



MEMORANDUM

Agenda Item No. 8(H)(1)

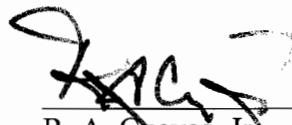
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 15, 2011

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

SUBJECT: Resolution authorizing waiver of formal competitive bid procedures pursuant to Section 5.03(D) of Home Rule Charter and Section 2-8.1(B) of the Code of Miami-Dade County by two-thirds vote of Board members present to approve the concession and operating agreement between Kelley Fleet, Inc. and Miami-Dade County and authorizing County Mayor to execute same and exercise any and all rights conferred therein

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Co-Sponsor Commissioner Sally A. Heyman.



R. A. Cuevas, Jr.
County Attorney


RAC/cp

Memorandum



Date: November 15, 2011

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

From: Carlos A. Gimenez
Mayor 

Subject: Bid Waiver and Agreement with Kelley Fleet Inc. for the Concession and Operation of the Drift Boat Fishing Facility at the Bill Bird Marina at Haulover Park

Recommendation

It is recommended that the Board adopt a resolution and approve a bid waiver for a new Agreement between Kelley Fleet, Inc. ("Kelley Fleet"), and Miami-Dade County, pursuant to section 5.03(D) of the Home Rule Charter and Section 2-8.1(B) of the Code of Miami-Dade County. This Concession Agreement for a period of 10 years is in the best interest of the County to continue the relationship with a proven business ensuring a consistent revenue stream in an unstable economic environment. The Kelley Fleet drift boat fishing operation is an institution that defines Haulover Marina, that provides much needed additional revenues and will provide renovation of the existing concession building and other amenities associated with the agreement.

Market research conducted by the department concluded that there is very limited willingness or interest, from the companies contacted, to expand and to move their current operations to Miami-Dade County. Furthermore, only one company other than Kelley Fleet indicated having the financial capacity to operate at least three vessels at Haulover Marina. Companies from Palm Beach, Broward, Miami-Dade and Monroe Counties that provide a similar drift boat fishing operation as Kelley Fleet were contacted.

Scope

Kelley Fleet is located in the Bill Bird Marina at Haulover Park at 10800 Collins Avenue, Miami Beach (Commission District 4), and is open to all residents and visitors of Miami-Dade County. The proposed agreement is expected to have a County-wide impact.

Fiscal Impact/Funding Source

There is a direct positive fiscal impact to the County relating to this proposed revenue generating agreement. Current average annual revenues to the department are \$37,200. The new agreement negotiated additional revenues to the department of \$29,200 annually (or \$292,000 over the term of the 10 year agreement). This new agreement further increases much needed revenue to the department. Combined, the current average annual revenue (\$37,200) and the additional annual revenue (\$29,200) total \$66,400 annually or \$664,000 over the term of the 10-year agreement.

Track Record/Monitor

Kelley Fleet has operated, managed, and maintained drift fishing boats at Haulover Marina since February of 1982. Kelley Fleet has provided a high level of service to the County and customers that meets or exceeds the requirements of the current agreement. The remittance of monthly fees has been consistent and timely. Additionally, Kelley Fleet has an outstanding track record of providing exceptional customer service and satisfaction.

The Concession Agreement (attachment #1) will be monitored and managed by Jon Seaman, MDPR Contract Manager.

Background

George Kelley, at the time of the Request for Proposals in 1981, had already been in the drift boat fishing business at Haulover for nearly 24 years, starting in 1957, owning five independently operated drift fishing boats. In February of 1982, Kelley Fleet was awarded the contract.

On February 3, 1982, the Lease and Concession agreement (R-122-82) was executed with Kelley Fleet, Inc. with an initial term of 10 years, including two additional options to renew for 10 years each for a total term of 30 years, for the operation of drift boat fishing services to the general public at Haulover Park. The current agreement with all options to renew exercised will expire on January 31, 2012. This Lease and Concession agreement was subsequently amended three times, in 1992 (R-529-92), 1999 (R-894-99) and in 2002 (R-183-02) see (attachment #2). The first amendment clarified a clerical error in the initial term ending date, approves the renewal of the Agreement for an additional 10 years and allowed for Kelley Fleet to provide free half-day trips to the Department in order to allow children and seniors participating in programs the opportunity to experience drift boat fishing. Due to a severe downturn in business following Hurricane Andrew, increased debt service incurred from replacing a boat lost in the storm, and taking into account a reduced fleet size, the Lease and Concession agreement was amended in 1999. This amendment reduced the minimum annual guarantee from \$60,000 to \$36,000 annually and provided for a payment of arrearages of \$33,478.76. The third amendment approved the second renewal for 10 years effective February 1, 2002 through January 31, 2012 and reduced the number of wet slips for use by Kelley Fleet from seven to the current amount of three, thus allowing additional revenue generating commercial wet slips for the department's use. Kelley Fleet currently provides a concession service to patrons and visitors of the marina and operates three drift fishing boats.

George Kelley transformed the drift boat fishing fleet into a professionally operated and customer-focused organization. Kelley Fleet has weathered economic downturns throughout the years and has consistently employed boat operators, deck hands and dock workers. Successive waves of economic turbulence have hit Haulover Marina hard. The once popular restaurant, sightseeing cruises and dinner boats have all gone out of business; however Kelley Fleet, even without these supporting anchor businesses, has persevered. Kelley Fleet has become an institution with more than 50 years at Haulover Marina.

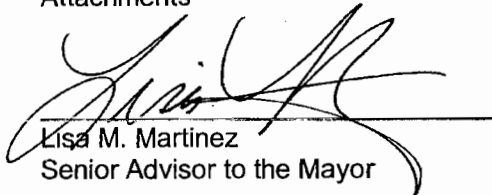
Kelley Fleet's current average monthly payment is \$3,100 in base rent and percentage of gross sales fees. In the proposed agreement, Kelley Fleet agreed to continue its minimum monthly payment of \$3,100 and will pay an additional \$25,000 annually each year for the term of the agreement (\$2,084 in monthly payments) totaling an additional \$250,000 over the term of the agreement. Kelley Fleet has also agreed to defray the cost of waste removal and collection by paying an additional \$350.00 per month (\$4,200 per year or \$42,000 over the term of the agreement) to the Department. The total minimum expected payments of \$664,000 over the term of the agreement represents an increase of \$292,080 (78.5% increase) from the current rent structure over this time period.

Honorable Chairman Joe A. Martinez
and Members, of the Board of County Commissioners
Page 3

The new agreement requires that Kelley Fleet will also be responsible for renovations to their existing building requiring a minimum capital investment of \$25,000. The 10 year term of the proposed agreement will make it feasible for Kelley Fleet to make the capital improvements within the first year of the agreement and pay the new higher minimum annual guarantee to the County. The agreement also provides that the Security Deposit of \$30,000, currently in place, continue with the new proposed agreement.

This Agreement, with such historical significance in name recognition and service to the community, is in the best interest of the residents and visitors of Miami-Dade County; additional revenues resulting from this agreement will benefit the entire County.

Attachments



Lisa M. Martinez
Senior Advisor to the Mayor

3A

Memorandum



Date: September 6, 2011

To: Carlos A. Gimenez
Mayor

From: Jack Kardys, Director
Park and Recreation Department

Subject: Bid Waiver and Agreement with Kelley Fleet Inc. for the Concession and Operating of the Drift Boat Fishing Facility at the Bill Bird Marina at Haulover Park.

Recommendation

It is recommended that the Board adopt a resolution and Bid Waiver for a new Agreement with Kelley Fleet, Inc. ("Kelley Fleet"), and Miami-Dade County, pursuant to section 5.03(D) of the Home Rule Charter and Section 2-8.1(B) of the Code of Miami-Dade County. This Agreement is in the best interest of the County and is for a period of 10 years for the operation of the drift boat fishing fleet and renovation of the existing concession building and other amenities associated with the agreement.

Market research conducted by staff from the department concluded there is very limited willingness or interest, from the companies contacted, to expand and to move their current operations to Miami-Dade County. Staff identified only one other company other than Kelley Fleet having the financial capacity to operate at least three vessels.

The new agreement requires that Kelley Fleet will also be responsible for renovations to their existing building requiring a minimum capital investment of \$25,000. The 10 year term of the proposed agreement will make it feasible for Kelley Fleet to make the capital improvements within the first year of the agreement and pay the higher minimum annual guarantee to the County. The agreement also provides that the Security Deposit of \$30,000, currently in place, continue with the new agreement.

Background

Since 1957, George Kelley, has operated a drift fishing boat at Haulover Marina. In 1981, a Request for Proposals (RFP) was initiated to consolidate drift boat operations at Haulover Marina. Subsequently, in February of 1982, George Kelley doing business as Kelley Fleet, Inc. was awarded a contract that consolidated operations of all drift fishing boats at Haulover Marina.

On February 3, 1982, the Lease and Concession agreement (R-122-82) was executed with Kelley Fleet, Inc. for the operation of drift boat fishing services to the general public at Haulover Park. This Lease and Concession agreement was subsequently amended three times, in 1992 (R-529-92), 1999 (R-894-99) and in 2002 (R-183-02) see (attachment #1). The first amendment (1992) clarified a clerical error in the initial term ending date and allowed for Kelley Fleet to provide free half-day trips to the Department in order to allow children and seniors participating in park programs, the opportunity to experience drift boat fishing. Due to a severe downturn in business following Hurricane Andrew, increased debt service incurred from replacing a boat lost in the storm, and taking into account a reduced fleet size, the Lease and Concession agreement was amended in 1999. This amendment reduced the minimum annual guarantee from \$60,000 to \$36,000 annually and provided for a payment of arrearages of \$33,478.76. The third amendment (2002) reduced the number of wet slips for use by Kelley Fleet from seven to the current amount of three, thus allowing additional revenue generating commercial wet slips for the department's use. Kelley Fleet Inc. currently provides a concession service to patrons and visitors of the marina and operates three drift fishing boats.

The total minimum expected payments of \$664,000 over the term of the new agreement represents an increase of \$292,080 (78.5% increase) from the current rent structure over this time period. Kelley Fleet operates a concession at the facility for the patrons and visitors of the Marina. Kelley Fleet will be responsible for renovations to their existing building spending a minimum of \$25,000.

George Kelley transformed the drift boat fishing fleet into a professionally operated and customer-focused organization. Kelley Fleet has weathered economic downturns throughout the years and has consistently employed boat operators, deck hands and dock workers. Successive economic turbulence has hit Haulover Marina hard. The once popular restaurant, sightseeing cruises and dinner boats have all succumbed to the effects of these downturns; however Kelley Fleet, even without supporting strong anchor businesses, has persevered. Kelley Fleet has become an institution with more than fifty (50) years at Haulover Marina.

Kelley Fleet at the recently renamed Bill Bird Marina is a part of the Master Plan for the renovation and business operation of the entire park. The Master Plan is now being reviewed for possible additional business opportunities. New agreements with the dry stack boat operator and possibly a new restaurant (RFP) replacing the former facility will enhance the customer experience. The Department recently completed the solicitation process for a new concessionaire for the beach facilities and is looking long term at enhancing facilities for the entire park. The new marina is quickly filling and becoming a destination point for boaters throughout the entire county.

Kelley Fleet always provides free fishing trips to our summer programs and George Kelley and his wife have supported and promoted special events at Haulover throughout the years including boat parades, Coconuts Festivals, Sandy Shoes Festivals, concerts, and 5K and 10K runs in their commitment to making Haulover a great park and destination for residents in the community

Their service to the patrons and visitors of this community has been outstanding. This Agreement with such historical significance in name recognition and service to the community is in the best interest of the residents and visitors of Miami-Dade County; additional revenues resulting from this agreement will benefit the entire County.

C: Lisa M. Martinez, Senior Advisor to the Mayor



MEMORANDUM

(Revised)

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

DATE: November 15, 2011

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

SUBJECT: Agenda Item No. 8(H)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- 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
Veto _____
Override _____

Agenda Item No. 8(H) (1)
11-15-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING WAIVER OF FORMAL COMPETITIVE BID PROCEDURES PURSUANT TO SECTION 5.03(D) OF HOME RULE CHARTER AND SECTION 2-8.1(B) OF THE CODE OF MIAMI-DADE COUNTY BY TWO-THIRDS VOTE OF BOARD MEMBERS PRESENT TO APPROVE THE CONCESSION AND OPERATING AGREEMENT BETWEEN KELLEY FLEET, INC. AND MIAMI-DADE COUNTY AND AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the waiver of formal competitive bidding procedures pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8.1(b) of the Code of Miami-Dade County, Florida by a two-thirds (2/3) vote of those members present to approve a Concession and Operating Agreement between the County and Kelley Fleet, Inc., in substantially the form attached hereto as Attachment 1, and authorizes the County Mayor or Mayor's designee to execute such Agreement on behalf of the County and to exercise any and all other rights conferred therein.

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

7

Joe A. Martinez, Chairman

Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro

Esteban L. Bovo, Jr.

Sally A. Heyman

Jean Monestime

Rebeca Sosa

Xavier L. Suarez

Lynda Bell

Jose "Pepe" Diaz

Barbara J. Jordan

Dennis C. Moss

Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of November, 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

Kelley Fleet Concession and Operating Agreement

THIS AGREEMENT made and entered into as of this 1st day of February, 2012 by and between Kelley Fleet, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 1209 Northeast 98 Street, Miami, FL. 33138 (hereinafter referred to as the "Operator"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, the County owns the Bill Bird Marina at Haulover Park (the "Park") for the recreation and enjoyment of park patrons, which facilities are administered for the County by its Director of the Park and Recreation Department (the "Department"); and,

WHEREAS, the Operator has operated a concession at the Park since [February 3, 1982] under a Lease and Concession Agreement with the County; and,

WHEREAS, the Operator has agreed to continue operating the Drift Boat Fishing Concession fleet consisting of three (3) commercial vessel slips and one small concession building (the "Concession") at the Park under the requirements of this new Agreement including any new terms and conditions, all associated addenda and attachments, incorporated herein by reference; and,

WHEREAS, the operation of the Concession by this Operator is recommended as being in the best interest of the County, and formed the basis for award of this Agreement,

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

1. **Use:** The County hereby grants unto the Operator, and the Operator hereby accepts from the County for the Term (as defined below), at the rate and upon the covenants and conditions as set forth, this Agreement to operate the Concession at the Park. The Operator shall use the Concession only for the uses permitted herein. The Operator shall not conduct any business nor provide any services nor sell any item or product except for those permitted under the terms of this Agreement, and any sales by the Operator of services or items not specifically authorized in writing by the Department shall constitute a

default. The unapproved services or items shall be discontinued immediately by the Operator, upon written notice from the Department. Operator shall conduct its business at all times in accordance with this Agreement.

2. **Operations:** Except when and to the extent that the Concession may be untenable by reason of damage by fire or other casualty, Operator shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein all of the Concession, other than such minor portions thereof, as are reasonably required for storage and office purposes; such storage and office space shall only be used in connection with the business conducted by Operator in the Concession and will have on the premises adequately trained personnel for efficient service to customers.
3. **Limitations on Use:** Subject to Operator's right to use the Concession for the purposes specified in this Agreement, Operator shall not suffer or permit the Concession or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements under paragraph 53 herein; (ii) cause structural injury to the Concession or Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Concession or Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Concession or Park, or the proper and economic functioning of any other common service facility or common utility of the Concession or Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Concession or Park; or (vii) impair any of the Operator's other obligations under this Agreement.
4. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Operator's business in the Concession, or any part thereof, and if failure to secure such license or permit would in any way adversely affect the County in the sole opinion of the County, Operator, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Operator shall at all times comply with the terms and conditions of each license and permit.
5. **Exclusivity/Non-exclusivity:** This Agreement is exclusive only to the type of service and items offered and further described in this document and in no way prevents the County from authorizing or offering competitive services, products or items by other concessionaires or others in other premises owned and

operated by the County or from authorizing other unrelated concession services within the Park. The Operator shall have no rights to any other location or concession that may be made available by the County.

6. **Exhibits:** The Exhibits listed in this paragraph and attached to this Agreement are hereby incorporated in and made a part of this Agreement:

Exhibit A: Approved Hours of Operation, Retail Items and Fishing Prices

Exhibit B: Facility Map, list of vessels

Exhibit C: Miami-Dade County Park and Recreation - Marina Rules and Regulations and Background Affidavit

Exhibit D: Miami-Dade County Park and Recreation - Operations Manual (6.8)

7. **Property Description:** The Bill Bird Marina at Haulover Park Concession site located at 10800 Collins Avenue, Miami, Florida 33154 as shown on Exhibit B, attached hereto and incorporated herein by reference, hereinafter referred to as the "Concession Site."

8. **Term:** The term of this Agreement shall be ten (10) years. The term of this Agreement shall begin on the first (1st) day of the month following execution of this Agreement ("Commencement Date").

9. **Option to Renew:** *Intentionally Left Blank*

10. **Monthly Guarantee:** Operator, in consideration of the use and occupancy of the Concession, does hereby covenant and agree with the County to pay to the County without deduction or set off of any kind the sum of sixty two thousand two hundred and eight dollars, \$62,208.00 (plus tax) per annum ("Annual Guaranty"), in monthly installments of five thousand one hundred eighty four dollars, \$5,184.00 (plus tax) ("Monthly Guarantee") on the first (1st) day of each month beginning on the Commencement Date without billing.

11. **Percentage of Monthly Gross Receipts:** In addition to the Monthly Guarantee, Operator agrees to pay to the County, monthly, an amount equal to the following:

A. [Incidental sales] at the rate of ten (10%) percent (plus tax) of monthly gross receipts, from all sales, excluding drift boat fees.

B. Drift boat fees at the rate of seven (7%) percent of annual gross sales over \$700,000 up to \$999,999 and ten (10%) percent of drift boat sales over \$1,000,000,

hereinafter referred to as "Percentage of Monthly Gross Receipts". Such payments are governed in

paragraph 18 of this agreement.

12. **Sales Tax:** The Operator shall be liable for the prevailing State of Florida Sales and Use Tax imposed on payments due (currently at the rate of 7%) on the amounts payable to the County, in addition to the Monthly Gross Receipt payments and percentage of Monthly Gross Receipts, under this Agreement. This Sales and Use Tax shall be payable to the County, when payment is due, which in turn will remit same, less authorized handling deductions, to the State. Said tax is applicable to Monthly Guaranteed unless otherwise determined by the State of Florida.
13. **Additional Taxes:** If at any time during the term of this Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on Fees (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, against the County on account of the Monthly Guarantee, Annual Guarantee or Monthly Gross Receipts (“Fees”) payable herein, such tax, charge, capital levy, or excise on Fees or other taxes shall be deemed to constitute real estate taxes on the Concession and the premises for the purposes of this paragraph.
14. **Taxes on Operator's Personal Property:** Operator shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Concession by Operator.
15. **Late Payment Charge:** In the event that the Operator fails to make any payments on time, as required to be paid under the provisions of this Agreement, a penalty at the rate of 1.5% per month or any portion of a month shall accrue from the due date, against the delinquent payment(s) until same are paid. The right of the County to require payment of such late payment charge and the obligation of the Operator to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.
16. **Application of Payments:** Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Monthly Guarantee, Percentage of Monthly Gross Receipts and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
17. **Worthless Check or Draft:** In the event that the Operator delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Operator shall incur and pay a

service charge of \$35.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment to be made within not more than five (5) days from written notice of such default. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department. A second such occurrence of dishonored check during the Agreement term will be a breach of contract and, at the County's sole option, will constitute a default allowing for termination.

18. **Payment of Fees:** The Monthly Guarantee payable by Operator to the County herein shall be payable in twelve (12) equal monthly installments on the first day of each month during the term of this Agreement. Such payments, as well as other amounts payable by Operator to the County under the terms of this Agreement, all of which shall be deemed to be additional Fees for the purposes of collection only herein, shall be paid promptly when due, without notice for any reason whatsoever and without abatement, except as hereinafter provided. Percentage of Monthly Gross Receipts shall be paid to the County on or before the tenth (10th) day following the end of each month during the term of this Agreement and on or before the tenth (10th) day of the month following the expiration or earlier termination of the term. All Fees provided for in this Agreement shall be paid or mailed to:

Miami-Dade Park and Recreation Department
Finance Management Section
275 N.W. 2nd Street, 3rd Floor
Miami, FL 33128

(Checks shall be made payable to the "Miami-Dade County Board of County Commissioners.")

19. **Accord and Satisfaction:** No payment by Operator or receipt by County of a lesser amount than any payment of Monthly Guarantee or Percentage of Monthly Gross Receipts herein stipulated shall be deemed to be other than on account of the earliest stipulated Monthly Guarantee or Percentage of Monthly Gross Receipts then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Monthly Guarantee or Percentage of Monthly Gross Receipts be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Monthly Guarantee or Percentage of Monthly Gross Receipts or pursue any other remedy provided in this Agreement, at law or in equity.

20. **Gross Receipts:**

A. Agreement Year: "Agreement Year" means a twelve-month period beginning on the Commencement Date.

B. Gross Receipts: "Gross Receipts" means all receipts from the sale of services or merchandise by Operator, concessionaires of Operator sold in, upon or from the Concession, including such sales as shall in good faith be credited by Operator in the regular course of business to personnel employed at the time of sale at the Concession, including mail and telephone orders received at the Concession and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Operator for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Operator's trade fixtures, operating equipment or other property used by Operator in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Operator, whichever of such events shall first occur.

C. Operator's Certification of Receipts: Operator shall submit to County on or before the tenth (10th) day following the end of each month during the Term of this Agreement and on or before the tenth (10th) day of the month following the expiration or earlier termination of the Agreement, a written statement, signed by Operator and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Operator shall submit to Department on or before the sixtieth (60th) day following the end of each of Agreement Year an annual written statement, signed by Owner, CEO, or financial officer of the Operator and certified by that person to be true and correct, setting forth the amount of Gross Receipts during the preceding Agreement Year, which statement shall also be duly certified by an independent certified public accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

D. Examination of Operator's Books and Records: Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross Receipts payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Operator's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Operator's business. All information obtained by Department or its authorized representatives from Operator's books and records shall be kept confidential by County and all such representatives except in connection with requirements of Florida's public records laws.

E. Operator's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Operator shall prepare and keep, for a period of not less than three (3) years following the end of each Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Operator. Operator shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. The Operator shall use a cash register that has the ability to take "X" readings that shall not alter the "Z" totals. The register must run dual tapes (one journal, one receipt), or have the ability to print out an itemized account and print the date and time on the journal tape and on individual receipts. Operator shall keep, for at least three (3) years following the end of each Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Operator's Gross Receipts.

The acceptance by County of payments of Percentage of Monthly Gross Receipts or reports thereon shall be without prejudice and shall in no case constitute a waiver of County's right to examination of Operator's books and records of its Gross Receipts and inventories of merchandise.

F. Audit of Operator's Business Affairs and Records: County shall have the right to cause, upon five (5) days' written notice to Operator, a complete audit to be made by: (i) a designated external auditing firm; (ii) a certified public accounting firm selected by the Department; (iii) The Department's internal auditing staff; or (iv) the Audit and Management Services Department of the County. Operator shall make all such records available for said examination at the Concession or at some other mutually agreeable location. If the result of such audit shall show that Operator's statement of Gross Receipts for any period has been understated, Operator shall pay County the amount due. If such understatement is three percent (3%) or more, Operator shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as Fees. A

report of the findings of said accountant shall be binding and conclusive upon County and Operator.

G. If Operator fails to record, maintain, or make available sales supporting documentation as specified above, Operator shall be deemed to be in default of this Agreement.

21. **Security Deposit:** Within 30 calendar days from the execution of this Agreement, Operator shall furnish to the Department a Security Deposit in cash equal to thirty thousand dollars redeemable at the end of the Agreement term except for such conditions as further described.

In the event that the Operator abandons performance or fails to perform as required, the County will execute on the security provided, draw upon or retain the cash deposit, whichever is the case, and Operator will be responsible for the balance of the debt, if any, that is owed. Additionally, if the County must draw upon any portion of the form of security provided, Operator hereby agrees to restore the security to its original amount within seven (7) business days of receiving notice by the County that the security was drawn upon.

22. **Reporting Requirements:**

- A. Operator shall submit to the Department at its own expense, within sixty (60) days the Agreement Year financial statements, including a balance sheet, income statement, a report of Gross Receipts per month and the summary of activities from operations under this Agreement.
- B. Examination of Operator's Books and Records: Such books and records as are necessary to determine the accuracy of any reports to be submitted to County shall be subject to examination by County or its authorized representatives at reasonable times during Operator's term at County's expense and in such manner as not to interfere unreasonably with the conduct of Operator's activities.
- C. The Operator agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation and adequate procedures for determining the accuracy of gross receipts and required performance measures.
- D. The Operator shall provide an Affidavit confirming compliance with the Shannon Melendi Act codified in Chapter 26, Article III of the Miami-Dade County Code.
- E. The Operator agrees to keep an accurate account of passenger counts per (46 U.S.C. 3502) and total number of passengers shall be provided to the Department and/or Coast Guard upon request.

The Department shall have the right to request or perform an audit to determine compliance with the terms of this Agreement.

23. **County Approval:** The Operator agrees that it will obtain prior written approval from the Department in all of the following matters:

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- A. Changes from originally approved specifications, pricing, activities, signage, and graphics.
- B. Equipment Operator plans to install requiring any building modifications.
- C. Aesthetics of vessels, concession building and general area of concession.
- D. Any use of the County's, Park's or Facility's name.
- E. Hours of Operation
- F. Uniforms to be used by employees which shall be consistent with or better than those normally used by professionally operated boat storage facilities, and be distinct from those worn by County employees.

Further, it is understood by the Operator that should any of the above items be disapproved, Operator may offer alternative solutions. The County reserves the right with stated just cause to require the Operator to change within a stated time any and all aforementioned items it deems in need of change, despite previous approval of same.

- 24. **Public Contact of Operator's Employees:** Operator's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the County to demand his or her removal from duties in the Concession. Operator's employees shall not be considered agents of the County.
- 25. **Hours of Operation:** The Concession will be required to operate seven (7) days a week during those hours approved by the County. Sufficient staff will be available to provide outstanding service. The County may require a change in hours of operation, if, in the reasonable discretion of the County, such a change is desirable in providing the best service to the public.
- 26. **Pricing:** Operator shall maintain the pricing schedule submitted to and approved by the Department. If the Operator wishes to change its standard prices, Operator will provide to the County a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date for approval or disapproval at any time during the Term when price changes are contemplated. Pricing for special events or services shall be expeditiously approved by the Department.
- 27. **Personnel:** The Operator shall provide the Department with the name and telephone number of a management person of the Operator who will be on call at all times for emergencies or other matters related to the operations under this Agreement. The Operator shall ensure that all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. The

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Operator shall ensure that all employees having public contact are able to understand and communicate in spoken English.

28. **Background Check Ordinance:** The Operator shall at all times abide by the rules and regulations of Miami-Dade County Ordinance 08-07, regarding the Park and Recreation Department Rules and Regulations.
29. **Signs:** The nature, size, shape and installation of Operator's business signs within the Concession or in, on or adjacent to the Concession or Park must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in Article 7 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Operator at the termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Operator. The Operator shall use the bulletin board provided by the Department.
30. **On-Site Manager:** Throughout the term of this Agreement or any extensions thereof, the Operator shall employ a qualified full-time on-site manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Operator under this Agreement and to accept service of all notices provided for herein.
31. **Quality of Operator's Service:** The Operator 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 immediate vicinity of such operations.

The Operator shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives and, upon objection of the County concerning the conduct, demeanor or appearance of any such person, Operator shall immediately take all necessary steps, up to and including removal of such individuals, to correct the cause of such objection.

Operator shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, keep, maintain, and repair and, upon the expiration of this Agreement or its termination in any manner, and shall deliver said premises to the County in the same condition as at the Commencement Date.

Operator shall furnish good, prompt and efficient service, adequate to meet all reasonable demands

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therefore.

It is expressly understood and agreed that the said operation shall not interfere in any manner with the use of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Operator agrees that a determination by the County will be accepted as final in evaluating whether its activities infringe on the rights of others and that Operator will fully comply with any decisions on this matter.

32. **Monitoring Services:** The Department shall have the right, without limitation, to monitor and test the quality of services of the Operator, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means.

33. **Services/Equipment Provided by County:** The County shall provide access to the following:

- A. Electrical as existing.
- B. Water facilities as existing.
- C. Sewage collection facilities as existing.
- D. Waste disposal and garbage collection equipment: The Department will provide access to garbage containers and will properly transport and dispose of trash collected in dumpster. It shall be the responsibility of the Operator to place trash and waste in the containers provided or in sealed heavy duty garbage bags. In consideration for this service and the fees associated with disposal, the Operator agree to pay to the County the additional sum of \$4,200.00 per year in addition to Fees in equal monthly installments of \$350.00 without billing. Payments shall be made on the first (1st) day of the month according to paragraph 18 herein.

34. **Equipment and Services Provided by Operator:** The Operator, at its sole cost, shall provide at the Concession:

- A. Janitorial service within the Concession and within fifty (50) feet of the operations area. The Operator shall keep the Concession and equipment clean at all times. If the Concession and equipment are not kept clean in the opinion of the Department, the Operator will be so advised and if corrective action if not immediately taken, the Department will cause the same to be cleaned and the Operator shall assume responsibility and liability for such cleaning.
- B. Cash registers or point-of-sale (POS) devices or equipment for recording original sales and

receipts.

- C. All new construction and maintenance.
- D. Fire sprinkler system, as required.
- E. Complete HVAC as required.
- F. All internal finishing such as ceilings, walls, decorations, furnishings, floor coverings, show cases, racks, displays and signage (as approved by the Department).
- G. Connections of operating equipment to utilities.
- H. All operating equipment.
- I. All plumbing fixtures.
- J. All interior maintenance and repair, including replacement of light bulbs.
- K. Outside landscaping as approved by the Department.
- L. Pest control and extermination within and around (within 20 feet of) operational areas.

35. **Equipment Installed by Operator:** The Operator shall provide and install all furnishings, fixtures and equipment necessary for the operation of the facilities. All furnishings, fixtures and equipment acquired for the facility shall be of a high quality and as good as or better than that found at similar facilities. The County shall be afforded the opportunity to approve all furnishings, fixtures and equipment for the facility. Any equipment, furnishings, signage and advertising installed by the Operator shall be in compliance with Article 7 of the Home Rule Charter and in keeping with the appropriate standards of decor at the Park. Following the installation of any additional equipment, furnishing and improvements which the County may approve from time to time, Operator shall provide to the County a statement setting forth the cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed.

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

Operator shall not alter or modify any portion of the Park, the Concession or the improvements constructed therein without first obtaining written approval from the County.

36. **Security and Protection:** The Operator acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Concession or Park, outside of

standard security measures supplied by the County in general. Operator may provide its own specialized security for the Concession, subject to the County's written approval. Absence of said Operator security measures shall not increase the County's security obligation.

37. **Hurricane Preparedness:** The Operator shall follow the County's emergency evacuation and hurricane plan as set forth for the Concession or Park.
38. **Maintenance Responsibilities of Operator, Appearance of Facility:** Operator shall, at its sole cost and expense, keep and maintain the Concession in a clean and good condition during the term of this Agreement and any extension thereof. The provision of janitorial services and all interior maintenance within the Concession are the sole and exclusive responsibility of the Operator. Upon failure of the Operator to maintain the Concession as required in this paragraph, the Department may, after fifteen (15) days written notice to the Operator, enter upon the Concession and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, which shall be billed to and paid by the Operator.
39. **Utility Services:** The County has caused all necessary utility lines and services to be brought to the Concession. Operator shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Park as determined either by the public utility providing such service or by the Department in the exercise of reasonable judgment. Operator shall make all repairs caused by Operator's negligence.
40. **Payment of Utility Services:** Operator agrees to pay for all charges for utility service used or consumed in or upon the Concession including, but not limited to: electricity, gas, water and sewer charges. To the extent that such charges are separately measured by metering or otherwise, Operator agrees to pay the actual cost thereof, without addition or surcharge by the County. To the extent that such charges are not separately metered, Operator agrees to pay Operator's pro-rata share thereof. In the event Operator uses a disproportionate amount of any utility or service provided by the County and not separately metered, the County shall have the right to engage a registered professional engineer to compute Operator's utility usage, and determine an equitable utility charge to Operator based upon such usage.
41. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Operator may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of County desirable

or necessary, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Operator or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of Fees or other charges, nor damages, shall be claimed by Operator by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Operator's obligations hereunder be affected or reduced thereby.

42. **Damages:** Operator shall repair all damages to the Concession or Park caused by the Operator, its employees, agents, or independent contractors.
43. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all the Concession, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Operator shall be required to make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Operator is operating in compliance with the terms and provisions of this Agreement.
44. **Right of Entry:** The County shall have the right to enter upon the Concession at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Concession as the County deems necessary, but the County assumes no obligation to make repairs in the Concession other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Operator and that the County will diligently proceed therewith to completion. The County or the County's agents shall also have the right to enter upon the Concession at reasonable times to show them to actual or prospective tenants, or Operators of the Park. During the one hundred and eighty (180) days prior to the expiration of this Agreement, the County may show the Concession to prospective operators. If, during the last ninety (90) days of the term of this Agreement, Operator shall have removed all or substantially all of Operator's property there from, the County may immediately enter, alter, renovate, and redecorate the Concession without elimination or abatement of Fees or other compensation and such action shall have no effect upon this Agreement.

45. **Damage or Destruction of Premises:** If either the Concession or the Park is partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall with due diligence be repaired by the Operator from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Monthly Guarantee payable hereunder for the period of the Operator's business interruption, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Operator from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Operator's business interruption a pro-rata adjustment shall be made as to the Monthly Guarantee and utility fees. In the event the said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, the Operator and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the Fees payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, with the permission of the County and at its sole discretion, the Operator may be permitted to reconstruct the premises at its own cost.

46. **County's Repair, Facility Repairs, Alterations and Additions by the County:** The County, as its responsibility, and at its expense (except if the damage is caused by Operator), shall make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair the foundations, roofs and structural soundness of floors and walls of the Concession and the common areas of the Park. There shall be no allowance to Operator for a reduction in Fees for interruption of business and no liability on the part of the County by reason of inconvenience, annoyance, or injury to business arising from the County, Operator or others making any repairs, alterations, addition, improvements, restorations, or replacements, in or to any portion of the Concession or Park, or to fixtures, appurtenances, or equipment thereof. The County shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Concession, free from any and all liability to the Operator for loss of business or damages of any nature whatsoever during the making of such repairs, alterations, and additions, except for such damage caused by the sole negligence or intentional misconduct by the County and where not otherwise indemnified by the Operator, subject to

the limitations of Section 768.28, Florida Statutes. In making such repairs, alterations, and additions, the County shall take such reasonable measures as are necessary to minimize interference with Operator's operations of the Concession, for short term disruption of one week or less to Operator's business where adequate accommodations can be made to minimize the inconvenience and injury to Operator's business. If the Operator's business is interrupted for more than one month, a pro rata adjustment of the Monthly Guarantee payable hereunder for the period of such interruption may be made.

47. **Diminution for County's Repair:** Except as elsewhere specifically provided in this Agreement, there shall be no allowance to Operator for a reduction in Fees and no liability on the part of the County by reason of inconvenience, annoyance or interference with Operator's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Concession, the Park or the building or buildings contained within the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Operator's use of the Concession .

48. **Performance of Obligations:** Operator covenants to perform promptly all of the obligations of Operator under the Agreement.

49. **Assignment, Subletting, and Successors in Interest:**

A. Operator shall not assign, mortgage, pledge nor otherwise encumber this Agreement or any portion thereof, nor any property associated with this Agreement. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Agreement.

B. Operator shall not enter into any sub-agreement for services required to be provided under this Agreement. Unapproved sub-letting shall be grounds for immediate termination of this Agreement.

C. Should the facility reside in a geographic area that incorporates, becoming an independent municipality, the rights and obligations granted the County under this Agreement may automatically be assigned upon the park's conveyance to the municipality or may be terminated by thirty (30) days notice by either party to the other party.

50. **Ownership of Operator:** The ownership of the Operator is very important to the County. Therefore, the County reserves the right to terminate this Agreement at any time the ownership of the Operator has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in the best interests of the public. Operator agrees to provide on 24-hour notice to the

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County an accurate list of all owners of the Operator, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Operators, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

51. **County's Property Insurance:** Any insurance the County may maintain shall not cover Operator's improvements and betterments, contents, or other property of Operator. Operator shall not violate, or permit the violation of, any condition imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Concession which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Concession is located or the property therein over the rate which would otherwise then be in effect (unless Operator pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the County. If, by reason of any act or omission on the part of Operator, the rate of property insurance on the Concession or Park or equipment or other property of the County shall be higher than it otherwise would be, Operator shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of Operator, which sum shall be deemed additional Fees for purposes of collection only.

52. **Operator's Insurance:** The Operator shall furnish to the Department Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below: During the operation of the concession, the following insurance must be kept in full force throughout the duration of the contract:

1. Worker's Compensation Insurance for all employees of the Operator pursuant to Chapter 440, Florida Statutes.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for Bodily Injury and Property Damage. **Miami-Dade County must be shown as the sole additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the agreement, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
4. Marina Operator's Legal Liability in an amount not less than \$1,000,000. **Miami Dade County must be shown as the sole additional insured with respect to this coverage.**

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5. Excess Marina Operator's Legal Liability in an amount not less than \$12,000,000. **Miami Dade County must be shown as the sole additional insured with respect to this coverage.**
6. Property Insurance on an "All Risk" basis. **Miami-Dade County must be shown as the sole named insured.**
7. The policy shall include protective and indemnity insurance limits, 100% coverage, maximum of \$1,000 deductible for;
 - a. Vessels with passenger capacity of up to and including 20 persons - \$50,000/\$100,000.
 - b. Vessels with passenger capacity of up to 21 and including 150 persons \$100,000/\$300,000.
 - c. Vessels with passenger capacity in excess of 150 persons - \$100,000/\$500,000.
8. **Hull Insurance Limits** as determined by the Owner and/or Insurer, deductible allowed.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Operator.

All Insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The Company must be rated no less than "B" as to management, and no less than Class "V" as to strength, by the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwich, 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 that no modification or change in insurance shall be made without thirty (30) days written advance notice to the Department.

Compliance with the foregoing requirements shall not relieve the Operator of any liability and obligation under this section or under any other section of this Agreement.

Award is contingent upon receipt from the Operator of insurance documents within fifteen (15) calendar days after Board of County Commission approval. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Operator shall be notified in writing of such deficiency and shall have an additional five (5) days to submit a corrected certificate to the County. If the Operator fails to submit the required insurance documents in the manner prescribed in this

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Agreement within twenty (20) calendar days after Board of County Commission approval, the Operator shall be in Default of the contractual terms and condition and award of the contract will be rescinded.

The Operator shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the Term; including any and all option years that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Operator shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration.

The Department reserves the right to reasonably amend the insurance requirements by the issuance of a notice in writing to the Operator. Modification or waiver of any of the aforementioned requirements is subject to approval of the County's Risk Management Division.

53. **Release and Indemnification:** Operator will be responsible for and will and does hereby release and relieve the County and hold and defend it harmless from and against any and all liabilities, obligations, damages, penalties, claims, cost, charges, and expenses which may be imposed upon or incurred by the County by reason of loss of life, personal injury, and/or damages to property occurring in any part of the Concession or Park, or business losses, occasioned in whole or in part by the negligence of Operator, its agents or employees. Operator shall defend, indemnify, and save harmless Miami-Dade County and its agents and employees against and from all liabilities, obligations, damages, penalties, claims, costs, expenses, and attorney's fees which may be imposed upon or incurred by or asserted against Miami-Dade County and/or its agents arising from Operator's use of the Concession, during the term of this Agreement or during any period of time that Operator may have been given access to or possession of all or any part of the Concession. The County shall not be liable for any damages or injury which may be sustained by any party or person on the Concession, other than the damage or injury caused solely by the negligence of the County subject to all limitations of Florida Statutes Section 768.28.

54. **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 Concession other than the damage or injury solely caused by the negligence or intentional actions of the County, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes.

55. **Termination by County:** The occurrence of any of the following shall cause this Agreement to be terminated by the County upon the terms and conditions also set forth below:

A. Automatic Termination:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Operator.
- ii. Institution of proceedings in involuntary bankruptcy against the Operator if such proceedings continue for a period of ninety (90) days.
- iii. Assignment by Operator for the benefit of creditors.
- iv. Abandonment or discontinuation of operations , in the sole opinion of the County, for more than a seventy-two (72) hour period without prior written approval from the County.
- v. The discovery of any misstatement in the Operator's proposal leading to award of this Agreement, which in the determination of the County significantly affects the Operator's qualifications to perform under the Agreement
- vi. Change of ownership interest, except for an increase or decrease in ownership interest between current owners in Operator, and/or failure to submit the ownership list within twenty four (24) hours after the request of the County.
- vii. Failure to cease any activity which may cause limitation of County's use of the Park.

B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Concession and by certified or registered mail to any known address of Operator set forth in this agreement hereof for doing any of the following:

- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Operator makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Monthly Guarantee and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.
- ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

C. Termination after fourteen (14) days from receipt by Operator of written notice having either been posted on or at the Concessioner by certified or registered mail to the address of the Operator set forth in this agreement:

- i. Non-performance of any covenant of this Agreement other than non-payment of Fees

and others listed in A and B above, and failure of the Operator to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

- ii. A final determination in a court of law in favor of the County in litigation instituted by the Operator against the County or brought by the County against Operator.

D. Revenue Control and Audit Defaults: The inability or failure of the Operator to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Operator. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the performance bond required in this agreement.

E. Habitual Default: Notwithstanding the foregoing, in the event that the Operator has repetitively defaulted (4) four times within a twelve (12) month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Operator, regardless of whether the Operator has cured each individual condition of breach or default as provided herein above, the Operator may be determined by the Director of the Department to be an "habitual violator". At the time that such determination is made, the Department shall issue to the Operator a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Operator that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may cancel this Agreement upon the giving of written notice of termination to the Operator, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Operator shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Operator shall discontinue its operations at the Park, and proceed to remove all its personal property in accordance with this agreement.

In the event that the County terminates this Agreement by operation of any of the provisions as stated in

this agreement, then in addition to other rights and remedies available to the County under the law, the County may accelerate the payments of all Fees due under this Agreement, whereupon the entire balance owed by the Operator under this Agreement shall become immediately due and payable without further notice or demand.

56. **Termination by Operator:** Operator shall have the right upon thirty (30) calendar days from receipt of written notice to the County by certified or registered mail to the address set forth in this Agreement to terminate this Agreement at any time after the occurrence of one or more of the following events:

- A. 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 ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Operator, of the existence of such breach.
- B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the Park, or any substantial part, or parts, thereof in such a manner as substantially to restrict Operator's operations for a period of ninety (90) calendar days or more.

57. **New Construction/Improvements:** The Department shall approve all construction, all installation and all use of facilities. Operator shall bear all costs associated with such construction, installation and use. Operator shall spend a minimum of twenty five thousand dollars (\$25,000) for immediate improvements, such improvements shall received prior written approval by the Department. All improvements shall become the property of the County at termination of the Agreement. All construction shall be accomplished in accordance with the Miami-Dade County Park and Recreation Operations Manual No 6-8.

58. **Termination of Contract:** Following the termination of this Agreement the Operator, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property not acquired under the terms of this Agreement. Any personal property of Operator not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Operator or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Operator for the safekeeping of Operator's personal property during or after termination of this Agreement. The County shall have the

senior interest in the Operator's personal property. Operator shall not remove any equipment, supplies in bulk, or fixtures within the Concession at any time without pre-approval in writing from the County. Operator shall be liable to the County for the fair market value of any equipment, supplies in bulk, or fixtures removed without County pre-approved written permission. Operator shall also be liable for any expenses incurred by the County in prosecuting any action against Operator following unapproved item removal described above. Operator shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Operator. It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by the Operator except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Operator. Upon the termination of this Agreement and the removal of all personal property by Operator, the Operator shall deliver said premises to the County in the condition set forth in this paragraph. Operator shall deliver all keys for the Concession to the County at the place then fixed for the payment of Fees, and shall notify the County in writing of all combinations of locks, safes and vaults, if any, in the Concession.

59. **Lien:** The County shall have a lien upon all personal property of the Operator on the Concession to secure the payment to the County of any unpaid money accruing to the County under the terms of this Agreement.

60. **Limiting Legislative or Judicial Action:** In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the County deems the Agreement null and void by function of this paragraph, the County will not be liable to the Operator for damages arising there from and the County shall have no further liability under this Agreement.

61. **Non-Discrimination:** Operator does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:

- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Concession , except as provided by law.
- ii. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except as provided by law.
- iii. That the Operator 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 County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- iv. That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Agreement and re-enter and repossess said Concession thereon and hold the same as if said Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.

Operator shall not discriminate against any employee or applicant for employment in the performance of the contract with respect to hiring, tenure, terms, conditions, or privileges of employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national origin, or ancestry.

62. **No Waiver of Right to Enforce:** The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Monthly Guarantee or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Operator of any term, covenant, or condition of this Agreement, other than the failure of Operator to pay the particular Monthly Guarantee or Percentage of Monthly Gross

Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Monthly Guarantee or Percentage of Monthly Gross Receipts. No covenant, term, or condition of this Agreement shall be deemed to have been waived by County, unless such waiver is in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Operator.

63. **Rules and Regulations:** The Operator will observe, obey, and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Operator's operations under this Agreement. Failure to do so will constitute a breach of the Agreement.
64. **Non-Domicile:** The Operator understands and agrees that none of the vessels described or included in this agreement may be used for the purposes of domicile or live-aboard for any length of time
65. **Notices:** Any notices submitted or required by this Agreement shall be sent by registered or certified mail addressed to the parties as follows:

To the County:

Jack Kardys, Director,
Miami-Dade Park and Recreation
275 NW 2nd Street
Miami, FL 33128

and,

The Contract Manager:

Contract Manager
Miami-Dade Park and Recreation
275 N.W. 2 Street
Miami, FL 33128

To the Contractor:

Attention Kelley Fleet, Inc.
1209 N.E. 98 Street
Miami Shores, FL 33138
George Kelley, President

or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party. The County may alternatively provide notice by posting written notice on or at the Concession. If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient, that notice will have the effect of being constructively received by the recipient.

66. **Rights to be Exercised by Department:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
67. **Interpretations:** This Agreement and the exhibits and attachments hereto, and other documents and agreements specifically referred to herein, constitute the entire, fully integrated Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may be amended only by written document approved by the Miami-Dade County Board of County Commissioners, properly authorized, executed, and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean appropriate formal action by the Board of County Commissioners, except where specified within this Agreement that the County Mayor or Mayor's designee shall have approval authority. This Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only the Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida.
68. **Rights Reserved to County:** All rights not specifically granted to the Operator by this Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.
69. **Entirety of Agreement:** The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.
70. **Headings:** The headings of the various paragraphs and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
71. **Waiver:** Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.
72. **No Lease, Partnership or Agency:** The County and the Operator are independent entities and the

officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Agreement does not constitute and shall not be represented to constitute a Lease or partnership between the County and the Operator.

73. **Choice of Venue:** Any litigation between the County and the Operator relating in any way to this Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida.

74. **Inspector General Reviews**

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 Agreement 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 Agreement'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 Operator, its officers, agents, employees, 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 its duties in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Operator 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. 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 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 Operator, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Operator from the Inspector General or IPSIG retained by the Inspector General, the Operator shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General shall have the right to inspect and copy all documents and records in the Operator's possession, custody or control which, in the Inspector General's sole judgment, pertain to performance of the Agreement, 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.

75. **County as Sovereign**: It is expressly understood that notwithstanding any provision of this Agreement and the County's status thereunder, that the County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the Joint Premises or be liable for the same. The County shall not by virtue of this Agreement be obligated to grant the Operator any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the Joint Premises.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Operator

Miami-Dade County

By: George Kelley
George Kelley, President
Kelley Fleet, Inc

By: _____
Carlos A. Gimenez
County Mayor

Date: _____

Date: _____

Attest: George Kelley
Corporate Secretary

Attest: _____
Harvey Ruvim
Clerk of the Board

By: _____
Deputy Clerk

Date: _____

Approved by County Attorney as to Form and Legal Sufficiency _____

Exhibit A
Approved Hours of Operation, Retail Items and Fishing Prices

Hours of Operation:

7am-8pm (with night fishing trips returning at midnight). 7 days a week.

Retail Items:

Snacks, refreshments, fishing tackle, miscellaneous items related to the operation of the vessels and convenience of the customers

Fishing Prices:

Advertised rates-half day/night \$40. adult, \$30. child. full day adult \$60., child \$45.

All kinds of promo/ discount coupons, 10 trip books, even some kids free days.

Exhibit B
Facility Map, List of Vessels

List of Vessels

Vessel #1 – 65’ - “Mucho-K” custom built fiberglass 60 passenger Coast Guard approved passenger vessel.

Vessel #2 – 65’ - “Hurricane” custom built fiberglass 51 passenger Coast Guard approved passenger vessel.

Vessel #3 – 80’ - “Atlantis” custom built fiberglass 100 passenger Coast Guard approved passenger vessel.

Map

Building Area
3-Adjacent Slips

Exhibit C
**Miami-Dade County Park and Recreation
General Marina Rules and Regulations**

1) **Vessels Entering a Marina:** Whenever a vessel enters marina waters, it shall immediately be governed by these terms and conditions of permit and shall be operated, navigated, moored, anchored, docked, or stored accordingly unless otherwise directed by marina staff. Vessel operators are required to comply with all applicable County, Local, State and Federal Regulations which may apply to their vessels or the operation thereof. Vessels entering and leaving the marina shall be governed by the "Inland Rules of the Road."

Permittee may not obstruct any established channel or tie up to or discharge persons upon any navigational aid within any Miami-Dade County marina or anchor within the limits of any established channel of a Miami-Dade County marina, except in an emergency or with the specific approval of the Director, or designee. A vessel shall not anchor or moor within the jurisdictional water areas of any County marina, except in those portions of the marina designated for that use, and then only if authorized by Marina personnel.

2) **Berthing Procedure:** Berths, docks, moorings, and anchorage will be assigned by the marina staff. Only vessels in good condition will be permitted to berth, dock, or moor. Berthed vessels are to be docked stern to pier except as otherwise approved by the Marina Manager, and only one vessel may occupy a single slip. Berths shall be assigned with respect to the overall length of a slips and the vessel to be berthed. A vessel may not be assigned to a berth where the vessel's overall length exceeds the berth's length by more than 10 percent, with the exception that any vessel in violation of this provision on its effective date, shall be permitted to remain in violation thereof until a suitable replacement berth is available. Temporary or emergency assignments for due cause may be made by the Marina Manager as necessary whereby vessel length exceeds slip length, by more than ten percent.

3) **Leakage:** Any vessel experiencing leakage must be repaired or removed from the Marina at the direction and discretion of Marina Operations. It is agreed that an owner or operator is responsible for the pumping out of his vessel, as necessary; however, should an emergency develop whereby the Marina uses equipment and manpower to pump out a vessel, an emergency service fee will be assessed.

4) **Towing:** No person shall operate a vessel engaged in towing persons on water skis, aquaplane or similar device on any waters within a Miami-Dade County marina. Vessels may not tow other vessels except when such vessels are disabled due to mechanical breakdown, or when the protection of persons or property requires such towing.

5) **Inspections:** All vessels must be in good condition and capable of self-propulsion (not paddles, oars, or make shift sail). All vessels shall be inspected for general condition and proper documentation prior to initial berthing, subsequent renewals or moves, or under other reasonable circumstances as determined by the marina staff. Such inspections are strictly and solely for the County's own use and benefit, and under no circumstances are to be relied upon by the Owner, his agents, employees, or guests as a warranty of seaworthiness or safe condition of such vessel, which is entirely the responsibility of the owner.

6) **Damage to public property:** Owners or operator of vessels shall reimburse Miami-Dade County for any damage or defacement which they or their vessel may cause to Miami-Dade County property within thirty (30) days notice of such damage or defacement. A Marina Berth Permit shall not be renewed with owners or operators who have not satisfied such outstanding obligation.

7) **Public liability:** Berthing of vessels and use of berthing space is at the sole risk of the permittee, his agents, servants, employees, patrons, guests, or service personnel, and Miami-Dade County shall not be liable for the care or protection of any vessel, its appurtenances or contents, or for any loss or damage of any kind or nature whatsoever, resulting from such berthing operations or use of berthing space.

8) **Replacement vessel:** If an owner disposes of his vessel, he may retain its berthing space by continuing the monthly rental payments for up to one year. If at the end of that year he does not have a replacement vessel then he will have to terminate his permit. The Department reserves the right to issue a short term or temporary berth permit during the time when the owner has not berthed his vessel. The new vessel, however, may not exceed the dimensions set for that space. The owner must give notification to the Marina Manager

seven days prior to placing the new vessel in the berth.

9) **Transfer and Assignment:** The space assigned under any Marina Berth Permit is not transferable and shall not be assigned or used by another vessel unless under a short term or temporary berth permit issued by the Marina. Any attempt to transfer rights, or to assign the berth space shall cause immediate termination of the Marina berthing permit and forfeiture of all deposits.

10) **General vessel appearance:** It shall be the responsibility of any person who owns, controls, or is aboard any vessel located within a Miami-Dade County marina to maintain such vessel in an orderly and well appearing manner. "For Sale" signs, not to exceed one foot (1') square may be displayed.

It shall be the responsibility and duty of vessel owners to keep their vessels and immediate environs in such condition so as not to reflect unfavorably on the appearance of Miami-Dade County marina facilities or to endanger any persons or property. Decks of vessels in berths or on trailers shall be kept free and clear of all debris and unsightly materials. Debris accumulated by wind, tide or any other cause within a berth or trailer storage area shall be policed and removed. No pollution, such as sewage, raw or treated, refuse, effluents, wastes or contaminants of any kind whatsoever shall be deposited into marina waters, within trailered storage areas, the general confines of the marina, channels or waters leading thereto. All current and applicable U.S. Coast Guard regulations pertaining to same shall be met.

Miami-Dade County Marinas subscribe to the Florida Department of Environmental Protection's Clean Marina Standards. Boaters will be given protocols to follow these standards and must adhere to all Clean Marina Standards.

11) **Pets:** Domestic pets are not generally allowed in Miami-Dade County marinas. Vessel owners, however, may bring pets into the marina on a leash or under restraint and take them directly aboard their vessel. Pets shall not be loose within a marina.

12) **Maintenance:** It shall be the responsibility of vessel owners and operators to keep the pier areas adjacent to their vessels in an orderly, clean, and safe condition. Piers and slips are to be clear of all gear, including dinghies, skiffs, and bicycles.

13) **Motorized vehicles:** It shall be unlawful to ride, drive, store or otherwise allow any motorized vehicle other than a Miami-Dade County vehicle on any pier, except in the case of an emergency.

14) **General conservation:** Unless metered, utilities provided by Miami-Dade County as part of the monthly permit fee for each berth are for the exclusive use of the vessel occupying that berth and paying the fee therefore. It shall be prohibited for either the permittee or any other person to use these utilities for any purpose other than to supply same to the vessel officially assigned to that berth. Water siphons shall not be used except in case of emergency. Fresh water provided by Miami-Dade County shall not be used as a cooling agent for equipment on vessels. All electrical usage shall be limited to reasonable consumption and should be reduced to minimum levels when the vessel is unoccupied. Water supply hoses of unattended vessels shall be disconnected at the dock and stowed aboard. Air conditioners must be turned off on unattended vessels.

15) **Telephone service:** Telephone installation and service may be individually arranged between the vessel owners and the appropriate telephone company, subject to approval of the Director or Marina Manager.

16) **Minor repairs:** Routine maintenance and minor repairs necessary for the preservation and seaworthiness of a vessel, such as mechanical adjustments, minor painting, leak seals and rot prevention, may be performed within a marina. Routine maintenance and minor repairs are generally considered to be those which:

1. Do not disturb the public peace or the tranquility of any person within a marina.
2. Do not contribute to a disorderly or unsightly appearance during the process of repair or maintenance.
3. Can be accomplished with hand tools or portable power tools of a type normally carried aboard a vessel.

4. Are confined to the vessel.
5. Do not add pollution or put wastes or contaminants into marina waters.

Major repairs: Major repair work or refitting of vessels is prohibited except at such marina repair facilities as may be designated by the Director.

17) Permittee responsibility: Permittee shall be solely responsible for any mechanical, cleaning, refurbishing or other personnel hired by permittee for service to be performed on a berthed vessel. A permittee shall be responsible for any and all damage whether negligent or otherwise caused by permittee, its employees or contractors. Permittee agrees to indemnify and hold the County harmless from and all liability, actions, and causes of action in connection with such personnel or the services rendered by same. The Marina staff may direct the permittee to cease if contract work is deemed inappropriate.

18) Repairs of trailered vessels: Major repairs or refitting of trailers or trailered vessels in a trailered boat space area is prohibited. Mechanical adjustments, minor painting and leak or rot prevention and other minor repairs will be allowed.

19) Marina responsibility: Permittee understands and acknowledges that except in emergencies, marina personnel will not start engines, engage in repairs, or operate vessels.

20) Sunken vessels: These vessels must be removed from the marina within 10 days notice to the owner or the vessel will be removed by the County at the owner's expense.

21) Modification of County property: Modification of County docks, equipment, utilities, or other property, or addition to existing facilities, is prohibited.

22) Fire Hazard: All persons shall use and maintain vessels and other property in a manner which does not constitute a fire hazard. The failure to conform to any statute, rule, regulation, standard, or ordinance relating to fire safety shall be considered a violation of this permit.

23) Appliances and electrical wiring: All cooking or heating appliances or any other machinery, equipment, utensil or apparatus which is used at a marina shall be constructed, installed, wired, situated, maintained, and used so as not to constitute a fire hazard. Any person using electrical tools shall have a ground fault interrupter in use.

24) Fire extinguisher: All vessels shall have an approved fire extinguisher as prescribed by the U.S. Coast Guard. The fire extinguisher shall be in good, serviceable condition and readily accessible for immediate and effective use at all times.

25) Smoking, flame-producing devices: No smoking, or flame-producing devices, shall be permitted within fifty (50) feet of any fueling operation. The use of charcoal burners, burning, or welding equipment is prohibited within fifty (50) feet of any vessels, docks or piers.

26) Fueling: Vessels shall be fueled only at designated and approved marina service stations, unless emergency circumstances dictate fueling at other locations within a marina. Tank barges and fuel supply vessels or vehicles, are expressly prohibited within marinas except when delivering fuel to marina service stations. Vessels may be fueled only from approved fuel containers and dispensers. Vessels must have all engines shut off while fueling. Only such persons as are necessary to perform the fueling operations shall be on board any vessel being filled with fuel. All safety precautions prescribed by the U.S. Coast Guard or marina staff shall be observed while fueling.

27) Solicitation or advertising: Permittee may not solicit or advertise for any purpose within County marinas, except as may be specifically authorized by the Director.

28) Proper docking, mooring: Permittees are solely responsible and liable for the proper docking or mooring of their vessels and are required to maintain mooring, docking, and anchoring lines in good condition, sufficiently strong and able to secure their vessels at all times. Patron will be assessed emergency

service fees when marina staff is required to secure or service a vessel that could threaten public safety.

29) Trailered vessel berths: Trailered vessel berths must remain free, clear and unencumbered of all gear, equipment, tools and materials. Vessel equipment and accessories remaining on site must be stowed within the vessel. Owners and operators are solely responsible and liable for the proper parking, tie down of trailered vessels.

30) Live-aboard: There shall be no live-aboards in any vessel berthed within marinas, except at marinas designed and designated for live aboard use, or as allowed for transient vessels.

31) Report of accident: A responsible representative of any vessel involved in an accident, injury to a person, or damage to property, shall immediately report to the marina manager or his representative, the time, place, cause and circumstances of such accident, injury, or damage, and within 24 hours shall submit such information in writing to the marina manager.

32) Marina security: The County does not provide security at the marinas and assumes no responsibility or liability for the safety of persons or property using the marina or the marina waters.

33) County emergency/corrective actions: The County may take emergency and corrective actions, including but not limited to the following examples:

(a) Closing Marinas during a declared emergency for whatever period specified by the Mayor or the Parks Department Director.

(b) To move or remove vessels or personal property within or from a marina or marina waters.

(c) To make emergency repairs to vessels to prevent either sinking in marina waters or damaging marina facilities or other vessels.

(d) To store or dispose of vessels or other property.

The County shall have the right to file and hold a lien on vessels or other personal property whenever a vessel owner has not reimbursed the County for its expenses incurred in carrying out such emergency or corrective action. The County does not assume responsibility, nor shall it be liable, for any damage or loss as a result of taking such emergency or corrective action.

34) Security deposit: The security deposit will be returned, without interest, to the owner upon the termination of the Permit only if the terms and conditions have been faithfully performed to the satisfaction of the Department and no outstanding charges or costs have been incurred. In the event the owner does not perform, the Department may declare the deposit forfeited or apply it as offset to any amounts owed by the Permittee to the County or for any damage or loss incurred by the County by the breach of such terms and conditions by the Permittee. The exercise of this option is without prejudice to the right of County to institute action for debt or damages against the owner or to take any further action against the owner or the vessel as may be provided by any law or these terms and conditions for the enforcement of any rights of the County under the Berth Permit or applicable law.

35) Internal move list: The marina will maintain an internal move list in order that berthed vessels may be reassigned to other berths within the same marina, to accommodate marina repairs, improvements, maintenance, construction, emergencies, or special events. Re-assignments may also be made if a vessel's size in relationship to the size of the assigned berth does not allow the maximum or most efficient use of marina facilities or if a reassignment will in any other manner facilitate maximum or more efficient public utilization of a marina.

36) Transient/temporary vessel assignment: A berth may be made available for transient or temporary vessel assignment by the Department whenever the primary vessel vacates its berth. Transient liveaboards will be allowed for a maximum of five (5) consecutive days providing that the marina can accommodate such a vessel under applicable marina rules and regulations regarding environmental quality. This includes the use

of the pump-out. All such transient liveaboards will be governed by the individual marina's operating hours. Transiency shall be cancellable upon notice by either party. Transient vessels may be re-assigned to alternate berths at the discretion of the Marina Manager.

37) Dock boxes must conform to the following criteria:

- Color: white or other color approved by Director
- Size: no more than 54" in length
no more than 36" in height
no more than 30" in width

The box will be constructed of fiberglass; the material and surfacing must be kept in good condition and appearance. Any dock box which is found in unacceptable condition may be removed, along with its contents, at the owner's expense, by the Marina Manager, if the box is not satisfactorily repaired within ten days after written notice is given to the vessel owner.

38) Vessels subject to this Permit and Permittee shall not be engaged in any commercial activity, including, without limitation, bare-boat or crewed chartering or the sale of fish, without the express written consent of the Department.

39) Vendor Policy: The implementation of the policy will be as follows:

A. All vendors must submit the following information to the marina manager prior to receiving a vendor decal:

1. Certificate of Insurance indemnifying Miami- Dade County against any losses or property damage in the marina
2. Valid Occupational License
3. Valid Driver's License

B. The Marina Manager will make a copy of all documents and file under the vendor's name.

C. The vendor decal will expire the month the occupational license will expire or one year from insurance expiration whichever comes first.

D. A fee according to the fee schedule will be charged for a vendor decal, which will be affixed to the vendor's vehicle.

E. This vendor decal will allow vendor access to all the marinas for work related functions only.

F. The vendor must check in at the marina office whenever performing work related duties and be approved by the manager to do the work.

G. A check-in and check-out log will be kept at each marina office.

H. Access keys to the marina gates will be issued only to those vendors that have a vendor decal. In order to be issued a key the vendor must leave his/her driver's license at the office and this will be returned once the key has been surrendered at the office.

I. Any vendor violating any of the marina rules and regulations will be subjected to having their privileges immediately terminated.

The hiring of mechanical, cleaning, refurbishing or any other personnel by the permittee for services to be performed on the berthed boat is an arrangement separate and apart from the County but subject to all marina rules and regulations. The marina permittee and the employed service shall be liable for any damages occurring to private or county property. The County shall not be liable in these matters whatsoever and may direct the marina permittee to cease such work if deemed in violation of the marina rules and regulations.

40) Insurance Policy: Boat owners will be required to provide a certificate of insurance which indicates that insurance coverage has been obtained. Effective October 1, 2007 if the insurance certificate is not on file then the Berth Permit will be terminated. The policy is as outlined below:

Boat owner’s insurance, Yacht owner’s insurance or stand alone protection and Indemnity (P&I) insurance, with minimum Liability limits of \$300,000 per occurrence. Miami-Dade County must be ad additional insured with respect to Coverage.

The required insurance policies shall be in full force during all periods of time during which the vessel is under a Miami-Dade County permit.

All insurance policies required above shall be 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 “Class V” as to financial strength, by the latest edition of Best’s Insurance guide, published by A. M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The Company must hold a valid Florida Certificate of Authority as shown in the latest “List of 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 written notice to the certificate holder.

The insurance policy includes all long term transients. A long term transient is a boat that is in the marina 6 months or longer or is in the marina anytime between the months of June 1st and November 30th.

41) Vessel Check-Out Procedure: Permittee departing a marina upon termination of Agreement shall report to the Marina Manager’s Office advising of date and time of departure and shall satisfy all outstanding charges prior to leaving. Check-out time shall be 1:00 p.m. on date of termination.

42) Berth Permit Agreement and Assignment of Berths: The Berth Permit Agreement shall be signed in exactly the same manner as on the application and the right to continued use of the berth and to renewal of the Permit shall be contingent upon ownership exactly as on the Application.

43) Commercial Berth Permits are subject to the following rules:

RULE 1 – APPLICATION

No commercial vessel or activity shall be permitted to berth or operate at a County marina or transport passengers or provide services for compensation until an appropriate Commercial Berth Permit has been properly issued by the County.

RULE 2 – COMPLIANCE WITH RULES AND REGULATIONS

Commercial Permittees shall be responsible for the conduct of their operations and of their employees, servants, agents, contractors, service personnel, patrons and guests, all of whom shall comply with these Rules and Regulations and all other laws applicable to their activities within the marina.

RULE 3 – RIGHTS OF THE PUBLIC

No commercial operation shall interfere with the public’s use of the marina area or infringe upon the normal method of operation of any other persons who are authorized to conduct business within the marina. Any order of the Director evaluating and limiting activities which may infringe upon the rights of others will be accepted as final.

RULE 4 – LICENSE REQUIREMENTS

All commercial vessel operators must be licensed by the Coast Guard and in all cases shall comply with all

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U.S. Coast Guard Rules and Regulations.

RULE 5 – MAXIMUM PASSENGERS

A commercial vessel is not permitted to carry more passengers than approved by its U.S. Coast Guard License.

RULE 6 – PERMITTEE’S EMPLOYEES

Permittee’s employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the Department to demand his or her removal from duty. All employees shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Permittee’s employees.

RULE 7 – APPLICATION FOR COMMERCIAL BERTH PERMIT

Application for commercial Berth Permit will be granted or denied by the Department primarily on the criteria of availability of commercial berth facilities, size of berth space required, and compatibility of the proposed commercial operation with the purpose and operation of the marina. Applications for Commercial Berth Permits shall be made to the Department by the applicant in person and will be stamped and logged with the date of application. Applicants shall not be required to actually own a vessel at the time of application. A non-refundable filing fee is required at the time of application. The applicant shall receive a receipt for this sum and a stamped copy of the application. Seniority on waiting lists is established by the type of vessel and lineal precedence in accordance with the date stamped onto each application. The Department reserves the right to reject and remove from the waiting list any applicant.

No application, or permit issued pursuant thereto, may be assigned or transferred. Any application, or permit issued pursuant thereto, may state or require such additional terms, condition, provisions, information or limitations as the Director may deem necessary or proper in the public interest.

RULE 8 – ASSIGNMENT OF COMMERCIAL BERTHS

When a commercial berth becomes available, the senior applicant on the appropriate list will be formally notified by certified mail forwarded to his address as recorded on the Application. It is the sole responsibility of the applicant to ensure that the address and all other information on the application is current and correct. If the applicant so wishes he may waive his right to the space and the next senior applicant on the waiting list will be notified. If an applicant waives his right to a berthing space he may still retain his position on the waiting list.

If any applicant does not own a vessel at the time of notification of berth availability, he shall be requested to come to the Department to partially complete his Commercial Berth Permit, leaving that portion of the Permit blank which furnishes details of the description of the vessel. The applicant must pay full permit fees, including the security deposit on the assigned berth during the period the berth is not occupied by his vessel. The vacant berth is subject to use by the County for transient berthing until the applicant’s vessel is berthed. Notice of intent to berth shall be provided to the Marina Manager by the applicant at least seven days prior to berthing.

Upon receipt of notification that commercial berth space is available, and prior to issuing the Marina Berth Permit, the applicant will be allowed a maximum of ten (10) County business days to submit the following information to the Department:

1. A certificate of insurance which indicates that insurance coverage has been obtained as outlined below:
 - A. Protection and Indemnity Insurance including coverage for crew, in an amount not less than \$300,000 covering Personal Injury and Property Damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
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 “Class V” as to financial strength, by the latest edition of Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of 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 written advance notice to the certificate holder.

2. Title or documentary proof of applicant's ownership of the vessel to be berthed, including a current "Florida Vessel Registration Certificate" or Bill of Sale, pending registration of new vessel.
3. A U.S. Coast Guard Certificate, issued within the last month, for the vessel to be berthed.
4. A copy of a current Miami-Dade County Business Occupational License.
5. A valid and current Captain's License issued by the U.S. Coast Guard.
6. A color photograph of the vessel with information regarding the physical characteristics of the vessel sufficient to easily identify the vessel.
7. A schedule of fees to be charged to the public, which schedule may not change without the approval of the Department.
8. A statement of any police record for the captain(s), and all of the mates, from the Miami-Dade Police Department.

RULE 9 – COMMERCIAL VESSEL INSPECTIONS

(a) Inspection: All commercial vessels operating from a marina under a Commercial Berth Permit must have been inspected and approved by the U.S. Coast Guard not more than one year prior to the issuance of such commercial permits, and any renewals or extensions thereof. The Director may also request at any time an inspection made by a qualified marine inspector to determine the general safety and seaworthiness of a commercial vessel.

(b) Certificate of inspection: All vessels under U.S. Coast Guard jurisdiction must conspicuously display a current and valid certificate of U.S. Coast Guard inspection. Any subsequent deficiencies in or violations by such vessels will be reported to the U.S. Coast Guard and the Director. The Director may request that commercial operations cease until the deficiencies or violations have been corrected and such corrections have been approved by the U.S. Coast Guard.

RULE 10 – PHYSICAL ALTERATION TO COMMERCIAL VESSELS

Any major physical alteration to a commercial vessel will require notification to the Marina Manager and appropriate reinspection prior to berthing in a marina.

RULE 11 – SUBSTITUTION OF COMMERCIAL VESSEL

A permittee may not put a substitute vessel in his assigned berth without permission of the Marina Manager. The substitute vessel must be owned by the permittee, and must be used for the exclusive commercial purpose stated in the Commercial Berth Permit. The substitute vessel will be subject to all terms and conditions of the Commercial Berth Permit.

RULE 12 – LEAKING VESSEL

Any commercial vessel experiencing leakage, as determined by the Marina Manager, must be removed from its berth and show proof of re-inspection by the U.S. Coast Guard prior to re-berthing. It is agreed that an owner or operator is responsible for the pumping out of his vessel, as necessary; however, should an emergency develop whereby the Marina uses equipment and manpower to pump out a vessel, an emergency service fee will be assessed.

RULE 13 – PERMITTEE OPERATIONS

No operations shall be conducted other than those specified in the Commercial Berth Permit, unless specifically approved in writing by the Director.

RULE 14 – SIGNS

Every holder of a Commercial Berth Permit shall display, in a conspicuous place, a sign which shall give the

name of the vessel, owner, and principal operator thereof, and the total charges per trip, half-day, or other period, stating the price and the tax. This sign shall be of design and size acceptable to the Director. On vessels making stopovers where attractions are offered or fees are collected the amount of admission to the attraction shall also be prominently displayed on such sign in the event such charge is not included in the boat ticket fare. No other sign shall be displayed on or about the vessel, unless previously approved in writing by the Director.

RULE 15 – DESIGNATED PRINCIPAL OPERATOR

Each commercial vessel or activity shall have a designated principal operator, whose name shall be furnished to the marina staff and kept current by the owner of such vessel or activity.

RULE 16 – REQUIRED MATE

Operators of commercial vessels are not permitted to leave with passengers unless at least one mate is aboard and able to assist.

RULE 17 – SOLICITING

All signs, pamphlets, advertisements, and other forms of solicitation must be approved in writing by the Director before exhibit or circulation at a marina.

RULE 18 – FALSE OR MISLEADING ADVERTISING

No person operating or representing a commercial vessel within a County marina shall be allowed to disseminate by any manner or means whatsoever, information as to the vessel or its operations which is untrue or misleading; or to fail to disclose all pertinent information concerning the vessel, its services or operations.

RULE 19 – TICKET BOOTHS

Passenger tickets sold in marinas shall be sold only at established booths or at the vessels. No operator may have more booths than vessels operating. It shall be the duty of the operator to keep such booths and all adjacent areas clean and free of all debris, obstacles, etc. No booth may be moved or relocated without the permission of the Marina Manager.

RULE 20 – LANDING FEES

Any vessel which embarks passengers at a County Marina, for purpose of providing a service for which a fee is paid, will be subject to a landing fee, as approved by the County Manager.

RULE 21 – SUPPLIES TO OPERATIONS

In the interest of maximizing waterfront space and improving marina aesthetics, commercial operators may be required by the Director to purchase supplies from a bulk supplier rather than store excessive supplies at dock site. Examples of such supplies include ice, bait, etc.

RULE 22 – FISH HANDLING

Upon return of fishing vessels to the marina, the operators of such vessels may display and dress fish as a service to patrons. These services shall be conducted in a manner determined to be suitable by the Marina staff.

RULE 23 – SALE OF FISH

The sale of fish directly from commercial vessels or the marina is not allowed without written Department approval. It shall be unlawful under any circumstances to dispose of fish by dumping whole fish into the waters of the marina. It shall be unlawful under any circumstances to dispose of said fish into the waters of the marina. Containers are provided and must be used.

RULE 24 – SALE OF FOOD AND BEVERAGES

Food and beverages shall not be sold or served aboard a commercial vessel while within a marina except by those vessels that have been specifically approved in writing by the Director.

RULE 25- RATE APPROVAL

All rates and charges by commercial vessels must have the prior approval of the Director and cannot be changed without the approval from the Director. These approved rates must be posted in a prominent place.

**MIAMI-DADE PARK AND RECREATION DEPARTMENT AFFIDAVIT
PURSUANT TO MIAMI-DADE COUNTY CODE CHAPTER 26, ARTICLE III; THE SHANNON MELENDI ACT**

1. This affidavit is submitted to the Miami-Dade County Park and Recreation Department, (the "Department") by: _____, for
(Print individual's name and title)

(Print name of entity submitting compliance statement)
whose business address is _____
and its Federal Employer Identification Number (FEIN/SSN) _____
2. I, am duly authorized to make this affidavit on behalf of:

(Print individual's name and title) _____ (Print name of entity submitting affidavit)
3. I understand that on January 10, 2008, the Miami-Dade County Commission passed and adopted Ordinance No. 08-07, which amended Miami-Dade County Code, Chapter 26, Article III, and the Shannon Melendi Act.
4. I understand and can attest to my organization/agency/firm's compliance with this Ordinance and that:
- A. Employers of child event workers, employers of park vendors, Programming Partners and CBOs shall secure a nationwide criminal background check of all existing child event workers, park vendors, employees, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County. In addition, prior to employing or allowing a person to volunteer whose duties would require physical presence on park property owned or operated by Miami-Dade County, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all such prospective child event workers, park vendors, employees or volunteers. My organization/agency/firm has conducted the nationwide criminal background checks through a **Professional Background Screener** and has obtained a report as to whether each child event worker, park vendor, staff member or volunteer is listed on the **National Sex Offender Public Registry**, and a comprehensive report and analysis, obtained from no less than **two independent databases/sources**, on the nationwide criminal history of such child event worker, park vendor, staff member or volunteer.
 - B. Every three (3) years thereafter, employers of park vendors, and Programming Partners and CBOs shall secure nationwide criminal background checks for existing park vendors, staff members, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County. However, employers of child event workers shall secure nationwide criminal background checks for existing child event workers whose duties require physical presence on park property owned or operated by Miami-Dade County every year thereafter.
 - C. Any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who:
 - 1. Has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years; or
 - 2. Has been convicted of a felony involving the trafficking of a controlled substance within the past (5) years; or
 - 3. Has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance; or
 - 4. Is a sexual offender or a sexual predator; or
 - 5. Has failed to provide the employer, Programming Partner or CBO with proof of United States citizenship or legal immigration status in the United States, shall be prohibited from working or volunteering on park property owned or operated by Miami-Dade County. All child event workers, park vendors, and staff members and volunteers of a Programming Partner or CBO shall submit to their employer, to the Programming Partner, or to the CBO an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by Miami-Dade County in violation of this subsection and that any arrest will be reported to his/her employer within forty-eight (48) hours of such arrest.
 - D. Employers of child event workers shall maintain copies of the results of the criminal background checks required by this section for a period of two (2) years from the date they were secured, and employers of park vendors, Programming Partners, and CBOs shall maintain such copies for a period of three (3) years from the date they were secured. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall maintain the affidavits required by Section 26-38.C. and the copies of the proof of United States citizenship or legal immigration status until the person is no longer a child event worker, park vendor, staff member, or volunteer. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall, upon request, provide copies of these documents to Miami-Dade County or to any law enforcement personnel with jurisdiction.
 - E. Every child event worker, park vendor, and staff member and volunteer of a Programming Partner or CBO shall wear, in a conspicuous and visible manner, an **identification badge that contains his/her photograph and full name** while working or volunteering on park property owned or operated by Miami-Dade County, except when in costume and during a

performance. The identification badge shall be of a size, design, and format approved by the Miami-Dade Park and Recreation Department.

- 5. I understand that the following Penalties and Enforcement shall take place for a violation of any provision of the ordinance.
 - a. It shall be unlawful for an employer of child event workers, an employer of park vendors, or a Programming Partner or CBO to knowingly permit or allow any child event worker, park vendor, staff member, or volunteer to work or volunteer on park property owned or operated by Miami-Dade County in violation of Section 26-38.
 - b. It shall be unlawful for any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to work or volunteer on park property owned or operated by Miami-Dade County in violation of Section 26-38.
 - c. Any person who shall violate a provision of Section 26-38, or who shall knowingly or willingly provide false or erroneous information to his/her employer, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.
 - d. Any person who violates or fails to comply with Section 26-38 may be subject to civil penalties in accordance with Chapter 8CC of this Code. Each day of violation or noncompliance shall constitute a separate offense.
- 6. I understand that any costs or fees associated with the required background screening will be borne by my organization/agency/firm.
- 7. I hereby certify that the foregoing statement is true and correct in relation to the company for which I am submitting this affidavit. I further certify that this statement is being given knowingly and voluntarily by me on behalf of the company. The organization/agency/firm submitting this affidavit recognizes and acknowledges that it's subject to the provisions of Code of Miami-Dade County, Chapter 26, Article III, the Shannon Melendi Act and agrees to comply therewith.

_____ Date _____ Title _____ (Signature) _____

SUBSCRIBED AND SWORN TO (or affirmed) before me this _____

by _____ He/She is personally known to me or has

presented _____ as identification.

(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____ Notary Seal
(State)

SO

Exhibit D
MIAMI-DADE COUNTY PARK & RECREATION DEPARTMENT
AUTHORIZATION FOR OUTSIDE AGENCY CAPITAL IMPROVEMENTS

Application available in PDF format

DATE ISSUED: 10/01/99

SECTION: 6 6.800

SUBJECT: The Miami-Dade Park and Recreation Department maintains a list of unfunded capital improvement needs for planned parks development and land acquisitions. When public funds are not available to construct new facilities, private organizations, such as private developers and community-based organizations (CBOs), are able to raise the money to both design and build much-needed athletic fields, lighting, recreation centers, concession buildings, et al.

Typically, developers will fund the cost of park development in lieu of paying impact fees. CBOs may receive grant funding through the County's authorized Programming and Capital Development Grants program, which stipulates their coordinating capital improvements with parks and recreation operations, planning, design and construction staff. However, some private organizations have taken it upon themselves to construct facilities without authorization from the County.

Application and Authorization Process

This procedure establishes criteria for the required documents and approval levels that all private organizations must abide by before any capital improvements can be constructed on County park and recreation property. This process will ensure that work is done:

- To comply with the park's general plan;
- In accordance with design standards and specifications;
- With the appropriate permits; and
- To protect both the County's and the organization's interests.

The Property Management Section of the Planning and Research Division will serve as the point of contact for applications and will coordinate their review and approval.

Application

Any private organization desiring to make improvements to County park and recreation property and not otherwise under contract to do so must complete and submit an *Application for Capital Improvements on County Park and Recreation Property*. This application form will be available through any Park Manager and the Property Management Section. It must be executed by the party proposing the work, and requires specific information regarding:

- The Organization;
- The Proposed Capital Improvement Project; and
- The Selected Design, Engineering and Construction Companies.

Application Review for Project Approval

The application will be submitted and reviewed by the Property Management Section for compliance with the park's general plan and appropriateness of the proposed project.

If the project is approved, the Property Management Section will provide the organization with a checklist of the minimum requirements, including all insurance documents, for authorization to proceed. It is the responsibility of the organization to meet these minimum requirements before authorization will be issued. Any special conditions associated with the proposed project will be noted.

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Note: If an organization is performing work without this application's approval, all work shall cease until it is filed and appropriate authorization has been granted. If authorization is not granted, the organization will be liable for all costs and labor associated with the removal of its work.

Authorization

The organization will be responsible for submitting to the Property Management Section all of the documents complying with the minimum requirements: insurance, plans, drawings, permits, et al. These documents will be circulated to the appropriate County staff for review and approval.

Upon final approval by the Park and Recreation Department's Assistant Director for Planning and Development, the Property Management Section will issue an *Authorization for Capital Improvements on County Park and Recreation Property*. This Authorization must be signed by the applicant organization prior to beginning construction.

The organization must notify the Property Management Section of all inspections associated with construction, and must provide a Certificate of Occupancy or Certificate of Completion once work on the project is complete and before operation of the facility commences.

APPLICATION FOR CAPITAL IMPROVEMENTS ON COUNTY PARK AND RECREATION PROPERTY

Park Name: _____ Date: _____

Park Address: _____

Project Title: _____

Organization Name: _____

Authorized Person: _____

Address: _____

Phone No.: _____ Fax No.: _____ Mobile No.: _____ Pager No.: _____

General Contractor Company: _____ License #: _____

Contact Person: _____

Address: _____

Phone No.: _____ Fax No.: _____ Mobile No.: _____ Pager No.: _____

Architect/Engineer Company: _____

Contact Person: _____

Address: _____

Phone No.: _____ Fax No.: _____ Mobile No.: _____ Pager No.: _____

Estimated Dollar Value of Improvement: _____

Projected Description: _____

Submitted by: _____

Print Name Signature Date

Please submit application to:

Contact: Miami Dade Park and Recreation, Property Management Section

Address: 275 NW 2nd Avenue 4th Floor, Miami, Florida 33128

Phone No.: (305) 755-7812 Fax No.: (305) 755-7864 Pager No.: _____

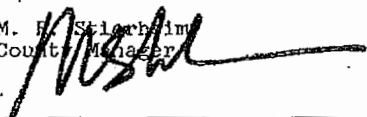
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R-122-82

MEMORANDUM

Not on Agenda
Item No. 5(a)24

17.07-17A

TO	Honorable Mayor and Members Board of County Commissioners	DATE	January 19, 1982
FROM	M. H. Stierheim County Manager 	SUBJECT	Acceptance of Drift Boat Bid at Haulover Beach Park

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached Lease and Concession Agreement with Kelley Fleet, Inc. for the development and operation of a drift boat concession at Haulover Beach Park.

BACKGROUND

The Park Policy Sub-Committee of the Board has worked with the Park and Recreation Department in developing proposals to take advantage of longer term agreements and the possibility of lessees investing capital in the beautification and physical improvements at Haulover Beach Park. The Park Policy Sub-Committee had previously approved the bidding of seven drift boat spaces at Haulover as one such project:

On December 9, 1981, the Park Policy Sub-Committee reviewed the recommendation for the award of the drift boat spaces at Haulover. A comparison of the bids received is contained in the attached Evaluation Committee report. The Park Policy Sub-Committee has recommended that the Board award the Leasing and Concession Agreement to Kelley Fleet, Inc.

Kelley Fleet, Inc. will begin operation immediately if approved by the Board. It's Board of Directors, Officers and Stockholders are made up of George and Alicia Kelley.

Attachments

EVALUATION COMMITTEE REPORT
 LEASE OF HAULOVER BEACH PARK
 DRIFT, FISHING BOAT SPACE

November 5, 1981

Members: Bill Bird, Chairman; Stacey Hornstein, Dr. Charles Pezoldt, Gorman Daniels, Ron Bell, John McKee

Advisory Personnel: Teresa Mussetto, Dick Jones, Judy Soto, Debbie Bovarnick

BACKGROUND: Requests For Proposals (RFP) were duly advertised in August 1981, and after a preliminary injunction requiring modification for bidder qualifications, was again duly advertised in October 1981 and, subsequently, bid proposals were publicly opened on October 28, 1981. On October 21, 1981, the County Manager appointed this Committee to review and make recommendation on bid proposals submitted. On November 5, 1981, this Committee met, as published in the Metro Calendar, to consider the proposals of Stacie's, Inc. and Kelley Fleet, Inc. the only two (2) proposers. Stacie's Inc. is presently involved in litigation with the County and is presently operating under court order, but has no written agreement with the County. Kelley Fleet, Inc. is presently operating as five separate corporations all with current year-to-year berthing agreements. Both proposers were invited to make presentations before the Committee.

HIGHLIGHTS OF PROPOSALS:

Minimum Payment - RFP Requirement - \$46,200

A. Stacie's Inc.

Item	1st Year	2nd Year	3rd Year	3 Year Total
Minimum Guarantee	\$66,000	\$66,000	\$66,000	\$198,000
Percentage Payments				
5% Gross Fishing Fees	12,600	12,600	12,600	37,800
10% Incidentals	Unknown	Unknown	Unknown	-
10% Alco. Beverages	Unknown	Unknown	Unknown	-
15% Food and Non-Alco. Beverage	Unknown	Unknown	Unknown	-
Utility Reimbursement	6,000	6,000	6,000	18,000
	\$84,600	\$84,600	\$84,600	\$253,800

Term of Lease: 12 years with two - 10 year renewals

Capital Improvements: \$35,000

Contract Changes: Substantial

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Kelley Fleet, Inc.

Item	1st Year	2nd Year	3rd Year	3 Year Total
Annual Guarantee*	\$60,000	\$ 60,000	\$ 60,000	\$180,000
Percentage Payments On Fishing Fees				
0%-\$0-\$850,000				
0%-\$850,000-\$1,500,000	5,017	10,195	15,586	46,392
0% over \$1,500,000	-	-	-	-
0% Incidentals-Food	14,222	15,504	16,666	46,392
0% Incidentals Rod & Reels	10,611	11,406	12,419	34,436
Utility Reimbursement	7,200	7,200	7,200	21,600
	\$97,050	\$104,305	\$111,871	\$315,226

* Guarantee is for use of five (5) slips; addition of boats to slips 6 and 7 will increase guarantee by \$1,000 per month per boat.

Term of Lease: 10 years with two - 10 year renewals

Capital Improvements: \$85,000

Contract Changes: Minimal

HIGHLIGHTS OF PRESENTATION TO COMMITTEE:

- A. Stacie's Inc. - Attendees - George Moskos, Jim Moskos, Louis Karageorges and Louis Stabinski
1. Administration - Proposer owns one boat and intends to sub-lease remaining spaces. Approach would be to allow market place to dictate price structures and feels that quality of service would be maintained by each sub-lessee policing their own operation.
2. Financial - Proposer's operation showed a net loss for 1980 of \$5,745. Proposer thought that they had made a profit in 1979.
3. Capital Improvements - Proposer indicated that \$35,000 had not been realistic in view of project proposed, but said they would cover costs as needed to comply with drawings. Funds for construction would come from George Moskos, President, not Stacie's Inc.
4. Advertising - Budget for 1980 was \$329.00. Indicated minimal interest in broadening advertising, cross promotions or other items in this area.
5. Contract Changes - Proposer's requested changes to Department's contract were major and adversely affected the Department's control. Some of the more critical changes involved: Automatic renewals not subject to Departmental review; Minimum Guarantee not subject to periodic Departmental review and adjustment; Utility Reimbursement not subject to periodic Departmental review and adjustment; No approval required from Department regarding sub-lease of seven boat slips; Removal of provision requiring Performance Bond; and others.
- B. Kelley Fleet, Inc. - Attendee - George Kelley
1. Administration - Proposer presently owns five boats and plans to fill remaining slips with new boats of his own fleet, as business conditions warrant. Proposer does not plan to sub-lease unused

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slips. Quality will be maintained by direct control of lessee with indirect supervision of Department. Price changes will be effected only with concurrence of the Department.

2. Financial - Proposer's operation showed a net profit of \$82,443 for 1980, and 1981 profit is projected to be approximately \$115,000.
3. Capital Improvements - The \$85,000 budgeted appears to be realistic based on proposer's plans. Proposer offered to immediately place funds in escrow upon award of lease if required by Department. Funds would come from Kelley Fleet, Inc. Although they had not assumed they could take over Park office, they indicated if they were made available they would be interested in it, and they would somehow participate in the cost of relocating Park office.
4. Advertising - Budget for 1980 was \$49,708. Projected 1981 budget is approximately \$65,000. Advertising presently includes Yellow Pages, weekly news paper ads, brochures distributed at various sites, including many hotels, and cross advertising with other lessees and the Department. Free transportation is provided to and from the boats from various Miami Beach locations. Proposer is willing to further expand budget and is very interested in cross advertising and promotions and promotion of the Park in general.
5. Contract Changes - Proposer accepted the contract as written except for changes in Article 4, relating to payments to County. Changes are not objectionable and basically tend to only clarify methods for payment.

ANALYSIS:

Both proposers' minimum guarantees were in excess of RFP requirements, however, over the first three years of the lease analysis indicates Kelly Fleet's projected payments, including minimum guarantee, percentage payments and utility reimbursements, would be approximately \$60,000 greater. Length of the leases were comparably equal. Kelley Fleet's capital improvement bid budget was considerably higher than Stacie's and funds for this work are available through operations and not necessarily reliant on personal or outside sources. Considering this and present profits and losses of both proposers, Kelly Fleet appears more financially sound and able to make capital improvements, as well as monthly guarantee payments and other payments. The Department's goal of making this Park self-supporting will require significant participation of all lessees. Any efforts of the lessee to promote, develop and expand his own business will have a carry-over effect to other areas of the Park. Kelly Fleet's advertising and promotion budget for 1980 was approximately 150 times greater than Stacie's, and the 1981 budget is projected to be even higher. Kelly Fleet also has interest in developing overall Park usage. Many contract changes proposed by Stacie's are unacceptable to the Department and would probably not be acceptable to the County Attorney's Office. Kelly Fleet's contract changes dealt more with procedure and method rather than substance and are acceptable to the Department subject to County Attorney's review and approval.

RECOMMENDATION: After completion of presentations and review by the Committee, a vote was taken and it was unanimously recommended that the Haulover Beach Park Drift Boat Concession Lease be awarded to Kelly Fleet, Inc. in that this proposer best complements the views of the Department toward public services, and will also make considerably greater contributions in revenue and capital improvement to the Park.

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STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, RICHARD P. BRINKER, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. R-122-82, adopted by the said Board of County Commissioners at its meeting held on January 19, 19 82.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 25th day of January, A. D. 19 82.

RICHARD P. BRINKER, Ex-Officio Clerk
Board of County Commissioners
Dade County, Florida

By Jesse C. Helman
Deputy Clerk



Board of County Commissioners
Dade County, Florida

R-12282

Working Copy

(2)24
1/19/82

LEASE AND CONCESSION AGREEMENT

R-122-82

2/1/82 - 1/1/92

³⁰¹ THIS LEASE AND CONCESSION AGREEMENT, made and entered into this day of FEBRUARY, 1982, by and between METROPOLITAN DADE COUNTY, FLORIDA, hereinafter called the "County", and KELLEY FLEET, INC., hereinafter called the "Lessee",

WITNESSETH:

WHEREAS, the County owns and operates marina facilities at Haulover Beach Park for the recreational and entertainment of park patrons, and

WHEREAS, the County has duly advertised for bids for and received bids for the lease of a portion of the said marina, and

WHEREAS, the bid of Kelley Fleet, Inc. was determined to be in the best interest of the County,

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

1. Purpose: The County hereby grants unto the Lessee, and the Lessee hereby accepts from the County a lease of seven drift boat slips and adjacent land spaces as described in Article 3, for the operation of vessels for drift fishing, anchor fishing, diving and extended cruises which may, with specific Departmental approval, allow stops for food, rest and/or shelter. Additional initially approved activities include the on board sale or rental of equipment, supplies, food and beverages. Landside activities may include sale of novelties and merchandise directly related to the operation, so long as these sales and rentals do not conflict with the exclusive rights of others, and determined by the Department.

2. Term: The County hereby leases to the Lessee for a term of ten (10) years, beginning February 1, 1982 and ending January 1, 1992, the premises described in Article 3.01 hereof for the operation of a Lease and Concession within Haulover Beach Park Marina, hereinafter called the "Facilities"

1/1/92
3/31/02
1/1/02
3/31/12

3. Option to Renew: Provided that there has been no default of the Lease by Lessee, Lessee may, by written notice to and approval by the County Manager or his assignee, hereinafter called the "Department", at least six months before the end of the current term, renew this Lease for two (2) additional periods of ten (10) years from the end of the original term, upon such terms and conditions as the parties may agree. Such periods shall run consecutively so as to make this Lease continuous in its operation from the beginning to its termination, a period of thirty (30) years. In the event that the parties do not agree on terms before the expiration of this Lease, Lessee shall have no further rights under this Lease.

4. This Lease and Concession Agreement is exclusive only to the site to be leased hereby and as to types of services and items offered. Initial space includes seven drift

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boat slips and immediately adjacent landside area as shown on Exhibit A. Nothing contained in this Agreement shall preclude the County from charging parking. Initially approved activities include fishing trips, fishing equipment sale and rental, ticketing, sale of fresh fish, sale of novelties, sale of food and beverages aboard vessels once away from the dock and use of seven designated drift boat slips.

WEST APPROVAL
12/6 2/16/92
5 approved in
Sept 2/10/92
would like
to add
12/9/92

5. New Construction: The Department shall approve construction, all installation and use of facilities. Lessee shall bear all costs associated with such construction, installation and use. Lessee shall spend a minimum of \$85,000 for immediate improvements, as represented within the proposal. All improvements shall become the property of the County upon termination or expiration of this Agreement.

6. Additional Services and Space: Initially Lessee shall operate five vessels although seven slips are available. The use of the two vacant slips shall require Departmental approval.

Upon determination by the Department that the public may be better served by permitting Lessee to provide additional service and/use additional space, the Department shall first offer Lessee the right to provide additional services and/or use additional space, upon such terms as the parties may agree.

If the Department and Lessee cannot agree to terms within a time period determined by the Department, the Department may then seek a different Lessee through normal public bidding procedures. Failure to agree to terms shall not preclude Lessee from participating in the public bidding.

7. Legal Description: Haulover Beach Park Marina, 10800 Collins Avenue, Miami Beach, Florida, 33154, seven slips and adjacent land space as shown on Exhibit A.

8. Minimum Rental Guarantee: Lessee shall pay a minimum annual rental of SIXTY THOUSAND DOLLARS (\$60,000.00), to the County from the date the premises, described in Article 3.01 hereof, are certified by the Department to be available for the Lessee's intended beneficial use and occupancy, in equal monthly payments of FIVE THOUSAND DOLLARS (\$5,000.00), until such time as the rental rates for the premises are adjusted as provided herein. Said Minimum Rent shall be due on the first (1st) day of each month in advance without billing. In the event that Lessee leased additional space, the rental fees may differ from the minimum rental guarantee rate. These rates shall be interim rates until reviewed as established below.

This rental guarantee shall be increased to ONE THOUSAND DOLLARS (\$1,000.00) a month for each vessel operated in excess of the originally approved five vessels.

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9. Rental Rate Review: The guaranteed rental rate(s) stated herein shall be subject to fair and non-discriminatory review and adjustment at the end of the first (1) year period from the date of commencement of this Agreement by Lessor, and each one (1) year period thereafter. Rates for additional properties shall be reviewed at the same time as the rate review for the minimum lease regardless of time of adding the additional space. When such rental rates are established and approved by appropriate action of the Board of County Commissioners, this Lease and Concession Agreement shall be considered amended and written notification shall be provided by the Department to the Lessee of the establishment and effective date of the said rental rate(s) applicable to the leased premises.

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10. **Percentage Fees:** In addition to the minimum rental guarantee, the Lessee shall pay to the County, without billing, the following:

A. **Drift boat fees** (monies paid by patrons for right to take a trip(s) on one of Lessee's vessels operating from facilities):

Seven percent (7%) of annual gross receipts from \$850,000.01 to \$1,499,999.99
Ten percent (10%) of annual gross receipts over \$1,500,000.00

B. **Incidental sales:**

Ten percent (10%) of the monthly gross receipts from all other sales, excluding drift boat fees.

Such payment shall be made by the tenth (10th) day of the month following the month during which the gross receipts as defined in Section 4.05 herein, were earned and shall be accompanied by the utility reimbursement for the leased facility. Utility reimbursement shall be \$600.00 per month and is subject to review as determined by the Department, and payable the 1st of each month in advance.

11. **Gross Receipts:** The term gross receipts as used in this Agreement means all monies paid or payable to or considerations of determinable value received by the Lessee for sales made, transactions had or for services rendered, from all sources, in the operations of the Concession, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value; provided, however, that any taxes imposed by law which are separately stated to and paid by customer and directly payable by the Lessee to a taxing authority, sales refunds and approved discounts shall be executed therefrom.

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to 4/23/92*

12. **Sales Tax:** The Lessee shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 4%) on the amounts payable to the County under this Agreement. This Sales and Use Tax shall be payable to the County which in turn will remit same, less authorized handling deductions to the State. Said tax is applicable to guarantee and percentage payments, unless otherwise determined by the State of Florida.

13. **Payment of Fees:** The Lessee shall pay all rental, fees and charges, and submit all reports required by this Lease and Concession Agreement to the following:

Park and Recreation Department
Contract Management Section
50 Southwest 32 Road
Miami, Florida 33129

Checks shall be made payable to the "Dade County Board of County Commissioners".

In the event Lessee fails to pay any of the rentals, fees or charges as required to be paid under the provisions of this Lease and Concession Agreement within ten (10) days after same shall become due, interest at the rate approved by the County (currently 1½% per month) shall accrue against the delinquent payment(s) until same are paid. Interest shall be charged from the date payment is due. This interest rate may vary at the

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determination of the Department. Implementation of this provision shall not preclude the County from terminating this Lease and Concession Agreement for default in the payment of rentals, fees or charges, or from enforcing any other provisions contained herein.

14. Reports and Records:

A. The Lessee shall maintain during the term of this Lease and Concession 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 collected hereunder, not limited to gross receipts. The form of all such records cash registers, cash registers, tapes books, ledgers, journals, sales slips and invoices, installed or used for recording the operations of the Lessee under this Agreement shall be subject to the approval of the Department prior to commencement of operations, and subsequent recommendations for changes, additions or deletions.

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B. On or before the tenth (10th) day following the end of each calendar month throughout the term of this Agreement, the Lessee shall furnish to the Department a report of gross receipts during the preceding calendar month, on forms approved by the Department. This report shall be signed by the Lessee certifying to the accuracy of such gross receipts. Any percentage fees or charges due shall be payable with the submission of the report provided for in this Article.

C. Lessee 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 certified report prepared and attested to by an independent Certified Public Accountant, as to the correct gross receipts per month arising from the Lessee's operations under this Agreement, prepared in conformance with the American Institute of Certified Public Accountants' requirements for "Special Reports." The report due under this Article shall, for the first reporting period, cover the period ending twelve months from the date of the execution of this Lease, plus the balance of the number of days necessary to have the period end on the last day of a month in the event this Lease is not executed on the first day of a month. Reporting periods may be adjusted with prior written approval of the Department. Accompanying the above report shall be a second report showing all improvement costs as required in Article 8.02.

D. The Lessee shall allow the Department or the auditors of the County to inspect all or part of the compilation procedures for the aforesaid monthly reports. Said inspection is at the sole discretion of the Department.

E. All records of the Lessee necessary to verify the report set forth herein shall be available to the Department and the County's auditors at a reasonable location in Dade County, Florida, for a period of five (5) years after the end of any lease year.

15. Facilities:

A. The Lessee hereby agrees to submit for approval by the Department detailed plans and specifications for any anticipated leasehold improvement following the execution date of this Agreement and shall begin the construction of the food and beverage service facilities, including related site preparation, pollution control, equipment installation, walls, flooring, drainage, lighting, and other required facility improvements, within sixty (60) days from the date of approval of said detailed plans and specifications by the Department unless a later date is specified by the Department. The Department may extend any time periods with proper justification.

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r. Officers
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B. The design, structure and all pertinent features of the ticket and information booth to be constructed by or for the Lessee shall only be subject to change upon the mutual consent of the Department and Lessee.

C. All equipment and personal property furnished by Lessee shall be of good quality and suitable for its purpose. The County Manager or his designee shall have the right to require substitute equipment or personal property or additional equipment or personal property when such action is deemed necessary or desirable. Equipment acquired by the Lessee by purchase from the Lessor that is unsuitable for Lessee's operation may be replaced with other equipment or personal property of the Lessee's choice.

D. The Lessor shall be given the right of purchase of any equipment within the leased premises according to procedures listed in Article 25.

E. It shall be the responsibility of the Lessee to coordinate activities with the County during any constructions and normal operations.

F. The Lessee has inspected and hereby accepts the premises in an "as is" condition at the commencement of this Lease Agreement, and agrees to maintain said premises in the same condition, order and repair as at the commencement of said term or better, excepting only reasonable wear and tear arising from the use thereof under this Agreement.

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16. Facility Manager: The Lessee shall hire and assign full-time, qualified, experienced facility manager for its operations in the Concession. Said facility manager will have no other duties or responsibilities and will be physically available during reasonable operating hours. The qualifications of said facility manager shall be submitted to the Department upon request. During the hours when the manager is not on duty or available, there shall be a designated assistant manager. The manager and assistant manager shall be authorized representatives of the Lessee and entitled to act in all matters relating to the operation of the facility leased hereunder. The Department shall be advised in writing of the names, addresses, social security number, birthdate of the manager and assistant manager.

17. Department Approval: The Lessee agrees that it will obtain prior written approval from the Department in all of the following matters:

- A. Use of any type of vending machines, inside or outside of the building within the leased premises.
- B. Changes from originally approved specifications, signage and graphics.
- C. Equipment Lessee plans to install requiring any building modifications.
- D. Initial prices and changes thereto.

Further, it is understood by the Lessee that should any of the above items be disapproved, Lessee may offer alternative solutions. The Department shall be allowed sixty (60) days to reach decision in any of the above matters and failure to do so within such period shall constitute approval.

18. Department Approval of Change: The Department reserves the right with stated just cause to require the Lessee to change within a stated time any and all items contained in Section 5.03 it deems in need of change, despite previous approval of same. Except that merchandise on hand and/or paid for shall be permitted to be sold until depleted.

19. Public Contact of Lessee's Employees: Lessee's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the Department to demand his or her removal from duties in the Concession. All employees, with the exception of the facility manager and assistant manager, shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Lessee's employees.

20. Minimum Hours of Operation: The Concession will be required to operate seven days a week during those hours approved by the Department. Sufficient attendants will be available to provide outstanding service. Prior to beginning operations, the Lessee shall submit a schedule of intended hours of operation to the Department for approval. The Department may require a change in hours of operation, if in the discretion of the Department, such a change is desirable in providing the best service to the public.

21. Quality of Lessee's Services:

A. The Lessee shall conduct its operations in an orderly manner so as not to annoy, disturb or be offensive to customers, patrons or others in the immediate vicinity of such operations.

B. The Lessee 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, Lessee shall immediately take all necessary steps to correct the cause of such objection.

C. Lessee shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, keep and repair, and upon the expiration of this Agreement, or its termination in any manner, shall deliver said premises to the County in not worse condition than the same was at the commencement of this Agreement, loss by fire or other casualty and ordinary wear and tear only exceptions.

D. Lessee shall furnish good, prompt and efficient service, adequate to meet all reasonable demand therefor.

E. The Lessee shall not conduct any business or activity not specifically authorized by this Agreement, unless approved by the Department. It is expressly understood and agreed that the said operation shall not interfere in any manner with the public use of the area or infringe upon the normal method of operations of any other parties authorized to conduct business at the location, other than the leased premises. The Lessee agrees that a determination by the Department will be accepted as final in evaluating its activities which infringe on the rights of others and that it will fully comply with any decisions on this matter.

22. Assignment, Subletting and Successors in Interest: Lessee shall not sub-lease the premises in whole or any part, nor assign this Lease and Concession Agreement to any

other persons or firm without first obtaining Lessor's written approval, which approval shall not be unreasonably withheld.

It is covenanted and agreed that all covenants, conditions, agreements and undertakings contained in this Agreement shall extend to and be binding on the respective successors and assignees as well as sub-lessees accepted by the Department.

23. Facilities and Services Provided by County: The County shall provide and shall be reimbursed for the following:

- A. Electrical distribution as existing.
- B. Water facilities as existing.
- C. Sewage collection facilities as existing.

24. Facilities, Equipment and Services Provided by Lessee: The Lessee, at its sole cost, shall provide and/or maintain leased premises, in accordance with all legal requirements:

- A. Janitorial service within fifty feet of operations areas and solid waste removal.
- B. Devices or registers for recording original sales as approved in advance by the Department (see Article 4.08 E.)
- C. All new construction and maintenance
- D. Fire sprinkler system, as required.
- E. Complete air handling system, as required.
- F. All internal finishing such as ceilings, walls, decorations, furnishings and floor coverings, and all show cases, racks other display and sales facilities, including concession identification signing, subject to prior approval of the Department.
- 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. Outside landscaping as approved by the Department.
- L. Pest control within and around (within 20 feet of) operational areas.
- M. Garbage Collection

25. Equipment Installed by Lessee:

A. All equipment, furnishings, signage and advertising installed by the Lessee shall be in keeping with the appropriate standards of decor at the facilities and must be approved by the Department prior to installation. The Lessee shall not install, remove or replace the equipment or furnishings without notification to, and prior to approval by, the Department. Annually, along with the gross receipts report, Lessee shall provide to the Department a certified statement by an independent Certified Public Accountant setting forth cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed.

No coin or currency-operated vending machines or games shall be installed or located within the premises unless deemed necessary for public service by the Department, in which event the Lessee may be requested to install specific types of vending machines.

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

C. Lessee shall not alter or modify any portion of facilities, the lease premises or the improvements constructed therein without first obtaining written approval from the Department.

D. Lessee shall not sell, convey, mortgage, pledge or otherwise dispose of any of the equipment or furnishings installed on the leased premises without prior written consent of the Department.

26. Maintenance Responsibilities of Lessee; Appearance of Facilities: Lessee shall, at its sole cost and expense, keep and maintain the leased premises in a first-class condition during the term of this Agreement and any extensions thereof. The provision of janitorial services and all interior maintenance and repair within and around the leased premises are the sole and exclusive responsibility of the Lessee.

27. Damages: Lessee shall repair all damage to the leased or non-leased portions of the building caused by the Lessee, its employees, agents or independent contractors.

28. Utilities Within Leased Premises: Lessee shall maintain all utilities within the leased facilities including drains, sewer pipes, air-conditioning, plumbing and electrical lines, services, outlets, and where required, submeters to monitor utility usage.

29. Quiet Enjoyment of Leased Property: The County covenants and agrees that so long as no default exists in the performance of Lessee's covenants and agreements contained herein, Lessee shall peaceably and quietly hold and enjoy the leased premises and all parts thereof free from eviction or disturbance by the County or any person claiming under, by or through the County.

30. Indemnification: The Lessee does hereby agree to indemnify and save the County harmless from any and all claims, liability, losses and causes of action which may arise out of this Lease Agreement or the Lessee's activities in the demised premises. The Lessee shall pay all claims and losses of any nature whatsoever in connection therewith,

and shall defend all suits, at the County's request, in the name of the County when applicable and pay all costs and judgments which issue thereon.

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

32. Damage or Destruction of Premises: If either the leased premises or the leased areas are partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall be repaired with due diligence by the Lessee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the minimum rent payable hereunder for the period of Lessee's business interruption, if any, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the Lessee from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Lessee's business interruption a pro-rata adjustment shall be made as to the minimum rental guarantee and utility fees.

In the event the said premises are completely destroyed or so damaged that they will remain unusable for more than thirty (30) days, the Lessee and the Lessor shall be under no obligation to repair and reconstruct the premises, and adjustment of the rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Lease and Concession Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the premises in a Lease and Concession Agreement, the Lessee may reconstruct the premises at its own cost.

33. Ingress and Egress: Subject to rules, and regulations, statutes and ordinances governing the use of the facilities, Lessee, his agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials, shall have the right of ingress and egress to and from the premises.

34. Performance Bond:

A. Construction - The Lessee shall obtain and deliver to the Department, not less than ten (10) days prior to the anticipated commencement of any construction as provided in Article 5.01 hereof, a Completion and Payment Bond (Performance Bond) with a surety meeting the qualifications set forth in Article 16 below, in favor of the County, said bond to be acceptable to the Insurance 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 material men.

The Lessee may, in lieu of a Performance Bond for its construction, substitute therefrom an escrow agreement with a financial institution or some other party. Said escrow agreement shall be with parties and in form acceptable to the Department and shall be submitted for approval twenty (20) days prior to the commencement of construction.

B. Operations - The Lessee shall furnish a Performance Bond to the County

each year in the form attached hereto, with a surety meeting the qualifications set forth in Article 16, below, in an amount equal to fifty percent (50%) of the annual rental guarantee contained in Article 4.01, however, in no case less than the amount, as determined by the Department, needed to restore the area in case of destruction as specified in Article 13.01. This Performance Bond will be conditioned solely upon the full and faithful performance of all covenants of this Agreement.

The Lessee may, in lieu of the Performance Bond, but subject to the above conditions, deposit with the County a Cashier's Check, Certificate of Deposit or Certified Check in the amount of fifty percent (50%) of the annual rental guarantee.

35. Insurance: The Lessee 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 in amounts not less than \$300,000 per occurrence for Bodily Injury, and \$50,000 per occurrence for Property Damage.
- C. Contractual Liability Insurance - Covering all liability arising out of the terms of this Agreement.
- D. Automobile Liability Insurance - Covering all owned, non-owned and hired vehicles in amounts as indicated in "B" above.
- E. Fire and extended coverage covering all property both real and personal, naming the County as an additional payee.
- F. The Lessee shall provide or cause its contractor to provide Builder's Risk Insurance during the construction required by Article 5.01 B, of this Agreement, and shall provide any other insurance or security that may be required.
- G. The policy shall include protective and indemnity insurance limits, 100% coverage, maximum of \$1,000 deductible.
 - 1. Vessels with passenger capacity of up to and including 20 persons - \$50,000/\$100,000.
 - 2. Vessels with passenger capacity of up to 21 and including 150 persons - \$100,000/\$300,000.
 - 3. Vessels with passenger capacity in excess of 150 persons - \$100,000/\$500,000.
- H. Hull Insurance Limits:
As decided by the Owner and/or Insuror; deductible allowed.

The insurance required shall include those classifications as listed in Standard Liability Insurance Manuals, which most nearly reflect the operations of the Lessee 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 holders 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 Lessee shall furnish Certificates of Insurance to the Department at least fifteen (15) days prior to the commencement of operations, which Certificates shall clearly indicate that the Lessee has obtained insurance in the type, amount and classifications as required for strict compliance of the contract. Insurance shall not be cancelled without thirty (30) days prior written notice to the Department.

36. Cancellation by County: The occurrence of any of the following shall cause this Agreement to be automatically terminated:

- A. Institution of proceedings in voluntary bankruptcy by the Lessee.
- B. Institution of proceedings in involuntary bankruptcy against the Lessee if such proceedings continue for a period of ninety (90) days.
- C. Assignment by Lessee for the benefit of creditors.
- D. Abandonment or and discontinuance of operations hereunder.
- E. The discovery of any misstatement in the Lessee's bid which, in the sole opinion of the County materially affects the Lessee's qualifications to perform under the Lease and Concession Agreement.

The County shall have the right, after fourteen (14) calendar days written notice sent by registered or certified mail to the Lessee specifying the amount of payment(s) in default, to terminate this Agreement 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; provided, however, that such termination shall not be effective if Lessee makes the required payment(s) during the fourteen (14) calendar day period following receipt of the written notice.

The County shall have the right to terminate this Agreement after thirty (30) days written notice sent by registered or certified mail to the Lessee, of the occurrence of one or more of the following, unless the same shall have been corrected within such period:

- A. Non-performance of any covenant of this Agreement and failure of the Lessee to remedy such breach.
- B. The conduct of any business or the merchandising of any product or service not specifically authorized herein.
- C. A final judicial determination that litigation instituted by the Lessee against the County was groundless.

37. Termination by Lessee: Lessee 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 commercial purposes, and the remaining in force of said injunction for period of more than ninety (90) 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 Lessee of the existence of such breach.
- C. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the facilities, or any substantial part, or parts, thereof in such a manner as substantially to restrict Lessee's operations for a period of ninety (90) calendar days or more.

38. Non-Discrimination:

A. That Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

1. No person on the ground of race, color, 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 furnishing of services thereon, no person on the ground of race, color, national original or sex shall be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination.
3. That the Lessee 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. That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the concession and re-enter and repossess said facilities thereon and hold the same as if said concession 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 of expiration of appeal rights.

C. Lessee shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to hiring,

tenure, terms, conditions or privileges to employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color religion, national origin or ancestry.

39. Rules and Regulations: The Lessee will observe, obey and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Lessee's operations under this Agreement.

40. Payment of Obligations:

A. Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the leased premises, its improvements and its operations under the agreement provided, however, that Lessee 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.

B. The Lessee shall procure, at the cost of the Lessee, all permits and licenses required for this operation and performance under this Agreement.

41. Availability of Lessee's Records: Lessee shall make available to the Department and/or the County's auditors at any time, from Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m., all books of account, reports, records and other pertinent information relating to Lessee's operations as may be required for audit purposes hereunder, as determined by the Department.

42. Inspection by County: The Department may make periodic inspections of all of the leased premises and equipment to determine if such are being maintained in a neat and orderly condition. The Lessee shall be required to make any improvements in cleaning or maintenance methods required by the Department. Such periodic inspections may also be made to determine whether the Lessee is operating in compliance with the terms and provisions of this Agreement.

43. Facility Repairs, Alterations and Additions by the County: The County shall have the absolute right, without limitations to make any repairs, alterations and additions to any structures and facilities at the concession, including the facilities leased under this Agreement, free from any and all liability to the Lessee for loss of business or damages of any nature whatsoever during the making of such repairs, alterations and additions.

44. Termination of Contract: The Lessee within thirty (30) calendar days following the termination of this Agreement, shall forthwith remove all of its personal property not acquired under the terms of this Agreement and the original proposal. Any personal property of Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Lessee for the safekeeping of Lessee's personal property.

It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by Lessee, except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be and will always remain, the personal

property of the Lessee.

Upon termination of this Agreement and the removal of all personal property by Lessee, the Lessee shall restore said premises to neat, clean and habitable condition.

The Department shall have the right upon the termination of this Agreement to retain any portion of the Lessee's property as specified in Article 5.01 and pay to the Lessee the undepreciated value thereof.

For purposes of this section, equipment and furnishings shall be depreciated on a straight line basis at ten percent (10%) a year and draperies, floor and ceiling coverings and the like at twenty percent (20%) a year. Building improvements, including architectural fees not to exceed eight percent (8%) of the cost thereof, are to be depreciated over the term of this Agreement unless otherwise agreed in writing. Personal property purchased from the County shall be depreciated at twenty five percent (25%) per year.

45. Approvals: Whenever prior approvals are required hereinabove by either party, such approvals shall not be unreasonably withheld.

46. Indulgence Not Waiver: The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement either at the time of the breach or failure occurs or at any time throughout the term of this Agreement.

47. 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. 32nd Road
Miami, Florida 33129

To the Lessee: Kelley Fleet, Inc.
138 N.E. 111 Street
Miami, Florida 33161

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

48. The Lessee's Vessels are described as follows:

Name of Vessel: New Popeye	Builder: Norseman
Number:	Rig or Type: Drift Boat
Length: 80'	Registered or Documented #: 511099
Beam: 23'	Radio/Telephone Call Letters: WV 2227

Draft: 5'

Power: Diesel

Sail:

Name of Lessee: George Hamway, Inc.
d/b/a New Popeye

Home Address - Telephone: 138 N.E. 111 Street
Miami Shores, Florida
Phone: 751-8104

Business Address - Telephone:

Name of Vessel: Mucho-K

Builder: A-One Marine

Number:

Rig or Type: Drift Boat

Length: 65'

Registered or Documented #: 608487

Beam: 20'

Radio/Telephone Call Letters: WQZ-3346

Draft: 4'

Power: Diesel

Sail:

Name of Lessee: Mucho-K, Inc.
d/b/a Mucho-K

Home Address - Telephone: 138 N.E. 111 Street
Miami Shores, Florida
Phone: 751-8104

Business Address - Telephone:

Name of Vessel: Hurricane

Builder: Gilliken

Number:

Rig or Type: Drift Boat

Length: 65'

Registered or Documented #: 296867

Beam: 22'

Radio/Telephone Call Letters: WV 7677

Draft: 4'

Power: Diesel

Sail:

Name of Lessee: Hurricane Fishing Trips, Inc.
d/b/a Hurricane

Home Address - Telephone: 138 N.E. 111 Street
Miami Shores, Florida
Phone: 751-8104

Business Address - Telephone:

Name of Vessel: Cap Rudy

Builder: Gilliken

Number:

Rig or Type: Drift Boat

Length: 65'

Registered or Documented #: 287290

Beam: 22'

Radio/Telephone Call Letters: WS 7046

Draft: 4'

Power: Diesel

Sail:

Name of Lessee: Cap Rudy, Inc.

Home Address - Telephone: 138 N.E. 111 Street
Miami Shores, Florida
Phone: 751-8104

Business Address - Telephone:

Name of Vessel: Mystery

Builder: Gilliken

Number:

Rig or Type: Drift Boat

Length: 65'

Registered or Documented #: 287244

Beam: 22'

Radio/Telephone Call Letters: WS 8027

Draft: 4'

Power: Diesel

Sail:

Name of Lessee: Mystery Fishing Trips, Inc.
d/b/a Mystery

Home Address - Telephone: 138 N.E. 111 Street
Miami Shores, Florida
Phone: 751-8104

Business Address - Telephone:

Name of Vessel:

Builder:

Number:

Rig or Type:

Length:

Registered or Documented #:

Beam:

Radio/Telephone Call Letters:

Draft:

Power:

Sail:

Name of Lessee:

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Home Address - Telephone:

Business Address - Telephone:

Name of Vessel:

Builder:

Number:

Rig or Type:

Length:

Registered or Documented #:

Beam:

Radio/Telephone Call Letters:

Draft:

Power:

Sail:

Name of Lessee:

Home Address - Telephone:

Business Address - Telephone:

49. Marina Rules and Regulations:

A. The Lessee agrees to comply with all Marina Rules and Regulations as accepted by the Department and as they may be amended, and the Marina Rules and Regulations are made a part of and are incorporated into this Agreement by reference. Upon failure of the Lessee to comply with any such Rules and Regulations or to pay the rental hereinabove provided, this Agreement may be terminated and the Lessor may, at the Lessee's sole risk and expense, remove the vessel from her berth space and/or store it outside the Marina and the Lessor may take possession of the space, relet the same, and shall have a lien against the above-described vessel, her appurtenances and contents.

50. Non-Domicile: Lessee understands and agrees that the above-described vessel may not be used for purposes of domicile without the prior written consent of the Department on a separate document.

*none of
Nothing on
the Registrar's
files*

51. Additional Submittals: The Lessee shall, at their own expense, secure and submit to the Department or its designee the following:

- A. A copy of all current and necessary Dade County Business Occupational License.
- B. A certificate of marine inspection dated within the last 45 days by a

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marine inspector approved by the Department, or current Coast Guard approval, for each vessel.

- C. Three professional references for the Captain of each vessel. (Principal Operator)
- D. A statement of police record clearance for the Captain of each vessel and all of the mates from the Metropolitan Dade County Public Safety Department.
- E. A photograph of each vessel.
- F. A copy of Certificate of Registry for each vessel.
- G. A copy of the Bill of Sale for each vessel.
- H. There shall be a signed affidavit by the Owner, stating that each vessel is to be used exclusively for commercial purposes.
- I. A schedule of proposed fees and charges to be assessed to the public.
- J. Excursion and sight-seeing vessels shall furnish a map showing proposed routes over which the applicant desires to operate, the length of the trip in miles, the time schedule and the proposed fare.
- K. A title or documentary proof of applicants ownership of each vessel to be berthed.

52. Interpretation: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior verbal or written agreement between the parties with respect thereto. This Agreement may be amended only by written document, properly authorized, executed and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean appropriate formal action by the Board of County Commissioners. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations all be governed by laws of the State of Florida.

Waiver of any breach shall not constitute waiver of any other breach. Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

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

ATTEST:

DADE COUNTY BOARD OF
COUNTY COMMISSIONERS

Richard P. Brinker

By: Aime Shaw
Deputy Clerk



By: M.R. Stierheim
County Manager

LESSEE: KELLY FLEET, INC

By: Alicia Kelley
Alicia Kelley
Vice President and Secretary

By: George Kelley
George Kelley
President

(CORP. SEAL)

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MEMORANDUM

DANIELS copy

7.07-12A

TO M.R. Stierheim
County Manager

FROM Bill Bird, Director
Park and Recreation Department

DATE November 30, 1981

SUBJECT Agenda Item:
Haulover Beach Park Drift
Boat Concession Lease

RECOMMENDATION:

It is recommended by the Park and Recreation Department that the Haulover Beach Park Drift Boat Concession Lease be awarded to Kelley Fleet, Inc. and that the attached resolution and memorandum to the Board be placed on the Board Agenda for acceptance.

BACKGROUND:

Background information is contained in the attached Manager's Report to the Board and the attached Evaluation Committee Report.

JK:rg

Attachment

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MEMORANDUM

Darius copy

Agenda Item No.

7.07-17A

TO Honorable Mayor and Members DATE
 Board of County Commissioners

FROM M.R. Stierheim SUBJECT Acceptance of Drift Boat
 County Manager Bid at Haulover Beach Park

RECOMMENDATION:

It is recommended that the board of County Commission approve the attached Lease and Concession Agreement with Kelley Fleet, Inc. for the development and operation of a drift boat concession at Haulover Beach Park.

BACKGROUND:

On December 5, 1980 the Park Policy Sub Committee discussed with Park and Recreation Department Personnel "the mutual advantages of a longer term agreement as well as the possibility of the successful Lessee investing capital in beautification and physical improvements" at Haulover Beach Park. Commissioner Phillips made a motion approving bidding the seven drift boat spaces at Haulover. The motion was seconded and passed. Commissioners Redford, Shack and Oesterle were also present.

A comparison of the two bids received is contained in the attached Evaluation Committee Report.

Kelley Fleets, Inc. will begin operation February 1, 1981. It's Board of Directors, Officers and Stockholders are made up of George and Alicia Kelley.

Attachment

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EVALUATION COMMITTEE REPORT
 LEASE OF HAULOVER BEACH PARK
 DRIFT FISHING BOAT SPACE

November 5, 1981

Members: Bill Bird, Chairman; Stacey Hornstein, Dr. Charles Pezoldt, Gorman Daniels, Ron Bell, John McKee

Advisory Personnel: Teresa Mussetto, Dick Jones, Judy Soto, Debbie Bovarnick

BACKGROUND: Requests For Proposals (RFP) were duly advertised in August 1981, and after a preliminary injunction requiring modification for bidder qualifications, was again duly advertised in October 1981 and, subsequently, bid proposals were publicly opened on October 28, 1981. On October 21, 1981, the County Manager appointed this Committee to review and make recommendation on bid proposals submitted. On November 5, 1981, this Committee met, as published in the Metro Calendar, to consider the proposals of Stacie's, Inc. and Kelley Fleet, Inc. the only two (2) proposers. Stacie's Inc. is presently involved in litigation with the County and is presently operating under court order, but has no written agreement with the County. Kelley Fleet, Inc. is presently operating as five separate corporations all with current year-to-year berthing agreements. Both proposers were invited to make presentations before the Committee.

HIGHLIGHTS OF PROPOSALS:

Minimum Payment - RFP Requirement - \$46,200

A. Stacie's Inc.

Item	1st Year	2nd Year	3rd Year	3 Year Total
Minimum Guarantee	\$66,000	\$66,000	\$66,000	\$198,000
Percentage Payments				
5% Gross Fishing Fees	12,600	12,600	12,600	37,800
10% Incidentals	Unknown	Unknown	Unknown	-
10% Alco. Beverages -	Unknown	Unknown	Unknown	-
15% Food and Non-Alco. Beverage	Unknown	Unknown	Unknown	-
Utility Reimbursement	6,000	6,000	6,000	18,000
	<u>\$84,600</u>	<u>\$84,600</u>	<u>\$84,600</u>	<u>\$253,800</u>

Term of Lease: 12 years with two - 10 year renewals

Capital Improvements: \$35,000

Contract Changes: Substantial

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B. Kelley Fleet, Inc.

Item	1st Year	2nd Year	3rd Year	3 Year Total
Annual Guarantee*	\$60,000	\$ 60,000	\$ 60,000	\$180,000
Percentage Payments On Fishing Fees				
0%-\$0-\$850,000				
7%-\$850,000-\$1,500,000	5,017	10,195	15,586	46,392
10% over \$1,500,000	-	-	-	-
10% Incidentals-Food	14,222	15,504	16,666	46,392
10% Incidentals Rod & Reels	10,611	11,406	12,419	34,436
Utility Reimbursement	7,200	7,200	7,200	21,600
	<u>\$97,050</u>	<u>\$104,305</u>	<u>\$111,871</u>	<u>\$315,226</u>

* Guarantee is for use of five (5) slips; addition of boats to slips 6 and 7 will increase guarantee by \$1,000 per month per boat.

Term of Lease: 10 years with two - 10 year renewals

Capital Improvements: \$85,000

Contract Changes: Minimal

HIGHLIGHTS OF PRESENTATION TO COMMITTEE:

- A. Stacie's Inc. - Attendees - George Moskos, Jim Moskos, Louis Karageorges and Louis Stabinski
- Administration - Proposer owns one boat and intends to sub-lease remaining spaces. Approach would be to allow market place to dictate price structures and feels that quality of service would be maintained by each sub-lessee policing their own operation.
 - Financial - Proposer's operation showed a net loss for 1980 of \$5,745. Proposer thought that they had made a profit in 1979.
 - Capital Improvements - Proposer indicated that \$35,000 had not been realistic in view of project proposed, but said they would cover costs as needed to comply with drawings. Funds for construction would come from George Moskos, President, not Stacie's Inc.
 - Advertising - Budget for 1980 was \$329.00. Indicated minimal interest in broadening advertising, cross promotions or other items in this area.
 - Contract Changes - Proposer's requested changes to Department's contract were major and adversely affected the Department's control. Some of the more critical changes involved Automatic renewals not subject to Departmental review; Minimum Guarantee not subject to periodic Departmental review and adjustment; Utility Reimbursement not subject to periodic Departmental review and adjustment; No approval required from Department regarding sub-lease of seven boat slips; Removal of provision requiring Performance Bond; and others.
- B. Kelley Fleet, Inc. - Attendee - George Kelley
- Administration - Proposer presently owns five boats and plans to fill remaining slips with new boats of his own fleet, as business conditions warrant. Proposer does not plan to sub-lease unused

slips. Quality will be maintained by direct control of lessee with indirect supervision of Department. Price changes will be effected only with concurrence of the Department.

2. Financial - Proposer's operation showed a net profit of \$82,443 for 1980, and 1981 profit is projected to be approximately \$115,000.
3. Capital Improvements - The \$85,000 budgeted appears to be realistic based on proposer's plans. Proposer offered to immediately place funds in escrow upon award of lease if required by Department. Funds would come from Kelley Fleet, Inc. Although they had not assumed they could take over Park office, they indicated if they were made available they would be interested in it, and they would somehow participate in the cost of relocating Park office.
4. Advertising - Budget for 1980 was \$49,708. Projected 1981 budget is approximately \$65,000. Advertising presently includes Yellow Pages, weekly news paper ads, brochures distributed at various sites, including many hotels, and cross advertising with other lessees and the Department. Free transportation is provided to and from the boats from various Miami Beach locations. Proposer is willing to further expand budget and is very interested in cross advertising and promotions and promotion of the Park in general.
5. Contract Changes - Proposer accepted the contract as written except for changes in Article 4, relating to payments to County. Changes are not objectionable and basically tend to only clarify methods for payment.

ANALYSIS:

Both proposers' minimum guarantees were in excess of RFP requirements, however, over the first three years of the lease analysis indicates Kelly Fleet's projected payments, including minimum guarantee, percentage payments and utility reimbursements, would be approximately \$60,000 greater. Length of the leases were comparably equal. Kelley Fleet's capital improvement bid budget was considerably higher than Stacie's and funds for this work are available through operations and not necessarily reliant on personal or outside sources. Considering this and present profits and losses of both proposers, Kelly Fleet appears more financially sound and able to make capital improvements, as well as monthly guarantee payments and other payments. The Department's goal of making this Park self-supporting will require significant participation of all lessees. Any efforts of the lessee to promote, develop and expand his own business will have a carry-over effect to other areas of the Park. Kelly Fleet's advertising and promotion budget for 1980 was approximately 150 times greater than Stacie's, and the 1981 budget is projected to be even higher. Kelly Fleet also has interest in developing overall Park usage. Many contract changes proposed by Stacie's are unacceptable to the Department and would probably not be acceptable to the County Attorney's Office. Kelly Fleet's contract changes dealt more with procedure and method rather than substance and are acceptable to the Department subject to County Attorney's review and approval.

RECOMMENDATION: After completion of presentations and review by the Committee, a vote was taken and it was unanimously recommended that the Haulover Beach Park Drift Boat Concession Lease be awarded to Kelly Fleet, Inc. in that this proposer best complements the views of the Department toward public services, and will also make considerably greater contributions in revenue and capital improvement to the Park.

R-529-92

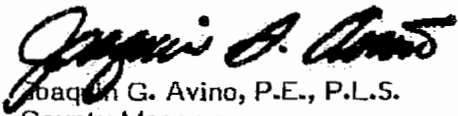
MEMORANDUM

Agenda Item No. 5(e)(17)

TO Honorable Mayor and Members
Board of County Commissioners

DATE May 5, 1992

SUBJECT Amendment To Lease With
Kelley Fleet, Inc.

FROM 
Joaquin G. Avino, P.E., P.L.S.
County Manager

Recommendation:

It is recommended that the Board approve an Amendment to the Lease Agreement with Kelley Fleet, Inc. to allow drift boat fishing services in lieu of late fee payment, to correct scrivener's error relating to date of renewal, and to retroactively approve renewal as of February 1, 1992 in accordance with the amended conditions. This Renewal Agreement was approved by the Culture and Recreation Committee at its meeting on April 2, 1992.

Background:

Kelley Fleet, Inc. has been a valued tenant at Haulover Beach Park under the current Lease and Concession Agreement since 1982 (Reso. No. R-122-82, January 19, 1982). Kelley Fleet provides fishing trips to residents and visitors for a half-day, full day and night fishing aboard its five vessels. They also provide multiple day trips to the Bahamas and Keys and diving trips.

Like many small companies, this tenant has suffered during the current economic downturn. The Park and Recreation Department has worked with Kelley Fleet to sustain its operations which support tourism in the Sunny Isles and other areas. Kelley Fleet has been cooperative and helpful in support of County events but has fallen behind in its payments to the County.

At present, the tenant has caught up and paid all rent that is due as required, and has provided a \$30,000 Certificate of Deposit assigned to the County for security. However, the tenant has been late with payments and \$6,590.18 in late fees have accrued using a simple 1½% rate. Under the terms of the contract, late fees are set by the County (customarily 1½% per month) on amounts outstanding. Nonpayment can lead to termination of the contract.

The Park and Recreation Department prefers to continue this contract. Not only is Kelley Fleet's operation important for tourism efforts, it also supplies a lower cost alternative for fishing. Further, Kelley Fleet has worked with the Department in providing low cost or no cost fishing trips in support of the Department's recreational programs. Kelley Fleet generates desirable activity at the Park and employs about 20 people.

In order to help this tenant through difficult times and to recognize Kelley Fleet's cooperative efforts, it is recommended that these accumulated late fees be waived in exchange for free trips in support of Departmental programs. In this regard, Kelley Fleet agrees to provide 1,560 free half-day trips. The retail value of those trips would be from \$10.45 to \$22.50 per trip. Even if only lower valued trips were used, this value exceeds the late fees due.

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Honorable Mayor and Members
Board of County Commissioners
Page 2

While this contract was being reviewed, it was pointed out that there were conflicting dates for renewal. The Lease and Concession Agreement became effective February 1, 1982. The term was for 10 years, but an ending date of January 1, 1992 rather than January 31, 1992 was typed in the document. The intent was for a full 10 year term ending January 31, 1992.

Because late fees were outstanding at the time of renewal and it is not customary to renew contracts with this fault, it is requested that the Board approve the Amendment to the Lease and Concession Agreement which corrects the renewal date, accepts 1,560 fishing trips for Park and Recreation programs in lieu of current late fees, and approving renewal retroactively to February 1, 1992 with the amended conditions.

VSA Present

RESOLUTION NO. R-529-92

RESOLUTION APPROVING THE RETROACTIVE AMENDMENT TO LEASE AND CONCESSION AGREEMENT WITH KELLEY FLEET, INC. ACCEPTING PROVISION OF DRIFT BOAT FISHING SERVICES IN LIEU OF LATE FEES, CORRECTING SCRIVENER'S ERROR, AND APPROVING RENEWAL WITH ABOVE AMENDED TERMS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board approves the retroactive Amendment to the Lease and Concession Agreement with Kelley Fleet, Inc. to accept the provision of drift boat fishing services in lieu of late fees at the time of approval, correcting scrivener's error, and approving renewal with the above amended terms, in substantially the form attached hereto and made a part hereof; and authorizing the County Manager to execute the same for and on behalf of the County.

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

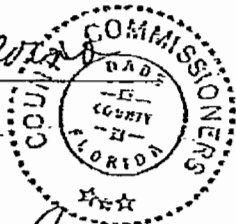
Mary Collins	absent
Charles Dusseau	aye
Joseph M. Gersten	absent
Larry Hawkins	aye
Alexander Penelas	aye
Harvey Ruvin	absent
Arthur E. Teele, Jr.	aye
Sherman S. Winn	aye
Stephen P. Clark	aye

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ATTEST:

Marshall Ader, Clerk

By: *Elizabeth Ader*
Deputy Clerk



DADE COUNTY BOARD OF
COUNTY COMMISSIONERS

By: *J. Avino*
Joachim C. Avino, P.E., P.L.S.
County Manager

By: *Alicia Kelley*
Alicia Kelley
Vice President and Secretary

LESSEE: KELLEY FLEET, INC.
By: *George Kelley*
George Kelley
President



(CORP. SEAL)

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, MARSHALL ADER, Clerk of the Circuit Court in and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. R-529-92, adopted by the said Board of County Commissioners at its meeting held on May 5, 19 92.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 6th day of May, A.D. 19 92.

MARSHALL ADER, Clerk
Board of County Commissioners
Dade County, Florida

By Andrew S. Coble
Deputy Clerk



Board of County Commissioners
Dade County, Florida

512)(17)
5-5-92
R-529-9

AMENDMENT TO LEASE AND CONCESSION AGREEMENT

THIS AMENDMENT, made this 5th day of MAY, 1992, by and between METROPOLITAN DADE COUNTY ("County") and KELLEY FLEET, INC. ("Lessee"),

WITNESSETH

WHEREAS, the County and the Lessee entered into a Lease and Concession Agreement dated February 3, 1982 and approved by County Resolution No. R-122-82 on January 19, 1982 (the "Agreement"); and

WHEREAS, the Agreement provides for an initial term of ten years and two renewal terms of ten years; and

WHEREAS, certain late fees currently exist under the Agreement which, if continued, may lead to termination of the Agreement; and

WHEREAS, both the County and the Lessee desire to continue the Agreement in full compliance,

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in the Agreement and this Amendment, the County and Lessee agree as follows:

1. The County agrees that its Park and Recreation Department may accept 1,560 half-day fishing trips from the Lessee at no cost for use in association with its various programs and events. These trips are in lieu of existing late fees which may otherwise be chargeable to the Lessee under the Agreement.

2. The Agreement is amended to correct a scrivener's error as follows:

Original: "2. Term: The County hereby leases to the Lessee for a term of ten (10) years, beginning February 1, 1982 and ending January 1, 1992,..."

Amended: "2. Term: The County hereby leases to Lessee for a term of ten (10) years, beginning February 1, 1982 and ending January 31, 1992,..."

3. The County approves the renewal of this Agreement and this Amendment as of February 1, 1992.

4. No other terms or conditions of the Agreement are hereby modified and all unmodified terms and conditions of the Agreement shall remain in full force and effect and hereby confirmed and ratified.

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

Attachment A

The current terms of Kelley Fleet, Inc. Lease and Concession Agreement are as follows:

Contract Start Date:	February 1, 1982
Contract Length:	10 years
Contract Ending Date:	January 31, 2002
Extension Options:	Two (2) ten (10) year options
Payment Terms:	7% of annual gross receipts from \$850,000.01 to \$1,499,999.99 10% of the annual gross receipts over \$1,500,000.00 10% of the monthly gross receipts from all other sales, excluding drift boat fees
Minimum Rent:	\$5,000.00 per month

MEMORANDUM

R-894-99

Agenda Item No. 6(L)(1)(A)

Honorable Chairperson and Members
Board of County Commissioners

DATE: July 27, 1999

SUBJECT: Amendment to Lease Concession
Agreement With Kelley Fleet,
Inc.

ROM: M. R. Stierheim
County Manager



RECOMMENDATION

It is recommended that the Board approve an Amendment to the Lease and Concession Agreement with Kelley Fleet, Inc. to reduce the minimum monthly guarantee rental rate from \$5,000.00 to \$3,000.00 per month retroactive to September 1, 1996. This date coincides with the date Kelly Fleet reduced its fleet from five (5) vessels to three (3) vessels. Further, it is recommended that the Board approve the negotiated lump sum payment of \$33,478.96 as payment to cure outstanding rent arrearages.

BACKGROUND

Kelley Fleet, Inc. has been a valued tenant at Haulover Beach Park under the current Lease and Concession Agreement since 1982 (Resolution No. R-122-82, January 19, 1982, amended Resolution No. R-529-92, May 5, 1992). Kelley Fleet provides fishing trips to residents and visitors for half-day, full day and night fishing aboard its three (3) vessels. They also provide multiple day trips to the Bahamas and Keys and diving trips. The current terms of Kelley Fleet, Inc. Lease and Concession Agreement are included in Attachment A.

Like many small companies, this tenant has suffered, due to a variety of reasons, including a down turn in business. This, coupled with the added debt services from replacing a vessel after Hurricane Andrew has resulted in Kelley Fleet, inc. experiencing difficulties in making rent payments to the County beginning in June 1995. Consequently, in September of 1996, Kelley Fleet, Inc. found it necessary to reduce its fleet of five (5) vessels to three (3) vessels, on a permanent basis.

As a result of missed payments, late payments and late fees, accruing at a rate of 1 ½ % monthly, the tenant's present rent arrearages under the current contract terms, amount to \$127,729.22. Due to the long-standing relationship between the Park and Recreation Department and Kelley Fleet, Inc., a series of negotiations began in September of 1997, in an effort to avoid terminating Kelley Fleets Lease. It should be noted that during this period the tenant did not stop paying rent, but paid at a reduced rate pending the resolution of the rent arrearage issues.

The Park and Recreation Department endeavors to continue this contract. Kelley Fleet, Inc.'s operations support tourism in Sunny Isles and other areas, as well as, supplying a lower cost alternative for fishing, available nowhere else in Miami-Dade County. Kelley Fleet, Inc. generates desirable activity at the Park and employs approximately 20 people.

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Honorable Chairperson and Members
Board of County Commissioners
Page 2

In order to help this tenant through their business difficulties and to recognize the benefit of the unique and positive recreational opportunity the operation provides, it is recommended that the minimum monthly rental rate of \$5,000.00 per month, be retroactively reduced to \$3,000.00 back to September 1996. This date coincides with the date Kelly Fleet reduced its fleet from five (5) vessels to three (3) vessels. For the above stated reasons and to continue a revenue stream that could not be easily replaced at that location, even at the reduced rate, it is in the best interest of the County to approve the proposed lease amendment.

Attachments

5/14/99

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6(L)(1)(A)
7-27-99

RESOLUTION NO. R-894-99

2nd Amendment

RESOLUTION APPROVING THE RETROACTIVE AMENDMENT TO LEASE AND CONCESSION AGREEMENT WITH KELLEY FLEET, INC. REDUCING THE MONTHLY MINIMUM GUARANTEED RENT FROM \$5,000.00 TO \$3,000.00 PER MONTH AND ACCEPTING THE LUMP SUM PAYMENT OF \$33,478.96 AS PAYMENT IN FULL OF OUTSTANDING RENT ARREARAGES

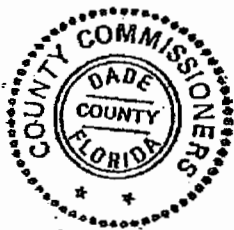
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR MIAMI-DADE COUNTY, FLORIDA, that this board finds that it is in the best interest of Miami-Dade County to approve the retroactive Amendment to the Lease and Concession Agreement with Kelley Fleet, Inc. reducing the monthly minimum guaranteed rent from \$5,000.00 to \$3,000.00 per month and to accept a lump sum payment of \$33,478.96 as payment to cure outstanding rent arrearages, in substantially the form attached hereto and made a part hereof; and authorizing the County Manager to execute the same for and on behalf of the County.

The foregoing resolution was offered by Commissioner ~~Gwen Margolis~~, who moved its adoption. The motion was seconded by Commissioner Jimmy L. Morales and upon being put to vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara M. Carey-Shuler	absent	Miguel Diaz de la Portilla	aye
Betty T. Ferguson	aye	Gwen Margolis	aye
Natacha Seijas Millán	aye	Jimmy L. Morales	aye
Dennis C. Moss	aye	Pedro Reboredo	absent
Dorin D. Rolle	aye	Katy Sorenson	aye
Javier D. Souto		absent	

The Chairperson thereupon declared the resolution duly passed and adopted this 27th day of July, 1999. 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: **KAY SULLIVAN**

Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. do

R-894-99

SECOND AMENDMENT TO LEASE AND CONCESSION AGREEMENT

THIS AMENDMENT, made this 27 day of July, 1999, by and between MIAMI-DADE COUNTY ("County") and KEILEY FLEET, INC. ("Lessee")

WITNESSETH

WHEREAS, the County and the Lessee entered into a Lease and Concession Agreement dated February 3, 1982 and approved by County Resolution R-122-82 on January 19, 1992 and amended by Resolution R-529-92 on May 5, 1992 (the "Agreement"); and

WHEREAS, certain rent arrearages currently exist under the Agreement which, if continued, may lead to termination of the Agreement; and

WHEREAS, both the County and the Lessee desire to continue the Agreement in full compliance,

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in the Agreement and this Amendment, the County and Lessee agree as follows:

1. Section 8 of the Agreement is amended retroactive to September 1, 1996, as follows:

Original: "8. Minimum Rental Guarantee: Lessee shall pay minimum annual rental of SIXTY THOUSAND DOLLARS (\$60,000.00), to the County ... in equal monthly payments of FIVE THOUSAND DOLLARS (\$5,000.00), ..."

Amended: "8. Minimum Rental Guarantee: Lessee shall pay minimum annual rental of THIRTY SIX THOUSAND DOLLARS (\$36,000.00), to the County ... in equal monthly payments of THREE THOUSAND DOLLARS (\$3,000.00), ..."

2. The Lessee agrees to pay and the County accepts, a lump sum payment to the County by the Lessee in the amount of \$33,478.96, as payment in full of all rent arrearages through July 1, 1999.

3. No other terms or conditions of the Agreement are hereby modified and all unmodified terms and conditions of the Agreement shall remain in full force and effect and hereby confirmed and ratified.

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

WITNESSES:

AS TO COUNTY:
MIAMI-DADE COUNTY

Agnes J. McK...

BY: M. R. Stierheim
M. R. STIERHEIM,
County Manager

Date: _____

AS TO LESSEE:
KELLEY FLEET, INC.

BY: *George Kelley*
GEORGE KELLEY
President

Paul Kelley

Date: *10/31/99*

BY: *Alicia Kelley*
ALICIA KELLEY
Vice President and Secretary

Date: *10/31/99*

(CORP. SEAL)

Memorandum

R-183-02

Agenda Item No. 6(L)(1)(B)

To: Honorable Chairperson and Members
Board of County Commissioners

Date: February 26, 2002

From: Steve Shiver,
County Manager

Subject: Third Amendment to the
Kelley Fleet Lease Agreement

RECOMMENDATION

It is recommended that the Board approve a third amendment to the Lease Agreement between Kelley Fleet, Inc. (Lessee) and Miami-Dade County (Lessor) for drift boat fishing services at Haulover Beach Marina. This third amendment reduces the number of slips leased to Kelley Fleet, Inc. from seven to three, to reflect current operations and payment terms.

BACKGROUND

Kelley Fleet, Inc. has been a valued tenant at Haulover Beach Marina under the current Lease and Concession Agreement since 1982 (Resolution No. R-122-82, January 19, 1982, amended Resolution No. R-529-92, May 5, 1992). Kelley Fleet provides fishing trips to residents and visitors for half-day, full day and night fishing trips aboard its three vessels, and also provides diving trips to the Bahamas and the Keys. Kelley Fleet supports tourism in Sunny Isles, North Beach and Bal Harbor by providing reasonably priced fishing trips to the public and has been supportive of County events and recreational programs.

The second amendment to the Lease and Concession Agreement dated July 27, 1999, (Resolution No. R-894-99) decreased the minimum guarantee payment to the County from \$5,000 to \$3,000. The second amendment also reflects the reduction in the number of boats Kelley Fleet operates out of Haulover Marina under this Lease Agreement from seven to three. However, a corresponding reduction in the number of slips available to Kelley Fleet, Inc. was not incorporated into that second amendment.

This third amendment corrects that oversight by reducing the number of boat slips available for lease to Kelley Fleet, Inc. from seven to three. The reduction in boat slips leased to Kelley Fleet allows for Haulover Marina to make additional slips available to the public.

Attachments

96

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6(L)(1)(B)
2-26-02

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

R-183-02

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN KELLEY FLEET, INC. AND MIAMI-DADE COUNTY FOR DRIFT BOAT SERVICES AT HAULOVER PARK AND MARINA TO REDUCE THE NUMBER OF ALLOCATED BOAT SLIPS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is attached for reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Manager to execute a third amendment to the Lease Agreement with Kelley Fleet, Inc. for operation of drift boat fishing services at Haulover Park and Marina, substantially in the form attached hereto.

The foregoing resolution was offered by Commissioner **Dr. Barbara M. Carey-Shuler** who moved its adoption. The motion was seconded by Commissioner **Dorcin D. Rolle** and upon being put to a vote, the vote was as follows:



MEMORANDUM

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: February 26, 2002

FROM: Robert A. Ginsburg
County Attorney

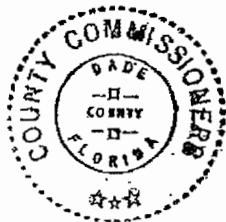
SUBJECT: Agenda Item No. 6 (L) (1) (B)

Please note any items checked.

- "4-Day Rule" (Applicable if raised)
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of private business sector impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- "Sunset" provision required
- Legislative findings necessary


Dr. Miriam Alonso	aye	Bruno A. Barreiro	aye
Dr. Barbara Carey-Shuler	aye	Betty T. Ferguson	aye
Gwen Margolis	aye	Joe A. Martinez	absent
Jimmy L. Morales	absent	Dennis C. Moss	absent
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 26th day of February, 2002. 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

Approved by County Attorney as
to form and legal sufficiency. 

Angelique Ortega

By: **KAY SULLIVAN**
Deputy Clerk

THIRD AMENDMENT TO LEASE AND CONCESSION AGREEMENT

THIS AMENDMENT, made this 16th day of February, 2002, by and between MIAMI-DADE COUNTY ("County") and KELLEY FLEET, INC. ("Lessee")

WITNESSETH

WHEREAS, the County and the Lessee entered into a Lease and Concession Agreement dated February 3, 1982 and approved by County Resolution R-122-82 on January 19, 1982, first amended by Resolution R-529-92 on May 5, 1992 and amended a second time on July 27, 1999 by Resolution R-894-99 (the "Agreement");

WHEREAS, the County approves the second renewal effective February 1, 2002 through January 31, 2012;

WHEREAS, both the County and the Lessee desire to continue the Agreement in full compliance,

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in the Agreement, the County and Lessee agree as follows:

1. Section 1 of the Agreement is amended as follows:

Purpose: The County hereby grants unto the Lessee, and the Lessee hereby accepts from the County a lease of seven ~~three~~ drift boat slips and adjacent land spaces as described in Article 3, for the operation of vessels for drift boat fishing, anchor fishing, diving and extended cruises which may, with specific Departmental approval, allow stops for food, rest and/or shelter.

2. No other terms or conditions of the Agreement are hereby modified and all unmodified terms and conditions of the Agreement shall remain in full force and effect and hereby confirmed and ratified.

IN WITNESS WHEREFORE, the parties hereto have caused this Third Lease Amendment to be executed by their appropriate officials as of the date first written above.

WITNESS:

AS TO COUNTY:
MIAMI-DADE COUNTY

Gladys Fernandez

BY: Steve Shiver
Steve Shiver
County Manager

Gladys Fernandez
Name

Date 4/18/02

100

WITNESS:

AS TO LESSEE:
KELLEY FLEET, INC.

Roseline Duborceau Baptiste
Name

BY: George Kelley
GEORGE KELLEY
President

2028 NW 89 Ave, P.P. FL 33024
Address

Date: 1/14/02

Roseline Duborceau Baptiste
Name

BY: Alicia Kelley
ALICIA KELLEY
Vice President and Secretary

2028 NW 89 Ave, P.P. FL 33024
Address

Date: 1/14/02

(CORP. SEAL)