

# Memorandum



**Date:** March 1, 2011

Agenda Item No. 8(M)(1)(B)

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of George M. Burgess.

**Subject:** Gold Coast Railroad Museum, Inc. Amended and Restated License Agreement

## **Recommendation**

It is recommended that the Board adopt the attached resolution approving the Amended and Restated License Agreement for the operation, maintenance and improvement of certain lands within the Gold Coast Railroad Museum Park ("Museum") by and between Miami-Dade County ("County") and Gold Coast Railroad Museum Inc. ("GCRMI"), and authorizing the County Mayor or County Mayor's designee to execute such agreement on behalf of Miami-Dade County. The Amended and Restated License Agreement retains the same term as the existing 1986 Agreement, but abides by changes in the newly approved General Plan for the property and furthers the development of the newly established Zoo Miami Entertainment Area.

## **Scope**

The Museum, a facility of County-wide significance is located at 12450 SW 152 Street within County Commission District 9. Approval of the amended and restated License Agreement will have a positive impact on the further development of the Zoo Miami Entertainment Area and the residents of the County who visit the property.

## **Fiscal Impact/Funding Source**

Gold Coast Railroad Museum, Inc. agrees to continue assumption all costs associated with operations and maintenance of the existing and proposed Museum Area. Furthermore, they will continue to pay a license fee to the County of 8% of adjusted gross receipts, currently about \$31,000 annually. Aside from the County working with GCRMI to seek public grant, bond and private investment funding to further capital development of the area, there is no fiscal impact to the County from operations or maintenance.

## **Track Record/Monitor**

Jon Seaman, Contracts Management Section of the Park and Recreation Department (MDPR), will monitor compliance of the Agreement.

## **Background**

Pursuant to Resolution No. R-493-85 (Exhibit A), GCRMI and County entered into the Gold Coast Railroad Museum License Agreement dated December 2, 1986 for the operation and use of Museum land. After twenty-five (25) years, the Museum has demonstrated it can successfully operate the facility at their sole expense, with the County only occasionally assisting with planned capital improvements and required historic preservation.


As a result of the newly established Zoo Miami Entertainment Area in 2009, the General Plan for the Museum was revised in 2010 and approved through Resolution No. R-182-10 (Exhibit B). The new Plan modified the boundary of the Museum area and added the adjacent Military Museum of South Florida, a facility dedicated to preserving the history and accomplishments of the former Richmond Naval Air Station.

Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners  
Page 2

The purpose of this Amended and Restated Agreement (Exhibit C) is to:

- Retain the existing term of agreement until 2022, since three (3) additional five-year options to renew are available.
- Modify the license area to only address that portion of the property occupied by the historic railroad museum.
- Provide how the Museum will assume increased operations and maintenance responsibilities for any additional facilities and exhibits proposed in the 2010 Plan and later constructed.
- Revise insurance requirements to GSA Risk Management specifications.

Attachments

  
\_\_\_\_\_  
Assistant County Manager  
Alex Muñoz



# MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

DATE: March 1, 2011

FROM: R. A. Cuevas, Jr.  
County Attorney

SUBJECT: Agenda Item No. 8(M)(1)(B)

Please note any items checked.

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

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8 (M) (1) (B)

3-1-11

Veto \_\_\_\_\_

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AMENDED AND RESTATED LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE GOLD COAST RAILROAD MUSEUM INC. FOR THE OPERATION, MAINTENANCE AND IMPROVEMENT OF THE MUSEUM AREA WITHIN THE GOLD COAST RAILROAD MUSEUM PARK; AND AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SUCH ON BEHALF OF THE COUNTY

**WHEREAS**, pursuant to Resolution No. R-493-85 (attached hereto as Exhibit "A"), the Gold Coast Railroad Museum Inc. ("GCRMI") and Miami-Dade County ("County") entered into the Gold Coast Railroad Museum License Agreement ("Original License Agreement") dated December 2, 1986 for the operation and use of Gold Coast Railroad Museum Park land; and

**WHEREAS**, County modified the General Plan of the Gold Coast Railroad Museum Park property pursuant to Resolution No. R-182-10 (attached hereto as Exhibit "B") to make it consistent with the newly established Zoo Miami Entertainment Area; and

**WHEREAS**, County and Museum now desire to amend and restate the Original License Agreement in its entirety to make it consistent with the new Plan, as provided in the Amended and Restated License Agreement (attached hereto as Exhibit "C"),

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves the Amended and Restated License Agreement by and between the County and the GCRMI for the further operation, maintenance and improvement of the Museum Area of the Gold Coast

Railroad Museum Park; and authorizes the County Mayor or County Mayor's designee to execute the Amended and Restated License Agreement on behalf of the County.

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

- |                                     |                   |
|-------------------------------------|-------------------|
| Joe A. Martinez, Chairman           |                   |
| Audrey M. Edmonson, Vice Chairwoman |                   |
| Bruno A. Barreiro                   | Lynda Bell        |
| Jose "Pepe" Diaz                    | Carlos A. Gimenez |
| Sally A. Heyman                     | Barbara J. Jordan |
| Jean Monestime                      | Dennis C. Moss    |
| Natacha Seijas                      | Rebeca Sosa       |
| Sen. Javier D. Souto                |                   |

The Chairperson thereupon declared the resolution duly passed and adopted this 1<sup>st</sup> day of March, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Monica Rizo

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RESOLUTION NO. R-493-85

RESOLUTION AUTHORIZING ERECTION, CONSTRUCTION  
AND OPERATION OF THE GOLD COAST RAILROAD  
MUSEUM TO BE LOCATED ON A 50-ACRE SITE  
ADJACENT TO METROZOO; AND AUTHORIZING COUNTY  
MANAGER TO TAKE FURTHER ACTION

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference, and has conducted a public hearing in compliance with the provisions of Section 33-303 of the Code of Metropolitan Dade County, Florida,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that:

Section 1. This Board hereby finds and declares that the erection, construction, and operation of the Gold Coast Railroad Museum on 50 acres of property located at S.W. 124 Avenue and 152 Street,

See Legal Description Attached,

is necessary to provide for and protect the public health, safety and welfare of the citizens and residents of Metropolitan Dade County, Florida, and, in so finding, has considered, among other factors, the type of function involved, the public need therefor, the existing land use pattern in the area, alternative locations for the facility and the nature of the impact of the facility on the surrounding property.

Section 2. This Board approves the recommendations in the attached memorandum and authorizes the County Manager to take appropriate action to accomplish them.

The foregoing resolution was offered by Commissioner Clara Cesterle, who moved its adoption. The motion was seconded by Commissioner Beverly Phillips, and upon being put to a vote, the vote was as follows:

Barbara M. Carey	Absent
Clara Oesterle	Aye
Beverly B. Phillips	Aye
James F. Redford, Jr.	Aye
Harvey Ruvin	Absent
Barry D. Schreiber	Absent
Jorge E. Valdes	Absent
Sherman S. Winn	Aye
Stephen P. Clark	Aye

The Mayor thereupon declared the resolution duly passed and adopted this 16th day of April, 1985.

DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

RICHARD P. BRINKER, CLERK

RAYMOND REED

Approved by County Attorney as to  
form and legal sufficiency. R A G

By: Raymond Reed  
Deputy Clerk

MEMORANDUM

11.07-17A


Agenda Item No. 2(m)

TO Honorable Mayor and Members  
Board of County Commissioners

DATE April 16, 1985

FROM M. R. Stierman  
County Manager

SUBJECT Recommendation - Gold  
Coast Railroad Museum



RECOMMENDATION

It is recommended that the Board authorize the construction and operation of the Gold Coast Railroad Museum on 50 acres of Federal surplus property adjacent to Metrozoo.

BACKGROUND

The Park and Recreation Department proposes the development of this 50 acres of surplus property (at the expense of the Museum) as a recreational, cultural, educational and historical operating railroad museum. Locating the Gold Coast Railroad Museum adjacent to Metrozoo and the proposed water theme park will greatly enhance the recreational activities and leisure time desirability of the Metrozoo complex. The Gold Coast Railroad Museum is a non-profit organization dedicated to preserving, exhibiting and operating historic railroad equipment. This is the only operating railroad museum in the State of Florida and one of the very few in the United States. The Museum plans to operate a full-size (Pacific 4-6-2) steam train in the grand manner of a bygone era, carrying passengers on a 24-mile round trip from the proposed terminal at Metrozoo to a station in the City of Homestead and then back to the Metrozoo terminal.

The Museum will feature, in addition to the steam train, the original 1905 Princeton, Florida railroad station, a museum building, maintenance building, passenger and train shed, retail shops and food service, gardens and promenade, a large model railroad setup, and a Pine Land Preservation area. All access to the site by visitors will be through the Metrozoo entrance and across a culvert to be constructed in the Metrozoo moat. The parking area will accommodate 385 cars with additional parking for buses and a tram dropoff/pickup area. Further plans for the 50-acre site include a railroad sleeping car for an overnight stay and a recreation of turn-of-the-century downtown Miami.

PUBLIC HEARING REQUIREMENTS

Section 33-303 of the Code of Metropolitan Dade County provides that prior to the construction or operation of a facility in the unincorporated area of Dade County on County property, a favorable public hearing before the Board of County Commissioners is required. The Board may only authorize construction and operation of such facilities after considering, among other factors, the public need for the facility, the type of function involved, alternate locations, existing land use patterns in the area, and the nature of the impact of the facility on the surrounding property. The attached report from the County Site Review Committee addresses these factors.

It is respectfully recommended that the Board approve the attached resolution.

Attachments



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**LICENSE AGREEMENT**

THIS AGREEMENT, made and entered into the 2 day of DEC., 1988, by and between DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "County" and the PARK AND RECREATION DEPARTMENT, referred to herein as the "Department", acting as agents for the County, and THE GOLD COAST RAILROAD, INC., a Florida Corporation not-for-profit hereinafter called the "GCRR."

**WITNESSETH**

WHEREAS, the County desires to provide a relocation site for the GCRR to an area adjacent to Metrozoo and GCRR would be an outstanding addition to this recreational complex; and

WHEREAS, this relocation will enable the southernmost operating standard-gauge steam train in the United States to operate between Metrozoo and the City of Homestead and on January 19, 1982, the Metropolitan Dade County Board of County Commissioners adopted Resolution No. R-105-82 which approved the GCRR's efforts to operate a scenic train ride between Metrozoo and the City of Homestead; and

WHEREAS, the GCRR is a non-profit organization dedicated to preserving, exhibiting and operating historical railroad equipment; and

WHEREAS, the GCRR will afford recreational, historical, cultural and educational enrichment opportunities to the citizens of Metropolitan Dade County; and

WHEREAS, the GCRR desires to be granted a license and privilege to construct and operate facilities in accordance with the Program of Utilization as submitted with the Application for Federal Surplus Real Property dated October 20, 1982, and approved at a Public Hearing by the Metropolitan Dade County Board of County Commission, Resolution No. R-493-85 on April 16, 1985; and

WHEREAS, the County is willing to grant the GCRR a license and privilege to construct and operate facilities in accordance with said program of utilization during the term of this agreement;

NOW, THEREFORE, in consideration of the mutual terms and conditions hereinafter set forth, it is agreed as follows:

This Instrument Prepared By:  
Martin A. Washington  
Park & Recreation Department  
Metropolitan Dade County

ARTICLE I

1.01 Purpose. This Agreement grants to the GCRR a License and the exclusive right to develop and operate a historical railroad museum, operating train system and associated commercial and non-commercial concessions which shall be approved by the County, subject to the terms and conditions of this License Agreement; the documents conveying the subject property to the County, which property is described in Article 1.04 below; and such rules, regulations, directions, ordinances, statutes, laws and the like which exist or may be adopted by bodies having appropriate jurisdiction.

1.02 Terms. The County hereby authorizes the GCRR to develop, install and operate its facilities on the property described below for a period of thirty-five (35) years which shall commence on January 1, 1987, and shall expire, unless sooner terminated as provided herein, on December 31, 2022, for the use of said property, subject to the conditions, covenants and agreements on the part of the GCRR to be kept, observed and performed.

1.03 Renewal Options. Provided that there are no defaults by the GCRR existing at the time of expiration of this Agreement, the County may renew this Agreement for three (3) periods of five (5) years each. The Department may approve renewals for more than one period at its sole discretion.

1.04 Property Description. This License Agreement shall be valid only within that property located adjacent to Metrozoo, which is located at <sup>17450</sup>~~12400~~ S.W. 152 Street, Miami, Florida, <sup>39177</sup> as more particularly described and/or shown in Exhibit "A", which is hereby incorporated in this Agreement, and hereinafter referred to as "Gold Coast Railroad Park," or "Park".

1.05 Museum Area. Within the Park, the "Museum Area" is specifically located and defined as shown in Exhibit "A".

1.06 License, Sublicenses and Subcontract. It is expressly understood and agreed that no real or personal property is leased to GCRR, that this is a License and not a Lease, that GCRR's right to use the park and operate the license hereby granted shall continue only so long as GCRR shall comply strictly and promptly with each and all of the undertakings, provisions, covenants, agreements, stipulations and conditions herein contained. GCRR agrees not to represent itself as an agent or associate of the County or any unit thereof.

- A. GCRR shall not license, sublicense nor subcontract the operations or any part thereof, or use the same or any part thereof, or permit the same or any part thereof, to be used for any other purpose than above stipulated or make any alterations therein without the written consent of the County.
- B. Subject to the provisions of this Agreement, the GCRR shall not subcontract its interest in this Agreement or in the property, or allow any other person or entity (except GCRR's authorized representatives) to occupy or use all or any part of the property or the buildings and improvements located thereon, without first obtaining Department consent. The GCRR shall, in each instance of a proposed subcontract, give written notice of its intention to subcontract, to the Department at least ninety (90) days or more before the proposed effective date of any such proposed subcontract, specifying in such notice what the GCRR proposes to contract, the proposed date thereof, and specifically identifying the proposed subcontracting entity, and such notice shall be accompanied by executed copies of the proposed subcontract document, current financial statements and the names, addresses and social security numbers of the principals of the proposed subcontracting entity. The Department shall not approve any subcontracts that are not ancillary to the railroad museum and operating train system(s).
- C. Upon receipt of said written notice, the Department shall contact the National Park Service for their review of the subcontract compliance with the terms of conveyance of said property to the County. The Department shall within thirty (30) days from the date the National Park Service returns their recommendations, notify the GCRR of either consent or refusal to consent to the proposed subcontract.
- D. The GCRR covenants and agrees that all conditions, agreements and undertakings contained in this Agreement shall extend to and be binding on the respective subcontractors accepted by the County including the County's right to terminate subcontractors directly for any cause as specified in Article 11, hereof; that contracts with subcontractors shall not relieve the GCRR of all liabilities, obligations and duties under this Agreement; that the County or the National Park Service may reject a subcontract or contract for any reason determined not to be in the best interest of the public; any subcontract without the County and National

Park Service consent shall be void, and shall constitute a breach of this Agreement; and no consent to any subcontract shall constitute a waiver of the provisions of this section.

E. All subcontracts shall include the provision that, in case of GCRR's inability to perform, the County shall have the right, but not the obligation, to take the position of the GCRR in the subcontract.

## ARTICLE 2

2.01 State of Title; Quiet Enjoyment. The GCRR accepts the Park, including the Museum Area, in an "as is" condition and subject to all existing liens, encumbrances, charges, conditions, covenants, easements, restrictions, rights-of-ways and other matters of record.

Provided that the GCRR is not in default of this Agreement, the County agrees that the GCRR shall have quiet, peaceful use, and enjoyment of the Museum Area and of the rest of the Park, as specified herein.

2.02 Ingress and Egress. Subject to applicable statutes and ordinances governing the use of the facilities, the GCRR, its members, agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials, shall have right of ingress and egress to and from the property. The GCRR shall be responsible for extra costs incurred by the County in providing access at hours outside the general operating hours of METROZOO.

The GCRR will comply with after hour ingress and egress identification procedures established by the County. All public ingress and egress to the Park shall be by way of the moat crossing as shown on Exhibit "A".

In the event of an animal escape, all ingress and egress will be prohibited until the animal is captured. During this time the METROZOO main gate and moat crossing gate shall remain closed. Any other access gates on the Park shall also be closed.

2.03 GCRR's Right to Use Parking Areas. The County grants to the GCRR and its authorized representatives and invitees the non-exclusive right to use the parking areas within the Park and overflow parking areas of the zoo as shown on Exhibit "A", with others who are entitled to use the parking areas, subject to County's rights set forth below.

The County shall maintain necessary access to the parking areas as stipulated in 6.01 H. contained herein.

GCRR and its authorized employees and representative shall park their cars only in areas specifically designated from time to time for this purpose by the County, whether such areas be inside or outside the Park (as long as reasonably near the Park). The GCRR shall not at any time park or permit the parking of its permitted vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. The County shall also have the right to institute, at any time during the term hereof, reasonable rules, regulations, procedures and/or methods in order to enforce the terms of this Section, and in order to provide for the orderly, efficient and safe use of the parking areas. The County may impose reasonable parking charges and/or to levy any fines or penalties against the GCRR and GCRR's patrons or other persons utilizing the property, provided, however, that there shall be reasonable provisions for free parking for employees, members and officers of the GCRR.

#### ARTICLE 3

3.01 Assignment. The GCRR shall not assign this License Agreement nor the property or any part thereof, nor permit the same or any part thereof to be assigned nor permit any alternations therein, or to be used for any purpose other than above stipulated.

3.02 Transfer and Encumbrance. The GCRR shall not, in any way, transfer, diminish or encumber its interest in this License Agreement nor shall the GCRR sell, mortgage or otherwise transfer or encumber the real property or any portion thereof.

However, nothing in this Article shall apply to personal property, museum items, rolling stock, or equipment installed or placed upon the property.

3.03 Release of Lien. To the extent required in connection with the Agreement or financing of any equipment to be installed or used by the GCRR at the property, the County hereby agrees to waive its right to seize such equipment of the GCRR for fees due or to claim or assert title to or any interest in such equipment or other personal property.

#### ARTICLE 4 - PAYMENTS

4.01 Percentage Fee Guaranty. The GCRR shall pay monthly fees to the County, commencing with the first day of the month following the date this License Agreement is approved by the Board of County Commission, a percentage fee based on the following formulae, throughout the entire term of this Agreement.

- A. First 1-12 months/Five percent (5%) on all "adjusted gross receipts."
- B. Next 13-24 months/Five-and-one-half percent (5.5%) on all "adjusted gross receipts."

- C. Next 25-36 months/Six percent (6%) on all "adjusted gross receipts."
- D. Next 37-48 months/Six-and-one-half percent (6.5%) on all "adjusted gross receipts."
- E. Next 49-60 months/Seven percent (7%) on all "adjusted gross receipts."
- F. Next 61-72 months/Seven-and-one-half percent (7.5%) on all "adjusted gross receipts."
- G. After 72nd month through end of agreement including renewal term/Eight percent (8%) on all "adjusted gross receipts."

The Percentage Fee shall be determined monthly and shall be paid monthly, within fifteen (15) days from the end of the preceding month.

4.02 Adjusted Gross Receipts. The term "adjusted gross receipts" as used in this Agreement means all monies owed or paid to or in consideration of determinable value received by the GCRR for services, admissions, merchandise and other transactions made by the GCRR, its contractors, licensees or concessionaires, regardless of when or where the order therefor is received, or the goods delivered, or services rendered, or in consideration of any other thing of value, less:

- A. Any taxes imposed by law which are separately stated to and paid by a customer and directly payable to a taxing authority.
- B. Refunds on sales.
- C. Amounts received by the GCRR from its contractors, licensees or concessionaires in excess of the amounts paid to the County pursuant to Section 4.03 herein.
- D. Cash or non-cash items received in connection with promotional programs for the park, including barter and discounts, provided such promotional programs are primarily for the purpose of park promotion and not direct production of revenue, but not to exceed thirty percent (30%) of cash revenues.
- E. Employee meals sold at a discount.
- F. Approved sales of fixtures, trade fixtures and personal property other than in the ordinary course of business.
- G. Amounts received for separate admission into the Railroad Museum building, Princeton Station, or other historical structures that may be relocated on the property and officially designated by the Dade County Historic Preservation Board; or for ticket sales for train rides on standard size trains on property or between Homestead and Metrozoo.

14.

H. Grants, bequests and donations of money, services or railroad paraphernalia, historical memorabilia, and other related non-earned receipts. Such grants, bequests and donations of money must be approved by the Department in writing if the donation of money is to be considered excluded from the adjusted gross receipts.

4.03 Subcontractor Adjusted Gross Receipts. GCRR shall pay the County on the Adjusted Gross Receipts of its subcontractors, licensees and concessionaires percentage at the then current rate set forth above which the GCRR pays to the County for remittance to the County.

4.04 Payment of Fees. The GCRR shall pay all fees and charges, and submit all reports required by the Agreement to the following:

Payable to:

"Dade County Board of County Commissioners"

Send to:

Park and Recreation Department  
c/o Metrozoo of Greater Miami  
12400 S.W. 152 Street  
Miami, Florida 33177

In the event the GCRR fails to pay any of the fees or charges as required to be paid under the provisions of this Agreement after same shall become due, interest at the rate of 1½% per month, shall accrue against the delinquent payment(s) until same are paid. Interest, when applied, shall be from the first date monies become due, regardless of whether notice has been sent to the GCRR. Implementation of this provision shall not preclude the County from terminating this Agreement for default in the payment of fees or charges, requiring a performance bond, or from enforcing any other provisions contained herein.

4.05 Reports and Records

A. The GCRR shall maintain, during the term of this Agreement, all books of account, reports and records customarily used in this type of operation and such records as are necessary to document its activities pursuant to this Agreement and all monies owed or collected hereunder, not limited to gross receipts. The form of all such records and reports shall be subject to the approval of the County prior to commencement of operations. The GCRR shall also abide by subsequent recommendations for changes, additions or deletions by the County. During normal business hours, the County may audit and examine all such books of

account, reports and records relating to the GCRR's operations hereunder.

- B. On or before the fifteenth (15) day following the end of each calendar month throughout the term of this Agreement any extension hereof, the GCRR shall furnish to the Department a report of gross receipts during the preceding calendar month, on forms approved by the County. This report shall be signed by the Facility Manager and Treasurer of the GCRR certifying to the accuracy of such gross receipts. Any percentage fees due shall be payable with the submission of the report provided for in this Article.
- C. The GCRR shall submit to the Department at its own expense, within sixty (60) days following each twelve (12) month period of operation under this Agreement, a report certified by an Independent Certified Public Accountant, as to the correct gross receipts per month arising from the GCRR's operations under this Agreement, certifying that the report submitted is a fair representation and has been accomplished using generally accepted accounting and auditing standards. The report due under this Article shall, for the first reporting period, cover the period from January 1, 1987 to May 31, 1987, with subsequent reports covering the following years ending May 31st or the end of the Agreement term. Accounting periods may be adjusted with County approval.
- D. The GCRR shall allow the County, as defined in sub-paragraph A of this Section, to inspect all or part of the compilation procedures for the aforesaid monthly reports. Said inspection is at the sole discretion of the County.
- E. Prior to the commencement of operation under this Agreement, the County shall review the current accounting procedures of the GCRR.
- F. All records of the GCRR necessary to verify the reports set forth herein shall be available to the County's auditors at a reasonable location in Dade County, Florida for a period of five (5) years after the end of any fiscal year.

4.06 Capital Improvement Fund. Beginning the fifteenth (15th) year of this Agreement, the GCRR and County shall establish a Capital Improvement Fund in a major financial institution acceptable to the County and the GCRR. The purpose of the Capital Improvement Fund and earnings thereon shall be to insure that sufficient funds exist



toward the end of the Initial Term to provide constant upgrading and Improvement for structural or real property at the railroad museum complex throughout any extension period and restoration of the site after termination of this Agreement. The deposits by the GCRR to said Capital Improvement Fund shall be two percent (2%) of the GCRR's "Adjusted Gross Receipts," except revenues from separate facilities and rides excepted under Section 4.06 G shall be included and subject to this 2% payment, as defined herein and shall be additional fees hereunder.

County shall have the right to approve any withdrawals from said Capital Improvement Fund. Approval for the following purposes shall not be unreasonably withheld: (a) building of additional attractions and upgrading and improving the complex; and (b) demolition and site restoration. Utilization of the Capital Improvement Fund for the purpose of renovation or rehabilitation of existing attractions prior to the end of the Initial Term or for maintenance purposes shall be at the County's sole discretion. No withdrawals shall be made without leaving sufficient funds available to cover the reasonably expected costs of demolition and site restoration.

## ARTICLE 5

### 5.01 Facilities

- A. The design of any structure(s) and all pertinent features of the facilities to be constructed by or for the GCRR shall receive prior design review by the Department. The Department shall not unreasonably withhold approval of design documents prepared and submitted by the GCRR unless these are found to conflict with the Program of Utilization as submitted with the Application for Federal Surplus Real Property and approved by Resolution No. R-493-85 at a Public Hearing by the County Commission on April 16, 1985 (Exhibit B) or subsequent approved amendments. If the Department does not notify the GCRR of the Department's review decision within a thirty (30) day period, the Department's silence shall be conclusively deemed a consent to the proposed design documents. Final approval shall be subject to the mutual consent of the Department, the GCRR and other agencies having lawful jurisdiction, including the County Commission as appropriate.
- B. The GCRR agrees that the final decision as to the age, condition, design and acceptability of improvements and equipment, furnished for installation and use, shall be made by the Department; prior to the commencement of any construction, installation or improvements, the

GCRR shall submit plans and specifications to the Department for review and recommendation; no work is to commence without written approval of the Department; the GCRR shall not commence construction of any improvement until it has on hand sufficient funds or methods of financing, as accepted in writing by the Department, to pay the full cost of the improvements; the GCRR shall post a construction performance bond in accordance with 5.01 F. contained herein; and such improvements shall be constructed only in accordance with the detailed plans and specifications approved in advance by the Department.

- C. Equipment and personal property furnished by the GCRR shall be of good quality and suitable for its purpose.
- D. It shall be the responsibility of the GCRR to coordinate activities with the County during any construction and normal operations, including construction or operations by or for the County.
- E. The GCRR shall be bound by and include in each and every contract for goods and/or services the following language: "All persons, firms or corporations dealing with the GCRR in respect to the furnishing of any labor, services or material for the improvement of said premises are hereby placed on notice that no liens of any nature or character shall be imposed upon or enforced against said lands, but that credit and liability of the GCRR only shall be relied upon for payment of the cost of such improvements."

All such improvements must comply with all applicable State and County ordinances and regulations, including but not limited to building and zoning. All improvements shall become the property of the County upon termination or expiration of this Agreement.

- F. Performance Bond - Construction. The GCRR shall obtain and deliver to the Department, not less than ten (10) days prior to the anticipated commencement of construction as provided in paragraph 5.01 B. hereof, a Completion and Payment Bond (Performance Bond) with a surety meeting the qualifications set forth in Article 10 herein, in favor of the County, said bond to be acceptable to the Risk Management Division of Dade County. The Bond shall be for the full amount of work and shall remain in effect until the completion of and payment for the improvements, free and clear of all claims of mechanics, laborers and materialmen.

5.02 GCRR Operations. The GCRR shall provide, assign and maintain a full-time qualified, experienced facility manager for its operations with authority to manage the day-to-day operations of the complex. Said facility manager shall be physically available during reasonable operating hours. The qualifications of said facility manager shall be submitted to the Department upon request. During the operating hours when the manager is not on duty or available, there shall be a designated assistant manager. The manager and assistant manager shall be the authorized representatives of the GCRR and entitled to act in all matters relating to the operation of the facility assigned hereunder.

Emergency phone numbers for manager and the assistant manager shall be provided to the Department.

5.03 Public Contact of the GCRR Personnel. The GCRR's personnel in contact with the public shall perform their duties in an efficient and courteous manner. All personnel shall be properly trained and, with the exception of the facility manager, shall be distinctively uniformed or appropriately attired so as to be distinguishable as the GCRR's personnel.

5.04 Quality of the GCRR's Services

- A. The GCRR shall conduct its operations in a first class manner, comparable or superior to similar attraction operations.
- B. The GCRR shall conduct its operations in an orderly manner and so as not to annoy, disturb or be offensive to customers, patrons, or others in the area.
- C. The GCRR shall control the conduct, demeanor and appearance of its officers, members, employees, agents and representatives and customers and patrons, and upon objection of the Department concerning the conduct, demeanor or appearance of any such person, the GCRR shall immediately take all steps to correct the cause of such objection.
- D. The GCRR shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, be responsible for the maintenance, appearance and safety of the licensed operation. The GCRR shall inspect the premises to insure a safe condition; shall maintain, paint, repair or replace any and all equipment or structures in use under this Agreement, as a normal responsibility of the GCRR. Standards of acceptable maintenance shall be in accordance with the General Standards for Lease, Agreement, or Permit Performance Evaluation Program and Safety Standards, and as same may be modified,

a copy of which is attached hereto and made a part hereof (Exhibit "C"). The GCRR agrees to fully comply with the Department's decision regarding maintenance standards. The Licensee agrees that it will not undertake any maintenance, painting, repair or replacement that would in any way modify or change the originally existing facility, its equipment or structures, or changes, as originally approved by the Department without the prior written approval of the Department as provided in paragraph 5.01 herein.

- E. The GCRR shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefor.
- F. The GCRR shall serve only high quality products obtainable for the type of service being offered.
- G. The GCRR will give due consideration to recommendations by the County to feature or sell products of the zoo sponsors and advertisers when such consideration is practical and the product is competitively priced. However, subject to a commitment to the County to cooperate fully with the County in the conduct of its operations, the GCRR will have complete discretion at all times to purchase and/or promote any products subject to the provisions of paragraph 5.04 F. hereof. Metrozoo will do likewise.
- H. The GCRR shall operate at least on weekends and holidays during daylight hours. The GCRR shall submit a proposed schedule of hours of operation, prior to commencement of operations under this Agreement, for approval by the Department.
- I. The GCRR shall have a suitable hurricane plan and emergency evacuation plan and shall provide a copy of said plan to the Department for approval.
- J. The GCRR's advertising materials will identify the location of its facilities as being "At Metrozoo of Greater Miami".
- K. The County or any of its agents shall have the right to examine the GCRR operations during all reasonable hours as may be deemed necessary to the safety, comfort or preservation thereof, and to determine if the GCRR is in compliance with all of the County rules, regulations, directives and otherwise. Advance notice is not required.
- L. If any unusual circumstances, unforeseen at this time, may occur which would necessitate a move or relocation of all or any part of the GCRR's

physical operation, the GCRR shall not move or relocate all or any part of the physical operation unless approved by the Department. Any move or relocation approved by the Department shall be at the expense of the GCRR.

M. The GCRR shall observe, obey and comply with all rules and regulations adopted by the County and all laws, ordinances and regulations of any other governmental units and agencies having lawful jurisdiction applicable to this License Agreement.

N. The GCRR covenants and agrees not to advertise in any manner or form on or about the premises, or facilities governed by the GCRR, except by such signs or forms of advertising as shall be approved in advance by the Department.

O. The GCRR shall not burn any trash or garbage of any kind in or about the Park.

P. The GCRR shall not dispose or discharge any chemicals, foreign substance, petroleum products or pollutants of any kind into any sanitary or storm sewer system nor allow same to seep into the ground.

5.05 Facilities, Equipment and Services Provided by the GCRR. The GCRR shall provide and/or maintain within the Park:

- A. A janitorial service, litter, garbage and trash collection including waste removal from the Park.
- B. Devices or registers for recording original sales as approved in advance by the Department (see paragraph 4.05 A. above).
- C. All internal construction.
- D. Complete air handling system as required by local code.
- E. Fire sprinkler system (or approved equivalent) as required by local code.
- F. All internal finishing and signage at a level consistent with that approved in paragraph 5.06 herein.
- G. Connection of utilities to operating equipment.
- H. All operating equipment.
- I. All interior maintenance and repair, including replacing of light bulbs and tubes.
- J. All plumbing fixtures.
- K. Cost of all utilities.
- L. Connection to water system for irrigation of landscaping within the Museum Area.

M. Pest and rodent control within the Park.

N. All chemicals to be used shall be approved in advance by the Department.

O. Establish and maintain a management program, approved by the Department of Environmental Resources Management, for the control and cleanup of potential discharge and spillage of pollutants.

5.06 Equipment "Installed" by the GCRR.

A. All equipment, furnishings, signing and advertising installed by the GCRR shall be in keeping with the appropriate standards of decor at the facilities and must be approved by the Department prior to installation. The GCRR shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by, the Department. Within sixty (60) days from the completion or opening of said facilities, whichever comes first, and the installation of any additional equipment, furnishings and improvements which the Department may approve from time to time, the GCRR shall provide to the Department a certified statement by an Independent Certified Public Accountant setting forth the cost of such equipment, furnishings and improvements as completed. The GCRR shall provide to the County and maintain the accuracy of, a binding list of personal property located at the property.

B. The GCRR agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.

C. The GCRR shall not alter or modify any portion of facilities, the property or the improvements constructed therein without first obtaining written approval from the Department.

D. Licensee shall provide adequate ventilation, safety, and other equipment in compliance with all County, State or Federal laws, statutes, ordinances and regulations.

5.07 Maintenance Responsibilities of the GCRR; Appearance of Facilities. The GCRR shall, at its sole cost and expense, keep and maintain its facilities in a first class condition during the term of this Agreement and any extensions thereof. Except as set forth in Section 6.01 E., F., G., and H., the provisions for litter and trash collection and

all interior and exterior maintenance and repair within the Museum Area are the sole and exclusive responsibility of the GCRR.

#### ARTICLE 6

6.01 Facilities and Services Provided by County. The County shall provide:

- A. Unimpeded road access to the moat crossing into the Park at all times, provided the GCRR will be responsible for providing advance request and for extra costs of access after METROZOO operating hours. An identification system will be established for after hours ingress and egress. Unimpeded access will not be provided during an animal escape.
- B. Sanitary sewer and water systems as existing.
- C. Road access to the overflow parking area, within Metrozoo.
- D. Survey indicating the location of sanitary sewer and water service on the property.
- E. Install and maintain all landscaping in the Park outside the Museum Area and to within ten (10') feet of any buildings, structures or other facilities that the County may permit the GCRR to construct inside the Museum Area, including all plants and their care.
- F. Install and maintain at its sole option, all irrigation systems, operate irrigation and pay utility cost for said operation in the Park outside the Museum Area.
- G. Perform grounds maintenance, structural maintenance and repairs in the Park outside the Museum Area, including but not limited to parking areas, roads, walkways, perimeter fencing, barriers, county signs, utility systems specified in 6.01 F and H. This excludes litter and garbage collection and removal specified in 5.05 A., maintenance of any trackage right-of-way (defined as an area parallel to each side of the track and 10' wide measured from the outside edge of crossties), or facilities that the County may permit the GCRR to construct outside the Museum Area.
- H. Maintain the parking lot and the overflow parking area on the Metrozoo premises, including but not limited to parking pavement, striping, curbing, drainage, lighting, signage and landscaping.
- I. Manage the Pineland Preserve Area. Any "controlled burns" will be coordinated with the GCRR.

J. The County hereby grants permission to the GCRR to relocate, restore and use the Princeton Station, Caboose and Signal Tower from Crandon Park. The County-owned personal property shall only be used at the subject property. Relocation and restoration of the Princeton Station will require approval of a "Certificate of Appropriateness" from the Dade County Historic Preservation Board. This property shall be returned to the County upon termination or expiration of this Agreement or any extension in the same or better condition as present, except normal wear and tear. The GCRR shall replace all damaged County property with like quantity and quality, which then become County property.

K. The County will technically assist the GCRR to a reasonable extent, as manpower and equipment is available.

#### ARTICLE 7

7.01 Indemnification. The GCRR shall indemnify and save the County harmless from any and all claims, liability, losses and causes of action which may arise out of the operation of the GCRR's business under this Agreement. The GCRR shall pay all just claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the County where applicable, and shall pay all judgments and costs which may issue thereon.

#### ARTICLE 8

8.01 Liability for Damage or Injury. The County shall not be liable for damage or injury which may be sustained by any party or persons on the Park other than damage or injury caused solely by the negligence of the County.

8.02 Damages. GCRR shall repair or pay for the repair of all damage at METROZOO or on the Park caused by the GCRR, its employees, agents, or contractors; or caused by the equipment, vehicles, or other property owned or used by GCRR, its employees, agents or contractors.

#### ARTICLE 9

9.01 Continuation on Damage or Destruction of Park. If either the Park or improvements thereon are partially damaged by fire, explosion, the elements, the public enemy, or as the result of war or other casualty, but not rendered unusable for more than 30 days for the purposes of this Agreement, the same shall be repaired with due diligence



by the GCRR at its own cost and expense, and a pro rata adjustment of the fees payable hereunder for the period the GCRR's operation interruption, if any, shall be made.

In the event the said property is completely destroyed by fire, explosion, the elements, the public enemy or as a result of war or any other cause whatsoever, or so damaged that they will remain unusable for more than thirty (30) days the GCRR shall be under no obligation to repair and reconstruct the property or improvements therein, and an adjustment of the fees payable hereunder shall be proportionately made up to the time of such damage or destruction, and this Agreement shall cease and terminate, and all adjustments which are proper shall be made accordingly. However, at the option of the GCRR, the GCRR may reconstruct the property at its cost according to the plans and specifications as previously approved (with such changes as may be approved by the County through the Department) and this Agreement will remain in full force and effect except for a suspension of minimum fee guaranty during the period of non-operation, but not to exceed twelve (12) months.

#### ARTICLE 10

10.01 Insurance. The GCRR shall maintain the following insurance during the term of this Agreement:

- A. Workmen's Compensation Insurance. As required by Chapter 440, Florida Statutes.
- B. Public Liability Insurance. On a comprehensive basis, including Products Liability, with not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage. Policies shall be endorsed to include the County as additional insured.
- C. Fire and Extended Coverage. To cover 100% of the replacement value of property, landscaping, structures, including wind and water damage, vandalism, malicious mischief.
- D. Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit for bodily injury and property damage. The insurance required shall include those classifications as listed in Standard Liability Insurance Manuals, which most nearly reflect the operations of GCRR under this Agreement. All insurance policies and surety bonds required under this Agreement shall be issued by companies authorized to do business under the laws of the State of

Florida, with the following qualifications as to management and financial strength:

The Company must be no less than "A" as to general policy holder's rating, and no less than "X" as to financial rating, in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Inc.

The GCRR shall furnish Certificates of Insurance to the Department and the Insurance Management Division, at least fifteen (15) days prior to the commencement of operations, which Certificates shall clearly indicate that the GCRR has obtained insurance in the type, amount and classifications as required for strict compliance with this Article, and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Department.

The Department reserves the right to reasonably amend the insurance requirements by the issuance of notice in writing to the GCRR.

The GCRR shall provide or cause its contractor to provide Owner's Protective Liability Insurance in the name of the County in an amount not less than \$3,000,000 and Builder's Risk Insurance during the construction required by Article 5, paragraph 5.01 B. of this Agreement, and shall provide any other insurance or security that may be reasonably required by the Department.

#### ARTICLE 11

11.01 Cancellation by County and Default. The occurrence of any of the following shall constitute a default and may cause this Agreement to be terminated immediately at the option of the County by notice to the GCRR as provided in Section 16.01 hereof:

- A. Assignment by the GCRR for the benefit of creditors.
- B. Abandonment or discontinuation of operations hereunder for a period of ninety (90) days, without giving notice of cancellation as specified in Article 12 herein, however, that if such abandonment or discontinuation shall be due to "fore majeure" (causes beyond GCRR's reasonable control such as, without limitation, acts of God, governmental laws or actions, war, civil commotion, casualty, fire, storm, labor disputes and energy shortages), the Agreement shall be terminated as long as the condition continues for thirty (30) days after termination of such condition.
- C. Any final judicial determination that litigation instituted by the GCRR against the County was groundless.
- D. Any institution of proceeding in involuntary bankruptcy against the GCRR if such proceedings continue for a period of ninety (90) days.

E. Failure by the GCRR to maintain non-profit status under provisions of Chapter 617, Florida Statute.

F. Continuation of any activity, after notice, which may cause challenge to the County's right to hold, possess, govern, manage or otherwise control ownership of the property.

11.02 County Right to Cure Default. The County, after GCRR commits a default hereunder which default was not cured after fourteen (14) days notice to the GCRR, may cure the default at the GCRR's cost, provided that the GCRR shall cure any adverse environmental hazard, restroom, eminent health, or safety conditions immediately.

11.03 Late Payments. Whenever the non-payment of any sum or sums due hereunder continues for a period of ten (10) calendar days after the due date for such payments, the County will send notice for payment to be made within fourteen (14) calendar days from the date of mailing. If payment is received within this period, no further action will be taken. If payments is not received, this Agreement may be cancelled by the County.

11.04 Performance. The County shall have the right to terminate this Agreement after thirty (30) days written notice by registered or certified mail to the GCRR, of the occurrence of one or more of the following:

A. Non-performance of any covenant of this Agreement and failure of the GCRR to remedy such breach, unless the breach cannot be cured in 30 days in which case the GCRR shall request, not less than 10 days prior to the 30 day deadline, approval of the Department to extend the deadline for a specific number of days. Such a request shall state the reason(s) why the 30 day deadline is inadequate and how the breach shall be cured by the extended deadline. The Department shall not unreasonably withhold approval of extension requests. Failure to cure breach by the extended deadline shall be grounds for immediate termination by Department.

B. The conduct of any business or the merchandising of products or services not specifically authorized herein.

C. Failure to comply with the provisions of paragraph 13.01 Non-Discrimination, A. of this Agreement.

ARTICLE 12

12.01 Termination by the GCRR. The GCRR shall have the right upon thirty (30) calendar days written notice to the County to terminate this agreement at any time after the occurrence of one or more of the following events:

- A. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the facilities for the intended purposes, and the remaining in force of said injunction for a period of more than thirty (30) calendar days.
- B. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of sixty (60) calendar days after receipt of written notice sent by registered or certified mail from the GCRR of the existence of such breach, unless the same shall have been corrected or remedial action started and diligently pursued within such period.
- C. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, for the operation, control or use of the facilities, or any substantial part, or parts, thereof in such a manner as substantially to restrict the GCRR's operations for a period of thirty (30) calendar days or more.

ARTICLE 13

13.01 Non-Discrimination

- A. That GCRR for itself, its personal representatives, subcontractors, and concessionaires as part of the consideration hereof, does hereby covenant and agree that:
  - 1. No person on the grounds of race, color, religion, national origin or sex shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - 2. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, religion, national origin or sex shall be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination.
  - 3. That the GCRR shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal

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Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the Department of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- B. That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Agreement in accordance with paragraph 11.04 herein, and to re-enter and repossess said facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision shall not be effective until the procedures of Title 45 Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.
- C. The GCRR shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

13.02 Rules and Regulations. The GCRR will observe, and comply with all laws and ordinances and/or rules and regulations of the County and other governmental units and agencies having lawful jurisdiction, which may be applicable to GCRR's operations under this Agreement, including, but not limited to, the securing of all permits, licenses and other authorizations as may be required.

The use of the area for carnivals, circus, mechanical rides (except railroad related), midways, etc. is specifically prohibited.

13.03 Payment of Obligations. The GCRR shall pay all taxes, special assessments and other costs lawfully assessed against its interest in the Premises, and its operations under the Agreement provided, however, that the GCRR shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes instituted in a timely fashion.

13.04 Telecommunications Tower. The County's General Services Administration shall be allowed unobstructed access to the Telecommunication Tower.

**ARTICLE 14**

14.01 Termination of Contract. The GCRR, within ninety (90) calendar days following the termination of this Agreement, shall remove all of its personal property forthwith. Any personal property of the GCRR not removed in accordance with this Article may be removed by the Department for storage at the cost of the GCRR or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County. The County shall not be liable to the GCRR for the safekeeping of the GCRR's personal property.

It is the intention of the parties of this Agreement that all furnishings and equipment purchased or leased by the GCRR, except those permanently affixed to the Premises, as defined under the laws of the State of Florida, shall be and will always remain, the personal property of the GCRR, except as provided in this Article.

Upon termination of this Agreement and the removal of all personal property by the GCRR, the GCRR shall cause the premises to be restored to a neat, safe and clean condition. Upon termination, County shall promptly advise the GCRR whether to demolish the GCRR's improvements and restore the site to level grade. If County desires such demolition, the GCRR may utilize funds from the Capital Improvement Fund for such purpose, if any funds remain.

In the event the County desires to retain any portion of the GCRR's personal property utilized in connection with the Premises, which property is not within the class of property which the GCRR is required by law to leave on the Premises following termination of the term of this Agreement, County shall have the right of first negotiation to acquire such property from the GCRR by giving notice to the GCRR within ten (10) days prior to termination of the Agreement (thirty (30) days if termination is at the end of its initial or extended term). If the parties are unable to reach an agreement on the purchase of such property within fifteen (15) days of such notice, the GCRR shall be free to dispose of same in whatever manner it chooses.

**ARTICLE 15**

15.01 Approval. Whenever prior approvals are required hereinabove by either party, such approvals shall not be unreasonably withheld or delayed.

**ARTICLE 16**

16.01 Notices. Any notices submitted or required by this Agreement shall be sent by Registered or Certified Mail and addressed to the parties as follows:

To the County: Director  
Park and Recreation Department  
50 S.W. 32 Road  
Miami, Florida 33129

To the Gold Coast Railroad, Inc.:

Facility Manager  
The Gold Coast Railroad, Inc.  
12450 S.W. 152 Street  
Miami, Florida 33177

or to such other address as either party may designate in writing.

#### ARTICLE 17

17.01 Indulgences. Indulgences with regard to breach granted at occurrences of initial breach, or thereafter, shall not constitute a waiver of the right of the County or a selection of remedies.

#### ARTICLE 18

18.01 Modifications. This agreement constitutes the entire agreement between the parties hereto and supercedes all prior agreements between the parties. This Agreement may be modified or amended by written document properly authorized, executed and delivered to both parties hereto. The GCRR acknowledges that the proper authorization for the County will require a resolution from the County Commission.

#### ARTICLE 19

19.01 Interpretation. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. This Agreement shall be interpreted under the laws of the State of Florida and venue of all litigation shall be Dade County, Florida.

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

ATTESTED:

RICHARD P. BRINKER, CLERK

*Asse Shaw*  
Deputy Clerk



DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

*Sergio Pereira*  
Sergio Pereira  
County Manager

GOLD COAST RAILROAD, INC.

By: *Sam Boldrick*  
Sam Boldrick, President

By: *Simone Nachwalter*  
Simone Nachwalter, Secretary

(CORPORATE SEAL)

Approved as to form and legal  
sufficiency

By: \_\_\_\_\_  
County Attorney

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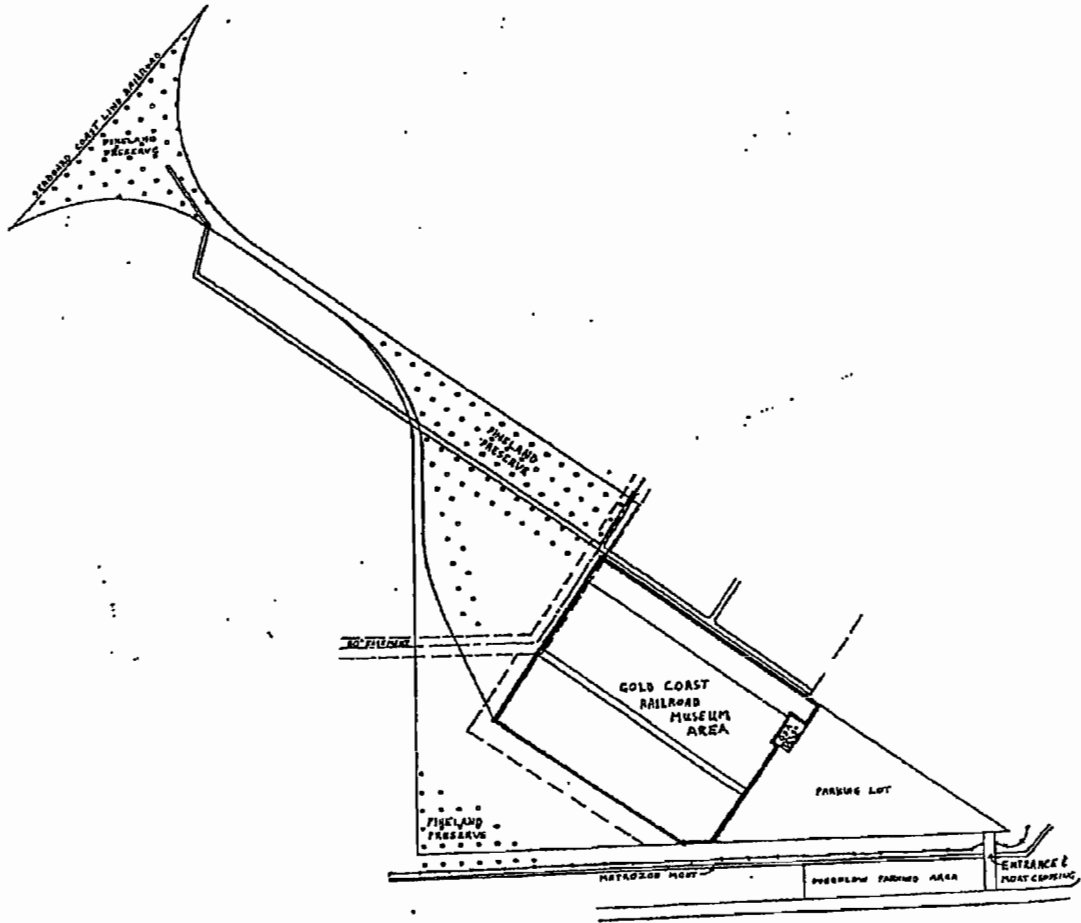


EXHIBIT "A"

5. PROGRAM OF UTILIZATION

A. Proposed Recreational Use and Development

The Metropolitan Dade County Park and Recreation Department proposes to develop the 45+ acres of surplus property as recreational, cultural, educational, and historical operating railroad museum. This can be accomplished by bringing the southernmost operating standard-gauge steam train in the United States, the Gold Coast Railroad Museum, to an area adjacent to the new Metrozoo. (See Proposed Site Plan, Exhibit 13, Appendix.)

The Gold Coast Railroad Museum is a non-profit organization dedicated to preserving, exhibiting, and operating historic railroad equipment. This is the only operating railroad museum in the State of Florida and one of the very few in the United States. The Museum operates a full-size steam train in the grand manner of a bygone era, without an amusement park atmosphere.

Major improvements planned for the site include the following:

Security Fence

A security fence would be installed along the southern boundary of site. This fence will also serve as the northern boundary security fence for the Federal Correctional Facility. Gates will be provided for emergency use by correctional security only.

#### Site Preparation

Exotic vegetation and debris will be removed from the site. Site preparation will also include the removal of any unsafe hangar wall support columns. Due to the extensive amount of materials to be removed, areas designated for development and track locations will be cleaned first. Eventually a land management practice of controlled burning and debris removal will complete the site preparation.

#### Bridge and Gate

A bridge will be constructed over the Metrozoo moat in order to provide controlled public access to the site. All access to the site by the visitors will be through the Metrozoo entrance and across the bridge. A gate will be installed in the zoo security fence.

#### RR Track Connection

The wye (switch) will be reconnected to the Seaboard Coast Line Railroad and the rail laid on the existing road bed to the old blimp hangar area. This includes the installation of over 6,300 feet of track as a main trunk line and five switches to spurs for storage of rolling stock.

#### Utilities

Existing water, sewer and utility lines will be used wherever possible and new lines installed where needed. All utilities are currently on or adjacent to the site.

#### Lighting

Lighting will be installed for security around the hangar area and parking lot.

#### Museum Building

The museum will be an air conditioned block building constructed at the

southeast end between the hangars. This facility will be constructed by using the existing hangar wall support columns. The Museum will house the President Car No. 1, the "Ferdinand Magellan", other historically significant railroad cars, displays of railroad memorabilia, and displays of model railroads. Public rest rooms, offices, storage, and display preparation areas will be included. Future construction would include educational classrooms and additional display and storage areas.

#### Maintenance Building

The maintenance area will be a Butler type building constructed at the northwest end between the hangars. By using the existing hangar wall support columns, only the roof and walls will need to be constructed. This facility will have two railroad tracks running between the columns, restrooms, inspection pit, small office area, storage and in-house steam for the maintenance and repairs of all rolling stock and museum exhibits.

#### Station

The station will be the original 1905 Princeton, Florida, railroad station. The station will be relocated twenty-one miles from the Crandon Park Zoo on Key Biscayne to the site. Plans call for the authentic historical building to be restored and incorporated into the Museum operation. The station will have a ticket office, passenger waiting area, small display area and gift shop.

#### Parking Lot

The parking lot will be developed on the existing asphalt landing pad southeast of the hangar area. The 5+ acre asphalt area will require the removal of debris and exotic vegetation, resealing and patching, and striping. The parking lot will accommodate 385 parking spaces with additional parking for buses and a bus tram drop off/pick up area.

Landscaping

Landscaping will be placed in the parking area to meet the Dade County Landscape Ordinance.

Relocation of Museum

The Gold Coast Railroad Museum will be moved from their existing facility in Ft. Lauderdale to the site. Rolling stock will be moved by rail and displays will be moved by truck.

Passenger and Train Shed

The passenger shed is a roofed - open sided shelter to cover passengers and visitors while they get on and off the train and tour the rolling stock.

Retail Shops

The retail shops will contain concessionaire operated support facilities. The specific size of the area would be determined by the number of types of concessionaire operations. Such operations could include novelties and souvenirs, model trains, railroad memorabilia and antiques, soda/candy/ice cream shop and other food services. All construction will maintain a 1900-1925 South Florida theme.

Gardens and Promenade

A garden and promenade will be developed as a landscaped ornamental area with fountains, shade trees and seating areas for visitors.

Museum Expansion

The Museum building will be expanded to accommodate additional display area for a large model railroad setup.

Car Storage Tracks

Additional tracks will be installed for car storage, heavy repair, and rip tracks.

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#### Machine Shop

A machine shop will be set up in the maintenance building to repair railroad equipment. The machine shop will also include an overhead crane.

#### Train Shed Expansion

An expanded roofed area will be added to the passenger and train shed.

#### Storage Tracks

Additional tracks will be installed for car storage.

#### Turntable and Roundhouse

A turntable and round house will be constructed for the maintenance and storage of locomotives. Support facilities in this area include storage areas, small office area, in house steam, water tank, fuel tanks, sand storage, and limited maintenance facilities.

#### Administrative Building

The administrative building will utilize the existing correctional storage area. Facilities for this area include office areas, meeting rooms, locker rooms, showers, rest rooms, rest area (lounge), work areas and storage for collection and accessioning of museum displays.

#### Track Loop Around Metrozoo

A track loop will be installed around the perimeter of the Metrozoo which will enable visitors to view the animal areas.

#### Storage

Due to the large scale of most historic railroad memorabilia, all the existing small brick buildings located within the hanger wall support columns will be utilized for storage.

**Boiler Building**

It is undetermined whether the boiler in this building is usable. If usable, the boiler could become a central heating plant and/or supply in-house steam.

**Pine Land Preservation**

The 10 acre area of Dade County Pines are located along the northern boundary and within the area of the wye. A management program will be implemented for the protection, preservation and propagation of the pine area. Coordinated management practices will be initiated with the Federal Correctional Institute, the Air Force and FAA, and GSA for periodic controlled burns to enhance the pines and fine adapted plants.





EXHIBIT "B"

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 5 (F)  
2-18-10

RESOLUTION NO. R-182-10

RESOLUTION APPROVING THE REVISED GENERAL PLAN OF THE GOLD COAST RAILROAD MUSEUM LOCATED AT 12450 SW 152 STREET IN THE MIAMI METROZOO ENTERTAINMENT AREA, IN COMPLIANCE WITH SECTION 33-303 OF THE CODE OF MIAMI-DADE COUNTY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference, and has conducted a public hearing in compliance with the provisions of Section 33-303 of the Code of Miami-Dade County, Florida,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE, COUNTY, FLORIDA, that this Board hereby finds that the revised General Plan for the Gold Coast Railroad Museum located at 12450 SW 152 Street, in the Miami Metrozoo Entertainment Area more specifically described as follows:

SEE ATTACHED EXHIBIT A

is necessary to provide for historic building preservation and cultural enhancement of the citizens of Miami-Dade County, Florida and in so finding, has considered, among other factors, the type of function involved, the public need therefore, the land use pattern in the area, and the nature of the impact on the surrounding property.

Resolution No. R-182-10

Agenda Item No. 5 (F)

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The foregoing resolution was offered by Commissioner Jose "Pepe" Diaz who moved its adoption. The motion was seconded by Commissioner Dennis C. Moss and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	aye		
Jose "Pepe" Diaz, Vice-Chairman	aye		
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Joe A. Martinez	aye
Dorin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 18<sup>th</sup> day of February, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK



By: **DIANE COLLINS**  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.


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

Dennis A. Kerbel

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**OFFICIAL FILE COPY  
CLERK OF THE BOARD  
OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

**Memorandum** 

**Date:** February 18, 2010  
**To:** Honorable Chairman Dennis C. Moss  
And Members, Board of County Commissioners  
**From:** George M. Burgess  
County Manager   
**Subject:** Governmental Facilities Hearing Application  
GF09-04 Gold Coast Railroad Museum

Agenda Item No. 5(F)

Resolution No. R-182-10

**RECOMMENDATION**

It is recommended that the Board of County Commissioners approve the attached resolution endorsing the revised General Plan of the Gold Coast Railroad Museum located at 12450 SW 152 Street, in compliance with Section 33-303 of the Code of Miami-Dade County. This item was prepared by the Department of Planning and Zoning at the request of the Miami-Dade Park and Recreation Department and is recommended for approval.

**LOCATION:** 12450 SW 152 Street, unincorporated Miami-Dade County

**COMMISSION DISTRICT:** 9

**COMMISSION DISTRICT  
IMPACTED:** Countywide

**FOLIO NUMBER:** 30-5926-000-0070

**SIZE:** 49.73-acres

**BACKGROUND:** In 1985, Resolution 493-85 authorized the construction and operation of the Gold Coast Railroad Museum. The property was acquired in 1987 through Federal surplus as a park and recreational facility to support a historic train museum. The facility has been developed in accordance with the approved site plan. The operation of the facility has been managed in accordance with a License Agreement approved pursuant to Resolution 1682-86.

**ZONING:** AU, Agricultural

**JUSTIFICATION:** The proposed modified General Plan for the Gold Coast Railroad Museum allows for the continued development of the site consistent with the approved CDMP Miami Metrozoo Entertainment Area and DRI.

Honorable Chairman Dennis C. Moss and Members,  
Board of County Commissioners  
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**FACILITY DESCRIPTION:** The Gold Coast Railroad Museum is an existing facility comprised of a 42,500 square foot train shed, 1,200 square foot train building, 725 square foot administrative building, 150 square foot boiler building and 150 square foot ancillary building. The revised Gold Coast Railroad Museum General Plan proposes improvements and modifications to the existing Gold Coast Railroad Museum as well as the establishment of the Miami Military Museum and the relocation of the previously approved Main Street.

Proposed improvements

**Gold Coast Railroad Museum**

- Additional Train Shed - 40-50,000 sq. ft.
- Additional Train Buildings - 40-50,000 sq. ft.
- Museum/Exhibit/Banquet Areas - 20-30,000 sq. ft.
- Museum Administrative Areas - 9-12,000 sq. ft.
- Repair/Maintenance Buildings - 12-22,000 sq. ft.
- Train Yard - 20 acres

**Miami Military Museum**

- Military Museum - 12-14,000 sq. ft.
- Parade Ground - 2-4 acres
- Outdoor Display Building - 3-7,000 sq. ft.

**Main Street**

- Retail and foodservice - 50,000 sq. ft.
- Parking - 300-400 spaces

**DEVELOPMENT:** The further development of the Gold Coast Railroad Museum will be managed by museum staff. There are currently no funds to complete planned improvements.

The development of the Military Museum will be managed by museum staff. There are currently no funds to complete planned improvements beyond relocation of the Richmond Naval Air Station Building 25.

The Main Street retail and foodservice area will be managed by the Park and Recreation Department. It is expected that a private developer will make improvements to this area as part of the Miami Metrozoo Entertainment Area.

**FUNDING:** Capital budget allocations for the expansion of each museum will depend on future private fundraising and grants.

Funding for the relocation, restoration and stabilization for the Richmond Naval Air Station Building 25, has been allocated through the General Obligation Bond Program. This facility will be a part of the new Miami Military Museum. It is listed as project number 283 and to date is allocated \$2,000,000.

**SITE REVIEW COMMITTEE:** The committee's task is to review projects subject to 33-303 of the Code of Miami-Dade County with regard to the public need for the proposed facility, its impact upon the surrounding community, and other similar considerations. The committee reviewed this project on July 22, 2009.

**COMMUNITY COUNCIL:** The project was presented to Community Council #14 on September 10, 2009. The council members were fully supportive of the project.

**PUBLIC HEARING:** Section 33-303 of the Code of Miami-Dade County provides that, prior to the construction or operation of a facility in the unincorporated areas of Miami-Dade County, a favorable public hearing before the Board of County Commissioners (BCC) is required. The BCC may only authorize the use, construction and operation of such facilities after considering, among other factors, the public need for the facility, the type of function involved, existing land use patterns in that area and the nature of the impact of the facility on surrounding properties. The attached report from the Miami-Dade County Site Review Committee addresses these factors.

**MONITOR:** Gilberto Blanco, Principal Planner

**DELEGATED AUTHORITY:** This resolution authorizes the revised General Plan of the Gold Coast Railroad Museum.

  
\_\_\_\_\_  
Assistant County Manager



EXHIBIT "C"

**GOLD COAST RAILROAD MUSEUM INC.  
AMENDED AND RESTATED LICENSE AGREEMENT**

THIS AMENDED AND RESTATED LICENSE AGREEMENT ("Agreement"), made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2010 between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "County" through its PARK AND RECREATION DEPARTMENT, referred to herein as the "MDPR", and THE GOLD COAST RAILROAD, INC., a Florida Corporation not-for-profit hereinafter called the "GCRMI."

WITNESSETH

WHEREAS, on December 2, 1986 the County and GCRMI entered into a License Agreement (R-493-85) for the preservation and operation of historic railroad equipment within the Gold Coast Railroad Museum Park property ("Park") for a term of 35 years ("Original Agreement"); and

WHEREAS, the County desires to retain the GCRMI on part of the Gold Coast Railroad Museum Park property (Exhibit 1), adjacent to Zoo Miami ("ZM"), since the GCRMI would remain an outstanding part of the newly created Entertainment Area associated with ZM; and

WHEREAS, this will allow the GCRMI, a non-profit organization dedicated to preserving, exhibiting and operating historical railroad equipment, to continue to operate; and

WHEREAS, the GCRMI will afford recreational, historical, cultural and educational enrichment opportunities to the citizens of Miami-Dade County; and

WHEREAS, the County and GCRMI desire to amend and restate the Original Agreement in its entirety as provided in this Agreement; and

WHEREAS, by virtue of this Agreement, GCRMI is granted the license and privilege to construct and operate facilities in accordance with the revised General Plan and Program of Utilization (Exhibit 2) approved at a Public Hearing by the Miami-Dade County Board of County Commission, Resolution No. R-182-10 on February 18, 2010; and

NOW, THEREFORE, in consideration of the mutual terms and conditions hereinafter set forth, it is agreed as follows:

## ARTICLE 1

1.01 Purpose. The parties agree that the Original Agreement entered into on December 2, 1986 between the parties is superseded in its entirety by this Amended and Restated License Agreement. This Agreement grants to the GCRMI a License and the exclusive right to develop and operate a historical railroad museum, operating train system and associated commercial and non-commercial concessions which shall be approved by the County, subject to the terms and conditions of this Agreement; the documents conveying the subject property to the County, which property is described in Article 1.04 below; and such rules, regulations, directions, ordinances, statutes, laws and the like which exist or may be adopted by bodies having appropriate jurisdiction.

1.02 Term of Agreement. The County hereby authorizes the GCRMI to develop, install and operate its facilities on the property described below for a period of thirty-five (35) years commencing on January 1, 1987 and expiring, unless sooner terminated as provided herein, on December 31, 2022.

1.03 Renewal Options. Provided that there are no defaults by the GCRMI existing at the time of expiration of this Agreement or any applicable renewal periods, the County may renew this Agreement for three (3) periods of five (5) years each. The County may approve renewals for more than one period, in its sole discretion.

1.04 Property Description. This Agreement shall be valid only within that property located adjacent to ZM located at 12450 S.W. 152 Street, Miami, Florida 33177, as more particularly described and/or shown in Exhibit "A", which is hereby incorporated in this Agreement, and hereinafter referred to as "Gold Coast Railroad Museum Park," or "Park".

1.05 General Plan. Improvements constructed or installed by GCRMI pursuant to this Agreement shall be consistent with the newly revised General Plan for the Park, inclusive of the "Museum Area" within which the GCRMI is authorized to operate within the Park as shown in Exhibit "2".

1.06 Museum Area. Within the Park, the "Museum Area" is specifically located and defined as shown in Exhibit "3".



1.07 Licenses, Sublicenses and Subcontracts. It is expressly understood and agreed that: (a) no real or personal property is leased to GCRMI; (b) this Agreement constitutes a license and not a lease; (c) GCRMI's right to use the Park and operate the license hereby granted shall continue only so long as GCRMI shall comply strictly and promptly with each and all of the undertakings, provisions, covenants, agreements, stipulations and conditions contained in this Agreement. GCRMI agrees not to represent itself as an agent or associate of the County or any unit thereof.

- A. GCRMI shall not license, sublicense nor subcontract the operations of the Park or any part thereof, or use the same or any part thereof, or permit the same or any part thereof, to be used for any other purpose than above stipulated or make any alterations therein without the written consent of the County.
- B. Subject to the provisions of this Agreement, the GCRMI shall not subcontract any of its rights, duties or obligations in this Agreement, or allow any other person or entity (except GCRMI's authorized representatives) to use all or any part of the property or the buildings and improvements located thereon, without first obtaining the consent of MDPR. The GCRMI shall, in each instance of a proposed subcontract, give written notice of its intention to subcontract, to the MDPR at least ninety (90) days or more before the proposed effective date of any such proposed subcontract, specifying in such notice what activities and/or operations the GCRMI proposes to subcontract, the proposed date thereof, and specifically identifying the proposed subcontracting entity, and such notice shall be accompanied by executed copies of the proposed subcontract document, current financial statements and the names, addresses and social security numbers of the principals of the proposed subcontracting entity. The MDPR shall not approve any subcontracts that are not ancillary to the railroad museum and operating train system(s). MDPR shall, within thirty (30) days from the date of said written notice to subcontract, notify the CGRR of any refusals of the County to consent to the proposed subcontract.
- C. Notwithstanding the foregoing, GCRMI understands and accepts that any proposed subcontract shall require the further and final approval of the National Park Service. Upon

initial approval by MDPR of a subcontract, MDPR shall contact the National Park Service for its review of the subcontract for compliance with the terms of conveyance of said property to the County. MDPR shall, within thirty (30) days from the date the National Park Service returns its recommendations, notify the GCRMI of either consent or refusal to consent to the proposed subcontract.

- D. The GCRMI covenants and agrees that all conditions, agreements and undertakings contained in this Agreement shall extend to and be binding on the respective subcontractors accepted by the County including the County's right to terminate subcontractors directly for any cause as specified in Article 11, hereof; that contracts with subcontractors shall not relieve the GCRMI of all liabilities, obligations and duties under this Agreement; that the County or the National Park Service may reject a subcontract or contract for any reason determined not to be in the best interest of the public; any subcontract without both the County's and National Park Service's consent shall be void, and shall constitute a breach of this Agreement; and no consent to any subcontract shall constitute a waiver of the provisions of this Agreement.
- E. All subcontracts shall include the provision that, in case of GCRMI's inability to perform, the County shall have the right, but not the obligation, to take the position of the GCRMI in the subcontract.

## **ARTICLE 2**

2.01 State of Park. The GCRMI accepts use of the Park, including the Museum Area, in an "as is" condition and subject to all existing liens, encumbrances, charges, conditions, covenants, easements, restrictions, rights-of-ways and other matters of record.

2.02 Ingress and Egress. Subject to applicable statutes and ordinances governing the use of the facilities, the GCRMI, its members, agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials, shall have right of ingress and egress to and from the Park. The GCRMI shall be responsible for extra costs incurred by the County in providing access at hours outside the general operating hours of ZM.

The GCRMI will comply with after-hour ingress and egress identification procedures established by the County. All public ingress and egress to the Park shall, pursuant to the approved Plan, be by way of the moat crossing as shown on Exhibit "A".

In the event of an animal escape, all ingress and egress will be prohibited until the animal is captured. During this time the ZM main gate and moat crossing gate shall remain closed. Any other access gates on the Park shall also be closed. ZM shall advise GCRMI staff of any such occurrence as soon as reasonably practicable in order that emergency access for GCRMI staff and visitors can be properly provided for.

2.03 GCRMI's Right to Use Parking Areas. The County grants to the GCRMI and its authorized representatives and invitees the non-exclusive right to use the parking areas within the Park and overflow parking areas of the ZM as shown on Exhibit "B", with others who are entitled to use the parking areas, subject to County's rights set forth below.

Once constructed, the County shall maintain necessary access to the parking areas as stipulated in 6.01 H. contained herein.

GCRMI and its authorized employees and representative shall park their cars only in areas specifically designated from time to time for this purpose by the County, whether such areas be inside or outside the Park (as long as reasonably near the Park). The GCRMI shall not at any time park or permit the parking of its permitted vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. The County shall also have the right to institute, at any time during the term hereof, reasonable rules, regulations, procedures and/or methods in order to enforce the terms of this Section, and in order to provide for the orderly, efficient and safe use of the parking areas.

### ARTICLE 3

3.01 Assignment. The GCRMI shall not assign this Agreement or any part thereof, nor permit the same or any part thereof to be assigned, nor permit any alternations therein, or to be used for any purpose other than above stipulated.

3.02 Transfer and Encumbrance. The GCRMI shall not, in any way, transfer, diminish or encumber its interest in this Agreement nor shall the GCRMI sell, mortgage or otherwise transfer or encumber the County's real property or any portion thereof. However, nothing in this Article shall apply to personal property, museum items, rolling stock, or equipment installed or placed upon the Park.

3.03 Release of Lien. To the extent required in connection with the GCRMI's financing of any equipment to be installed or used by the GCRMI at the property, the County hereby agrees to waive its right to seize such equipment of the GCRMI for fees due or to claim or assert title to or any interest in such equipment or other personal property.

#### ARTICLE 4

4.01 License Fee. Beginning with effective date of this Agreement, the GCRMI shall pay eight percent (8%) of the "adjusted gross receipts", as that term is defined herein, of the prior month as a license fee (the "License Fee") to ZM on a monthly basis, to offset ZM's operational expenses associated with ZM's assistance of GCRMI. License Fee shall be paid to ZM on or before the fifteenth (15) day of every month. For example, if the "adjusted gross receipts" for the month of November 2012 were \$20,000.00, then the GCRMI shall pay the County a License Fee of \$1,600.00 on or before December 15, 2012.

4.02 Adjusted Gross Receipts. The term "adjusted gross receipts" as used in this Agreement means all monies owed or paid to or in consideration of determinable value received by the GCRMI for services, admissions, merchandise and other transactions made by the GCRMI, its contractors, licensees or concessionaires, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, or in consideration of any other thing of value including but not limited to proceeds received by the GCRMI from its subcontractors, licensees and concessionaires, less:

- A. Any taxes imposed by law which are separately stated to and paid by a customer and directly payable to a taxing authority.
- B. Refunds on sales.
- C. Cash or non-cash items received in connection with promotional programs for the

Park, including barter and discounts, provided such promotional programs are primarily for the purpose of Park promotion and not direct production of revenue, but not to exceed thirty percent (30%) of cash revenues.

- D. Employee meals sold at a discount.
- E. Approved sales of fixtures, trade fixtures and personal property other than in the ordinary course of business.
- F. Grants, bequests and donations of money, services or railroad paraphernalia, historical memorabilia, and other related non-earned receipts. Such grants, bequests and donations of money must be approved by the MDPR in writing if the donation of money is to be considered excluded from the adjusted gross receipts.

#### 4.03 Reports and Records.

- A. The GCRMI shall maintain, during the term of this Agreement, all books of account, reports and records customarily used in this type of operation and such records as are necessary to document its activities pursuant to this Agreement and all monies owed or collected hereunder, not limited to gross receipts. The form of all such records and reports shall be subject to the approval of the MDPR prior to commencement of operations. The GCRMI shall also abide by subsequent recommendations for changes, additions or deletions by the MDPR. During normal business hours, the MDPR may audit and examine all such books of account, reports and records relating to the GCRMI's operations hereunder.
- B. On or before the fifteenth (15) day following the end of each calendar month throughout the term of this Agreement or any extension hereof, the GCRMI shall furnish to the MDPR a report of gross receipts and of "adjusted gross receipts" during the preceding calendar month, on forms approved by the MDPR. This monthly report shall be signed by the Facility Manager and Treasurer of the GCRMI certifying to the accuracy of such gross receipts and adjusted gross receipts.
- C. The GCRMI shall submit to the MDPR at its own expense, within sixty (60) days following each twelve (12) month period of operation under this Agreement, a report certified by an independent Certified Public Accountant, as to the correct gross receipts

per month arising from the GCRMINs operations under this Agreement, certifying that the report submitted is a fair representation and has been accomplished using generally accepted accounting and auditing standards. The report due under this Article shall, for the first reporting period, cover the period from January 1, 2010 to May 31, 2010, with subsequent reports covering the following years ending May 31st or the end of the Agreement term. Accounting periods may only be adjusted with the prior approval of MDPR.

- D. The GCRMI shall allow the MDPR, as defined in sub-paragraph A of this Section, to inspect all or part of the compilation procedures for the aforesaid monthly reports. Said inspection is at the sole discretion of the MDPR.
- E. Prior to the commencement of operation under this Agreement, the MDPR shall review the current accounting procedures of the GCRMI.
- F. All records of the GCRMI necessary to verify the reports set forth herein shall be available to the MDPR's auditors at a reasonable location in Miami-Dade County, Florida for a period of five (5) years after the end of any fiscal year.

4.04 Payment. The GCRMI shall pay on a monthly basis all license fees and submit all reports required by the Agreement to the following:

Payable to:

"Miami-Dade County Board of County Commissioners"

Send to:

Park and Recreation Department  
Financial Management Division  
275 NW 2 Street  
Miami, Florida 33128

4.05 Inspector General.

- A. Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the

County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

- B. Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.
- C. Exception. The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may

authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.

- D. Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.
- E. Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.



F. Sovereign Rights. It is expressly understood that notwithstanding any provisions of this Agreement and the County's status thereunder:

(a) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of GCRMI or the operation thereof, or be liable for the same; and

(b) The County and the City shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of GCRMI.

(c) Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the County's Planning and Zoning Department, DERM, or any other County, Federal or State Department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

## ARTICLE 5

### 5.01 Facilities

A. The design of any structure(s) and all pertinent features of the facilities to be constructed by or for the GCRMI shall receive prior design review by the MDPR. The MDPR shall not unreasonably withhold approval of design documents prepared and submitted by the GCRMI unless these are found to conflict with the revised General Plan and Program of Utilization as approved by Resolution No. R-182-10 at a Public Hearing by the County Commission on February 18, 2010 (Exhibit 2) or subsequent approved amendments. If the MDPR does not notify the GCRMI of the MDPR's review decision within a thirty (30) day period, the MDPR's silence shall be

conclusively deemed a consent to the proposed design documents. Final approval shall be subject to the mutual consent of the MDPR, the GCRMI and other agencies having lawful jurisdiction, including the County Commission as appropriate.

- B. The GCRMI agrees that the final decision as to the age, condition, design and acceptability of improvements and equipment, furnished for installation and use, shall be made by the MDPR. Prior to the commencement of any construction, installation or improvements, the GCRMI shall submit plans and specifications to the MDPR for review and recommendation. No work is to commence without written approval of the MDPR. The GCRMI shall not commence construction of any improvement until it has on hand sufficient funds or methods of financing, as accepted in writing by the MDPR, to pay the full cost of the improvements; the GCRMI shall post a construction payment and performance bond in accordance with 5.01 F. contained herein and such improvements shall be constricted only in accordance with the detailed plans and specifications approved in advance by the MDPR.
- C. Equipment and personal property furnished by the GCRMI shall be of good quality and suitable for its purpose.
- D. It shall be the responsibility of the GCRMI to coordinate activities with the MDPR during any construction and normal operations, including construction or operations by or for the MDPR.
- E. The GCRMI shall be bound by and include in each and every contract for goods and/or services the following language: "All persons, firms or corporations dealing with the GCRMI in respect to the furnishing of any labor, services or material for the improvement of said premises are hereby placed on notice that no liens of any nature or character shall be imposed upon or enforced against said lands, but that credit and liability of the GCRMI only shall be relied upon for payment of the cost of such improvements.

All such improvements must comply with all applicable State and County ordinances

and regulations, including but not limited to building and zoning. All improvements shall become the property of the MDPR upon termination or expiration of this Agreement.

F. **Payment and Performance Bond- Construction.** The GCRMI shall obtain and deliver to the MDPR, not less than ten (10) days prior to the anticipated commencement of construction a Payment Bond and Performance Bond in accordance with Section 255.05, Florida Statutes, with a surety meeting the qualifications set forth in Article 10 herein, naming the County as additional payee and obligee, said bond to be acceptable to the Risk Management Division of Miami-Dade County. The Bond shall be for the full amount of work and shall remain in effect until the completion of and payment for the improvements, free and clear of all claims of mechanics, laborers and materialmen.

5.02 GCRMI Operations. The GCRMI shall provide, assign and maintain a full-time qualified, experienced facility manager for its operations with authority to manage the day-to-day operations of the complex. Said facility manager shall be physically available during reasonable operating hours. The qualifications of said facility manager shall be submitted to the MDPR upon request. During the operating hours when the manager is not on duty or available, there shall be a designated assistant manager. The manager and assistant manager shall be the authorized representatives of the GCRMI and entitled to act in all matters relating to the operation of the facility assigned hereunder.

Emergency phone numbers for manager and the assistant manager shall be provided to the MDPR.

5.03 Public Contact of the GCRMI Personnel. The GCRMI's personnel in contact with the public shall perform their duties in an efficient and courteous manner. All personnel shall be properly trained and, with the exception of the facility manager, shall be distinctively uniformed or appropriately attired so as to be distinguishable as the GCRMI's personnel.

5.04 Quality of the GCRMI's Services

- A. The GCRMI shall conduct its operations in a first class manner, comparable or superior to similar attraction operations.
- B. The GCRMI shall conduct its operations in an orderly manner and so as not to annoy, disturb or be offensive to customers, patrons, or others in the area.
- C. The GCRMI shall control the conduct, demeanor and appearance of its officers, members, employees, agents and representatives and customers and patrons, and upon objection of the MDPR concerning the conduct, demeanor or appearance of any such person, the GCRMI shall immediately take all steps to correct the cause of such objection.
- D. The GCRMI shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, be responsible for the maintenance, appearance and safety of the licensed operation. The GCRMI shall inspect the premises to insure a safe condition; shall maintain, paint, repair or replace any and all equipment or structures in use under this Agreement, as a normal responsibility of the GCRMI. The GCRMI agrees to fully comply with the MDPR's decision regarding maintenance standards. The GCRMI agrees that it will not undertake any maintenance, painting, repair or replacement that would in any way modify or change the originally existing facility, its equipment or structures, or changes, as originally approved by the MDPR without the prior written approval of the MDPR as provided in paragraph 5.01 herein.
- E. The GCRMI shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore.
- F. The GCRMI shall serve only high quality products obtainable for the type of service being offered.
- G. The GCRMI will give due consideration to recommendations by the MDPR to feature or sell products of the zoo sponsors and advertisers when such consideration is practical and the product is competitively priced. However, subject to a commitment to the MDPR to cooperate fully with the MDPR in the conduct of its operations, the GCRMI will have complete discretion at all times to purchase and/or promote any

products subject to the provisions of paragraph 5.04 F. hereof. Zoo Miami will do likewise.

- H. The GCRMI shall operate at least on weekends and holidays during daylight hours. The GCRMI shall submit a proposed schedule of hours of operation, prior to commencement of operations under this Agreement, for approval by the MDPR.
- I. The GCRMI shall have a suitable hurricane plan and emergency evacuation plan and shall provide a copy of said plan to the MDPR for approval.
- J. The GCRMI's advertising materials will identify the location of its facilities as being "At Miami-Dade Zoological Park and Gardens" or "Zoo Miami".
- K. The MDPR or any of its agents shall have the right to examine the GCRMI operations during all reasonable hours as may be deemed necessary to the safety, comfort or preservation thereof, and to determine if the GCRMI is in compliance with all of the MDPR rules, regulations, directives and otherwise. Advance notice is not required.
- L. If any unusual circumstances, unforeseen at this time, may occur this would necessitate a move or relocation of all or any part of the GCRMI's physical operation, the GCRMI shall not move or relocate all or any part of the physical operation unless approved by the MDPR. Any move or relocation approved by the MDPR shall be at the expense of the GCRMI.
- M. The GCRMI shall observe, obey and comply with all rules and regulations adopted by the MDPR and all laws, ordinances and regulations of any other governmental units and agencies having lawful jurisdiction applicable to this Agreement.
- N. The GCRMI covenants and agrees not to advertise in any manner or form on or about the premises, or facilities governed by the GCRMI, except by such signs or forms of advertising as shall be approved in advance by the MDPR.
- O. The GCRMI shall not burn any trash or garbage of any kind in or about the Park unless it received a properly approved burn permit from the Miami-Dade Fire Department and provides two (2) days advance notice to Zoo Miami. The GCRMI

shall not dispose or discharge any chemicals, foreign substance, petroleum products or pollutants of any kind into any sanitary or storm sewer system nor allow same to seep into the ground.

5.05 Facilities, Equipment and Services Provided by the GCRMI. The GCRMI shall provide and/or maintain within the Museum Area:

- A. A janitorial service, litter, garbage and trash collection including waste removal from the Museum Area.
- B. Devices or registers for recording original sales and parking toll or surcharge as approved in advance by the MDPR (see paragraph 4.05 A. above).
- C. All construction within the Museum Area, unless otherwise provided by MDPR.
- D. Complete air handling system as required by local code.
- E. Fire alarm and sprinkler system (or approved equivalent) as required by local code.
- F. All internal finishing and signage at a level consistent with that approved in paragraph 5.06 herein.
- G. Connection of utilities to operating equipment.
- H. All operating equipment.
- I. All interior maintenance and repair, including replacing of light bulbs and tubes.
- J. All plumbing fixtures.
- K. Cost of all utilities.
- L. Connection to water system for irrigation of landscaping within the Museum Area.
- M. Pest and rodent control within the Park.
- N. All chemicals to be used shall be approved in advance by the MDPR.
- O. Establish and maintain a management program, approved by the Department of Environmental Resources Management, for the control and cleanup of potential discharge and spillage of pollutants.

5.06 Equipment Installed by the GCRMI.

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- A. All equipment, furnishings, signing and advertising installed by the GCRMI shall be in keeping with the appropriate standards of decor at the facilities and must be approved by the MDPR prior to installation. The GCRMI shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by, the MDPR. Within sixty (60) days from the completion or opening of said facilities, whichever comes first, and the installation of any additional equipment, furnishings and improvements which the MDPR may approve from time to time, the GCRMI shall provide to the MDPR a certified statement by an independent Certified Public Accountant setting forth the cost of such equipment, furnishings and improvements as completed. The GCRMI shall provide to the MDPR and maintain the accuracy of a list of personal property located at the property.
- B. The GCRMI agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.
- C. The GCRMI shall not alter or modify any portion of facilities, the property or the improvements constructed therein without first obtaining written approval from the MDPR.
- D. Licensee shall provide adequate ventilation, safety, and other equipment in compliance with all County, State or Federal laws, statutes, ordinances and regulations.

5.07 Maintenance Responsibilities of the GCRMI. The GCRMI shall, at its sole cost and expense, keep and maintain its facilities in a first class condition during the term of this Agreement and any extensions thereof. Except as set forth in Section 6.01 E, F, G, and H, the Museum Area is the sole and exclusive responsibility of the GCRMI.

## ARTICLE 6

6.01 Facilities and Services Provided by MDPR through Zoo Miami. The MDPR shall provide:

- A. Unimpeded road access to the moat crossing into the Park at all times, however, the GCRMI shall provide advance notice of any request to access the moat at any time that is not during Zoo Miami's normal operation hours ("after-hours"). An identification system will be established for after-hours ingress and egress. Unimpeded access will not be provided during an animal escape.
- B. Sanitary sewer and water systems as existing.
- C. Road access to the overflow parking area.
- D. The installation and maintenance of landscaping, at the County's sole option, in the Park but outside the Museum Area.
- E. The installation and maintenance, at the County's sole option, of all irrigation systems, and the operation of the irrigation and the payment of the utility cost for said operation in the Park outside the Museum Area.
- F. Perform on an as-needed basis grounds maintenance, structural maintenance and repairs in the Park outside the Museum Area, including but not limited to parking areas, roads, walkways, perimeter fencing, barriers, county signs, utility systems specified in 6.01 D, E, G and H. This excludes litter and garbage collection and removal specified in 5.05.
- G. Maintain the parking lot(s) and the overflow parking area on the Zoo Miami premises, including but not limited to parking pavement, striping, curbing, drainage, lighting, signage and landscaping.
- H. Manage the Pineland Preserve Area. Any "controlled burns" will be coordinated with the GCRMI.

## ARTICLE 7



7.01 Indemnification. GCRMI shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the GCRMI or its employees, agents, servants, partners principals or subcontractors. GCRMI shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. GCRMI expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by GCRMI 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.

## ARTICLE 8

8.01 Liability for Damage or Injury. The MDPR shall not be liable for damage or injury which may be sustained by any party or persons on the Park other than damage or injury caused solely by the negligence of the MDPR.

8.02 Damages. GCRMI shall repair or pay for the repair of all damage at Zoo Miami or on the Park caused by the GCRMI, its employees, agents, or contractors; or caused by the equipment, vehicles, or other property owned or used by GCRMI, its employees, agents or contractors.

## ARTICLE 9

9.01 Continuation on Damage or Destruction of Park. If either the Park or improvements thereon are partially damaged by fire, explosion, the elements, the public enemy, or as the result of war or other casualty, but not rendered unusable for more than 30 days for the purposes of this Agreement, the same shall be repaired with due diligence by the GCRMI at its own cost and expense, and a pro rata adjustment of the fees payable hereunder for the period the GCRMI's operation interruption, if any, shall be made. In the event the said property is completely destroyed by fire, explosion, the elements, the public enemy or as a result of war or any other cause whatsoever, or so damaged that they will remain unusable for more

than thirty (30) days, the GCRMI shall be under no obligation to repair and reconstruct the property or improvements therein, and an adjustment of the fees payable hereunder shall be proportionately made up to the time of such damage or destruction, and this Agreement shall cease and terminate. However, at the option of the GCRMI, the GCRMI may reconstruct the property at its cost according to the plans and specifications as previously approved (with such changes as may be approved by the MDPR through the MDPR) and this Agreement will remain in full force and effect except for a suspension of monthly fee during the period of non-operation, but not to exceed twelve (12) months.

## ARTICLE 10

10.01 Insurance. GCRMI shall furnish to the Miami-Dade County Park & Recreation Department , 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance. As required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance. On a comprehensive basis, including Products Liability, with not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
- C. Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit for bodily injury and property damage.

During construction required by Article 5.01 B of this Agreement, GCRMI shall provide or cause it's contractor to provide:

- D. Builders Risk Insurance Builder's Risk Insurance: on an "All Risk" basis in an amount not less than 100 percent of the insurable value of the structure. The policy shall be in the name of Miami Dade County, GCRMI and the contractor as their interest may appear.

All insurance policies required above shall be issued by companies authorized to do

business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund. Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder. The MDPR reserves the right to reasonably amend the insurance requirements by the issuance of notice in writing to the GCRMI.

GCRMI and/or the contractor shall provide other insurance or security that may be reasonably required by the MDPR.

## ARTICLE 11

11.01 Cancellation by MDPR and Default. The occurrence of any of the following shall constitute a default and may cause this Agreement to be terminated immediately at the option of the MDPR by notice to the GCRMI as provided in Section 16.01 hereof:

- A. Assignment by the GCRMI for the benefit of creditors.
- B. Abandonment or discontinuation of operations hereunder for a period of ninety (90) days, without giving notice of cancellation as specified in Article 12 herein, however, that if such abandonment or discontinuation shall be due to "force majeure" (causes beyond GCRMI's reasonable control such as, without limitation, acts of God, governmental laws or actions, war, civil commotion, casualty, fire, storm, labor disputes and energy shortages), the Agreement shall be terminated as long as the condition continues for thirty (30) days after termination of such condition.
- C. Any final judicial determination that litigation instituted by the GCRMI against the MDPR was groundless.

- D. Any institution of proceeding in involuntary bankruptcy against the GCRMI if such proceedings continue for a period of ninety (90) days.
- E. Failure by the GCRMI to maintain non-profit status under provisions of Chapter 617, Florida Statute.
- F. Continuation of any activity, after notice, which may cause challenge to the MDPR's right to hold, possess, govern, manage or otherwise control ownership of the property.

11.02 MDPR Right to Cure Default. The MDPR, after GCRMI commits a default hereunder which default was not cured after fourteen (14) days notice to the GCRMI, may cure the default at the GCRMI's cost, provided that the GCRMI shall cure any adverse environmental hazard, restroom, eminent health, or safety conditions immediately.

11.03 Late Payments. Whenever the non-payment of any sum or sums due hereunder continues for a period of ten (10) calendar days after the due date for such payments, the MDPR will send notice for payment to be made within fourteen (14) calendar days from the date of mailing. If payment is received within this period, no further action will be taken. If a payment is not received, this Agreement may be cancelled by the MDPR.

11.04 Performance. The MDPR shall have the right to terminate this Agreement after thirty (30) days written notice by registered or certified mail to the GCRMI, of the occurrence of one or more of the following:

- A. Non-performance of any covenant of this Agreement and failure of the GCRMI to remedy such breach, unless the breach cannot be cured in 30 days in which case the GCRMI shall request, not less than 10 days prior to the 30 day deadline, approval of the MDPR to extend the deadline for a specific number of days. Such a request shall state the reason(s) why the 30 day deadline is inadequate and how the breach shall be cured by the extended deadline. The MDPR shall not unreasonably withhold approval of extension requests. Failure to cure breach by the extended deadline shall be grounds for immediate termination by MDPR.

- B. The conduct of any business or the merchandising of products or services not specifically authorized herein.
- C. Failure to comply with the provisions of paragraph 13.01 Non-Discrimination, A. of this Agreement.

## ARTICLE 12

12.01 Termination by the GCRMI. The GCRMI shall have the right upon thirty (30) calendar days written notice to the MDPR to terminate this agreement at any time after the occurrence of one or more of the following events:

- A. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the facilities for the intended purposes, and the remaining in force of said Injunction for a period of more than thirty (30) calendar days.
- B. A breach by the MDPR of any of the terms, covenants or conditions contained in this Agreement and the failure of the MDPR to remedy such breach for a period of sixty (60) calendar days after receipt of written notice sent by registered or certified mail from the GCRMI of the existence of such breach, unless the same shall have been corrected or remedial action started and diligently pursued within such period.
- C. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, for the operation, control or use of the facilities, or any substantial part, or parts, thereof in such a manner as substantially to restrict the GCRMI's operations for a period of thirty (30) calendar days or more.

## ARTICLE 13

13.01 Non-Discrimination.

- A. That GCRMI for itself, its personal representatives, subcontractors, and concessionaires as part of the consideration hereof, does hereby covenant and agree that:
  - 1. No person on the grounds of race, color, religion, national origin or sex shall be

excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, religion, national origin or sex shall be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination.

3. That the GCRMI shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the Department of Health, Education and Welfare -Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. In the event of breach of any of the above non-discrimination covenants, the MDPR shall have the right to terminate the Agreement in accordance with paragraph 11.04 herein, and to re-enter and repossess said facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision shall not be effective until the procedures of Title 45 Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.

C. The GCRMI shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin or ancestry.

13.02 Rules and Regulations. The GCRMI will observe, and comply with all laws and ordinances and/or rules and regulations of the MDPR and other governmental units and agencies having lawful jurisdiction, which may be applicable to GCRMI's operations under this Agreement, including, but not limited to, the securing of all permits, licenses and other authorizations as may be required.

The use of the area for carnivals, circus, mechanical rides (except railroad related), midways, etc. is specifically prohibited.

13.03 Payment of Obligations. The GCRMI shall pay all taxes, special assessments and other costs lawfully assessed against its Interest in the Premises, and its operations under the Agreement provided, however, that the GCRMI shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes instituted in a timely fashion.

13.04 Telecommunications Tower. The County's Enterprise Technology Service Department shall be allowed unobstructed access to the Telecommunication Tower.

#### **ARTICLE 14**

14.01 Termination of Contract. The GCRMI, within one hundred sixty (160) calendar days following the termination of this Agreement, shall remove all of its personal property forthwith. Any personal property of the GCRMI not removed in accordance with this Article may be removed by the MDPR for storage at the cost of the GCRMI or shall constitute a gratuitous transfer of title thereof to the MDPR for whatever disposition is deemed to be in the best interest of the MDPR. The MDPR shall not be liable to the GCRMI for the safekeeping of the GCRMI's personal property.

It is the intention of the parties of this Agreement that all furnishings and equipment purchased or leased by the GCRMI, except those permanently affixed to the Premises, as defined under the laws of the State of Florida, shall be and will always remain, the personal property of the GCRMI, except as provided in this Article.

Upon termination of this Agreement and the removal of all personal property by the GCRMI, the GCRMI shall cause the premises to be restored to a neat, safe and clean condition. Upon termination, MDPR shall promptly advise the GCRMI whether to demolish the GCRMI's improvements and restore the site to level grade. If MDPR desires such demolition, the GCRMI may utilize funds from the Capital Improvement Fund for such purpose.

In the event the MDPR desires to retain any portion of the GCRMI's personal property

utilized in connection with the Premises, MDPR shall have the right of first negotiation to acquire such property from the GCRMI by giving notice to the GCRMI within ten (10) days prior to termination of the Agreement (thirty (30) days if termination is at the end of its initial or extended term). If the parties are unable to reach an agreement on the purchase of such property within fifteen (15) days of such notice, the GCRMI shall be free to dispose of same in whatever manner it chooses.

#### ARTICLE 15

15.01 Approval. Unless otherwise stated herein, whenever prior approvals are required hereinabove by either party, such approvals shall not be unreasonably withheld or delayed.

#### ARTICLE 16

16.01 Notices. Any notices submitted or required by this Agreement shall be sent by Registered or Certified Mail and addressed to the parties as follows:

To the County:

Director  
Park and Recreation Department  
50 S.W. 32 Road  
Miami, Florida 33129

To the Gold Coast Railroad, Inc.:

Facility Manager  
The Gold Coast Railroad Museum, Inc.  
12450 S.W. 152 Street  
Miami, Florida 33177

or to such other address as either party may designate in writing.

#### ARTICLE 17

17.01. Indulgences. Indulgences with regard to breach granted at occurrences of initial breach, or thereafter, shall not constitute a waiver of right of the MDPR or a selection of remedies.

#### ARTICLE 18

18.01. Modifications. This Agreement constitutes the entire agreement between the parties

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hereto supersede all prior agreements between the parties. This Agreement may be modified or amended by written document properly authorized, executed and delivered to both parties hereto. The GCRMI acknowledges that the proper authorization for the MDPR will require a resolution from the County Commission.

#### **ARTICLE 19**

19.01. Interpretation. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. This Agreement shall be interpreted under the laws of the State of Florida and venue of all litigation shall be Miami-Dade County, Florida.

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

ATTESTED:

HARVEY RUVIN, CLERK

\_\_\_\_\_  
Deputy Clerk

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

\_\_\_\_\_  
Carlos Alvarez  
County Mayor

GOLD COAST RAILROAD MUSEUM, INC.

By: *Connie Greer*  
Print Name: Connie Greer, President

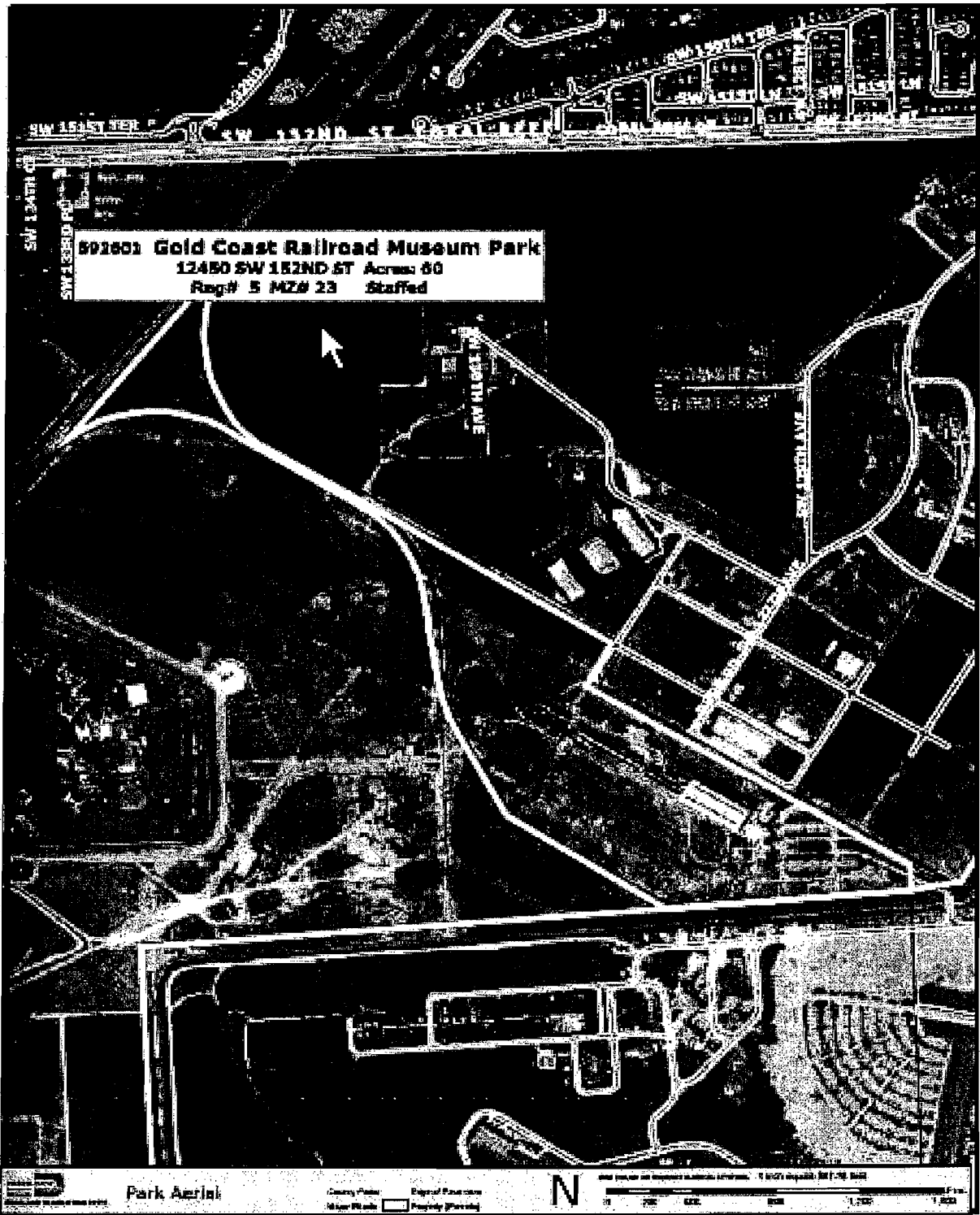
By: *Jamie Jones*  
Print Name: Jamie Jones, Secretary

(Corporate Seal)

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
County Attorney

Exhibit 1  
Gold Coast Railroad Museum



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## Program of Utilization

### A. Proposed Recreational Use and Development

The Miami-Dade County Park and Recreation Department proposes to redevelop the 49± acre Gold Coast Railroad Museum Park property as a more diversified recreational, cultural, educational, and historical operating railroad complex for the benefit of Miami-Dade County residents and tourists. This can be accomplished by expanding standard-gauge steam train facilities associated with the Gold Coast Railroad Museum Inc., adding a second museum facility focusing on the unique cultural heritage of the former military base, and by refining previously approved concession areas needed as ancillary and support spaces.

The Gold Coast Railroad Museum Inc. is a non-profit organization dedicated to preserving, exhibiting, and operating historic railroad equipment. It is one of very few operating railroad museum in the State of Florida and the United States. The Museum operates a variety of full-size rolling steam trains, fixed equipment, historical exhibits and artifacts while presenting them to the public through historical exhibits, train rides, special events and ongoing programs.

The Military Museum of South Florida is a non-profit organization dedicated to preserving, exhibiting and operating historical exhibits and displays associated with the unique heritage of the Richmond Naval Air Station. Through the relocation of the General Headquarters (Building 25) currently located on the adjacent Army base, the Museum will help residents and tourists learn and appreciated the role of the Naval Air Station in military history between 1935 and 1970.

The following is a profile of major improvements planned for the site as illustrated in the Gold Coast Railroad Museum General Plan and attached as Exhibit 2.

#### Security Fence

A security fence currently encircles the entire property. The fence on the northern boundary will largely be replaced by a security wall, pursuant to the Agreement in Principal. The fence between the Museum property and the Federal Correctional Facility will remain, but a gate will be provided for emergency use by correctional security only. The fence on the southern boundary, part of the ZM, will be removed to allow visitors greater exposure to the combined site.

#### Museum Gate and Entrance

A main gate entrance to the property will be from Zoo Drive, which is a circular driveway, providing enhanced signage and landscaping. The main entrance will direct automobile and bus traffic to the rear of the facility. Ticketing will be available at both the Mini Main Street entrance gate as well as at the parking lot entrance gate. There will be distinct ticketing booths and admission structure for the Gold

Coast Railroad Museum and Military Museum of South Florida. Two bridge culverts have been planned over the moat in order to provide controlled public access to the site.

Railroad Track Connection

The Wye (switch) will be reconnected to the Seaboard Coast Line Railroad and the rail laid on the existing road bed to the old blimp hangar area. This includes the installation of over 6,300 feet of track as a main trunk line and five switches to spurs for storage of rolling stock.

Utilities

Existing water, sewer and utility lines will be used wherever possible and new lines will be installed where needed. All utilities are currently on or adjacent to the site.

Lighting

Lighting will be installed for building and patron security as needed around improvements and parking lot.

Museum Building and Exhibition Areas

*Gold Coast Railroad Museum*

The existing museum building and exhibition area comprises a total 51,500 square feet including a 42,500 square foot exhibition shed, a 7,750 square foot model train building and 1,250 square feet of administrative space. The proposed (additional) museum building and exhibition area will comprise a total 99,500 square feet, the main elements of which are included in the table below.

*Military Museum of South Florida*

In addition to the increased railroad exhibition space and main street retail concept, the opportunity to integrate the Military Museum of South Florida within the GCRM site further broadens the visitor base to the complex. The military museum will be housed in the former NAS Richmond Building 25 and integrated into the site plan with 12,656 square feet of area that will operate under a separate organization.

<b>Use of Space</b>	<b>Square Feet</b>
Additional Train shed Exhibition (Covered Outdoors)	39,250
General Repair/Storage Facility	16,000
Restoration Shops/Viewing Gallery	11,500

Banquet/Meeting Space	10,000
Dirigible/Airbase Exhibits (Open)	5,300
Station (Entry, Sorter, Theater)	4,800
General Use Space	12,650
<b>Total GCRM New Space</b>	<b>99,500</b>
<b>Total Military Museum Space</b>	<b>12,656</b>

In addition to the new site and space improvement noted above, additional “later” phase of development includes 11,500 square feet of space for Education Building and a Model Train Expansion.

Main Street Retail

A primary feature to the redeveloped GCRM will be the Gold Coast Main Street, a pedestrian friendly small town street with restaurants, retail, café and a “town square.” The retail component comprises 49,900 square feet of restaurant and retail including over 500 feet of open “platform” market and café. Plans have been approved to have commercial and non-commercial food and concessions providing ancillary support to museum functions. Main Street is being redesigned to enhance food, drink and retail sales for the purposes of subsidizing museum operations.

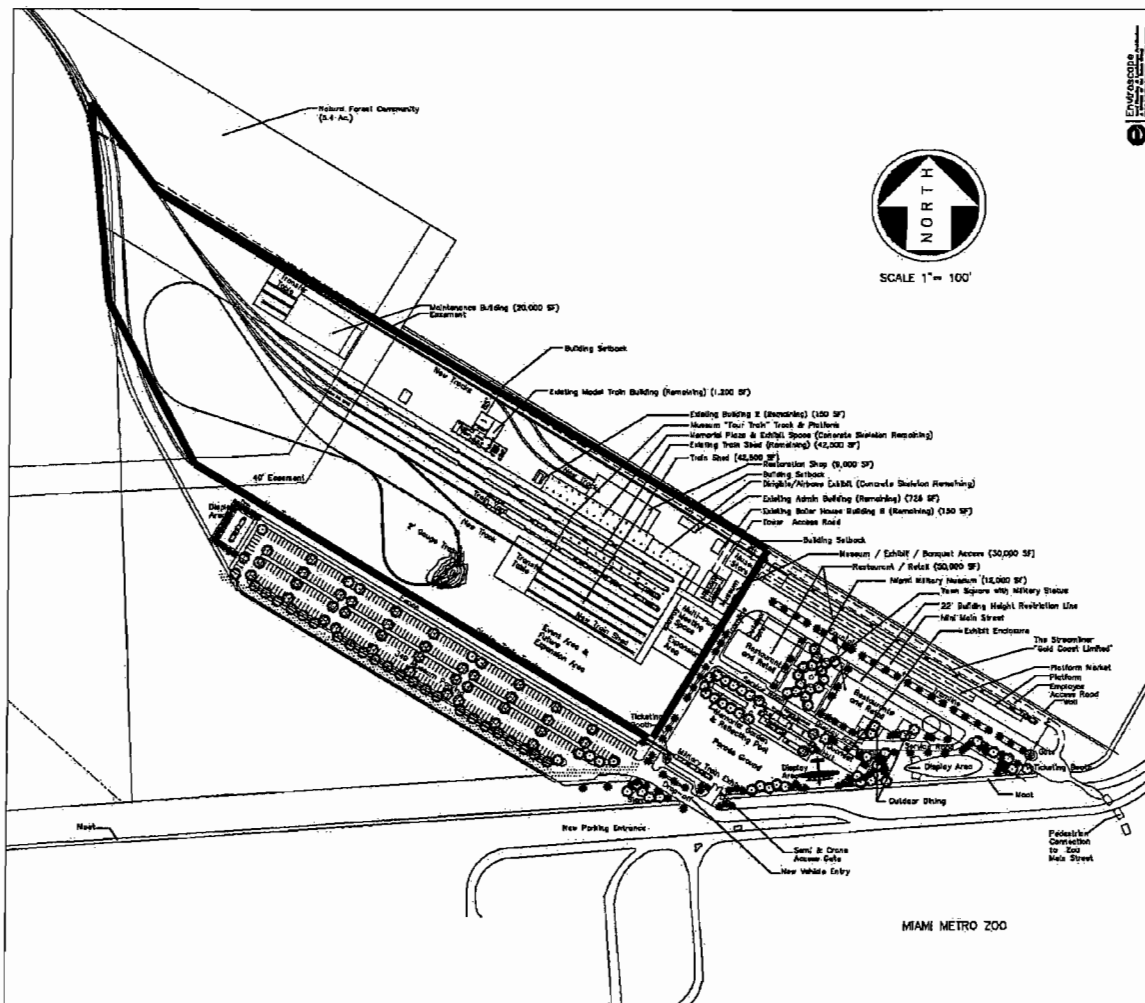
Parking Lot

The parking lot will be developed on the existing asphalt landing pad southeast of the hangar area. There will be 349 car parking spaces on the GCRM property landscaping will be placed in the parking area to meet the Miami-Dade County Landscape Ordinance.

Pine Land Preservation

The 8+acre area of Miami-Dade County Pines is located along the northern boundary and within the area of the Wye. A management program has been implemented for the protection, preservation and propagation of the pine area. Coordinated management practices will includes the Federal Correctional Institute, the Air Force and FAA, and GSA for periodic controlled burns to enhance the pines and fine adapted plants.

### Exhibit 3 Museum Area



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<b>Miami-Dade County</b> <b>Park and Recreation Department</b> <small>275 NW 2nd Street, 4th Floor, Miami, FL 33108</small>																					
<b>Project: The GOLD COAST RAILROAD MUSEUM</b> <b>GENERAL PLAN</b> <small>12450 SW 193 St. MIAMI, FLORIDA</small> <small>Drawing Title: AMENDED GENERAL PLAN</small>																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Contract #</td> </tr> <tr> <td style="width: 50%;">Date</td> <td style="width: 50%;">Scale</td> </tr> <tr> <td>9/2/09</td> <td>AS NOTED</td> </tr> <tr> <td colspan="2">Drawing #</td> </tr> <tr> <td colspan="2">1 of 1</td> </tr> <tr> <td>By</td> <td>Checked/Dep.</td> </tr> </table>		Contract #		Date	Scale	9/2/09	AS NOTED	Drawing #		1 of 1		By	Checked/Dep.								
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Exhibit 4  
Construction Rider

Gold Coast Railroad Museum

This Construction Rider is attached to and hereby made a part of the Agreement covering certain premises at the "Park" and within the "Museum Area". Words and phrases used in this Construction Rider shall have the same meaning as in the Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Construction Rider and the provisions of the terms and conditions of the Agreement, the terms and conditions of the Agreement will prevail.

I. CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES

For the purposes of this Construction Rider, improvements shall mean the structure or public utility or any other installation or physical change made to the Facility to increase its value and utility or to improve its appearance. The improvements the Contractor constructs at the premises shall be constructed in accordance with the provisions of this Agreement and such costs associated with the Improvements shall be limited to the requirements defined in Florida Statute 255.20 section (1).

A. Conceptual Plans. The Department shall have 60 days from receipt of the Conceptual Plan to review the Conceptual Plans and to solicit input from other government agencies in order to provide feedback to the Park regarding the general aesthetics, layout, traffic and pedestrian flow, site orientation and design of the proposed Improvements.

B. Sustainable Buildings Program. The Contractor shall cooperate and shall cause its subcontractors and subconsultants to cooperate with the County's Sustainability Manager incorporating green building practices into the planning and design of the Facility, pursuant to County Ordinance Number 07-65 concerning the County's Sustainable Buildings Program.

The Contractor shall cause each of its sub-contracts to include a provision that the sub-contractor and/or sub-consultant:

1. shall comply with all requirements of the County's Sustainable Building Program;
2. shall maintain all files, records, accounts of expenditures for contractor's or consultant's portion of the Project;
3. that such records shall be maintained within Miami-Dade County; and
4. that County shall have access thereto as provided in this Agreement.

C. Preliminary Plans and Specifications. Within 90 days after the Department notifies Contractor that the Department has approved the Conceptual Plan or provided notification to Contractor detailing required modifications, Contractor, at its cost, shall prepare and deliver to the Department five (5) "Preliminary Plans," including one Mylar set (A CADD file may be submitted in lieu of the Mylar set) for the construction of the Improvements, at the Premises prepared by an architect or engineer licensed to practice as such in Florida, which Preliminary Plans shall include and show, without limitation, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from the Park, curbs, gutters, parkways, lighting, design and locations for outdoor signs, storage areas, landscaping, and structures all sufficient to enable reasonably accurate cost estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect the Facility shall have on the Park. Such Preliminary Plans shall be based on Conceptual Plans previously submitted by Contractor to the Department. The Project shall be constructed within the exterior property lines of the Premises; provided that required work beyond the Premises or utilities, access and conditional use requirements will not violate this provision. The Facility shall be aesthetically and functionally compatible with the setting of the Park.

Within 60 days after the Department receives Preliminary Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Contractor specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Contractor shall exercise reasonable diligence in attempting to resolve any objections by the Department to the Preliminary Plans.

If the parties are unable to resolve any objections by the Department to the Preliminary Plans within 30 days after Contractor has received the Department's objections, the Department shall have the right to

terminate the Agreement upon notice to the other party, the parties being thereafter relieved of any liability hereunder and under the Agreement.

D. Final Plans. Within 90 days after the Preliminary Plans and specifications are approved between the parties, the Contractor, at its cost, shall prepare and deliver to the Department five (5) sets of Final Plans, including one Mylar set or CADD file, and specifications and working drawings ("Final Plans") covering the Project, which Final Plans must be consistent with the approved Preliminary Plans and signed and sealed by an architect or professional engineer licensed to practice as such in Florida. The Final Plans and all associated addenda and attachments shall be incorporated to the Agreement by reference.

E. Permits. Not later than the date that Contractor receives the Department's approval of the Final Plans as required in this Section, Contractor shall commence seeking from all governmental agencies having jurisdiction over the Park and the Facility all such required permits, and Contractor shall exercise due diligence in attempting to obtain such permits.

Subject to the timing requirements contained in the next paragraph, the obtaining of any such permits shall not be considered as complete until any review and/or appeal is final by the highest body authorized to determine same or until the time for such appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any permit, the obtaining of the permits shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal there from shall have expired, or if any appeal has been taken, until the appeal has final determinations.

If Contractor is unable to obtain such permits within 120 days from the date Contractor delivers copies of the Final Plans to the Department as herein required, the Department shall have the right to terminate the Agreement upon notice to the other party. If Contractor is unable to obtain such permits within such period of time due solely to delays beyond the reasonable control of Contractor including, without limitation, acts of God, inclement weather, and like matters as mutually agreed between the Contractor and the Department, such period of time may be extended by the Department up until such permits have been obtained. However, if such permits are not obtained within 270 days from the date Contractor delivers copies of the Final Plans to the Department, notwithstanding the reason therefore, or by such deadline as parties may reasonably agree the Department shall have the right to terminate the

Agreement upon notice to the other party. When Contractor obtains all such permits, it shall deliver copies of them to the Department.

F. Commencement and Completion of Construction of the Project. Within 30 days from the date that the Department receives copies of the permits and authorizations regarding construction of the Project, which permits and authorizations shall be delivered to the Department within 3 business days of receipt by the Contractor, the Department shall deliver a Notice to Proceed with Construction and shall turn over possession of the Facility to Contractor, and Contractor shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Project shall be in accordance with the Final Plans. The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

All work in connection with the construction of the Project shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws. Contractor will permit unobstructed inspection by the Department's staff to determine compliance with the approved plans and specifications throughout construction.

The Contractor nor its subcontractors shall discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to his/her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except where based on a bona fide occupational qualification; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts between the Contractor and its subcontractors shall include the above non-discrimination provisions.

Contractor agrees that construction of the Project shall be completed within one year of the date Contractor was provided possession of the Facility for construction. However, both parties agree that Contractor's obligation to commence construction of the Project and diligently pursue completion thereof is subject to delays resulting from causes beyond the reasonable control of Contractor including, without limitation, acts of God, inclement weather, and like matters.

Upon completion of construction of the Project, Contractor shall, at its cost, obtain a survey of the Facility and deliver to the Department "as built" drawings, including copies all of CADD drawing, accurately reflecting the Project at the Park. Both parties agree to execute and attach to the Agreement, a new Exhibit B showing the exact location of the Facility at the Park.

G. Provisions Applicable during Construction of Project In addition to the other provisions of the Agreement, the following provisions shall be applicable during the period of time that Contractor constructs Project:

1. Contractor shall notify the Department of Contractor's intention to commence construction of the Project at least twenty (20) days before the delivery of the Notice to Proceed by the Department.
2. All construction shall be performed by licensed contractors approved by the Department. Contractor shall furnish the Department with a true copy of Contractor's contract with the general contractor showing a breakdown of costs. Such contract shall give Contractor the right, but not the obligation, to assume the general contractor's obligations and rights under that contract if the general contractor should default.
3. During the construction of the Improvements, the Department or its designee shall periodically inspect the construction to ensure conformity with the approved improvement documents, and any changes thereto requested by the Contractor and approved by the Department in writing.
4. During the construction of Museum improvements, a Project Manager ("PM") for the Department may be assigned and shall be responsible to attend weekly/monthly construction meetings and periodically inspect and review the progress of construction to ensure adequate performance and conformity with the approved plans. Any changes requested by the Contractor must be in writing and approved by the Department prior to

implementation. If a Project Manager is assigned, the Lessee shall at its sole cost remit to the County a fee for the PM that shall not exceed 1% of construction costs.

H. Construction Bonds:

1. At least ten (10) days prior to any construction work on the Premises is commenced, or prior to the purchase of any materials, equipment or supplies for construction, the Contractor shall deliver to the County and record in the public records of Miami-Dade County, Florida, a payment and performance bond with a surety insurer authorized to do business in the State of Florida as a surety in the full amount of the construction cost of the Improvements. Such bond shall be in the form provided and attached hereto as part of the Construction Rider, and shall name the Contractor as the principal and the County as the obligee.

2. Surety Bond Qualifications: The following specifications shall apply to bid, performance, payment, maintenance, and all other types of bonds.

A. All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond Amount</u>	<u>Best's Rating</u>
500,001 to 1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,001 to 10,000,000	A VIII
Over 10,000,000	A IX

On bond amount of 500,000 or less, the provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

1. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued,
2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

B. Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

C. The attorney-in-fact or other officer who signs a Contract Bond for a surety company must file with such bond a certified copy of his power of attorney authorizing him to do so. The Contract bond must be countersigned by the surety's resident Florida Agent.

The Contractor may in lieu of a surety bond, submit a cash bond, conditioned upon the faithful performance of the work in strict accordance with this Contract and with the Plans and Specifications and the completion of the same free from all liens and within the time limit herein specified; the said Bond shall be so worded as to make the Contract a part thereof and shall contain a clause providing the right of suit or action for whose benefit said bond shall be executed as disclosed by the text of said Bond and Contract to the same extent as if he or they were the obligee or obligee therein specifically mentioned, and all such persons shall be held or deemed to be obligee thereof.

Florida Statutes 255.05 provide for the following conditions to be made in all Performance and Payment Bonds relating to public projects:

"A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days

after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection.”

“A claimant who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment.”

“No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies.”

3. The bonds shall provide the following, without limitation:

a. That a payment bond in an amount not less than the cost of construction of the Project is obtained that is conditioned to secure the completion of the Project free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen in substantially the form attached hereto;

b. That a performance bond in an amount not less than the cost of construction of the Project is obtained that insures that the construction work shall be effected by the general contractor or, on their default, the surety in substantially the form attached hereto; and,

c. That the surety will defend and indemnify Miami-Dade County and Contractor against all loss, cost, damage, expense and liability arising out of or connected with the construction of the Project, up to the maximum bond requirement amount.

4. In the event that, for any reason, either or both of the Contractor’s Payment and Performance bonds lapse or are held to be no longer valid or enforceable before the satisfaction of any and all claims by material men, laborers, subcontractors, or any suppliers of any kind, the Contractor shall pay all such claims, and indemnify, defend, and hold the County harmless against such claims.



I. Prior to the commencement of construction. Contractor shall provide or cause its subcontractors to provide an original policy for Builders Risk/Installation Floater on an "All Risk" basis in an amount not less than one hundred percent (100%) of the insurable value of the building(s) or structure(s) or material(s). The policy shall be in the name of Miami-Dade County and the Contractor as their interests may appear. This insurance is to be maintained until substantial completion of the work, as determined by the Department.

*(This insurance is in addition to the insurance required elsewhere).*

1. No liens shall be attached to the Park or any part thereof.
2. Prior to the commencement of any work, Contractor shall demonstrate to the Department's satisfaction that all construction financing is in place.
3. Contractor shall work closely with the Department in scheduling and engaging in Contractor's construction activity so as not to disrupt Park events, including but not limited to Special Events. Where conflict may occur, the Department shall solely make the determination as to Contractor's right to continue work and the desirability of temporarily halting or continuing activity by Contractor.
4. Contractor shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by Contractor's failure to cease work after written notice from the Department.

J. Art in Public Places. The Contractor shall, upon execution of the Agreement, and prior to preparing the Final Plans and specifications, through the Department initiate contact and confer with the Art in Public Places Representative for review of applicability of an art component to the Project. Should Art in Public Places determine that the installation of an art component is applicable to this Project based on the provisions of Ordinance No. 73-77 and subsequent amendments and guidelines, and should it decide to pursue said installation, the Contractor shall further confer with the Arts in Public Places Representative to develop a concept for art appropriate to the Project, and the Art in Public Places Professional Advisory Committee as to the type(s) of art, location(s) and possible artist(s). The Director of the Arts in Public Places program shall approve the final concept and location. The Art in

Public Places Trust will make the final choice of the artist(s), upon recommendation of the Art in Public Places Professional Advisory Committee. As part of its Master Plan, Art in Public Places encourages and will give preference to collaborative projects between artist(s) and the Contractor to promote the integration of artwork and site. Such collaborative efforts shall include the active involvement of both the Contractor and the artist(s) during design development of the Project. The Contractor shall coordinate the installation of anchorages, special lighting, or plumbing or other utility or installation and connections as required for the proper installation of the artwork in accordance with the artist's concept(s) as part of their services under this Agreement.

Should the Art in Public Places fee be assessed against this Contract, the Contractor shall at its sole cost expend one-and-a-half-percent (1.5%) of the cumulative construction cost for the refurbishment of existing works of art at the batting cage facility and/or for the commissioning of new works of art. All aspects concerning the acquisition of new works of art or the removal and/or relocation of existing works of art located within the facility shall comply with the Art in Public Places (APP) ordinance and the program Master Plan & Implementation Guidelines as are appropriate in the determination of the County. The Contractor may be requested to assign a representative to act as a liaison with APP for purposes of implementing the requirements set forth herein. The County reserves the right to make final determination on how funds appropriated herein are expended.

## II. THE DEPARTMENT'S CONSTRUCTION OBLIGATIONS

A. Conditions of Premises. The Department shall deliver physical possession of the Premises to Contractor in an "as is" condition so that Contractor may commence construction.

B. Reasonable Access. The Department shall provide reasonable access to allow Contractor to have utilities brought to the Premises and to have constructed the approved improvements described in this Agreement.

C. Liquidated Damages. NA