

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date: April 6, 2010 Consent Regular
 Workshop Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Agreement with Mad Studios Co. to design and deliver a new website for Palm Beach International Airport (PBIA).


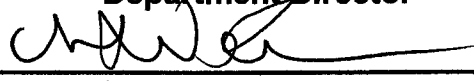
Summary: The Agreement with Mad Studios Co. will provide an updated website for PBIA which is aesthetically pleasing and user friendly. This service will include all required coding, programming, software development, quality assurance testing and development of integration for maintenance of the site. The new website will allow staff the flexibility of inputting timely and accurate updates from their desktop computer. The term of the agreement is 120 days. **Countywide (AH)**

Background and Justification: The current PBIA website is dated and substandard when compared to what is expected in today's marketplace. In addition, the site is difficult to update and maintain. If approved, the agreement will result in a website which reflects the best of Palm Beach County; is easy to maintain and update, while also increasing customer satisfaction. The services will be performed at no cost.

Attachments:

- 1. Three (3) original agreements with Mad Studios Co.

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Recommended By:		3/23/10
	Department Director	Date
Approved By:		3/29/10
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues (Grants)	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* - 0 -	(see below)		_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No: Fund _____ Department _____ Unit _____ Object _____
 Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* No Fiscal Impact.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

[Signature]
 OFMB VA
 3/15/10 3/15/10 3/15/10

[Signature] 3/24/10
 Contract Dev. and Control

B. Legal Sufficiency:

Anne Delmont 3/26/10
 Assistant County Attorney

C. Other Department Review:

 Department Director

AGREEMENT

This AGREEMENT, is made and entered on _____, between Mad Studios Co. (hereinafter referred to as the "Company" or "Mad Studios") and Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners (hereinafter referred to as "PBIA"). The Company and PBIA are hereinafter from time to time collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, the Parties desire to enter into this Agreement to define and set forth the terms and conditions of the free services to be provided by the Company to PBIA.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Services to be Provided to PBIA by Mad Studios

In exchange for the mutual covenants and agreements set forth in this Agreement, Mad Studios agrees to provide the following services to PBIA without any charge to PBIA or cost or expense to PBIA during the term of this Agreement:

- a. Mad Studios will provide the interface design for the new PBIA website;
- b. Mad Studios will provide to PBIA all required coding, programming, software development, quality assurance testing, and deployment integration for the website;
- c. Mad Studios will provide the integration roadmap and all required systems architecture of the web server platform; and
- d. Mad Studios will provide the database creation and integration with the Palm Beach County MIS systems.

2. Term of the Agreement

Mad Studios shall commence services upon receipt of a Notice to Proceed and complete all services within one hundred twenty (120) days from said Notice to Proceed.

3. Mad Studios Is Not An Agent or Employee of PBIA

In performing its obligations under this Agreement, Mad Studios shall be deemed to be an independent contractor and not an agent or employee of PBIA.

4. Termination of this Agreement and Ownership Rights

Either the Company or PBIA may terminate this Agreement at any time with or without cause upon thirty (30) days written notice. In the event that this Agreement is

terminated, the Parties acknowledge and agree that PBIA shall own all source codes and all of the inventions, work product, work and/or services performed under this Agreement. Mad Studios acknowledges and agrees that it shall have no ownership interests and rights in the source code or in any of the inventions, work product, work and/or services performed by Mad Studios under this Agreement in the event this Agreement is terminated.

5. Claims, Damages and Indemnity

In exchange for the mutual covenants and agreements set forth in this Agreement, including, but not limited to Mad Studios' agreement to provide work and/or services to PBIA at no charge or cost to PBIA, Mad Studios agrees to defend, indemnify and hold PBIA and its owners, officers, directors, employees and agents, harmless from and against any and all claims, causes of action, damages, judgments, arbitration awards, demands, costs, losses or expenses, (including, but not limited to court costs and attorneys' fees) arising from, caused by, resulting from or in any way relating to the services and/or work performed by Mad Studios, the transaction contemplated by this Agreement, and/or performance of this Agreement by Mad Studios, including, but not limited to any and all direct and/or indirect consequential damages, loss of profits, loss of revenues, loss of production, damage to property, personal injuries, and/or death.

6. Confidentiality and Non-Disclosure Agreement

In exchange for PBIA's promises herein, Mad Studios agrees that it shall disclose to PBIA some or all of its Confidential Information in order to provide services to PBIA. During and after the term of this Agreement, and to the extent permitted by Florida Statute, Chapter 119, PBIA agrees that it will not divulge or appropriate to its own use or to the use of others, any trade secret or Confidential Information or knowledge pertaining to the business of the Company, or of any of its subsidiaries or affiliates, obtained by it in any way while Mad Studios performed the work and services under this Agreement.

"Trade secret or Confidential Information or knowledge pertaining to the business of the Company, or of any of its subsidiaries or affiliates" includes, but is not limited to specifications, policies and procedures for marketing and operations, quality of product and service standards, identity of customers, customer lists, customer preferences, customer specifications, customer purchase history, sales information, pricing information, the manner in which prices are calculated, cost information, profit and/or cost margins, business development plans, procedures for marketing, promotional programs, pricing arrangements, knowledge of its customers' needs and requirements, account information, invoice information, list of targeted customers, supplier and vendor lists, business techniques, financial information, training materials, pricing studies and determinations, pricing lists, marketing strategies, techniques developed by Mad Studios, formulae, processes and techniques, and any other information not generally known by the public that is valuable to Mad Studios (hereinafter collectively "Confidential Information").

PBIA agrees that all records and Confidential Information obtained by PBIA as a result of Mad Studios' performance of the terms of this Agreement, whether original, duplicated, computerized, memorized, handwritten, or in any other form, and all information contained therein, are confidential and the sole and exclusive property of Mad Studios. PBIA acknowledges and agrees that it may use the Confidential Information of Mad Studios solely as directed by Mad Studios. PBIA agrees that it shall surrender any materials containing any part of or all of Mad Studios' Confidential Information to Mad Studios, upon request and automatically upon termination of this Agreement. PBIA agrees that it shall not use, disclose, copy, or cause others to use, disclose, or copy, the Confidential Information of Mad Studios at any time, including, but not limited to, after the termination of this Agreement. PBIA further agrees that Mad Studios' Confidential Information shall be used solely as directed by Mad Studios and solely for the profit of Mad Studios and that PBIA shall not profit, or take any steps that allow others to profit, from the use of the Confidential Information of Mad Studios. PBIA further agrees that it has no ownership interest or rights of any kind in or to the Confidential Information of Mad Studios.

7. Non-Discrimination

Mad Studios warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identity and expression.

8. Notices

Any notices and demands required to be given hereunder shall be in writing and shall be sent by hand-delivery with confirming receipt or by certified mail, return receipt requested, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other parties.

If directed to Mad Studios, the notice shall be addressed to:

Mad Studios Co.
Attention: Marc Aptakin
2100 Northwest 94th Avenue
Miami, FL 33172

If directed to PBIA, the notice shall be addressed to:

Palm Beach International Airport
Attention: Bruce V. Pelly
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470

9. Non-Assignment

The interests of PBIA under this Agreement are not subject to the claims of its creditors and may not be voluntarily or involuntarily assigned, alienated or encumbered.

10. Successors

This Agreement shall be binding upon, and inure to the benefit of, the Company and its successors and assigns and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company's assets and business.

11. Applicable Law

The provisions of this Agreement shall be construed in accordance with the laws of the State of Florida. Venue for all legal action shall be held in Palm Beach County, Florida.

12. Counterparts

The Parties agree that this Agreement may be executed in multiple counterparts and/or copies or facsimile copies with the same force and effect as if all signatures were set forth upon a single instrument.

13. Entire Agreement.

The Parties agree that this Agreement sets forth the entire agreement between the Parties, and fully replaces any and all prior understandings, negotiations, statements or agreements between the Parties regarding this subject matter.

14. Waiver and Amendment.

The Parties agree that no breach of any provision herein can be waived unless in writing signed by the Parties. The Parties further agree that waiver of any breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof, nor shall such waiver constitute a continuing waiver. The Parties further agree that this Agreement may be amended only by a written Agreement executed by the Parties.

15. Severability.

The Parties agree that if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been

comprised as a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

16. Construction.

The Parties agree that each party and counsel for each party have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

17. Titles Not Controlling.

The Parties agree that paragraph titles or captions contained in this Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of the parties or affect the meaning or construction of this Agreement or any provision hereof.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of PBIA and Mad Studios has hereunto set its hand the day and year above written.

Attest: SHARON R. BOCK
Clerk & Comptroller

COUNTY: PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

(SEAL)

Attest: [Signature]
By: Jerry Delance
Secretary

COMPANY: Mad Studios Co.
By: [Signature]
Title: President

(CORPORATE SEAL)

APPROVED AS TO TERMS AND
CONDITIONS

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
Director of Airports

By: _____
County Attorney