



Memorandum



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To: Honorable Daniella Levine Cava, Mayor, Miami-Dade County
Honorable Chairman Jose “Pepe” Diaz, Chair
and Members, Board of County Commissioners, Miami-Dade County

From: Felix Jimenez, Inspector General

Date: May 27, 2021

Subject: *OIG Final Report Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC in its Operation and Management of American Airlines Hospitality Clubs, Ref. IG17-0023-I*

Attached please find the Office of the Inspector General’s (OIG) final report involving Miami-Dade County permittee SodexoMagic, LLC (SodexoMagic) and its underreporting of gross revenues to the Miami-Dade Aviation Department (MDAD). SodexoMagic operated and managed American Airlines’ (AA) hospitality lounges at Miami International Airport (MIA) from 2008 to April 2019. For the two-year period examined (January 2017 through December 2018), the OIG found that SodexoMagic failed to pay opportunity fees to MDAD totaling **\$1,466,455** due to its underreporting. Facts supporting the OIG finding of SodexoMagic’s underreporting are detailed in this report.

This report, as a draft, was provided to MDAD and SodexoMagic. A response was received from SodexoMagic, which is included in Appendix A. SodexoMagic disputes the OIG’s finding of underreporting namely because it claims that it had a tacit agreement with MDAD to only report and pay opportunity fees on its profits. A response was also received from MDAD, which is included in Appendix B. Generally, MDAD concurs with *most* of the OIG recommendations.

MDAD does not concur with the OIG recommendation to collect past-due opportunity fees from SodexoMagic. It is notable that MDAD does not dispute SodexoMagic’s past-due opportunity fees of \$1,466,455, which were calculated based upon the decades-long definition of gross revenues in all MDAD permit agreements. Instead, pursuant to discussions between MDAD and the current company that manages AA hospitality lounges at MIA, Host International, Inc. (Host), MDAD has shifted policy and redefined gross revenues to exclude operational expenses, such as salaries, operational overhead, and the costs of goods sold—but only for permittees operating hospitality lounges at MIA pursuant to a private management agreement. MDAD has executed this new permit agreement with SodexoMagic (which currently only manages the Delta Sky Club at MIA) and Host (the current manager of AA Admiralty Clubs at MIA). Problematic issues raised

due to MDAD's decision to waive or otherwise fail to collect the SodexoMagic past-due opportunity fees are also explored in this report (see Section IX).

The OIG is requesting that MDAD provide us with a follow-up response in 60 days, on or before July 30, 2021, to address the OIG's restated recommendation that it collect the past-due opportunity fees, as well as other OIG recommendations pertaining to the permittee reporting operation as a whole.

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MIAMI-DADE COUNTY

OFFICE OF THE INSPECTOR GENERAL



FINAL REPORT OF INVESTIGATION

*Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC
in its Operation and Management of American Airlines Hospitality Clubs*

IG17-0023-I

May 27, 2021

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EXHIBITS:

1. Definition of Gross Revenues Extracted from the MDAD Standard Permit Agreement
- 2A. SodexoMagic's Monthly Report of Gross Revenues for December 2015 (Revenues from Clients AA and Delta Jointly Reported)
- 2B. SodexoMagic's Monthly Report of Gross Revenues for December 2016 (Revenues from Clients AA and Delta Jointly Reported)
- 3A. SodexoMagic's Monthly Report of Gross Revenues for December 2016 (Revenues from American Airlines Admirals Clubs)
- 3B. SodexoMagic's Monthly Report of Gross Revenues for December 2016 (Revenues from Delta Sky Club)
4. Email dated March 9, 2016, from MDAD Permits to Bill Sepkowski, SodexoMagic/Delta Controller
5. Excerpt from Email Chain Dated June 29-30, 2017 between SodexoMagic and MDAD Permits Regarding Separate Operational Teams

APPENDIX A – SodexoMagic's Response

APPENDIX B – MDAD's Response

APPENDIX C – Excerpt from New *MDAD Management Agreement Permit* Regarding New Definition of Gross Revenues

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I. INTRODUCTION AND SYNOPSIS

This report details the OIG's findings from a self-initiated probe of SodexoMagic, LLC (SodexoMagic), a company providing services to private clients at Miami International Airport (MIA) pursuant to a permit issued to it by Miami-Dade County. SodexoMagic, as a permittee, is required to report its gross revenues derived from its commercial activities at MIA and remit to the Miami-Dade Aviation Department (MDAD) an opportunity fee of seven percent of its gross revenues. This report details SodexoMagic's years of significant underreporting of its gross revenues derived from hospitality club management services provided to American Airlines (AA). For two years analyzed in greater detail, the OIG determined that SodexoMagic was reporting less than two percent of what it was actually receiving from AA in gross revenues. The underpaid amount for calendar years 2017 and 2018 was approximately \$1.46 million.

SodexoMagic contracts with airlines to operate airline hospitality lounges and clubs. Its two clients at MIA were AA and Delta Airlines (Delta). SodexoMagic began operating one hospitality club for AA at MIA in approximately 2008. Since 2008, AA increased and decreased the number of clubs operated at any given time at MIA. At all times material hereto, SodexoMagic operated two to four AA clubs at MIA.

In 2011, SodexoMagic began providing management services to Delta by operating Delta's one Sky Club located at MIA. From 2011 until it was caught in May 2015, SodexoMagic failed to report any gross revenues received from Delta. Therefore, it failed to pay any opportunity fees thereon. MDAD discovered this and began an enforcement action against SodexoMagic to recoup monies owed. During this time, however, MDAD allowed SodexoMagic to continue operating the Delta Sky Club by piggybacking onto SodexoMagic's permit to operate the AA hospitality clubs. SodexoMagic began to jointly report its gross revenues from both Delta and AA on the same *Monthly Report of Gross Revenues* (MRGR) form.

In its enforcement action, MDAD ultimately determined that SodexoMagic had failed to report over \$1,000,000 in gross revenues derived from services provided to Delta. MDAD required SodexoMagic to pay \$72,354 in past-due opportunity fees. This number was reached by applying the permit agreement's definition of gross revenues. MDAD explained to SodexoMagic that gross revenues included all operational costs and fees charged to Delta plus all sales invoiced by SodexoMagic—it was not limited solely to SodexoMagic's compensation derived from its management fee.

The OIG learned of MDAD's settlement agreement with SodexoMagic. We were also aware that SodexoMagic operated *more* clubs for AA than it did for Delta, yet the gross revenues reported by SodexoMagic from the AA hospitality clubs was significantly *less* than the reported gross revenues derived from the one Delta Sky Club. This apparent discrepancy warranted further examination. The OIG self-initiated an investigation to

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determine if SodexoMagic was underreporting its gross revenues derived from its AA operations.

The OIG examined SodexoMagic's permit history with MDAD. The OIG notes that each permit agreement issued to SodexoMagic contained the same standard definition of gross revenues. The OIG also obtained and analyzed SodexoMagic's MRGRs for its AA operations and compared them to its invoices issued to AA for the same time period. The same comparison was performed for SodexoMagic's MRGRs and invoices to Delta for the one Delta lounge operated by SodexoMagic after the settlement agreement was reached. This analysis determined that while SodexoMagic began accurately reporting gross revenues derived from Delta, SodexoMagic continued to inaccurately report its gross revenues received from AA. Instead, SodexoMagic was reporting its management compensation (i.e. net revenues) not gross revenues. As such, SodexoMagic was only reporting a miniscule fraction of what it was invoicing AA. While MDAD staff was scrutinizing SodexoMagic for its failure to report its Delta-derived gross revenues (and negotiating with them to determine the correct amounts due), no one was apparently conducting any reasonable review of what SodexoMagic was actually reporting related to its AA operations.

During the two-year period scrutinized by the OIG (January 2017 through December 2018), SodexoMagic reported gross revenues of \$385,090 from its AA line of business and paid MDAD \$26,883 in opportunity fees. The OIG finds that SodexoMagic's gross revenues derived from AA club operations were in reality over \$21 million. SodexoMagic should have paid \$1,493,337 in opportunity fees—not the paltry \$26,883 that was actually paid. For this two-year period alone, the underpaid amount totaled **\$1,466,455**. Based on records reviewed, this underreporting is likely not limited to 2017 and 2018 and may date back to 2008, when the first permit was issued to SodexoMagic for its servicing of the AA clubs. This report explores how the OIG determined SodexoMagic's true gross revenues derived from its AA business and the amount of its underpaid opportunity fees to the County.

Separate from this investigation, MDAD was in discussion with AA's successor management company, Host International, Inc. (Host). Host took over managing AA's hospitality lounges from SodexoMagic. Host appealed to MDAD that "pass through" operating costs should be excluded from gross revenues. As a result of those discussions—and after the issuance of the OIG draft report—MDAD changed its policy and redefined gross revenues in the permit agreements issued to hospitality services providers who operate pursuant to a management agreement. For these businesses, reimbursement for "pass through" operating costs are now specifically excluded from their calculation of gross revenues.

This report, as a draft, was furnished to both SodexoMagic and MDAD for their responses. SodexoMagic's and MDAD's responses to the OIG draft report are contained in

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Appendix A and **B**, respectively. An excerpt of the new permit agreement, which contains the new gross revenues definition, is found in **Appendix C**. Generally, MDAD concurs with almost all recommendations. However, the issue of the underpaid and uncollected SodexoMagic opportunity fees remains. The OIG strongly urges that MDAD begin enforcement action to collect said fees. Any other action raises a number of issues, which are explored later in Section IX. The OIG is requesting a 90-day status response from MDAD, regarding these and other questions raised by this report.

II. OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs; audit, inspect and review past, present and proposed County programs, accounts, records, contracts, and transactions; conduct reviews, audits, inspections, and investigations of County departments, offices, agencies, and boards; and require reports from County officials and employees, including the Mayor, regarding any matter within the jurisdiction of the Inspector General.

III. ENTITIES RELEVANT TO THIS INVESTIGATION

MDAD Real Estate Management and Development Division (aka MDAD Properties)

MDAD Properties consists of four sections: Terminal, MIA Non-Terminal, General Aviation Airports, and Permits. One of the main duties of the division is the administration of lease agreements, under which airlines, cargo handlers, maintenance providers, and other tenants operate. Relevant to this investigation are the leases issued to the airlines for the space in the terminal to operate hospitality lounges.

The Permit Section oversees the permitting process from application through issuance and renewal. A permit is a type of agreement that authorizes an individual or entity to access a Miami-Dade County airport to engage in business or commercial activities with airport tenants and airlines. Any individual or entity requiring access to a County-operated airport to transact business with an airport tenant, must first obtain a permit from MDAD.¹

In consideration for the ability to transact business at the airport, the permittee must pay the County an opportunity fee for that privilege. The opportunity fee is set at seven percent of the permittee's gross revenues from that commercial activity. The Permit Agreement is a standard document. Section C(3)(a) of the agreement defines "gross revenues" as:

¹ The permit requirement also extends to other customers located outside of the airport if the commercial activities or business is made possible by accessing Airport grounds. See the following link: http://www.miami-airport.com/business_permits.asp.

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... The term “Gross revenues” is intended to be all-encompassing and is intended to apply to the fullest extent of the money or consideration charged by or received by the Permittee for its activities under this Permit or as facilitated by this Permit, and includes but specifically is not limited to:

- I. Fees and charges imposed by Permittee upon its customers,
- II. Opportunity or percentage fees collected by the Permittee from its customers, including any “pass through” charges to a customer by which the Permittee recovers from the customer the 7% Opportunity Fee, or any portion thereof, payable by the Permittee to MDAD under Section C.1 above,
- III. Any money or consideration charged to a customer or received by the Permittee from a customer, whether on a cash or credit basis and whether such money or other consideration is actually paid to or is unpaid to the Permittee.

See **Exhibit 1** for the full excerpt of Section C “Fees and Payments” from the standard permit agreement. A close reading of this section makes clear that gross revenues includes every revenue stream imaginable, with the exception of taxes imposed by law, such as State sales taxes, and the value of subcontracted work so long as the subcontractor has its own MDAD permit, is also reporting its gross revenues, and is separately paying its own seven percent opportunity fee.

MDAD Finance Division, Revenue Section

Regarding issues relevant to this report, the Revenue Section of the MDAD Finance Division is charged with accepting and reviewing a permittee’s *Monthly Report of Gross Revenues* (MRGR) form and processing the opportunity fees to be paid. The MRGR includes a list of customer names and the gross revenues derived from the services provided to a permittee’s customer. The MRGR must be submitted to MDAD Finance by the 10th day of the month following the month in which services were rendered. It is the Revenue Section’s job to ensure that permittees are paying opportunity fees based on the permit agreement’s definition of gross revenues.

SodexoMagic, LLC (SodexoMagic)

SodexoMagic is a joint venture formed in 2006, between Magic Johnson Enterprises, LLC, which is owned by Earvin “Magic” Johnson, and Sodexo, Inc.² SodexoMagic is a

² <https://us.sodexo.com/services/sodexomagic.html>

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Delaware for-profit, limited liability corporation that registered in the State of Florida in 2008 as a foreign corporation. For the period relevant to this review, Sodexo Operations, LLC has been (and continues to be) the Managing Member of SodexoMagic.³ The corporate address is 9801 Washingtonian Blvd., Gaithersburg, MD 20878. The designated nature of this business is Food and Facilities Management Services.

IV. CASE INITIATION AND INVESTIGATIVE METHODOLOGY

Case Initiation

After the OIG learned of MDAD's enforcement action taken against SodexoMagic for failing to report its Delta gross revenues, the OIG initiated a review of SodexoMagic's AA gross revenues. The preliminary review showed that SodexoMagic was reporting significantly fewer gross revenues—and paying considerably less money in opportunity fees—compared to what it was now reporting for Delta. Knowing that AA's presence at MIA is significantly larger than Delta's and that AA has more than one hospitality lounge, the OIG determined that further review was warranted.

Investigative Methodology

During this investigation, the OIG met with MDAD Special Projects Administrator Virginia Carrillo⁴ (Permit Section) and now-retired Accountant II Lori Sugg (Revenue Section) to obtain procedural information, SodexoMagic's MRGRs, copies of applicable permit agreements, and other documents. Interviews were conducted with SodexoMagic financial representatives for both AA and Delta. Contact was also made with AA representatives Suzanne Peters and Patsy Yuen-Lyn, both Senior Managers-Premium Customer Services, and Jordan Heigel, Purchasing and Commodities Manager.

The OIG subpoenaed records from both AA and Delta, to include all service agreements, invoices, and methods of payment to SodexoMagic specific to MIA. Delta was cooperative and complied. It should be noted that AA was served through its corporate agent, CT Corporation, on June 8, 2017, and again on July 24, 2017, but failed to respond to the subpoena for almost two years. On August 26, 2019, after continued communications with AA's subpoena compliance department, the OIG finally received only a few of SodexoMagic's invoices submitted to AA (invoices limited to September through November 2018).

³ In its annual report filing of 2009, SodexoMagic, LLC named Sodexo Operations, LLC, as its Managing Member. From 2009 to 2018, Sodexo Operations, LLC was the only named manager and/or officer of the SodexoMagic, LLC. In its annual report filing of 2019, SodexoMagic added several individuals to its LLC as President, Executive Vice-President (5 individuals), Secretary, and Treasurer.

⁴ Ms. Carrillo is no longer with the Permit Section.

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Due to the incomplete response from AA, in August 2020, the OIG subpoenaed the records directly from SodexoMagic for the period of January 2017 through December 2018 to confirm the actual revenues received by SodexoMagic from AA. It is only from the OIG’s review of the SodexoMagic invoices issued to AA—invoices AA failed to provide—that the true scope of the underreporting was revealed. According to SodexoMagic, opportunity fee expenses paid by SodexoMagic to MDAD are passed through to AA. Therefore, it is likely that SodexoMagic had no obvious motive to underreport its gross revenues.

This investigation was conducted in accordance with the *Principles and Standards for Offices of Inspector General* as promulgated by the Association of Inspectors General and is accompanied by an *AIG Quality Standards for Investigations Attestation Form*.

V. CHRONOLOGY OF IMPORTANT EVENTS RELEVANT TO THIS REPORT

Table 1, below, lists a chronology of important events relevant to this investigation.

Table 1: Chronology of Events

DATE	EVENT
Jan. 2005	AA opens first Admirals Club at MIA - Concourse D-30
2008	SodexoMagic contracts with AA re: Admirals Club
Jul. 2008	MDAD issues SodexoMagic Permit No. PC-004495 allowing it to provide services at MIA—to operate and service AA’s Admirals Club
Sept. 2010	AA adds Admirals Club located at Concourse D-15 (SodexoMagic operates club via contract with AA)
Feb. 2011	AA adds Admirals Club - Concourse E (SodexoMagic operates the club via contract with AA)
Jun. 2011	SodexoMagic contracts with Delta re: Sky Club to operate club (no permit obtained)
May 2015	MDAD observes SodexoMagic operating Delta Sky Club, initiates MDAD enforcement action
2015 - 2017	SodexoMagic piggybacks Delta Sky Club services onto SodexoMagic/AA permit agreement. Joint MRGR forms submitted by SodexoMagic
Mar. 2016	SodexoMagic offers \$6,793.90 in past-due Sky Club opportunity fees
Mar. 9, 2016	MDAD emails SodexoMagic explaining gross revenues calculation
Sept. 2016	MDAD Finance assesses \$72,354 in past-due opportunity fees
Feb. 2017	SodexoMagic remits final payment to MDAD for \$72,354

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DATE	EVENT
Mar. 2017	MDAD issues SodexoMagic a separate permit agreement relating to the services provided to the Delta Sky Club
Jul. 2017	SodexoMagic renews permit agreement for its operation of AA's hospitality lounges

VI. INVESTIGATIVE FINDINGS

Based on the OIG investigation and SodexoMagic's own admission, SodexoMagic failed to apply the permit agreement's definition of gross revenues to its AA gross revenues stream. Instead, SodexoMagic only reported a flawed profit calculation. This failure occurred despite MDAD educating SodexoMagic on how to accurately calculate gross revenues in March 2016 regarding its Delta revenues. After the Delta Sky Lounge enforcement action, SodexoMagic correctly reported its gross revenues derived from Delta, however SodexoMagic continued to *incorrectly* report its gross revenues derived from AA. After this correction, it was apparent that the report figures for the single Delta Sky Club was approximately three times higher than the reported figures for the multiple AA lounges. This wide discrepancy was readily visible on the MRGRs but was never questioned. While this investigation finds that SodexoMagic underreported its gross revenues from its AA operations, we also find that MDAD staff could have been more diligent in its monthly review and processing of the MRGRs to have questioned this wide discrepancy.

A. SodexoMagic's Opportunity Fees as Reported to MDAD

According to records reviewed of the 2015 SodexoMagic enforcement action, after MDAD discovered that SodexoMagic was not paying any opportunity fees for its revenues derived from its Delta scope of business nor had a permit for the Delta Sky Club, SodexoMagic was allowed to continue to operate by piggybacking onto the SodexoMagic/AA permit agreement. SodexoMagic began paying opportunity fees as it negotiated with MDAD regarding past-due opportunity fees. During the year-long period of negotiations, SodexoMagic began paying ongoing opportunity fees based on the same flawed method of calculation SodexoMagic used to pay its opportunity fees on AA revenues—profit.

SodexoMagic initially offered a settlement amount of \$6,793.90. MDAD rejected this amount and conducted a thorough review of the actual SodexoMagic invoices issued to Delta for hospitality club operation and management. MDAD applied the standard definition of gross revenues contained in its permit agreement. MDAD and SodexoMagic ultimately agreed that \$72,354 in past-due opportunity fees was owed. SodexoMagic has continued to accurately report its gross revenues derived from the Delta Sky Club consistent with the definition of gross revenues in its permit agreement. However,

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SodexoMagic/AA continued to inaccurately report gross revenues derived from its AA hospitality club operations.

Table 2 shows the gross revenues amounts reported by SodexoMagic to MDAD. This information is derived directly from the MRGRs submitted by SodexoMagic to MDAD. After MDAD realized SodexoMagic had failed to report any Delta revenues, SodexoMagic began reporting via the same method used to report AA gross revenues. In August 2015, both gross revenues streams were reported on the same MRGR until March 2016, when SodexoMagic began to report true Delta gross revenues.

Table 2: SodexoMagic’s MRGRs and Fees Paid (July 2015 through February 2017)

SODEXOMAGIC’S MRGRs YEAR - MONTH	SODEXOMAGIC/AA OPPORTUNITY FEES PAID (Two – Four Clubs)	SODEXOMAGIC/DELTA OPPORTUNITY FEES PAID (One Club)
15-July*	\$1,120.91	\$147.94
15-August	\$1,106.97	\$147.94
15-September	\$1,367.42	\$175.41
15-October	\$1,095.76	\$147.94
15-November	\$1,128.52	\$147.94
15-December	\$731.55	\$157.82
16-January	\$848.05	\$147.94
16-February	\$845.18	\$166.50
16-March**	\$1,025.63	\$2,069.03
16-April	\$871.51	\$2,319.07
16-May	\$891.13	\$1,997.30
16-June	\$981.33	\$3,204.06
16-July	\$805.80	\$2,301.30
16-August	\$872.50	\$2,398.38
16-September	\$959.52	\$4,087.59
16-October	\$934.84	\$2,902.72
16-November	\$738.86	\$2,694.64
16-Dececeber	\$1,051.46	\$3,753.05
17-January	\$940.37	\$2,783.15
17-February	\$949.24	\$3,810.07
TOTAL	\$19,266.55	\$33,342.82

*SodexoMagic/Delta management team first submitted a separate MRGR to MDAD after failure to report was discovered. In August 2015, SodexoMagic/Delta and SodexoMagic/AA management teams began to combine revenues on a single MRGR under the existing permit.

**SodexoMagic/Delta management team began to report true gross revenues as directed by MDAD.

As can be seen above, the amount reported for one Delta Sky Club is consistently 3 to 4 times more than the amount of gross revenues reported for two to four AA clubs. No one

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ever questioned SodexoMagic regarding this disparity. **Composite Exhibit 2** consists of the December 2015 MRGR and the December 2016 MRGR, as examples showing both clients (AA and Delta) being reported on the same form. The months of December 2015 and December 2016 were selected to show a before and after month (after SodexoMagic fixed its Delta gross revenues reporting).

B. OIG Analysis of SodexoMagic’s Monthly Reports of Gross Revenues (MRGR)

After SodexoMagic received a separate permit from MDAD for its Delta operations, we note that the trend identified in Table 2 continued. SodexoMagic’s MRGRs, which were submitted to MDAD from March 2017 through December 2018, continue to show a reporting disparity between the SodexoMagic’s opportunity fees paid based on its Delta gross revenues and its AA gross revenues.

Table 3: SodexoMagic’s MRGRs and Fees Paid (March 2017 through December 2018)

SODEXOMAGIC’S MRGRs YEAR - MONTH	SODEXOMAGIC/AA OPPORTUNITY FEES PAID (Two – Four Clubs)	SODEXOMAGIC/DELTA OPPORTUNITY FEES PAID (One Club)
17-March	\$989.13	\$3,617.90
17-April	\$977.56	\$2,660.57
17-May	\$924.86	\$2,604.96
17-June	\$1,094.37	\$3,328.13
17-July	\$871.97	\$3,044.99
17-August	\$1,017.87	\$3,314.33
17-September	\$964.67	\$2,956.01
17-October	\$1,278.78	\$3,060.79
17-November	\$1,172.86	\$3,263.05
17-December	\$1,110.56	\$3,228.94
18-January	\$1,157.94	\$3,561.25
18-February	\$1,150.35	\$3,132.12
18-March	\$1,061.60	\$5,004.50
18-April	\$1,212.80	\$3,063.73
18-May	\$1,186.69	\$3,487.00
18-June	\$1,135.30	\$3,280.33
18-July	\$1,302.71	\$3,696.93
18-August	\$1,253.24	\$3,776.80
18-September	\$1,307.92	\$3,659.86
18-October	\$1,276.52	\$3,753.21
18-November	\$1,279.40	\$4,031.74
18-December	\$1,265.98	\$3,940.19
TOTAL	\$24,993.08	\$75,467.33

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Composite Exhibit 3 consists of the December 2017 MRGRs (separate MRGR for AA and Delta). Even though SodexoMagic submitted separate MRGRs for each of its clients, the disparity of the reported gross revenues continued. This reporting disparity likely continued until the end of the SodexoMagic/AA management agreement, which was in April 2019.

Explanation of SodexoMagic's Delta Gross Revenues Calculation

OIG Special Agents spoke with Bill Sepkowski, the SodexoMagic Senior Manager/Comptroller overseeing SodexoMagic's Delta contract. Mr. Sepkowski stated that under its Delta contract, Delta pays SodexoMagic a management fee and reimburses SodexoMagic for its labor costs and other associated costs. Simply put, SodexoMagic calculates its Delta Sky Club gross revenues as all operational costs and fees charged to Delta plus all sales invoiced.⁵

Explanation of SodexoMagic's AA Gross Revenues Calculation

To obtain an explanation of how SodexoMagic reported its AA gross revenues to MDAD, OIG Special Agents met with Leidy Lopez, SodexoMagic Controller II. Ms. Lopez handled the bookkeeping for SodexoMagic's AA account and was stationed at MIA. According to Ms. Lopez (as of the date of the interview⁶) AA operated hospitality clubs in the North and Central Terminals at MIA as follows:

- Concourse D-15 – Admirals Club
- Concourse D-30 – Admirals Club and new Flagship Club Lounge, which opened in November 2017
- Concourse E – Admirals Club (Premium Lounge) – A joint lounge servicing AA Admirals Club members, British Airways, and Iberia Airlines customers.

Ms. Lopez stated that each domestic club location (or cluster of locations by airport) is assigned a SodexoMagic corporate accountant at its headquarters in Buffalo, NY, and a local, on-site accountant, who adjusts and pays the invoices. According to Ms. Lopez, David Watson is the corporate accountant for SodexoMagic's AA account, and she is the local on-site accountant. Ms. Lopez receives a monthly print-out from Mr. Watson showing the following figures:

- (1) Fixed Management Fee – this is a fixed fee charged every month. According to SodexoMagic, the fixed fee was currently \$4,583 per month.

⁵ Because SodexoMagic does not hold a liquor license, all liquor sales are credited to Delta and deducted from the amount billed.

⁶ As of approximately April 2019, AA stopped using SodexoMagic to manage its hospitality lounges. AA now uses Host.

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- (2) Expense Management Fee – 2.0% of all costs of non-food and non-beverage items. The fee includes all other direct operating costs for operating the clubs. For example, wages, office supplies, menus, etc. (This fee does not include food and beverage costs, which are reimbursed by AA).

- (3) Revenue Based Fee – 2.5% of all cash and credit card sales made from all AA Admirals Clubs.

Ms. Lopez advised that most club amenities are free to members/day pass holders. The Admirals Clubs located at Gates D-15 and D-30 both offer menu items and premium liquor for sale. However, once the new Flagship Lounge opened in November 2017, the club located at Gate D-30 was closed for renovations and remained closed until August 2018. During this time, the club over Gate D-15 was the only club generating sales.

OIG Special Agents contacted Jordan Heigel, AA's Purchasing and Commodities Manager. Ms. Heigel confirmed to the OIG that the information provided by Ms. Lopez as it relates to SodexoMagic's AA contract was correct. Ms. Heigel explained that the contract with SodexoMagic is a blanket contract for all AA US airport locations. There is no SodexoMagic/AA contract specific to MIA.

The OIG issued a subpoena to AA asking for all invoices submitted by SodexoMagic related to SodexoMagic's management of hospitality clubs at MIA. Also requested were copies of checks or other payment by AA to SodexoMagic for the MIA hospitality clubs operation. AA never complied. Finally, after two years and repeated requests, AA produced three invoices. According to the few SodexoMagic invoices received from AA, SodexoMagic billed AA for operations and supplies monthly. The monthly invoices detailed SodexoMagic services rendered in September, October, and November of 2018. These three invoices reveal that SodexoMagic invoiced for all of its costs, not just its fees. Based off of the three invoices received, Table 4, on the next page, compares those amounts to the gross revenues reported and assesses the permit opportunity fees that should have been paid.

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Table 4: Calculation of Underpaid SodexoMagic Opportunity Fees Based on the Three Monthly Invoices Provided by AA

MONTH & YEAR	ACTUAL GROSS REVENUES PAID BY AA TO SODEXOMAGIC	SODEXOMAGIC'S GROSS REVENUES REPORTED TO MDAD	SODEXOMAGIC OPPORTUNITY FEES PAID*	OPPORTUNITY FEES UNDERPAYMENT
Sept. 2018	\$1,079,107.00	\$18,684.59	\$1,307.92	\$74,230.00
Oct. 2018	\$1,044,938.00	\$18,236.07	\$1,276.52	\$71,869.00
Nov. 2018	\$1,099,480.00	\$18,277.15	\$1,279.40	\$75,684.00

*The fee is calculated as 7% of the gross reported revenues.

SodexoMagic was paying its AA opportunity fees based on a flawed calculation that had nothing to do with the permit agreement's definition of gross revenues. Instead, SodexoMagic reported its management and revenue-based fees—a number more akin to a profit calculation. If SodexoMagic had used the permit agreement's definition of gross revenues, it would have paid MDAD an *average* of \$75,216 in monthly opportunity fees during this period when all four clubs were operational.

Given AA's failure to provide all the invoices as required by the OIG subpoena, the OIG subpoenaed additional invoices directly from SodexoMagic for the period of January 2017 through December 2018. The SodexoMagic invoice information verified that SodexoMagic was significantly underreporting its gross revenues derived from AA. In a virtual TEAMS-platform meeting with SodexoMagic representatives on October 7, 2020, SodexoMagic acknowledged that it reported only SodexoMagic's monthly profits to MDAD.

The OIG analyzed SodexoMagic invoices issued to AA from January 2017 through December 2018. Based on the actual invoiced amounts, the OIG determined that approximately \$1.5 million was underpaid to MDAD for the two years of 2017 and 2018. Table 5 below shows this analysis.

Table 5: OIG Analysis of SodexoMagic's Underpaid Opportunity Fees for its AA Hospitality Lounges (January 2017 through December 2018)

ACTUAL SODEXOMAGIC GROSS REVENUES FROM AA	7% OPPORTUNITY FEES OWED TO MDAD	SODEXOMAGIC GROSS REVENUES REPORTED TO MDAD	SODEXOMAGIC OPPORTUNITY FEES PAID TO MDAD	TOTAL SODEXOMAGIC OPPORTUNITY FEES UNDERPAYMENT
\$21,333,390	\$1,493,337	\$385,090	\$26,883	\$1,466,455

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After netting out the amount of opportunity fees that SodexoMagic should have paid, against what SodexoMagic actually paid, the OIG has determined that between January 2017 and December 2018, SodexoMagic underreported approximately **\$20,948,300** in gross revenues derived from AA. By failing to accurately report this as gross revenues, SodexoMagic failed to pay opportunity fees totaling **\$1,466,455** for these two years. Based on records reviewed, the underreporting likely dates back to 2008 when the first permit was issued to SodexoMagic for the operation of the AA hospitality lounges.

During this same meeting, the OIG confirmed that AA reimburses SodexoMagic for the SodexoMagic opportunity fees paid to MDAD. In this case, the lower opportunity fees directly benefitted AA, not SodexoMagic. The benefit to AA came at the expense of MDAD.

C. SodexoMagic Maintained Two Separate Operational Teams

During the period of the Sodexo/Delta enforcement action, MDAD conducted a thorough analysis of all SodexoMagic's invoices issued to Delta. In a March 9, 2016 email, from Virginia Carrillo, Special Project Administrator assigned to MDAD's Permit Section to the SodexoMagic Controller assigned to the Delta account, Ms. Carrillo noticed the flawed gross revenues calculation used by SodexoMagic, questioned SodexoMagic's reporting methodology and attempted to educate SodexoMagic's Controller on the proper calculation of gross revenues, consistent with the permit agreement. **(Exhibit 4)**

In 2017, after SodexoMagic paid its Delta obligations, MDAD issued SodexoMagic a stand-alone permit for its Delta Sky Club operations. Shortly thereafter, MDAD renewed SodexoMagic's permit for its ongoing AA operations.⁷ The OIG has reviewed both permit agreements. Both contain the same definition of the term "Gross Revenues" that is standard in all MDAD permits.

According to Ms. Carrillo, SodexoMagic had two different operational teams managing its Delta and AA lines of business. This is corroborated in a June 30, 2017 email from SodexoMagic to the MDAD Permits Section. In the email, SodexoMagic thanked MDAD for its guidance during the SodexoMagic/Delta permitting process and referenced the separate operational teams. The email states that "in the spirit of confidentiality and differentiation" SodexoMagic assigns separate operational teams and separate controllers to manage the two contracts and its obligations as well as provide guidance for the permit and contract processes. **(Exhibit 5)**

SodexoMagic's desire to maintain client confidentiality between its two clients may have contributed to SodexoMagic's inaccurate reporting of its gross revenues from each client. The SodexoMagic team negotiating the Delta permit enforcement action was instructed

⁷ The OIG notes that this SodexoMagic/AA permit was silent as to the number of hospitality lounges managed.

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by MDAD on what needed to be reported within the definition of gross revenues. We do not know if this was communicated to the SodexoMagic/AA team, but we do know that the SodexoMagic/AA figures generally did not change—demonstrating that actual gross revenues were not being reported. Especially for the 19-month period of joint reporting, it is hard to believe that no one within SodexoMagic realized that it was using two inconsistent methods to calculate gross revenues.

D. MDAD Staff Failed to Appreciate the Full Definition of Gross Revenues

Even if SodexoMagic relied upon different teams to prepare its figures for each client airlines' lounges, and even if the SodexoMagic/Delta team never communicated the instructions they received with the SodexoMagic/AA team, MDAD Finance looking at the same MRGR should have caught the overwhelming disparity between the reported AA figures and the Delta figures. This is especially so as these two clients were reported on the same MRGR form for 19 months. Delta had one lounge. AA had anywhere from two to four lounges and is the largest airline passenger operation at MIA. Even if MDAD Finance staff was unaware of the actual number of clubs actually operated by the airlines, the difference between the reported monthly numbers was not negligible—it was consistently significant.

Based on conversations OIG Special Agents had with MDAD staff and MDAD emails reviewed, OIG Special Agents are concerned that MDAD staff failed to appreciate the full definition of gross revenues, especially as applied to hospitality clubs. In both the conversations and the reviewed emails, MDAD staff often referred to gross revenues as “gross sales” or “gross sales revenues.” While most permittees may have only one revenue stream such as sales, the calculation of gross revenues regarding hospitality clubs is more complicated. The operation of hospitality clubs may involve different types of revenue streams, in addition to sales. Labor (staffing) may also be outsourced. By referring to gross revenues as “gross sales,” the OIG is concerned that the MDAD staff charged with monitoring permittee compliance might easily overlook the operational expenses and the costs of goods sold that are passed on to the client. The client (airline) is often looking for a turnkey operator to provide staff, purchase all supplies, and take care of all operational expenses. These costs are charged to the client, and when paid, they make up gross revenues.

E. Current Status of SodexoMagic at MIA

In April 2019, AA severed its contractual relationship with SodexoMagic and entered into a new contract for management of its hospitality clubs with Host International, Inc. (Host). On October 17, 2019, Host's permit application was approved by MDAD. The OIG notes that the Host/AA permit application was approved, despite Host being deeply in arrears

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to MDAD for opportunity fees related to its other lines of business.⁸ Lastly, the OIG notes that MDAD allowed Host to begin managing the AA Admirals Clubs before the permit was approved.⁹ SodexoMagic continues to service Delta's Sky Club at MIA.

VII. RESPONSES TO THE DRAFT REPORT & OIG COMMENTS

This report, as a draft, was provided to SodexoMagic and MDAD for review and an opportunity to provide a written response. Responses were received from both recipients and their responses are contained in Appendices A and B. SodexoMagic's response is summarized below and is followed by OIG comments thereon. MDAD's response only addressed the OIG's recommendations and is silent on any of the factual findings.¹⁰ As such, its response to each recommendation has been re-stated directly after each recommendation in Section VIII. Notably, MDAD disputes the OIG's recommendation to collect past-due opportunity fees from SodexoMagic and has instead informed the OIG that it is implementing a new definition of "gross revenues" for hospitality services providers that operate lounges pursuant to a private management agreement. According to MDAD, this definitional change will equate gross revenues to that of net revenues and will only affect a few businesses operating under permits at the airport. A discussion of this change and the OIG comments thereto follow in Section IX.

Response from SodexoMagic (Appendix A) & OIG Comment

SodexoMagic, through its corporate President Selena Cuffe, submitted a 3-page letter dated February 2, 2021 and two attachments, which are:

- (1) a SodexoMagic letter to MDAD dated December 18, 2008, which is addressed to "Virginia Sanchez" and is regarding a "MDAD Contract Clarification" and
- (2) a copy of the 2008 permit agreement.

Generally, SodexoMagic disputes the OIG finding that SodexoMagic underreported gross revenue derived from its AA line of business, pursuant to its MDAD permit agreement. Specifically, SodexoMagic states that it fully and timely paid all opportunity fees in accordance with the permit agreement. SodexoMagic alleges that it "is not a concessionaire incurring expenses in connection with a service it is providing to a

⁸ In January 2020, Host paid its outstanding fees for two unrelated Lease/Concessionaire agreements.

⁹ The OIG has performed a cursory review of the Host MRGRs submitted to MDAD. While the Host MRGRs are on average 79% higher in reported gross revenues than SodexoMagic's AA gross revenues, a more thorough review by MDAD might be warranted.

¹⁰ Additionally, and by way of its transmittal email, MDAD requests that specific language be changed in the OIG Final Report for clarification, to which the OIG has agreed and adopted.

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customer.” Instead, SodexoMagic argues that the expenses incurred in running the hospitality club, such as cost of goods and employment expenses, were AA’s expenses and not SodexoMagic’s. The permittee claims that it was merely AA’s agent, serving an “administrative function” at AA’s expense. SodexoMagic claims that monies paid to it by AA were paid solely as a “pass through” and in no way constituted payment for a SodexoMagic expense. SodexoMagic further claims that its actual revenue was limited to its management fee.

In an attempt to corroborate its position, SodexoMagic’s response includes a letter dated December 18, 2008, purportedly from SodexoMagic employee, Mr. Dave Hatcher, to MDAD. This letter was addressed to “Virginia Sanchez.” In summary, the letter states that SodexoMagic was paying its opportunity fees solely as a percentage of its management fee. In the letter, SodexoMagic requests that MDAD respond if SodexoMagic is misinterpreting the gross revenue term of the permit. SodexoMagic now alleges that MDAD’s failure to respond in opposition of the 2008 letter is proof that MDAD agreed or acquiesced with SodexoMagic’s understanding.

Notwithstanding SodexoMagic’s unilateral interpretation of gross revenues under its AA permit, it attempts to differentiate the SodexoMagic/Delta fees paid pursuant to the 2015 MDAD enforcement action. The response clearly acknowledges that pursuant to the enforcement action, MDAD conducted an audit of SodexoMagic’s Opportunity Fees,

. . . the result of which was that Sodexo began including the expense reimbursements in gross revenue and paying the Opportunity Fee based on that total amount. In hindsight, we regret not having given due consideration to the rationale behind the required shift in calculation. The shift in calculation was implemented by Sodexo merely for the sake of compliance with MDAD’s directive, but without fully appreciating that Sodexo was thereafter going to be paying the Opportunity Fee based on money received that was not gross revenue. That said, Sodexo intends to continue paying the Opportunity Fee for the Delta lounge operations in accordance with the calculation agreed upon in 2016.

SodexoMagic’s response ends by stating that it is willing to further discuss any misunderstandings in an effort to seek resolution and close out this matter.

OIG Comment to SodexoMagic Response

The OIG does not accept SodexoMagic’s letter as proof of any prior understanding between SodexoMagic and MDAD. Neither should MDAD. *Section H, Entirety of Permit* clearly states:

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*The parties hereto agree that this Permit sets forth the entire agreement between the parties, and that there are no promises or understanding other than those stated herein. None of the provisions, terms, and conditions contained in this Permit may be added to, modified, superseded, or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto. [Emphasis added]*¹¹

The 2008 letter fails to comply with this important contract provision. The 2008 SodexoMagic letter is not a “written instrument” and is not executed by MDAD. Further, there is no evidence—anywhere—that MDAD agreed or acquiesced to the 2008 SodexoMagic letter’s contents or even received the letter.

There are no corroborating documents within SodexoMagic. Since providing its response, SodexoMagic has cooperated with the OIG Special Agent and searched for contemporaneous 2008 emails regarding the subject matter of the 2008 letter, within SodexoMagic’s files. Nothing exists. According to SodexoMagic’s attorney, there are no notes, emails, or other documentation in SodexoMagic’s files related to the 2008 letter. Moreover, SodexoMagic is unable to definitively determine whether this 2008 letter was emailed to an MDAD employee or was sent via US Mail. It should be noted that there is no indication within the letter itself of any MDAD email address potentially used. Further, there is no evidence of this letter at MDAD—either in hard copy or electronic form. The MDAD permit section employee who oversaw this permit agreement in 2008—Virginia Carrillo—has no knowledge of this letter.

A review of the 2008 letter itself proves that no reasonably prudent businessperson would conduct business in this fashion. A close examination of the 2008 SodexoMagic letter reveals three salient irregularities:

1. The 2008 SodexoMagic letter is addressed to “Virginia Sanchez.” According to Miami-Dade County Human Resources, there has never been a Virginia Sanchez employed at MDAD. Virginia Carrillo has never been known as Virginia Sanchez. Further, Ms. Carrillo was a fairly new employee to the permits section in 2008. She would have no authority to orally change any provisions to the permit agreement, and states that she never did.
2. The 2008 SodexoMagic letter fails to name an MDAD division. According to the MDAD employees who regularly handle MDAD mail, the listed PO Box is a valid MDAD postal box. Upon MDAD receiving via US Mail a letter addressed to a valid MDAD postal box—yet undeliverable as the addressee does not exist—the mailroom would open the letter and attempt to ascertain the correct MDAD division to deliver the letter. Given that the 2008 letter references a contract—not a

¹¹ See page 14 of the permit agreement contained in **Appendix A**.

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permit—the MDAD employees state that they likely would forward the letter to MDAD’s contract section or perhaps procurement. However, SodexoMagic states that it may have emailed the letter to MDAD, but it is unknown to whom it may have been emailed.

3. A comparison of the signature on the 2008 letter of former SodexoMagic employee David Hatcher to his signature which appears on his Florida Driver’s License, reveals that the signatures are substantially different.

Despite SodexoMagic’s claims in its response, this 2008 letter is of no legal significance and SodexoMagic’s reliance thereon is misplaced. Moreover, this 2008 letter was never raised as a defense in the 2015-2016 SodexoMagic/Delta enforcement action. At no time between 2008 did SodexoMagic seek to have this alternate understanding of gross revenues memorialized in any of its permit renewals when SodexoMagic had every opportunity to seek such change.

Regarding its Delta line of business, SodexoMagic acknowledges that it is paying the materially higher, permit definition of gross revenues, which includes reimbursable expenses; but claims it is only doing so because MDAD required it. The OIG concurs with this MDAD determination—made around March 2016—that reimbursable expenses should be included in the permit’s definition of gross revenues. There is no ambiguity. The permit agreements’ definition of gross revenue in the SodexoMagic/Delta permit and the SodexoMagic/AA permit were exactly the same. The notion that SodexoMagic could calculate its opportunity fees on its AA line of business using anything other than the permit agreement’s definition of gross revenue makes no sense. The OIG urges MDAD to meet with SodexoMagic to determine how to resolve its unpaid opportunity fees.

VIII. OIG RECOMMENDATIONS

Based on this investigation, the OIG, in the draft report, made seven recommendations. MDAD’s response (contained in **Appendix B**), without addressing any of the OIG’s factual findings, concurred with five recommendations. Notably, MDAD, in its disagreement with OIG Recommendation No. 1, stated that it is implementing a new gross revenues definition for permittees that manage hospitality lounges at MIA. Its disagreement with a second recommendation (No. 6) is also premised on its new definition of gross revenues. The recommendations and responses follow below:

1. MDAD should collect the past-due opportunity fees from SodexoMagic for the period of at least 2017-2018, if not longer.

MDAD Response: The OIG auditors have correctly interpreted the definition for Gross Revenues in the Permit and based on how SodexoMagic (Sodexo) posts invoiced amounts as revenues to its system, all amounts identified would have

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been reported. However, Sodexo, and its successor, are providing management services to operate the airline's Club. Not unlike the Department's management agreement operators, all costs for operating the Club are to be paid by the owner, American Airlines (American). When Sodexo invoices American for salaries and other operating costs, those monies are either to reimburse Sodexo or to pay for those costs. There is no true under-reporting of gross revenues as Sodexo is using those funds to pay the Club's operating costs for American. The actual concern is that the Department did not take into consideration the business model of these service providers and assure the Gross Revenue definition in the Permit allows them to invoice for operating costs from the owner and have those amounts excluded as gross revenues of the Permittee.

In correction, we have already created a new Gross Revenues definition for insertion in our Permit templates for those permittees who provide management services. The definition has been vetted by the County Attorney and the Finance and Professional Compliance Divisions. We will be reissuing new Permits to Sodexo and like service providers to correct this inadvertent oversight. For future, OIG staff are encouraged to bring these administrative concerns to Department management's attention to allow for a more efficient resolution before drafting the report.

We had hoped that the OIG would be able to advise the Department as to the accuracy of the fees paid to Sodexo by American for operating and managing its Club, as these are true gross revenues earned by Sodexo and should be reported to the Department. OIG advised as they were unable to isolate the fees earned, they could not provide assurance the opportunity fees paid to the Department were sound. As a result, Finance staff will seek to work with Sodexo to audit its records to evaluate the accuracy of Sodexo's reporting and payment of fees.

2. MDAD Finance should instruct staff on the broad definition of Gross Revenues, as it applies to different lines of business.

MDAD Response: The Department concurs. Although it was the Finance Division staff that noted the initial concern of Sodexo not accurately reporting revenues and brought this issue to the OIG's attention, we will advise staff of the new gross revenue definition as it relates to the different types of services provided by permittees.

3. MDAD Finance should review and evaluate MRGRs submitted by permittees in similar lines of business, and look for disparities, trends, or other reporting patterns that might warrant additional auditing.

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MDAD Response: The Department concurs and will work towards developing and implementing a comparative electronic data file to cost-effectively detect revenue reporting anomalies among permittees providing similar services at Miami International Airport (MIA). If warranted, areas of concerns will be discussed with the Audit and Management Services Department for further review.

4. For permittees whose annual gross revenues fails to meet the threshold amount requiring an external certified public accountant's audit, MDAD should consider requiring these permittees to submit invoices and copies of payments received to support the permittees' self-certified audits.

MDAD Response: The Department concurs and will consider requiring permittees who self-certify, to submit an electronic data file detailing by date, transactions posted to all revenue accounts related to MIA operations. Requesting and reviewing paper invoices and payments from all permittees below the threshold would be a time consuming and inefficient use of our resources. Therefore, such documents will be requested on a sample basis if gross income totals certified by the permittees differs from the data file. Permit agreements will be modified to reflect this change, if implemented.

5. MDAD Properties needs to communicate with the MDAD Permit Section and MDAD Finance when it allows expansion or contraction of a leasehold's scope, which may result in a material modification of gross revenues.

MDAD Response: The Department concurs. There has always been communication between the Real Estate and Finance Divisions, and it is continually being enhanced. Specific to Permits, a communal Permit file has been established for access between both Divisions for reference. The Permit Section has undergone significant staffing changes and new staff are being trained to work with the Finance Division as their efforts are synergistic.

6. MDAD should remove the "Exclusions Section" from the MRGR. As stated in the permit agreement, the only exclusions from gross revenues are taxes.

MDAD Response: The Exclusions Section on the MRGR was incorporated to prompt Permittees to identify those revenues they chose to exclude from the calculation of the opportunity fee. This provides early detection of inadvertent under-reporting. With the introduction of the new Gross Revenue definition, more than ever, review of amounts that have been excluded from the opportunity fee calculation is needed to assist in detecting inaccurate reporting.

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7. MDAD should not issue a new or additional permit to permittees that are in arrears to MDAD.

MDAD Response: The Department concurs, and this requirement had already been established in the Permit Section. For clarification, the Permit Section will seek to determine with Finance if a renewing Permittee is in arrears with the Department and require full payment before issuing a new permit.

IX. OIG COMMENTS ON MDAD’S CHANGE IN POLICY AND ITS NEW DEFINITION OF GROSS REVENUES

In its response, MDAD acknowledges that the OIG’s interpretation of gross revenues is correct and that all of SodexoMagic’s invoiced amounts (i.e., all charges to AA, including reimbursable expenses, for the operation of the lounges) met the definition of gross revenues. Without addressing any of the OIG’s factual findings, MDAD disagrees with the OIG’s recommendation to pursue collection for the underpaid amounts. Clearly, the OIG’s calculation of underpaid opportunity fees was based on the definition of gross revenues contained in SodexoMagic’s permit—and every other permit issued by MDAD. In correction, MDAD states that it has created a new Gross Revenues definition for insertion in its Permit templates, but only for those permittees who provide services pursuant to a management agreement. MDAD further states it will work with SodexoMagic/AA to ensure that SodexoMagic reported the correct amount of gross revenue, consistent with this new definition.

After receiving MDAD’s response, which signaled this shift in policy, the OIG requested a copy of the new permit agreement that will contain this new definition. (An excerpt from the new permit agreement, *Section C. Fees and Payments*, is attached as Appendix C.) According to MDAD—and only as applied to hospitality lounges—gross revenues will be defined as a percentage of the management fee paid by the airline to the permittee to manage the lounges, plus all sales revenues collected by the permittee in the course of operating the lounges. “Pass through” revenues received in reimbursement for operating expenses, such as payroll expenses and other overhead, are now specifically excluded from gross revenues.

The OIG believes this definitional change is ill-advised for the following five reasons:

1. The Definitional Change is in Direct Conflict with Past Enforcement Precedent

The original gross revenues definition existed for decades and enjoys universal understanding by all involved in the permitting process. In that decades-old definition, gross revenues is all encompassing, and excludes only certain taxes. Through the years, the County’s Audit Management Services Department—and MDAD itself—have

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vigorously defended the original gross revenues definition and forced concessionaires and permittees of all types to comply. The SodexoMagic/Delta enforcement action detailed herein is a prime example of MDAD's past precedent. The new gross revenues definition is in direct contravention of longstanding enforcement precedent and will likely reduce permit fees collected by MDAD from applicable permittees.

**2. The Definitional Change Makes Collection of Opportunity Fees
Dependent on Private Contractual Agreements and Language**

It is unclear from MDAD's response whether the other lounges at MIA actually operate pursuant to a "management agreement" between the hospitality services provider and the lounge owner. If they do not, it is guaranteed that they soon will. Once the other MIA tenants realize that the amount of opportunity fees paid is dependent upon the type of contract it has with a hospitality services provider, other tenants and permittees will claim its contract is a management agreement or redraft the contract.¹² MDAD is taking a historically bright-line rule—the original definition of gross revenues—and making MDAD's opportunity fee revenue dependent upon the cleverness of a company's lawyers in drafting a private agreement. The OIG predicts that other types of businesses, beyond hospitality lounges, will soon redraft their contracts to appear as "management agreements" in order to qualify for the new definition of gross revenues, thereby decreasing the opportunity fees paid to MDAD and increasing their net revenue. Therefore, if it has not done so to date, MDAD must quickly implement policies and procedures to use in determining the definition of a management agreement, which hospitality lounges operate pursuant to a management agreement, and which do not.

**3. No Cost/Benefit Analysis was Performed Regarding the Definitional
Change**

According to follow-up investigation conducted after issuing the draft report, MDAD was already in discussions with Host (AA's current lounge operator) regarding the definition of gross revenues. These discussions commenced before the issuance of the OIG draft report. During the course of these discussions, the MDAD Controller was provided business records and other financial information from Host's accounting firm to buttress its claims that the gross revenues definition, as applied to hospitality lounges with "pass through" expenses, was unfair. The OIG notes there are several other hospitality lounges that might be impacted by this change in definition. The MDAD Controller stated that she intends to look at the other lounges to determine whether the new definition of gross revenues might apply. However, as of April 2, 2021, that has not been completed.

¹² It has been long recognized that MDAD's charging of opportunity fees is another typical expense that is passed from the permittee to the tenant. See Miami-Dade County Resolution R-442-02.

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
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Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC
in its Operation and Management of American Airlines Hospitality Clubs

It appears from the discussions with the MDAD Controller that no cost/benefit analysis was performed by MDAD before implementing this shift in policy. From looking just at SodexoMagic and its operation of the Delta Sky Club and AA lounges, as detailed in this report, the new definition has the potential to materially affect MDAD's opportunity fee revenues collected from this type of permittee.

4. The Definitional Change Complicates Oversight of Permittee Compliance

The original, all-inclusive definition of gross revenues at issue in this report was simple to implement and oversee. Virtually all monies paid to a permittee were considered gross revenues, with the exception of certain taxes. Pursuant to this simple definition, gross revenues also included reimbursement for operating expenses. With the new definition of gross revenues, which excludes reimbursement for "pass through" operating expenses, oversight must now include a consideration and review of the accuracy of said reported "pass through" operating expenses. With the new definition, a permittee might artificially inflate these operating expense amounts—thereby adding masked profits into its "pass through" operating expenses. With the old definition, it was irrelevant whether or not a management company marked up the cost of operating expenses charged to an owner, because the marked up amounts were included in gross revenues. With the new definition of gross revenues, they are not. The OIG urges MDAD to consider this form of potential fraud and develop and implement oversight procedures to monitor this risk.

5. Failure to Apply the Definitional Change Consistently to All Hospitality Lounge Permittees May Lead to Claims of Unfairness and Bias

MDAD implemented the new policy shift and included the new definition of gross revenues in the renewed SodexoMagic/Delta permit, signed by the parties in March 2021, and in the new Host/AA permit, signed by the parties in May 2021. Until this change in policy, all concessionaires and permittees at MDAD were subject to the old definition of gross revenues. In enforcing the old definition, MDAD required SodexoMagic to pay the past-due amounts related to its Delta line of business. It does not appear that MDAD will require SodexoMagic to pay the past-due amounts related its AA line of business. If MDAD fails to collect past-due fees, thereby treating SodexoMagic/AA differently than every other permittee at MIA—including SodexoMagic/Delta—MDAD opens itself up to accusations of favoritism and inconsistent application of clear contract language. Every other permittee operating during the time period at issue, was required to pay opportunity fees pursuant to the old definition...except now for SodexoMagic/AA. It is only SodexoMagic/AA that will catch this break. To maintain fairness and consistency, MDAD is now faced with two choices:

- a. Collect past-due opportunity fees from SodexoMagic/AA for the time period at issue, or

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL
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Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC
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- b. Treat all other Hospitality Lounge operators consistently and refund the difference between opportunity fees paid pursuant to the old gross revenues definition and the new gross revenues definition.¹³

The OIG does not believe that MDAD staff has an actual intent to favor one airline or management company over another. However, by failing to collect the past-due opportunity fees from just one permittee—without addressing other similarly-situated permittees—the unintended consequence of perceived favoritism will result.

X. CONCLUSION

The OIG stands by its findings that SodexoMagic underreported its gross revenues and therefore, failed to accurately pay its opportunity fees owed to MDAD. SodexoMagic only reported its management and sales fees (aka profits) received from AA. It failed to report all of its receipts from its client, AA. Based on the OIG review of SodexoMagic invoices issued to AA for the period of January 2017 through December 2018, SodexoMagic failed to pay **\$1,466,455** in opportunity fees to MDAD.

MDAD has elected to implement a new gross revenues policy for a select group of permittees—hospitality providers servicing MIA tenants pursuant to a “management agreement.” For these select companies, the definition of gross revenues now specifically excludes operating expenses, including labor and the cost of goods sold, and overhead. Past-due opportunity fees from SodexoMagic/AA (and perhaps Host/AA) must be collected to ensure that all permittees similarly situated are treated fairly and consistently, with no unintended favoritism shown to any one permittee or tenant.

Moreover, this change’s actual impact on MDAD opportunity fee revenues is unknown, as no cost/benefit analysis regarding this change was performed. While only a definitional revision, it is a shift in policy that deserves thoughtful analysis and deliberation by policymakers and stakeholders.

The OIG requests that MDAD provide a status report in 60 days regarding reconsideration of OIG Recommendation No. 1 (the collection of underreported opportunity fees) and implementation of the OIG’s remaining recommendations. We look forward to receiving MDAD’s response on or before Friday, July 30, 2021.

* * * * *

¹³ The OIG notes that writing off collection accounts or waiving past-due fees may require BCC approval.

Miami-Dade County Office of the Inspector General

Exhibit 1

**Definition of Gross Revenues extracted from the
MDAD Standard Permit Agreement**

(2 pages)

OIG Case No. 17-0023-I

3. **Gross Revenues:** The term "Gross Revenues," as used in this Permit, refers to the total amount of money or other consideration charged for or received by the Permittee for (a) all services rendered, (b) all sales made, or (c) all transactions engaged in under the authority of this Permit, and in the case of (a), (b), or (c), such services, sales, or transactions resulted from, or were facilitated by, the activities of the Permittee under this Permit, whether such activities were on the Airport grounds or off the Airport grounds under the conditions set forth in Section C(1) above. The following shall apply to the definition of "Gross Revenues": (a) The term "Gross Revenues" is intended to be all-encompassing and is intended to apply to the fullest extent of the money or consideration charged by or received by the Permittee for its activities under this Permit or as facilitated by this Permit, and includes, but specifically is not limited to:

I. Fees and charges imposed by Permittee upon its customers;

II. Opportunity or percentage fees collected by the Permittee from its customers, including any "pass-through" charges to a customer by which the Permittee recovers from the customer the 7% Opportunity Fee, or any portion thereof, payable by the Permittee to MDAD under Section C.1 above;

III. Any money or consideration charged to a customer or received by the Permittee from a customer, whether on a cash or credit basis and whether such money or other consideration is actually paid to or is unpaid to the Permittee, with the Permittee being required to pay MDAD the 7% Opportunity Fee on any uncollected charges to Permittee's customers; and (b) If the Permittee does not charge a customer a cash amount or an amount of stated consideration if other than cash, or if MDAD determines that the amount or consideration charged by a Permittee does not reflect the reasonable value of the services provided by the Permittee, MDAD shall have the right to impute a value for Permittee's services under this Permit and recover from the Permittee 7% of such imputed value.

4. **Exclusion from Gross Revenues:** The only amounts of money or other forms of consideration that are excluded from the all-encompassing concept of "Gross Revenues" are taxes imposed by law which are separately stated to and paid by a customer and directly payable by the Permittee to a taxing authority, and revenues from Bankrupt Airlines to the extent set forth in D.2 below, provided Permittee complies with the reporting obligation set forth in D.2 below.

5. **Subcontracted Work:** If the Permittee is allowed by MDAD in writing under Paragraph A.7 to subcontract its work permitted hereunder to a subcontractor, the following shall apply:

(a) The subcontractor must perform the work under its own Permit separately obtained from MDAD to conduct such activities on the Airport;

(b) The Permittee shall be liable for payment of the 7% Opportunity Fee on the entirety of the money or consideration charged by the Permittee to the customer who was serviced by such subcontractor;

(c) The Permittee must identify to MDAD the names of the subcontractor and the nature of the work the subcontractor will be performing, including the names of all customers to be serviced by such subcontractor;

(d) The subcontractor under its separate Permit shall be required to pay MDAD the 7% Opportunity Fee on the amount the subcontractor receives from the Permittee in payment for the subcontractor's work unless the subcontractor has provided acceptable documentation to MDAD demonstrating that the Permittee has paid to MDAD the 7% Opportunity Fee required herein;

(e) If the subcontractor fails to obtain its own Permit or fails to make the identification and provide such demonstration as required in (d), the subcontractor shall be liable for payment of the 7% Opportunity Fee on the amount received by the subcontractor from the Permittee hereunder in payment for the subcontractor's work for the Permittee; and

(f) If Permittee fails to identify the name of a subcontractor and provide the information required in 5(c) above, such failure constitutes a material breach of this Permit that will entitle MDAD to terminate the Permit immediately

Miami-Dade County Office of the Inspector General

Exhibit 2A

**SodexoMagic's Monthly Report of Gross Revenues for
December 2015 (revenues from clients AA and Delta
jointly reported)**

(2 pages)

OIG Case No. 17-0023-I

MONTHLY REPORT OF GROSS REVENUES

MONTH OF: December YEAR 2015

(Due by the 10th day of the following month)

To: Miami-Dade Aviation Department

P.O. Box 526624
Miami, Florida 33152-6624

Attn: Finance Division

EMAIL TO:
PLAZIER@MIAMI-AIRPORT.COM
LSUGG@MIAMI-AIRPORT.COM

Monthly Gross Revenue:

List of Customers

(1) AA Admirals Club - All Locations Nov Estimate	\$16,210.92
(2) AA Admirals Club - All Locations Nov Actual	\$12,032.85
(3) Net Variance (True Up)	-\$4,178.07
(4)	
(5) AA Admirals Club - All Locations December Estimate	\$14,628.83
(6)	
(7) Delta Sky Club Miami - December Actual	

**Attach List for Additional Customers*

American Airlines Admirals Clubs
4333 Amon Carter BLVD
MD 5307
Fort Worth, TX 76155

From: SodexoMAGIC, LLC
Delta Sky Clubs
1030 Delta Blvd,
Atlanta, GA 30354

Lease/Permit No.: PC-008665

Lease/Permit No.: PC-008665

Handwritten signature: Provi Morales

Monthly Gross Revenue Before Exclusions: \$10,450.76 \$0.00

Less: Exclusions from Gross Revenue:

- (1) _____
- (2) _____
- (3) _____
- (4) _____

Total Excluded from Gross Revenue:

Total Gross Revenue After Exclusions: \$10,450.76 \$0.00

Computation of % Fee Due:

7% of Monthly Gross Revenues: \$731.55 \$0.00

Less: Initial Rent Invoice

Total Fee Due \$731.55 \$0.00

Payment included in Check No.: _____

Amount Paid: _____ Dated: _____

I hereby certify that the above statement is true and correct

Provi Morales
Print Name

Handwritten signature: Provi Morales
Signature

MIA Controller, SodexoMAGIC
Title

Date 1/1/2016

* The Department reserves the right to modify this form at any time

Reviewed
Marco Kazmierczak
Area General Manager
AA Admirals Clubs

Signature: *Handwritten signature*
Date: 1/4/15

MONTHLY REPORT OF GROSS REVENUES

MONTH OF: December YEAR 2015

(Due by the 10th day of the following month)

To: Miami-Dade Aviation Department
 P.O. Box 526624
 Miami, Florida 33152-6624
 Attn: Finance Division
 EMAIL TO:
 PLAZIER@MIAMI-AIRPORT.COM
 LSUGG@MIAMI-AIRPORT.COM

American Airlines Admirals Clubs
 4333 Amon Carter BLVD
 MD 5307
 Fort Worth, TX 76155

From: SodexoMAGIC, LLC
Delta Sky Clubs
 1030 Delta Blvd,
 Atlanta, GA 30354

Lease/Permit No.: PC-008665

Lease/Permit No.: PC-008665

Monthly Gross Revenue:

List of Customers

(1) AA Admirals Club - All Locations Sept Estimate	_____	_____
(2) AA Admirals Club - All Locations Sept Actual	_____	_____
(3) Net Variance (True Up)	_____	_____
(4)	_____	_____
(5) AA Admirals Club - All Locations October Estimate	_____	_____
(6)	_____	_____
(7) Delta Sky Club Miami - December Actual	_____	\$2,254.59

**Attach List for Additional Customers*

Handwritten signature: All attached

Monthly Gross Revenue Before Exclusions: _____ align="right">\$2,254.59

Less: Exclusions from Gross Revenue:

(1) _____	_____	_____
(2) _____	_____	_____
(3) _____	_____	_____
(4) _____	_____	_____

Total Excluded from Gross Revenue: _____

Total Gross Revenue After Exclusions: _____ align="right">\$0.00 _____ align="right">\$2,254.59

Computation of % Fee Due:

7% of Monthly Gross Revenues: _____ align="right">\$0.00 _____ align="right">\$157.82

Less: Initial Rent Invoice _____

Total Fee Due _____ align="right">\$0.00 _____ align="right" style="background-color: yellow;">\$157.82

Handwritten signature

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

I hereby certify that the above statement is true and correct

Provi Morales

 Print Name
MIA Controller, SodexoMAGIC

 Title

 Signature

 Date
 1/8/2016

* The Department reserves the right to modify this form at any time.

Miami-Dade County Office of the Inspector General

Exhibit 2B

**SodexoMagic's Monthly Report of Gross Revenues for
December 2016 (revenues from clients AA and Delta
jointly reported)**

(1 page)

OIG Case No. 17-0023-I

MONTHLY REPORT OF GROSS REVENUES

MONTH OF: **December** YEAR **2016**
 (Due by the 10th day of the following month)

MIA0108

To: Miami-Dade Aviation Department
 P.O. Box 526624
 Miami, Florida 33152-6624
 Attn: Finance Division
 EMAIL TO:
LSUGG@MIAMI-AIRPORT.COM
kquiroz@miami-airport.com

From: SodexoMAGIC, LLC		December Totals
American Airlines Admirals Clubs	Delta Sky Clubs	
4333 Amon Carter BLVD MD 5307 Fort Worth, TX 76155	1030 Delta Blvd, Atlanta, GA 30354	

Lease/Permit No.: PC-008665	Lease/Permit No.: PC-008665	Lease/Permit No.: PC-008665
------------------------------------	------------------------------------	------------------------------------

Monthly Gross Revenue:

List of Customers

(1) _____			\$0.00
(2) _____			\$0.00
(3) _____			\$0.00
(4) _____			
(5) _____			\$0.00
(6) _____			
(7) Delta Sky Club Miami - November Actual	\$15,020.86	\$53,615.04	\$68,635.90

**Attach List for Additional Customers*

Monthly Gross Revenue Before Exclusions:	\$15,020.86	\$53,615.04	\$68,635.90
---	-------------	-------------	-------------

Less: Exclusions from Gross Revenue:

(1) _____			
(2) _____			
(3) _____			
(4) _____			

Total Excluded from Gross Revenue:

Total Gross Revenue After Exclusions:	\$15,020.86	\$53,615.04	\$68,635.90
--	-------------	-------------	-------------

Computation of % Fee Due:

7% of Monthly Gross Revenues:	\$1,051.46	\$3,753.05	\$4,804.51
Less: Initial Rent Invoice			
Total Fee Due	\$1,051.46	\$3,753.05	\$4,804.51

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

I hereby certify that the above statement is true and correct

Bill Sepkowski

 Print Name
Senior Manager, Operational Support

 Title

 Signature

 Date 1/8/2017

* The Department reserves the right to modify this form at any time.

Miami-Dade County Office of the Inspector General

Exhibit 3A

**SodexoMagic's Monthly Report of Gross Revenues for
December 2016**

(revenues from American Airlines Admirals Clubs)

(3 pages)

OIG Case No. 17-0023-I

MONTHLY REPORT OF GROSS REVENUES

MONTH OF: December YEAR 2017
 (Due by the 10th day of the following month)

To: Miami-Dade Aviation Department
 P.O. Box 526624
 Miami, Florida 33152-6624
 Attn: Finance Division
 EMAIL TO:
 KQuiroz@miami-airport.com
 LSUJGG@MIAMI-AIRPORT.COM

From: SodexoMAGIC, LLC	September 2017
<u>American Airlines Admirals Clubs</u>	Totals
4333 Amon Carter Blvd MD 5207 Fort Worth, TX 76155	<u>AA Admirals Clubs Only</u>

Lease/Permit No.: PC-009926 Note, new Permit # per Virginia Carillo

Lease/Permit No.: PC-009926

Monthly Gross Revenue:

List of Customers

(1) AA Admirals Club - All Locations November Estimate	\$15,604.00	\$15,604.00
(2) AA Admirals Club - All Locations November Actual	\$16,747.60	\$16,747.60
(3) Net Variance (True Up)	\$1,143.54	\$1,143.54
(4)		
(5) AA Admirals Club - All Locations December Estimate	\$14,721.59	\$14,721.59
(6)		
(7) Adjustment for Missed True up		

*Attach List for Additional Customers

Monthly Gross Revenue Before Exclusions: \$15,865.13 \$15,865.13

Less: Exclusions from Gross Revenue:

(1)		
(2)		
(3)		
(4)		

Total Excluded from Gross Revenue:

Total Gross Revenue After Exclusions: \$15,865.13 \$15,865.13

Computation of % Fee Due:

7% of Monthly Gross Revenues: \$1,110.56 \$1,110.56

Less: Initial Rent Invoice

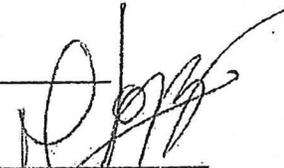
Total Fee Due \$1,110.56 \$1,110.56

Payment included in Check No.: _____

Amount Paid: _____ Dated: _____

I hereby certify that the above statement is true and correct

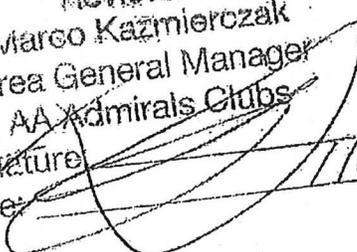
Ledy Lopez Rondon
 Print Name


 Signature

MIA Controller, SodexoMAGIC
 Title

1/3/2018
 Date

* The Department reserves the right to modify this form at any time.

Reviewed
 Marco Kazmierczak
 Area General Manager
 AA Admirals Clubs
 Signature: 
 Date: 1/16/18

Quiroz, Kelly (Aviation)

From: Kazmierczak, Marco <Marco.Kazmierczak@sodexomagic.com>
Sent: Wednesday, January 10, 2018 10:57 AM
To: Quiroz, Kelly (Aviation); Sugg, Lori (Aviation)
Cc: Lopez Rondon, Leidy; Heckel, Karen
Subject: MIA SODE Monthly Report of Gross Revenues for the Month of December 2017
Attachments: SODE Monthly Report of Gross Revenue for the Month of December 2017.pdf

All,

Please find attached.

Marco Kazmierczak
General Manager – Food & Beverage
American Airlines Admirals Club Miami
SodexoMAGIC
MB: 3055465723
marco.kazmierczak@sodexomagic.com

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Miami-Dade Aviation Department

REMIT TO:
 Miami Dade Aviation Department
 Finance
 P O Box 526624
 Miami, FL 33152-6624

Invoice# 18367698
Invoice Date 01/10/2018
Agreement# 009926
Contract# PC-009926
Company# 00003316
Total Amount \$1,110.56



Accounts Payable
 Sodexo Magic LLC
 American Airlines Headquarters
 4333 Amon Carter Blvd MD 5307
 Forth Worth, TX 76155

Payment is due within 10 days from the invoice date. Please submit a copy of this invoice with your payment. If you need assistance with this invoice you may contact Lori Sugg at (305) 876-7861 or E-Mail her at lsugg@miami-airport.com.

Miami International Airport

Line	Description	Amount
1	Permit Fee - % Fee of Gross Revenues \$15,865.13 @ \$0.07 (12/01/2017-12/31/2017)	\$1,110.56
Total Amount Due		\$1,110.56

Invoice# 18367698 01/10/2018 Company# 00003316

December 2017

Miami-Dade County Office of the Inspector General

Exhibit 3B

**SodexoMagic's Monthly Report of Gross Revenues for
December 2016
(revenues from Delta Sky Club)
(3 pages)**

OIG Case No. 17-0023-I

MONTHLY REPORT OF GROSS REVENUES

MONTH OF: December YEAR 2017

(Due by the 10th day of the following month)

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

From: SodexoMAGIC, LLC
Delta Sky Clubs
1030 Delta Blvd,
Atlanta, GA 30354

MIA0106

EMAIL TO:
LSUGG@MIAMI-AIRPORT.COM
kquiroz@miami-airport.com

Lease/Permit No.: PC-009927

Monthly Gross Revenue:

List of Customers

(1)	_____	_____
(2)	_____	_____
(3)	_____	_____
(4)	_____	_____
(5)	_____	_____
(6)	_____	_____
(7)	Delta Sky Club Miami - November 2017 Actual	\$46,127.77

*Attach List for Additional Customers

Monthly Gross Revenue Before Exclusions: \$46,127.77

Less: Exclusions from Gross Revenue:

(1)	_____	_____
(2)	_____	_____
(3)	_____	_____
(4)	_____	_____

Total Excluded from Gross Revenue:

Total Gross Revenue After Exclusions: \$46,127.77

Computation of % Fee Due:

7% of Monthly Gross Revenues: \$3,228.94

Less: Initial Rent Invoice

Total Fee Due \$3,228.94

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

I hereby certify that the above statement is true and correct

Bill Sepkowski _____

Print Name

Senior Manager, Operational Support _____

Title

1/6/2018

* The Department reserves the right to modify this form at any time.

Quiroz, Kelly (Aviation)

From: Sepkowski, Bill <Bill.Sepkowski@sodexomagic.com>
Sent: Saturday, January 06, 2018 11:46 AM
To: Sugg, Lori (Aviation); Quiroz, Kelly (Aviation)
Subject: FW: Delta MIA Port Fee
Attachments: MIA 2017 Dec Port Fee Payment Worksheet.xls; MIA 2017 Dec Transmittal.xls

Attached are the updated December reports. Please let me know if you have any questions

Thanks
Bill

Bill Sepkowski
Senior Manager, Ops Support
Delta Sky Club
Sports & Leisure, North America
914.772.8682

From: Sepkowski, Bill
Sent: Saturday, January 06, 2018 11:42 AM
To: NorAm AP Office Transmittals <APOfficeTransmittals.NorAm@sodexo.com>
Cc: Johenning, Bill <Bill.Johenning@sodexomagic.com>
Subject: Delta MIA Port Fee

Please process the attached transmittal for payment.

Bill J,
Please forward your approval for this payment.

Thanks
Bill

Bill Sepkowski
Senior Manager, Ops Support
Delta Sky Club
Sports & Leisure, North America
914.772.8682

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Miami-Dade Aviation Department

REMIT TO:
 Miami Dade Aviation Department
 Finance
 P O Box 526624
 Miami, FL 33152-6624

Invoice# 18367372
Invoice Date 01/10/2018
Agreement# 009927
Contract#
Company# 00003316
Total Amount \$3,228.94



Accounts Payable
 Sodexo Magic LLC
 American Airlines Headquarters
 4333 Amon Carter Blvd MD 5307
 Forth Worth, TX 76155

Payment is due within 10 days from the invoice date. Please submit a copy of this invoice with your payment. If you need assistance with this invoice you may contact Lori Sugg at (305) 876-7861 or E-Mail her at lsugg@miami-airport.com.

Miami International Airport

Line	Description	Amount
1	Permit Fee - % Fee of Gross Revenues \$46,127.77 @ \$0.07 (12/01/2017-12/31/2017)	\$3,228.94
Total Amount Due		\$3,228.94

Invoice# 18367372 01/10/2018 Company# 00003316

December 2017

Miami-Dade County Office of the Inspector General

Exhibit 4

**Email dated March 9, 2016, from MDAD Permits to Bill
Sepkowski, SodexoMagic/Delta Controller**
(2 pages)

OIG Case No. 17-0023-I

From: Carrillo, Virginia (Aviation) [mailto:VCarrillo@miami-airport.com]

Sent: Wednesday, March 09, 2016 5:09 PM

To: Sepkowski, Bill

Cc: Johenning, Bill; Propper, Robert; Garcia, Zarina; Bruno Loosli; 'Saizan, Melanie C'; Owens, Greg (Aviation); Wilson, Jason (Aviation); Sugg, Lori (Aviation); Quiroz, Kelly (Aviation)

Subject: RE: Delta Sky Club MIA-Dade Fee Retroactive Nov 2011 through June 2015

Good Afternoon Bill,

I hope this email finds you well. As you are aware, back in 2015 it was brought to our attention that Sodexomagic LLC had been providing services to Delta Air Lines at the Delta Sky Club, effective November 2011. Though, the company never advised MDAD of this operation at MIA and further, it failed to report the required gross revenues and to submit payment to MDAD of the required 7% opportunity fee of the gross revenues arising from its operation at the Delta Sky Club. At that time, I was referred to you for assistance and you provided the requested retroactive Gross Revenue Report for the period of November 2011 through June 2015. Upon review of the report, I considered that the gross revenue amounts reflected, were extremely low for a period of four years. Attached is a copy of the referenced retroactive Gross Revenue Report submitted by Sodexomagic (first attachment).

As a result, we were prompted to request copies of all invoices generated by Sodexomagic and submitted to Delta for the commercial activities conducted at the Delta Sky Club during the period of time identified above. We thank you again for submitting the requested invoices in a timely manner, but I did not have an opportunity to perform a thorough analysis of the invoices until now. As a result of my analysis, **Sodexomagic owes MDAD unpaid revenues in the total amount of \$45,202.72, instead of the \$6,793.90** calculated on the attached retroactive report submitted by the company. Attached (second attached) for your review are the spreadsheets prepared, based on the monthly invoices provided. The attachment contains six sheets, which are prepared and itemized as follows:

- One spreadsheet for each year for the period of November 2011 through June 2015.
- The spreadsheets prepared by year provide a monthly breakdown of the unreported gross revenues and reflect the calculated 7% payment due to MDAD.
- The last spreadsheet reflects the unreported total gross revenues per year, illustrating how we arrived to unpaid amount of \$45,202.72.

Bill, when the invoices were submitted for review, you ***stated on an email that Delta only pays Sodexomagic the Administrative and Supervision Fee and Management Fee listed on the invoices under Non Controllable Expenses.*** In order for MDAD to have a better understanding of your statement, ***please advise why Delta pays Sodexomagic only a portion of the amount for which the Airline is billed.*** Unless, there is a valid and reasonable reason for this discrepancy, we are respectfully requesting the submittal of amended retroactive Gross Revenue Reports for the referenced period of time. Please prepare the reports in accordance with the attached analysis. The amended reports should be submitted with payment of the total unpaid opportunity fees in the amount of **\$45,202.72 by March 18, 2016.**

Please keep in mind that as previously explained to you and to Melanie Saizan with Delta Air Lines via email, pursuant to MDAD Permit Agreement the ***term "gross revenues" refers to the total amount of money or other consideration charged for or received by the Permittee for (a) all services rendered, (b) all sales made, or (c) all transactions engaged in under the authority of the Permit.***

We thank you in advance for your prompt attention to this matter and for your assistance and cooperation.

Please advise if you have any questions.

Best Regards,

Virginia Carrillo

Special Projects Administrator
Miami-Dade Aviation Department
Miami International Airport
Real Estate Management & Development Division
Phone: 305-876-7069
Email: vcarrillo@miami-airport.com

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Email Scan by McAfee Email Gateway

Miami-Dade County Office of the Inspector General

Exhibit 5

**Excerpt from Email chain dated June 29-30, 2017
between SodexoMagic and MDAD Permits regarding
separate Operational Teams**

(2 pages)

OIG Case No. 17-0023-I

Carrillo, Virginia (Aviation)

From: Wrazen, Stacey <Stacey.Wrazen@sodexomagic.com>
Sent: Friday, June 30, 2017 8:16 AM
To: Carrillo, Virginia (Aviation)
Cc: Munckton, Joan
Subject: RE: INFORMATION PROVIDED BY SODEXOMAGIC-

Good afternoon Virginia,

Thank you for your support and guidance through our permit processes at Miami-Dade Airport. I am Sr. Director of Finance for SodexoMAGIC, reporting into the Board of Directors, with financial leadership responsibility for the organization. American Airlines & Delta Airlines are very important clients for us, yet also competitors. In the spirit of partnership we value our client's need for confidentiality and differentiation. Therefore we not only have separate operational teams, we also provide separate client account controllers who manage that contract's financial progress and obligations as well as provide guidance for the permit and contract processes. Below please find our contact information should you have any further questions or if we could do anything more efficiently for the airport.

Sincerely,
Stacey

Joan Munckton, Controller
American Airlines Admirals Club | FLAGSHIP Lounge | FLAGSHIP First Dining
Mobile: 817-805-5718
Joan.Munckton@SodexoMAGIC.com

Bill Sepkowski, Controller
Delta Sky Clubs
119 Travers Ave
Mamaroneck NY 10543
Mobile: 914-772-8682
Bill.Sepkowski@SodexoMAGIC.com

Stacey Wrazen
Sr. Director Finance & Strategy – SodexoMAGIC
9801 Washingtonian Boulevard
Gaithersburg, MD 20878
(p) 301-987-4313
Stacey.Wrazen@SodexoMAGIC.com
www.sodexomagic.com

SodexoMAGIC is a Joint Venture between Sodexo and Magic Johnson Enterprises
Sodexo : A world leader in Food and Facilities Management Services www.sodexo.com
Magic Johnson Enterprises : We Are The Communities We Serve www.magicjohnsonenterprises.com

From: Munckton, Joan
Sent: Thursday, June 29, 2017 11:29 AM
To: Wrazen, Stacey
Subject: FW: INFORMATION PROVIDED BY SODEXOMAGIC-

Can you give her my address, Delta's address, and the corporate address?

Joan

Thank You,

Joan Munckton

National Multi-Site/Multi-Location Controller

American Airlines Admirals Club | FLAGSHIP Lounge | FLAGSHIP First Dining

Corporate Services, North America

Mobile: 817-805-5718

FAX: 817-284-0331

Joan.Munckton@SodexoMAGIC.com



SodexoMAGIC is a Joint Venture between Sodexo and Magic Johnson Enterprises
Sodexo: A world leader in Food and Facilities Management Services www.sodexo.com
Magic Johnson Enterprises: We are the Communities We Serve www.magicjohnson.org

From: Carrillo, Virginia (Aviation) [<mailto:VCarrillo@miami-airport.com>]
Sent: Thursday, June 29, 2017 10:15 AM
To: Munckton, Joan
Cc: San Miguel, Sergio (Aviation)
Subject: FW: INFORMATION PROVIDED BY SODEXOMAGIC-

Good Morning Joan,

MDAD is currently determining certain issues related to the past unreported revenues and unpaid fees, arising from SodexoMAGIC's operations at the Delta Sky Club. When we first became aware of the matter, I contacted you for assistance and clarification. You stated that Sodexo had to separate teams for the operations conducted at the American Airlines - Admiral's Club and at the Delta's Sky Club. You also provided the information highlighted below in the email dated, 8/10/15.

At this time, it is vital that we obtain the following clarification:

1. Please explain why Sodexo's Delta group is totally independent of the American.
2. Provide the address/location for the Sodexo's American Team and the address for the Sodexo's Delta Team.

We will greatly appreciate your immediate response.

Thank you.

Virginia Carrillo

Special Projects Administrator

Miami-Dade Aviation Department

Miami International Airport

Real Estate Management & Development Division

Phone: 305-876-7069

Email: vcarrillo@miami-airport.com

From: Munckton, Joan [<mailto:Joan.Munckton@sodexo.com>]
Sent: Monday, August 10, 2015 10:44 AM

MIAMI-DADE COUNTY

OFFICE OF THE INSPECTOR GENERAL



APPENDIX A

SodexoMagic, LLC's Response Including Its Exhibits

(18 pages)

*Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC
in its Operation and Management of American Airlines Hospitality Clubs*

Final Report of Investigation

IG17-0023-I

May 27, 2021



February 2, 2021

VIA ELECTRONIC MAIL

Felix Jimenez, Inspector General
Miami-Dade County Office of the Inspector General
Overtown Transit Village South
601 NW 1st Court, 22nd Floor
Miami, Florida 33136
Felix.Jimenez@miamidade.gov

**Re: Response to OIG Draft Report – 17-0023-I MDAD
Permittee SodexoMAGIC, LLC**

Dear Mr. Jimenez:

SodexoMAGIC, LLC (“Sodexo”) submits this letter in response to the Office of the Inspector General’s (OIG) draft report regarding the Underreporting of Gross Revenues by Miami-Dade Aviation Department (MDAD) Permittee SodexoMAGIC, LLC, in its Operation and Management of American Airlines Hospitality Clubs at Miami International Airport (the “OIG Report”). Capitalized terms used herein that are not otherwise defined are intended to have the meaning given in the OIG Report.

The OIG Report focuses on the Permits entered into by and between the Board of County Commissioners of Miami-Dade County Florida and Sodexo authorizing Sodexo to provide management of food, beverage and related services at the American Airlines Admirals Club at the Miami International Airport (the “Permits”). The OIG Report alleges that during calendar years 2017 and 2018, Sodexo failed to report \$20,948,300 in Gross Revenue generated at the AA lounges, resulting in a failure to pay \$1,466,455 in Opportunity Fees pursuant to the Permits during that time.

It is Sodexo’s position that we did not underreport Gross Revenue pursuant to the Permits, and we fully and timely paid all Opportunity Fees in accordance therewith.

The crux of the OIG Report is that Sodexo did not include the expense reimbursements that it received from AA in its calculation of Gross Revenue. Had it done so, the Opportunity Fees would have been significantly greater. This argument is built on a mischaracterization of the nature of Sodexo’s business at MIA. The OIG Report portrays Sodexo essentially as a concessionaire, with AA as its customer. It deems Sodexo’s expenses incurred in providing its services as being akin to the expenses of any other concessionaire, and the entire payment that Sodexo received from AA as being standard business revenue like that from the sale of goods at a concession. A concessionaire must

00090834.1:21-3368

9100 Wilshire Boulevard, Suite 700 East Tower
Beverly Hills, CA 90212
Tel.: 310 246 6120

Legal notice (if required)
www.sodexomagic.com

report all sales of its goods, and likewise, Sodexo was required to have reported the full amount received from AA.

In truth, however, Sodexo is not a concessionaire incurring expenses in connection with a service it is providing to a customer. AA operates a series of lounges that offer various different services and amenities to paying customers. AA provides some of the services and amenities itself, and it engaged Sodexo to provide others on its behalf. In either case, the expenses incurred in providing such services and amenities, including cost of goods and employment expenses, were AA's expenses and not Sodexo's. Sodexo served the administrative function of actually going through the process of procuring the goods and employment, but it did so as an agent of AA and at AA's expense. Sodexo served the function of paying the invoices on those expenses, but Sodexo could just as easily have simply forwarded those invoices to AA; the difference is semantics. Ultimately, it was AA that paid the expenses and not Sodexo, and the money that went from AA to Sodexo was not revenue to Sodexo. Sodexo was merely an intermediary between AA and the supplier.

This can be illustrated by highlighting two simple points. The first is that the risk of loss on the purchased goods was borne by AA and not Sodexo. If a shipment of food to the lounge for Sodexo's use would have been spoiled, Sodexo would still have been reimbursed by AA for the amount it paid for that shipment. If it was Sodexo's expense, Sodexo would have had to sustain the loss just as any other concessionaire would sustain a loss when its business expense ends up losing its value. That is not the case here. AA paid for whatever Sodexo spent, regardless of whether it ended up being used, because it was AA's expense, and Sodexo merely served the clerical function of temporarily advancing the money on AA's behalf. The tri-monthly expense reimbursement from AA was thus not revenue to Sodexo, it merely closed the loop between AA, as the purchaser, and the vendor, as the seller.

The second point that illustrates the nature Sodexo's business is the fact that all revenue from Sodexo's sales at the AA lounges was paid over to AA. Sodexo did not pay an Opportunity Fee on sales revenue because the revenue was a complete pass-through. Sodexo was essentially a temporary custodian of the money. The same is true on the expense side. The expenses were a pass-through, and Sodexo did nothing more than facilitate the payment from AA to the various vendors and providers. When the expense payment went from AA to Sodexo, that was not revenue to Sodexo, and it would not make sense for Sodexo to pay an Opportunity Fee on that reimbursement.

Sodexo's actual revenue was the fee it charged for providing the services described above. That was the revenue on which the Opportunity Fee was to be based pursuant to the Permits, and Sodexo at all times remained current with such Opportunity Fee payment. This is not a profit-based fee, as the OIG Report describes it. A profit-based fee would calculate revenue minus expenses. Sodexo's expenses were not the food it purchased or the staff it employed. As explained above, those were not Sodexo's expenses at all. Sodexo's expenses were the back-office expenses incurred in operating its corporate office. Those expenses indeed were not discounted off of the revenue that Sodexo generated from the AA lounge operations, namely the fee charged to AA. That entire fee, no more and no less, was the gross revenue upon which the Opportunity Fee should be, and always was, calculated and paid.

The OIG Report points out that the calculation described above was also made with respect to operations at the Delta lounge from 2011 until 2015, at which point MDAD performed an audit of the Opportunity Fees paid from the Delta lounge operations, the result of which was that Sodexo began including the expense reimbursements in gross revenue and paying the Opportunity Fee based on that total amount. In hindsight, we regret not having given due consideration to the rationale behind the required shift in calculation. The shift in calculation was implemented by Sodexo merely for the sake of compliance with MDAD's directive, but without fully appreciating that Sodexo was thereafter going to be paying the Opportunity Fee based on money received that was not gross revenue. That said, Sodexo intends to continue paying the Opportunity Fee for the Delta lounge operations in accordance with the calculation agreed upon in 2016.

It is also important to note that when operations began at the AA lounge in 2008, there was a meeting of the minds between MDAD and Sodexo regarding the correct calculation of the Opportunity Fee. Attached hereto (Ex. 1) is a letter from Sodexo to MDAD dated December 18, 2008 sent to avoid any doubt or miscommunication with regard to the calculation of gross revenue and the Opportunity Fee. The letter requested feedback from MDAD if Sodexo had misinterpreted the Permit, and MDAD provided no indication that it believed Sodexo's understanding to be incorrect. MDAD had acknowledged the correct nature of Sodexo's business operations and how that dictated the calculation of the Opportunity Fee. The Permit is MDAD's document; it was drafted by MDAD and initially interpreted by MDAD in a manner consistent with Sodexo's understanding, and the OIG Report now seems to assert that MDAD incorrectly interpreted its own document. Sodexo respectfully disagrees with this assertion and maintains that the original interpretation by the parties is correct, as described above, and that Sodexo is not in arrears on its payments under the Permits. Anecdotally, the OIG Report correctly observes that Sodexo would gain nothing from underpaying the Opportunity Fee since ultimately, that fee was paid by AA in any case.

We are open to discussing an amicable manner of closing out this matter. Please let our Vice President for Ethics, Compliance and Privacy, Eugenia M. Hernández, eugenia.hernandez@sodexo.com, know if you are open to such discussion and she will take lead from Sodexo.

Sincerely,

SodexoMagic, LLC



Selena Cuffe, President

cc: Eugenia Hernandez, Vice-President and Asst. General Counsel, Sodexo Group
Eugenia.Hernandez@sodexo.com

Sodexo **MAGIC**

SODEXO MAGIC, LLC.
13005 Waterford Run Drive
Riverview, FL 33569

December 18, 2008

Virginia Sanchez
Miami-Dade County
Aviation Department
P.O. Box 025504
Miami, FL 33102-5504

Reference: MDAD Contract Clarification

Dear Virginia Sanchez:

The intent of this letter is to clarify our position in relationship to American Airlines in our operation within the Miami International Airport and some additional items in our current contract agreement.

American Airlines has contracted with Sodexo Magic, LLC, in order to manage and run the admiral clubs businesses within the Miami International Airport. As compensation for our services, we receive revenue in the form of a Management/Administrative fee.

So, it will be our understanding that we are to provide to Miami-Dade County at the end of each calendar month, a sheet documenting this fee and payment of 7% owed to Miami.

Our fee to Miami-Dade will be seven percent (7%) of our fee, based on our understanding of the agreement for each of the clubs.

We will generate a check to bring us current through November, and will continue to make these payments going forward.

It is our understanding that American Airlines will continue to report and pay Concession Fees each month based on sales of liquor and other applicable revenues at the Admirals Clubs in accordance with their VIP Club lease at MIA.

If the foregoing is not consistent with MDAD's understanding of the proper reporting and payment of fees, please contact me as soon as possible.



Dave Hatcher
National Client Executive for American Airlines

Permit No.: PC-004495
Cust. No.: SODE66
Doc. Name: SODE4495PMT

MIAMI-DADE COUNTY, FLORIDA

Aviation Department
Miami International Airport

FOOD AND BEVERAGES SERVICES PERMIT

Issued to: **SODEXHO MAGIC, LLC.**
(Permittee) **13005 WATERFORD RUN DRIVE**
 RIVERVIEW, FLORIDA, 33569

Effective Date: **JULY 1 ,2008**

The holder of this Permit is granted a nonexclusive privilege under authority of Administrative Order No. 8-5 to enter onto Miami International Airport ("Airport") to provide the following services:

Operation of the food and beverages services for the American Airlines Admirals Club

AOA access is authorized for personnel only.

This Permit shall be for a term of month-to-month not to exceed one year from the effective date shown above cancelable by either party, upon not less than fifteen calendar days notice in writing at any time, to the other party. Termination shall not relieve the Permittee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of termination.

This Permit is issued subject to the following Terms and Conditions attached hereto, consisting of pages 3 through 15 and Exhibit A.

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

Date: 9.2.08

By: [Signature]
Aviation Director

The Permittee hereby accepts this Permit and agrees to abide by all of the attached Terms and Conditions.

SODEXHO MAGIC, LLC.

Date: August 8, 2008

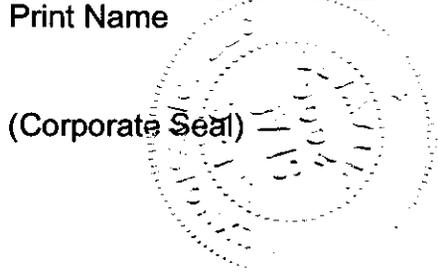
By: [Signature]
~~President~~ Manager

George Chavel
Print Name

~~Attest:~~ [Signature]
~~Corporate Secretary~~ Manager

Approved as to form
And legal sufficiency
[Signature]
Assistant County Attorney

Robert A. Stern
Print Name



TERMS AND CONDITIONS

A. General:

1. **Rules and Regulations:** The Permittee shall observe, obey and comply with all ordinances of Miami-Dade County, Florida ("County"), including the Rules and Regulations of the Aviation Department, Chapter 25, Code of Miami-Dade County, Florida and Section 2-8.9 of the Miami-Dade County Code, the Living Wage Ordinance, as the same may be amended from time to time, operational directives issued thereunder, all other laws, statutes, ordinances, regulations and rules of the Federal, State and County governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations under this Permit.
2. **Permits and Licenses:** The Permittee shall obtain and maintain current all permits and licenses required for its operations hereunder and shall pay all taxes and license fees and excises which may be assessed, levied, exacted or imposed on its operations hereunder and shall make all applications, reports and returns required in connection therewith. Such permits and licenses may include, but not be limited to, Certificates of Use and Occupancy and any operating permits required by the County's Department of Environmental Resources Management ("DERM"). Upon request from the Department, the Permittee shall provide the Department, or others designated by the Department, copies of any and all permits and licenses, applications therefore and reports required in connection therewith, which the Department may request.
3. **Discrimination:** The Permittee, in exercising any of the rights, or privileges herein granted, shall not on the grounds of age, race, color, sex, religion, national origin, ancestry, or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Rules and Regulations of the Secretary of Transportation, the Americans with Disabilities Act or any other applicable Federal, State and County laws, rules and regulations. The County is hereby granted the right to take such actions, anything to the contrary herein notwithstanding, as any agency of the United States Government or any court of competent jurisdiction may direct to enforce this nondiscrimination covenant.
4. **Indemnification:** The Permittee shall defend, indemnify and hold 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 of nature arising out of, relating to or resulting from the negligent performance or willful misconduct of the Permittee or its employees, agents, servants, partners principals or subcontractors. The Permittee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorneys fees which may issue thereon. The Permittee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Permittee 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.

5. Payment of Claims: The Permittee agrees to pay on behalf of the County any penalty, assessment or fine, issued against the County or to defend, or to compromise, 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 Permittee, its agents, employees or invitees, have violated any law, ordinance, rule or regulation or directive described in Section A. 1 hereof or any plan or program developed in compliance therewith.
6. Assignment and Transfer: The rights and privileges granted to the Permittee hereunder shall be exercised only by the Permittee, through its officers, partners and employees, and not by or through any other person, corporation or legal entity. This Permit is not assignable or transferable to any other person, corporation or legal entity.
7. Financial responsibility: The Permittee shall be financially responsible for the repair or replacement of any property of the County damaged by the Permittee's operations hereunder, including the negligent acts of its agents and employees, except for normal wear and tear. The Permittee shall notify the Department as to any damage to Airport property caused by Permittee or its employees and such damage shall be repaired by the Department and the cost of such repair, plus 25% for administrative costs, shall be paid by the Permittee to the County upon billing.
8. Signs and Posters: No signs, posters, or similar devices shall be erected, displayed or maintained by the Permittee on the Airport, its equipment or vehicles, without the written approval of the Department, and any not so approved, may be removed by the Department at the expense of the Permittee. The Permittee shall, for identification purposes as opposed to

advertising purposes, place its standard corporate identification on all of its equipment and vehicles operating on the Airport.

9. Default Termination: The Department shall have the right, upon not less than 15 calendar days written notice to the Permittee, to terminate this Permit if the Permittee fails to comply with any of the terms, conditions and covenants of this Permit, unless the default shall have been cured within the notice period.
10. No Activity Termination: The Department shall have the right, upon not less than 15 calendar days written notice to the Permittee, to terminate this Permit if there has been no report of Gross Revenues for one month.
11. Permittee Rights: This Permit does not grant the Permittee any rights to vehicle parking, equipment storage space, or any other rights in, or for any land or space, except as provided under Section F. 3 hereof, as to common use facilities and ingress and egress, nor does this Permit constitute the Permittee as the agent or representative of the County for any purpose whatsoever.

B. Insurance:

In addition to such insurance as may be required by law, the Permittee shall maintain during the term of this Permit the following insurance:

- (a) Commercial General Liability Insurance: On a comprehensive basis, including Contractual Liability, products, and completed operations in an amount not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be included as an Additional Insured with respect to this coverage.
- (b) Automobile Liability Insurance: Automobile Liability Insurance, covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than:
 - 1 \$5,000,000 combined single limit per occurrence for bodily injury and property damage covering vehicles when being used by the Lessee on the AOA.
 - 2 \$300,000 combined single limit per occurrence for bodily injury and property damage covering vehicles when being used by the Lessee off of the AOA.

The insurance coverages required herein shall include those classifications as listed in the Standard Liability Insurance Manuals, which most nearly reflect the operations of the Permittee under this Permit. All insurance policies required herein shall be issued by companies authorized to do business under the Laws of the State of Florida. The companies must be rated no less than "A-" as to Management, and no less than "VII" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent as approved by the Miami-Dade County Risk Management Division.

- (c) Certificates of Insurance: Prior to the commencement of operations hereunder, and annually thereafter, the Permittee shall furnish certificates of insurance to the Miami-Dade Aviation Department which certificates shall clearly indicate: (1) that the Permittee has obtained insurance in the type, amount and classifications as required for strict compliance with this Section; (2) that any material change or cancellation of the insurance shall not be effective without thirty days prior written notice to the County; and (3) that the County is named as an Additional Insured with respect to the Commercial General Liability Coverage.

The County reserves the right to require the Permittee to provide such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Permittee, which notice shall automatically amend this Permit effective thirty days after such notice.

- (d) Compliance with the foregoing requirements shall not relieve the Permittee of its liability under any other portion of this Permit.

C. Fees and Payments:

1. Percentage Permit Fee: In addition to any service or facility charges as may be established by the County from time to time, the Permittee shall pay the County for the rights and privileges granted herein a fee in the amount of **SEVEN PERCENT** of all Gross Revenues arising from the operation of its business at Miami International Airport.
2. Gross Revenues Defined: The term "Gross Revenues", as used in this Permit means all moneys paid or payable to the Permittee for all services rendered, sales made, or transactions had under this Permit at the Airport together with all fees and charges, including opportunity or percentage fees, whether paid or unpaid, whether on a cash or credit basis; provided however, that any taxes imposed by law which are separately stated to and paid by a customer and directly payable by the Permittee to a taxing

authority, shall be excluded therefrom.

3. Payment Security: Prior to the commencement of this Permit, the Permittee shall provide the County with a cash deposit, an irrevocable letter of credit or other form of security acceptable to the Department and so endorsed as to be readily negotiable by the County, as security for the payments required hereunder, in the amount of \$1,000.00, plus any applicable State sales/use taxes, as may be required by law. The amount of such payment security may be increased annually to an amount equal to three times the average monthly payment made by the Permittee in the prior year. Such payment security shall be kept in full force throughout the term of this Permit. The Department may draw upon such payment security instrument if the Permittee fails to pay the fees and charges required to be paid under this Permit within the time limits specified herein.
4. Late Payment and Reporting Charges: In the event the Permittee fails to make any payments, as required to be paid under the provisions of this Permit, within ten (10) calendar days after same shall become due, interest at the rates established from time to time by the Board of County Commissioners (currently set at 1.½% per month), shall accrue against all such delinquent payment(s) from the original date due until the Department receives payment.

In the event the Permittee fails to submit the monthly report by the tenth (10) calendar day of the following month, a penalty fee of Fifty Dollars (\$50.00) per day for each calendar day following the report due date until the report is received by the Department shall be imposed, up to a maximum of Seven Hundred Fifty dollars (\$750.00) per violation.

The right of the Department to require payment of such interest and penalty fees and the obligation of the Permittee to pay same shall be in addition to and not in lieu of the County's rights to enforce other provisions herein, including termination of this Permit, or to pursue other remedies provide by law.

5. Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less, THIRTY DOLLARS, if the face value of the dishonored check or draft is \$50.00 and less than \$300.00, FORTY DOLLARS, if the face value of the dishonored check or draft is \$300.00 or more, or Five Percent of the face value of such dishonored check or draft, whichever is greater. Further, in such event, the Department may require

that future payments required pursuant to this Agreement be made by cashiers check or other means acceptable to the Department.

6. Payment Address: The Permittee shall pay and/or submit all reports and fees required to be paid under this Permit to the following address:

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

D. Reports:

1. Monthly Gross Revenues Report: The Permittee shall submit a report (see Exhibit A hereto) accurately reflecting all Gross Revenues and a listing of all customers for the month by the 10th calendar day of the month following the month in which the services were performed and the Gross Revenues for such services were received or accrued. Such reports shall be signed and attested to by a corporate officer or other authorized representative of the Permittee. Percentage fees due to the County shall be remitted together with this report. Failure of the Permittee to accurately reflect Gross Revenues on the monthly report shall result in the automatic termination of this Permit. In the event that there are no Gross Revenues from any month, the Permittee shall submit a report stating such fact. The Permittee may retroactively adjust the previously reported Monthly Gross Revenues Report to reflect the uncollected portion of pre-petition debts incurred by it from an air carrier which has filed for bankruptcy, provided that such adjustment be separately noted on the Monthly Report required by Section D. 1. hereof and supported by legible copies of the "**Notice to Creditors**" received by the Permittee from the U. S. Bankruptcy Court, with a case number, and the "**Proof of Claim**" filed by the Permittee in the U. S. Bankruptcy Court, with applicable documentation. The "**Proof of Claim**" must have the U. S. Bankruptcy Court stamp showing the filing date.
2. Annual Audit Required: The Permittee shall, within 90 days following the end of each 12 months of this Permit, submit to the Department a certified report, prepared and attested to by an independent Certified Public Accountant, as to the correct Gross Revenues per month and for the year for the Permittee's operations under this Permit. Said report shall be prepared in accordance with the American Institute of Certified Public Accountants' requirements for special reports. The first such report shall contain 12 full calendar months of operation under the percentage formula and any fraction of the first month. The last such report shall include the

last day of operation.

3. **Waiver of Annual Audit:** Notwithstanding the provisions of Paragraph D.2. (Annual Audit Required) above, if the annual Gross Revenues of the Permittee for any year of this Permit are less than \$250,000, the Permittee may, without audit, certify its Gross Revenues for such year to the Department. Such certification shall be in a form specified or approved by the Department, shall be executed, before a notary public, commissioned in the State of Florida, subject to the provisions of Chapter 837.012, Florida Statutes, by a corporate officer of the Permittee. If it is determined by the Department as a result of an audit or inspection of the Perimeters books and records, that the Permittee has understated its Gross Revenues and that the corporate officers certification was therefore a false oath, such shall be considered an uncorrectable default hereunder, pursuant to which the Department may terminate this Permit and shall assess a 50% surcharge on the percentage fees due on the understated portion of the Gross Revenues. In addition, the Department may file charges for the false oath, pursuant to Chapter 837.012 Florida Statutes, and the annual audit waiver pursuant to the provisions of this Section D.3 shall no longer be applicable for the remaining terms of this Permit or any subsequent agreement between the County and the Permittee.

E. Accounting Records:

The Permittee shall keep and maintain during the term of this Permit all books of account and records customarily used in this type of operation, in accordance with accepted accounting practices and standards, and for such period of time thereafter as provided herein unless otherwise approved by the Department. The Permittee shall make all such books of account and records available to the auditors of the County, in the local offices of the Permittee, within three working days of any request for same. The County shall then be permitted to audit and examine all such books of account and records relating to the operations of the Permittee hereunder; provided, however, that the Permittee shall not be required to maintain such books of account and records for more than three years after the end of each 12 months of this Permit.

F. Operations:

1. **Restricted Area Access - Identification Badges:** The Permittee shall be responsible for requesting the Department to issue identification ("ID") badges to all employees who require access to Restricted Areas on the Airport as part of its regularly assigned duties, including areas designated

in the Airport Security Program, Secured Area/AOA/SIDA/Sterile Areas, Restricted Areas as determined by the Aviation Department and certain areas designated by signs or regulations as off-limits to unauthorized individuals. The Permittee shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of the Permittee or upon termination of this Agreement. Each employee must complete the SIDA training program conducted by the Department, before an ID badge is issued. The Permittee shall pay, or cause to be paid, to the Department such nondiscriminatory charges, as may be established from time to time, ID issuance, fingerprinting fees, lost or stolen ID badges and those not returned to the Department in accordance with this Section. The Department shall have the right to require the Permittee to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data will include a fingerprint based criminal history records check (CHRC) of employee applicants for such badges.

2. Standards of Service:

- (a) The Permittee shall furnish good, prompt and efficient service adequate to meet all the demands for its services at the Airport, and furnish said services on a fair, equal and nondiscriminatory basis to all users thereof; provided, however, that the Permittee shall be allowed to make reasonable and nondiscriminatory discounts or other similar types of price reductions to volume purchasers or users.
- (b) The operations and conduct of the Permittee, its employees and agents, shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others at the Airport. The Department shall have the right to object to the Permittee regarding the demeanor, conduct and appearance of the Permittee's employees and agents, whereupon the Permittee shall take all steps necessary to remove or correct the cause of the objection.
- (c) The Permittee shall remove or have removed all trash and refuse to such locations in such manner as shall be designated by the Department and in accordance with Federal, State, and County requirements.

3. Common Use Facilities: The Permittee shall have the right, in common

with others, as necessary for the performance of the services authorized herein, to use the ramps, roads, streets, and bridges and all other non-exclusive or common use facilities owned or provided by the County for non-exclusive air carrier use, in accordance with regulations and operating procedures and the facility use assignment processes of the Department and subject to the payment of the nondiscriminatory fees, rates and charges established by the County for such uses. However, the Permittee shall not be authorized to operate vehicles on the Air Operations Area (AOA) of the Airport, unless such access is determined to be necessary by the Department. In such event the Terms and Conditions of this Permit will be amended including the vehicle insurance requirements.

4. Personnel: The Permittee shall properly control its employees who shall present a clean and neat appearance at all times, discharge their duties in a courteous and efficient manner, shall be suitably uniformed and wear appropriate corporate and Airport identification.
5. Drug-Free Workplace Default: The Permittee acknowledges, that as part of its application for a Permit, 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 15 days written notice to the Permittee, to terminate this Permit in the event the Permittee fails to provide, as of each anniversary of the effective date of this Permit, the annual re-certification affidavit as required by the Ordinance; provided, however, that such termination shall not be effective if the Permittee submits the required Affidavit within the notice period.

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

- (a) That the Permittee has made a false certification in its execution of the Affidavit submitted with its application or in its annual re-certification as required by the Ordinance;
- (b) That the Permittee has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual re-certification; or
- (c) That such a number of employees of the Permittee have been

convicted of violations occurring in its workplace(s) as to indicate that the Permittee has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

6. Vehicle and Equipment: Vehicles and equipment of the Permittee, brought on to the Secured Area/Air Operations Area ("AOA") of the Airport, shall at all times comply with the regulations of the Department, as provided under Chapter 25, Code of Miami-Dade County, Florida, and shall be subject to approval by the Department. The Department shall have the right, but shall not be obligated, to inspect, at any time, the vehicle and equipment of the Permittee for proper safety equipment and general operating conditions. The Department, further have the right to require removal from the Secured Area/AOA of any vehicle or equipment of the Permittee determined by the Department, in its sole discretion, to be unsafe or which may cause environmental damage. The Department shall have no Liability to the Permittee for such removal. Vehicle and equipment of the Permittee may not be stored on common use Secured Area/AOA.
7. Airfield- Vehicle Operator: Before the Permittee shall permit any employee to operate a motor vehicle of any type or kind on the Secured Area/AOA, the Permittee shall require such employee to attend and successfully complete the AOA Driver's Training Course conducted from time to time by the Department. The privilege of a person to operate a motor vehicle on the Secured Area/AOA may with withdrawn by the Department because of violations of Secured Area/AOA driving rules. Notwithstanding the above, the Permittee shall be responsible for ensuring that all such vehicle operator of fueling vehicles operating on the Airport and the Secured Area/AOA/SIDA have a current, valid Commercial Driver's License of the proper Class and with the proper endorsements, as required by law.
8. AOA - Right to Search: The Permittee agrees that its vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while on the Secured Area/AOA/SIDA. The Permittee further agrees that it shall not authorize any employee or agent to enter the Secured Area/AOA/SIDA unless and until such employee or agent has executed a written consent-to-search form acceptable to the Department. Person not executing such consent-to-search form shall not be employed by the Permittee at the Airport, in any job requiring access to the Secure Area/AOA/SIDA.

It is further agreed that the Department has the right to revoke or suspend prior Secured Area/AOA/SIDA access authorization or to prohibit an individual, agent or employee of the Permittee from entering the Secured

Area/AOA/SIDA based upon facts which lead a person of reasonable prudence to believe that such individual, employee or agent might be inclined to engage in theft, cargo tampering, aircraft sabotage or unlawful activities. Any person denied access to the Secured Area/AOA/ or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the Director of the Department or his designated management representative within reasonable time. Prior to such hearing, the person whose authorization has been revoked or suspended or who has been denied access to the Secured Area/AOA/SIDA shall be advised in writing, as to the reason for such action.

9. Working Restrictions: The Permittee understands and agrees that all persons entering and working in or around international aircraft and facilities used by various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by Federal Inspection Services agencies may not be employed by the Permittee in areas under the jurisdiction or control of such agencies.

G. Notices

Any notices required herein shall be delivered by hand or sent by certified or registered mail to the parties as follows:

To Miami-Dade County:

Director
Miami-Dade County Aviation Department
P.O. Box 025504
Miami, Florida 33102-5504

To the Permittee: Dave Hatcher, National Client Executive
Sodexho Magic, LLC..
13005 Waterford Run Drive
Riverview, Florida 33569

With a copy to:

or to such other address in lieu thereof as may hereafter be designated in writing by either party.

H. Entirety of Permit:

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

I. Disclosures:

The Permittee acknowledges that it has completed and submitted a Drug Free Workplace Affidavit, a Miami-Dade Disclosure Affidavit, a Family Leave Affidavit, a Public Entity Crimes Affidavit, an Arrearage Affidavit, a Criminal Record Affidavit, and a Disability Nondiscrimination Affidavit. The discovery of any misrepresentation on any of these documents shall result in the automatic termination of this Permit by the Department.

MIAMI-DADE COUNTY

OFFICE OF THE INSPECTOR GENERAL



APPENDIX B

Miami-Dade Aviation Department's Response

(4 pages)

*Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC
in its Operation and Management of American Airlines Hospitality Clubs*

Final Report of Investigation

IG17-0023-I

May 25, 2021

Memorandum



Date: February 1, 2021

To: Felix Jimenez
Inspector General

From: Lester Sola
Aviation Director 

Subject: Aviation Response to Permittee SodexoMagic, LLC Report -Ref: IG17-0023-I

We have received the above referenced draft report dated January 4, 2021, which provided us the opportunity to respond to the reported findings by January 19, 2021, which was extended to February 2, 2021.

Within the report, the OIG provided specific recommendations to address their reported concerns, these are italicized and replicated in order of report appearance below, followed by the Department's response.

OIG Recommendation

- 1. MDAD should collect the past due opportunity fees from SodexoMagic for the period of at least 2017-2018, if not longer.*

Department Response

The OIG auditors have correctly interpreted the definition for Gross Revenues in the Permit and based on how SodexoMagic (Sodexo) posts invoiced amounts as revenues to its system, all amounts identified would have been reported. However, Sodexo, and its successor, are providing management services to operate the airline's Club. Not unlike the Department's management agreement operators, all costs for operating the Club are to be paid by the owner, American Airlines (American). When Sodexo invoices American for salaries and other operating costs, those monies are either to reimburse Sodexo or to pay for those costs. There is no true under-reporting of gross revenues as Sodexo is using those funds to pay the Club's operating costs for American. The actual concern is that the Department did not take into consideration the business model of these service providers and assure the Gross Revenue definition in the Permit allows them to invoice for operating costs from the owner and have those amounts excluded as gross revenues of the Permittee.

In correction, we have already created a new Gross Revenue definition for insertion in our Permit templates for those permittees who provide management services. The definition has been vetted by the County Attorney and the Finance and Professional Compliance Divisions. We will be reissuing new Permits to Sodexo and like service providers to correct this inadvertent oversight. For future, OIG staff are encouraged to bring these administrative

concerns to Department management's attention to allow for a more efficient resolution before drafting the report.

We had hoped that the OIG would be able to advise the Department as to the accuracy of the fees paid to Sodexo by American for operating and managing its Club, as these are true gross revenues earned by Sodexo and should be reported to the Department. OIG advised as they were unable to isolate the fees earned, they could not provide assurance the opportunity fees paid to the Department were sound. As a result, Finance staff will seek to work with Sodexo to audit its records to evaluate the accuracy of Sodexo's reporting and payment of fees.

OIG Recommendation

- 2. MDAD Finance should instruct staff on broad definition of Gross Revenues, as it applies to different lines of business.*

Department Response

The Department concurs. Although it was the Finance Division staff that noted the initial concern of Sodexo not accurately reporting revenues and brought this issue to the OIG's attention, we will advise staff of the new gross revenue definition as it relates to the different types of services provided by permittees.

OIG Recommendation

- 3. MDAD Finance should review and evaluate MRGRs, submitted by permittees in similar lines of business, and look for disparities, trends, or other reporting patterns that might warrant additional auditing.*

Department Response

The Department concurs and will work towards developing and implementing a comparative electronic data file to cost-effectively detect revenue reporting anomalies among permittees providing similar services at Miami International Airport (MIA). If warranted, areas of concerns will be discussed with the Audit and Management Services Department for further review.

OIG Recommendation

- 4. For permittees whose annual gross revenues fails to meet the threshold amount requiring an external certified public accountant's audit, MDAD should consider requiring these permittees to submit invoices and copies of payments received to support the permittees' self-certified audits.*

Department Response

The Department concurs and will consider requiring permittees who self-certify, to submit an electronic data file detailing by date, transactions posted to all revenue accounts related to MIA operations. Requesting and reviewing paper invoices and payments from all permittees below the threshold would be a time consuming and inefficient use of our resources. Therefore, such documents will be requested on a sample basis if gross income totals certified by the permittees differs from the data file. Permit agreements will be modified to reflect this change, if implemented.

OIG Recommendation

- 5. MDAD Properties needs to communicate with the MDAD Permit Section and MDAD Finance when it allows expansion or contraction of leasehold's scope, which may result in a material modification of gross revenues.*

Department Response

The Department concurs. There has always been communication between the Real Estate and Finance Divisions, and it is continually being enhanced. Specific to Permits, a communal Permit file has been established for access between both Divisions for reference. The Permit Section has undergone significant staffing changes and new staff are being trained to work with the Finance Division as their efforts are synergistic.

OIG Recommendation

- 6. MDAD should remove the "Exclusions Section" from the MRGR. As stated in the permit agreement, the only exclusions from gross revenues are taxes.*

Department Response

The Exclusions Section on the MRGR was incorporated to prompt Permittees to identify those revenues they chose to exclude from the calculation of the opportunity fee. This provides early detection of inadvertent under-reporting. With the introduction of the new Gross Revenue definition, more than ever, review of amounts that have been excluded from the opportunity fee calculation is needed to assist in detecting inaccurate reporting.

OIG Recommendation

- 7. MDAD should not issue a new or additional permit to permittees that are in arrears to MDAD.*

Department Response

The Department concurs and this requirement had already been established in the Permit Section. For clarification, the Permit Section will seek to determine with Finance if a renewing Permittee is in arrears with the Department and require full payment before issuing a new permit.

The Department thanks the Office of the Inspector General (OIG) for the opportunity to include our response with the final report. Should you have any questions regarding this response, please contact me directly at 305-876-7066.

cc: Arlyn Rull Valenciaga, Chief of Staff, MDAD
Ken Pyatt, Deputy Director, MDAD

MIAMI-DADE COUNTY

OFFICE OF THE INSPECTOR GENERAL



APPENDIX C

**Excerpt from MDAD's New Permit Agreement Applicable to Hospitality Services
Provider Operating Pursuant to a Private Management Agreement: Section C. Fees and
Payments, Definition of Gross Revenues and Exclusions of Gross Revenues
(5 pages)**

***Underreporting of Gross Revenues by MDAD Permittee SodexoMagic, LLC
in its Operation and Management of American Airlines Hospitality Clubs***

Final Report of Investigation

IG17-0023-I

May 25, 2021

OIG EXERPT OF THE BELOW-CAPTIONED PERMIT AGREEMNT

**EXCERPT OF TERMS AND CONDITIONS
SECTION C. FEES AND PAYMENT**

Permit No.: PC-011740
Cust. No.: HOSI66
Doc. Name: HOSI011740PMT

MIAMI-DADE COUNTY, FLORIDA

Miami-Dade Aviation Department
Miami International Airport

MANAGEMENT SERVICES PERMIT AGREEMENT

Issued to: **HOST INTERNATIONAL, INC.**
(Permittee) **6905 Rockledge Drive**
 Bethesda, MD 20817

Effective Date: **April 1, 2021**

The holder of this Permit is granted a nonexclusive privilege by Miami-Dade County's Aviation Department ("MDAD") under authority of Miami-Dade County's Administrative Order No. 8-5 to enter onto Miami International Airport ("Airport") to provide the following services:

Operation and management services of the following American Airlines Admirals Club: Admirals Club D15, D30, E and Flagship D30 at Miami International Airport.

C. Fees and Payments:

1. Opportunity Fee: As a condition to allowing the Permittee the right and privilege of engaging in commercial activities either on the Airport or on the portions of the Airport as defined on page 1 of this Permit, or both, the Permittee shall pay MDAD an Opportunity Fee in the amount of **SEVEN PERCENT (7.0%)** of all Gross Revenues arising from the operation of Permittee's commercial activities either (a) on the Airport grounds or in the facilities located on the Airport in which Permittee is allowed to conduct its business hereunder, or (b) outside of the Airport grounds if this Permit to

operate at the Airport is a requirement for Permittee's commercial activities or business outside of the Airport grounds or is made possible by the Permittee's commercial activities or business on the Airport grounds as allowed by this Permit.

2. Other Fees: In addition to the Opportunity Fee of 7% payable to MDAD under Section C.1, Permittee shall pay MDAD all other service or facility charges that may be established by the County from time to time and are applicable to Permittee's commercial operations hereunder.
3. Gross Revenues: The term "Gross Revenues," as used in this Permit, refers to the total amount of money or other consideration charged for or received by the Permittee for (a) all services rendered, (b) all sales made, or (c) all transactions engaged in under the authority of this Permit, and in the case of (a), (b), or (c), such services, sales, or transactions resulted from, or were facilitated by, the activities of the Permittee under this Permit, whether such activities were on the Airport grounds or off the Airport grounds under the conditions set forth in Section C(1) above. The following shall apply to the definition of "Gross Revenues":
 - (a) The term "Gross Revenues" is intended to be all-encompassing and is intended to apply to the fullest extent of the money or consideration charged by or received by the Permittee for its activities under this Permit or as facilitated by this Permit, and includes, but specifically is not limited to:
 - I. Fees and charges imposed by Permittee upon its customers, including any fixed per unit fee billed to recover expenditures incurred:
 - II. Opportunity or percentage fees collected by the Permittee from its customers, including any "pass-through" charges to a customer by which the Permittee recovers from the customer the 7% Opportunity Fee, or any portion thereof, payable by the Permittee to MDAD under Section C.1 above;
 - III. Any money or consideration charged to a customer or received by the Permittee from a customer, whether on a cash or credit basis and whether such money or other consideration is actually paid to or is unpaid to the Permittee, with the Permittee being required to pay MDAD the 7% Opportunity Fee on any uncollected charges to Permittee's customers; and

**EXCERPT OF TERMS AND CONDITIONS
SECTION C. FEES AND PAYMENT**

- (b) If the Permittee does not charge a customer a cash amount or an amount of stated consideration if other than cash, or if MDAD determines that the amount or consideration charged by a Permittee does not reflect the reasonable value of the services provided by the Permittee, MDAD shall have the right to impute a value for Permittee's services under this Permit and recover from the Permittee 7% of such imputed value.
4. Exclusion from Gross Revenues: The only amounts of money or other forms of consideration that are excluded from the all-encompassing concept of "Gross Revenues" are:
- i. Any taxes imposed by law which are separately stated to and actually paid by a customer and directly payable by the Permittee to a taxing authority.
 - ii. Revenues from Bankrupt Airlines to the extent set forth in D.2 below, provided Permittee complies with the reporting obligation set forth in D.2 below.
 - iii. All customer direct reimbursements for actual employee wages, fringe benefits and payroll taxes paid
 - iv. All customer direct reimbursements for actual expenses incurred to purchase small wares, paper goods, cleaning supplies and other similar items required to facilitate the operations of the Club
 - v. All customer direct reimbursements for actual expenditures incurred to provide complimentary food and beverage items only. Note: cost incurred to provide food and beverage menu items are not excluded from gross revenue. All food and beverage gross revenue realized through the Point of Sale System (POS) must be reported as gross revenue.

Despite the above-mentioned items being excluded from gross revenues for the purpose of calculating Opportunity Fee, Permittee shall report these amounts as separate line items under '*Exclusions from Gross Revenue*' in its reporting under Articles 4.14 and 4.15.

Customer shall mean any user, airport patron, airlines club's member or any person that uses and enjoy the services of the airport club or lounge and pay for access, consumption, or any other available services.

Reimbursement shall mean any and all reimbursements approved to be deducted by the Permittee's from the gross revenues as described above. Compensation received for actual out-of-pocket expenses incurred and paid, that is, payment received for actual amount spent for services rendered.

5. Subcontracted work: If the Permittee is allowed by MDAD in writing under Paragraph A.7 to subcontract its work permitted hereunder to a subcontractor, the following shall apply:

**EXCERPT OF TERMS AND CONDITIONS
SECTION C. FEES AND PAYMENT**

- (a) The subcontractor must perform the work under its own Permit separately obtained from MDAD to conduct such activities on the Airport;
 - (b) The Permittee shall be liable for payment of the 7% Opportunity Fee on the entirety of the money or consideration charged by the Permittee to the customer who was serviced by such subcontractor;
 - (c) The Permittee must identify to MDAD the names of the subcontractor and the nature of the work the subcontractor will be performing, including the names of all customers to be serviced by such subcontractor;
 - (d) The subcontractor under its separate Permit shall be required to pay MDAD the 7% Opportunity Fee on the amount the subcontractor receives from the Permittee in payment for the subcontractor's work unless the subcontractor has provided acceptable documentation to MDAD demonstrating that the Permittee has paid to MDAD the 7% Opportunity Fee required herein.
 - (e) If the subcontractor fails to obtain its own Permit or fails to make the identification and provide such demonstration as required in (d), the subcontractor shall be liable for payment of the 7% Opportunity Fee on the amount received by the subcontractor from the Permittee hereunder in payment for the subcontractor's work for the Permittee; and
 - (f) If Permittee fails to identify the name of a subcontractor and provide the information required in 5(c) above, such failure constitutes a material breach of this Permit that will entitle MDAD to terminate the Permit immediately.
6. Payment Security: Prior to the commencement of this Permit, the Permittee shall provide the County with a cash deposit, an irrevocable letter of credit, or other form of security acceptable to MDAD and so endorsed as to be readily negotiable by the County, as security for the payments required hereunder, in the amount of not less than \$1,000.00, or such other amount as may be directed from time to time by MDAD, plus any applicable State sales taxes applicable to the security deposit as may be required by law. Following the commencement of commercial activities hereunder, the amount of such payment security may be increased annually or periodically as MDAD determines, to an amount equal to three times the average monthly payment made by the Permittee in the prior year or in the prior period. Such payment security, as adjusted from time to time, shall be kept in full force throughout the term of this Permit.

**EXCERPT OF TERMS AND CONDITIONS
SECTION C. FEES AND PAYMENT**

MDAD may draw upon such payment security cash or instrument if the Permittee fails to pay the fees and charges required to be paid under this Permit within the time or times required herein for such payment.

7. Late Payment: In the event the Permittee fails to make any payments, as required to be paid under the provisions of this Permit, within ten (10) calendar days after same shall become due, interest at the rates established from time to time by the Board of County Commissioners (currently set at 1 ½% per month), shall accrue against all such delinquent payment(s) from the original due date (and not from the end of any grace period) until the Department receives payment.
8. Penalty for No Monthly Report: In the event the Permittee fails to submit the monthly report required under Section D.1 below by the tenth (10th) calendar day of the following month, a penalty fee of Fifty Dollars (\$50.00) per day for each calendar day following the report due date until the report is received by MDAD shall be imposed, up to a maximum of Seven Hundred Fifty dollars (\$750.00) per violation.
9. Interest and Penalty Fees Not a Waiver: The right of the Department to require payment of such interest and penalty fees and the obligation of the Permittee to pay same shall be in addition to and not in lieu of the County's rights to enforce other provisions herein, including termination of this Permit, or to pursue other remedies provide by law.
10. Dishonored Check or Draft: In the event that the Permittee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Permittee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less; THIRTY DOLLARS, if the face value of the dishonored check or draft is \$50.00 and less than \$300.00; and the greater of FORTY DOLLARS, if the face value of the dishonored check or draft is \$300.00 or more, or Five Percent of the face value of such dishonored check or draft. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashiers check or other means acceptable to the Department.
11. Payment Address: The Permittee shall pay and/or submit all reports and fees required to be paid under this Permit to the following address:

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

**EXCERPT OF TERMS AND CONDITIONS
SECTION C. FEES AND PAYMENT**