

DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☐ New contract

☐ OTR

☐ CO

☐ SS

☒ BW

☐ Emergency

Previous Contract/Project No.
Exclusive Demand Shared Ground
Transportation Services

☐ Re-Bid

☐ Other

LIVING WAGE APPLIES: YES X NO

Requisition/Project No: BW-10064

Term of Contract: 9 months

Requisition/Project Title: Demand Shared Services

Description: The Concessionaire will provide Exclusive Demand Shared Ground Transportation Services at Miami International Airport (the "Airport"), and in addition will comply with all obligations as they pertain to the service of attendants, multiple party vehicles, demand shared ground transportation services from designated zones in the vicinity of the Terminal Building ("Terminal") at the Airport.

User Department(s): Miami-Dade County Aviation Department

Issuing Department: Strategic Procurement Division

Contact Person: Jason Edelstein

Phone: 305-375-4211

Estimated Revenue: \$187,000.00

Funding Source: Proprietary

Revenue Generating: No

ANALYSIS

Commodity/Service No: 961, 961-82

Trade/Commodity/Service Opportunities

Contract/Project History of Previous Purchases For Previous Three (3) Years
Check Here X if this is a New Contract/Purchase with no Previous History

PREVIOUS CONTRACT

2ND YEAR

3RD YEAR

Contractor:

American Shuttle Inc

Small Business Enterprise:

No

Estimated Cost To Date:

\$783,137

Comments:

Continued on another page (s): Yes X No

RECOMMENDATION: SELECTION FACTOR

Basis of Recommendation: ACDBE Goal

Signed: Jason Edelstein

Date to SBD: 02-05-2020

EXCLUSIVE DEMAND SHARED GROUND TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT made as of the _____ day of _____ (Effective Date) in the year Two Thousand and Twenty

Between the Owner: Miami-Dade County Florida, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the "COUNTY",

and the CONCESSIONAIRE:

American Shuttle, Inc.
2766 NW 62 Street
Miami, FL 33147

Which term shall include its, successors, legal representatives, and assigns.

For the Project Known As: Exclusive Demand Shared Ground Transportation Services

The Concessionaire will provide Exclusive Demand Shared Ground Transportation Services at Miami International Airport (the "Airport"), and in addition will comply with all obligations as they pertain to the service of attendants, multiple party vehicles, demand shared ground transportation services from designated zones in the vicinity of the Terminal Building ("Terminal") at the Airport. Additionally, the Concessionaire is afforded the nonexclusive right to provide prearranged shared ground transportation services to drop-off areas at the Terminal at the Airport as designated by the Department.

The Owner and CONCESSIONAIRE agree as set forth herein.

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Attachments to the Agreement:

Exhibit 1 - Starter Location Map/Matrix

Exhibit 2 - Van Staging Area

Exhibit 3 - Irrevocable Standby Letter of Credit and Performance Bond

Exhibit 4 - Executed Affidavits from the Concessionaire

Exhibit 5 - ACDBE Participation Provisions with executed ACDBE agreements Exhibit

6 - Passenger Rates

EXCLUSIVE DEMAND SHARED GROUND TRANSPORTATION SERVICES AGREEMENT

WITNESSETH:

WHEREAS, the County as owner of the Miami International Airport through its Aviation Department (the "Department" or "MDAD"), is interested in providing world class demand shared-ride vehicle services to all those using Miami International Airport; and,

WHEREAS, the Concessionaire has offered to provide demand shared ride service in a manner that shall conform to the requirements of this Agreement and the Scope of Services in the County's _____ and all associated addenda, incorporated herein by reference; and,

WHEREAS, Demand Shared Ground Transportation Services have been an integral part of the transportation services provided at Miami International Airport, and finding such services to be in accordance with Miami International Airport's goal of maximizing passenger service and convenience, the County wishes to continue providing this type of Ground Transportation Service,

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

ARTICLE 1 - TERM

1.01 Term

The initial term of this Agreement is for ninesix (96) consecutive months, commencing on the date listed on the recitals page. The County reserves the right to exercise its option to extend this Contract for up to one hundred eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

Commented [PB(1)]: Consider negotiating 1 year versus 6 months.

Commented [EJ(2R1)]: Added extension language and changed to 9 months per meeting.

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1.02 Use of Airport Facilities

- a. The County hereby initially makes available to the Concessionaire those locations in the Airport Terminal Building Lower Drive ("Lower Drive"), as shown on attached Exhibit I, for the operations of starter services hereunder. Concessionaire shall have a license to use such locations, as they may be expanded, contracted, or relocated by the Department from time to time.
- b. The Department reserves the right to relocate the starter booths at any time due to operational, construction or safety considerations. With the exception of emergencies, the County will give no less than fifteen (15) days advanced written notice of such relocation; such written notice shall constitute a mutually acceptable administrative Revision to Exhibit I of this Agreement. If the Department requires relocation of said booths, the cost for relocating and / or providing wiring for electrical services to the new location shall be borne by the County. Further, the Department and the Concessionaire by mutual agreement may add or delete locations hereunder.
- c. The Department will not provide the Concessionaire storage / maintenance facilities

for its vehicles within the Airport property. The Concessionaire is required to store / stage the remaining fleet on its own property in a five-mile radius of the main Le Jeune Road (NW 42nd Ave.) entrance to the Airport. These facilities will be secured, maintained, and operated solely by the Concessionaire at its own cost. The Department, however, will make available to Concessionaire stand-by storage for up to ten (10) vehicles. Such storage area is initially designated on Exhibit 2. The Department shall have the right to amend Exhibit 2 from time to time and Concessionaire shall have a license to make use of such area as amended.

1.03 Bid Incorporated

The Bid of the Concessionaire, including all bid documents and Addenda upon which the Bid was made, is hereby incorporated into this Agreement by reference.

ARTICLE 2 - DEFINITIONS

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

- a) The terms "Airport" or "MIA" mean Miami International Airport.
- b) The term "Commencement of Operations Date" shall mean the date and hour at and upon which Concessionaire must commence its operations and services at Miami International Airport as required in this Agreement, ~~which shall be no earlier than and no later than 12:01 AM on Monday, February 20, 2012.~~
- c) The term "Concessionaire" means American Shuttle Inc. and its permitted successors. ~~the successful Bidder that receives the award of an Agreement from the County as a result of the ITB.~~
- d) The term "County" means Miami-Dade County, a political subdivision of the State of Florida.
- e) The terms "Department" or "MDAD" means Miami-Dade Aviation Department.
- f) The term "Director" means the Director of the Aviation Department, or his or her designee.
- g) The term "Effective Date" of the Exclusive Demand Shared Ground Transportation Services Agreement shall mean ten (10) days after the date recorded on the recitals page of this Agreement. ~~is executed by the County Manager of Miami-Dade County or designee and attested by the Clerk of the Board.~~
- h) The term "Employee" means any individual performing services pursuant to this agreement whether directly employed by the Concessionaire or through a contract agreement.
- i) The term "Gross Revenues", mean all monies paid or payable to or consideration of determinable value received by the Concessionaire for sales made, transactions had, or services rendered from its operations, pursuant to Article 4 (Rentals, Payments and

Commented [PB(3)]: Updated because we didn't issue an ITB

Commented [PB(4)]: Updated because they already have beneficial occupancy. The previous definition doesn't make sense.

Reports) under this Agreement, regardless of when or where the services therefor are rendered, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value. The term "Gross Revenues" shall not include any taxes imposed by law, which are separately stated to and actually paid by a customer and directly payable by the Concessionaire to a taxing authority and sales refunds.

j) The words "Minimum Annual Guarantee" or "MAG" to mean the annual amount the Concessionaire shall pay as consideration for the privilege to engage in business at Miami International Airport. This annual amount may be referred to as the "Minimum Monthly Guarantee" or "MMG" when paid on a monthly basis.

k) The terms "Scope of Services" or "Scope of Work" mean the work to be performed by the Concessionaire as set forth in Article 3 of this Agreement.

l) The term "Solicitation" or "Agreement" means this he Invitation to Bid ("ITB") document, and all associated addenda and attachments.

m) The terms "Work", "Services", "Program", "Project" or "Engagement" to mean all matters and things that will be required to be done by the Concessionaire in accordance with the ITB and the terms and conditions of this Agreement.

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Commented [EJ(6R5)]: Updated and removed.

Commented [PB(7)]: No ITB Issued

Commented [EJ(8R7)]: Added "Agreement" to Solicitation definition to cover document type.

ARTICLE 3 - PRODUCTS AND SERVICES

3.01 Products and Services

a. The Concessionaire will provide Exclusive Demand Shared Ground Transportation Services from designated zones in the vicinity of the Terminal Building ("Terminal") at the Airport. In addition, Concessionaire will comply with all obligations under this Agreement and under the ITB bid documents, including the obligations as to the service of attendants and multiple party vehicles.

Commented [PB(9)]: Not sure that this is applicable, as no ITB was issued.

b. The Concessionaire may provide nonexclusive prearranged shared ground transportation to the Airport.

c. To perform prearranged ground transportation services from the Airport from areas other than the commercial lane Demand Service Zones, the Concessionaire must comply with Miami-Dade Aviation Department's Operational Directive 24 and any other applicable requirement of the Department and the County.

d. During the term of this Agreement, the Concessionaire shall have the obligation to furnish, operate, and maintain vehicles for shared ride services in compliance with all the requirements outlined in this Agreement.

~~e.g. The Concessionaire must possess or successfully obtain, prior to award, a For Hire Passenger Motor Carrier (PMC) certificate of transportation to provide Contract Service, according to Miami Dade County Code Chapter 31. Vehicles for Hire, Article III Passenger Motor Carrier.~~

ARTICLE 4 - RENTALS, PAYMENTS AND REPORTS

4.01 Minimum ~~Monthly Annual~~ Guarantee

- a. As consideration for the privileges granted the Concessionaire herein to engage in business at Miami International Airport and not as payment for the use and occupancy of any property or for any lease or license to use or occupy any property, during this Agreement, the Concessionaire shall pay to the County in U.S. funds without deduction or set off of any kind, a Minimum ~~Monthly Annual~~ Guarantee of ~~One Hundred and Twenty Five~~Two Hundred and Fifty Thousand dollars ~~(\$125,250,000), regardless in of the level of gross revenues earned by the Concessionaire under this Agreement. For purposes of payment of such amount, the Minimum Monthly Annual Guarantee shall be paid in equal monthly payments of \$27,777.77 plus tax, of \$20,833.33 (MMG) (with partial months of operation to be pro-rated as to such amount) or an amount equal to 4.75% plus tax, of monthly Gross Revenues as defined in Sub-article 4.07, whichever amount is greater. Payments by the Concessionaire to the County as described shall be guaranteed and persist throughout the term and conclusion of this Agreement. All Services undertaken by the Concessionaire before the County's approval of this Agreement shall be at the Concessionaire's risk and expense. Such monthly amount shall be paid on or before the first day of each month under this Agreement, in advance, without billing or demand.~~
- b. In the event of an identifiable national disaster, including an act of terrorism, that has a demonstrable effect in reducing MIA airline passenger traffic, and the passenger traffic in any quarterly period of the calendar year (herein, the "Affected Quarterly Period") has been reduced by more than twenty five percent (25%) of the traffic in the previous quarterly period, then the Minimum Annual Guarantee payment that is due in each month of the Affected Quarterly Period shall be fifty percent (50%) of the amount that was otherwise due under Sub-article 4.01a in the Affected Quarterly Period. Such reduction in the Minimum Annual Guarantee for a quarterly period shall continue from quarter to quarter until such time as the MIA passenger traffic has increased to eighty percent (80%) of the passenger traffic that existed in the quarterly period prior to the Affected Quarterly Period, at which time the Minimum Annual Guarantee shall revert to the levels established under Sub- article 4.01b, starting with the first quarterly period in which the 80% level is reached. Provided, however, nothing in this Sub-article 4.01c shall affect the Concessionaire's obligation to pay the Percentage Fees under Sub-article 4.02 for gross revenues applicable to any month in a quarterly period.
- c. In the event the State of Florida claims that the privilege fee set forth above in Section 4.01 or the Percentage Fee set forth below in Sub-article 4.02 is subject to state sales taxes, then consistent with Concessionaire's liability under Sub-article 17.01 for payment of all taxes attributable to its operations under this Agreement at the Airport, Concessionaire shall be responsible and liable, at its own cost, for responding to the claim and paying any taxes ultimately determined to be due under such claim.

4.02 Percentage Fee

- a. ~~As additional consideration for the privilege granted the Concessionaire herein to engage in business at Miami International Airport and not as payment for the use and occupancy of any property or for any lease or license to use or occupy any property, the Concessionaire shall, for~~

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~~the term of this Agreement, pay to the County on a monthly basis an additional fee (Percentage Fee) of 4.75% of Concessionaire's~~

Commented [PB(13)]: This needs to be re-worded to be an MAG "or" Percentage Fee whichever is greater. The way it reads right now is in "addition" to the MAG.

~~b.a.~~ Monthly gross revenues, as Gross Revenues are defined in Sub- article 4.07, to the extent such Percentage Fee expressed in U.S. dollars exceeds the then-current monthly payment of the Minimum Monthly Guarantee. Such Percentage Fee shall be paid in arrears by the tenth (10th) day of the month following the month during which the gross revenues were received or accrued.

~~e.b.~~ The parties acknowledge that the Minimum Monthly Guarantee established under Sub-article 4.01 ~~is the primary payment~~ expected of Concessionaire under this Agreement and that such guarantee is a monthly guarantee unless otherwise exceeded by percentage of Gross Revenues to be paid monthly stated in Sub-article 4.01a. However, because the monthly guarantee is paid on a monthly basis, and because there may be severe fluctuations in monthly gross revenues resulting in Concessionaire's payment of a Percentage Fee in some months but not in others, the parties agree that at the end of each three-month quarterly period in each year of this Agreement a quarterly reconciliation of Concessionaire's payments under Sub-articles 4.01 and 4.02 shall be made, with such reconciliation subject to the Audit provisions of Sub- articles 4.10 and 4.11. If any quarterly reconciliation demonstrates that Concessionaire paid County more that it should have paid based on the cumulative effect of such three month's gross revenues, an adjustment shall be made to the minimum monthly guarantee payment due on a monthly basis for each of the three months in the following three (3) months period (the "Adjusted Quarterly Period") so that the sum of the minimum monthly payments made in the Adjusted Monthly Period, along with the sum of the monthly minimum payments and the Percentage Fees paid during the prior quarters of the then-current monthly period, shall be no less than the monthly ~~minimum monthly guarantee~~ **MMG** payments due for the then-current monthly period up through the end of the Adjusted Quarterly Period. Provided, however, any downward adjustment to the quarterly minimum payment for a following quarter shall not relieve Concessionaire of the obligation to pay the Percentage Fee under Sub-article 4.02 for the monthly gross revenues generated for each month in that quarter, and any adjustments made during the course of the monthly period hereunder shall not relieve Concessionaire of its obligation to pay the then-applicable Minimum Monthly Guarantee for the entire six month period plus any Percentage Fee under Sub-article 4.02 that may be applicable to gross revenues for the term of the agreement.

4.03 Rental Rate Adjustment

If the Department provides leased facilities to Concessionaire, in addition to the licensed facilities described in Sub-article 1.03 (a) above, such leased facilities shall be subject to rental rate adjustments made by the Department in accordance with then-existing County policy.

4.04 Late Payment

In the event the Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement, within ten (10) calendar days of the due date, interest at the rates established from time to time by the Board of County Commissioners of Miami-Dade County, Florida (currently set at 1 ½ % per month) shall accrue against all such delinquent payment(s) from the original due date until the Department actually receives payment. The right of the County

to require payment of such interest and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.

4.05 Dishonored Check or Draft

In the event the Concessionaire delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service charge of Twenty Five Dollars (\$25.00) if the face value of the check is \$50.00 or less, Thirty Dollars (\$30.00) if the face value is more than Fifty Dollars (\$50.00) and less than Three Hundred Dollars (\$300.00), or Forty Dollars (\$40.00), if the face value is Three Hundred Dollars (\$300.00) or more or five percent (5%) of the face amount of such check, whichever is greater, plus penalties imposed by law as set forth in Sections 832.08 and 125.0105, Florida Statutes, as may be amended from time to time. 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.

4.06 Payment Address

All payments required from the Concessionaire shall be due and payable, by mail, at the following:

**Miami-Dade Aviation Department Finance Division
Post Office Box 526624
Miami, Florida 33152-6624**

Payments may be made by hand delivery to the offices of the Department / Finance Division, 4200 NW 36th St, Building 5A, 3rd Floor Miami, FL 33122, during normal working hours.

4.07 Gross Revenues

The term "Gross Revenues", as used in this Agreement, means all monies paid or payable to, or considerations of determinable value received by the Concessionaire for sales made, transactions had, or services rendered from its operation, pursuant to the provisions of this Agreement, regardless of when or where the ~~services~~ Services therefor are rendered, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value. The term "Gross Revenues" shall not include: (i) any taxes imposed by law, which are separately stated to and actually paid by a customer and directly payable by the Concessionaire to a taxing authority; and, (ii) sales refunds.

4.08 Records and Reports

- a. The Concessionaire shall keep in Miami-Dade County, during the term of this Agreement, records and reports customarily used in this type of operation to calculate and report its Gross Revenues and to calculate the percentage fees payable hereunder and as may, from time to time, be required by the Department to document its activities pursuant to this Agreement. The form of all such records and reports shall be subject to the approval of the Department and/or the auditors of the County prior to commencement of operations hereunder.
- b. An auditor of the County may be one or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, the Audit and Management Services Department of the County or auditors of the State of

Florida, or any auditor required by Federal, State and Local law. Subsequent recommendations for changes, additions or deletions to such records and reports by the auditors of the County shall be compiled with by the Concessionaire when requested by the Department. The Department and the auditors of the County shall have the right, without limitation, and shall be permitted during normal business hours, to audit and examine all records and reports relating to the Concessionaire's operations hereunder. The Concessionaire shall not be required to retain such records and reports in the County for more than five (5) years after the end of this Agreement nor for more than three (3) years following termination of this Agreement.

4.09 Reports of Gross Revenues

On or before the tenth day following the end of each calendar month throughout the term of this Agreement, the Concessionaire shall furnish to the Department a statement of monthly Gross Revenues for its operations hereunder during the preceding calendar month and certify as to the accuracy of such Gross Revenues in the form prescribed by the Department. As a minimum, such report shall require a full and complete disclosure of Gross Revenues by vehicle.

4.10 Annual Audit

Within sixty (60) days of the commencement of operations date of this Agreement and within sixty (60) days following termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department an audit report of Gross Revenues, containing an unqualified opinion, prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. Said accounting firm shall be approved in writing by the Department prior to being engaged. The report shall include a schedule of Gross Revenues and percentage fees paid to the County under this Agreement, prepared in accordance with the comprehensive basis of accounting defined under terms of this Agreement or under generally accepted accounting principles, and reported in the format as subsequently prescribed by the Department. The audit shall be conducted in accordance with generally accepted auditing standards and include the issuance of a management letter, which will contain the findings discovered during the course of the examination, such as recommendations to improve internal controls and other significant matters related to this Agreement. In addition, the audit shall also include comprehensive compliance procedures to determine whether the books of account, records and reports were kept in accordance with the terms of the Agreement for the period of examination. The auditor shall report such procedures and findings in a separate letter report to the Department. The last such report shall include the last day(s) of operations. All reports and letters required pursuant to this Sub-article 4.10 shall be submitted to and discussed with the Department in draft form before being issued in final form. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

4.11 Right to Audit and Inspect

The Department and the auditors of the County shall have the right, without limitation, to enter the area and any other premises of the Concessionaire from which it does business related to the operations hereunder, at any time during the normal operating hours of the Concessionaire, to: (1) inspect, review, verify and check all or any portion(s) of the Concessionaire's procedures for recording or compiling Revenue information by day or month; and (2) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements, inventory records, copies of State sales tax returns, and work papers relating to operation of the Concessionaire, and other pertinent information as may be determined to be needed or desirable by the Department.

4.12 Revenue Control Procedures

Notwithstanding anything else proposed by the Concessionaire, the Concessionaire shall comply with

revenue control procedures established from time to time by the Department, which procedures shall include, but not be limited to, strict requirements relative to tampering with monetary transactions.

4.13 Payment Security

Prior to the first day of operation under this Agreement, the Concessionaire shall provide the County with an irrevocable letter of credit, or Performance Bond (the form of which shall be substantially in conformance with the form contained in Exhibit 3) in the amount of the Minimum Annual Guarantee, or other type of security acceptable to the Department. Such payment security shall be kept in full force throughout the term of this Agreement. The Department may draw upon such payment security instrument if the Concessionaire fails to pay the fees and charges required within the time limits specified herein.

ARTICLE 5 - STANDARDS OF OPERATION

5.01 Operating Procedures

The Concessionaire shall keep the shared ride vehicles operational 24 hours daily, seven (7) days per week, for the duration of the Agreement, with the County having the right to review and approve such operations, as set forth in this Agreement in accordance with the terms and conditions herein.

5.02 Minimum Features for Demand Services

- a. **Demand Services - Defined** The term "Demand Services", as used herein, is defined to mean ground transportation services provided to any person requesting same on a demand basis from the designated service pick-up zones at the Airport, and for which service the charges or fares are fixed and are paid for by or on behalf of said person at the time the service is rendered in cash, credit card, or by voucher. All passenger transportation services shall mean door to door service. Said demand service pick-up zones and service areas are defined and set forth in Sub-article 5.02(c) below. For the purposes of this Agreement, Demand Services does not include ground transportation services provided by taxicabs, as defined in the Code of Miami Miami-Dade County, Florida, or Prearranged Contract Service as defined in subsection (b) below. At all times the obligation of the Concessionaire to provide required Demand Services shall take precedence over any right of the Concessionaire to provide Prearranged Services to the Airport, in the event of any conflicts or problems with equipment or staffing availability.
- b. **Prearranged Contract Services Defined** The term "Prearranged Contract Services," as used herein is defined to mean nonexclusive ground transportation services provided at a prearranged time, by a single vehicle or, in the case of large groups, by multiple vehicles specifically assigned for such services, from the Airport, to a predetermined specific location, which services are arranged and contracted for in advance of the arrival of the person or persons to be transported at the Airport, and for which service the charges or fares for the service are paid for either in advance by said person or persons as part of a tour, through fare, group or similar arrangement or through after the fact billing or credit arrangement, as in the case of airline crew transportation services. The provision of Prearranged Contract Services at the Airport, by the Concessionaire, shall be subject to the issuance by the Department of permits separate and apart from this Agreement and the uniform procedures and fees established by the Department and by Operational Directive

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- c. **Demand Services - Services Areas** The Concessionaire shall have the obligation to provide Demand Services to all of Miami-Dade County and Broward County, as a minimum, and to other areas, as designated by the Concessionaire in the Bid submitted by the Concessionaire and any special remote passenger terminal facilities which might be established to serve the Airport ("Service Areas"). The Concessionaire with the Department's written concurrence may add, delete or change the Service Areas each six months during the term or any extensions of this Agreement, in order to provide service consistent with customer demand. At least thirty (30) days in advance of any change in Service Areas, the Concessionaire shall publish and post notice of the Services Areas, prices, service frequencies and loading rules to be used subject to the approval of the Department.
- d. **Demand Service Zones** Exhibit I shows the preferential use service zones for the Airport. These sites are to be used by the providers of Prearranged Contract Services, 24-hour demand service, taxicabs, and other vehicles owned or authorized by the Department to operate in the 24-hour demand service zones which are not transporting demand services passengers into or off the Airport ("Service Zones"). The Department, to accommodate changing patterns of ground transportation service demands, Airport operational and environmental concerns and Airport construction activities, shall have the right to change such Service Zones, upon reasonable notice to the Concessionaire and other users of the Service Zones. Because of the Department's needs to assure passenger safety and to respond to emergency conditions, Concessionaire agrees to respond immediately to a notice from the Department (such notice being provided in writing or orally) or at whatever other time the notice may indicate. The Department, at all times, shall have the right and duty to control, by means of operational directives, rules and regulations and other policy statements, the methods and areas of operation and number and size of vehicles, in general or by type of service provided), to be allowed at any time within the Service Zones, and particularly the 24 hour Demand Service Zones. Further, the Department shall have the right to move high density Demand Services of the Concessionaire from the Service Zones to other designed areas when required by operational necessity.
- e. **Vehicle Storage Area** The Vehicle Storage Area, shown on Exhibit 2 shall be reserved for the temporary storage of up to ten vehicles to be used in providing Demand Shared Transportation Services under this Agreement. The Department shall have the right to reassign use of or relocate the vehicle storage area, but in no event shall the reassigned/relocated storage area provide for less than ten (10) vehicles of the Concessionaire. The Department will not provide storage /maintenance facilities on Airport property except as stated above. The Concessionaire is required to store/ stage the remaining fleet on its own property within a five mile radius of the main entrance to the Airport at Le Jeune Road (NW 42 Avenue).
- f. **Service Obligations** The Concessionaire shall be obligated to provide all the ground transportation services authorized herein 24 hours per day each day of the year, and shall promptly provide such transportation service to all passengers

arriving at curbside at the Airport Terminal facility. Promptly shall mean within twenty minutes of such passenger arrival at curbside. The Concessionaire shall adequately meet all demands for such service, including the implementation of additional services as provided for by this Agreement. The Department, in writing, may authorize the substitution of scheduled departure service to low customer Demand Service Areas or the subcontracting of such service under such terms established by the Department.

- g. **Terminal Building- Curbside Leases Space** In the event that the Concessionaire desires to lease, and the Department agrees to lease, vehicles dispatch facilities, counter space, office space, vehicle service or storage areas or other facilities in or about the Terminal Building and/or Terminal Building Curbside areas, not specifically provided under the terms of this Agreement, other than designated Demand Service starter positions, then such facilities shall be leased at prevailing rental rates.
- h. **Control Check Booths** The Concessionaire shall staff, operate and maintain the control check booths assigned to the operation by the Department. All vehicles of the Concessionaire arriving at the Airport and all vehicles of the Concessionaire departing Demand Service Zones shall, unless otherwise authorized by the Department, stop at the control check booths for the making of required internal control checks, passenger counts, and so forth. Data collected by ~~the~~ the Concessionaire from such control check booths shall be provided to the Department by the 15th day of each month for the Department's internal use.
- i. **Public Buses** Nothing contained herein shall prevent the County, through the Department or another agency of the County, from providing public transportation or using public buses from and to the Airport and such shall not constitute a violation of the rights granted by this Agreement.
- j. **Vehicles** The Concessionaire shall provide a minimum of fifty (50) new air-conditioned vehicles, suitable, modern, transportation vehicles, in full compliance with all requirements of law applicable to such vehicles. The vehicles shall have a rated seating capacity of ten (10) or more persons, such rated seating capacity as established by the manufacturer of the vehicle, be of good quality, ready for use and immediately available to transport all passengers requesting demand ground transportation pursuant to this Agreement.

New vehicles shall be defined as vehicles purchased by the Concessionaire within a 12 month period preceding the date of the Agreement first stated above, and all vehicles purchased thereafter during the term of this Agreement. The Concessionaire is responsible for maintaining all vehicles operating pursuant to this agreement in good condition so as to meet such demands for the transportation service rights granted to and obligations assumed by the Concessionaire under the Agreement. The Concessionaire shall maintain enough vehicles equipped with passenger wheel lifts so as to meet the American with Disabilities Act (ADA) requirements. The Concessionaire shall utilize equipment and services of other companies as may be necessary for it to meet the reasonable normal and peak demand for the services required of the Concessionaire under the Agreement at any time that the quantity of its own equipment is insufficient to meet the demand, as determined by the Department. Vehicles so used shall be of a quality at least equal to those owned by the Concessionaire and used to provide demand service herein. The Concessionaire shall

maintain its vehicles and other equipment in a clean, first-class operable condition and shall at all times maintain efficient and courteous service to the public. The Concessionaire shall equip all vehicles being used for services hereunder with two-way communication equipment. Vehicles used in this provision of service must be owned or leased by the Concessionaire, with the exception of vehicles owned or leased by the ACDBE identified for this Agreement. ACDBE firms may use temporary rental ~~equipment~~equipment (e.g. rental cars) to perform subcontracted tasks.

All vehicles operated by the Concessionaire in providing services under the Agreement shall have distinctive markings, painting, graphics, signing and colors, which identify the name of Concessionaire, the vehicle itself by a distinctive number and the type of service for which the vehicle is used. Color, paint, markings, graphics and signing shall be approved in advance by the Department. The Concessionaire shall maintain its vehicles in quality condition for any extension period and the determination of the Department to extend this Agreement will, in part, be based on the condition of the Concessionaire's vehicles and the Concessionaire's commitment to properly maintain, or replace vehicles as necessary. At any time during the initial period or extension period of this Agreement when vehicles are replaced by the Concessionaire or at the direction of the Department, the concessionaire shall acquire or replace the vehicles with vehicles approved by the Department.

~~During the initial term, if~~ the Agreement is terminated for cause or by lapse of time, ~~the County shall have the right to purchase the vehicles of the Concessionaire,~~ used in providing the Demand Services, for the unamortized portion of the original purchase price, of such vehicles, on a four year straight line basis, but such right shall impose no obligation upon the County to purchase all or any of the vehicles. The Concessionaire shall furnish an inventory of its vehicles used in providing the Demand Service hereunder, along with documentation of the acquisition cost, within thirty (30) days of such acquisition, and as replacement vehicles are acquired.

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During the initial term of this agreement or any of its extensions, no vehicle shall be any older than five (5) years; provided, however, the Aviation Department shall have the right to instruct the Concessionaire to remove those vehicles from the fleet, even if the vehicles are less than five (5) years old, if in the Aviation Department's reasonable determination the vehicles are unsafe or are inconsistent with a first-class operation that must be provided by Concessionaire at all times during the Agreement.

- k. **Passenger Loading** Unless otherwise directed by the Department, the Concessionaire shall load passengers only within the Demand Service Zones as established and designated pursuant to Sub-article 1.03 of the Agreement. Notwithstanding anything to the contrary contained herein, any passenger loaded in the Demand Service Zones shall be considered a demand service passenger hereunder.
- l. **Substitute Service** In the event of temporary or substantial failure of service by the Concessionaire, or in the event the Concessionaire fails to have a sufficient number of vehicles available and ready for use for loading of passengers desiring transportation, the Department, at its sole discretion, for passenger convenience, may supplement or

authorize other services until complete service is restored by the Concessionaire. Any such action of substitution or authorization of other service on behalf of the County shall not be considered a violation by the County the rights of the Concessionaire under the Agreement, nor shall it relieve the Concessionaire of its responsibilities, financial and otherwise, under the Agreement.

- m. **Vehicles Waiting** The Concessionaire shall require its drivers and vehicles to remain away from the passenger loading areas and the starter positions at the Terminal until such time as either a Concessionaire or Department starter specifically instructs the driver and vehicle to approach the passenger loading area in a Service Zone. The Concessionaire shall ensure that its transportation vehicles in the waiting line are staffed by drivers. The Concessionaire shall require that the doors of its vehicles nearest the moving traffic lane be closed at all times.
- n. **Complaints** The public shall be given the highest consideration in matters affecting the operation of the Concessionaire under the terms of this Agreement. Any questions or complaints regarding the standards of service, appearance and maintenance of the vehicles or other standards of operation or public safety, which shall be brought before the Department, shall be subject to review by the Department with due notice thereof given to the Concessionaire. The Department may take such action as it deems appropriate in the particular circumstances. The Concessionaire shall thereafter take the necessary steps to comply with any reasonable directive of the Department necessary to resolve complaints received and to prevent their recurrence. The Concessionaire shall send copies of all correspondence related to customer complaints relative to operations hereunder to the Department.
- o. **Lost and Found** The Concessionaire shall operate a lost and found service for baggage and belongings of its customers.
- p. **No Solicitations** No solicitations for private business other than that herein provided for shall be carried on by the Concessionaire at the Airport. The carrying on, or conducting, or the administration or supervision of any other type or kind of business at the Airport by the Concessionaire is strictly prohibited, unless specifically authorized by a separately issued permit or agreement. This prohibition includes, but is not limited to, activities such as the solicitation of, or the execution of rental car contracts, the receipts of rental cars or the servicing, parking or moving of rental cars at the Airport.
- q. **Advertising** The Concessionaire may sell advertising space for display on the outside or inside of its demand service vehicles. All revenues derived from such sales shall be considered as part of Gross Revenue. Any form of advertising must receive prior approval from the County.
- r. **No Interference** The Concessionaire shall conduct its operations in an orderly and proper manner so as not to annoy, disturb, interfere with or be offensive to others, and shall control the conduct, demeanor and appearance of its officers, employees, agents and representatives, and, upon objection from the County or its authorized representative(s) concerning the conduct, demeanor and appearance of such persons, shall immediately take all steps necessary to correct or remove the cause of the objection.
- s. **Waste Disposal** The Concessionaire shall cause its drivers to use the waste receptacles

provided for the disposal of all waste materials, including cigarette butts, matches, paper and other accumulated waste.

- t. **Vehicles in Service** Vehicles shall be maintained so as to always have 90% of the fleet in service, 24 hours, seven (7) days a week, 52 weeks each year.
- u. **Taxes** The Concessionaire shall be responsible for the payment of all sales and use taxes required by law, in any jurisdiction in which the services are provided.
- v. **Emergency Services** In the event of disruption of the employee and/or public parking shuttle service(s) at the Airport, upon the written request of the Department, the Concessionaire, if deemed qualified by the Department to provide such service, shall operate said bus service on an interim basis. In such event, the Concessionaire shall be reimbursed for all actual costs plus ten percent (~~10~~%) of such costs. The actual costs shall be documented in a form auditable and acceptable to the Department. In the event of cessation or disruption of other ground transportation services at the airport, upon request of the Department, the Concessionaire shall enhance its service, during such cessation, or disruption, either directly or through a subcontract to a third party, the Department may directly provide or contract for some or all of such replacement services.

5.03 Rights or Interest in Equipment

In the event that any person has a right or interest in the Concessionaire's Vehicles or equipment by virtue of a security interest, lien, lease or chattel mortgage, the Concessionaire shall submit full details (including any security agreement, financing statement, and/or other instrument if existing) to MDAD. The Concessionaire hereby indemnifies and holds harmless MDAD from any damage or liability however arising and to whomever owed, which shall result from an act or omission or commission on the part of MDAD or its agents in dealing with third parties who claim ownership rights in the Concessionaire's property.

5.04 Initial Fares

The maximum per passenger fares for Demand Services from the Airport to the Demand Service Areas in Miami-Dade County, Broward County and other service areas identified in Exhibit 5, which the fares include applicable taxes identified in the Concessionaire's Bid, imposed by the Concessionaire during the term of this Agreement, have been provided to the County by the Concessionaire as part of its Bid for award of this Agreement, and are incorporated herein by reference and shall be binding on the Concessionaire.

5.05 Fare Adjustments

The maximum per passenger fares pursuant to Sub-article 5.04 shall be subject to adjustment, during the term of this Agreement, to compensate for increases in the price of fuel, the percent change in the Miami Area Consumer Price Index, labor cost changes, governmental mandated costs, or other required operational expenses. The Concessionaire shall request changes in writing, justifying such adjustments, which the Department may administratively authorize or adjust to the extent such adjustments are based upon operational increases. Any other request-for-increase to passenger fares based upon other reasons than those stipulated above shall require approval by the Board of County Commissioners of Miami-Dade County, Florida. In addition, the per passenger fares charged by the Concessionaire for Demand Service passengers transported from the Airport shall not be less than the marginal cost of the Concessionaire in providing such services.

5.06 Posting of Fares

The Concessionaire shall develop a schedule of fares and services in an easily readable form, approved by the Department, which shall be printed in English and Spanish and any other languages as may be required by the Department. Such schedule shall be posted for the specified service areas and any other destinations served by the Concessionaire, at each passenger loading point required by the Department and shall be available in printed form in each vehicle and with a starter at each passenger loading point.

5.07 Right to Inspect

It shall be the right of MDAD, with or without notice to the Concessionaire, to inspect all vehicles and/or starter booths. At MDAD's request, which may be without advance notice, the Concessionaire shall make available said vehicle and/or starter booth to enable such inspection.

In addition, MDAD maintains the right to monitor and enforce quality standards, including without limitation, appearance, cleanliness, maintenance and repair of vehicles or equipment, attire and demeanor of employees, adequacy of staffing and overall responsiveness to MDAD and/or customer concerns regarding the operation of the Concession.

5.08 Employees

The Concessionaire's employees shall be clean, courteous, and neat in appearance at all times. The Concessionaire's employees shall be suitably uniformed and shall wear identification sufficient to establish their identity and affiliation with the Concessionaire. The Department must approve Concessionaires uniforms and company identification badge. If it is determined by the Department that an employee of the Concessionaire has acted improperly in the performance of services hereunder, or contrary to the intent and purpose of this Agreement, the Concessionaire shall be so advised and shall promptly institute appropriate disciplinary action in accordance with the policies and procedures of the Concessionaire and the severity of the infraction. Should initial disciplinary action fail to correct the performance of an employee or should the severity of the infraction alleged so warrant, the Department shall have the right to require that the Concessionaire not use such employee in the provision of services under this Agreement.

5.09 Contract Manager

- a. Concessionaire shall designate a Contract Manager who shall meet the experience requirements set forth in the Agreement and who shall be responsible for the day-to-day operations of the Concessionaire hereunder. The Contract Manager shall have the authority and responsibility to insure proper operation of the Concession, to render decisions and to take all necessary action in connection with the Agreement. The Contract Manager shall reside within a reasonable distance of the Airport and be available twenty-four hours a day, seven (7) days a week. The Contract Manager may appoint a representative who may serve in the Contract Manager's capacity for a minimal period of time, such as to be present when the Contract Manager is on vacation, sick leave, or business trips. At the time a Representative acts in the place of the Contract Manager, the Representative shall have had the required five (5) years' experience required of the Contract Manager under the Agreement.
- b. For so long as its vehicles are in operation pursuant to the terms of the Agreement, the Concessionaire shall provide the Department with the Contract Manager's name, address, email address, beeper phone number, home telephone number, business telephone number, cellular telephone number and fax telephone number. The Contract Manager shall, at the least, be reachable by means of a business telephone number, beeper number, and cellular number for the purpose of responding to inquiries of the Department, emergency matters, or any other matters related to the Concessionaire's operations under the Agreement.

5.10 Resolution of Complaints

Questions or complaints regarding service, whether raised by customer complaints or MDAD's own initiative or otherwise, may be submitted to the Concessionaire who shall promptly and fully respond to such questions or complaints. MDAD may make service audits at its discretion, and the Concessionaire shall meet with MDAD to review the results thereof and to correct promptly any deficiencies observed. MDAD may reasonably request appropriate action by the Concessionaire to correct service deficiencies and such requests shall be complied with by the Concessionaire.

MDAD reserves the right to terminate the Agreement because of Concessionaire's failure to provide service commensurate with the specific terms of the Agreement and/or the reasonable expectations of customers and MDAD regarding the highest quality of merchandise, availability of merchandising, proper functioning of the vehicles and the like.

5.11 No Warranty of Security

MDAD MAKES NO WARRANTY TO THE CONCESSIONAIRE REGARDING THE SECURITY AND SAFETY OF THE AIRPORT, THE TERMINAL BUILDING, THE ROADWAY SYSTEM AT OR ABOUT THE TERMINAL BUILDING, OR CONCESSIONAIRE'S VEHICLES OR EQUIPMENT. ANY LOSS OCCASIONED TO THE CONCESSIONAIRE THROUGH DAMAGE TO OR LOSS OF VANDALISM TO VEHICLES OR EQUIPMENT, SHALL BE BORNE BY THE CONCESSIONAIRE WITHOUT RIGHT OF RECOVERY OR OFFSET AGAINST MDAD.

5.12 No Additional Services

The Concession herein granted is for Exclusive Demand Shared Ground Transportation Services and nonexclusive prearranged services to the Airport only and does not permit the Concessionaire under any circumstances to enter into any other service at Miami International Airport except as specifically permitted by this Agreement. No other services or concessions not expressly permitted herein shall be provided or engaged in by the Concessionaire without the express prior written approval of MDAD.

5.13 Right of Possession; License to use Airport Facilities

MDAD shall retain possession and control of all areas and premises used by the Concessionaire. MDAD grants to the Concessionaire for the term of this Agreement a license to enter the Facilities designated by the Department to provide the services and discharge the obligations specified in the Agreement and in particular, to provide starter services at the locations specified but no others. In the exercise of this License the Concessionaire shall at all times conform to the reasonable directions and requirements of MDAD as necessitated by the need for safe and efficient management and operation of the Facilities. Neither the County nor the Department makes any representation that the Facilities that are available for Concessionaire's use are adequate for Concessionaire's operations.

5.14 Sales Reporting

Concessionaire will be required to submit a Monthly Statement and an Annual Income Statement. Monthly sales must be reported. This report shall be submitted in a format acceptable to the Aviation Department.

5.15 Utilities

Concessionaire may obtain from MDAD, without charge, a reasonable supply of 110-volt electricity for operation of the Starter Booths. If existing outlets are inadequate, Concessionaire shall request permission for additional utility installations. In the event the Concessionaire receives approval for such installations, the Concessionaire may complete such installations at its own cost and expense.

The expenses incurred for installations requiring voltage of over 110 volts are the sole responsibility of the Concessionaire and require prior written approval from MDAD. Concessionaire shall assure that all its electrical connections are safe and secure against tampering. Concessionaire agrees to take such reasonable steps to conserve electricity as MDAD may direct.

5.16 Additional Rules and Regulations

MDAD shall have the right to adopt and enforce reasonable rules and regulations and operating performance standards with respect to the use of the Airport, Terminal Building, and related facilities, which Concessionaire agrees to observe and obey. Such rules or regulations and operating performance standards may be amended from time to time by the Department.

5.17 Right to Investigate

The County reserves the right to investigate the management, operational experience, reputation and business judgment of Concessionaire and its Management, including the conducting of investigations of the officers, directors, principal stockholders, other principals, if any, of the business entity of the Concessionaire, its affiliates and parents, and the proposed Management.

5.18 Monitoring Services

The Department shall have the right, without limitation, to monitor and test the quality of services of the Concessionaire, including, but not limited to, through the use of a shopping service, closed circuit TV, Automatic Vehicle Identification (AVI) device and other reasonable means.

ARTICLE 6 - MAINTENANCE

6.01 Cleaning and Maintenance

The Concessionaire shall keep each starter booth clean, maintained and operational at all times. The Concessionaire shall keep each vehicle, maintained and 90% of its fleet operational at all times. The Concessionaire shall do major repairs and restoration at an off-Airport location provided by the Concessionaire.

6.02 Removal of Trash

The Concessionaire shall, at its sole cost and expense remove, from the starter booth areas, all trash and refuse of any nature whatsoever from the operations at said location. Such trash and refuse shall temporarily be stored and disposed of in a manner approved by the Department.

ARTICLE 7 - ASSIGNMENT AND OWNERSHIP

7.01 Assignment

The Concessionaire shall not assign, transfer, or convey this Agreement to any other person, firm, association, or corporation in whole or in part. However, the Concessionaire will be permitted to cause portions of the services to be performed by sub-contractors, partners or joint ventures so as to comply with ACDBE participation goals or any other required participation by way of sub-contracts, partnerships, or joint ventures that are determined or permitted under Articles 12 and 17.12.

7.02 Owner of Concessionaire

The Concessionaire shall take no actions that shall serve to transfer ownership or control of the business entity of the Concessionaire without the prior written approval of the Department.

ARTICLE 8 - INDEMNIFICATION / HOLD HARMLESS

8.01 Indemnification/ Hold Harmless

The Concessionaire shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance and operations under of this Agreement by the Concessionaire or its employees, agents, servants, partners, principals or Sub-Concessionaires. Concessionaire shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Concessionaire shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. This provision shall survive early cancellation or termination of this Agreement.

ARTICLE 9 - INSURANCE

9.01 Insurance Required:

Prior to execution of the Agreement by the County and commencement of the Agreement, the Concessionaire shall obtain all insurance required under this Article and submit it to the Miami-Dade Aviation Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-5504 for approval. All insurance shall be maintained throughout the term of the Agreement.

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

Certificate(s) of insurance from the Concessionaire must show coverage has been obtained that meets the requirements as outlined below during the provision of Services at the Facilities:

A. Workers Compensation Insurance for all employees as required by Chapter 440, Florida Statutes.

B. Commercial General Liability in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate. Miami-Dade County must be shown as an additional insured with respect to this coverage.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles for no less than ~~\$300,000~~ \$1,000,000 combined single limit. Coverage must include For-hire livery insurance, Rideshare Coverage and pre-arranged ground transportation.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications: The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division. Or The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

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Commented [EJ(17R16)]: See below.

NOTE: CERTIFICATE HOLDER MUST READ:

MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128

9.02 Insurance Classifications:

The insurance coverage required shall include those classifications as listed in Standard Liability Insurance Manuals, which most nearly reflect the operations of the Concessionaire under this Agreement.

9.03 Certificates of Insurance:

The Concessionaire shall furnish certificates of insurance to the County prior to commencing any operations under this Agreement, which certificates shall clearly indicate:

- a) the Concessionaire has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-article;
- b) the County is named as an additional insured; and
- c) no material change or cancellation of said insurance shall be effective without thirty (30) days prior written notice to the County. The County reserves the right to require the Concessionaire to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to the Concessionaire.

9.04 Certificates of Renewal:

The Concessionaire shall furnish certificates evidencing renewal or replacement of required insurance coverage, thirty (30) days prior to expiration or cancellation. The Department reserves the right to reasonably amend the insurance requirements or to assume direct responsibility for carrying all or any of the required insurance coverage by the issuance of notice in writing to the Concessionaire. In the event the Department exercises its right to assume direct responsibility for any of the required insurance coverage, the Concessionaire shall be named as an additional insured, where applicable provided the Department does not self-insure. Compliance with the foregoing requirements shall not relieve the Concessionaire of its liability and obligation under any other portion of this Agreement.

9.05 Certificates of Continuity:

The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-article remain in force for the duration of the lease. If insurance certificates are scheduled to expire during the lease period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates to the MDAD Risk Management Office at a minimum of thirty (30) calendar days before such expiration.

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

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

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

9.06 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 Concessionaire agrees to permit such inspection at the offices of the Department.

9.07 Personal Property

Any personal property of the Concessionaire used on or located at the Airport shall be at the sole risk of the Concessionaire or the owners thereof, and the County shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 10 - TERMINATION BY COUNTY

10.01 Automatic Termination

The discontinuance of operations and services required under this Agreement, except pursuant to or by reason of Acts of God or force of nature, for any period of time exceeding one consecutive 12 hour period shall constitute a default by the Concessionaire and this Agreement shall be automatically terminated upon declaration of termination by County without any notice required to be given to the Concessionaire.

10.02 Payment Defaults

The County shall have the right, upon five (5) calendar days written notice to the Concessionaire, specifying the amount of payment in default, to terminate this Agreement whenever the non-payment of any sum or sums due hereunder continues for a period of five (5) calendar days after the due date for such payments; provided, however, that such termination shall not be effective if Concessionaire makes the required payment within the notice period.

10.03 Standard Defaults

Failure of the Concessionaire to comply strictly with the Standards of Operation, as set forth in Article 5 above, shall constitute a default, and the County shall have the right upon ten (10) days written notice to terminate this Agreement, unless such default(s) has been cured within the notice period or, if a complete cure cannot be effected within the notice period, unless Concessionaire has taken reasonable steps within the notice period to effect the cure of the default within a reasonable period of time.

10.04 Other Defaults

The County shall have the right, upon thirty (30) calendar days written notice to the Concessionaire, 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:

- A. Failure of the Concessionaire to comply with any covenants of this Agreement, other than the covenants to pay monies when due and defaults pursuant to Sub- article 10.02 (Payment Defaults) and Sub-article 10.05 (Revenue Control and Audit Defaults).
- B. MDAD reserves the right to terminate the Agreement because of Concessionaire's failure to provide service commensurate with the specific terms of the Agreement and/or the reasonable expectations of customers and MDAD regarding the highest quality of merchandise, availability of merchandising, proper functioning of the vehicles and the like. The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.
- C. Repeat defaults (more than three (3) in any consecutive 12-month period) for any default under

Sub-articles 10.02-10.05 shall be grounds for termination. If the County elects to terminate under the authority of this Sub-article, the Concessionaire will not be provided an opportunity to cure the default (s).

10.05 Revenue Control and Audit Default

The inability or failure of the Concessionaire to provide the County with an unqualified certified audit pursuant to Sub-article 4.10 (Annual Audit), or to strictly adhere to the revenue control procedures established pursuant to Sub-article 4.12 (Revenue Control Procedures) shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Concessionaire.

10.06 Drug-Free Workplace Default

The Concessionaire acknowledges, that as part of its Bid, it 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 such may be amended from time to time ("Ordinance"). Based on the provisions of said Ordinance, the County shall have the right, upon thirty (30) days written notice to the Concessionaire, to terminate this Agreement in the event the Concessionaire fails to provide, as of each anniversary of the effective date of this Agreement, the annual re- certification affidavit as required by the Ordinance; provided, however, that such termination shall not be effective if the Concessionaire 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 Concessionaire, and without liability to the County, if the Department or the County Manager determines any of the following:

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

ARTICLE 11- TERMINATION BY CONCESSIONAIRE

11.01 Termination by Concessionaire

The Concessionaire shall have the right, upon ninety (90) calendar days written notice to the County, to terminate this Agreement, without liability to the County, at any time after the occurrence of one or more of the following events:

- A. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the remaining in force of said injunction for a period of more than ninety (90) calendar days.
- B. Breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the County to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by certified mail from the Concessionaire of the existence of such breach.

- C. Assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the Airport facilities or any substantial part, or parts thereof, in such a manner as substantially to restrict the operations of the Concessionaire for a period of ninety (90) days.

ARTICLE 12 - NONDISCRIMINATION

12.01 Equal Employment Opportunity

In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), the Concessionaire shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Concessionaire shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship.

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

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

12.02 Nondiscriminatory Access to Premises

The Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant that: (1) no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the premises; (2) that the Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation, as amended from time to time.

12.03 Breach of Nondiscrimination Covenants

In the event it has been determined that the Concessionaire has breached any enforceable nondiscrimination covenants contained in Sub-article 12.01 Equal Employment Opportunity and Sub-article 12.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Concessionaire fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this

Agreement pursuant to the Sub- article 10.04 Other Defaults hereof.

12.04 Nondiscrimination

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

The Concessionaire will include Sub-article 12.01 Equal Employment Opportunity and Sub-article 12.02 Nondiscriminatory Access to Premises of this Article in the Concessionaire sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. The Concessionaire shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Concessionaire becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

12.05 Disability Nondiscrimination Affidavit

By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, the Concessionaire attests that this is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Concessionaire or any owner, subsidiary or other firm affiliated with or related to the Concessionaire is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution, such violation shall render this Contract terminable in accordance with Article 10 Termination by County hereof. This Agreement shall be void if the Concessionaire submits a false affidavit pursuant to this Resolution or the Concessionaire violated the Act or the Resolution during the term of this Agreement, even if the Concessionaire was not in violation at the time it submitted its affidavit.

12.06 Affirmative Action / Nondiscrimination of Employment Promotion and Procurement Practices (County Code Section 2-8.1.5)

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

Affirmative Action Plan/Procurement Policy Affidavit, as applicable, is current, complete and accurate.

12.07 Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation Plan

ACDBE REQUIREMENTS:

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

The ISD has established an ACDBE concession **specific goal of twenty three (23)** percent of the prime concessionaire's portion of gross sales. The ACDBE goal can be achieved either through the Concessionaire being an ACDBE itself, Joint Venture or sub-contracting a percentage of Gross Revenues.

The Concessionaire will be required to submit:

- (1) Executed Joint Venture or Sub-concession Agreement prior to submission for Board approval;
- (2) Notarized Monthly Utilization Report (MUR) reflecting ACDBE revenue;
- (3) Notarized Monthly Activity Report (MAR) of ACDBE JV Partner on or before the 10th of every month.

COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS:

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

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

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

4. ISD's decision on commercially useful function matters are final.

ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING:

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

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

The work should be submitted as part of this solicitation and annually thereafter to the ISD's Small Business Development (SBD) Division. The work to be performed by the ACDBE joint venture partner should be store specific with regards to tasks and locations or as a distinct element of work be specified.

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

- (2) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:

a. Details of training sessions, including class rosters and lesson plans.

b. Deliverables and work products.

c. Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.

d. Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).

(3) Each ACDBE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.

(4) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.

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

CERTIFICATION - AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

In order to participate as an Airport Concession Disadvantaged Business Enterprise (ACDBE) on this contract, firms must be certified by the Florida Unified Certification Program (FLUCP) for the State of Florida as an ACDBE. Only those firms certified as ACDBEs at the time of bid submittal will be counted towards an ACDBE goal. It is the prime Bidder's obligation to verify ACDBE status prior to bid submission. Certification as a SBE/CSBE/MWBE or by any other program SHALL NOT count toward achievement of the ACDBE Goal.

Application for certification as an ACDBE may be obtained by contacting the Florida DOT Equal Opportunity Office Located at FLUCP 605 Suwannee Street, MS 65 Tallahassee, Florida 32399-0450 Tel: (850) 414-4747 Facsimile: (850) 414-4879, or their Website: <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/>. The Miami-Dade County, SBD Division is a certifying member of the Florida Unified Certification Program (FLUCP) and can be contacted for ACDBE certification. SBD is located at 111 N.W. 1st Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111, website: <https://www.miamidade.gov/smallbusiness/>.

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

AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS:

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

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

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

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

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

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

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

ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM:

Consistent with the goal of providing ACDBE's with hands-on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Section 12.07 "Airport Concession Disadvantaged Business Enterprises"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed.

which shall include but not be limited to the following specific duties and responsibilities:

A. Store Operations

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

B. Personnel

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

C. Shop Design and Display

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

D. Loss Prevention

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

E. Books, Records and Reports

- (1) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the ISD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.
- (2) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Concessionaire shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (i.e., income) statement for the preceding month and for the year-to-date.

- (3) Reports of the ACDBE Mentoring Program shall be submitted to the Department's SBD Division and Business Management Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN:

The Concessionaire shall contract with those firm(s) as are listed on the Concessionaire's ACDBE Participation Plan in the Proposal documents and approved by the Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.

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

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

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

ACDBE REQUIREMENTS

It is the policy of the County that ACDBE's shall have the maximum practical opportunity to participate in the performance of County agreements. As used in the Bid Documents, the term "Airport Concession Disadvantaged Business Enterprises (ACDBE)" means a small business concern, which (a) is at least fifty one percent (51%) owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty one percent (51%) of the stock which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it as set forth in 49 CFR Part 23, Code of Federal Regulations. ~~The County has established an ACDBE concession specific goal of 15% percent of gross revenues. The ACDBE contract goal can be achieved either through the Bidder being an ACDBE itself, a partnership or joint venture, or~~

~~subcontracting a percentage of gross revenues in terms of labor services, purchase of goods and services excluding fuel.~~

~~The Airport Concession Disadvantaged Business Enterprise (ACDBE) Plan must be submitted with the Bid in accordance with Appendix C, Section II and its supporting documents: Joint Venture Agreement, Sub-concession Agreement, etc. The Successful Bidder will be required to submit to the Internal Services Department, Small Business Division, Monthly Utilization Reports (MUR) reflecting ACDBE revenue and operational expenses, commencing 90 days after beneficial occupancy and monthly thereafter, on or before the 10th of every month.~~

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~~II — COUNTING ACDBE PARTICIPATION TOWARD CONTRACT GOALS~~

~~I. — When an ACDBE participates in a contract, only the value of the work actually performed by the ACDBE toward the ACDBE goal will be counted.~~

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~~1. — When an ACDBE performs as a participant in a joint venture a portion of the total dollar value of the contract during the complete contract term, equal to the clearly defined portion of the work of the contract that the ACDBE performs will be counted toward ACDBE goals as outlined in Appendix C, "Airport Concession Disadvantaged Business Enterprise Participation Plan/Provision" and ACDBE Joint Venture Guidance by the U.S. Department of Transportation, Federal Aviation Administration (USDOT-FAA) ACDBE Appendix 7.~~

~~1. — Expenditures to an ACDBE contractor toward ACDBE goals will be counted only if the ACDBE is performing a commercially useful function as defined below:~~

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

~~MDAD will determine whether an ACDBE is performing a commercially useful function by evaluating the specific duties outlined in the Joint Venture Agreement; the subcontract agreement or other agreements in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.~~

~~(-) — An ACDBE does not perform a commercially useful function if its role is limited to that of an extra participant in a financial or other transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE participation.~~

~~(-) — If an ACDBE does not perform or exercise responsibility for at least seventy (70%) percent of its participation or if the ACDBE subcontract's a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the ACDBE is not performing a commercially useful function.~~

~~(-) — When an ACDBE is presumed not to be performing a commercially useful function as provided in paragraph (c) of this section, the ACDBE may present evidence to rebut~~

~~this presumption. MDAD will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.~~

~~1. MDAD's decision on commercially useful function matters are final.~~

~~3. ACDBE GOAL ACHIEVED THROUGH JOINT VENTURE ("JV") PARTNERING~~

~~Bidders may satisfy a part of the ACDBE goal by Joint Venturing with an ACDBE as detailed in the ACDBE Joint Venture Guidance by the U.S.DOT FAA; ACDBE Appendix 7. The Joint Venture agreement must specify the following:~~

~~(0) Each ACDBE joint venture ("JV") partner must be responsible for a clearly defined portion of the work to be performed. The work should be detailed separately from the work performed by the non-ACDBE JV partner as specified in the Joint Venture Guidance by U.S. DOT FAA (Appendix 7).~~

~~The work should be submitted as part of this solicitation and annually thereafter to the Aviation Department's Minority Affairs Division.~~

~~The ACDBE Joint Venture partner will be required to spend the minimum amount of aggregate time on-site, focused on the operation of the concession. Such "minimum amount of aggregate time" is defined as ten (10) hours per week.~~

~~(0) Each joint venture partner must submit a notarized Monthly Utilization Report and a notarized Monthly Report of ACDBE Joint Venture Activity providing details of how the performance objectives were achieved and providing documentation of that achievement on the form. This information should include, but not limited to:~~

- ~~- Details of training sessions, including class rosters and lesson plans.~~
- ~~- Deliverables and work products.~~
- ~~- Time sheets of partner employees used to fulfill objectives. Time sheets must accurately reflect hours worked and compensation earned.~~
- ~~- Proof that employees of partner actually work for them (payroll, payroll tax returns and the like).~~

~~(0) Each ACBDE partner must share in the ownership, control, management, and administrative responsibilities, risks and profits of the JV in direct proportion to its stated level of JV participation.~~

~~(0) Each ACDBE JV partner must perform work that is commensurate with the Lease Agreement.~~

~~As described below, each Bidder must submit, as part of its Bid, a plan for the achievement of ACDBE goal, ACDBE Utilization, Schedule of Participation by ACDBE firms; JV Agreement and the Letter of Intent from certified ACDBEs who are Certified or have applied for Certification. Certification information can be obtained through the Miami Dade County, Department of Small Business Development (SBD) or the Florida Unified Certification~~

~~Program as required by Airport Concession Disadvantaged Business Enterprise Participation Plan (ACDBE).~~

~~Without limiting the requirements of the Agreement, the County will have the right to~~

review and approve all agreements utilized for the achievement of these goals. Such agreements must be submitted with the Bid.

~~III. CERTIFICATION AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)~~

In order to participate as an ACDBE on this contract, an ACDBE must be certified

or have applied for certification to the Miami-Dade County, Department of Small Business Development (SBD) or Florida Uniform Certification Program (FLUCP) at the time of Bid submittal, but the ACDBE firm must be fully certified on or before the award date. ACDBE firms must maintain their certification throughout the term of this agreement.

Application for certification as an ACDBE may be obtained by contacting the Miami-Dade County, Department of Small Business Development located at 111 N.W. 11th Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111, or visit their website at www.co.miamidade.gov/sbd.

The ACDBE Certification List is maintained and published at least every other week by the Miami-Dade County, Department of Small Business Development and contains the names and addresses of currently certified Airport Concession Disadvantaged Business Enterprise (ACDBE's) certified by the agency.

The FLUCP (Florida Unified Certification Program) Directory is available at www.dot.state.fl.us/egualopportunityoffice/. The Directory lists the firm's name, address, phone number, date of the most recent certification, certifying agency and type of work the firm has been certified to perform. The FLUCP updates the data every 24 hours and revises the Directory regularly. The address for Florida UCP is:

**Florida Department of Transportation
Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, Florida 32399-0450
Tel: (850) 414-4747 Fax: (850) 414-4879**

~~III. AFFIRMATIVE ACTION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS~~

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

These requirements may include, but not be limited to, the compliance with Airport Concession Disadvantaged Business Enterprise and/or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if directed by the MDAD,

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the contracting of specified percentages of goods and services contracts to Airport Concession Disadvantaged Business Enterprises. In the event it has been determined, in accordance with applicable regulations, that the Successful Bidder has defaulted in the requirement to comply with the provisions of this section and fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Concessionaire, to terminate this Agreement, pursuant to Default language referenced in the Agreement.

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

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

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

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

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

III. ~~ACDBE MENTORING, ASSISTANCE AND TRAINING PROGRAM~~

Consistent with the goal of providing ACDBE's with hands on participation and the responsibility for a clearly defined portion of the Airport Concession operations, subject to **Sub-article 12.07 "Airport Concession Disadvantaged Business Enterprises"** hereof, each ACDBE shall have the duty and responsibility to operate certain areas of the concession(s) following a mentoring period, if needed, which shall include but not be limited to the following specific duties and responsibilities:

~~— Store Operations~~

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

~~— Personnel~~

- ~~(-) Employment practices~~
- ~~(2) Compliance with wage and hour laws~~

- ~~(2) Compliance with County and Airport requirements~~
- ~~(2) Designing compensation and benefits plans~~
- ~~(2) Management and staff training to enhance product knowledge and customer service~~
- ~~(2) Warehousing packaging and sales reporting of merchandise~~

~~— Shop Design and Display~~

- ~~(-) Retail layout~~
- ~~(1) Merchandising techniques~~
- ~~(1) Visual display techniques~~

~~— Loss Prevention~~

- ~~(0) External and internal theft~~
- ~~(0) Shop security~~

~~— Books, Records and Reports~~

- ~~(0) The books of account and supporting records of the joint venture(s) and the sub-concessionaire(s) shall be maintained at the principal office and shall be open for inspection by the MDAD or the ACDBE sub-concessionaire(s) or Joint Venture(s), upon reasonable prior written notice, during business hours.~~
- ~~(0) The books of account, for both financial and tax reporting purposes shall be maintained on the accrual method of accounting. The Successful Bidder shall provide to the sub-concessionaire(s) or joint venture(s), within an agreed upon time after the end of each month during the term of this agreement, an unaudited operating (i.e., income) statement for the preceeding month and for the year to date.~~
- ~~(0) Reports of the ACDBE Mentoring Program shall be submitted to the Department's Minority Affairs and Business Development Divisions, outlining the specific areas of training (i.e., components covered, total number of hours of training, training material covered, etc.).~~

~~III. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN~~

~~The Successful Bidder shall contract with those firm(s) as are listed on the Successful Bidder's ACDBE Participation Plan in the Bid documents and approved by the~~

~~Department, and shall thereafter neither (i) terminate such ACDBE firm(s), nor (ii) reduce the scope of the work to be performed, nor (iii) decrease the percentage of participation, nor (iv) decrease the dollar amount of participation by the ACDBE firm(s) without the prior written authorization of the Department.~~

~~The MDAD shall monitor the compliance of the Successful Bidder with the requirements of this provision during the term and/or extension of this agreement.~~

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

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

ARTICLE 13 - RULES, REGULATIONS AND PERMITS

13.01 Rules and Regulations

- a. The Concessionaire shall comply with the Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Metropolitan Miami-Dade County, Florida, as the same may be amended from time to time, and any Operational Directives issued thereunder. The Concessionaire is presumed to be familiar with and shall comply with all additional laws, 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. Failure to comply with these rules and regulations will give the Department the right to terminate the Agreement with the Concessionaire.
- b. The Concessionaire shall in particular comply with all federal statutes, regulations and Department directives relating to security measures, including compliance with requirements relating to hiring of employees, screening of bags and cargo, and movement of vehicles.

13.02 Permits and Licences

Concessionaire shall obtain, pay for, and maintain current all permits and licenses as required for its operation hereunder including but not limited to the following:

- a. The Concessionaire must possess or successfully obtain, prior to award, a For-Hire Passenger Motor Carrier (PMC) certificate of transportation to provide Contract Service, according to Miami-Dade County Code Chapter 31. Vehicles for Hire, Article III Passenger Motor Carriers.

ARTICLE 14 - CIVIL ACTIONS

14.01 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

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action to determine the rights or obligations of the parties hereto shall be brought in the State or Federal courts within the State of Florida.

14.02 Registered Office/Agent; Jurisdiction

Concessionaire, 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, as may be amended from time to time. If the Concessionaire 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 15 - ACTIONS AT TERMINATION

15.01 Actions at Termination

On or before the termination date of this Agreement, provided that the Concessionaire is current in all the payments required pursuant to this Agreement, the Concessionaire shall, at its sole cost and expense, remove all of its personal property from the Airport. Any personal property of the Concessionaire not removed in accordance with this Article may be removed by the Department for storage at the cost of the Concessionaire. Failure on the part of the Concessionaire to reclaim its personal property within thirty (30) days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever use and disposition is deemed to be in the best interests of the County.

ARTICLE 16 - TRUST AGREEMENT

16.01 Incorporation of Trust Agreement by Reference

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

16.02 Adjustment of Terms and Conditions

If at any time during the term of this Agreement, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the County by the Concessionaire or by other Concessionaires under other agreements of the County for the lease or use of premises 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 terms and conditions and the rentals, fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like premises 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 revised 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 revision of the terms and conditions, upon the issuance of written notice from the Department to the

Concessionaire.

ARTICLE 17 - GENERAL PROVISIONS

17.01 Payment of Taxes

The Concessionaire shall pay all taxes lawfully assessed against the Concessionaire and its interests in its operations hereunder; provided, however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay it after the ultimate adverse conclusion of such contest shall constitute default, pursuant to Sub-article 10.03 hereof.

17.02 Alterations by Concessionaire

The Concessionaire shall not make any alterations or revisions or other improvements on the Airport without first obtaining written approval from the Department. This shall include signage of any form on any surface.

17.03 Rights to be Exercised by Department

Wherever in this Agreement rights are reserved to the County, the Department may exercise such rights.

17.04 Security

The Concessionaire acknowledges and accepts full responsibility for the security and protection of its equipment, vehicles, other personal property and money used in connection therewith. The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for protection of said equipment, personal property and money shall be the sole responsibility of the Concessionaire and shall involve no cost to the County.

17.05 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 Concessionaire 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.

17.06 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 the United States of America shall be suspended.

17.07 Notices

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Any notices given under the provisions of this Agreement shall be in writing and shall be hand-delivered or sent by Registered or Certified Mail, Return Receipt Requested, to:

To the County:

Director

Miami-Dade Aviation Department Post Office Box

025504

Miami, Florida 33102

To the Concessionaire

American Shuttle, Inc. 2766 NW 62 Street

Miami, FL 33147

Or to such other respective addresses as the parties may designate to each other in writing from time to time in accordance with this Sub-article 17.07. Notices by Registered or Certified Mail shall be deemed given on the delivery date indicated on the Return Receipt from the U.S. Postal Service.

17.08 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 or a hearing examiner in a bid protest proceeding, 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.

17.09 Rights Reserved to County

- A. All rights not specifically granted to the Concessionaire by this Agreement are reserved to the County.
- B. **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 concessionaire 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, the Planning Department (as they may be renamed from time to time), or any department, board or agency of the County, to agree to any specific request of Concessionaire that relates in any way to the regulatory or quasi-judicial power of the County and the county shall be released and held harmless by concessionaire 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 reversal of the County's action.
- C. **Right of Operation of Airport and Flight:** The County hereby reserves, and the Concessionaire agrees to such reservation, for the use and benefit of the County and the public, a right to make improvements to and to use the airport and the right of flight for the passage of aircraft in the air space above the surface of the Premises and Improvements leased herein or used by Concessionaire, together with the right to cause in said airspace and at such Airport such noise and inconvenience and business interruption as may be inherent in the making of improvements and operation of aircraft at or about the Airport, which aircraft may now be known or hereafter used for navigation of or flight in the air, and using said air space or landing at, taking off from, or operating at the airport.

17.10 Lien

The County shall have a lien upon all personal property of the Concessionaire on the Airport to secure the payment to the County of any unpaid money accruing to the County under the terms of this Agreement.

17.11 Authorized Uses Only

Notwithstanding anything to the contrary herein, the Concessionaire shall not use or permit the use of the Airport for any illegal or unauthorized purpose or for any purpose which would invalidate any insurance policies of the County or any policies of insurance written on behalf of the Concessionaire under this Agreement.

17.12 No Waiver

There shall be no waiver of the right of the County to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Concessionaire unless such waiver is explicitly made in writing by the Department.

17.13 Sub-Concessionaires

If the Concessionaire, with the written approval of the Department, causes any part of this Agreement to be performed by a Sub-Concessionaire, the provisions of this Agreement will apply to such Sub-Concessionaire and its officers, agents and employees in all respects as if it and they were employees of the Concessionaire; and the Concessionaire will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Sub-Concessionaire, its officers, agents, and employees, as if they were employees of the Concessionaire. The services performed by the Sub-Concessionaire will be subject to the provisions hereof as if performed directly by the Concessionaire.

The Concessionaire, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Sub-Concessionaire, the portion of the Services which the Sub-Concessionaire is to do, the place of business of such Sub-Concessionaire, and such other information as the County may require. The County will have the right to require the Concessionaire not to award any subcontract to a person, firm or corporation disapproved by the County.

Before entering into any subcontract hereunder, the Concessionaire will inform the Sub-

Concessionaire fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Sub-Concessionaire will strictly comply with the requirements of this Contract.

In order to qualify as a Sub-Concessionaire satisfactory to the County, in addition to the other requirements herein provided, the Sub-Concessionaire must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Sub-Concessionaire must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of Concessionaire's obligations under this Agreement. All Sub-Concessionaires are required to protect the confidentiality of the County's proprietary and confidential information. Concessionaire shall furnish to the County copies of all subcontracts between Concessionaire and Sub-Concessionaires and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the

County to request completion of performance by the Sub-Concessionaire of its obligations under the subcontract, in the event the County finds Concessionaire in breach of its obligations, the option to pay the Sub-Concessionaire directly for the performance by such Sub- Concessionaire. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Sub-Concessionaire hereunder as more fully described herein.

17.14 Solicitation

Except as provided by Section 2-11.1(s) of the Miami-Dade County Code, the Concessionaire warrant(s): 1) that it has not employed or retained any company or person other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement; and 2) that it has not paid, or agreed to pay any company or other person any fee, or commission, gift, or other consideration contingent upon the execution of this Agreement. For breach of violation of this warranty, the County has the right to annul this Agreement without liability to the Concessionaire for any reason whatsoever.

17.15 Conflict of Interest

Notwithstanding the provisions of any Federal, State or County law governing the activities of the Concessionaire hereunder, commencing as of the effective date of this Agreement and continuing for the term hereof, the Concessionaire shall not knowingly enter into any contract or other financial arrangement with any person, corporation, municipality, authority, county, state or country or any Concessionaire or airline at the Airport, which would constitute a conflict of interest with the County hereunder or with the services provided by the Concessionaire to the County hereunder. The Director shall make determination(s), binding upon the parties, as to whether conflicts exist or will exist and if such will be serious enough to constitute a conflict hereunder.

17.16 Compliance with Applicable Law

The Concessionaire shall comply with all applicable provision of law pertaining to the services of the Concessionaire required under this Agreement.

17.17 Rules and Regulations

The Concessionaire shall comply with the Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder, all additional laws, 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.

17.18 Violations of Rules and Regulations

The Concessionaire agrees to pay on behalf of the County any penalty, assessment or fine, issued in the name of 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 Concessionaire, its agents, employees or invitee, have violated any law, ordinance, regulation or rule described in Sub-articles 17.16 and 17.17 above or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of this Sub-article 17.18 and Sub-articles 17.16 and 17.17 above shall be included in every contract and other agreement, which the Concessionaire may enter into related to its operations and activities under this Agreement and that any such contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or

limiting assignments, subletting or subcontracting.

17.19 No Damages for Delay

The Concessionaire hereby agrees to make no claim for damages for delay, whether contemplated or not contemplated, in the performance hereunder occasioned by any acts or omissions to act of the County, or any of its representatives or other Concessionaires, and agree that any such claim shall be fully compensated for by an extension of time to complete performance of the Services.

17.20 Right of Decision

All services shall be performed by the Concessionaire to the satisfaction of the Department or its designee, who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this agreement, the prosecution and fulfillment of the services hereunder, and the character, quality, amount and value thereof.

17.21 Administrative Revisions

It is understood and agreed that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, provided however that such revisions, except for those under Sub-article 1.03 above, shall not have a materially adverse effect on the right of Concessionaire to operate hereunder.

17.22 No Estoppel or Waiver

No acceptance, order, measurement, payment, or certificate of or by the County or its employees or agents shall estop the County from asserting any right of this Agreement. There shall be no waiver of the right of the County to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Concessionaire unless such waiver is explicitly made in writing by the Department waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

17.23 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 area and any area from which the Concessionaire does business related to the operations hereunder, at all reasonable times, for the purposes of inspection to determine compliance with the provisions of this Agreement. This right of inspection shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

17.24 Independent Private Sector Inspector General

The County shall have the right but not the obligation to retain the services of an independent private sector inspector general (IPSIG) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Concessionaire and County in connection with this agreement. The scope of services performed by an IPSIG may include, but is not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the contracting and procurement process, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of Concessionaire, its officer, agents and employees, lobbyists, County staff and elected officials.

Upon written notice to Concessionaire from an IPSIG, the Concessionaire shall make all requested

records and documents available to the IPSIG for inspection and copying. The IPSIG shall have the right to examine all documents and records in the Concessionaire's possession, custody or control which, in the 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 from and with successful and unsuccessful subcontractors and suppliers; all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid 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.

The provisions in this section shall apply to the Concessionaire, its officers, agents, and employees. The Concessionaire shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Concessionaire in connection with the performance of the agreement.

Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the Concessionaire or third parties.

17.25 Trademarks and Licenses

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

17.26 Performance:

The parties expressly agree that time is of the essence in the performance of this Agreement and that the failure by the Concessionaire to complete performance within the time specified, or within a reasonable time, if no time is specified herein, shall relieve the County of any obligation to accept such performance.

17.27 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, revised, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

17.28 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.

17.29 County - Concessionaire Relationship

Notwithstanding any of the terms, conditions and covenants of this Agreement, nothing contained

herein shall be construed as creating any landlord and tenant relationship between the County and the Concessionaire, except for any leases separately entered into between the County and Concessionaire, in which event Concessionaire's rights as a tenant shall be restricted to those set forth in any such leases. Further, officers, agents, or employees of the Concessionaire shall not be deemed to be employees of the County for any purpose whatsoever. No partnership or joint venture relationship between the County or the Department and the Concessionaire is created or intended in this Agreement.

17.30 No Waiver of Governmental Regulatory Authority

Nothing in this Agreement should be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Concessionaire 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 Concessionaire that relates in any way to the agency of the County, to agree to any specific request of Concessionaire that relates in any way to the regulatory or quasi-judicial power of the county and the county shall be released and held harmless by Concessionaire 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 reversal 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.

17.31 FAA Special Provisions

i) Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor 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 contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor 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 contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal

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

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contract 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 contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal.

Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
 - Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain

testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123 (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- ii) All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The [contractor | consultant] has full responsibility to monitor compliance to the referenced statute or regulation. The [contractor | consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division
- iii) All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor 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). Contractor 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.

17.32 Miami-Dade County United States Soccer Federations 2026 World Cup

The terms of this agreement are subordinate to the terms of the Airport Agreement submitted by Miami-Dade County to the United States Soccer Federation on February 21, 2018. In carrying out its obligations under this Contract, the Concessionaire shall not take or omit any action which is inconsistent with, or in derogation of, the County’s obligations under the Airport Agreement. Where the Concessionaire’s rights or obligations under this Contract are in conflict with the County’s obligations under the Airport Agreement, and upon notice by the County to Concessionaire, the terms of this Contract shall be deemed conformed to the County’s obligations under the Airport Agreement. Where such conformance would cause a material change in this Contract, Concessionaire shall have the right, upon written notice to the County within five (5) days of receipt of notice of such a conflict, to terminate this Contract for convenience; in such termination, the Concessionaire shall have no cause of action for money damages of any kind, including but not limited to direct damages, unamortized costs or debt, stored or ordered materials, indirect damages, lost profits, loss of opportunity, loss of goodwill, or otherwise. In the event that the Concessionaire

does not elect to terminate this Contract within the time specified herein, this contract shall be deemed to have been amended via consent of the parties to conform its terms to the requirements of the Airport Agreement, but only to the extent needed to avoid conflict with same.

17.33 Vendor Registration/Conflict of Interest

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2-8.1(d)(2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution R-919-18)
14. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)
17. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. 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
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
18. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

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

CONCESSIONAIRE

(Legal Name of Corporation)

ATTEST:

Secretary _____
(Signature and Seal)

By: _____
Concessionaire - Signature

(Type Name & Title)

Name: _____

(Type Name & Title)

CONCESSIONAIRE (If a L.L.C.):

Name of L.L.C.

A Florida member-managed limited liability company

By: _____
Signature of Member

Witness

(Print Name of Member)

**BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

By: _____
Mayor

Approved for Form and
Legal Sufficiency

Attest: Harvey Ruvin, Clerk

Assistant County Attorney

By: _____
Deputy Clerk

Resolution No.: _____

Date: _____