitled to any time extensions for the time it may take Tenant to correct or address any errors, omissions, deficiencies, conflicts, and/or ambiguities in the Design and Construction Documents. The Tenant shall continue to be held responsible for meeting the deadlines contained herein and shall be subject to the Departments' remedies specified herein for not meeting said deadlines. The Department shall in no way be held responsible for delays resulting from the failure of the Tenant to timely meet all submittal requirements contained herein.

- (2) Tenant shall submit its required design submissions to the County in strict compliance with the following submission deadlines:
 - (a) Basis of Design Report: Due within 90 calendar days of Lease Date;
 - (b) 30% design submission: Due within 180 calendar days of Lease Date;
 - (c) 60% design submission: Due within 270 calendar days of Lease Date;
 - (d) 90% design submission: Due within 360 calendar days of Lease Date;
 - (e) 100% design submission: Due within 390 calendar days of Lease Date.
- (3) Upon submission of the Design and Construction Documents to the Departments for design review at the various design stages set forth above, the Departments shall also review the plans for compliance with the following:
 - (a) Conformance with the Airport Master Plan, Comprehensive Development Master Plan (CDMP), and Airport Layout Plan (ALP), and has the approval of the FAA.
 - (b) Compliance with environmental requirements, utilities master plan, and storm water master plan and permitting requirements.

The Departments shall provide comments in writing on each respective submission within fifteen (15) business days from receipt thereof. All comments by the Departments shall be incorporated into the Design and Construction Documents at the following milestone submission deadline, except with respect to County comments to the 100% design submission, which shall be incorporated and resubmitted to County within seven (7) calendar days from receipt thereof. However, Tenant may request reconsideration of any of the Departments' comments. Such request shall include documentation supporting the Tenant's position. The Departments shall review the request for reconsideration and shall either approve or disapprove the request or alter its initial comments. The determination of the Departments at this time shall be final and binding upon the Tenant and accordingly shall be incorporated in the revised Design and Construction Documents for final resubmittal.

- (4) After the Departments reviews the Design and Construction Documents as submitted by the Tenant, the Tenant may not make a material change in the documents, including at any time during construction, without the Departments' further review, which shall not be unreasonably withheld or delayed. The Departments' review for Tenant's design and compliance with all applicable codes and regulations does not constitute certification or warranty by the Departments' (a) as to the quality of the Design and Construction Documents prepared by the Tenant's architect/engineer(s), (b) that the Design and Construction Documents are free of design errors or omissions, or (c) that the Design and Construction Documents are in compliance with Applicable Laws, codes, rules or regulations of the authorities having jurisdiction over the construction of the Facility or any Additional Improvements. Such review shall not be unreasonably withheld or delayed by the Departments.
- (5) If the Tenant fails to provide the complete Design and Construction Documents for review to the Departments or delays the start of the construction by more than sixty (60) calendar days from the Project Master Schedule, any reviews theretofore provided by the Departments will become null and void and will require Tenant's re-submission of the documents for County's review.

7.03 Submission of Certain Documents and Fees Prior to Commencement of Construction.

At least ten (10) calendar days prior to the commencing construction, Tenant shall comply with the following requirements:

- (A) Tenant shall submit the following to the Departments' Project Managers assigned to this Agreement:
 - (1) A copy of the building permit(s);

- (2) All construction bonds including performance, payment, contract completion bonds or their substitute and Insurance Certificates required under Article 7.07 (Construction Bonds and Insurance Required);
 - (3) Documentation in a form acceptable to County showing the Insurance requirements set forth in Article 15 (Insurance) have been timely and properly satisfied; and
 - (4) Copies of each Tenant contract with a Project Contractor, the form of which must comply with all applicable requirements of this Lease and the PIDP Grant, and which must provide in each that the County is an express third-party beneficiary thereof with rights of enforcement.
- (B) Unless the County directs otherwise, Tenant shall submit the following documents and County fees to the Departments' Project Managers:
- (1) A check made payable to the County in the amount that represents one percent (1%) of the budgeted construction hard costs for reimbursement of Regulatory and Economic Resources Department fees together with a copy of the construction contract. Tenant shall provide County with a written certification stating the final (total) construction costs of the Facility within 45 days of receiving a CO for the Facility. If the final construction hard costs are higher or lower than the budgeted amount, the difference shall be multiplied by 1% and shall either be paid by Tenant to the County if the resulting number is a positive amount (payable by Tenant to the County within 15 calendar days of a written request therefore). Such fee shall be non-refundable. In addition, if Tenant obtains a building permit and allows the permit to expire prior to completion of the Facility or any Additional Improvements then Tenant shall be required to pay an additional one-half of one percent ($\frac{1}{2}$ of 1%) of the budgeted construction hard costs as administrative fees for plans processing reviews required by Regulatory and Economic Resources Department staff to issue a building permit. Such fee shall be non-refundable and shall be payable in addition to the 1% fee required pursuant to this Article 7.03(B)(1).
- (C) Tenant shall submit the following to the Departments' Project Managers:
- (1) Copy of Tenant Financing Documents pursuant to Article 14.05 (County Approval of Financing Documents); and
 - (2) any other documents related to the Tenant Financing Documents reasonably requested by the Department.
- (D) Tenant shall not be authorized to begin construction until the above-listed items have been submitted to the County. If Tenant begins construction prior to submission of the Documents and Fees in the required form and amounts, satisfactory to the Departments, as required pursuant to this Article 7.03 (Submission of Certain Documents and Fees Prior to Commencement of Construction), the County shall be authorized to halt Tenant's construction activities without any liability to the County until such time as Tenant satisfies this requirement. In such event, no extensions of time shall be granted by the County to

Tenant. During construction, the Departments' Project Manager or a designee will be permitted by Tenant to observe all aspects of the progress of the work.

7.04 Construction of Facility and Additional Improvements by Tenant; Tenant Reimbursement Limits, Conditions, and Procedures. Promptly following County's approval of the 100% Design and Construction Documents in accordance with Article 7.02 (Design of Facility), the Tenant shall at its cost cause the construction of the Facility to be completed in satisfaction with all Facility Minimum Requirements, in conformance with the Final Design and Construction Documents, and in compliance with all Applicable Laws, the PIDP Grant, and the requirements hereof, and shall cause the Facility to receive a Temporary Certificate of Occupancy, all by the Completion Deadline. Notwithstanding the foregoing, and subject to Tenant's compliance with (i) all PIDP requirements, (ii) all applicable terms and requirements hereof, and (iii) the terms, conditions, limitations, and reimbursement procedures set forth below, Tenant shall be entitled to seek reimbursement from County only for incurred, expended, and verifiable Eligible Costs of constructing the following four elements of the Facility: the Facility building shell, the concrete truck bay area, landscaping (Xeriscape), and civil/site improvements, and expressly excluding (x) all costs of designing, selecting, procuring, installing, and/or commissioning any Facility related cold storage, cold chain processing or phytosanitary systems, equipment, or components and (y) all Non-Eligible Costs. Notwithstanding and prevailing over the foregoing or any contrary term or implication that may be contained herein, in no event may Tenant seek, nor be entitled to, any payments or reimbursements from the County which would exceed, in aggregate, the sum of the PIDP Maximum Contribution Amount plus the County Contribution Cap.

(A) Reimbursement Procedures for Certain Tenant Incurred Facility Construction Cost. Following (i) the County's approval of the Final Design and Construction Documents, the form of Tenant's written construction contract with the Project Contractor retained by Tenant to construct the Facility, the form of Tenant's payment and construction bond for the full amount of the total construction costs of the Facility and any County approved Additional Improvements and the filing of same in the public record in compliance with all applicable requirements of F.S. 255.055, (ii) the issuance by County to Tenant of a Notice to Proceed for Construction (NTP-C), (iii) the provision by Tenant to County of a copy of a fully executed and bonded construction contract for the construction of the Facility and (if applicable) any County approved Additional Improvements, together with all exhibits, attachments, and addenda thereto, including a complete contractor schedule of values itemizing the costs of all work to be performed under said contract in a form acceptable to the County ("SOV"), (iv) the provision by Tenant to County of a copy of a resource loaded critical path method ("CPM") construction schedule using Primavera scheduling software, or its County approved equivalent, in an electronic form acceptable to the County, showing a construction completion date (for the Facility) no later than the Completion Deadline, which CPM schedule must identify all major trades and work items and associated durations, all critical work tasks and paths (with early and late start and finish dates for each), and all assumptions and logical ties underlying said CPM schedule (once approved by the County, the "Baseline Schedule"), and (v) the issuance of required building permits, the Tenant and its Facility contractor, construction manager, or design-builder, as the case may be (hereafter, the "Tenant Contractor"), may commence construction of the Facility and (if applicable) any County approved Additional

Improvements and, in conformance with all applicable requirements, conditions, and limitations hereof, seek reimbursement for previously incurred Tenant construction costs of certain (non-excluded) elements of the Facility. All Tenant requests to the County for reimbursement of previously incurred costs of constructing non-excluded elements of the Facility shall be in a form or format approved by the County and must be accompanied by the following required documents, information, and certifications:

(i) identification of the duration of the prior work period for which reimbursement is being sought;

(ii) a detailed and itemized summary of all work completed during the subject reimbursement period, clearly divided between **excluded** work elements completed, for which no County reimbursement is allowed (e.g., legal and administrative costs; permitting costs; Facility design, engineering, and architectural costs; and all costs associated with procurement, construction, installation, commissioning, and testing of any and all cold storage, cold chain processing, and/or phytosanitary systems, equipment, and components) and **non-excluded** work elements completed, for which reimbursement may be sought (e.g., incurred construction costs of the Facility building shell, the concrete truck bay area, landscaping (Xeriscape), and civil/site improvements other than Tenant incurred environmental remediation costs governed by subsection 3.10 hereof, which summary shall include a percentage of total, excluded, and non-excluded construction work completed to date and during the subject payment period, and the estimated dollar values of each based on the SOV and applicable percentages of work completed, all certified as accurate and complete by the Project architect or engineer;

(iii) provision of an updated SOV;

(iv) provision of an updated and impacted Baseline Schedule, updated through the last day of the payment period for which reimbursement is sought, which update must identify the current progress of all work and identify all then-existing critical delays and also which incomplete work items are approaching critical (late finish) dates and identify the reasons for anticipated critical delays and what steps need to be taken to avoid same, and, where then-existing critical delays are identified, such update should identify Tenant's recovery schedule options considered and undertaken and identify any critical delay recovery projected over the upcoming pay period;

(v) provision of a Buy America certification from the Tenant's contractor or architect or engineer of record certifying that all iron and steel used in the Project are produced in the United States, including all manufacturing processes, from initial melting stage through the application of coatings, occurred in the United States; that all manufactured products used in the Project are produced in the United States—meaning that the manufactured product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and that all construction materials are manufactured in the United States – this mean that all manufacturing processes for the construction material occurred in the United States;

(vi) provision of certification by Tenant that reimbursement request does not seek reimbursement of any costs incurred or expended in connection with the design, procurement, construction, installation, or commissioning of any Tenant Property;

(vii) releases from all suppliers, contractors, and subcontractors (of all tiers) for which any reimbursements are sought releasing the Tenant, the contractor, and the County for all amounts due through the last day of the subject pay period, in a form reasonably acceptable to the County or surety releases of lien re same;

(viii) all documents, certificates, information, and reports required by the PIDP Grant, which may be requested by MARAD or any federal grant administration staff, or requested or required by the USDA Animal and Plant Health Inspection Service (APHIS);

(ix) if the Tenant proposes to build and/or operate an irradiation facility with which to provide phytosanitary services on the Premises, then the Tenant shall also provide the County, as part of any submission or request for reimbursement of any Facility construction costs, with documentary evidence that the proposed phytosanitary portion of the Facility has been certified by APHIS as required by 7 CFR 305.5; with a copy of the APHIS compliance agreement required by 7 CFR Section 305.5(c); and evidence of any other required phytosanitary facility approvals required from APHIS or any other Governmental Authority;

(x) if the Tenant proposes to build and/or operate a Facility that provides fumigation or other chemical-based phytosanitary treatments on the Premises, then the Tenant shall also provide the County, as part of any submission or request for reimbursement of any Facility construction costs, with documentary evidence that the proposed Facility site and location has been approved by APHIS and the State of Florida; that APHIS has certified the subject irradiation facility as required by 7 CFR 305.9(d); that APHIS has approved the irradiation facility operator's contingency plans to safely dispose or destroy regulated articles if the irradiation facility is unable to treat a shipment; provide a copy of the facility compliance agreement with APHIS required by 7 CFR 305.9(c)(1)(i); and evidence of any other required irradiation facility approvals required from APHIS or any other Governmental Authority;

(xi) any other documents, information, or certifications that the Seaport or Aviation Departments may request as a condition of payment or reimbursement, which may include requests for attestations or affirmations by Tenant pursuant to the Miami-Dade County False Claims Ordinance

(B) Processing of Tenant Reimbursement Requests. Upon receipt by County of a proper and complete Tenant reimbursement package containing all information, certifications and backup required in subsection 7.04(A) and otherwise in compliance with the terms, limitations, exclusions, and conditions hereof, the County shall review and process same, while reserving the right to request any clarifications or additional information or certifications deemed necessary by the County, and further reserving the right to disallow, in whole or in part, any reimbursement request or component thereof not permitted by the terms of this Agreement or the PIDP Grant.

(C) Tenant Reimbursement Cap. Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, under no circumstances or events may the sum total of all Tenant reimbursements sought or received exceed hereunder (excluding only reimbursements pursuant to Section 3.10 hereof), in aggregate, the sum of (i) the PIDP Maximum Contribution Amount plus (ii) the County Contribution Cap.

(D) Reconciliation, Adjustments, and County Credits and/or Refunds. If at any time during or following the Term the County learns that any prior County reimbursement payments to or on behalf of Tenant hereunder included any items or amounts for or relating to ineligible items or costs or items excluded from County reimbursement eligibility hereunder or under the terms of the PIDP Grant, the County may identify same in writing and retroactively disallow said reimbursement(s) or relevant portion(s) of same. In such event, the amount of such disallowance(s) shall be credited to the County in the Tenant reimbursement request following the County's notice of such disallowance(s), provided as to any disallowances noticed to Tenant after Tenant's submission of its last (or deemed to be last) reimbursement request, Tenant shall pay the County the amount of the uncredited disallowance(s) in immediately available funds within twenty (20) calendar days of its receipt of the County's disallowance notice.

(E) Tenant Reimbursement Periods. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County (the "Code"), allowed reimbursement requests, per this section, could be submitted periodically but no more than once a month.

7.05 County Extension to Complete Facility. The County may in its sole discretion grant an extension to the time periods set forth in Article 3.03 (Facility Improvement Deadline) for up to twenty-four (24) months, or the expiration of the Grant, whichever is earlier, and may grant an extension of the time periods set forth in Article 7.02 (Design of Facility) and Article 7.04 (Construction of Facility) for any delays caused by Casualty, Force Majeure events, Acts of God or other causes wholly beyond the control of the Tenant and its employees, agents, partners, affiliates, design professionals, contractors, and subcontractors (of all tiers). Notwithstanding, nothing herein shall obligate the County to grant such extension, and the County may decline any such extension which would not be in the best interests of the County.

In the event the Tenant fails to comply with the time requirements for the design and construction of the Facility, as specified in Article 3.03 (Facility Improvement Deadline), Article 7.02 (Design of Facility), and Article 7.04 (Construction of Facility), unless Tenant submits evidence satisfactory to the County that the delay(s) beyond the Completion Deadline is/are wholly outside of Tenant's reasonable control (and also beyond the reasonable control of Tenant's agents, employees, partners, design professionals, and contractors (of all tiers)) or such time requirements are extended by the Departments as permitted by this Article, in writing, the County shall have the right, without prejudice to any other County rights or remedies hereunder or otherwise, to terminate this Agreement on sixty (60) days' notice and to take whatever other appropriate legal or other steps may be available to protect the County's interests.

7.06 Certain Construction Contract Terms. All contracts entered into by the Tenant for the construction of the Facility shall require completion of the Facility within a specified time period following the execution of said contract(s), which required completion date shall be no later than the earlier of the Completion Deadline or the required late completion date set forth in the Project Master Schedule, and all such contracts shall contain, unless otherwise authorized by the

Departments, reasonable provisions for the payment of actual or liquidated damages (in an amount not less than \$4,000 per day of delay or such other daily amount as may be agreed to in writing by both the Port Director and MDAD Director, in their reasonable discretion, and which, in all cases, shall be payable to the County) in the event Tenant's Builder fails to complete the construction on time. The Tenant agrees that it will use its best efforts to take all necessary action available under such construction contract to enforce the timely completion of the work covered thereby. Further, as a standard construction practice, all such contracts shall contain provisions requiring the retention of 5% of Builder billings or such lesser percentage amount as may be approved by the Departments. All Tenant construction contracts and subcontracts (of all tiers) for or relating to construction of the Facility or any portion(s) thereof or any County approved Additional Improvements shall: (i) provide that the County is an express third-party beneficiary thereof with rights of enforcement; (ii) shall require the Tenant contractor and subcontractors (of any tier), as the case may be, to perform all work thereunder in compliance with all Applicable Laws, the Project Definition Document, PIDP Grant requirements, and all applicable terms, conditions, and other requirements of this Agreement, including, without limitation, with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5), and the most recent guidelines on the Americans with Disability Act of 1990 (ADA), DOT Public Transportation Regulations and Section 504 of the Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968, as amended, which, among other things, requires that buildings and public accommodations be accessible to individuals with disabilities; (iii) require that the contractor or subcontractor (as the case may be) comply with the performance and payment bond requirements set forth in Florida Statutes Sec. 255.05 and provide a payment and bond form acceptable to the County; (iv) require the Builder and all Builder subcontractors (of all tiers) to comply with the Copeland "Anti-Kickback" Act (codified at 40 U.S.C. 3145 *et seq.*, as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), as amended (generally requiring that all contractors, subcontractors, and sub-recipients of federal grant funds be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled), and shall further require the Builder and all subcontractors to report suspected violations to the Tenant and County; (v) provide that such Tenant construction contracts (as the case may be) shall be assignable to the County, without charge, at the County's sole option and election and upon the County's written request for assignment following or in connection with any County termination of Tenant hereunder for default (under one or more of the Articles 16.01 – 16.09) or for convenience (under Article 16.16) provided that the County shall not be liable for any costs, expenses, or liabilities to or owing to said contractors incurred or arising prior to the effective date of such contract's potential assignment to the County; and (vi) include provisions for termination for default and for convenience and shall include associated remedies and terms for each. Notwithstanding the foregoing, Tenant may not enter into any cost-plus or time and material basis construction or construction management contract with any contractor to construct or install the Facility or any portion thereof, or any portion of any County approved Additional Improvements, as such construction contract forms are prohibited or severely limited by the terms of the PIDP, 2 CFR §200.318, and/or 2 CFR §200.324(d).

7.07 Construction Bonds. Tenant shall execute, deliver to the County, and record in the public records of the County the following construction bonding and insurance prior to the

commencement of the construction of the Facility or any County approved Additional Improvements and prior to recommencing the work after a default or abandonment, as well as prior to the commencement of construction of any major capital repairs or maintenance that have a value in excess of the threshold then in place in section 255.05, Florida Statutes (currently \$200,000.00 or more):

- (A) Separate performance and payment bonds, in a form satisfactory to the County, in the full amount of Tenant's construction contract with its Builder, to assure the faithful and timely completion of all contract work relating to the Facility and (if applicable) any Additional Improvements and the payment of the costs thereof, free and clear of all claims, liens and encumbrances of subcontractors, laborers, mechanics and suppliers. The required bonds shall be in compliance with all applicable laws including, without limitation, the terms of section 255.05, Florida Statutes, shall (as to the performance bond) name the County as beneficiary and obligee thereof, shall be written by or through, and shall be countersigned by, a licensed Florida agent of the surety insurer in accordance with Florida Statutes, and shall be in a form acceptable to the County. To the extent Tenant's construction contract with its Builder is later amended via change order or otherwise, all such change order and other changes shall be consented to in writing by Tenant's surety or other underwriter (as applicable). The above-described bonds must cover and apply to Tenant's Builder, and its subcontractors, suppliers, and materialmen as well as to any suppliers, materialmen or contractors retained by or on behalf of Tenant in connection with the construction and/or commissioning of the Facility and (if applicable) any Additional Improvements.
Reserved.

7.08 Construction Completion Documents: Within one hundred twenty (120) calendar days following the completion of construction of any Facility or Additional Improvement for which a Certificate or Temporary Certificate of Occupancy is issued, the Tenant shall furnish (without charge) the following documents to the Departments:

- (A) Documents showing that the Facility and Additional Improvement have met the requirements of the final inspection and that all permits have been closed out;
- (B) Documents that Tenant has obtained lien waivers from the Builder and all parties designated by the Department, along with any final affidavit of the Builder required by Chapter 713, Florida Statutes;
- (C) Certificate of Occupancy for the Facility and, if applicable, the Additional Improvement;
- (D) Certification from the Tenant's architect that the Facility and, if applicable, the Additional Improvement has been completed in conformance with the approved Plans and Specification as well as all permits and applicable government requirements;
- (E) At least one copy of an as-built survey of the area covered by the Facility and, if applicable, the Additional Improvement;
- (F) Two (2) complete signed and sealed sets of as-built construction drawings certified both by the architect(s) and/or engineer(s) of record and also by the PSM where required, which as-builts must show all changes and deviations from or to permitted plans and drawings and include as-built dimensions and elevations and also furnish to the County evidence of satisfaction of all Permit closure requirements and submittals in accordance with the timing

and other requirements set forth therein, and two (2) AutoCAD files of the as-built construction drawings in a compact disk format or other format designated by the Departments (in native digital format with all features available to construction personnel included), including all pertinent shop and working drawings and such other as-built drawings as the Departments may reasonably require. All as-built information regarding underground or otherwise concealed facilities shall be taken in the field concurrently with the program of construction and before facilities are covered or otherwise concealed. Otherwise, Tenant's contractor or design-builder, as the case may be, shall expose (and restore) sufficient areas of work to allow the PSM to meet the aforementioned dimension, elevation, and location verification and certification requirements. The as-built drawing shall be submitted to the County in AutoCAD for Windows Release 14 format or later and in Geographic Information System ("GIS") as-built information format;

- (G) Copies of all releases of contractor claims and liens.

7.09 Final Facility Costs.

- (A) Post-Construction Audit Requirement. For purposes of verifying Tenant's expenditure in design and construction costs of the Facility, within ninety (90) calendar days of completion of construction of the Facility or, in the event of a termination of this Agreement prior to the completion of construction, within ninety (90) calendar days of the termination, the Tenant shall submit to the Procurement Division of the Seaport Department, a certified audit of the monies actually expended in the design and construction of the Facility, including all infrastructure and utility facilities, in accordance with the Final Design and Construction Documents described in Article 7.02 (Design of Facility), prepared by an independent certified public accounting firm ("Auditor"), that is approved in advance by the Department, which approval shall not be unreasonably withheld, conditioned or delayed. The audit report shall provide a detailed list of all expenditures in the design and construction costs of the Facility on the Premises and shall also separately identify and segregate Eligible Costs and Non-Eligible Costs. In addition to the audit report, Tenant shall promptly provide the Seaport Department upon request (and without charge) with copies (or access to originals if requested) of all audit work papers, source documents, and costs and other records that may be requested by the County (within seven calendar days of receipt of the County's request). The Tenant shall be responsible for providing documentation of the completed Facility on the Premises, whereby the Auditor can calculate and validate all Tenant incurred Eligible Costs and Non-Eligible Costs incurred on the Premises and render an opinion in the audit report, to be accompanied by verified and itemized summary schedules, with respect to the documented and verified amounts of Tenant expended Eligible Costs versus Non-Eligible Costs. The Department's failure to disapprove or challenge all or parts of the audit submitted by Tenant as required in this Article 7.09 (Final Facility Costs) within one hundred eighty (180) calendar days from the date of submission (unless such period may be extended upon assent of Tenant) shall constitute an approval. In the event of any disputes between the Department and the Tenant as to whether certain Tenant claimed costs are to be classified as Eligible Costs or Non-Eligible Costs, or whether any of either were actually incurred adequately documented, or were reasonable and/or necessary, said dispute(s) shall be submitted to the MDAD and Seaport Department Directors for final resolution. The

decision of said directors shall be reduced to writing and shall be final and binding upon the parties hereto unless found by a court of competent jurisdiction to be arbitrary and capricious.

- (B) **Post-Construction Audit Reconciliation Rights.** Based on the results of the above-referenced post-construction audit, any County approval, disapproval, or response thereto, and the resolution of any audit related dispute in accordance with the terms of Article 7.09(A) above, the County may require a reconciliation of or relating to any prior County reimbursements and/or payments made to Tenant or any Tenant agent, partner or contractor (of any tier) in connection with the development of the Facility or other County approved Additional Improvements (if applicable), which reconciliation may include, without limitation, (1) a County demand that Tenant refund County for all amounts paid or reimbursed to Tenant for or in connection with Non-Eligible Costs or any amounts paid by County to Tenant or any Tenant agent, partner, Affiliate, or contractor (of any tier), which, in aggregate, exceeded the sum of the PIDP Grant Maximum Contribution plus the County Contribution Cap; and (2) if factually warranted, County authorization to make additional reimbursements to Tenant for verified and unpaid Tenant-expended Eligible Costs deemed by County to be reasonable, necessary, and adequately documented and not otherwise precluded or limited hereunder, under the terms of the PIDP Grant, or otherwise. In the event County issues Tenant a post-audit or reconciliation related refund demand pursuant to subsection 1 of the preceding sentence, Tenant agrees to pay the County requested reconciliation amount within ten calendar days of receipt of said demand.

7.10 Temporary Structures. Trailers or temporary structures used for construction purposes but not for business purposes shall be allowed on the leased Premises during the period of construction of the Facility subject to all required permitting. All trailers or temporary structures must comply with the Florida Building Code and must be removed prior to or upon the ending of construction. Copies of the building permits shall be submitted to the Departments' Project Manager within ten (10) calendar days of issuance to Tenant. The County may, in its discretion, make space off premises available for temporary structures or materials storage through a separate agreement.

7.11 Review of Construction; County's Right to Require and Attend Facility Construction Progress Meetings and to Receive Construction Progress and Schedule Updates from Tenant. During construction, the Departments or its designee shall have the right to establish, require, and/or attend weekly construction progress meetings to be attended by the Tenant's design professionals and contractor (at Tenant's cost) as well as (at County's election) one or more County representatives and consultants. During construction, the County shall also have the right to enter the Premises (with its own employees and consultants and/or inspectors of its choosing) as needed to inspect the construction for the purpose of ensuring conformity with the Departments' approved Final Design and Construction Documents. Failure of the Departments to make such review or inspection shall not impose any liability on the Departments or the County, nor constitute County's acceptance of the Facility as being in accordance with the Agreement and Tenant's obligations hereunder. Upon demand, the County shall be entitled to receive (without charge) weekly schedule updates from Tenant, which updates shall be in a format acceptable to the County, and which shall

reflect all construction progress through the date of said update and identify all critical and near critical delays to the Project Master Schedule. Where a weekly schedule update identifies or shows any critical delay(s) to the Facility's proposed TCO completion date as shown on the County approved Project Master Schedule, Tenant shall include with such schedule update Tenant's proposed recovery schedule, within 20 calendar days, delineating how Tenant and its contractor propose to accelerate or otherwise recover lost time to ensure that the Facility both achieves substantial completion, as determined by the County, and receives a TCO, by the Completion Deadline.

7.12 Tenant Airport Construction Contracts. From time to time, the Tenant and the County through its Airport Director shall be entitled to negotiate and enter into separate future Tenant Airport Construction, non-reimbursable (TAC-N) contracts for the purpose of enabling Tenant to construct, at Tenant's sole cost and without any right of reimbursement from County, additional facilities or improvements on the Premises that are deemed by County and Tenant as consistent with and required for Permitted Uses, subject to the prior written approval of the County and the FAA in the exercise of their respective sole discretion. Such contracts, if approved and authorized by the County and FAA, shall comply with the Aviation Department's TAC-N contract requirements, as such requirements may be amended by the Aviation Department from time to time. Any additional facilities or improvements that may be constructed by or on behalf of Tenant on the Premises (in addition to the Facility), which are approved and authorized pursuant to this subsection 7.12, shall become the sole property of the County upon such improvements' construction, installation, placement, or incorporation on or upon the Premises, although Tenant shall be solely responsible, at Tenant's cost and expense, for the completion, operation, maintenance, repair, and security of same throughout the Term.

7.13 Assignment of Agreement to County and Assumption of Construction of Facility and Additional Improvements by County. In the event Tenant fails to perform its material obligations under Article 7 (Facility Improvements to Premises), the County may provide Tenant written notice of such default specifying those matters constituting such default. Material obligations shall include, but not be limited to, compliance with the Agreement and compliance with any regulatory requirement. If such default continues for a period of thirty (30) calendar days following Tenant's receipt of the notice or Tenant fails to diligently commence to cure such default within such thirty (30) calendar day period if such default is of a nature that it cannot be cured within thirty (30) calendar days, the County may, in addition to any other County remedies hereunder, under common law or otherwise and at the County's election, either terminate this Agreement or terminate Tenant's rights with respect to the construction of the Facility and/or Additional Improvements or portions thereof and thereafter assume the obligations of Tenant under an assignment by Tenant to County of relevant contracts and permits (in a form acceptable to the County), and complete the construction of the Facility and (if applicable) Additional Improvements or portions thereof with the benefit of all bonds, insurance, and other forms of security provided by Tenant hereunder. County's use of any such bonds, insurance, and/or security shall not diminish Tenant's liability to County hereunder for Tenant's failure to complete the Facility and any Additional Improvements in accordance with Tenant's obligations hereunder, for which all County claims are expressly and fully reserved. In the event of an assignment pursuant to this Section, Tenant shall be relieved of any payment obligations or other liability under the

relevant contracts and permits assigned to the County that occur after contract assignment. For avoidance of doubt, Tenant is not relieved of all obligations and liability up to when the contract is assumed by the County.

7.14 Standards of Construction; Minimum Required Facility Warranties. The Tenant shall design and construct the Facility and all Additional Improvements in compliance with all Applicable Laws, codes and permits; the terms and requirements of this Lease; the terms and conditions of the PIDP Grant; all installation and construction requirements, guidelines, and recommendations of all equipment and material suppliers; and County approved Design and Construction Documents and Aviation Department Design Guidelines. To the extent any of the preceding standards conflict, the strictest standard shall apply. Unless otherwise provided, Tenant shall ensure that all constructed or installed elements of the Facility and Additional Improvements are covered by a warranty no less than one-year from the later of the issuance of a final CO for the entire Facility or the Seaport Department's issuance of a written final acceptance of the completed Facility, except that Tenant shall ensure the Facility's roofing system is covered by a warranty of not less than twenty (20) year's duration, the Facility's cold storage, freezer, and refrigeration equipment, systems, and components are covered by a warranty of not less than five (5) year's duration, and the Facility's phytosanitary system, equipment, and components shall be covered by a warranty of not less than five (5) year's duration.

7.15 Compliance with Davis-Bacon Act. Tenant is required to follow the PIDP Grant requirements, which shall include among others the overall per hour rates for laborers and mechanics, which shall be the rate of wages to be paid under the requirements of the Davis-Bacon Act (40 U.S.C. 3141-3148, or 23 U.S.C. 113, as applicable) as supplemented by Department of Labor regulations (29 CFR Part 5), as determined by the U.S. Secretary of Labor; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts. A copy of the current prevailing wage determination issued by the Department of Labor for Miami-Dade County, Florida is attached as **Attachment A-8** hereto. Tenant shall include in each contract with a Project Contractor a copy of the then-current prevailing wage determination issued by the Department of Labor, and shall require each such Project Contractor to include a copy of same in all subcontracts (of all tiers).

7.16 Buy America Requirements.

(A) Under the terms of the PIDP Grant, the Project is deemed "a project for infrastructure." The Tenant acknowledges that iron, steel, manufactured products, and construction materials used in the Project or the construction of the Facility or the Additional Improvements are subject to the domestic content procurement preference in that award term and neither the PIDP Grant nor this Lease is a waiver of that preference.

(B) If the Tenant or any of its Project Contractors (of any tier) uses iron, steel, manufactured products, or construction materials in the Project, Facility, or Additional Improvements that are not produced in the United States in violation of the award term at Exhibit C of the PIDP Grant,

MARAD may disallow and deny reimbursement of costs incurred by the Tenant or any of Tenant's Project Contractors (of all tiers), or by or on behalf of the County, and MARAD may take other remedial actions under article 16 and 2 C.F.I. 200.339-200.340. For avoidance of doubt, any Facility or other construction cost(s) that is/are disallowed, disapproved, or rejected by or on behalf of MARAD, at any time, shall be deemed a Non-Eligible Cost hereunder and to the extent all or any portion of such disallowed or disapproved costs have been previously reimbursed or paid by County to Tenant then Tenant shall fully and immediately refund same to County upon written request therefore.

(C) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Tenant should, to the greatest extent practicable under this award, provide a preference or the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Tenant shall include the requirements of 2 C.F.R. 200.322 in all construction contracts and purchase orders with Project Contractors (of all tiers) and suppliers for any construction, work, or products relating to the Project, Facility, or the Additional Improvements.

7.17 Federal Business Requirements. The Tenant shall pay all Project costs for which PIDP Grant funds will be sought for reimbursement or payment in compliance with the requirements at 2 C.F.R. 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms"). Pursuant to 2 C.F.R. 200.321, the non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed (1) through (5) above.

7.18 Other Programs. Except to the extent precluded or limited by applicable federal or Florida law or applicable PIDP Grant requirements, Tenant and its Project Contractors (of all tiers) shall comply with applicable County ordinances, as well as any County issued or adopted Implementing Orders and other directives issued by the County relating to other programs, as applicable, to include:

- (A) Airport Concession Disadvantaged Business Enterprise (ACDBE) (US Department of Transportation, 49 CFR Section 23);
- (B) County Sustainable Build Program (Sections 9-71 through 9-75 and terms of County Implementing Order 8-8; and
- (C) any other program of the County made applicable to the Tenant's activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time.

7.19 Reserved.

7.20 Reserved.

7.21 Art in Public Places. Art in Public Places (“AIPP”) provisions of the Miami-Dade County Code and Administrative Orders, as managed by the Miami-Dade County Department of Cultural Affairs (“Department of Cultural Affairs”) are pursuant to Procedure 358 in the Miami-Dade County Procedures Manual (“Procedures Manual”). The Tenant shall transmit 1.5% of the costs for all development on County land (as outlined in the Procedures Manual) to the Miami-Dade Aviation Department to be deposited in the Aviation Art in Public Places Trust Account for the implementation of the AIPP program. The Tenant is required to work collaboratively with the Department of Cultural Affairs on the implementation of the AIPP program pursuant to the requirements of said program. The referenced documents can be accessed at:

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances

<http://www.miamidade.gov/ao/home.asp?Process=alphalist>

<http://intra.miamidade.gov/managementandbudget/library/procedures/358.pdf>

7.22 Construction Practice, Safety and Security.

- (A) Means and Methods: The Tenant shall perform the Project in accordance with the Agreement and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Facility and any County approved Additional Improvements. The responsibility of Tenant and its Project Contractors (of all tiers) to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but shall not be limited to, the obligation of the Tenant to provide at its cost the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Project Site; construction trade management; temporary parking; vehicle traffic; safety and first aid facility and equipment; correction or replacement of or compensation for defective work or equipment; Project Contractors’ and Subcontractors’ insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Site; temporary power, water, and all other needed temporary utilities; potable water; sanitary services; non-temporary utilities and related infrastructure; Project Contractor, Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.
- (B) Safety and Security: The Tenant shall maintain safety and security at the Project Site at all times in accordance with all local, state and federal workplace regulations. Without limiting the foregoing, the Tenant shall:

- (1) Take all necessary precautions for the safety and security of the Facility and any Additional Improvements and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course, for (a) workers at the Project Site and all other persons who may be involved with deliveries or inspections; (b) visitors to the Project Site; (c) passersby and adjacent properties; (d) materials and equipment under the care, custody or control of the Tenant, Project Contractors or Subcontractors on the Project Site; (e) other property constituting part of the Premises or the Project under construction; and (f) County property;
- (2) Establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
- (3) Implement a comprehensive safety program;
- (4) Give all notices and comply with all applicable law relating to the safety of persons or property or their protection from damage, injury or loss;
- (5) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements; and
- (6) Provide for safe and orderly vehicular movements.

(C) Health and Safety Plan: The Tenant shall develop and implement a written site-specific health and safety plan (the "Health and Safety Plan") that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections which shall:

- (1) Designate an appropriately certified safety professional with appropriate construction safety experience who is to develop and sign the Health and Safety Plan including all safety rules at the Project Site;
- (2) Designate a qualified safety professional stationed full-time at the Project Site during on-site construction activities whose primary/only duty shall be the implementation of safety rules at the Project Site, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with the County and all governmental bodies having jurisdiction; and
- (3) Require the Project Contractors and all Subcontractors to work and implement the Health and Safety Plan.

7.23 LEED Certification; County Sustainable Building Program. The Tenant shall obtain LEED Silver Certification of the Project. LEED Silver Certification means formal certification of the Project as meeting the requirements for the Leadership in Energy and Environmental Design Green Building Rating System for New Construction, developed and maintained by the U.S. Green Building Council ("LEED") "silver" rating for new construction under the LEED-NC Rating System.

The Tenant and its Project Contractors shall also comply with all requirements of the County's Sustainable Buildings Program, as set forth in Sections 9-71 through 9-75 of the County Miami-

Dade Code and in County Implementing Order 8-8.

7.24 Traffic Flow around the Premises. County and Tenant recognize that the design, construction, and operation of Facility will affect traffic flow to, from, and around the Premise, Airport and general area. As and when required by the Project Master Schedule, or as otherwise required herein, Tenant shall produce a Traffic Impact Analysis through the contracting of a professional traffic engineer consulting firm. Tenant's traffic engineer shall work with County, Florida Department of Transportation, and other Tenant's contractors to consider roadways, including rates of flow, speeds, density of the road, and time to enter and exit Facility, and ancillary structures. Tenant agrees to incorporate in the design of the Project those features and comments, which County deems in its best interest in County's reasonable discretion as part of the Final Master Plan. County may in its sole discretion and at its sole cost and expense, retain the services of an engineer experienced in traffic flow to assist County in the evaluation of Tenant's analysis. However, if the County as a preference requests additional items to accommodate traffic flow to, from, and around the Premise, Airport and general area not identified as necessary by the Traffic Impact Analysis or not required by Applicable Law, Tenant shall be entitled to reasonable compensation for any associated costs.

7.25 Consideration of Sea Level Rise. The Tenant shall at all times comply, and shall ensure each of its Project Contractors (of all tiers) complies, with Board Resolution No. R-451-14, which requires the consideration of sea level rise projections and potential impacts as best estimated at the time of the Project using the regionally consistent unified sea level rise projections, during all Project phases, including, but not limited to, Facility planning, design, and construction, in order to ensure that infrastructure projects, including the Facility, will function properly for fifty (50) years or the design life of the Facility, whichever is greater.

7.26 Storm Water Retention During Construction and After. Tenant's construction activities shall not cause any watershed to or flooding of any area outside of the Premises, nor impact the storm water disposal or systems of or relating to any areas outside of the Premises, and, if necessary, Tenant agrees to implement, at Tenant's cost, necessary remediation measures regarding watershed, flooding, and dewatering activities at or on the Premises so as to avoid and prevent watershed to and flooding of any areas outside the Premises during the Term.

ARTICLE 8

Maintenance and Repair by Tenant

8.01 Cleaning. The Tenant shall, at its sole cost and expense, perform or cause to be performed, services which will, at all times, keep the Premises, the Facility, and any Additional Improvements clean, neat, orderly, sanitary and presentable.

8.02 Removal of Trash. The Tenant shall, at its sole cost and expense, remove from the

Premises, Facility, and Additional Improvements all trash and refuse which might accumulate and arise from its use of the Premises and the business operations of the Tenant under this Agreement. Such trash and refuse shall be disposed of in a manner approved by the County.

8.03 Maintenance and Repairs; Replacements.

- (A) For the buildings, structures, HVAC, phytosanitary, and other equipment, plumbing, electrical, and emergency generator systems, roofing systems, parking and staging areas, and other facilities and improvements to be constructed by or on behalf of Tenant on the Premises, Tenant shall be exclusively responsible for all security, maintenance, preventive maintenance, and repair of same, as well as for all unpaved and landscaped areas whether or not certificates of occupancy or temporary certificates of occupancy have been issued. Maintenance and repairs by Tenant shall be in quality and class equal to or better than the original completed Facility to preserve the Premises and Additional Improvements in good operating condition. The Tenant shall repair all damage caused by the Tenant and its employees, agents, independent contractors (of all tiers), patrons, servants, trespassers, guests, or invitees.
- (B) The Tenant shall, at the Tenant's sole cost, risk, and expense, keep and maintain the Facility, Premises, and Additional Improvements, including appurtenances, furniture, fixtures, and equipment, ADA accessibility features and elements, and every part thereof, in good working order and operating condition, ordinary wear and tear excepted, and make all necessary repairs and replacements thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. In the event the Tenant fails to perform any of its obligations as required by this Article, after expiration of a reasonable cure period determined by the County and after notifying the Tenant, the County may (but shall not be required to) perform and satisfy same, and the Tenant hereby agrees to reimburse the County for the reasonable cost thereof promptly upon demand. It shall be the Tenant's sole responsibility to maintain the facility consistent with the maintenance standards for a world class phytosanitary and cold chain processing facility or similar future designation as may be determined in the industry.
- (C) In no event shall County be responsible or liable for any security, maintenance, replacements, or repair of the Premises, the Facility, or any Additional Improvements, fixtures, equipment, structure, facility, alteration, or addition thereto on the Premises.
- (D) Any injury or damage caused by the installation or removal of personal property of the Tenant shall be repaired so as to restore the Premises, Facility, and Additional Improvements to their original state, except as such improvements may have been altered by the Tenant with the approval of the County pursuant to Article 11.01 (Alterations), and to quit and surrender up the Premises in the same good order and condition as it was at the Effective Date and upon completion of construction of any Improvement, except for reasonable wear and tear and damage caused by an Act of God; provided however, that such return of the Premises, Facility, and Additional Improvements in the condition required under this Article 8.03 (Maintenance and Repair by Tenant) shall not relieve the Tenant of its obligations for damages to the Premises or any improvements thereon that may be specifically provided elsewhere in this Agreement.

8.04 Excavation of Land. No excavation of any of the land shall be made, no soil or earth shall be removed from the Premises, and no well of any nature shall be dug, constructed or drilled on the Premises, except as may be required for environmental monitoring purposes, without the prior written approval by the County. The Tenant shall obtain permission for excavation required for construction pursuant to Article 7 (Facility Improvements to Premises).

8.05 Water and Sewerage System. The Tenant shall augment and upgrade, at its sole cost and expense, the components of the existing water, sanitary sewerage and storm drainage facilities within the boundaries of the Premises to accommodate the water, sewer, and drainage needs of the Premises, the Facility, and the Additional Improvements, and shall, throughout the Term, pay all applicable connection charges, impact fees, and other utility fees and charges in connection therewith. Notwithstanding the foregoing, the Tenant shall not make any upgrades, alterations or modifications to these facilities without the advance written approval of the County. During the Development Term, the Operating Term, and, if applicable, the Extension Term, Tenant shall, at its sole cost, operate, maintain, repair, replace (when needed), and secure all components of the current and future water, sanitary sewerage, and storm drainage facilities within the boundaries of the Premises and shall pay for all water, sewer, drainage, and other utility services provided to the Facility or Premises and pay all utility fees and charges applicable to the Facility, Additional Improvements, and/or Premises or which arise from the operation of or on same.

8.06 Industrial Waste Facilities. The Tenant shall be fully responsible for all industrial wastes exiting or resulting from Tenant's operations on the Premises and in response thereto shall provide, operate and maintain adequate facilities on the Premises for separating, neutralizing and treating industrial wastes and foreign materials and the proper disposal thereof, in accordance with applicable laws, rules and regulations.

8.07 Grassed Areas and Shrubbery. The Tenant shall mow the grassed areas and trim the shrubbery on the leasehold regularly to maintain the Premises in a neat, orderly and attractive condition. Any land areas not grassed or paved shall be stabilized by the Tenant and the Premises shall be so utilized that use of the same will not cause dust, debris or waste to be blown about or raised so as to be ingested by aircraft or otherwise interfere with or disturb the use or enjoyment of others of their Premises. All landscaping maintenance required hereunder shall be performed in accordance with landscape maintenance standards, as published from time to time by the County.

8.08 Facility Maintenance Plan; Required Documentation of Tenant Maintenance, Repairs, Replacements (as needed), and Preventive Maintenance

(A) Tenant Preparation, Submission, and Fulfillment of Facility Maintenance Plan. Tenant shall prepare a written Facility maintenance plan and submit same to the County for its review and approval no later than sixty (60) days before the earlier of the anticipated (per the Project Master Schedule) or actual TCO issuance date. The Facility maintenance shall detail all scheduled

inspections, testing, maintenance, and preventive maintenance needed to keep the Facility and all components thereof in proper working order and operating condition consistent with best industry practices and manufacturer recommendations. The Facility maintenance plan shall include proposed maintenance and preventive maintenance schedules for all Facility building systems, including, without limitation; all phytosanitary equipment, systems, and associated infrastructure; all HVAC and cold storage and cold chain processing equipment, systems, and associated infrastructure; all Facility plumbing, electrical, and storm water drainage system equipment, systems, and associated infrastructure; Facility structures; vertical transportation equipment (if applicable); ADA accessibility features and elements system; building management and security systems, monitors, lighting, and alarms; Facility fire suppression system and associated sensors, alarms, pumps, valves, controls, switches and communication systems and components thereof; roofing system, drainage systems, gutters, pipes, and associated components of each; overhead doors, loading docks, and insulation; parking areas, roadways, exterior lighting, and refrigerated container plugs and connections; emergency generators, switchgear, and associated fuel tank(s) and associated equipment. The County shall have thirty (30) days in which to either in writing approve or disapprove Tenant's proposed Facility maintenance plan. If disapproved, the County shall provide Tenant with written comments detailing the proposed plan's deficiencies. Tenant shall have ten (10) days from receipt of County's comments in which to resubmit a revised Facility maintenance plan, incorporating the County's comments, for the County's reconsideration and approval. The County shall have seven (7) days from receipt of same to either in writing approve the resubmitted plan or provide further written comments to Tenant. Tenant shall have five days from receipt of County's additional comments in which to submit a further revised Facility maintenance plan, incorporating the County's prior comments. The County shall then have five (5) days in which to approve, deny, or approve as noted Tenant's resubmission. If denied, the parties shall continue to work in good faith to resolve and finalize the plan. If approved or approved as noted by County, the approved, or approved as noted maintenance plan, as the case may be, shall be deemed the "**Facility Maintenance Plan**".

(B) Tenant Provision of Quarterly and Annual Inspection Reports and Maintenance Certifications.

1. Throughout the Operating Term, Tenant shall, on a quarterly basis and at Tenant's sole cost, provide the County with a written inspection report and proper maintenance certification, in a form acceptable to the County, certifying that the Facility and the components thereof have been properly maintained in conformance with Applicable Laws, the Facility Maintenance Plan, and other requirements of this Lease. Such certification shall be accompanied by photographs and/or other documentation, as the County may require, evidencing that the Facility and its associated elements, equipment, and systems are being properly maintained and repaired, including, without limitation, the provision of proper and timely preventive maintenance, that the Facility and its component elements, systems, and equipment are in proper working order and operating condition, and where elements of the Facility are inoperative or in need of maintenance, repair, or replacement, the certification shall identify and detail the steps and action Tenant is undertaking to promptly maintain, repair, or replace all deficiencies.

2. Throughout the Operating Term, Tenant shall, on an annual basis and at Tenant's sole cost, provide the County with a written inspection report and proper maintenance certification, in a form acceptable to the County, certifying that the Facility and the components thereof have been properly maintained in conformance with Applicable Laws, the Facility Maintenance Plan, and

other requirements of this Lease. Such certification shall be accompanied by photographs and/or other documentation, as the County may require, evidencing that the Facility and its associated elements, equipment, and systems are being properly maintained and repaired, including, without limitation, the provision of proper and timely preventive maintenance, that the Facility and its component elements, systems, and equipment are in proper working order and operating condition, and where elements of the Facility are inoperative or in need of maintenance, repair, or replacement, the certification shall identify and detail the steps and action Tenant is undertaking to promptly maintain, repair, or replace all deficiencies.

(C) **Tenant Maintenance of Warranties and Timely Submission of Warranty Claims.** Tenant and its contractors (of all tiers) shall take all steps to maintain warranties that may exist with respect to any component, system, or equipment associated with the Facility and, where appropriate or available, to timely submit and prosecute available warranty claims and remedies. Whenever Tenant or any manager or contractor acting on the Tenant's behalf files any warranty claim in connection with the facility, Tenant shall disclose same, including providing a summary of the underlying facts giving rise to the claim and providing a copy of said claim(s), to the County in the immediately following Tenant quarterly report and maintenance certification to the County.

8.09 Inspections. The County and/or its designated representatives shall have the right, during normal working hours, to inspect the Premises to identify those items of maintenance, repair, replacement, modification and refurbishment required of the Tenant to keep the Premises in good order and condition. The Tenant shall perform all corrective work required of it, identified in such inspection(s) within thirty (30) calendar days of receipt of written notice from the Department; provided, however that if such corrective work cannot be reasonably accomplished within a thirty (30) calendar day period then the Tenant shall commence the corrective work within that thirty (30) days' notice and diligently prosecute the same completion. Trash and debris problems shall be corrected within 24 hours following receipt of either oral or written notice from the County. Failure of the County to inspect as aforementioned shall not impose any liability on the County.

8.10 Failure to Maintain. If it is determined by the County that the Tenant has failed to properly clean, remove trash and debris, maintain, repair, replace and refurbish the Premises, Facility, and Additional Improvements as required by this Article 8 (Maintenance and Repair by Tenant) or in conformance with industry standards, the Department shall provide to the Tenant a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Tenant to correct same. If the Tenant fails to correct such deficiencies within the time allowed, the County may enter upon the Premises and perform all work (through itself or its retained contractors), which, in the judgment of the County, may be necessary and the County shall add the cost of such work, plus 25% for administrative costs, to the rent due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the County notice of intent to perform repairs or cleanup from the County, the Tenant shall not undertake performance of such repairs or cleanup without specific prior written authorization from the County.

8.11 Recertification. As may be required by the County, recertification repairs shall be

performed by the Tenant when the existing premises reach 30 years old and every 10 years subsequently. Tenant shall be responsible for all of the 30-year recertification repair costs inasmuch as maintenance responsibility for the Premises, the Facility and all Additional Improvements is transferred to the Tenant at the Effective Date and retained by Tenant throughout the Development Term and Operating Term.

ARTICLE 9

Maintenance by County

9.01 County Maintenance. The County shall operate and maintain in good condition all components of the existing water, sanitary sewerage and storm water drainage facilities that lie on MIA property outside the boundaries of the Premises.

9.02 County Maintenance Subject to Certain Conditions. Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain, fuel, power or parts, accidents, breakdowns, catastrophes, national or local emergencies, Acts of God, and other conditions beyond the control of the County. Upon any such happening, the Tenant shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the Department, in its sole discretion, may provide a rent abatement for that portion of the Premises rendered unusable for the period of time that the County is unable to make the repairs required by Article 9.01 (County Maintenance).

ARTICLE 10

Regulations, Licenses and Permits

10.01 Rules and Regulations - General.

(A) **Rules and Regulations:**

- (1) The Tenant shall comply with all Applicable Laws. Including, without limitation, all Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued there under, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws.
- (2) During the construction period of the work to be performed by Tenant hereunder, and at any time Tenant performs any work on the Premises, Tenant shall comply

with all design and construction requirements of MDAD, including, but not limited to, MDAD's Tenant Airport Construction (Reimbursable or Non-Reimbursable) requirements ("TAC"), as they may be amended from time to time. All design and construction work must be approved in advance by MDAD, to the extent set forth in such TAC requirements. The MDAD Procedures for TAC can be found at <http://www.miami-airport.com/resources.asp>.

- (3) County Inspection: The Tenant agrees to permit the entry, at all reasonable times upon prior reasonable notice, of inspectors of the Department, the County's Department of Regulatory Economic Resources ("RER"), as such Departments' names may be changed from time to time, or any Federal, State, or County agency having jurisdiction over any law or requirement referenced in Article 10.1-A (Rules and Regulations - General), to make inspections of the Premises and Improvements to determine the Tenant's compliance therewith.

(B) Permits and Licenses:

- (1) The Tenant, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the Term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Tenant or the Tenant's operations and activities, for any activity of the Tenant conducted on the Premises and for any and all operations conducted by the Tenant, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Tenant's operations and activities on the Premises have been obtained and are being fully complied with.
- (2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required Industrial Waste or Operating Permits from Department of Regulatory and Economic Resources. Prior to DBO, the Tenant shall provide to the Department evidence that it has obtained the Certificate of Use and Occupancy and, as applicable, the appropriate operating Waste Permit(s). Upon written request of the Department, the Tenant shall provide to the Department copies of any permits and licenses, and applications therefor, which the Department may request.

- (C) Penalties, Assessments and Fines: Without prejudice to its right to seek reimbursement from the County for certain environmental remediations costs incurred in satisfaction of the DERM Site Remediation Requirements under Section 3.10 hereof, Tenant agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Tenant, its agents, employees, invitees, contractors, subcontractors (of any tier), subtenants, or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 10-01 (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Tenant further agrees that the substance of this Article 10-01 (Rules and

Regulations - General) above shall be included in every sublease, contract and other agreement, which the Tenant may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of "his and related provisions" and shall require all such third parties to indemnify and hold the County harmless to the same extent as Tenant is required to indemnify the County under this Agreement. This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

- (D) If Tenant or its sub-Tenant enters into contracts with its concessionaires, then Tenant shall require such concessionaires to comply with the applicable provisions of County's labor peace agreements policy as currently provided in Resolution No. R-148-07.
- (E) County, at its sole cost and expense (but at Tenant's reasonable expense if Tenant is required to pay MDAD more than ten percent of the amount claimed by Tenant to be payable, as a result of an audit), shall have the right but not the obligation to perform the audits under this Agreement pursuant to Article 24.23 (Insp General Reviews).
- (F) To the extent Chapter 25 of the Code of Miami-Dade County requires authorizations from County for Tenant to engage in certain activities, this Agreement shall constitute authorization from County for Tenant to engage in all customary and standard commercial and retail activities on the Premises that are a reasonable and normal incident of the Premises that are authorized by this Agreement to be constructed by Tenant and thereafter operated by Tenant or its sub-Tenants, subject to Tenant's and the sub-Tenant's compliance with applicable federal, state, and local laws.

10.02. Nuisances Disallowed. Tenant shall not make any use of the Premises, nor shall it allow any of its sub-tenants or invitees to make use of the Premises, in a manner that creates or reasonably will lead to a nuisance as defined by Florida law. Upon notification by County that a nuisance is then being allowed on the Premises, and the nuisance poses an immediate danger to aircraft, passengers, or users of the Airport, Tenant shall promptly, and at its sole cost, take steps necessary to abate such nuisance to the reasonable satisfaction of the County. County shall retain all of its contract rights to abate a nuisance under the terms of this Agreement, as well as its regulatory rights to abate the nuisance in accordance with then-current law.

ARTICLE 11

Alteration of Premises and Erection of Signs

11.01 Alterations. The Tenant shall not alter the Premises in any manner whatsoever without the prior written approval of MDAD. In the event the Tenant is given approval to make any alterations to the Premises, the Tenant shall fully comply with the terms and conditions of the approval document, the applicable Tenant Airport Construction (TAC) requirements, as may be amended from time to time, of MDAD's TAC Program in effect, the provisions of section 255.05, Florida Statutes, and Article 10 (Regulations, Licenses and Permits). Such programs may include,

but shall not be limited to: (i) the County's Community Business Enterprise (CBE) Program applicable to architects and engineers under Section 2-10.4.01 of Miami-Dade County's Code; (ii) the Small Business Enterprise Construction Services Program for construction activities under Section 10-33.02; (iii) the Living Wage Ordinance under Section 2-8.9; the Art in Public Places (AIPP) Program under Section 2-11.15; (iv) the Responsible Wages Ordinance under Section 2-11.16; (v) Residents First Training and Employment Program under Section 2-11.7; (vi) Employ Miami-Dade under Administrative Order (AO) 3-6; and any other program of the County applicable to the Tenant's alteration activities hereunder, as such programs, ordinances, or code provisions may be amended from time to time.

The Tenant shall comply with such applicable provisions as well as any Administrative and/or Implementing Orders and other directives issued by the County relating to such Programs. The Tenant's failure to do so shall constitute a default pursuant to Article 16.04 (Other Defaults) hereof.

11.02 Signage. Excepting branded signage indicating the facility name and brand, the Tenant shall not erect, maintain or display any identifying signs or any advertising matter, of any type or kind, which is visible to the public, without obtaining the prior written approval of the MDAD and Seaport Department Directors.

ARTICLE 12

Environmental Compliance

12.01 Tenant's Acceptance of the Risks and Condition of Premises As-Is. Tenant agrees that the Premises shall be leased and delivered to Tenant in its current "as-is/with all faults" condition (but it is not intended by this provision that County be relieved from its duties expressly set forth in this Agreement). Tenant hereby, warrants, covenants, agrees, and acknowledges that:

- (A) Hazardous Materials may be present on the Premises and Other County Property. The County is currently engaged in a significant environmental remediation program at MIA.
- (B) Prior to the Lease Date, the County has provided Tenant with copies of environmental assessment reports of the Premises (the "ESAs Original") and either (i) a 2023 updated Phase 2 environmental site assessment of the Premises (the "ESA Update") if available or (ii) the written results of an implemented DERM approved soil sampling plan for the Premises that is may include new and/or updated analyses or test results of soil and groundwater samples from the Premises (the "SSP Results"). Tenant acknowledges it has reviewed and understands the contents of both the ESAs Original and either the ESA Update of SSP Results (as applicable), and their respective attachments and exhibits, and enters into this Lease with full and prior knowledge of both the ESAs Original and the ESA Update and/or SSP Results.
- (C) Because of the possible presence of environmental contaminants on the Premises or other County property, County has made no express, implied, or other representations of any kind with respect to the suitability or usability of the Premises or other County Property, or any improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due

to the presence of Hazardous Materials in, on, under, or about the Premises or other County property), for Tenant's proposed or intended use, and Tenant has relied solely on Tenant's own inspection and examination of such matters.

- (D) Tenant expressly assumes the risk that Hazardous Materials that are or may be present on the Premises on the Effective Date may affect the suitability or usability of the Premises for Tenant's proposed or intended use. Tenant further expressly assumes the risk that Hazardous Materials that are or may be on the Premises may pose to the obligations, financial condition, health and well-being of Tenant, its employees, consultants, contractors, subtenants or users as a result thereof. Tenant agrees that, other than with respect to the County's limited reimbursement obligations relating to certain Completed Required Remediation costs to be incurred by Tenant as set forth in subsection 3.10 hereof, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises, including but not limited to, any liability to Tenant or its employees, agents, consultants, invitees, contractors (of any tier), subtenants or users as a result thereof. Tenant understands and agrees that in no event shall County be liable to Tenant for damages relating to physical or personal injury, business interruptions, relocation costs or any other cost (other than a cost for which County is liable under this Article) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement. Tenant shall bear all financial obligations related to the cost of managing, monitoring, treating, removing and/or disposal of contaminated water, soil or media required to develop the Project Site. This requirement supersedes any County obligation stated in this Article regarding environmental conditions at the Project Site.
- (E) Tenant shall have a period of not less than ninety (90) days from the Effective Date to conduct its own environmental investigations and assessments of the Premises. Within such ninety (90) day period, Tenant shall compare the results of its investigations and assessment with the environmental disclosures provided by the County, as detailed in Attachment A-1, and advise the County of the results. Such advisement to the County shall be via written notice to the County within the review period, detailing any discrepancies, a remediation plan, a revised Project Schedule, cost to remediate the issues caused by the discrepancies, to include the supporting documents as further detailed in Section 3.10. Remediations related to any discrepancies, or related to conditions caused by Tenant's use or control of the Premises will be at Tenant's sole cost and expense.

The County shall either approve such cost to remediate the issues and approve any requested change to the Project Schedule or may further negotiate the cost and Project Schedule with the Tenant or may terminate the contract. If the County approves the cost to remediate the issues, then the County shall reimburse the Tenant for costs to complete the approved work to remediate the issues up to the approved additional remediation cost.

If the County terminates the contract due to the additional remediation per this Article, the County will refund the Security Deposit and return of the letter of credit, without any further responsibilities or liabilities for either Party pursuant to any other section of this Agreement.

12.02 Disclosure of Hazardous Materials. To the extent they exist, the County has made available to Tenant a listing of contamination assessment reports, the SSP Results, and remedial action plans regarding any soil and groundwater contamination at the Premises. Such list is found

in **Attachment A-1**. The County may have already installed remediation systems to clean up the contamination described in such reports to the extent they exist. Tenant agrees that during the Term, County's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace any such installed systems. Without limiting the generality of the foregoing, the County shall have the right (but not any obligation) to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the Aviation Department or other governmental authorities may require or recommend, utilizing such methods as the Aviation Department or the applicable governmental authorities may elect in order to remediate the contamination described in any such reports; provided, however, the County has no obligation to take any such actions.

12.03 Baseline Audit. The County has provided Tenant with a copy of the environmental audit reports of the Premises (ESAs Original), conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit may include analyses of soil and groundwater samples (the initial "Baseline Audit" or "ESA Original"). Tenant shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit, without prejudice to Tenant's conditional Completed Required Remediation cost reimbursement rights set forth in Article 3.10 hereof.

12.04 Baseline Audit Update (ESA Update). On or prior to the Effective Date, the County has provided Tenant with, in addition to the ESAs Original, either (i) a copy of an ESA Update of the Premises, conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit may include new and/or updated analyses of soil and groundwater samples (if available) or, alternatively, at the County's election (ii) a copy of the SSP Results. To the extent available as of the Effective Date, the County has also provided Tenant with a copy of the DERM Site Remediation Requirements (if available, to be attached hereto. Tenant shall be responsible for timely fulfilling all remediation obligations set forth in subsection 3.10 hereof.

12.05 Environmental Maintenance of Premises. Except for the limited Completed Required Remediation reimbursement obligations of the County set forth in subsection 3.10 hereof, Tenant shall, at its sole cost and expense, keep, maintain and use the Premises, the Facility, and Additional Improvements, and operate within the Premises, at all times, in compliance with all applicable Environmental Laws, and shall maintain the Premises, Facility, and Additional Improvements in good and sanitary order, condition, and repair.

12.06 Tenant's Use of Hazardous Materials. Attachment A-2 includes a complete list of all Hazardous Materials which Tenant currently intends to use on the Premises during the Term which have been approved by the County, and the use, storage and transportation of which on or about the Premises shall not be subject to County's approval or objections. Except for those Hazardous Materials listed in Attachment A-2, Tenant shall not use, store, generate, treat,

transport, or dispose of any Hazardous Material on the Premises or Other County Property without first providing the County thirty (30) calendar days written notice prior to bringing such Hazardous Material upon the premises. To the extent certain Hazardous Materials are needed to be used by Tenant on a non-routine basis, such as for emergency repairs, Tenant may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the premises. Notwithstanding the foregoing, County may object to the use of any previously approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Tenant presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises or Other County Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon County's objection, Tenant shall immediately remove the Hazardous Material from the Project Site. This section 12.06 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by Tenant but which are otherwise transported by Tenant solely in the course of Tenant's business, such as cargo operations, and for which Tenant has no knowledge as to the identity of such hazardous materials prior to such transport. County's objection or failure to object to the use, storage, generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Tenant's obligations under this Agreement, including Tenant's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County and hold the County harmless from and against any harm or damage caused thereby. Tenant shall promptly and completely answer periodic questionnaires from the County concerning Tenant's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

12.07 Entry by County.

- (A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in Article 12.07(B), the County shall have the right, at its own expense and upon reasonable notice, to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of:
- (1) determining whether the Premises are in conformity with applicable Environmental Law;
 - (2) conducting an environmental review or investigation of the Premises;
 - (3) determining whether Tenant has complied with the applicable Environmental Requirements of this Agreement;
 - (4) determining the corrective measures, if any, required of Tenant to ensure the safe use, storage, and disposal of Hazardous Materials; or
 - (5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Tenant in compliance with applicable Environmental Requirements and the terms of this Agreement).

Tenant agrees to provide access and reasonable assistance for such inspections. The County shall use its best efforts to reasonably minimize interruptions of business operations on the Premises.

- (B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Tenant shall have the right to collect split samples of any samples collected by MDAD, MDAD shall not be limited in the number of such inspections during the Term of this Agreement. MDAD will conduct such inspections during Tenant's normal business hours, but MDAD may conduct such inspections in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Tenant with reasonable notice (not less than twenty four (24) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Tenant shall, in a timely manner, at its sole expense, remove such Hazardous Materials in a manner not inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the Premises, nor liability of MDAD for Tenant's use, storage, or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Tenant in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Tenant shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this Article 12.07 (Entry by County).

12.08 Permits and Licenses. The Tenant warrants that it will secure at the times required by issuing authorities all applicable permits or approvals that are required by any governmental authority having lawful jurisdiction to enable Tenant to conduct its obligations under this Agreement. Upon written request, Tenant shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to Tenant under applicable Environmental Requirements, as they pertain to the Tenant's operations on or use of the Premises or Other Airport Property.

12.09 Required Notice of Discharge to County.

- (A) In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or cleanup of any Hazardous Material on the Premises or Other Airport Property in connection with Tenant's operation thereon; or (ii) any written Environmental Claim affecting Tenant from any person or entity resulting from Tenant's use of the Premises, the Facility, Additional Improvements, or Other Airport Property, then Tenant shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) Business Days of said notice. If County is reasonably satisfied that Tenant is not

promptly commencing the response to either of such events, County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises, which if true, could result in an order, suit or other action against the County. If Tenant is unable to promptly resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Agreement and shall be payable by Tenant upon demand.

- (B) With regard to any reporting obligation arising out of Tenant's operations or during the Agreement, Tenant shall timely notify the State of Florida Department of Environmental Protection, all Miami-Dade County pertinent regulatory agencies, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.

Within sixty (60) calendar days of the Effective Date, Tenant shall submit to County an emergency action plan/contingency plan setting forth in detail Tenant's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Tenant's emergency response coordinator and Tenant's emergency response contractor.

12.10 Reports to County. For any year during the Development Term or Operating Term in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises, (or on or in other Airport property for purposes related to Tenant's operations on the Premises), Tenant shall provide County with a written report listing: the Hazardous Materials which were present on the Premises or other Airport property; all releases of Hazardous Material that occurred or were discovered on the Premises or other Airport property and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such Hazardous Materials, including all, consent agreements or other non-privileged documents relating to such enforcement actions during that time period. In addition, Tenant shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on the Premises. Tenant shall provide the report required under this Article 12.10 to the County by April 1 of each year for the preceding calendar year.

12.11 Periodic Environmental Audits. Tenant shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit") by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned.

Alternatively, if the Aviation Department approves, which approval shall not be unreasonably withheld, delayed, or conditioned, such Environmental Audit may be conducted by Tenant's personnel but in either case Tenant shall provide County with a copy or summary of its report of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits", or other recognized format approved by County. If the Environmental Audit indicates any unresolved violation of any applicable Environmental Law and/or Environmental Requirements, Tenant shall, at the request of County, provide a detailed review of the status of any such violation within thirty (30) calendar days of the County's request.

12.12 Remediation of Hazardous Material Releases. If Tenant or Tenant's agents, employees, subtenants, customers, contractors (of any tier), invitees or trespassers cause any Hazardous Materials to be released, discharged, or otherwise located on or about the Premises or Other Airport Property during the Term of this Agreement ("Hazardous Material Release"), Tenant shall promptly take all actions, at its sole expense and without abatement of rent, as are reasonable and necessary to return the affected portion of the Premises, Facility, Additional Improvements, and Other Airport Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release in a manner not inconsistent with applicable Environmental Law. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Tenant proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. The County's approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County's prior consent shall not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Tenant's best efforts, it is not practicable to obtain County's consent before taking remedial action to abate such immediate threat, provided that: (a) Tenant shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Tenant shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Tenant, Tenant's consultants and Tenant's contractors in any meetings with representatives of the governmental authorities and Tenant shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Tenant shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County.

12.13 Indemnity. Tenant shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all losses, costs, damages, expenses (including reasonable attorneys' fees at all levels including appellate), claims, causes of action, judgments, penalties, fines, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about

the Premises or Other Airport Property and caused by Tenant, Tenant's agents, employees, contractors, invitees or trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises, Facility, Additional s, or Other Airport Property; (d) damages for the loss or restriction on use of the Premises, Facility, Additional Improvements or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fees or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided, however, claims for which Tenant may be liable pursuant to this Article 12.13 shall not be settled without Tenant's consent. Any costs or expenses incurred by County for which Tenant is responsible under this paragraph or for which Tenant has indemnified County: (i) shall be paid to County on demand, during the Term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Tenant to County on demand. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Tenant's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this Article 12.13 (Indemnity) does not apply to the environmental conditions or Hazardous Materials on the Premises or to a discharge, disposal or release to the Premises) caused solely by the County, its officers, employees, contractors or agents. For avoidance of doubt, Tenant is not, and shall not be deemed to be, a County officer, employee, contractor or agent.

- (A) This indemnity specifically includes the direct obligation of Tenant to perform, at its sole cost and expense, any remedial or other activities required or ordered by court or agency having competent jurisdiction over the subject matter, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of Hazardous Materials.
- (B) In addition, because costs of Hazardous Materials discharges are passed on to airlines through the residual rate charging mechanism at Miami International Airport and the charges to Tenant will be increased to offset such costs, Tenant agrees in order to minimize its obligations in this regard to use best efforts to assist the Aviation Department in responding to Hazardous Materials spills in or Airport property reasonably close to the Premises used by Tenant by making Tenant's remediation equipment and personnel available for such emergency remediation activity. However, Tenant may provide such assistance only at the direct request of the Aviation Department and only if Tenant's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Tenant's personnel have been trained to respond to the Hazardous Material spill at issue. If Tenant is directed to perform any remedial work under this Article 12.13(B) for which it is later determined that Tenant is not responsible, the Aviation Department shall reimburse Tenant for all costs associated with or arising out of Tenant's performance of

such remedial work. Tenant shall cooperate with the Aviation Department in any subsequent effort by the Aviation Department to recover from the responsible parties all costs involved with the remediation effort that utilized Tenant's equipment and personnel. Tenant shall perform all such work in its own name in accordance with applicable laws. Tenant acknowledges that the County's regulatory power in this regard is independent of the County's contractual undertakings herein, and nothing herein shall affect the County's right in its regulatory capacity to impose its environmental rules, regulations, and authorities upon the Tenant in accordance with the law.

- (C) In the event Tenant fails to perform its obligations in Article 12.13(A), and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in Article 12.13(A), and thereafter seek reimbursement for the costs thereof. In accordance with this Article 12 (Environmental Compliance), Tenant shall permit County or its designated representative access to the Premises areas to perform such remedial activities.
- (D) Whenever County has incurred costs described in this Article 12 as a result of the failure of Tenant to perform its obligations hereunder, Tenant shall, within thirty (30) calendar days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 1½% per month on the outstanding balance commencing on the thirty-first day following Tenant's receipt of such notice until the date of payment.
- (E) To the extent of Tenant's responsibility under this Article and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this Article 12, Tenant shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on or within the Premises, the Facility, or the Additional Improvements. Tenant's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Tenant shall assume, pursuant to the indemnity provision set forth in this Article 12 (Environmental Compliance), any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

12.14 Attempted Dispute Resolution; Mediation. County and Tenant agree that any dispute between them relating to this Article 12 (Environmental Compliance) will first be submitted, by written notice, to a designated representative of both County and Tenant who will meet at County's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. In the event the representatives are unable to resolve any dispute within ten (10) calendar days after submission to them, either party may refer the dispute to mediation, or institute any other available legal and/or equitable proceeding in order to resolve the dispute.

12.15 Tenant Waiver and Release. Tenant, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County lawfully, and the successors and assigns of any of the preceding, of and from any and all claims,

actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant or any of its heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Premises, including, without limitation, any Hazardous Material in, at, on, under or related to the Premises, or any violation or potential violation of any Environmental Law applicable thereto; provided, however, this Article 12.15 (Waiver and Release) shall not constitute a waiver or release of any obligation of County under Article 12 (Environmental Compliance) or under subsection 3.10 hereof. Tenant acknowledges that County would not enter into this Agreement without Tenant's agreement to the waiver and release provided herein.

12.16 Surrender of Premises. Tenant shall surrender the Premises, the Facility, and any Additional Improvements to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Tenant or its agents, employees, contractors (of all tiers), subtenants, invitees or Trespassers, or otherwise discharged on the Premises or Other Airport Property for which Tenant is responsible during the Term of this Agreement. The Premises, the Facility, and Additional Improvements shall be surrendered to County in a condition that complies with all applicable Environmental Requirements, and such other reasonable environmental requirements as may be imposed by County. Tenant shall not be responsible under this Article 12.16 to the extent of County's obligations under this Article 12 (Environmental Compliance).

12.17 Breach. Any breach by Tenant of any provision of this Article 12 (Environmental Compliance) shall, after notice and a reasonable opportunity for Tenant to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law. For this type of breach, reasonable time shall be no less than any other applicable cure period provided in this Agreement, unless County determines there is eminent danger/detriment to the airport operations or a life, health or safety issue exists and, in such cases, the County can take immediate action.

12.18 Survivability of Terms. The terms and conditions of this Article 12 (Environmental Compliance), including the indemnity, waiver, and release, as well as the terms and conditions of subsection 3.10 hereof, shall survive the termination of this Agreement.

12.19 Right to Regulate. As provided for in Article 24.12 (Right to Regulate), nothing within this Article 12 (Environmental Compliance) shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

12.20 Landlord Environmental Indemnification; Liability for Damage or Injury. With the exception of those claims, demands, losses, damages, suits, causes of action or proceedings caused or contributed to by the negligence or willful misconduct of Tenant or its employees, agents, partners, consultants, customers, invitees, or contractors (of any tier), or by Tenant's non-

compliance with any contractual obligations hereunder, and to the extent permitted under Section 768.28 of the Florida Statutes and subject to the monetary limitations set forth in that law, County shall defend, indemnify and hold harmless the Tenant Indemnified Parties from any liability, losses, or damages, including reasonable attorneys' fees and costs of defense, arising out of any County breach of any County obligation under Article 12 hereunder, including without limitation non-excluded claims against Tenant Indemnified Parties by any third party arising out of any County breach of any County obligation under Article 12 hereunder.

Notwithstanding the foregoing, County shall not be liable for any damage or injury which may be sustained by any party, person or any personal property located on the Premises other than the damage or injury caused solely by the negligence or willful misconduct of County, and all of which is subject to the conditions and limitations of Florida Statutes, Section 768.28. Nothing herein shall be construed as a waiver or limitation of the conditions and limitations of such statute. The provisions of this Section 12.20 shall survive any termination or expiration of this Lease.

ARTICLE 13

Indemnification and Hold Harmless

Tenant shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, claims, demands, losses and damages, including attorneys' fees and costs (at all levels including appellate), 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 or the use of the Premises, Facility, or Additional Improvements by the Tenant or any of its employees, agents, servants, partners, principals, invitees, trespassers, contractors or subcontractors (of any tier), except to the limited extent attributable to the gross negligence or willful misconduct of the County or its agents. Tenant 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 costs, judgments and attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Tenant shall in no way limit its responsibility to indemnify, keep and save harmless and defend the County and its officers, employees, agents and instrumentalities as herein provided. The County shall give the Tenant reasonable notice of any such claims or actions. The provisions of this Article 13 shall survive the expiration or early termination of this Agreement.

ARTICLE 14

Assignment and Subletting and Conditions of Financing

14.01 Assignment and Transfer. Except as provided in Article 14.03 (Subletting), the Tenant shall not, in any manner, assign, transfer, mortgage, pledge, hypothecate, encumber or otherwise

convey an interest in this Agreement, or authorize others to exercise the rights granted to the Tenant herein, without the prior written approval of MDAD and the Seaport Department. The Tenant may make a collateral assignment to a Lender or sell the stock of the business subject to obtaining the prior written approval of the Seaport Department and MDAD Directors, including the County's approval of the form and terms of any proposed collateral assignment, provided under no circumstance may any collateral assignment encumber, diminish, hypothecate, or encroach upon the County's fee simple interest in the Premises, or any other legal title or interest the County has or may have hereunder or otherwise in any portion of the Facility or the Additional Improvements. Tenant may also sell substantially all of its assets without prior approval of the Department, provided that (a) substantially all of the assets are sold, (b) the purchaser is a single entity that will continue substantially all of the operations permitted or required of Tenant hereunder, and (c) the purchaser is a publicly traded corporation legally authorized to transact business in the state of Florida with a then-existing market capitalization of no less than \$100 million or a non-publicly traded business entity legally authorized to conduct business in Florida that the MDAD and Seaport Director's reasonably determine, upon presentment and receipt of whatever financial and other information they may request, has sufficient financial wherewithal and experience to fulfill both the performance and payment obligations of Tenant hereunder and signs an assignment and assumption agreement in a form acceptable to the MDAD and Seaport Directors in which said proposed nominee or transferee unconditionally assumes all of the payment, performance, and other obligations and duties of Tenant hereunder. In the event the Lender seeks provisions in the assignment affecting the interests or requiring certain actions by the MDAD or the Seaport Department, such provisions must be approved by both MDAD and the Seaport Department; however, such provisions shall not be unreasonably withheld or delayed by either department as long as the Use of Premises as provided for in Article 4 (Use of Premises) remain the same and are assigned or transferred to an entity deemed by the County to be reputable and credit worthy meeting all County requirements stated under Article 14.01(c) above.

14.02 Assignment or Transfer Fee. Assignment or Transfer Fee due to the County from Tenant shall be 3% of gross consideration received by Tenant for the assignment or transfer in effect for the Operating Term for all or any portion of the combined Premises; provided however, such Assignment or Transfer Fee shall not be assessed on transfers, subleases, or assignments to Affiliates of the Tenant of which is a firm that shares a majority of corporate officers or which tenant has majority equity position, or which has majority equity position in Tenant

14.03 Subletting and Subtenant Lease. Tenant shall be permitted to sublease space within the Facility to subtenants for the purpose of operating specific designated spaces within the facility for value added services such as cold chain processing and storage.

The Tenant shall submit any subleases to the Department and MDAD for approval, which shall not be unreasonably withheld. Any objection by the Department must be forwarded to the Tenant within thirty (30) calendar days of receipt of the sublease by Seaport Director. Subleases shall be subject to the provisions of any applicable County Commission Resolution, as amended from time to time, which may describe conditions applicable to subleases or limit the rental to be charged to the sublease by the Tenant. The County shall have the right to audit the Tenant's compliance with such subleasing policy. Subleases are subject to Gross Revenue reporting requirements.

Further, any such subleases shall be subject to the same conditions, obligations and terms as set forth herein, including as a minimum, but not limited to, requirements for compliance with County Rules and Regulations and Applicable Laws in payment of concession fees and indemnification of the County. Notwithstanding anything herein contained to the contrary, in the event of an approved sublease, the Tenant shall remain fully liable to the County for fulfilling all obligations, conditions and terms of this Agreement, throughout its entire Term.

Additionally, Tenant, via its subtenants or directly, is permitted to enter into warehouse agreements with its customers for the storage and handling of goods within the Premises, and other services, including, but are not limited to, inventory management, order fulfillment, and distribution ("warehouse agreements"). The use of the Premises for warehouse agreements shall be considered a permitted use under this Lease.

14.04 This Subarticle Intentionally Deleted.

14.05 Leasehold Financing.

- (A) Solely for the purpose of financing or refinancing the construction of the Facility or other capital improvement on the Premises during the Term of this Lease, Tenant shall have the right to grant a Leasehold Mortgage to a Mortgage Lender in a form acceptable to the County and subject to the County's prior written approval. Notwithstanding and prevailing over any contrary term or implication herein, the aggregate amount of the principal indebtedness secured by mortgages encumbering Tenant's interest in this Lease for the initial construction financing, shall not exceed, in aggregate, the cost of any capital improvements to be constructed on the Premises in conformance with the Final Master Plan (including design costs thereof incurred on or after the Lease Date, but excluding all costs of Tenant Property) less the sum of: (I) the amount of the County Contribution Cap plus (II) the PIDP Grant Maximum Contribution amount (the "Leasehold Construction Mortgage Ceiling"). Notwithstanding anything herein to the contrary, the Tenant shall be permitted to refinance the initial construction financing in the ordinary course of Tenant's business and such subsequent refinancing shall be limited by or subject to the Post Construction Mortgage Ceiling. No Leasehold Mortgage that Tenant executes in connection with any financing will extend to or be a lien or encumbrance on County's fee interest in the Premises nor on the County's ownership interest in the Facility or the Additional Improvements or on or upon any element thereof. Any and all financing agreements entered into by Tenant which are to be secured by a Leasehold Mortgage shall contain a provision which permits, but does not require, County to terminate the Leasehold Mortgage, and all of the mortgagee's rights, title and interest therein, upon payment by County of Tenant's obligations under the financing documents, in the same terms and conditions applicable to Tenant. Any and all financing agreements entered into by Tenant which are to be secured by a Leasehold Mortgage shall also contain a provision which expressly permits County to terminate the Leasehold Mortgage, and all of the mortgagee's rights, title and interest therein, at the County's election and without any County cost or payment, in the event, (i) following a noticed Tenant payment or performance default hereunder, or notice of a payment and performance default, Mortgagee or any County permitted Transferee fails to timely cure the subject payment and/or performance default(s)

within the Mortgagee permitted cure period provided herein or (ii) the County exercises its termination for convenience rights set forth in Article 16.16 hereof.

- (B) Notwithstanding anything in this Lease to the contrary, if a Tenant Event of Default under this Lease occurs, County shall give written notice thereof, together with the notice provided for in this Lease to Tenant, to any Mortgage Lender, and County shall take no action to terminate this Lease or to interfere with the occupancy, use or enjoyment of the Premises, provided that (i) if such Tenant Event of Default is a default in the payment of any installment of Rent or other fees due County under this Lease, such Mortgage Lender must timely cure all such defaults not later than thirty (30) days after receipt of such notice; (ii) without prejudice to the requirement to pay Rent and other fees due County hereunder in the manner set forth in (i) above, if the Tenant Event of Default is solely a default in observing or performing any other covenant or condition to be observed or performed by Tenant hereunder (unaccompanied by any default for non-payment), and such Tenant Event of Default can be cured by such Mortgage Lender without obtaining possession of the Premises, such Mortgage Lender remedies such default within sixty (60) days after receipt of such notice; provided, however, in the case of a Tenant Event of Default that cannot with diligence be cured, or the curing of which cannot be commenced, within such sixty (60) days, such Mortgage Lender shall have such additional period as may be necessary to cure such default with diligence and continuity except no such additional period shall exceed ninety (90) days in duration or (iii) without prejudice to the requirement to pay Rent and other fees due County from Tenant hereunder in the manner set forth in (i) above, if the Tenant Event of Default is a default that can only be remedied by such Mortgage Lender upon obtaining possession of the Premises, such Mortgage Lender must obtain such possession with diligence and continuity, through a receiver or otherwise, and cure all such defaults within ninety (90) days after obtaining notice of a Tenant Event of Default; provided, however, in the case of a Tenant Event of Default that cannot with diligence be cured, or the curing of which cannot be commenced, within such period of ninety (90) days from receipt of notice of a Tenant Event of Default (excluding defaults based in whole or in part on any payment default hereunder), such Mortgage Lender shall have such additional period as may be necessary to cure such default with diligence and continuity except no such additional period shall exceed ninety (90) days in duration.
- (C) If any Mortgage Lender or a person designated by such Mortgage Lender either becomes the owner of the leasehold interest of Tenant hereunder upon the exercise of any remedy provided for in the Leasehold Mortgage, or enters into a new lease with County as provided below, such Mortgage Lender or such person shall have the right to assign such interest or such new lease to any company meeting the following minimum experience and qualification requirements:
- (1) The company must have substantial experience in the operation and management of (a) phytosanitary facilities equivalent to the phytosanitary treatments used at this Facility and (b) cold chain processing facilities, and must have a financial statement demonstrating, to the reasonable satisfaction of the Director, that such company has reasonably sufficient assets and capital to undertake and meet the obligations of Tenant under this Lease; and

- (2) The company must meet all existing rules and requirements for companies entering into contracts with County.

The Mortgage Lender shall promptly provide to County any and all documents which County may reasonably require to demonstrate compliance with the minimum requirements set forth above.

- (D) If this Lease terminates for any reason, other than for a County noticed termination for convenience pursuant to Article 16.16 hereof, or is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, any Mortgage Lender or a person designated by such Mortgage Lender shall have the right, exercisable by notice to County, within thirty (30) days after the effective date of such termination, to enter into a new lease of the Premises with County on the same terms hereof, provided such Mortgage Lender must first fully cure all then existing Tenant payment defaults and assume all future financial, payment, and other obligations of Tenant hereunder. Where applicable and subject to the satisfaction of the foregoing conditions, the term of said new lease shall begin on the date of the termination of this Lease (excluding terminations for convenience under Article 16.06) and shall continue for the remainder of the Term, subject to potential early termination by County due to any default hereunder that is not timely cured as required hereunder or due to County's exercise of its rights to terminate this Lease for its convenience (and without cause) under Article 16.16 hereof. Such new lease shall otherwise contain the same terms and conditions as those set forth herein, except for requirements that are no longer applicable or have already been performed, and further provided that such Mortgage Lender shall have fully cured all defaults on the part of Tenant hereunder that are susceptible of being cured by the payment of money, and that such new lease shall require the tenant thereunder promptly to commence, and expeditiously to continue, to cure all other defaults on the part of Tenant hereunder. This provision shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this provision were a separate and independent contract among County, Tenant and each Mortgage Lender.
- (E) No Mortgage Lender shall become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Tenant unless and until such Mortgage Lender becomes the owner of Tenant's Leasehold interest hereunder upon the exercise of any remedy provided for in any Leasehold Mortgage, enters into a new lease with County pursuant to above, otherwise in writing assumes payment and/or performance obligations of Tenant hereunder, or provides County with notice that it is seeking an additional cure period (beyond 60 days), a condition of which is Mortgagee's compliance with all Tenant obligations hereunder as and when do.
- (F) Notwithstanding and prevailing over any contrary term or implication contained herein, County has a unilateral right to terminate this Lease for convenience (and without cause or Tenant default) in accordance with the terms of Article 16.16 hereof. In the event the County elects to terminate this Lease for the County's convenience under Article 16.16 hereof, neither Tenant nor any Mortgage Lender is afforded any cure period, as a termination for convenience does not require the existence of any Tenant default. Accordingly, notwithstanding and prevailing over any leasehold financing rights contained herein or any Leasehold Mortgage that may be authorized under the terms hereof, any Leasehold Mortgage authorized hereunder shall be subject, and subordinate, to, among other things, the County's termination for convenience rights under subsection 16.16

hereof, and upon the effective date of termination of any properly County-noticed termination for convenience under subsection 16.16 hereof, any Mortgage Lender shall have no further interest in or rights to or under this Lease.

- (G) The County shall have the right to review and approve any Leasehold Mortgage for compliance with the terms of this Lease. Notwithstanding and prevailing over any contrary term or implication contained herein, the aggregate amount of principal indebtedness secured by mortgages encumbering Tenant's interest in this Lease may not exceed, in aggregate, the Leasehold Mortgage Ceiling during the construction phase, or the Post Construction Mortgage Ceiling thereafter. Nor may any Leasehold Mortgage encroach upon, pledge, lien, or otherwise encumber the County's fee simple interest in the Premises or County's legal or other interests in the Facility or the Additional Improvements. The County may not unreasonably withhold, condition, or delay approval. Tenant shall submit drafts of the documents for review and approval of County reasonably in advance of execution of those documents; provided, however, that County's right to review and approve the documents shall not extend to matters which do not impact County's decision on whether such Leasehold Mortgage is compliant with the terms and conditions of this Lease. The County's failure to approve the draft documents or to furnish Tenant its written objections to such documents within twenty (20) days after properly delivering copies of the documents to the Port Director and MDAD Director shall constitute County's approval of the documents. Tenant shall provide to County upon execution copies of all executed Leasehold Mortgages, or such portions thereof as are reasonably determined by the County to determine the County's rights and obligations under the Lease. The Tenant shall accompany each executed Leasehold Mortgage with a cover sheet, executed by the Mortgage Lender and Tenant, identifying with specificity, the name and address of each and every representative of the Mortgage Lender authorized to receive the notices specified in this Section 14.

14.06 Establishment of Agent and Phytosanitary Revenue Fund.

Not later than five (5) Business Days after Substantial Completion the County and Tenant shall select a mutually agreeable Agent and shall enter into the Revenue Collection and Disbursement Agreement on mutually agreeable terms and conditions consistent with those contained herein. The Revenue and Collection Disbursement shall provide for, the opening and monitoring of the Phytosanitary Revenue Fund.

14.07 Agent Disbursements from the Phytosanitary Revenue Fund.

Tenant shall on or before the 10th day of each month, of each Lease Year, provide the County with notice of the amount of Agent's fees, Ground Rent, Additional Rent, and Operating Fee owed for the prior month. The County shall have until the 20th day of each month to review and dispute any of the amounts provided by Tenant, and the Parties shall thereafter use commercially reasonable efforts to resolve any pending disputes. The Parties shall direct the Agent to pay on the 28th day of each month, of each Lease Year the mutually agreed upon amounts from the Phytosanitary

Revenue Fund in the following order of priority provided, however, that the Parties shall direct the Agent to pay the amounts due under Section 14.07(c) hereof within thirty (30) days of the County's notification that expenses have been incurred, or are due and payable, within those categories, unless payment would be sooner made under the monthly payment schedule applicable to other categories:

- a) The Agent's fees;
- b) Ground Rent, Additional Rent, and Operating Fee to the County;
- c) Payment to the County of all third-party costs and expenses incurred by the County, or which are due and payable, to maintain the "All Risk" insurance of the Project following Substantial Completion in accordance with Article 15 of this Agreement;
- e) Operating expenses of the Tenant;
- f) Debt Service payments (if required by Lender(s));
- g) Funding of any reserve or maintenance accounts (if required by Lender(s));
- h) Repayment of Working Capital Advances (if any);
- i) The remainder to Tenant (or Tenant's designated facility operator, if any) for Tenant's account. The above sets forth a priority for payment of moneys available in the Phytosanitary Revenue Fund but shall not be understood to diminish or impair the County's right to receive Ground Rent, Additional Rent, and Operating Fee as set forth in this Lease.

ARTICLE 15

Insurance

15.01 Insurance Required.

INSURANCE REQUIRED DURING THE DEVELOPMENT TERM AND SUCH LONGER PERIOD AS MAY BE REQUIRED TO RETAIN COVERAGES UNTIL THE FACILITY ACHIEVES SUBSTANTIAL COMPLETION

The following policies of insurance shall be obtained and kept in force during the Development Term and such additional period as may be required to retain the following coverages until such time as the Facility achieves Substantial Completion and receives a TCO in accordance with the terms of the agreement.

Tenant shall furnish **Miami-Dade County Risk Management Division 111 NW 1st Street Suite 2340 Miami FL 33128**, Certificate(s) of Insurance evidencing coverages as outlined below:

- (A) Completed Value Builders' Risk insurance, in an amount not less than one hundred (100%) percent of the replacement cost of the Facility and any Additional Improvements. Coverage

shall remain in place until Substantial Completion as determined by building inspectors. **The policy shall be in the name of Miami Dade County, Tenant and Lenders.** Such builder's risk policy:

- (1) Shall be written on an "all-risks" or special perils basis including wind and flood, equipment breakdown, earth movement including earthquake, collapse, machinery breakdown;
 - (2) Shall include LEG3 coverage with respect to faulty workmanship, design or materials
 - (3) Shall include coverage for demolition and debris removal, ordinance and law, crane re-erection and extra expense;
 - (4) Shall include coverage for delay in completion covering Tenant's soft costs and other indirect construction costs caused by the delay. Indemnity period of at least 18 months;
 - (5) The policy must allow a 12 month term extension at a pre-determined rate if the Project is delayed for any reason and an additional 6 months extension if there is a loss in excess of \$20,000,000 or a combination of losses totaling \$25,000,000; and
 - (6) Shall include coverage for property in transit and temporarily off-site in an amount of \$10,000,000.
- (B) Workers' Compensation as per Florida Statute 440 or any applicable law to include USL&H at the Port of Miami locations.
- (C) Umbrella or Excess Liability with minimum limits of \$10,000,000 per occurrence, \$20,000,000 in the aggregate policy.
- Policy shall include commercial general liability, auto and employers' liability as underlying insurance. This insurance shall afford insured status to all individuals and entities required to be insureds on underlying insurance and shall have not more restrictive terms than underlying coverages.
- (D) Commercial General Liability in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. **Miami-Dade County must be included as additional insured.** Policy shall be written on an occurrence basis.
- Policy shall cover all liabilities arising out of the construction of the project, to include independent contractors, products/completed operations, personal & advertising injury and liability assumed under contract. No XCU exclusion or terrorism.
- Policy shall include a separation of insureds clause and not contain any cross liability nor insured versus insured exclusions.
- Products & Completed Operations extended reporting for a period of no less than 10 years following Substantial Completion.
- (E) Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than \$1,000,000 combined single limit.

It must be endorsed to include MCS-90 (Motor Carrier Act Endorsement -Hazardous Materials Clean Up) and CA 99 48 (Pollution Liability -Broadened Coverage for Covered Autos -Business Auto, Motor Carrier and Truckers Coverage Form).

(F) Professional Liability or Errors & Omissions

Policy shall be project-specific in an amount not less than \$10,000,000 each occurrence, \$20,000,000 aggregate covering claims arising out of the rendering or failure to render professional services or provision of products, it shall include Miami-Dade County as an indemnified party.

Policy shall have an extended reporting or discovery “tail” period, or be renewed for a period of not less than 10 years after Substantial Completion and have a retroactive date prior to first design.

(G) Contractors Pollution and Pollution Legal Liability in an amount not less than \$10,000,000 per occurrence, \$20,000,000 aggregate. Policy shall be project-specific on an occurrence form. **Miami-Dade County must be included as additional insured.**

Policy shall cover sums the insured becomes legally obligated to pay to a 3rd party or for investigation, removal, monitoring, remediation or disposal of soil, surface water, groundwater or any other contamination.

Policy shall include bodily injury, property damage (including natural resource damage) clean-up costs, legal defense cost. Policy must apply to sudden and non-sudden pollution conditions and contain a severability or separation of insureds provision.

Policy shall include Miami-Dade County and Tenant as additional insureds.

INSURANCE REQUIRED DURING ON-GOING OPERATIONS

Following Substantial Completion, and prior to commencement of operations of the Facility or any usable element thereof, Tenant shall present evidence of the following coverages, which must remain in place throughout the Operating Term and any mutually agreed upon extension thereof:

(H) PROPERTY. Tenant shall obtain and keep in force Special Perils property insurance for 100 % Replacement Cost of the Facility and Additional Improvements and any other buildings and structures located on the Premises. **The Policy must have Miami-Dade County and Tenant as named insureds and County as payee**, it being understood that proceeds from insurance must be used first to restore and repair the damaged portions of the Facility, Premises, and Additional Improvements where such damages arose from an insured risk, with Tenant and County working cooperatively (but without cost to the County) to restore and repair the damaged portions of the Facility, Premises, and Additional Improvements. Where repair costs exceed the amount of available insurance proceeds, Tenant shall be solely responsible to pay the cost of any insurance deficiency. If Tenant will not or cannot pay the cost of such deficiency, it shall be deemed a Tenant

default hereunder. If such default is not fully and timely cured by any Leasehold Mortgagee, the County may retain all proceeds of insurance and use same as the County sees fit in the exercise of County's sole discretion. Such Property Policy:

- (1) Shall be written on an "all-risks" or special perils basis including flood, windstorm & hail, theft, vandalism, earth movement including earthquake and terrorism;
 - (2) Shall include equipment breakdown coverage for all electrical and mechanical equipment in use for regular operations. The policy, if separate, shall include a joint loss clause;
 - (3) Shall include coverage for flood, water damage, earth movement including earthquake with each occurrence and aggregate sublimit of not less than \$35,000,000 for flood, \$50,000,000 for named storm and \$35,000,000 for unnamed storm; and
 - (4) Shall include foundations, pilings, ordinance or law coverage with no sublimit for the undamaged portion of the structures and no less than \$20,000,000 for demolition and increased cost to repair or replacement.
- (I) Workers' Compensation Insurance as per Florida Statute 440 or any applicable law to include USL&H at the Port of Miami locations.
- (J) Business Income Policy shall provide 18 months of indemnity.
Policy shall provide an extended period of indemnity (EPI) of not less than three hundred and sixty-five (365) days. Ordinance or law increased period of indemnity.
Extra expense with a sublimit of \$10,000,000. Utility service interruption with a sublimit of \$10,000,000.
- (K) Commercial General Liability in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate to include Products/complete operations. No terrorism exclusion. **Miami-Dade County must be included as additional insured.** Policy shall be written on an occurrence basis and apply separately for each insured against whom a claim is made or a lawsuit is brought.
Policy shall include a separation of insureds clause and no cross liability nor insured versus insured exclusion.
- (L) Umbrella or Excess Liability with minimum limits of \$10,000,000 per occurrence \$20,000,000 in the aggregate.
Policy shall include the Commercial General Liability, Commercial Auto Liability and Employers' liability as underlying insurance. Umbrella shall have terms not more restrictive than underlying coverages.

- (M) Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than \$1,000,000 combined single limit.
- (N) Pollution Legal Liability in an amount not less than \$5,000,000 each occurrence, \$10,000,000 Aggregate.
Policy shall include bodily injury, property damage (including natural resource damage) clean-up costs, legal defense costs, apply to sudden and non-sudden pollution conditions, contain a severability or separation of insureds provision. **Policy shall include Miami-Dade County as additional insured.**
- (O) Professional Liability to include fumigation operations \$2,000,000 each occurrence, \$4,000,000 aggregate.

REQUIRED INSURANCE ISSUED ON A CLAIMS MADE BASIS

If any required insurance purchased by Tenant or any subtenant has been issued on a “claims made” basis, the purchaser of such claims made coverage must have an extended reporting or discovery “tail” period of not less than ten years after the completion of the contract and shall have a retroactive date prior to the date of the execution of the agreement. The limits of liability and the extensions to be included remain the same.

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 as to management and financial strength:

The company must be rated no less than “A-” as to management, and no less than “Class VII” as to strength, by A.M. Best Company, Oldwick, New Jersey.

CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st Street Suite 2340
Miami FL 33128

15.02 Reserved

15.03 Insurance Requirements for Contractors. Tenant shall require any contractor (or subcontractor) performing work on the Project, at any time, including before and after the Notice to Proceed Date to carry and maintain:

- (A) Comprehensive general liability insurance or the equivalent thereof, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, to afford protection, with limits for each occurrence, combined single limit coverage, of not less than

One Million Dollars (US\$1,000,000) with respect to personal injury, death and property damage;

- (B) Completed value builders' risk insurance on a "special causes of loss" form in an amount not less than one hundred percent (100%) of the insurable value of the Project;
- (C) Comprehensive automobile liability insurance or the equivalent thereof with limits for each occurrence, combined single limit coverage, of not less than One Hundred Thousand Dollars (US\$100,000) with respect to personal injury, death and property damage;
- (D) Worker's Compensation coverage (if applicable) or similar insurance in form and amounts required by law; and
- (E) Professional liability insurance in the name of Tenant or the licensed design professional employed by Tenant in an amount not less than One Million Dollars (US\$1,000,000) per claim.

15.04 Insurance Certificates Required. Prior to the commencement of design and construction and prior to commencement of operations hereunder and annually thereafter, the Tenant shall furnish or cause to be furnished certificates of insurance to the Department as noted above. If the Tenant fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) Business Days, the Tenant shall be in default of the contractual terms and conditions, unless such timeframe for submission has been extended by the County.

On said insurance certificates, unless specifically shown to be excluded thereon, commercial general liability coverage shall include contractual liability, and notification of cancellation shall include notification of material changes in the policies. The County reserves the right to require the Tenant to provide such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Tenant, which notice shall automatically amend this Agreement effective thirty (30) calendar days after such notice.

15.05 No Double Recovery. Nothing in this Lease shall be construed to allow for double recovery on account of the payment of insurance for any loss or damage to either Party. The amount of recovery available to either Party from the other shall be reduced by the amount of an insurance payment for such event. Except as expressly provided in this Section 15, each Party's obligations to the other as set forth in this Lease shall remain unaffected.

15.06 County Self-Insured; Sovereign Immunity. The County is a political subdivision of the State of Florida and is authorized, subject to the provisions of Section 768.28 of the Florida Statutes, providing limitations for the making of claims against the County as a sovereign, to self-insure against claims.

15.07 Compliance. Compliance with the requirements of this Article 15 (Insurance) shall not relieve the Tenant of its liability under any other portion of this Agreement or any other agreement between the County and the Tenant.

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

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

ARTICLE 16

Termination

16.01 Expiration of Agreement. At the expiration of the Agreement, or, if applicable, upon the earlier termination of the Agreement in accordance with the terms hereof, the Tenant shall surrender and return the Premises, the Facility, and any Additional Improvements to the County in clean, working, and fully operable condition and, thereupon, the Facility, the Additional Improvements, and all equipment associated with either shall immediately revert to and become (if not already) the sole property of the County without any charge, fee, lien, mortgage or hypothecation of any kind. Upon request, Tenant shall provide the County, without charge, lien, mortgage, or other encumbrance, a marketable and registerable title to the Facility and the Additional Improvements suitable for recordation and in a form acceptable to the County.

16.02 Tenant Payment Defaults. Failure of the Tenant to make all payments of Rents, fees and charges required to be paid herein when due shall constitute a default, and the County may, at its option, terminate this Agreement after ten (10) calendar days' notice in writing to the Tenant unless the default(s) be fully cured within the notice period. Tenant shall be permitted ten (10) calendar days to review and object in writing to the imposition of such other charges. The County will review and, if necessary, will meet with Tenant.

16.03 Tenant Insurance Defaults. The County shall have the right, upon fifteen (15) calendar days written notice to the Tenant, to terminate this Agreement if the Tenant fails to provide evidence of insurance coverage in strict compliance with Article 15 (Insurance) hereof prior to commencement of operations, or if Tenant fails to continuously and timely renew and maintain such insurance coverages, and provide County with evidence of same, at all times during the Operating Term hereof and, if applicable, during the Extension Term; provided, however, that such termination shall not be effective if the Tenant provides the required evidence of continuous insurance coverages within the notice or grace period.

16.04 Other Tenant Defaults. The County shall have the right, upon sixty (60) calendar days written notice to the Tenant, to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, if correction

cannot reasonably be completed within such 60-day period, in the sole discretion of the Department, the Tenant has commenced substantial corrective steps within such 60-day period and diligently pursues same to completion:

- (A) Failure of the Tenant to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage. This shall also include compliance with the Financial Close Deadline in Article 3.01 (Financial Close) and development schedule as indicated in Article 3.07 (Development Schedule and Failure to Develop);
- (B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein, by the Tenant;
- (C) Failure of the Tenant to comply with any Environmental Law or Environmental Requirement as those terms are defined in Article 1 (Definitions); or
- (D) Failure to construct the Facility or any Additional Improvements (if applicable) in a timely manner as noted in Article 3.07 (Development Schedule and Failure to Develop) and Article 7.05 (County Extension to Complete Additional Improvements).

Note: In the County's best interest, the County shall have the right to bypass the sixty (60) calendar days written notice to the Tenant, for reasons including but not limited to extreme circumstances (such as danger or detriment to airport operations or life, health or safety issues).

16.05 Tenant Defaults. The occurrence of the following events shall constitute a Tenant Event of Default under this Lease:

- (A) Failure by Tenant to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed hereunder, including without limitation, Tenant's failure to fully and timely pay the County Ground Rent, Additional Rent, the Operating Fee, or other fees due County hereunder, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to Tenant by County, unless County shall agree in writing to an extension of such time prior to its expiration; provided, however, that if such failure, other than any failure to timely comply with a payment obligation hereunder, cannot be corrected within such thirty (30) day period even with the exercise of the utmost diligence by tenant, it shall not constitute an Event of Default if prompt and effective corrective action is instituted by Tenant within such period and diligently pursued until such failure is corrected; and/or
- (B) The commencement by Tenant of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or its consent to the entry of an order for relief in an involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee or sequestrator (or other similar official) of itself or any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due; and/or
- (C) A court having jurisdiction shall enter a decree or order for relief in respect of Tenant in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or

hereafter in effect, or appointing a receiver, custodian, liquidator, assignee, trustee or sequestrator (or other similar official) of itself or any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of such decree or order unstayed and in effect for a period of ninety (90) consecutive days.

16.06 Tenant Default Notice. Upon the occurrence of a Tenant Event of Default, County may, at County's option, without any demand or notice whatsoever, except as expressly required in this Article 16 (Termination):

- (A) Subject to restrictions set forth in the Leasehold Mortgage (which are not inconsistent with the terms and conditions hereof) and Article 14.05 (Leasehold Financing) of this Lease, terminate this Lease by giving Tenant a Tenant Default Termination Notice, with sixty (60) calendar days and such additional time as reasonable necessary if Tenant timely and diligently pursues the cure, in which event this Lease shall expire and terminate on the Termination Date specified in such Tenant Default Termination Notice (which such date shall not be earlier than the date that the Tenant Default Termination Notice is deemed to be given pursuant to the terms hereof) and all rights of Tenant under this Lease and in and to the Premises, the Facility and Additional Improvements (if any) shall terminate as of such Termination Date. Notwithstanding and following such termination, Tenant shall remain liable for (i) all Tenant obligations under this Lease arising up to Termination Date and (ii) all Tenant obligations hereunder that survive the expiration or early termination hereof (expressly including, among others, all Tenant payment obligations, indemnity, hold harmless, and duty to defend obligations, environmental remediation and restoration obligations, and other obligations to restore or repair the Premises, the Facility, and/or any Additional Improvements), and subject to Mortgage Lender's rights under Article 14.05(B) hereof, Tenant shall surrender the Premises to County on the Termination Date (provided that Tenant shall have reasonable time to remove any of the Tenant Property allowed to be removed under Article 11.02 (Removal of Alterations) above, from the Premises); and/or
- (B) Bring an action in a court of competent jurisdiction as provided in this Lease for the collection of any amounts for which Tenant owes as of, on, or following the Termination Date, and/or for or relating to the performance of any other covenant, term, obligation or agreement of, affecting, or devolving upon Tenant, including, without limitation, seeking declaratory, injunctive, and/or other relief, with or without terminating this Lease; and/or
- (C) Pursue any other legal and/or equitable remedy available hereunder, under any Applicable Law, under common law, or otherwise.

Note: In the County's best interest, the County shall have the right to bypass the written cure notice period to the Tenant, for reasons including but not limited to extreme circumstances (such as danger or detriment to airport operations or life, health or safety issues).

16.07 County Remedies. Tenant agrees that the foregoing remedies available to County are (i) not exclusive, and (ii) one, some or all of such remedies may be exercised by County in connection with a Tenant Event of Default and, as to the County remedy and right provided in subsection 16.16 hereof (Termination for Convenience), may be exercised by the County in the absence of

any Tenant Event of Default. County's election to terminate this Lease shall not be a waiver of County's right to recover damages for breach of this Lease.

Notwithstanding anything herein to the contrary contained in this Lease, and without prejudice to Tenant's obligations to indemnify, hold harmless and defend the County Indemnified Parties contained in this Lease, County's recovery in the event of a Tenant Event of Default shall include, but not be limited to (i) recovering all amounts owed by Tenant as of the Termination Date, plus all amounts owed for periods prior to the termination date that are not due until after same (such as, without limitation, rents or fees paid in arrears), (ii) recovering all Rent and other fees and charges that would have been due to County hereunder through the end of the Term had Tenant not been terminated for default hereunder, it being understood that upon an uncured Tenant Event of Default all Rent and other fees and charges that would have been due to County from Tenant during the remainder of the Term shall become immediately due and owing; (iii) recovering Facility (subject to restrictions set forth in the Leasehold Mortgage) and any Additional Improvements, (iv) recovering the Capital Maintenance Reserves; and (v) if the Tenant Event of Default caused damage to the Project or adjacent County properties or facilities, restoration or repair of the Project, the Facility, any Additional Improvements, and any adjacent County properties and facilities damaged by such Tenant Event(s) of Default, all at Tenant's sole cost, to fully restore the Premises's, Facility's, and the Additional Improvements' use, functionality, and operability, and, if applicable, to also fully restore or repair any damaged adjacent County properties' and facilities' use, functionality, and operability.

16.08 Immediate Termination. The happening of the following events shall constitute a default by the Tenant and this Agreement shall permit County to terminate this Agreement immediately, effective as of the date of Tenant's receipt of notice thereof: abandonment of the Premises or discontinuance of Tenant operations; failure of the Tenant for thirty (30) calendar days or more to occupy, use, or operate the Premises for one or more of the purposes permitted under this Agreement; or if a lien is filed against the leasehold interest of the Tenant or against any ownership interest of the County in the Premises, Facility, or Additional Improvements and such lien(s) is/are not promptly removed, satisfied, or caused to be extinguished by Tenant within a reasonable time.

16.09 Actions at Termination.

- (A) The Tenant shall vacate, quit, surrender up and deliver the Premises, the Facility, and any Additional Improvements to the County on or before the termination date of this Agreement, whether by lapse of time, pursuant to a Termination Date specified in a County issued Tenant Default Termination Notice, or otherwise. The Tenant shall surrender the Premises, the Facility, and the Additional Improvements in the condition required under Article 8 (Maintenance and Repair by Tenant) herein with all repairs for which the Tenant is responsible shall be completed prior to surrender and shall execute appropriate documents confirming that title to the Facility and any Additional Improvements in Tenant's name (if any) has been transferred to County without lien or other encumbrance and without any cost or charge to the County. Tenant shall also return to County all manuals and warranties pertaining to the facility. In no event shall County be required to pay any compensation or reimbursement to Tenant for such transfer of title. On or before the termination date of this Agreement, the Tenant shall remove all Tenant Property of its

personal property from the Premises; provided, however, that if immediate termination occurs under Article 16.08 (Immediate Termination), Tenant shall be allowed up to five (5) calendar days from the receipt of notice of termination to remove such Tenant Property.

- (B) If the County advises the Tenant that it has reason to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises or into any adjacent properties, then the Tenant at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release(s). The Tenant shall comply with the recommendations and conclusions of such consultant regarding environmental clean-up efforts that may be required and shall comply with any other clean-up requirements imposed on the Tenant by Federal, State or County laws, regulations or codes, including, without limitation, with any remediation or clean-up requirements required or imposed by Miami-Dade County DERM.
- (C) In the event of termination for default, the County shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Agreement, the following amounts as damages: (1) the reasonable costs of re-entry and re-leasing including without limitation the cost of any clean up, alteration, repair, maintenance, refurbishment, removal of personal property and fixtures of the Tenant, or any other expense occasioned by failure of the Tenant to quit the Premises upon termination and to leave them in the required condition, any remodeling costs, attorney's fees, court costs, and expenses of litigation through all levels of legal proceedings; and (2) the loss of reasonable rental value from the date of default until a new tenant has been secured.

No termination of this Lease prior to the expiration or earlier termination thereof as provided herein, by lapse of time or otherwise, shall affect County's right to collect Rent for the period prior to termination thereof, or, if allowed hereunder, the County's right to seek damages for lost Rents and other fees and charges that would have been due to County by Tenant through the remainder of the Term had the Lease not been early terminated by County upon one or more events of Tenant Default. Notwithstanding anything to the contrary contained herein, if this Lease is rejected in any bankruptcy action or proceeding filed by or against Tenant, and the effective date of rejection is on or after the date upon which that month's Rent is due and owing, then the Rent and other fees owing under this Lease for the month during which the effective date of such rejection occurs shall be due and payable in full and shall not be prorated.

16.10 Lien Upon Personal Property. In the event of termination for default, the County shall have a lien upon all personal property of the Tenant located at Premises to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

16.11 Right to Show Premises. At any time within six months of the scheduled expiration date of this Agreement or any time after the Tenant has been given notice of termination or default, pursuant to Article 16 (Termination), the County shall have the right to enter on the Premises for the purposes of showing the Premises to prospective tenants or users during regular business hours.

16.12 Habitual Default. Notwithstanding the foregoing, in the event that the Tenant has frequently, regularly or repetitively defaulted in the performance of or breach any of the terms, covenants and conditions required herein, to be kept and performed by the Tenant, on five (5) occasions regardless of whether the Tenant has cured each individual condition of breach or default as provided for in Article 16.02 (Payment Defaults), Article 16.03 (Insurance Defaults), and Article 16.04 (Other Defaults) above, the Tenant shall be determined by the County to be an “habitual violator”. At the time that such determination is made, the Seaport Department shall issue to the Tenant a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Tenant 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 County may terminate this Agreement upon the giving of written notice of termination to the Tenant, such termination to be effective upon the seventh (7th) calendar day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Tenant shall have no further rights hereunder. Immediately upon receipt of said termination, the Tenant shall discontinue its operations at the Site and proceed to remove its Tenant Property in accordance with Article 16.09 (Actions at Termination) hereof (expressly excluding the Facility and the Additional Improvements and all elements and components of either and expressly excluding all structures, fixtures, equipment, systems, infrastructure, and utilities associate with either, all of which shall remain on the Premises and remain the property of the County).

16.13 Termination by Abandonment. This Agreement shall be automatically terminated upon the abandonment by the Tenant of the Premises, the Facility, or any of the Additional Improvements for any period of time exceeding fifteen (15) consecutive calendar days, unless such abandonment or discontinuance has been caused by strike, labor disturbance, acts of God, civil disturbance, casualty or governmental order that prevents the Tenant’s use of the Premises for the purposes authorized in Article 4.02 (Use of Premises) hereof. Such termination shall not relieve the Tenant of its rental payment obligation for the remaining Term of the Agreement nor does it constitute a waiver by the County of its rights to recover damages for rental payments for the remaining Term of the Agreement.

16.14 County Defaults. This Agreement shall be subject to termination by the Tenant in the event of a material default by the County in the performance of any covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Tenant of such default. The occurrence of the following events shall constitute a County Event of Default under this Lease:

- (A) Failure by County to observe or perform, or breach of, any material covenant, condition, agreement, obligation, representation or warranty on its part to be observed or performed under this Lease, and such failure or occurrence shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to County by Tenant, unless Tenant shall agree in writing to an extension of such time prior to or following its expiration; however, if such failure cannot be corrected within such

thirty (30) day period, it shall not constitute an Event of Default if corrective effective action is commenced or instituted by County, within such period (or extended period, if applicable) and diligently pursued until such failure is corrected; nor shall any County failure constitute an Event of Default or an uncured Event of Default hereunder to the extent caused or contributed to by any Tenant Event of Default or breach of any Tenant obligation or duty hereunder or by any event of force majeure, or to the extent the County's ability to fully and timely cure such default is precluded or impaired by any Tenant Event of Default or by any breach of any Tenant obligation, covenant, or warranty hereunder or by any event of force majeure; and

- (B) The transfer of fee simple title in the Premises by the County without preserving the rights conferred to Tenant under this Lease, except as otherwise expressly provided in this Lease.

Upon the occurrence of an uncured County Event of Default, Tenant may, at Tenant's option, without any demand or notice whatsoever (except as expressly required in this Article 16.14):

- (A) Terminate this Lease by giving County a County Default Termination Notice, in which event this Lease shall expire and terminate on the Termination Date and all obligations of Tenant under this Lease shall terminate, other than those obligations and terms that expressly indicate they survive the expiration or termination of the Term. In such event, the County shall become liable for the remaining balance on the Leasehold Mortgage (not to exceed, in aggregate, the Leasehold Mortgage Ceiling less any payments made or which were due thereon on or prior to the Termination Date), except that the County shall have no liability for the remaining balance of any Leasehold Mortgage if Tenant has committed any act or omission constituting any Tenant Event of Default hereunder (even if such Tenant Event of Default occurs prior to, contemporaneously with, or following within one year of same) or if the County exercises or initiates its right to terminate this Lease for convenience pursuant to Article 16.16(D) hereof no later than 365 days following receipt of Tenant's most recent notice of County default; and/or
- (B) Bring an action in a court of competent jurisdiction as provided in this Lease for the collection of any amounts for which County may be in default, or for the performance of any other covenant or agreement devolving upon County, without terminating this Lease.

County agrees that the foregoing remedies available to Tenant are not exclusive, and one, some or all of such remedies may be exercised by Tenant in connection with a County Event of Default. Tenant's election to terminate this Lease for a County Event of Default shall not be a waiver of Tenant's right to recover damages for breach of this Lease, provided that Tenant hereby waives any right to seek damages from County or claim any loss for or arising from the expenditure of any Project or Facility related costs for which Tenant was reimbursed from PIDP Grant funds or otherwise reimbursed from the County or from County provided funds.

16.15 Transfer of Title and Ownership of All Improvements to County. At the expiration or earlier termination of the Term of this Lease, Tenant shall surrender the Premises, the Facility, and all Additional Improvements, alterations and additions thereto, including the Facility and all Facility related fixtures, equipment and infrastructure, excepting only Tenant Property (as defined herein), including all Facility keys, security codes, and building management and all other operating or maintenance manuals and software, a complete set of Facility as-built drawings (updated), and any other Facility related manuals as well as any proprietary and non-proprietary

software or programs that may be needed for County to fully, properly, and efficiently operate the Facility and all elements thereof as well as any Additional Improvements. The Facility and all Additional Improvements and associated equipment and systems shall be turned over in clean and neat condition and in good working order, with all utilities, equipment, HVAC, plumbing, building management, electrical, roofing, and other building systems and infrastructure fully functioning as intended and in good working order, excepting damage caused solely by County, its agents, employees or contractors, or normal wear and tear. Upon the occurrence of such event, no further deed or other instrument shall be necessary to confirm the vesting in County of full title to such Improvements, provided, however, that Tenant, upon request of County, shall execute, acknowledge and deliver to County a deed in registerable form, and in a form acceptable to the County, and at no cost or charge to the County, confirming that all of Tenant's right, title, and interest in or to the Facility, all components thereof and to any Additional Improvements (if any) has expired, and that sole title to all of such facilities and equipment has fully and completely vested in County. The provisions of this Article 16.15 shall survive the termination (or expiration of the Term) of this Lease.

- (A) If Tenant remains in possession of the Premises or any portion of the Facility or Additional Improvements after expiration or earlier termination of the Term, with or without County's acquiescence and without any express agreement of the Parties, Tenant shall be a tenant-at-sufferance at one hundred fifty percent (150%) of the Base Rent and Additional Rent in effect at the end of the Term. Tenant shall also continue to pay the Operating Fee due hereunder. Notwithstanding the foregoing, there shall be no renewal of this Lease by operation of law or otherwise (other than Tenant's right to extend the Term upon mutual written assent as provided in this Lease), and, in addition to and without limiting such rights and remedies as may be available to County at law or in equity as a result of Tenant's holding over beyond the Term, County shall be entitled to exercise any and all rights and remedies available to County in respect of a Tenant Event of Default hereunder (it being agreed that any such holdover shall be deemed an immediate Tenant Event of Default hereunder). No receipt of money by County from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term or Tenant's right of possession. The provisions of this subsection 16.14 shall survive the expiration of the Term.

16.16. Termination for Convenience. Notwithstanding the foregoing, and in addition to any other County right of termination provided herein, the County shall have the right to terminate this Agreement for its convenience, with or without cause, in accordance with the following:

- (A) At any time during the Term, if the Premises leased hereunder, or any improvements erected or constructed thereon, or both, are required for other MDAD development purposes, or for any other purpose as may be determined by the Board, then the County shall have the unilateral right to terminate this Agreement for its convenience (and without cause) as to all or any portion of the Premises, including any improvements erected thereon, upon no less than sixty (60) calendar days prior written notice to Tenant as provided herein below.
- (B) In the event such notice is given prior to completion of construction of the Facility, the notice shall specify the effective date of termination, provided such effective date may not be earlier than the expiration of a forty-five (45) calendar day period from the date of

issuance of said notice. The County shall have the option of requiring Tenant to complete construction of the Facility and obtain a CO therefore or else requiring the Tenant to cease all construction activity as of the date of the notice or otherwise but not later than the effective date of termination (at the County's election). Tenant shall submit to the County all construction costs incurred by Tenant as of the effective date of termination, including support documents, invoices, and evidence of payments, plus any other backup documents that the County or its (or other) auditors may request. The determination of which construction costs are eligible for reimbursement to Tenant under this Article 16.16, if invoked by County and otherwise applicable, shall be based on the calculation of eligible Facility construction costs as of the effective date of termination as determined by the County in accordance with subsection (D) below, plus reimbursement for all Rent payments from Tenant up to the date of the termination for convenience, less (minus) the sum of the following reimbursement deductions: (i) all payments and reimbursements by the County to or on behalf of Tenant for or relating to Facility or Additional Improvements related construction costs plus (ii) any costs (including, without limitation, legal fees and costs at all levels including trial, pre-trial, and appellate, up to \$250,000.00) incurred or reasonably anticipated to be incurred by County to resolve, extinguish, remove, satisfy, or defend against any liens, claims, or encumbrances placed on the Premises or any improvements thereon or asserted against the County by Tenant or any Tenant Contractor (of any tier) or any Tenant employee, agent, officer, invitee, partner, affiliate or lender plus (iii) all costs incurred or to be incurred by County (including, without limitation, legal fees and costs at all levels including trial, pre-trial, and appellate, up to \$250,000.00) to fix, cure, repair, or replace any construction and/or design defects or deficiencies of any kind in or associated with the Facility or any Additional Improvements and all costs to remediate or otherwise respond to any releases of hazardous substances or any other prohibited elements, chemicals, products, or materials on or from the Premises (collectively, (i), (ii) and (iii) shall be referred to as the "Termination for Convenience Reimbursement Deductions"). Within twenty (20) days of the date of the issuance of the termination for convenience, the County shall submit a detailed claim with a breakdown of the purported costs and supporting written report(s) from a licensed third-party engineer(s) setting forth the County's position of alleged costs under subsection (iii), if any, for the Tenant's review. Failure of the County to timely submit such a claim with the corresponding report(s) shall be deemed acceptance of the conditions and waiver of an offset claim under subsection (iii). In the event the County timely submits a written claim under subsection (iii), Tenant shall have twenty (20) days to respond and in the event of any dispute over the purported items, the Parties shall meet and confer in an attempt to resolve same within sixty (60) days of the issuance of the termination for convenience. Within sixty (60) calendar days of County's acceptance of the eligible construction costs incurred prior to the date of termination for convenience, County shall pay Tenant the amount of County determined (accepted) incurred eligible costs less (minus) the amount of the Termination for Convenience Reimbursement Deductions defined above. For avoidance of doubt, no reimbursement rights shall arise under this Article 16.16 if the County invokes any of its other termination rights under Article 16, or otherwise hereunder, in whole or in part, for cause upon or relating to one or more Tenant defaults hereunder.

- (C) In the event the County provides Tenant with a written notice of termination solely for Convenience under this subsection 16.16 after completion of the Facility, the notice shall

provide Tenant with a reasonable period of time to vacate the Facility and any other erected improvements, which shall not be less than one hundred and twenty (120) calendar days after the date of the notice. The County shall be responsible for paying the Tenant the stabilized appraised value of the Facility (expressly excluding the value of the Premises) as determined by two members of the Appraisal Institute (MAI appraisers) less (minus) all of the Termination for Convenience Reimbursement Deductions. One appraiser shall be chosen by the Tenant and one shall be chosen by the County. If the average of the two appraisals is 10% or less of each appraisal amount, then such average shall be deemed the stabilized appraisal value. If the average of the two appraisals is over 10% of either appraisal, then the two appraisers shall choose a third MAI appraiser to determine the stabilized appraised value. Amortization shall be calculated in a straight line declining basis over the Term (excluding the potential Extension Term). Within sixty (60) calendar days of County's acceptance of the stabilized appraised value from both MAI appraisers, or if three are used as stated above, then from all three MAI appraisers, which may be subject to negotiations by the parties prior to the County's acceptance thereof, County shall pay Tenant the amount of the County accepted stabilized appraised value less (minus) the sum of all Termination for Convenience Reimbursement Deductions. Payment by the County of such amount to Tenant, or the tendering of same to Tenant (if not accepted), shall constitute full accord and satisfaction, and serve as an irrevocable release by Tenant in favor of County, with respect to any and all actual and potential claims of Tenant arising from or relating to the County's exercise of its termination for convenience rights under Article 16.16 hereof. For avoidance of doubt, no reimbursement rights shall arise under this Article 16.16 if the County invokes any of its other termination rights under Article 16, or otherwise hereunder, in whole or in part, for cause upon or relating to one or more Tenant defaults hereunder.

- (D) Calculation of Potentially Reimbursable Eligible Facility Construction Costs in Event of County Termination Solely for Convenience prior to completion of construction of the Facility. In the event the County exercises its rights under subsection 16.16 to terminate this Agreement for Convenience (without cause), which termination for convenience is not coupled or associated with a County right to terminate this Agreement for cause upon one or more Tenant defaults hereof (such as any Tenant default described or referenced in subsections 16.01 through and including 16.09 hereof), then potentially reimbursable Facility construction costs, incurred by Tenant up to the effective date of said termination for convenience shall be calculated in accordance with this subsection 16.16(D). Potentially reimbursable Facility construction costs shall be those incurred, verifiable, and reasonable construction costs directly related to the actual design and construction of the Facility and equipment, which occurred prior to the effective date of the termination for convenience and were not previously paid or reimbursed to Tenant from County (or MARAD or other governmental entities) from PIDP Grant funds, County funds, or otherwise, plus ten percent (10%) thereof (for Tenant profit and overhead, building permit fees, required builders' risk and liability insurance costs, required payment and performance bond costs, general conditions, and other indirect costs). Notwithstanding the foregoing, and for avoidance of doubt, Facility design construction costs potentially reimbursable under this subsection 16.16 shall expressly exclude all professional fees other than direct Facility surveying and architectural and design costs. Those fees excluded, but not limited to, are legal, accounting, and other non-surveying and non-design professional

fees, all financing fees, costs, and interest, loans and mortgages, the cost of any Tenant Property, any Tenant overhead, administrative costs, indirect costs, or lost profits (as these excluded items are deemed covered in other than the 10% permitted markup referenced above), and shall further exclude any costs of any ordered cancellable material or equipment not incorporated into the Facility prior to the effective date of said notice of termination for convenience or not in conformance with the Final Design and Construction Documents or any specifications, requirements, standards, or codes set forth, incorporated, or referenced therein. Tenant shall upon demand provide the County, without charge, with access to and copies of (if requested by County) any and all Project and other records, documents, invoices, purchase orders, contracts, subcontracts (of all tiers), Project Contractor agreements, evidence of payments, releases, correspondence, cost, progress and other reports, job cost summary report and detail, and any other Project cost related records or materials that the County may request.

- (E) The County's right to terminate this Lease for convenience under this Article 16.16 shall survive any other actual or purported earlier termination of this Lease by either party.
- (F) For further clarity, in the event of any termination of convenience under this Article 16.16, the County shall reimburse the Security Deposit to Tenant within sixty (60) days of the issuance of the termination for convenience and shall return or otherwise cancel the Financial Close Security (letter of credit).

ARTICLE 17

Taking of Premises

17.01 Eminent Domain.

- (A) Entire Taking: If all of the Premises are acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use, any of which materially affect the Premises in their entirety), during the Term of this Agreement, for any public or quasi-public purpose, under any statute or regulation, or by right of eminent domain, this Agreement shall terminate on the date that surrender of possession to the condemning authority is required by court order or other binding agreement in lieu of condemnation, and rent due under this Agreement shall be pro-rated as of the date of said termination, and Tenant shall be entitled to any claim against the condemning authority for which the Tenant may be entitled, provided Tenant may not bring any claim that belongs to the County. No compensation settlement of Tenant's Leasehold interest or sale in lieu of condemnation of Tenant's Leasehold interest shall be entered into by County without Tenant's prior written consent. Tenant shall be entitled to recover, out of any condemnation award or proceeds of sale in lieu of condemnation, compensation for the value of Tenant's unexpired leasehold interest as agreed to by County and Tenant, or absent such agreement, as determined in an apportionment proceeding, to the extent provided by law, including, but not limited to, any inverse condemnation claim less the amount of Rent and fees that would have been due the County hereunder by Tenant during the remainder of the unexpired leasehold, the claims for which shall belong solely to the County. Nothing in this Agreement shall prohibit

Tenant from asserting a separate claim for business or other damages, including, but not limited to, the loss of value of its trade fixtures, and moving costs to the extent allowed by law. Nothing herein shall affect, limit, or diminish the County's right to receive any amounts that may be due County from the condemning authority to the extent allowed by law.

- (B) Partial Taking: If a portion of the Premises is acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use, any of which affect the portion of the Premises) during the Term of this Agreement for any public or quasi-public purpose, under any statute or regulation, or by right of eminent domain,, and if, in Tenant's reasonable discretion, the remainder of the Premises cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction, and commercial feasibility, as immediately before such Taking, Tenant shall have the right, to be exercised by written notice no later than one hundred twenty (120) calendar days after surrender of possession to the condemning authority is required, to terminate this Agreement on a date to be specified in said notice, but Tenant shall be entitled to any claim against the condemning authority for which the Tenant may be entitled, including, but not limited to, any inverse condemnation claim. In the event of termination by Tenant under this paragraph, Tenant shall pay FMV Land Rent pro-rated through the date of termination and shall perform all of the obligations of Tenant hereunder to such date. Tenant shall also have the right to separately claim all damages including but not limited to business damages from the condemning authority to the extent allowed by law and no compensation settlement of Tenant's Leasehold interest or sale in lieu of condemnation of Tenant's Leasehold interest shall be entered into by County without Tenant's prior written consent; provided, however, that nothing in this Article shall affect, limit, or reduce the County's right to receive any amounts that may be due County from the condemning authority to the extent allowed by law, including, without limitation, the County's rights to seek and retain all amounts and damages arising from or relating to the County's fee simple interest in the Premises, its ownership and/or Reversionary Interest in the Facility and the Additional Improvements, and/or any lost or reduced Rent or other fees to be received by County during the remainder of the Term hereunder as a result of such taking.

If a portion of the Premises is acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any future taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use) during the Term of this Agreement for any public or quasi-public purpose, under any statute, or by right of eminent domain, and this Agreement is not terminated as provided in the foregoing sub-paragraph, Ground Rent and Additional Rent shall be reduced in proportion to the square footage of the Premises taken as of the date that surrender of possession is required, but Tenant shall be entitled to any claim against the condemning authority for which the Tenant may be entitled, including, but not limited to, any inverse condemnation claim. No compensation settlement of Tenant's Leasehold interest or sale in lieu of condemnation of Tenant's Leasehold interest shall be entered into by County without Tenant's prior written consent. Tenant shall also have the right to separately claim all damages, including but not limited to business damages against the condemning authority as provided by law. Tenant shall be entitled to recover, out of any

condemnation award or proceeds of a sale in lieu of partial condemnation, compensation for the value of Tenant's unexpired leasehold interest taken, as agreed to by County and Tenant, or absent such agreement, as determined in an apportionment proceeding to the extent provided by law and subject to the provisions herein less the amount of Rent and fees that would have been due the County hereunder by Tenant during the remainder of the unexpired leasehold, the claims for which shall belong solely to the County. Nothing herein shall affect, limit, or reduce County's right to receive any amounts that may be due County from the condemning authority to the extent allowed by law, including, without limitation, the County's rights to seek and retain all amounts and damages arising from or relating to the County's fee simple interest in the Premises, its ownership and/or Reversionary Interest in the Facility and any Additional Improvements, and/or any lost or reduced Rent or other fees to be received by County during the remainder of the Term hereunder as a result of such taking.

- (C) Temporary Taking: If the whole or any part of the Premises or of Tenant's interest under this Agreement be acquired by eminent domain or sale in lieu of condemnation (including, without limitations, any taking by the FAA or change to the FAA Regulations, or change in the Runway Protection Zones, Object Free Area, height limitation or use), a temporary interest, this Agreement for any public or quasi-public purpose, under any statute or regulation, or by right of eminent domain, shall not automatically terminate by reason thereof, but Tenant shall be entitled to any claim against the condemning authority for which the Tenant may be entitled, including, but not limited to, any inverse condemnation claim. Tenant shall not be required to pay rent for any portion of the premises which is temporarily not usable by Tenant, and such rent reduction shall be determined on a pro rata basis based upon the area that remains usable. Tenant shall perform all other payment, performance, and other Tenant obligations under this Agreement, except to the extent that Tenant may be prevented from so doing due to the temporary occupancy by the condemning authority. In the event of any such Temporary Taking, Tenant shall be entitled to claim all damages, including but not limited to, business damages and moving costs against the condemning authority as provided by law. No compensation settlement of Tenant's Leasehold interest or sale in lieu of condemnation of Tenant's Leasehold interest shall be entered into by County without Tenant's prior written consent. Subject to this Article, Tenant shall be entitled to recover out of any condemnation award or proceeds of a sale in lieu of a temporary condemnation, any damage to its remaining leasehold interest, as agreed to by County and Tenant, or absent such an agreement, as determined in an apportionment proceeding to the extent provided by law and subject to the provisions herein. Nothing herein shall affect, limit, or reduce County's right to receive any amounts that may be due County from the condemning authority to the extent allowed by law, including, without limitation, the County's rights to seek and retain all amounts and damages arising from or relating to the County's fee simple interest in the Premises, its ownership and/or Reversionary Interest in the Facility and any Additional Improvements, and/or any lost or reduced Rent or other fees to be received by County during the remainder of the Term hereunder as a result of such taking.

ARTICLE 18

Special Conditions

18.01 Quality of Services. The Tenant shall furnish the services required and authorized, pursuant to Article 4 (Use of Premises) hereof, on a good, prompt and efficient basis and on a fair, equal and not unjustly discriminatory basis to all users thereof. The Tenant shall operate and maintain the facility in conformance with industry standards for a world class phytosanitary treatment and cold chain processing facility.

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

18.03 County's Obligations. The Tenant, in recognition of the County's obligation, pursuant to Section 22 of Part V of the Federal Aviation Administration's standard grant assurances, to enforce the provisions of Article 18.01 (Quality of Services) and Article 18.02 (Nondiscriminatory Prices), agrees that the Department may, from time to time, promulgate standards, methods and procedures for and monitor and test the provision of services hereunder and may require the Tenant to provide copies of schedules of service charges and the bases for discounts, rebates and similar types of price reductions. Should the Department determine that the Tenant is not in compliance with the provisions of Article 18.01 (Quality of Services) and Article 18.02 (Nondiscriminatory Prices), the first such occurrence shall be considered a curable default, pursuant to Article 16.04 (Other Defaults) hereof, and subsequent occurrence(s) shall be considered a material breach of this Agreement, entitling the County to the remedies provided in this Agreement or by law.

18.04 Right of Flight. There is hereby reserved to the County, its successors and assigns, for the use and benefit of the County and the public, a right of flight for the passage of aircraft in the air space above the surface of the Premises herein leased, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space or landing at, taking off from or operating on the Airport.

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

18.06 Compliance with FAA Requirements. To the extent the FAA has jurisdiction over the activities of Tenant, or to the extent the federal grant assurances or FAA regulations require County to monitor the activities of the Tenant hereunder, the Tenant agrees to comply with such FAA or federal requirements or regulations.

ARTICLE 19

Equal Employment Opportunity, Nondiscrimination and Affirmative Action

The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules and Applicable Laws as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Tenant for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program or to the Seaport Department through the PIDP Grant. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

(A) The period during which the property is used by the Tenant or any Project Contractor, airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits;

OR

(B) The period during which the airport sponsor, the Tenant, or any transferee or Project Contractor has or retains possession of the Site or any portion thereof.

19.01 Employment Discrimination. The Tenant shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry, sexual orientation or disability. The Tenant shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

19.02 Nondiscriminatory Access to Premises and Services. The Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, sex, national origin, disability, sexual orientation or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, sex, national origin, disability, sexual orientation or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Facility or any Additional Improvements; and (3) that the Tenant shall use the Premises in compliance with Applicable Laws and all other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.

19.03 Breach of Nondiscrimination Covenants. In the event it has been determined that the Tenant has breached any enforceable nondiscrimination covenants contained in Article 19.01 (Employment Discrimination) and/or Article 19.02 (Nondiscriminatory Access to Premises and Services), pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Tenant fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to Article 16.04 (Other Defaults).

19.04 Disadvantaged Business Enterprise Programs. It is the County's intent to ensure that Proposers invite certified Disadvantaged Business Enterprise (DBE) firms to have an opportunity to participate in the performance of federally-funded contracts, and for proposers to take all necessary and reasonable steps to make such assurances. DBE's and other small businesses, as defined in Title 49 CFR Part 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds.

19.05 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this Agreement, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Tenant") agrees as follows:

- (A) Compliance with Regulations: The Tenant (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 set forth in Article 19.06 (Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program).
- (B) Nondiscrimination: The Tenant, with regards to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Tenants or subcontractors, including procurements of materials and leases of equipment. The Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities set forth below, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- (C) Solicitations for sub-leases or subcontracts, including procurements of materials and equipment: In all solicitations, either by competitive bidding, or negotiation made by the Tenant for work to be performed under a sub-lease or subcontract, including procurements of materials, or leases of equipment, each potential sub-Tenant or subcontractor or supplier will be notified by the Tenant of the Tenant's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- (D) Information and Reports: The Tenant 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 Tenant is in the exclusive possession of another who fails or refuses to furnish the information, the Tenant will so certify to the County or the

Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- (E) Sanctions for Noncompliance: In the event of a Tenant's noncompliance with the Nondiscrimination provisions of this Agreement, the County will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- (1) Withholding payments to the Tenant under the Agreement until the Tenant complies; and/or
 - (2) Cancelling, terminating, or suspending the Agreement, in whole or in part.
- (F) Incorporation of Provisions: The Tenant will include the provisions of paragraphs one through six in every sublease and 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 Tenant will take action with respect to any sublease or 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 Tenant becomes involved in, or is threatened with litigation by a sub-Tenant, subcontractor, or supplier because of such direction, the Tenant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

19.06 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

- (A) The Tenant, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- (B) With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the County will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

19.07 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, the Tenant agrees to comply with the following nondiscrimination statutes, ordinances, and authorities; including but not limited to:

- (A) *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);
- (B) *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*);
- (C) *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);
- (D) *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*;
- (E) *The Age Discrimination Act of 1975*, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (F) *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);
- (G) *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 Tenants, whether such programs or activities are Federally funded or not);
- (H) *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;
- (I) *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);
- (J) *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;
- (K) *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);
- (L) *The Federal-Aid Highway Act of 1973*, (23 U.S.C. §324 *et. seq.*) (prohibits discrimination on the basis of sex);
- (M) *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.*);
- (N) Chapter 11A of the Code of Miami-Dade County; and

- (O) Executive Order 11246 of September 24, 1965, as amended, and the non-discrimination and equal opportunity rules, regulations, and relevant orders of the Secretary of Labor including, without limitation, those applying to contractors and subcontractors who utilize or receive any federal grant funds.

19.08 Equal Opportunity for Employment. All contractors and subcontractors (of all tiers) performing work in connection with this Lease or the Project, Facility, or the Additional Improvements shall comply with Chapter 11A of the Code of Miami-Dade County and shall provide equal opportunity for employment without regard to race, religion, color, age, sex, national origin, sexual orientation, gender identity or gender expressions, status as a victim of domestic violence, dating violence or stalking, disability, or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Tenant shall contractually require all of its contractors and subcontractors (of all tiers) to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Miami-Dade Commission on Human Rights, or any other authorities having jurisdiction over any work or improvements to be undertaken on or within the Premises setting forth the provisions of the aforementioned non-discrimination law or ordinance.

ARTICLE 20

Security and Related Provisions

20.01 Alcohol and Drug Testing. The Tenant acknowledges that the County, as a public agency sponsor 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 Tenant acknowledges that the Department, on behalf of the County, has the right to require users of the Airport (Tenants, Permittees, Licensees, etc.) to establish reasonable programs to further the achievement of the objectives described herein. Accordingly, the Tenant shall establish 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 Airport Operations Area (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 Tenant 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.

20.02 Drug-Free Workplace Default. The Tenant acknowledges it has provided to the County a Drug-Free Workplace Affidavit certifying that it is providing a drug-free workplace for its employees, as required by County Ordinance No. 92-15, adopted on March 17, 1992 as amended from time to time ("Ordinance"). Based on the provisions of said Ordinance, the County shall have the right, upon thirty (30) calendar days written notice to the Tenant, to terminate this Agreement in the event the Tenant fails to provide, as of each anniversary of the Effective Date,

the annual re-certification affidavit as required by the Ordinance; provided, however, that such termination shall not be effective if the Tenant submits the required Affidavit within the notice period.

Further, this Agreement shall be terminated upon not less than fifteen (15) calendar days written notice to the Tenant and without liability to the County, if the Department or the County Manager determines any of the following:

- (A) That the Tenant has made a false certification in its execution of the Affidavit submitted or in its annual re-certification as required by the Ordinance;
- (B) That the Tenant has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual re-certification; or
- (C) That such a number of employees of the Tenant have been convicted of violations occurring in its workplace(s) as to indicate that the Tenant has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

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

20.04 Federal Agencies Right to Consent. The Tenant 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 Tenant in areas under the jurisdiction or control of such federal inspection agencies.

ARTICLE 21

Employees

21.01 Control of Employees. Tenant shall properly control the actions of its employees at all times that said employees are working at the Site, 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.

At the request of the County, the Tenant shall promptly remove from the Project any of its employee, or any other person, working at the Site. The Tenant agrees that such removal of any employee or other person does not require the termination or demotion of the employee or person.

21.02 Tenant's Responsibility for Employee's Violations. In the event the Tenant is in default of the covenants of Article 21.01 (Control of Employees) for failure to properly control its employees or by permitting its employees to improperly use the facilities by the County, the Department shall have the right to require the Tenant to conduct an investigation into any claimed violation of the covenants; if such investigation substantiates a violation, Tenant agrees to administer the appropriate discipline up to and including discharge of the offending employee.

21.03 Verification of Employment Eligibility (E-Verify). By entering into this Agreement, the Tenant becomes obligated to comply with the provisions of Section 448.095, Florida Statute, titled "Verification of Employment Eligibility." This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Tenant effective, January 1, 2021, and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Agreement or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately.

Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination, and the Tenant may be liable for any additional costs incurred by the County resulting from the termination of the Agreement. If this Agreement is terminated for a violation of the statute by the Tenant, the Tenant may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 22

Civil Actions

22.01 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.

22.02 Notice of Commencement of Civil Action. In the event that the County or the Tenant commence a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the County and the Tenant agree that service of process shall be made pursuant to the rules of Civil Procedure in the court in which the action has been filed.

22.03 Registered Office/Agent; Jurisdiction. Notwithstanding the provisions stated in Article 22.02 Notice of Commencement of Civil Action and in addition thereto, the Tenant, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.0501, Florida Statutes. If the Tenant is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for

any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 23

Trust Agreement

23.01 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, to the extent of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, and the level of rents, fees or charges required hereunder and their periodic modification or adjustment as may be required by the provisions of the Trust Agreement dated as of the 15th day of December, 2002 as by and among the County and the JP Morgan Chase Bank as Trustee and Wachovia Bank, National Association as Co-trustee (“the Trust Agreement”), shall prevail and govern at all times during the Term of this Agreement. Copies of the Trust Agreement are available for inspection in the offices of the Department during normal working hours.

23.02 Adjustment of Terms and Conditions. If, at any time during the Term of this Agreement, a Federal agency or court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the County by the Tenant or by other Tenants under other Agreements of the County for the lease or use of facilities used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals, fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that the rentals, fees and charges payable by the Tenant and others shall not thereafter be unjustly discriminatory to any user of like facilities and shall not result in any violation of the Trust Agreement 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 including the adjustment of rentals, fees and charges upon the issuance of written notice from the Department to the Tenant.

ARTICLE 24

Other Provisions

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

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

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

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

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

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

24.07 Notices. All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be deemed sufficiently served if delivered by: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) **To the County**

a) to the Miami-Dade Aviation Department:

Director
Miami-Dade County, Aviation Department
Post Office Box 025504
Miami, Florida 33152-5504

Attention: Airport Director
Phone: 305-876-7066
E-mail: RCutie@flyMIA.com

and

b) to the Miami-Dade Seaport Department:

Director
Miami-Dade County, Seaport Department
1015 N. America Way 2nd Floor
Miami, Florida 33134

Attention: Hydi Webb, Director
Phone: 305-347-4800
E-mail: hydi.webb@miamidade.gov

(2) To the Tenant

Mandich Group LLC
4000 Hollywood Blvd
Suite 650N
Hollywood, FL 33021
Attention: Michael Mandich
Phone: 305-742-8808
E-mail: michael@mandichgroup.com

With a copy to: Haber Law, LLP
Attention: David Podein
251 NW 23rd Street
Miami, FL 33127
dpodein@haber.law

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

24.08 Rights Reserved. Rights not specifically granted the Tenant by this Agreement are reserved to the County.

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

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

24.11 No Waiver. Failure by either party to enforce any provision or term of this Agreement shall not be deemed a waiver of such provision or a modification of this Agreement. There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

24.12 Right to Regulate. Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Tenant or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning Appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County to agree to any specific request of the Tenant that is related in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by the Tenant from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests, provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversible of the County's action or injunctive relief; nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.

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

24.14 Inspections. The authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises at all reasonable times for the purposes of inspection and testing to determine compliance

with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

24.15 Payment of Taxes. The Tenant shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, the Facility, and any Additional Improvements and/or its operations under this Agreement; provided, however, the Tenant shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Tenant shall constitute a default pursuant to Article 16.04 (Other Defaults).

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

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

Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

24.18 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 employees, agents, consultants, contractors, subcontractors (of any tier), or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are Force Majeure Events: acts of military authority, acts of nature (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses (through no fault or disability of the party responsible for obtaining same or that party's agents, employees, partners, consultants, or contractors (of any tier)), blockades, embargoes, sabotage, epidemics (excluding COVID-19) 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 (not occasioned or contributed to by the acts or omissions of the party claiming force majeure or any of that party's employees, agents, partners, consultants, or contractors (of any tier)). The party affected and claiming force majeure disability or relief shall provide written notice within 15 days to the other party indicating the nature, cause, date of commencement

thereof, the obligations claimed to be prevented or delayed solely by a claimed Force Majeure Event, 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 Force Majeure Events and provided the affected party has timely notified the other and exercised commercially reasonable efforts, the time for performance under this Agreement (excluding payment obligations hereunder) shall be extended for a period of time reasonably necessary to overcome the effect of such unavoidable delay, but only to the extent such unavoidable delay was caused solely by a Force Majeure Event. Notwithstanding the foregoing, and for avoidance of doubt, Force Majeure relief shall not apply if a party's non-payment or non-performance is prevented or impaired, in whole or in part, by any cause, factor, or event that was reasonably avoidable or which was caused in whole or in part by the party seeking force majeure relief or by any of that party's employees, agents, partners, consultants, or contractors (of any tier).

24.19 Destruction of Premises. In the event the Premises shall be destroyed or be so damaged or injured by fire, windstorm, flood or other Casualty so as to be rendered untenable during the Term, Tenant shall notify County of such destruction or damage within 24 hours after Tenant has knowledge thereof, and as soon as is reasonably practicable thereafter, but no later than ten (10) business days from the occurrence of such Casualty, Tenant shall provide County with a written and detailed description of all damage to Facility and Premises and the estimated costs to repair and restore same, and within such time shall also provide County with complete copies of all Builder's Risk, property and casualty, and other policies of insurance, and bonds, covering or otherwise applicable to such loss, damage or Casualty.

(A) Total or Partial Destruction Prior to CO; Tenant's Duty to Rebuild: During the Development Term and any portion of the Operating Term before a CO is issued for the Facility, the following provisions shall apply to any Casualty to all or any part of the Facility, Additional Improvements, or the Premises:

- (1) In the event all or any portion of the Facility, any County approved Additional Improvements, or the Premises is or are damaged by fire or other Casualty prior to the Final Completion of the Facility, Tenant shall promptly and diligently proceed at its own cost and expense, and irrespective of any potential insurance deficiency, to fully repair, restore, and complete the Facility, the Premises, and, if applicable, any County approved Additional Improvements damaged by said Casualty. In such event, subject to Tenant's timely and proper compliance with the foregoing Tenant repair, restoration, and completion requirements, Tenant shall be entitled to receive the entire available and payable proceeds of the applicable insurance to be used by Tenant solely for its reconstruction, repair, rebuilding and completion of the Facility, the Premises, and, if applicable, the other County approved Additional Improvements within the Premises damages by said Casualty. In the event the amount of available insurance proceeds is insufficient to cover all necessary costs

to repair, rebuild, and complete the Facility and any Additional Improvements, Tenant shall be solely responsible for any insurance deficiencies. Any excess insurance award or proceeds available after such reconstruction, repair or completion is completed to the satisfaction of County, if any, shall be paid to and retained by Tenant as a Facility capital replacement reserve fund to be used only to replace or refurbish capital components of the Facility on as needed basis during the remainder of the Operating Term or any mutually approved extension thereof; the remainder of which fund, if any, shall be paid to the County upon the expiration of the Operating Term or, if applicable, upon the earlier termination of the Lease in accordance with its terms. Additional Rent shall proportionately abate during the time that Facility or any part thereof is unusable, having due regard to the extent to which Tenant (or its sub-tenant) may be required to discontinue its/their use of, or business or operations in, a portion of the damaged Facility, unless such Facility disability arises from a Casualty caused or contributed to, in whole or in part, by any act or omission of Tenant or any Tenant agent, employee, partner, Affiliate, contractor, or subcontractor (of any tier) (a "Tenant-Fault Casualty") or Tenant or a Tenant contractor or Affiliate has business interruption insurance that covers the risk or loss giving rise to said disability, in which case, in either event, Additional Rent payments due County shall not be abated during the period of repair and reconstruction. Notwithstanding the forgoing, in no event shall Additional Rent be abated for a period in excess of 12 months from the date of the commencement of the subject Casualty.

- (2) If the Project or any part of the Project shall be damaged or destroyed by fire or other Casualty prior to Final Completion, which damage or destruction is not caused or contributed to, in whole or in part, by Tenant or any Tenant agent, employee, partner, Affiliate, contractor or subcontractor (of any tier) (a "Tenant No-Fault Casualty"), then Completion Deadline shall be extended for a reasonable amount of time as mutually agreed by the Parties to afford Tenant the opportunity to expeditiously repair, restore, and complete construction of the Facility, any Additional Improvements and Premises at Tenant's cost.
- (B) Total or Partial Destruction of Facility or Premises During Operating Term or Extension Term. During the portion of the Operating Term following the issuance of a CO for the Facility and throughout (if applicable) the Extension Term, the following provisions shall apply to any Tenant No-Fault Casualty or Tenant-Fault Casualty to all or any part of the Facility, the Premises, or any County approved Additional Improvements:
- (1) In the event all or any portion of the Facility, Premises, or any other County approved Additional Improvements is/are damaged by fire or other Casualty, whether a Tenant No-Fault Casualty or a Tenant-Fault Casualty, during any portion of the Operating Term, other than during the final seven (7) years of same or any portion of the Extension Term (if applicable), Tenant shall at its cost promptly and diligently repair, restore, and rebuild all damaged portions of the Facility, the Premises, and (if applicable) any County approved Additional Improvements. In connection therewith, Tenant shall be solely responsible for any insurance deficiency(ies). During any period of repair, completion, or restoration, all Tenant

rental and other payment obligations shall continue unabated. Any Casualty related damages to the Facility, the Premises, or, if applicable, any County approved other Additional Improvements of the Premises, will be addressed in sections 24.19(B)(2) and (3) below.

- (2) Tenant-Fault Casualty During Last 7 Years of Operating Term or Extension Term. In the event all or any portion of the Facility, Premises, or any other County approved Additional Improvements is/are damaged by a Tenant-Fault Casualty during the last seven (7) years of the Operating Term or any portion of the Extension Term (if applicable), then Tenant shall at its cost promptly and diligently repair, restore, and rebuild all damaged portions of the Facility, the Premises, and (if applicable) any County approved Additional Improvements. In connection therewith, Tenant shall be solely responsible for any insurance deficiency(ies). During any period of repair, completion, or restoration, all Tenant rental and other payment obligations shall continue unabated.
- (3) Tenant No-Fault Casualty During Last 7 Years of Operating Term or Extension Term. During the final seven years of the Operating term or, if applicable, any portion of the Extension Term, in which 50% or more of the Facility is damaged and rendered untenable or for which required repairs cannot be done in less than 18 months, then Tenant may provide County with a written notice of a Tenant No-Fault Casualty termination in which Tenant must detail and document the scope of all Tenant No-Fault Casualty related damages to the Facility, Premises, and, if applicable, any other County approved Additional Improvements, identify all contributing causes of same, provides County with all available incident, casualty, or other investigative, incident, or casualty reports and any associated damage assessments, as well as copies of all notices, claims, and other information provided to or received from any insurance company or adjuster regarding same, provide County with copies of all policies of insurance that provide, or which may provide, coverage in connection with the claimed Casualty or any damage or loss arising from same (the "Tenant No-Fault Casualty Termination Notice"). Said notice must also include a notarized affidavit from a Florida licensed engineer or architect attesting and certifying either that over 50% of the Facility is damaged and untenable solely due to the claimed Tenant No-Fault Casualty or is over 25% damaged and untenable due to same and cannot be repaired in less than 18 months (12 months if the Casualty occurs within the Extension Term). Within thirty (30) calendar days of County's receipt of Tenant's proposed Tenant No-Fault Casualty Termination Notice, in compliance with all certification, document, and other requirements hereof, County must provide Tenant a written response in which County either (x) accepts Tenant's No-Fault Termination Notice, in which case Tenant shall, within five (5) business days of receipt of County's acceptance, fully and irrevocably assign to County (in a form acceptable to County) (i) all of Tenant's rights, claims, and entitlement to insurance proceeds arising from or associated with any policy of insurance required under Article 15 hereof or otherwise that covers or potentially covers damage to, loss of, and/or loss of use of or business interruption with respect to the Premises, the Facility or the Additional Improvements and (ii) all of Tenant's claims and causes of action against any responsible third parties bearing any responsibility for any portion of the damage

or loss to the Premises, the Facility, or to the Additional Improvements, or (y) reasonably rejects Tenant's Casualty Termination Notice in writing, which rejection must provide one or more reasonable bases therefore, such as, without limitation, the claimed Casualty is actually a Tenant-Fault Casualty governed by Section 24.19(B)(2) above or that one or more certification requirements is missing or lacks merit. In the event County rejects Tenant's (purported) No-Fault Termination Notice, this Lease shall not terminate and Tenant shall at its cost promptly and diligently repair, restore, and rebuild all damaged portions of the Facility, the Premises, and (if applicable) any County approved Additional Improvements in accordance with the Final Master Plan and Final Design and Construction Documents. In connection therewith, Tenant shall be solely responsible for any insurance deficiency(ies). In the event Tenant fully repairs and restores the damaged Facility, Premises, and, if applicable, other County approved Additional Improvements, then the proceeds from insurance in connection with such damage or destruction shall be paid over to Tenant upon confirmation of actual construction costs expended for such purposes, to be used by Tenant solely for the purposes of repairing and restoring Facility, Premises, and, if applicable, other Additional Improvements. During any period of repair, completion, or restoration, all Tenant rental and other payment obligations to County shall continue unabated. In the event, however, the County accepts Tenant's proposed No-Fault Casualty Termination Notice, this Lease shall then terminate as of such Casualty Termination Date, provided Tenant has first satisfied all payment obligations hereunder through the proposed effective date of termination, and if so terminated, all obligations of Tenant and County under this Lease shall cease as of said date (other than those obligations hereunder that by their terms survive the expiration or early termination hereof), except that upon County's written request, Tenant shall be obligated, at its sole cost and expense, to demolish the damaged portion of Facility and, if applicable, any damaged Additional Improvements, and to dispose of the demolition debris, which Tenant obligation shall expressly survive any early termination hereof and the expiration of the Term. Following such demolition and cleanup the only obligations of the Parties shall be such obligations which as by law are preserved unto the Parties as well as any obligations hereunder that expressly survive the early termination hereof.

24.20 Quiet Enjoyment. Subject to the terms and conditions of this Agreement, the County's right to make certain repairs, alterations, and additions under Article 9 (Maintenance by County) which, for purposes of this clause, includes any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Airport, and the reservation of easement rights to the airspace under Article 18.04 (Right of Flight), all of which provisions and any others in this Agreement, the Tenant acknowledges may cause disruption and disturbance to the Tenant, and upon the observance by the Tenant of all the terms, provisions, covenants, and conditions imposed upon the Tenant hereunder, the Tenant shall peaceably and quietly hold and enjoy the Premises for the Term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Tenant's business, for acts or omissions of Tenant or any of Tenant's agents, employees, Project Contractors (of any tier), sub-tenants, customers, invitees, or guests, or for acts or omissions of users of the Airport, third

parties or when any department or agency of the County is acting in its governmental capacity or for Acts of God.

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

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

24.23 Inspector General Reviews.

Independent Private Sector Inspector General Reviews: Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Tenant shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Tenant's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Tenant, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Tenant in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Tenant or any third party.

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.

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 Agreement. 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 Tenant, 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 Tenant from the Inspector General or IPSIG retained by the Inspector General, the Tenant 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 Tenant'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.

24.24 Federal Aviation Administration (FAA)/U.S. DOT Maritime Administration (MARAD) Provisions.

- (A) Compliance with Nondiscrimination Requirements: During the performance of this Agreement, the Tenant, for itself, its assignees, and successors in interest agrees as follows:
- (1) Compliance with Regulations: The Tenant (including its Project Contractors and Subcontractors) 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 Agreement and with Nondiscrimination Acts and Authorities relative to Non-discrimination in federally-assisted programs of the U.S. Department of Transportation, Maritime Administration (MARAD), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
 - (2) Non-discrimination: The Tenant, with regard to the work performed by it or on its behalf during the Agreement, 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 Tenant 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 Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier (of all tiers) will be notified by the Tenant of the Tenant's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- (4) Information and Reports: The Tenant 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 County, the Federal Aviation Administration, or MARAD to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and Instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Tenant will so certify to the County, the Federal Aviation Administration, and/or MARAD as appropriate, and will set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of a Tenant's noncompliance with the Nondiscrimination provisions of this Agreement, the County will impose such contract sanctions as it, the Federal Aviation Administration, or MARAD may determine to be appropriate, including, but not limited to:
 - (i) Withholding payments to the Tenant under the Agreement until the Tenant complies; and/or
 - (ii) Cancelling, terminating, or suspending a contract, in whole or in part.
- (6) Incorporation of Provisions: The Tenant will include the provisions of Section 24.24(A) subparagraphs one through six in every subcontract (of all tiers), including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Tenant will take action with respect to any subcontract or procurement as the County, the Federal Aviation Administration, or MARAD may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Tenant becomes involved in, or is threatened with litigation by a Subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.
- (7) During the performance of this Agreement, the Tenant, for itself, its assignees, its Project Contractors (of all tiers) and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
 - (i) 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);
 - (ii) 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);
 - (iii) 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);

- (iv) 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;
 - (v) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - (vi) 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);
 - (vii) 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 contractors, whether such programs or activities are Federally funded or not);
 - (viii) 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;
 - (ix) 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);
 - (x) 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;
 - (xi) 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); and
 - (xii) 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 Tenant contracts and subcontracts (of all tiers) that result from this agreement, including, without limitation, all Tenant contracts with Project Contractors (of all tiers), shall 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 Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant 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 Tenant contracts and subcontracts (of all tiers) that result from this agreement, including, without limitation, all Tenant contracts with Project Contractors (of all tiers), must incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Tenant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Tenant 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). Tenant 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.
- (D) All Tenant contracts and subcontracts (of all tiers) that result from this agreement, including, without limitation, all Tenant contracts with Project Contractors (of all tiers), must require such contractors and subcontractors to at all times comply with, and Tenant hereby agrees to at all times comply with, section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered material identified in the EPA guidelines.
- (E) Tenant and Tenant's Project Contractors (of all tiers) are prohibited from obligating or expending grant or loan funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), as well as
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, covered telecommunications equipment includes video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence of the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the PIDP Grant meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Debarment and Suspension (Executive Orders 12549 and 12689) A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (H) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Tenant and its Project Contractors must file the Byrd Anti-Lobbying Amendment Certification prior to the time of contracting. Each tier of contractor must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

24.25 Vendor Registration/Conflict of Interest

- (A) Vendor Registration:
The Tenant shall be a registered vendor with the County – Strategic Procurement Department, 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 Tenant confirms its commitment to comply with the vendor registration requirements and the associated affidavits available in **INFORMS** at <https://supplier.miamidade.gov>.

- (B) Conflict of Interest and Code of Ethics: Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

24.26 Miami-Dade County's Rights As Sovereign. The County retains all its sovereign prerogatives and rights as a county under State and local law with respect to the planning, design, construction, development, operation, and maintenance of the Project. It is expressly understood that notwithstanding any provisions of this Lease and County's status thereunder:

- (A) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State and local law, and in the event Tenant does not comply with the requirements for obtaining Permits and Approvals proscribed by County, County shall in no way be estopped from withholding or refusing to issue any approvals or applications for building, zoning, planning or development under present or

future laws and regulations whatever nature applicable to the planning, design, construction and development of the Project, or the operation thereof, or be liable for the same; and

- (B) The County shall not by virtue of this Lease be obligated to grant Tenant any approvals of applications for building, zoning, planning, development, FAA, or otherwise under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Project.

Notwithstanding and prevailing over any contrary provision in this Lease, any County covenant or obligation that may be contained in this Lease shall not bind the Board of County Commissioners, County's Regulatory and Economic Resources Department, the Division of Environmental Resources Management, or any other County, city, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld, or revoked in the discretion of County or other applicable governmental agencies in the exercise of its/their police power(s).

24.27 Florida Public Records Act. As it relates to this Lease, the Tenant and any of its subsidiaries, pursuant to Section 119.0701 of the Florida Statutes, shall:

- (A) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service; and
- (B) Upon request of from the Landlord's custodian of public records identified herein, provide the Landlord with a copy of the requested records or allow the public with access to public records on the same terms and conditions that the Landlord would provide the records and at a cost that does not exceed the cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law; and
- (C) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of the work under this Agreement if the Tenant does not transfer the records to the Landlord; and
- (D) Meet all requirements for retaining public records and transfer to the Landlord, at no cost to the Landlord, all public records created, received, maintained and/or directly related to the performance of this Lease that are in possession of the Tenant upon termination of this Lease. Upon termination of this Lease, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Landlord in a format that is compatible with the information technology systems of the Landlord.

For purposes of this Article, the term “public records” shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the Landlord.

In the event the Tenant does not comply with the public records disclosure requirements set forth in Section 119.0701, Florida Statutes, and this Article, the Landlord shall avail itself of the remedies set forth in this Lease. The Tenant’s obligations under this Article shall survive the termination of this Agreement.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE LANDLORD’S CUSTODIAN OF PUBLIC RECORDS AT:

Miami-Dade County Seaport Department
Luis L. Gonzalez – Public Records Custodian
1015 North America Way, 2nd Floor
Miami, FL 33132
Luis.Gonzalez4@miamidade.gov
305-347-4827

24.28 No Broker. Each Party represents and warrants to the other that no real estate broker or agent has been involved in the procurement of this Lease. Each Party shall covenant and agree to indemnify, defend, protect and hold the other Party harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys’ and experts’ fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the other Party by reason of any breach of the foregoing warranty.

24.29 Grant of Land Permits.

- (A) Tenant is hereby authorized to grant Land Permits as necessary, across, under and over the Premises, for the installation, construction, maintenance, repair and replacement of sewer and other utility lines, for rights of way and for other means of ingress and egress, all subject to the express written approval of County in County’s reasonable discretion and subject to compliance with Applicable Laws. Upon approval by County of a Land Permit, County covenants that it will, where required by Applicable Law, join in the execution of such Land Permit as landowner. Tenant shall be solely responsible for all costs associated with (i) Land Permits granted pursuant to this Subsection (a), (ii) construction and installation on the Premises in connection with such Land Permits, and (iii) all required

repairs to the Project, the Facility and any County approved Additional Improvements, and Premises resulting from the construction, installation and maintenance of such Land Permits.

- (B) County shall have the right but not the obligation, with the consent of Tenant which shall not be unreasonably withheld, delayed, or conditioned, to grant Land Permits affecting the Premises, and to construct and install on the Premises, utility lines and other improvements, so long as the Land Permits do not unreasonably interfere with the construction and operation of the Facility. County shall be solely responsible for all costs associated with (i) the Land Permits granted pursuant to this Subsection (B) other than and excluding Land Permits sought or requested by or on behalf of Tenant or which are for the primary benefit of Tenant or any Tenant agent, affiliate, contractor (of any tier), employee, tenant, subtenant, customer or invitee or are for the actual or proposed Facility or any Additional Improvements on the Premises ("Tenant Related Land Permits"), (ii) construction and installation on the Premises in connection with such Land Permits granted pursuant to this Subsection (B) other than Tenant Related Land Permits, and (iii) all required repairs to the Project and Premises resulting from the construction, installation and maintenance of such Land Permits granted pursuant to this Subsection (B) other than Tenant Related Land Permits.

24.30 Transfer Tax. Any transfer tax or other tax payable to any governmental taxing authority, including the county in which the Premises lies, by reason of the execution of this Lease and/or recordation of a memorandum thereof or of any rights conveyed or provided herein shall be paid solely by Tenant.

24.31 Consents. Unless otherwise specifically provided herein, no consent or approval by County or Tenant permitted or required under the terms of this Lease shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the Party by or on whose behalf such consent is given.

24.32 Governing Law. This Lease and the interpretation of its terms shall be governed by and construed in accordance with the Laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Lease or arising from or relating to this Lease shall lie exclusively in Miami-Dade County, Florida.

24.33 Rights. All rights, powers, and privileges conferred hereunder upon the Parties hereto shall be cumulative, but not restrictive to those given by law.

24.34 Time is of the Essence. Time is of the essence of this Lease.

24.35 No waiver. No failure of County or Tenant to exercise any power given County or Tenant hereunder or to insist upon strict compliance by County or Tenant with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of County's or Tenant's rights to demand exact compliance with the terms hereof.

24.36 Entire Agreement. This Lease (and any documents expressly incorporated hereinto) contains the entire agreement of the Parties hereto as to the subject matter of this Lease, and no prior representations, inducements, letters of intent, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force and effect. Any future amendment to this Lease must be in writing and signed by the Parties hereto, and as to County, subject to approval of same by the Board of County Commissioners. The masculine (or neuter) pronoun, singular number shall include the masculine, feminine and neuter gender and the singular and plural number.

24.37 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.

24.38 Assistance of Counsel. The Parties acknowledge that this Lease has been extensively negotiated with the assistance of competent counsel for each Party and agree that no provision of this Lease shall be construed in favor of or against any Party by virtue of the fact that such Party or its counsel has provided an initial or any subsequent draft of this Lease or of any portion of this Lease. This Lease shall be construed and enforced in accordance with the Laws of the State of Florida and no presumption as to authorship shall be presumed.

24.39 No Conflict. The Parties agree that this Lease and its exhibits are not intended to conflict with each other, and as such, are to be read cooperatively, in a broad, collective and cumulative manner (with parallel provisions covering the same issue co-existing).

24.40 Sole Relationship. It is expressly understood and agreed that the relationship between the Parties shall be solely that of landlord and tenant, and County shall in no event be construed to be a partner or joint venturer of Tenant and Tenant shall not be responsible for any of County's debts or liabilities.

24.41 Recordkeeping. Tenant shall keep and maintain all books, records, and documents of all kinds in any way related to Tenant's performance of its obligations and exercise of its rights under this Lease separate and identifiable from its other books, records and documents. The County shall be given the opportunity to review any and all documents reasonably necessary to verify compliance with this Lease, including the Small Business Enterprise program provisions, and shall the right to audit the books and records of Tenant relating to this Lease, Tenant's construction of the Project, the hiring, work, and payment of Small Business Enterprise firms, Tenant's

compliance with workforce requirements, and the payment of responsible wages. Tenant shall also require in its construction contracts, that construction contractors and trade subcontractors keep and maintain all books, records and documents of any kind related to their respective obligations in connection with construction of the Project, and that the County shall have the right to audit those books and records solely for the purpose of determining compliance with the applicable provisions of this Lease.

24.42 Special losses/Consequential Damages. Notwithstanding and prevailing over any other provision of this Lease, neither Party shall be liable for any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Lease, or any representation made in this Lease being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty, or any other legal theory.

24.43 Additional Audit Rights of County; Retention of Records by Tenant. In addition to other County or IPSIG audit rights set forth herein, the County shall have the right to audit the books, records, and accounts of Tenant and its Project Contractors (of all tiers) that relate to this Agreement or to the design, construction, operation, security, or maintenance of the Facility or any Additional Improvements of or on the Premises. Tenant and its agents, employees, and Project Contractors (of all tiers) shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement or any performance of any Tenant rights or obligations thereunder. All books, records, and accounts of Tenant and its Project Contractors (of all tiers) shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Tenant or its Project Contractors (of all tiers), as applicable, shall make same available to the County at no cost to County in written form. Tenant and its Project Contractors (of all tiers) shall preserve and make available , at reasonable times within Miami-Dade County for examination, review, and/or audit, at County's election, all financial records, supporting documents, statistical records, billing and payment records and ledgers, and any other documents pertinent to this Agreement or to Tenant's performance of any right or obligation thereunder for the Term of this Agreement or until resolution of any audit findings, whichever is longer. County reserves the right to conduct such audit or review at Tenant's place of business or, where applicable, at the place of business of any Tenant Project Contractor (of any tier), if deemed appropriate by County, with ten (10) calendar day advance notice. Any incomplete or incorrect entry in such books, records, or accounts shall be a basis for County's disallowance and recovery of any payment sought or, if applicable, previously made upon such entry. If an audit, review, or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Tenant or any Project Contractor (of any tier) in excess of (5%) of the total contract billings reviewed by the County of Tenant or any respective Project Contractor, the reasonable actual cost of County's audit, inspection or review, as applicable, shall be reimbursed to County by Tenant and/or such Project Contractor(s), as applicable. Any adjustments and/or payments due County as a result of such audit, review, or inspection shall be made within thirty (30) calendar days from presentation of County findings to Tenant or Project Contractors (of any tier), as applicable.

24.44 No Contingent Fee. Tenant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Tenant, to solicit or secure this Agreement (other than to assist in the negotiation or drafting of same), and that it has not paid or agreed to pay any person, company, partnership, corporation, individual or firm, other than a bona fide employee working solely for Tenant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award, making, or execution of this Agreement. For the breach or violation of this provision, County shall have the right, without limitation, to terminate this Agreement (for default by Tenant) without a cure period, and to otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

24.45 Fla. Stat. Sec. 908.111 Compliance. In compliance with the requirements of Florida Statutes Section 908.111(3)(a), Tenant hereby attests that it is not willfully providing and will not willfully provide any service during the Term in furtherance of transporting an unauthorized alien into the state knowing that the unauthorized alien entered into or remains in the United States in violation of law. In further compliance with the requirements of Florida Statutes Section 908.111(3)(a), Tenant has executed the attestation form required by Florida Administrative Code Section 60A-1.020 (Form PUR 1808), which form is verified as provided in section 92.525, Florida Statutes, a copy of which verified attestation is attached as Attachment A-4 (Common Carrier or Contracted Carrier Attestation) hereto and hereby incorporated by this reference herein.

In addition to any other County right to terminate this lease for cause that may be set forth herein, the County may terminate same for cause if Tenant is found to be willfully providing any service in furtherance of transporting an unauthorized alien into the state knowing the unauthorized alien entered into or remains in the United States in violation of law and, in such event, the County's exercise of such aforementioned right to terminate for cause shall not require any prior notice or cure period.

24.46 Tenant Compliance with Fla. Stat. Sec. 553.865 ("Safety in Private Spaces Act"). The Facility shall be deemed a "Public Building" for purposes of Fla. Stat. Section 553.865. As such, throughout the Term Tenant shall at its cost comply with all applicable terms of Fla. Stat. Sec. 553.865 as same may be amended from time to time.

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

This compliance includes the Tenant providing an affidavit that it does not use coercion for labor or services. This attestation by the Tenant shall be in the form attached to this Lease as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit (the

“Affidavit” incorporated as Attachment A-9 and must be executed by the Tenant and provided to the County when entering, amending, or renewing this Lease.

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

[Signature page to follow]

Lease Agreement for the Phytosanitary and Cold Chain Processing Facility

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

TENANT

MIAMI-DADE COUNTY, FLORIDA

By: [Signature]

By: _____

for

Name: Michael Mendik

Name: Daniella Levine Cava

Title: Managing Partner

Title: Mayor

Date: 1-24-2025

Date: _____

Attest: [Signature]
Notary Public

Attest: _____
Juan Fernandez-Barquin
Clerk of the Court and Comptroller

Notary Seal



ANGELA HAIRE
Notary Public
State of Florida
Comm# 11534572
Expires 6/29/2026

Approved as to form and legal sufficiency

This ____ day of _____, 202__

Assistant County Attorney

List of Exhibits and Attachments

Exhibit A –Boundary Survey of Premises by Triangle Surveying and Mapping, Inc., dated December 22, 2010;

Exhibit B – First Amended and Restated Grant Agreement;

Exhibit C – Conceptual Schedule;

Exhibit D – Temporary Master Plan;

Exhibit E1A – Phase I November 2015;

Exhibit E1B – Phase II April 2018;

Exhibit E1C – Environmental Site Investigation June 2023;

Exhibit E-2 – Soil Sampling Monitoring Plan Implementation Report;

Exhibit E-3 – DERM Response to Soil Sampling Plan Implementation Report;

Exhibit F – Aviation Department Design Guidelines;

Exhibit G – Project Master Schedule (once available);

Exhibit H – Scope; and

Attachment A-1 (County provided list of Premises related environmental assessments, test/monitoring results, and remediation action plans or requirements) (see Section 12.02);

Attachment A-2 (Tenant provided list of hazardous material Tenant or Tenant’s operator intends to use on the Premises) (see Section 12.06) (once available);

Attachment A-3 (INTENTIONALLY OMITTED);

Attachment A-4 (Tenant verified Common Carrier or Contracted Carrier Attestation form required by Florida Statute Section 908.111 and Florida Administrative Code Section 60A-1.020 (Form PUR 1808), which form is verified as provided in section 92.525, Florida Statutes);

Attachment A-5 Financial Close Security (in a form acceptable to County) (once available);

Attachments A-6 and A-7 (Tenant Performance and Payment Bonds, respectively (when due and both in a form acceptable to the County) (once available);

Attachment A-8 (a copy of the current Davis-Bacon prevailing wage determination construction) issued by the Department of Labor for Miami-Dade County;

Attachment A-9 Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit; and

Attachment A-10 Business Plan, per Exhibit H (Scope) Section 2.7 (Business Plan).

[Exhibits and Attachments pages to follow]