# Memorandum

MIAMI-DADE COUNTY

**Date:** October 2, 2012

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

Agenda Item No. 8(H)(4)

**From:** Carlos A. Gimenez
Mayor

**Subject:** Recommendation for Award: Development and Operation of a Water Sports Complex at Amelia Earhart Park

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**Recommendation**

It is recommended that the Board of County Commissioners approve award of a License Agreement to Miami Wake Board Cable Complex d/b/a Miami Watersports Complex (Licensee) for *RFP803 - Development and Operation of a Wakeboard Cable Complex at Amelia Earhart Park.* The License Agreement is for the development and operation of a water sports complex at Amelia Earhart Park for the Parks, Recreation and Open Spaces Department (PROS).

The Licensee will develop a water sports complex that will consist of a state-of-the-art cable skiing system and related infrastructure, and offer other water-related sports activities, instructions and lessons, as well as provide concessions and bathroom facilities, at no cost to the County. The County will receive a minimum annual guaranteed rent or a percentage of gross receipts, whichever is greater, as described further below.

**Scope**

The impact of this item is countywide in nature. Amelia Earhart Park is located in Commission District 13.

**Fiscal Impact and Funding Source**

The minimum estimated revenue to PROS is $840,000 over the initial twenty-year term, based on the negotiated minimum annual guaranteed rent of $42,000 per year. However, if the Licensee's gross receipts are between $525,000 and $1,250,000 per year, the rent due to the County will be calculated at 8 percent of the Licensee's monthly gross receipts. As an example, if the Licensee generates $1,000,000 in annual gross receipts, the rent due to the County will be $80,000 per year, or, $1,600,000 over the initial twenty-year term. Additionally, the percentage of gross receipts will increase to 10 percent on the portion of yearly revenues that exceed $1,250,000. This License Agreement also provides for two, five-year option-to-renew terms, with the same financial terms.

**Track Record/Monitor**

The license agreement will be monitored by Jon Seaman, Contracts Manager of the Parks, Recreation and Open Spaces Department. Andrew Zawoyski, CPPO, of the Internal Services Department is the Procurement Contracting Officer.

**Delegated Authority**

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise, at their discretion, cancellation provisions, subsequent options-to-renew and other extensions in accordance with the terms and conditions of the license agreement.

**Due Diligence**

Due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists that were referenced include: convicted vendors,

debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to Contractor responsibility. This information is being provided pursuant to Resolution R-187-12.

**Vendor Recommended for Award**
A Request for Proposals was issued under full and open competition on December 7, 2011. Award of this License Agreement was to the highest-ranked proposer offering the best value to the County.

| Vendor | Address | Principal |
|---|---|---|
| Miami Wake Board Cable Complex, d/b/a Miami Watersports Complex | 95 Merrick Way, Ste. 380 Coral Gables, FL | Michael Fay |

**Vendor(s) Not Recommended for Award**
None, as there was only one proposer.

**Applicable Ordinances and Contract Measures**
- At the time this solicitation was issued, Small Business Enterprise measures did not apply to revenue-generating contracts.
- Local Preference was applied in accordance with the Ordinance.
- The Living Wage Ordinance does not apply.
- The two percent User Access Program provision does not apply to revenue-generating contracts.

**Background**
The County issued a Request for Proposal (RFP) to solicit proposals from experienced and capable parties to develop, finance, design, construct, operate, and maintain a wakeboard cable complex and provide related services (e.g. wakeboarding, waterskiing, wake surfing, tubing, and kneeboard rentals and lessons) at Amelia Earhart Park for the Parks, Recreation and Open Spaces Department.

The County only received one proposal, which was from a vendor that is currently operating a scaled-down version of a wakeboard complex at Amelia Earhart Park under a permit issued by PROS. Prior to issuing the solicitation, the County held an Industry Day to conduct market research and notify relevant parties that the County was interested in developing a water sports complex. Additionally, the solicitation was advertised in local newspapers and notices of the solicitation were forwarded to over 900 potentially interested parties.

As further described in the attached Report of the Evaluation/Selection Committee (Committee), the proposal was evaluated and scored. After completion of the oral presentation, the Committee recommended that staff enter into negotiations with Miami Wake Board Cable Complex, d/b/a Miami Watersports Complex. During negotiations staff was able to negotiate a significantly increased monthly gross receipts percentage due to the County. Additionally, the recommended firm will be making a capital investment of approximately $2,000,000 in the equipment and infrastructure improvements necessary to fully develop this project. As such, this License Agreement represents a potentially significant revenue-generating opportunity for the County that will also further enhance Amelia Earhart Park as a countywide attraction for use by our residents.

Lisa M. Martinez, Senior Advisor
Office of the Mayor

# MEMORANDUM

(Revised)

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

**DATE:** October 2, 2012

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

**SUBJECT:** Agenda Item No. 8(H)(4)

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**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)(4)

10-2-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF LICENSE AGREEMENTS WITH MIAMI WAKE BOARD CABLE COMPLEX, D/B/A MIAMI WATERSPORTS COMPLEX TO DEVELOP AND OPERATE A WATER SPORTS COMPLEX AT AMELIA EARHART PARK FOR A MINIMUM FEE OF $840,000 TO THE COUNTY OVER A TWENTY-YEAR PERIOD, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND ALL OTHER RIGHTS CONTAINED IN LICENSE AGREEMENT NO. 803

**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 MIAMI-DADE COUNTY, FLORIDA,** that this Board approves the execution of a license agreement with Miami Wake Board Cable Complex, d/b/a Miami Watersports Complex to develop and operate a water sports complex at Amelia Earhart Park for a minimum fee of $840,000 to the County over a twenty-year period, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein.

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

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

| | |
|---|---|
| Bruno A. Barreiro | Lynda Bell |
| Esteban L. Bovo, Jr. | Jose "Pepe" Diaz |
| Sally A. Heyman | Barbara J. Jordan |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of October, 2012. This resolution shall become effective upon the earlier of (1) 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, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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

# Memorandum

MIAMI-DADE COUNTY

**Date:** June 12, 2012

**To:** Miriam Singer, CPPO
Assistant Director
Internal Services Department

**From:** Andrew Zawoyski, CPPO
Contracting Officer
Chairperson, Evaluation/Selection Committee

**Subject:** Report of Evaluation/Selection Committee for RFP No. 803 Development and Operation of Wakeboard Complex at Amelia Earhart

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The County issued a solicitation to obtain proposals from qualified firms to develop, operate, and maintain Wakeboard Complex at Amelia Earhart Park. Amelia Earhart Park is managed by the Parks, Recreation and Open Spaces Department (PROS). The solicitation yielded only one proposal.

The Evaluation/Selection Committee has completed the evaluation of the sole proposal submitted in response to the solicitation following the guidelines published in the solicitation.

**Committee meeting dates:** April 16, 2012 and April 30, 2012.

**Verification of compliance with contract measures:**
Not applicable since no contract measures were assigned to this solicitation.

**Verification of compliance with minimum qualification requirements:**
The solicitation did not have any minimum qualification requirements.

**Local Certified Service-Disabled Veteran's Business Enterprise Preference:**
Veteran's Preference was considered in accordance with the applicable ordinance. None of the proposers qualified for the preference.

**Summary of scores:**

The preliminary scores are as follows:

Pre-Oral Presentations

| ***Proposer*** | ***Technical Score*** *(max. 400)* | ***Price Score*** *(max.100)* | ***Total Combined Score*** *(max.500)* | ***Revenue/Price Submitted*** |
|---|---|---|---|---|
| 1. Miami Wake Board Cable Complex | 358 | 72 | 430 | $1,392 Initial Rent/$2,000 Monthly Guarantee and 4% of Gross Revenues |

The Evaluation/Selection Committee decided to hold oral presentations. Price/Revenue proposals were reviewed subjectively with the technical proposals.

The final scores are as follows:

Post-Oral Presentations

| ***Proposer*** | ***Technical Score*** *(max. 400)* | ***Price Score*** *(max.100)* | ***Total Combined Score*** *(max.500)* | ***Revenue/Price Submitted*** |
|---|---|---|---|---|
| 1. Miami Wake Board Cable Complex | 357 | 72 | 429 | $1,392 Initial Rent/$2,000 Monthly Guarantee and 4% of Gross Revenues |

**Local Preference:**
Local Preference was considered in accordance with applicable ordinance, but did not affect the outcome as the highest ranked proposer is local.

**Other information:**
The County received only one proposal, from a vendor who is currently operating a scaled down version of a wakeboard complex on a permit issued by PROS. Notices were sent to 779 potential interested parties and 56 interested parties downloaded the solicitation. The solicitation was advertised, as a stand alone item, in the Miami Herald.

**Negotiations:**
The Evaluation/Selection Committee recommends that the County enter into negotiations with the single proposer, Miami Wake Board Cable Complex. The following individuals will participate in the negotiations:

Andrew Zawoyski, Contracting Officer, ISD
Pedro Reynaldos, Amelia Earhart Park Manager, PROS
Alessandra Williams, Park Service Officer, PROS
Robert Warren, Real Estate Advisor, ISD
Bill Solomon, Chief, Procurement Division, PROS

**Consensus Statement:** Upon completion of the ranking, a Consensus Statement from the Evaluation/Selection Committee was prepared as to the rationale for the recommendation to negotiate. This Statement is attached.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheets.

Approved

Miriam Singer
Assistant Director

6/12/12
Date

MIAMI-DADE COUNTY, FLORIDA
Internal Services Department - Procurement Management Services

**Evaluation/Selection Committee Results Memo**

**RFP No. 803: Development and Operation of Wake Board Complex at Amelia Earhart Park**

The Evaluation/Selection Committee was tasked with rating and ranking the sole proposal received in response to the RFP for Development and Operation of Wake Board Complex at Amelia Earhart Park. The Evaluation/Selection Committee scoring was conclusive The Evaluation/Selection Committee recommends that the County enter into negotiations with Miami Wake Board Cable Complex.

The Evaluation/Selection Committee unanimously agrees that the selected proposer is recommended for negotiations as a result of·

A Proposal with the following advantages.

- Past performance and experience in developing and operating similar water sports complexes,
- Good Team of professionals with legal, financial and operational experts,
- Financial capabilities as represented in the proposal and at orals,
- Plan fits in with what the technical advisors, Parks Department and Amelia Earhart Park recommend

Robert Warren – Real Estate Advisor, Internal Services Department

Lars Bergquist – Park Manager, Department of Park, Recreation and Open Spaces

Alessandra Williams – Park Service Officer, Department of Park, Recreation and Open Spaces

Susan Schreiber – Transportation Systems Analyst, MPO

Dennis Maytan – Director, Parks Town of Homestead

## COMPOSITE

**RFP NO. 803**

**DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHART PARK**

**EVALUATION OF PROPOSALS**

| SELECTION CRITERIA / PROPOSERS | Maximum Points Per Member | Maximum Total Points (5 members) | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 75 | 70 |
| Relevant experience and qualifications of key personnel, incldng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 75 | 68 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 200 | 174 |
| Proposer's Management and Financial Resources | 10 | 50 | 46 |
| **Technical Points** *(Technical rows above)* | 80 | 400 | 358 |
| **Financial and Payment Criteria** | | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 100 | 72 |
| | | | |
| ***TOTAL POINTS*** | 100 | 500 | 430 |

**SIGNATURE:**

Chairperson

Reviewed By

**PRINT NAME:**

Andrew Zawoyski

FRED Simmons Jr.

5/14/2012

EVALUATION OF PROPOSALS

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHART PARK

Robert Warren

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 13 |
| Relevant experience and qualifications of key personnel, incldlng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 14 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 36 |
| Proposer's Management and Financial Resources | 10 | 9 |
| **Technical Points** *(Total of technical rows above)* | 80 | 72 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 15 |
| | | |
| ***TOTAL POINTS*** | 100 | 87 |

Robert Warren

SIGNATURE

5/2/2012

EVALUATION OF PROPOSALS

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHA

Lars Bergquist

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 15 |
| Relevant experience and qualifications of key personnel, incldng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 15 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 35 |
| Proposer's Management and Financial Resources | 10 | 10 |
| **Technical Points** *(Total of technical rows above)* | 80 | 75 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 15 |
| | | |
| ***TOTAL POINTS*** | 100 | 90 |

Lars-Bergquist

SIGNATURE

6/6/2012

EVALUATION OF PROPOSALS

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHAI

Alessandra Williams

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 15 |
| Relevant experience and qualifications of key personnel, inclding key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 15 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 35 |
| Proposer's Management and Financial Resources | 10 | 10 |
| **Technical Points** *(Total of technical rows above)* | 80 | 75 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 10 |
| | | |
| ***TOTAL POINTS*** | 100 | 85 |

Alessandra Williams

SIGNATURE

5/3/2012

EVALUATION OF PROPOSALS

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHA

Susan Schreiber

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 15 |
| Relevant experience and qualifications of key personnel, incldlng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 12 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 38 |
| Proposer's Management and Financial Resources | 10 | 10 |
| **Technical Points** *(Total of technical rows above)* | 80 | 75 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 17 |
| | | |
| ***TOTAL POINTS*** | 100 | 92 |

SIGNATURE

5/4/2012

EVALUATION OF PROPOSALS

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHAI

Dennis Maytan

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 12 |
| Relevant experience and qualifications of key personnel, including key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 12 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 30 |
| Proposer's Management and Financial Resources | 10 | 7 |
| **Technical Points** *(Total of technical rows above)* | 80 | 61 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 15 |
| | | |
| ***TOTAL POINTS*** | 100 | 76 |

Dennis Ny Maytan

SIGNATURE

5/2/2012

## COMPOSITE - Post Orals

### RFP NO. 803

### DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHART PARK

### EVALUATION OF PROPOSALS

| SELECTION CRITERIA / PROPOSERS | Maximum Points Per Member | Maximum Total Points (5 members) | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 75 | 70 |
| Relevant experience and qualifications of key personnel, incldng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 75 | 68 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 200 | 173 |
| Proposer's Management and Financial Resources | 10 | 50 | 46 |
| **Technical Points** *(Technical rows above)* | 80 | 400 | 357 |
| **Financial and Payment Criteria** | | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 100 | 72 |
| | | | |
| ***TOTAL POINTS*** | 100 | 500 | 429 |

**SIGNATURE:** **PRINT NAME:**

Andrew Zarwoski

Chairperson

Fred Simmons Jr.

Reviewed By

5/14/2012

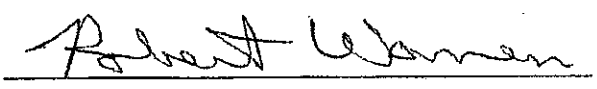
EVALUATION OF PROPOSALS - Post Orals

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHART PARK

Robert Warren

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 13 |
| Relevant experience and qualifications of key personnel, incldlng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 14 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 36 |
| Proposer's Management and Financial Resources | 10 | 9 |
| **Technical Points** *(Total of technical rows above)* | 80 | 72 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 15 |
| | | |
| ***TOTAL POINTS*** | 100 | 87 |



SIGNATURE

6/2/2012

EVALUATION OF PROPOSALS - Post Orals

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHAI

Lars Bergquist

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 15 |
| Relevant experience and qualifications of key personnel, incidling key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 15 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 35 |
| Proposer's Management and Financial Resources | 10 | 10 |
| **Technical Points** *(Total of technical rows above)* | 80 | 75 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 15 |
| | | |
| ***TOTAL POINTS*** | 100 | 90 |

Lars Berg

SIGNATURE

5W201

EVALUATION OF PROPOSALS - Post Orals

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHA

Alessandra Williams

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 15 |
| Relevant experience and qualifications of key personnel, incldng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 15 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 35 |
| Proposer's Management and Financial Resources | 10 | 10 |
| **Technical Points** *(Total of technical rows above)* | 80 | 75 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 10 |
| | | |
| ***TOTAL POINTS*** | 100 | 85 |

Alessandra Williams

SIGNATURE

5/3/2012

EVALUATION OF PROPOSALS - Post Orals

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHA

Susan Schreiber

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 15 |
| Relevant experience and qualifications of key personnel, incldlng key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 12 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 37 |
| Proposer's Management and Financial Resources | 10 | 10 |
| **Technical Points** *(Total of technical rows above)* | 80 | 74 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 17 |
| | | |
| ***TOTAL POINTS*** | 100 | 91 |

SIGNATURE

5/4/2012

EVALUATION OF PROPOSALS - Post Orals

RFP NO. 803

DEVELOPMENT AND OPERATION OF WAKEBOARD CABLE COMPLEX AT AMELIA EARHA

Dennis Maytan

| SELECTION CRITERIA / PROPOSERS | Maximum Points | Miami Wake Board Cable Complex d/b/a/ Miami Watersports Complex |
|---|---|---|
| Proposer's experience, qualifications, and past performance related to the development, construction, operation, and maintenance of sports complex, and associated services as requested in this Solicitation | 15 | 12 |
| Relevant experience and qualifications of key personnel, including key personnel of any subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors | 15 | 12 |
| Proposer's development plan, time frame, pro forma, operation Plan, and approach to providing the services requested in this Solicitation | 40 | 30 |
| Proposer's Management and Financial Resources | 10 | 7 |
| **Technical Points** *(Total of technical rows above)* | 80 | 61 |
| **Financial and Payment Criteria** | | |
| Proposed Initial Rent, Guaranteed Monthly Rent, and Percentage of Monthly Gross Receipts | 20 | 15 |
| | | |
| ***TOTAL POINTS*** | 100 | 76 |

Dennis Maytan

SIGNATURE

5/2/2012

DEVELOPMENT AND OPERATION OF WATERSPORTS CABLE COMPLEX AT AMELIA EARHART PARK

**License Agreement No. 803**

THIS LICENSE AGREEMENT made and entered into as of this ____ day of _____, 2012, by and between Miami Wakeboard-Cable Complex LLC (d/b/a Miami Watersports Complex), a limited liability corporation organized and existing under the laws of the State of Florida, having its principal office at 95 Merrick Way, Suite 380, Coral Gables, FL 33134 (hereinafter referred to as the "Licensee"), and Miami-Dade County (the County), a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128, (herein referred to as the "County"),

## WITNESSETH:

WHEREAS, the County owns Amelia Earhart Park, (the "Park") for the use by patrons, Licensee, employees, and visitors, and which facilities are administered for the County by its Director of the Park, Recreation and Open Space (the "Department", also "PROS"), or designee; and

WHEREAS, the Licensee has offered to develop and operate a Watersports Complex ("Complex") in a manner that shall conform to the Scope of Work (Appendix A), Miami-Dade County's Request for Proposals (RFP) No. 803 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this License Agreement; and

WHEREAS, the Licensee has submitted a written proposal dated March 21, 2012, hereinafter referred to as the "Licensee's Proposal", which is incorporated by reference herein; and

WHEREAS, the Licensee's Proposal is recommended as being in the best interest of the County, and formed the basis for award of this License Agreement,

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

1. **Definitions:** The following words and expressions used in this License Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "License Agreement" or "Agreement" to mean collectively these terms and conditions, the Scope of Work (Appendix A), RFP No. 803 and all associated addenda and attachments, the Licensee's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "License Agreement Date" to mean the commencement date of this License Agreement, and shall begin on the date indicated in the first page of this License Agreement.

b) The words "License Agreement Year" to mean each twelve month period starting from the date this License Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the License Agreement.

d) The word "County" to mean Miami-Dade County.

e) The word "Licensee" to mean Miami Wake Board Cable Complex; d/b/a Miami Watersports Complex and its permitted successors and assigns.

f) The word "Days" to mean Calendar Days.

h) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.

j) The words "Scope of Work" to mean the document appended hereto as Appendix A, which details the work to be performed by the Licensee.

k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Licensee, who furnishes labor and/or materials, in connection with the Services, whether directly or indirectly, on behalf and/or under the direction of the Licensee and whether or not in privity of License Agreement with the Licensee.

l) The words "Work", "Services", or "Project" to mean all documentation and any items of any nature submitted by the Licensee to the County's Project Manager for review and approval pursuant to the terms of this License Agreement, and all matters and things required to be done by the Licensee in accordance with the provisions of this License Agreement.

2. **Use:** The County hereby grants unto the Licensee, and the Licensee hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth, a License Agreement to develop and operate a Watersports Complex. Licensee shall use the Complex only for the use permitted. The Licensee shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of County, and any sales by the Licensee of services or items not specifically authorized in writing by County may constitute a default. Licensee shall conduct its business at all times in accordance with this License Agreement.

**Property Description:** The Licensed Property is located at Amelia Earhart Park - 401 E. 65th Street, Hialeah, FL 33014. The Licensed Property covered by this Agreement is not a lease and only includes the rights to develop and operate a water sports complex. The Licensed Property comprises of the Areas (and associated square footage) marked A through E on Appendix C - Site Map and 45 acres of the eastern side of the 91 acre North Lake (also, "Lake") at Amelia Earhart Park. The Licensee may also use the entire lake as stated herein for boat lessons, tubing, standup paddle boarding, and kayaking, and for any special events, that are expected to be 8-10 such special events a year. All such use is expressly subject to further arrangements with the County and with prior written approval of PROS. Uses other than those noted above shall be subject to the written confirmation of the PROS or County, as applicable. Additionally, the Licensee shall have the right to use existing parking, restrooms and concession trailer, two storage containers, and/or Licensee constructed supporting infrastructure, concession area, restrooms, locker rooms, office space, and any additional parking.

3. **Operations:** Except when and to the extent that the Complex may be untreatable by reason of damage by fire, hurricane, or other casualty, Licensee shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein all of the Complex other than such minor portions thereof as are reasonably required for storage and office purposes, and such storage and office space shall only be used in connection with the business conducted by Licensee in the Complex; and will have on the premises adequately trained uniformed personnel for efficient service to customers.

4. **Limitations on Use:** Subject to Licensee's right to use the Complex for the purposes specified in this License Agreement, Licensee shall not suffer or permit the Complex 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; (ii) cause structural injury to the Complex or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Complex; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Complex or the proper and economic functioning of any other common service facility or common utility of the Complex; (vi) impair or interfere with the physical convenience of any of the occupants of the Complex; (vii) impair any of the Licensee's other obligations under this License Agreement or (viii) violate Article 7 of the Home Rule Charter.

5. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Licensee's business in the Complex, or any part thereof, and if failure to secure such license or permit would in any way adversely affect the County, Licensee, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Licensee shall at all times comply with the terms and conditions of each license and permit.

6. **Non-Exclusivity:** This License Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services, products or items by other vendors or others in other premises owned and operated by the County or from authorizing other unrelated concession services within the Park; provided however, the County shall not authorize or offer services directly competitive to the Licensee on the Lake or that creates wakes on the Lake that reasonably would interfere with the safe and comfortable use of the Complex by riders. The Licensee shall have no rights to any other location that may be made available by the County.

7. **Proposal Incorporated:** The Licensee acknowledges that it has submitted to the County a proposal ("Licensee's Proposal") that was the basis for the award of this License Agreement and upon which the County has relied.

8. **Order of Precedence:** If there is a conflict between or among the provisions of this License Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions and any associated appendices, attachments, exhibits, etc. 3) the Miami-Dade County's RFP No. 803 and any associated addenda and attachments thereof, and 4) the Licensee's Proposal.

9. **Appendices:**
The Appendices listed in this Paragraph and attached to this License Agreement are hereby incorporated in and made a part of this License Agreement:

Appendix A - Scope of Work
Appendix B - PROS Development Rider
Appendix C – Site Map

10. **Nature of the License Agreement:**
A. This License Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this License Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this License Agreement that are not contained in this License Agreement, and that this License Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this License Agreement shall be of no force or effect, and that this License Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

B. The Licensee shall provide the services set forth in the Scope of Work, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

C. The Licensee acknowledges that this License Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Services under this License Agreement. All things not expressly mentioned in this License Agreement but necessary to carrying out its intent are required by this License Agreement, and the Licensee shall perform the same as though they were specifically mentioned, described and delineated.

D. The Licensee shall furnish all labor, materials, tools, supplies, and other items required to perform the Services that are necessary for the completion of this License Agreement. All Services shall be accomplished at the direction of and to the reasonable satisfaction of the

County's Project Manager.

E. The Licensee acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Work. The Licensee agrees to provide input on policy issues in the form of recommendations. The Licensee agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Licensee agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

11. **Term:** The County hereby grants a License Agreement to manage and operate for an initial term of twenty (20) years, the premises described in this License Agreement to be operated as a Complex. The term and commencement date of this License Agreement, herein referred to as the License Agreement Effective Date, shall begin on the date indicated in the first page of this Agreement, and shall end on the last day of the two-hundred and fortieth (240) month.

12. **Option to Renew:** This License Agreement may be renewed for two (2), five (5) year periods as follows: At the County's sole discretion and provided that there has been no default of the License Agreement by the Licensee, the Licensee may by written notice to, and upon approval by, the Department at least six months before the end of the then current term but in no event earlier than one year prior to the end of the then current term, renew the License Agreement for the first five year renewal period. Additionally, provided that there has been no default of the License Agreement by the Licensee, the Licensee may by written notice to, and upon approval by, the Department at least six months before the end of the then current term but in no event earlier than one year prior to the end of the then current term, renew the License Agreement for the second five year renewal period. All renewal periods shall run consecutively so as to make this Agreement continuous in its operation from beginning to its termination, for a period up to thirty (30) years.

The County reserves the right to exercise its option to extend this License Agreement for up to one hundred-eighty (180) calendar days beyond the current License Agreement period and will notify the Licensee in writing of the extension. This Agreement may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

13. **Security Deposit:** Prior to the start of the License Agreement, the Licensee shall furnish a Security Deposit in cash or cashier's check payable to the Board of County Commissioners, equal to three (3) months Guaranteed Monthly Rent or $5,000.00 whichever is greater. Redeemable at the end of the License Agreement term except for such conditions pertinent thereto, additionally, if the County must draw upon any amount owed to the County for this License Agreement, Licensee hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon. In the event the Licensee abandons its performance, the County will retain the security deposit. No interest on the Security Deposit will be owed to the Licensee.

14. **Initial Rent:** Licensee, in consideration of the use of the land does hereby covenant and agree with the County to pay to the County without deduction or set off of any kind the sum of $1,392.00 (plus tax) per month for the Initial Rent period on the first day of each month without billing. The obligation to pay the Initial Rent shall commence on the License Agreement Date and shall terminate upon the date the cable skiing system is completed and in revenue operation, as defined in the Guaranteed Monthly Rent Article.

15. **Guaranteed Monthly Rent:** In consideration of the use of the Licensed Property, Licensee

does hereby covenant and agree to pay to the County without deduction or set off of any kind the GREATER of (i) the sum of $2,500 (plus tax) per month for use of the 45 acres of the eastern portion of North Lake plus the sum of $1,000 (plus tax) per month so that the Licensee is able to use the remaining 46 acres of the western portion of North Lake for at least three weekends of such month as Guaranteed Monthly Rent is paid or (ii) the Percentage of Monthly Gross Receipts. Payment of the Guaranteed Monthly Rent shall commence on the date the cable skiing system is completed and in revenue operation, which shall be determined by the County, based on the earlier of:

(i) the date on which substantial completion of the Complex has occurred and the appropriate code enforcement agency has issued a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) that enables the Licensee to occupy or utilize the Complex in a manner for its intended use;

or

(ii) the date on which the Licensee commences the use of any substantial portion of the Complex for its intended use - with or without a TCO or CO – (Beneficial Occupancy Date).

The Guaranteed Monthly Rent shall be adjusted upward at the end of each License Agreement Year based on the Consumer Price Index (CPI) under the City of Miami Group, for All Urban Consumers, under Other Goods and Services.

However, except as noted below, in no event shall the Date of Beneficial Occupancy be later than twelve (12) months after NTP-2 date as identified in Appendix B – Construction Rider.

Additionally Licensee shall coordinate with the Park Foundation of Miami-Dade to offer one thousand (1,000) 2-hr riding passes/experiences a year, which passes shall primarily be used by youth groups to use the Complex before or after regularly scheduled operating hours.

The Licensee may only be granted or entitled to an adjustment to the above twelve month period, due to unforeseen causes beyond the control and without the fault or negligence of the Licensee (force majeure) such as those caused by act of God or of a public enemy, war, acts of terrorism, sabotage, explosions, fire, floods, unusually severe weather, hurricanes, epidemics, pandemics, quarantine restrictions, strikes and other work stoppage caused by a labor dispute, shortage of materials and freight embargoes, provided that the Licensee has taken reasonable precautions to prevent delays due to such causes.

16. **Percentage of Monthly Gross Receipts – Percentage Fee:** Percentage Fee: As noted in Article 15, Licensee agrees to pay to the County monthly the greater of (i) the Guaranteed Monthly Rent, or (ii) an amount equal to:

8% (plus tax) of Monthly Gross Receipts on the first $1,250,000 of yearly revenues; and, 10% (plus tax) of Monthly Gross Receipts on all amounts above $1,250,000 of yearly revenues, hereinafter referred to as "Percentage Fee" within 15 days following the end of each month during the term of this License Agreement.

The yearly revenues calculation shall commence on the Beneficial Occupancy Date except if that date is some other date than the first of the month, which in that event the yearly calculation shall commence on the first day of the month after the Beneficial Occupancy Date.

17. **Sales Tax:** The Licensee shall be liable for the prevailing State of Florida Sales and Use Tax

imposed on rent (currently at the rate of 7%) on the amounts payable to the County, including the Guaranteed Monthly Rent and Percentage Fee payments, under this License Agreement. This Sales and Use Tax shall be payable to the County, when applicable rent is due. The County will remit same, less authorized handling deductions, to the State.

18. **Additional Taxes:** If at any time during the term of this License 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 rents (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, against the County on account of the rent or percentage fees payable herein, such tax, charge, capital levy, or excise on rents or other taxes shall be deemed to constitute real estate taxes on the Complex and the premises for the purposes of this Paragraph.

19. **Taxes on Licensee's Personal Property:** Licensee 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 Complex by Licensee.

20. **Late Payment Charge:** In the event that the Licensee fails to make any payments on time, by the due date, as required to be paid under the provisions of this License Agreement, a late payment charge of $100.00 per month shall be assessed. The right of the County to require payment of such late payment charge and the obligation of the Licensee to pay same shall be in addition to and not in lieu of the County's rights to enforce other provisions herein, including termination of this License Agreement, or to pursue other remedies provided by law.

21. **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 Guaranteed Monthly Rent, then Percentage Fee, including the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.

22. **Worthless Check or Draft:** In the event that the Licensee delivers a dishonored check or draft to the County in payment of any obligation arising under this License Agreement, the County shall incur and pay a service charge of $10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within not more than five (5) days from written notice of such default. Further, in such event, County may require that future payments required pursuant to this License Agreement be made by cashier's check or other means acceptable to County. A second such occurrence of dishonored check during the License Agreement term will be a breach of contract and, at the County's option, will constitute a default allowing termination.

23. **Payment of Fees:** The Guaranteed Monthly Rent and Percentage Fee as well as other amounts payable by Licensee to the County, under the terms of this License Agreement, shall be paid promptly when due, without notice for any reason whatsoever and without abatement. Guaranteed Monthly Rent and Percentage Fee and all other payments provided for in this License Agreement shall be paid or mailed to:

Miami-Dade Park and Recreation Department
Financial Management Division
Accounts Receivable 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".)

24. **Notices:** Any notices submitted or required by this License Agreement shall be sent by registered or certified mail (or email or fax if provided below, with a hardcopy to the address below) addressed to the parties as follows or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party.

1. To the County:

a) To the Project Manager:

Miami-Dade County
Park and Recreation Department
275 N.W. 2nd Street, 5th Floor
Miami, Florida 33128
Attn: Director
Phone: (305) 755-7800
Fax: (305) 755-7946

and

b) To the Contract Manager:

Miami-Dade County
Internal Services Department - Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5548
Fax: (305) 375-2316

2. To the Licensee:

Miami Wakeboard-Cable Complex LLC
95 Merrick Way, Suite 380
Attn: Michael Fay
Coral Gables, FL 33134

The County may alternatively provide notice by posting written notice on or at the Complex. If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient, said notice will have the effect of being constructively received by the recipient.

25. **Interpretations:** This License Agreement and the Appendices hereto, and other documents specifically referred to herein, constitute the entire, fully integrated License Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written License 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 License Agreement. This

License 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 the County Mayor (or designee) or the Contract Manager (or designee) within this License Agreement shall have approval authority or the Board of County Commissioners (as applicable). This License Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The License Agreement shall not be construed in favor of one party or the other. All matters involving the License Agreement shall be governed by laws of the State of Florida.

26. **Accord and Satisfaction:** No payment by Licensee or receipt by County of a lesser amount than any payment of Guaranteed Monthly Rent or Percentage Fee herein stipulated shall be deemed to be other than on account of the earliest stipulated Guaranteed Monthly Rent or Percentage Fee then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Guaranteed Monthly Rent or Percentage Fee 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 Guaranteed Monthly Rent or Percentage Fee or pursue any other remedy provided in this License Agreement, at law or in equity. No covenant, term, or condition of this License Agreement shall be deemed to have been waived by County, unless such waiver be in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Licensee.

27. **Gross Receipts:**

A. License Agreement Year Defined: "License Agreement Year" means a twelve-month period beginning on the License Agreement Effective Date and ending twelve months thereafter.

B. Gross Receipts Defined: "Gross Receipts" means all monthly receipts collected by the Licensee from the sale of services or merchandise by Licensee, concessionaires of Licensee and sub-Licensee(s) of Licensee, sold in, upon or from the Complex, including such sales as shall in good faith be credited by Licensee, its concessionaires, and sub-Licensees in the regular course of its or their business to personnel employed at the time of sale at the Complex, including sub-concession Agreements or contract employee payments to the Licensee and mail and telephone orders received at the Complex and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Licensee or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Licensee's trade fixtures, operating equipment or other property used by Licensee or its concessionaires 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 Licensee, or its concessionaires, whichever of such events shall first occur.

C. Licensee's Certification of Receipts: Licensee shall submit to County on or before the 15th day following the end of each month during the term of this License Agreement and on or before the 15th day following the expiration or earlier termination of this License Agreement, a written statement, signed by Licensee and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Licensee shall submit to County on or before the 60th day following the end of each License Agreement year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Licensee and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding License 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 Licensee's Books and Records: Such books and records as are necessary to determine the amount of any Percentage Fee payable to County shall be subject to examination by the County or its authorized representatives at reasonable times during Licensee's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Licensee's business. All information obtained by the County or its authorized representatives from Licensee's books and records shall be kept confidential by the County and all such representatives except in connection with any mortgage or assignment of this License Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Licensee's Receipts Records: For the purpose of computing and verifying the Percentage Fee due hereunder, Licensee shall prepare and keep, for a period of not less than three (3) years following the end of each License 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 Licensee. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this License Agreement. Licensee 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. Licensee shall keep, for at least three (3) years following the end of each License 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 Licensee's Gross Receipts.

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

F. Audit of Licensee's Business Affairs and Records: County shall have the right to cause, upon five (5) business days' written notice to Licensee, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by County, or the Audit and Management Services Department of the County. Licensee shall make all such records available for said examination at the Complex or at some other mutually agreeable location. If the result of such audit shall show that Licensee's statement of Gross Receipts for any period has been understated, Licensee shall pay County the amount due. If such understatement is three percent (3%) or more, Licensee 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 rent. A report of the findings of said accountant shall be binding and conclusive upon County and Licensee. The furnishing by Licensee of any grossly inaccurate statement shall constitute a breach of this License Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this License Agreement for financing purposes.

G. If Licensee fails to record, maintain, or make available sales supporting documentation as specified above then Licensee may be deemed by the County to be in default of this License Agreement.

28. **New Construction:** The County's approval is required prior to all construction, all installation, and all use of facilities. All improvements shall become property of the County (for avoidance of doubt the cables, floating docks and obstacles shall not be considered improvements for purposes hereof). All construction shall be accomplished in accordance with any applicable permitting requirements and the Development Rider in Appendix B.

29. **Condition of Licensed Property:** Licensee hereby accepts the Licensed Property in the condition it is in at the beginning of this License Agreement.

30. **Assumption, Parameters, Projections, Estimates and Explanations:** The Licensee understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Licensee for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn there from; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Licensee. The Licensee accepts all risk associated with using this information.

31. **County Approval:** The Licensee agrees that it will obtain prior written approval from the County , which consent shall not be unreasonably delayed or withheld, in all of the following matters:

A. Changes from originally approved specifications, pricing, activities, signage, and graphics.
B. Equipment Licensee plans to install requiring any building modifications.
C. Aesthetics of the Complex.
D. Any use of the County's facilities or Complex's name.
E. Hours of Operation.
F. Uniforms to be used by employees shall be consistent with or better than those normally used by professionally-operated Complexes.

Should any of the above items be disapproved, Licensee may offer alternative solutions. The County reserves the right with stated just cause to require the Licensee to change within a stated time any and all items contained in this paragraph it deems in need of change, despite previous approval of same.

32. **Hours of Operation:** Operating hours for the Complex may vary and should be determined by the Licensee, subject to approval by the County. The Licensee shall provide sufficient staff 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 and is commercially viable.

33. **Pricing:** Licensee shall maintain the pricing schedule for goods and services submitted with Lessee's Proposal, and as approved by the County, which approval shall not be unreasonably

delayed or withheld. If the Licensee wishes to change its standard prices for goods and services, Licensee 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 License Agreement term when price changes are contemplated. Pricing for special events or services shall be expeditiously approved by the County.

34. **Personnel:** The Licensee shall provide County with the name and telephone number of a management person of the Licensee who will be on call, at all times, for emergencies, or other matters related to the operations under this License Agreement. The Licensee shall ensure that all its personnel performing services under this License Agreement are courteous and cooperative and present a neat, clean, and professional appearance at all times. Failure of an employee to do so shall be grounds for the County to demand his or her removal from duties in the Complex. The Licensee shall ensure that all employees having public contact are able to understand and communicate in spoken English. Licensee's employees will not be considered agents of the County.

In the event the Licensee wishes to substitute personnel for the key personnel identified by the Licensee's Proposal, the Licensee must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

35. **Signs:** The nature, size, shape, and installation of Licensee's business signs within the Complex or in, on, or adjacent to the Complex or The 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 6 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Licensee at the termination of the License 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 Licensee.

36. **On-Site Manager/Designee:** Throughout the term of this License Agreement, the Licensee shall employ a qualified full-time on-site Complex Manager or Designee having experience in the management of this type of operation, who shall be available during normal business hours and on-call at all times, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Licensee under this License Agreement and to accept service of all notices provided for herein.

37. **Quality of Licensee's Service:** The Licensee 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 Licensee 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, Licensee shall immediately take all necessary steps to correct the cause of such objection.

Licensee 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 License Agreement or its termination in any manner, shall deliver said premises to the County in the same condition as at the commencement this License Agreement, with the exception of loss by fire or other casualty.

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

demands 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 Licensee 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 Licensee will fully comply with any decisions on this matter.

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

39. **Utility Services:** Licensee 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 County in the exercise of reasonable judgment. Licensee shall make all repairs caused by Licensee's negligence.

40. **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 collection as existing.

41. **Equipment and Service Provided by Licensee:**
The Licensee, at its sole cost, shall provide for the Complex:

A. Janitorial service within the Complex. The Licensee shall keep the Complex and equipment clean at all times. If the Complex and equipment are not kept clean in the opinion of the County, the Licensee will be so advised and if corrective action if not immediately taken, the County will cause the same to be cleaned and the Licensee shall assume responsibility and liability for such cleaning.
B. Maintenance service for equipment necessary for the operation of the Complex. The Licensee shall ensure monthly maintenance and necessary repairs are done for all applicable equipment.

42. **Equipment Installed by Licensee:** The Licensee shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Complex. All furnishings, fixtures, and equipment acquired for the Complex shall be of a high quality 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 Complex. The County, or its designee, shall have the right to use any infrastructure installed by the Licensee as part of the development of the Complex (i.e., electrical installation) subject to reasonably compensating the Licensee for the costs of (i) the electricity actually used, and (ii) such infrastructure investment if such infrastructure is to be used on an ongoing basis.

Any equipment, furnishings, signage and advertising installed by the Licensee shall be in compliance with Article 6 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, Licensee 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, or improvements was completed.

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

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

43. **Security and Protection:** The Licensee 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 Complex, outside of standard security measures supplied by the County in general. Licensee may provide its own specialized security for the Complex, subject to the County's written approval.

44. **Hurricane Preparedness:** The Licensee shall follow the County's emergency evacuation and hurricane plan as set forth for the Complex.

45. **Maintenance Responsibilities of Licensee, Appearance of Facility:** Licensee shall, at its sole cost and expense, keep and maintain the Complex in a clean and good condition. The provision of janitorial services and all interior maintenance within the Complex are the sole and exclusive responsibility of the Licensee. Upon failure of the Licensee to maintain the Complex as required in this Paragraph, County may, after fifteen (15) days written notice to the Licensee, enter upon the Complex and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall constitute Percentage Fee(s), and shall be billed to and paid by the Licensee.

46. **Independent Licensee Relationship:** The Licensee is, and shall be, in the performance of all work services and activities under this License Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this License Agreement shall at all times, and in all places, be subject to the Licensee's sole direction, supervision and control. The Licensee shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Licensee's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Licensee does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this License Agreement.

47. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Licensee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of the County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. If utility service is interrupted, curtailed or suspended at the County's request for more than 7 business days, the Lessee shall be entitled to a rent abatement based on the average daily rent during the previous 12 months. 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

Licensee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of payment or other charges, nor damages, shall be claimed by Licensee by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this License Agreement or any of Licensee's obligations hereunder be affected or reduced thereby.

48. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all of the Complex, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Licensee shall 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 Licensee is operating in compliance with the terms and provisions of this License Agreement.

49. **Right of Entry:** The County or any of its agents shall have the right to enter upon the Complex 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 Complex as the County deems necessary, but the County assumes no obligation to make repairs in the Complex other than those expressly provided for in this License Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Licensee 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 Complex at reasonable times to show them to actual or prospective mortgagees, tenants, or Licensees of the Complex. During the one hundred and eighty (180) days prior to the expiration of the term of this License Agreement, the County may show the Complex to prospective tenants. If, during the last ninety (90) days of the term of this License Agreement, Licensee shall have removed all or substantially all of Licensee's property there from, the County may immediately enter, alter, renovate, and redecorate the Complex without elimination or abatement or fee or other compensation and such action shall have no effect upon this License Agreement.

50. **Permits and Regulations:** Licensee covenants and agrees that Licensee will obtain any and all necessary permits and approvals and that all uses of the Licensed Property will be in conformance with all applicable laws. For avoidance of doubt, the Licensee agrees not to offer as part of its food concessions any meat products containing "lean finely textured beef" (widely known as "pink slime").

51. **Damage or Destruction of Property:** In all events, Licensee shall repair all damages to the property caused by the Licensee, its employees, agents, contractors or sub-consultants. If the Complex is partially damaged, but not rendered unusable for the purposes of this License Agreement, the same shall with due diligence be repaired by the Licensee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of the Licensee'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 Licensee from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Licensee's business interruption a pro-rata adjustment shall be made as to the Guaranteed Monthly Rent. In the event said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, through no fault of the Licensee, its employee, agents, contractors or sub-consultants, the Licensee and the County shall be under no

obligation to repair and reconstruct the premises, and adjustment of the Guaranteed Monthly Rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the License 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 License Agreement, the Licensee may reconstruct the premises at its own cost.

52. **Repairs, Alterations and Additions by the County:** The County, as its responsibility, and at its expense (except if the damage is caused by Licensee, its employees, agents, or independent Licensees), 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 Common Areas of the Park, excluding the Complex.

The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Licensee 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 to be made, 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. If utility service is interrupted, curtailed or suspended at the County's request for more than 7 days, the Lessee shall be entitled to a rent abatement based on the average daily rent during the previous 12 months. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of Fee or other charges, nor damages, shall be claimed by Licensee by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this License Agreement or any of Licensee's obligations hereunder be affected or reduced thereby

Except as provided herein in this License Agreement, the County shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Complex under this License Agreement, free from any and all liability to the Licensee 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 of the County and where not otherwise indemnified by the Licensee, 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 Licensee's operations of the Complex, for short term disruption of one week or less to Licensee's business where adequate accommodations can be made to minimize the inconvenience and injury to Licensee's business. If the Licensee's business is interrupted for more than one week, as a result of any of the foregoing, a pro rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of such interruption shall be made.

53. **Diminution for County's Repair:** Except as elsewhere specifically provided in this License Agreement, there shall be no allowance to Licensee for a diminution of rental value and no liability on the part of the County by reason of inconvenience, annoyance or interference with Licensee'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 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 Licensee's use of the Complex.

54. **Performance of Obligations:** Licensee covenants at all times to perform promptly all of the obligations of Licensee set forth in this License Agreement.

55. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this License Agreement governing the use of the Complex, Licensee, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.

56. **Assignment, Sub-Contracting and Successors in Interest:**

A. Licensee shall not assign, mortgage, pledge nor otherwise encumber this License Agreement or any portion thereof, nor any property associated with this License Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this License Agreement. It is agreed that all terms and conditions of this License Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.

B. Licensee shall not enter into any sub-contracting Agreement for services required to be provided under this License Agreement without prior written approval of the County. Unapproved sub-contracting shall be grounds for immediate termination of this License Agreement. It is agreed that all terms and conditions of this License Agreement shall extend to and be binding on any sub-Licensees, including percentage payments on gross receipts as defined in this License Agreement. Licensee shall be liable for acts and omissions by any sub-Licensee affecting this License Agreement. The County reserves the right to directly terminate (and pursue any applicable remedy) any sub-Licensee of the Licensee for any cause for which Licensee may be terminated.

Any sub-contracting Agreement for License Agreement services must be made available and accounted for through the Licensee so as to provide seamless service to the public as if provided directly by the Licensee.

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

57. **Ownership of Licensee:** The ownership of the Licensee is very important to the County. Therefore, the County reserves the right to terminate this License Agreement at any time if more than 10% of the ownership of the Licensee 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. Licensee agrees to provide on 24-hour notice to the County an accurate list of all owners of the Licensee, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Licensees, 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.

58. **Proprietary Information:** As a political subdivision of the State of Florida, Miami-Dade

County is subject to the stipulations of Florida's Public Records Law.

59. **County's Property Insurance:** Any insurance the County may maintain shall not cover Licensee's improvements and betterments, contents, or other property of Licensee. Licensee 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 Complex which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Complex is located or the property therein over the rate which would otherwise then be in effect (unless Licensee 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 Licensee, the rate of property insurance on the Complex or the Park or equipment or other property of the County shall be higher than it otherwise would be, Licensee 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 Licensee, which sum shall be deemed Percentage Fee for purposes of collection only.

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

The Licensee shall furnish to Miami-Dade County, Department of Procurement Management 111 N.W. 1st Street, 13th Floor, Miami, Florida 33128, Certificate(s) of Insurance evidencing insurance coverage that meets the requirements outlined below:

A. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.

B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $5,000,000 per occurrence for Bodily Injury and Property Damage combined. Coverage is to specifically include participants. Miami-Dade County must be shown as an additional insured with respect to this coverage.

C. Boat and Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than $500,000 per occurrence for Bodily Injury and Property Damage combined.

**DESIGN STAGE**

In addition to the insurance required in (A) – (C) above, a certificate of insurance must be provided as follows:

D. Professional Liability Insurance in the name of the Licensee or the licensed design professional employed by the Tenant in an amount not less than $1,000,000 per claim.

**CONSTRUCTION PHASE (IF APPLICABLE)**
In addition to the insurance required in (A) – (D) above, the Licensee may be required to provide, as determined in the sole discretion of the County, or cause its contractors to provide policies indicating the following type of insurance coverage prior to commencement of construction:

E. Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The Policy will name Miami-Dade County as a Loss Payee.

**OPERATION PHASE**
In addition to the insurance required in (A) – (C) above, the following coverage may be required if applicable:

F. Property Insurance Coverage on an "All Risk" basis in an amount not less than one hundred (100%) percent of the replacement cost of the building or structure. Miami-Dade County must be named a Loss Payee with respect to this coverage.

The Lessee is responsible for any and all deductibles related to this coverage.

**CONTINUITY OF COVERAGE**
The Licensee shall be responsible for assuring that the insurance documentation required in conjunction with this subsection remain in force for the duration of the agreement period, including any and all option years. The Licensee will be responsible for submitting renewal insurance documentation prior to expiration.

All insurance policies required above shall be issued in 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 A.M. Best Company, Oldwick, New Jersey.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

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

**NOTE: MIAMI-DADE COUNTY BID NUMBER AND TITLE OF BID MUST APPEAR ON EACH CERTIFICATE.**

CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128

Compliance with the foregoing requirements shall not relieve the Licensee of this liability and obligation under this Article or under any other Article in this Agreement.

Award of this License Agreement is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County's notification to Licensee to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this License Agreement, the Licensee shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Licensee fails to submit the required insurance documents in the manner prescribed in this License Agreement within twenty (20) calendar days after County's notification to comply, the Licensee shall be in default of the contractual terms and conditions and award of the License Agreement will be rescinded, unless such time frame for submission has been extended by the County.

The Licensee shall be responsible for ensuring that the insurance certificates required in conjunction with this Article remain in force for the duration of the contractual period of the License Agreement, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Licensee 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. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the License Agreement until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this License Agreement.

61. **Liability for Damage or Injury:** The County shall not be liable for damage or injury which may be sustained by any party or persons at the Complex other than the damage or injury if and to the extent caused solely by the negligence of the County, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes.

62. **No Liability For Personal Property:** All personal property placed or moved in the Licensed Property above described shall be at the risk of Licensee or the owner thereof. County shall not be liable to Licensee or any third party for any damage to said personal property unless solely caused by negligence of County, County's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

63. **Patent and Copyright Indemnification:**
a) The Licensee warrants that all Work furnished hereunder, including but not limited to, wall murals, and the like, shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.

b) The Licensee shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third

party proprietary rights, by the use or supplying of any wall murals, and the like, in the course of performance or completion of, or in any way connected with, the Works, or the County's continued use of the Work furnished hereunder. Accordingly, the Licensee at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Work or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Licensee shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Licensee's expense, the rights provided under this License Agreement to use the item(s).

d) The Licensee shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Work hereunder. The Licensee shall enter into agreements with all suppliers and subcontractors at the Licensee's own risk. The County may reject any Work that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

64. **Manner of Performance:**

A. The Licensee agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Licensee's personnel performing services hereunder at the behest of the County. Removal and replacement of any Licensee's personnel as used in this Paragraph shall not require the termination and or demotion of such Licensee's personnel.

B. The Licensee agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Licensee agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

C. The Licensee warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

D. The Licensee shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

E. The Licensee shall comply with all provisions of all Federal, State and local laws, statutes, ordinances, and regulations that are applicable to the performance of this License Agreement.

65. **Severability:**
If this License Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this License Agreement without affecting the binding force of this License Agreement as it shall remain after omitting such provision.

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

A. Automatic Termination upon written notice by the County if any of the following occurs:
   i. Institution of proceedings in voluntary bankruptcy or reorganization by the Licensee.
   ii. Institution of proceedings in involuntary bankruptcy against the Licensee if such proceedings continue for a period of ninety (90) days.
   iii. Assignment by Licensee for the benefit of creditors.
   iv. Abandonment or discontinuation of operations for more than a 96 hour period without prior written approval from the County and after written notice from the County.
   v. The discovery of any misstatement in the Licensee's Proposal leading to award of this License Agreement, which in the determination of the County significantly affects the Licensee's qualifications to perform under the License Agreement
   vi. Unapproved change of ownership interest in Licensee and/or failure to submit the ownership list within 48 hours upon the written request of the County.
   vii. Failure to cease any activity after written notice from the County which may cause limitation of County's use of The Park.
   viii. A final determination in a court of law in favor of the County in litigation instituted by the Licensee against the County or brought by the County against Licensee.

B. Termination after seven (7) business days written notice by the County either by posting on or at the Complex and by certified or registered mail to any known address of Licensee set forth in this License 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 Licensee makes the required payment(s) during the seven (7) business day period following mailing of the written notice. Additionally, the County may sue for Guaranteed Monthly Rent and Percentage Fee for the unexpired term of this License Agreement.
   ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied or a reasonably acceptable plan for remediation not provided within the seven (7) business day period from receipt of written notice.

C. Termination after fourteen (14) calendar days from receipt by Licensee of written notice having either been posted on or at the Complex or by certified or registered mail to the address of the Licensee set forth in this License Agreement:
   i. Non-performance of any covenant of this License Agreement other than non-payment of rent or performance fees and others listed in A and B above, and failure of the Licensee to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

D. Revenue Control and Audit Defaults: The inability or failure of the Licensee to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this License Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this License

Agreement upon seven (7) business days written notice to the Licensee. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required in this License Agreement.

E. Habitual Default: Notwithstanding the foregoing, in the event that the Licensee has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the material terms, covenants and conditions required herein to be kept and performed by the Licensee, regardless of whether the Licensee has cured each individual condition of breach or default as provided herein above, the Licensee may be determined by the County to be an "habitual violator". At the time that such determination is made, County shall issue to the Licensee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Licensee 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 License Agreement. In the event of any such subsequent breach or default, County may cancel this License Agreement upon the giving of written notice of termination to the Licensee, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Licensee shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Licensee shall discontinue its operations at the Complex, and proceed to remove all its personal property in accordance with this License Agreement.

In the event that the County terminates this License Agreement by operation of any of the provisions as stated in this License Agreement, then in addition to other rights and remedies available to the County under the law, the County may accelerate the rental payments under this License Agreement, whereupon the entire balance owed by the Licensee under this License Agreement shall become immediately due and payable without further notice or demand.

67. **Event of Default:**

A. An Event of Default shall mean a breach of this License Agreement by the Licensee. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Licensee has not delivered Work on a timely basis;

ii. the Licensee has refused or failed to supply enough properly skilled Staff Personnel;

iii. the Licensee has failed to make prompt payment to subcontractors or suppliers for any Services delivered or performed;

iv. the Licensee has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Licensee's creditors, or the Licensee has taken advantage of any insolvency statute or debtor/creditor law or if the Licensee's affairs have been put in the hands of a receiver;

v. the Licensee has failed to obtain the approval of the County where required by this License Agreement;

vi. the Licensee has failed to provide "adequate assurances" as required under section "B" below; or

vii. the Licensee has materially failed in the representation of any warranties stated herein.

B. When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Licensee's ability to perform the Services or any portion thereof, the County may request that the Licensee, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Licensee's ability to perform in accordance with the terms of this License Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Licensee for portions of the Services which the Licensee has not performed. In the event that the Licensee fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this License Agreement; and

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

C. In the event the County shall terminate this License Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data other than cables, floating docks and obstacles.

68. **Notice of Default – Opportunity to Cure:** If an Event of Default occurs in the determination of the County, the County may so notify the Licensee ("Default Notice"), specifying the basis for such default, and advising the Licensee that such default must be cured immediately or this License Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Licensee to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Licensee has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Licensee shall discontinue the Services upon the Termination Date.

69. **Remedies in the Event of Default:** If an Event of Default occurs, the Licensee shall be liable for all damages resulting from the default, including, but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and

c) such other direct damages.

The Licensee shall also remain liable for any liabilities and claims related to the Licensee's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

70. **Termination and Suspension of Work:**
A. The County may immediately terminate this License Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

B. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

C. The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Licensee may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

71. **Termination by Licensee:** Licensee 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 License Agreement to terminate this License 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 License 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 Licensee, 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 Licensee's operations for a period of ninety (90) calendar days or more.

C. The costs of environmental compliance or permitting make the Complex commercially not viable in the Licensee's reasonable judgment. If the Licensee were to intend to terminate this License Agreement on such basis, it will provide before such termination the County all consulting and environmental reports prepared by third-parties (not subject to confidentiality obligations) so that the County may evaluate the reasonableness of the Licensee's intention.

72. **Surrender of Complex:** At the expiration or earlier termination of the term of this License Agreement, Licensee shall peaceably surrender the Complex in as good a condition as the Complex was on the Commencement Date of this License Agreement, ordinary wear and tear and damage by condemnation, fire or other casualty excepted; all improvements made by the Licensee in connection with this Licensee Agreement shall become the property of the County other than cables, floating docks and obstacles. Licensee shall deliver all keys, as applicable, for the Complex to the County at the place then fixed for the payment of rent, and shall notify the County in writing of all combinations of locks, safes and vaults, if any, in the Complex. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Licensee's property or trade fixtures into or out of the Complex. Licensee's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this License Agreement.

73. **Termination of Contract:** Following the termination of this License Agreement the Licensee,

within thirty (30) calendar days, shall forthwith remove all of its personal property not acquired under the terms of this License Agreement. Any personal property of Licensee not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Licensee 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 Licensee for the safekeeping of Licensee's personal property during or after termination of this License Agreement. The County shall have the senior interest in the Licensee's personal property. Licensee shall not remove any equipment, supplies in bulk, or fixtures within the Complex at any time without pre-approval in writing from the County. Licensee 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. Licensee shall also be liable for any expenses incurred by the County in prosecuting any action against Licensee following unapproved item removal described above. Licensee shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Licensee. It is the intention of the parties to this License Agreement that all furnishings and equipment purchased or Licensed by the Licensee except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Licensee. Upon the termination of this License Agreement and the removal of all personal property by Licensee, the Licensee shall deliver said premises to the County in the condition set forth in this Paragraph.

74. **Holding Over:** If Licensee continues to use and operate the Complex after the expiration of the term of this License Agreement, or any option period, without a new License Agreement reduced to writing and duly executed and delivered (even if Licensee shall have paid, and County shall have accepted, payment in respect to such unauthorized operations), Licensee shall be deemed to be operating and using the Complex only from month-to-month, subject to all covenants, conditions, and agreements of this License Agreement. If Licensee fails to surrender the Complex upon the termination of this License Agreement, then Licensee, in addition to any liabilities to County accruing there from, shall indemnify and hold harmless the County and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Licensee on such failure.

75. **Mechanics', Materialmen's and Other Liens:** Licensee agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the Complex for work or materials furnished to Licensee; it being provided, however, that Licensee shall have the right to contest the validity thereof. Licensee shall immediately pay any judgment or decree rendered against Licensee, with all proper costs and charges, and shall cause any such lien to be reLicensed off record without cost to County.

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

77. **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 License Agreement, this License Agreement will be null and void and unenforceable by any party to this License Agreement and the County shall have no further liability under this License Agreement. In the event that a referendum vote of the electorate of the County in any way restricts or prohibits the use of the Complex for the purposes of this License Agreement, this License Agreement

will be null and void and unenforceable by any party to this License Agreement and the County shall have no further liability under this License Agreement. If the County deems the License Agreement null and void by function of this Paragraph, the County will not be liable to the Licensee for damages arising there from and the County shall have no further liability under this License Agreement.

78. **Non-Discrimination:** Licensee 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 Complex, except as provided by law.

ii. 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. The Licensee 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. In the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the License Agreement and re-enter and repossess said Complex thereon and hold the same as if said License 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.

v. The Licensee shall not discriminate against any employee or applicant for employment in the performance of the License Agreement 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.

79. **Conflict of Interest:**
The Licensee represents that:

A. No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this License Agreement.

B. There are no undisclosed persons or entities interested with the Licensee in this License Agreement. This License Agreement is entered into by the Licensee without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and

appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

i) is interested on behalf of or through the Licensee directly or indirectly in any manner whatsoever in the execution or the performance of this License Agreement, or in the services, supplies or work, to which this License Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to the Licensee or to the best of the Licensee's knowledge any subcontractor or supplier to the Licensee.

C. Neither the Licensee nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Licensee shall have an interest which is in conflict with the Licensee's faithful performance of its obligation under this License Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Licensee provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

D. The provisions of this Paragraph are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this License Agreement and those provided by statute, the stricter standard shall apply.

E. In the event Licensee has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Licensee shall promptly bring such information to the attention of the County's Project Manager. Licensee shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Licensee receives from the County's Project Manager in regard to remedying the situation.

80. **Press Release or Other Public Information:** Under no circumstances shall the Licensee without the express written consent of the County:

A. Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Services being performed hereunder, unless the Licensee first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

B. Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

C. Except as may be required by law, the Licensee and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Licensee or such parties has been approved or endorsed by the County.

81. **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 Guaranteed Monthly Rent and Percentage Fee

hereunder by County shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant, or condition of this License Agreement, other than the failure of Licensee to pay the particular Guaranteed Monthly Rent and Percentage Fee so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Guaranteed Monthly Rent and Percentage Fee.

82. **Rules and Regulations:** The Licensee 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 Licensee's operations under this License Agreement. Failure to do so will constitute a breach of the License Agreement.

83. **Bankruptcy:** The County reserves the right to terminate this License Agreement, if, during the term of any contract the Licensee has with the County, the Licensee becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Licensee under federal bankruptcy law or any state insolvency law.

84. **Authority Of The County's Project Manager:**

A. The Licensee hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this License Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the License Agreement; negligence, fraud or misrepresentation before or subsequent to acceptance of the Licensee's Proposal; questions as to the interpretation of the Scope of Work; and claims for damages, compensation and losses.

B. The Licensee shall be bound by all determinations or orders and shall promptly obey and follow every order of the County's Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Licensee agrees with the County's Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the County's Project Manager as soon thereafter as is practicable.

C. The Licensee must, in the final instance, seek to resolve every difference concerning the License Agreement with the County's Project Manager. In the event that the Licensee and the County's Project Manager are unable to resolve their difference, the Licensee may initiate a dispute in accordance with the procedures set forth in this Paragraph. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

D. In the event of such dispute, the parties to this License Agreement authorize the County Mayor or designee, who may not be the County's Project Manager or anyone associated with this project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the License Agreement (including but not limited to claims in the nature of breach of the License Agreement, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.

E. The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and

objective determination of whether Licensee's performance or any Deliverable meets the requirements of this License Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the License Agreement. All such disputes shall be submitted in writing by the Licensee to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Paragraph, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Licensee. Except as such remedies may be limited or waived elsewhere in the License Agreement, Licensee reserves the right to pursue any remedies available under law after exhausting the provisions of this Paragraph.

85. **Mutual Obligations:**
A. Nothing in this License Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

B. In those situations where this License Agreement imposes an indemnity obligation on the Licensee, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Licensee fails to diligently defend such claims, and thereafter seek indemnity for costs from the Licensee.

86. **Rights Reserved to County:** All rights not specifically granted to the Licensee by this License 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.

87. **No Partnership or Agency:** The County and the Licensee 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 License Agreement does not constitute and shall not be represented to constitute a partnership between the County and the Licensee.

88. **Choice of Venue and Law :** Any litigation between the County and the Licensee relating in any way to this License Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida, and governed by the laws of Florida.

89. **Audits:** Pursuant to County Ordinance No. 03-2, the Licensee will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Licensee agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

90. **Local, State and Federal Compliance Requirements:**
Licensee agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this License Agreement,

including but not limited to:

A. Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

B. Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

C. Environmental Protection Agency (EPA), as applicable to this Contract.

D. Miami-Dade County Code, Chapter 11A, Article 3. All Licensees and subcontractors performing work in connection with this License Agreement shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Licensee agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

E. "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

F. Miami-Dade County Code Section 10-38 "Debarment".

G. Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

H. Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this License Agreement, Licensee shall not be required pursuant to this License Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Licensee, constitute a violation of any law or regulation to which Licensee is subject, including but not limited to laws and regulations requiring that Licensee conduct its operations in a safe and sound manner. The parties expressly acknowledge and agree that the Licensee shall only be responsible for environmental remediation directly related to the installation and operation of the Complex and not any existing environmental conditions on the North Lake.

**91. Inspector General Reviews:**

***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 Licensee shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this License Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Licensee'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 Licensee, its officers, agents, employees, sub-Licensees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Licensee in connection with

this License Agreement. The terms of this Paragraph shall not impose any liability on the County by the Licensee or any third party.

***Miami-Dade County Inspector General Review***

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Licensee. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and License agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

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

documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

**92. Vendor Registration and Forms/Conflict of Interest:**

a) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, contact the Ethics Commission hotline at (305) 579-2593.

b) Vendor Registration

The Licensee shall be a registered vendor with the County's Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, Licensee confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
*(Section 2.8-1(d)(2) of the County Code)*

3. ***Miami-Dade Employment Drug-free Workplace Certification***
*(Section 2-8.1.2(b) of the County Code)*

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
*(Section 2-8.1.5* of the County Code)

5. ***Miami-Dade County Debarment Disclosure Affidavit***
*(Section 10.38 of the County Code)*

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
*(Section 2-8.1 of the County Code)*

7. ***Miami-Dade County Code of Business Ethics Affidavit***
*(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

8. ***Miami-Dade County Family Leave Affidavit***
*(Article V of Chapter 11 of the County Code)*

9. ***Miami-Dade County Living Wage Affidavit***
*(Section 2-8.9 of the County Code)*

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
*(Article 8, Section 11A-60 11A-67 of the County Code)*

11. ***Subcontracting Practices***
*(Ordinance 97-35)*

12. ***Subcontractor /Supplier Listing***
*(Section 2-8.8 of the County Code)*

13. ***Environmentally Acceptable Packaging***
*(Resolution R-738-92)*

14. ***W-9 and 8109 Forms***
(as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
   - Identification of individual account records
   - To make payments to Individual/Contractor for goods and services provided to Miami-Dade County
   - Tax reporting purposes
   - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
(Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-

8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

*18. Antitrust Laws*

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida

**93. E-Verify:**

Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of (a) all persons employed by the Contractor to perform employment duties within Florida during the term of the Agreement; and (b) all persons (including subcontractors/subconsultants/subvendors) assigned by the Contractor to perform Work pursuant to the Agreement with the County. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the Agreement is a condition of the Agreement with the County.

**94. Survival:**

The parties acknowledge that any of the obligations in this License Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Licensee and the County under this License Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

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

| Licensee | Miami-Dade County |
|---|---|
| By: _____ | By: _____ |
| Name: Michael T. Fay | Name: _____ |
| Title: Manager | Title: _____ |
| Date: August 2, 2012 | Date: _____ |
| Attest: _____ | Attest: _____ |
| Corporate Secretary/Notary Public | Clerk of the Board |
| I.D.: Personally known to me | |
| Corporate Seal/Notary Seal | |

INES MORALES
Notary Public - State of Florida
My Comm. Expires Aug 18, 2013
Commission # DD 894824
Bonded Through National Notary Assn.

_____
Approved by County Attorney as to form and legal sufficiency

Appendix A
Scope of Work

Note: All required certifications must be in place prior to the start of operations of the Complex. The required certifications are a continuing obligation of the Lessee throughout the duration of the Agreement.

**1.4 Design**
The Lessee shall develop site plans for the Complex that best utilizes the space of the Park, is consistent with the theme of the Park, and fully complies with all applicable building and zoning codes and PROS's Development Rider - Appendix C. The Lessee shall obtain all necessary approvals and permits for construction and infrastructure improvements, as applicable.

**1.5 Construction and Facility Improvements**
The Lessee shall construct a state-of-the-art cable skiing system at the North Lake within the AE Park, and improve the site as necessary, at its own expense, with supporting infrastructure required for a successful wakeboarding and water sports operation, such as a concession area, restrooms, locker rooms, office space, and parking (hereinafter referred to collectively as "improvements"). Concessions may include, but are not limited to sale/rental (where applicable) of food, beverages, lessons, sports/recreational merchandise/equipment. The Lessee(s) may request use of existing facilities (such as parking, restrooms and office trailer) or shall include the improvement(s) as part of its capital development plan. Lighting for parking areas for the Complex shall be provided by Lessee.

The Lessee shall:

1. Select a contractor(s) in accordance with Florida Statute (F.S.) Section 255.20 and perform all construction and improvements in compliance with all applicable building codes (including Florida Building Code Chapter 11 ADA), Miami-Dade County Implementing Order 8-8 Sustainable Buildings Program, PROS's Development Rider, and obtain all necessary permits and approvals. PROS approval of the design and plans must be obtained prior to submission to the applicable building and/or zoning department.

2. Develop a final comprehensive timeline for the development of the supporting infrastructure, including the construction phase schedule and cost estimates for the supporting infrastructure and the required furnishings, fixtures and applicable equipment. *The timeline and cost estimates are due within 30 days after approval of the Lessee's design and concept by the County.*

3. Assume all costs associated with the improvements and installations. All such improvements and installations shall become the property of the County at the completion of the construction (when skiing system is ready for revenue generating operations).

4. Until construction of the cable skiing system is completed, provide, at a minimum, wakeboarding, waterskiing, wake surfing, tubing and kneeboard lessons and sessions – and make available any necessary recreational and safety equipment available for use at the Complex site.

5. Complete the construction within the time frame established in the Agreement Appendix C. In the case that delays are beyond the control of the Lessee, the County may, at its sole discretion, grant a written extension.

Appendix A
Scope of Work

6. Install landscaping that enhances the aesthetic beauty and coexists with the natural flora of the Park. Maintain the landscaping of leased area. Landscaping type and maintenance shall be subject to PROS approval.

7. Obtain a payment and performance bond for construction in accordance with F.S. Section 255.05.

**1.6 Operation and Quality of Services**

The Lessee shall operate and continuously maintain a high quality and customer-oriented wakeboarding and water sports operation program in a manner normally associated with this industry, which includes:

A) 1. Provide an operation that is safe and customer-oriented with prompt complaint resolution by well-trained and professional staff. Maintain all constructed property, equipment and water sports facilities in a manner that will keep such items safe and in proper working order.

2. Provide high quality customer service and reasonably adjust program and service offerings to meet customer demands, including establishing regular hours of operation, subject to approval by PROS.

3. Provide all services and concessions at fees and prices approved by PROS. Such services, types of concessions, and charges may be modified only by written request of the Lessee to PROS and upon approval by PROS. Such approval shall be in writing at least 30 days prior to implementation of the modification.

4. Pay for all operating expenses, including utilities, associated with the day-to-day operations of the Complex.

5. Install and maintain signage as approved by PROS. At a minimum, signage shall include hours of operation, fees, and required safety guidelines.

6. Supply and maintain an Operations manual to be approved by PROS.

7. Have an emergency plan and hurricane plan, to include how the Lessee shall secure the site in the event of a hurricane.

8. Ensure that employees are distinctively uniformed so as to be distinguishable as the Lessee's staff and not PROS employees.

9. Promote the Park's offerings through marketing and the quality provision of all concession services with the highest level of service to the public. Promotional flyers or advertisements for special events shall include the Miami-Dade County or PROS logo. The Lessee shall submit sample or mock up of such publicity or materials to PROS for review and approval.

Appendix A
Scope of Work

10. Enforce strict adherence to safety guidelines for the Complex, including requiring cable skiing participants to wear U.S. Coast Guard-approved life jackets and helmets while riding, and making such safety gear available for use.

11. Ensure the Complex remains in safe, clean, and usable condition on a daily basis, to include, but not be limited to, removing debris from the lake and shoreline, inspecting and maintaining the cables and equipment, and maintaining the concession area, as well as performing regular trash removal and maintenance of the site and associated grounds, etc., as applicable, at its own expense.

12. Take proper care of the facilities and use the same in a careful manner and shall, at its own expense, repair County property or facilities damaged by its (or its subcontractors') operations.

13. Store equipment on site in designated areas only. The County will not be responsible for any loss or damage of the Lessee's equipment or supplies.

14. Provide a concession operation during normal hours to serve park patrons.

15. Utilize an electronic cash register for all transactions. The cash register must have the ability to produce "Z" reports (i.e., sales totals for each day) and "X" reports (i.e., sales totals at any given time); run dual tapes, or have the ability to print out an itemized account of each transaction each day; and print the date and time on journal tape and on each individual sales receipt.

16. Develop a process which will be included in the Operations Manual for coordinating requests from the public or outside entities requesting use of the Complex (e.g., for competitions, tournaments, or training purposes).

17. Employ a qualified, full-time on-site manager or designee who will be available during normal business hours and be on call, at all times, for emergencies or other matters related to the Complex.

18. Provide additional services and fees by mutual agreement of the Lessee and PROS.

B) Hours of operation shall typically be limited to that of the AE Park; special events held outside of normal hours for the Park shall be subject to the approval of PROS. For any special events, the Lessee shall complete a special events application for PROS approval at least 30 days in advance and coordinate with PROS to ensure there is not disruption to other park patrons and amenities.

C) PROS reserves the right to schedule special events that may preclude the Complex from operating during a given event. PROS will use reasonable efforts to notify the Lessee as early as possible of these special events, but in no event later than two weeks prior to the special event. PROS may also close the park during inclement weather conditions.

D) All activities and operations of the Lessee must conform to and comply with Chapter 26, Park and Recreation Rules and Regulations and Article 7 of the Charter of Miami-Dade County, as well as the applicable rules and regulations of the Park.

Appendix A
Scope of Work

1.7 **Background Screening**
In accordance with Miami-Dade County Ordinance No. 08-07 titled Chapter 26, Parks, Recreation and Open Spaces Department Rules and Regulations, Article III, The Shannon Melendi Act (the Act), all Lessee's personnel and volunteers that will provide any service at the wakeboard complex must be in compliance with the requirements set forth under the Act prior to the scheduled start of employment or volunteerism.

Appendix B
DEVELOPMENT RIDER

Facility Site: Amelia Earhart Park

Project: Development and Operation of Watersports Cable Complex

This Development Rider is attached to and hereby made a part of the License Agreement and shall govern the development of a Watersports Cable Complex at Amelia Earhart Park (the "Facility") within the site set forth in Attachment A – Site Area Map). Words and phrases used in this Development Rider shall have the same meaning as in the License Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Development Rider and the provisions of the terms and conditions of the License Agreement, the terms and conditions of the Development Rider will prevail.

A Project Manager ("PM") shall be assigned by the Miami-Dade County Park, Recreation and Open Spaces Department (the "Department", also "PROS") to represent Miami-Dade County. The PM shall monitor compliance with the terms and conditions of the Development Rider; coordinate reviews, comments and approvals; attend design phase and construction meetings; and provide periodic inspections to monitor compliance with the Scope of Work and schedule during design, construction, and close-out of the Facility.

Licensee's requests for modifications to the Final Plans and/or schedule during any phase of the development process must be submitted in writing to the PM with sufficient documentation to justify said request. The Department will consider the information provided and any mitigating circumstances prior to approving or rejecting said requests.

I. LICENSEE'S OBLIGATIONS TO DEVELOP THE FACILITY SITE

The improvements the Licensee develops at the Facility Site shall be designed and constructed in accordance with the provisions of the License Agreement. Licensee shall complete all improvements pursuant to the design and construction defined in Licensee's Proposal and as approved by the County.

Licensee understands and agrees that all costs associated with the design, development, permitting, construction and close-out of the Facility, and any off-site improvements, shall be the sole responsibility of the Licensee. Prior to commencing construction, the Licensee shall provide proof, in a manner sufficient to satisfy the County, that the Licensee obtained the necessary funds to complete the approved Facility.

The Licensee shall maintain all files, records, accounts of expenditures for the Facility and improvements, including improvements performed by Licensee's subcontractor's, in a local office within Miami-Dade County. The County shall have access to such records as provided in the License Agreement.

The Watersports Complex shall operate within the North Lake at Amelia Earhart Park and in certain areas of the surrounding area.

The Licensee shall, upon execution of the License Agreement, and prior to preparing the Final Plans (as defined elsewhere in this document) and specifications, shall submit a Critical Path Method (CPM) schedule for the entire scope of the Facility along with the phasing plan and receive approval from the County. Such approval from the County shall not be unreasonably withheld or delayed. The schedule shall be updated and submitted to the County with the Conceptual, Preliminary, and Final Plans and as requested by the County. The terms and conditions of this Development Rider, in its entirety, shall apply to all construction.

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The Licensee shall remit to the County a fee for the Project Management (PM) ("PM Fee Payment") that shall not exceed 1.5% of the Total Development Cost of each Facility. The total PM Fee Payment shall be subject to an adjustment at the end of construction or upon Termination of the License Agreement, whichever occurs first, when the actual Total Development Cost of each phase is confirmed, to be based on an audit conducted at the expense of the Licensee.

The Licensee shall cooperate and shall cause its consultants and contractors to cooperate with the County's Sustainability Manager to incorporate green building practices into the planning and design of the Facility, pursuant to County Ordinance Number 07-65 concerning the County's Sustainable Buildings Program. The Licensee shall include in its contracts for services associated with this Project a provision that each subcontractor shall comply with all requirements of the County's Sustainable Building Program.

The Licensee shall, upon execution of the License Agreement, and prior to preparing the Final Plans (as defined elsewhere in this document) and specifications, through the Department, initiate contact and confer with the Art in Public Places (APP) Representative to review the applicability of an art component to the Facility. Should Art in Public Places determine that the installation of an art component is applicable to this Facility based on the provisions of Section 2-11.15 of the Miami-Dade County Code and subsequent amendments and guidelines, and should it decide to pursue said installation, the Licensee shall further confer with the Arts in Public Places Representative to develop a concept for art appropriate to the Facility, and the Art in Public Places Professional Advisory Committee as to the type(s) of art, location(s) and possible artist(s). The Director of the Arts in Public Places program shall approve the final concept and location. The Art in Public Places Trust will make the final choice of the artist(s), upon recommendation of the Art in Public Places Professional Advisory Committee. As part of its Master Plan, Art in Public Places encourages and will give preference to collaborative projects between artist(s) and the Licensee to promote the integration of artwork and site. Such collaborative efforts shall include the active involvement of both the Licensee and the artist(s) during design development of the Project. The Licensee shall coordinate the installation of anchorages, special lighting, or plumbing or other utility or installation and connections as required for the proper installation of the artwork in accordance with the artist's concept(s) as part of the services under this License Agreement.

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

1. Site Conditions. The Licensee accepts complete responsibility for all conditions encountered at the Facility Site, including, without limitation, unforeseen site conditions, subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the construction plans, unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the project, and any dewatering activities necessary to construct the facility. The Licensee shall be responsible for the removal or relocation of man-made obstructions, abandoned foundations, utilities, and natural obstructions required for the completion of the Facility. The Licensee shall also be responsible for any and all site conditions, including environmental conditions, caused, disturbed, or exacerbated by the construction and agrees to be responsible for and pay for all environmental remediation work that is required to be performed resulting from the construction of the Facility. The Licensee further agrees not to initiate any claims or suits against the County relating to any site condition, including environmental conditions, and to indemnify, defend and

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hold harmless the County from and against any claims arising from an environmental condition caused or exacerbated by the Licensee in the construction of the Facility.

2. Time of the Essence. The timely completion of all activities set forth below, and the milestones set forth in the Development Schedule for each phase is of the essence. A material failure to meet those deadlines, as the same may be extended by written agreement of the parties, may be a breach of any agreement issued as a result of this RFP.

A. Conceptual Plans. The Department shall review the conceptual plans and CPM schedule submitted for each phase as part of the Licensee's Proposal for the aesthetics, design, and construction of the Facility (hereinafter referred to as the "Conceptual Plans"), for substantial compliance with the RFP and the provisions of the License Agreement. If the County has any comments and/or proposed modifications to the Conceptual Plans, the County shall provide comments and/or proposed modifications in writing to the Licensee within 30 calendar days from the License Effective Date. The comments and proposed modifications shall be addressed by Licensee in developing the Preliminary Plans, as described below. Licensee shall incorporate said comments into a set of revised Conceptual Plans to be reviewed and approved by the County.

Prior to commencing the development of the Preliminary Plans for each phase, the Licensee shall schedule and coordinate a kick-off meeting with the PM to review the Development Schedule including start and completion dates as well as major milestones and the Total Development Cost estimate.

B. Preliminary Plans and Specifications. Within 60 calendar days after approval of the Conceptual Plans for each phase, unless a written request for extension has been received and approved by the PM, Licensee, at its cost, shall prepare and deliver to the Department an updated CPM schedule and five (5) sets of preliminary plans and a computer-aided design and drafting (CADD) file for the construction of the Facility prepared by an architect and/or engineer Licensed to practice as such in Florida (hereinafter referred to as "Preliminary Plans"). The Preliminary Plans shall include the Total Development Cost Estimate and updated Development Schedule and show, without limitation; site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Facility, curbs, gutters and parkways; lighting; locations for outdoor signs; and storage areas; all sufficient to enable reasonably accurate cost estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect the Facility shall have on the Park. Such Preliminary Plans shall be based on Conceptual Plans previously submitted by Licensee as approved by the Department. Additionally, such Preliminary Plans of the improvements shall be in strict adherence to Article 7 of the Miami-Dade County Home Rule Charter. The Facility shall be constructed within the area described in Attachment A. The Licensee shall also be responsible for all off-site improvements required to accomplish the construction and occupancy of the Facility. The Facility shall be aesthetically and functionally compatible with the setting of the Park. Within 30 days after the Department receives Preliminary Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Licensee specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Licensee shall resolve all comments and requests for modifications by the Department to the Preliminary Plans and obtain written approval from the Department prior to proceeding with the development of the Final Plans.

If the parties are unable to resolve any objections by the Department to the Preliminary Plans within 60 days after Licensee has received the Department's objections, the Department shall have the right to terminate the License Agreement upon notice to the Licensee, the parties being thereafter relieved of any liability hereunder and under the License Agreement.

C. Final Plans. Within 90 days after the Preliminary Plans and specifications are approved by the Department for each phase, the Licensee, at its cost, shall prepare and deliver to the Department an

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updated CPM schedule and five (5) sets of Final Plans, one CADD file, and specifications comprising the Final Plans for the Facility, which Final Plans must be consistent with the approved Preliminary Plans and signed and sealed by an architect and/or engineer Licensed to practice as such in Florida. The Final Plans and all associated addenda and attachments shall be incorporated into the License Agreement by reference.

The Final Plans shall be considered 100% construction documents and include an updated Total Development Cost Estimate and updated CPM schedule and show, without limitation; site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Facility, curbs, gutters and parkways; lighting; locations for outdoor signs; storage areas; and off-site improvements. Completed technical specifications shall be included under the Final Plans.

Within 45 days after the Department receives Final Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Licensee specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Licensee shall resolve all comments and requests for modifications by the Department to the Final Plans and obtain written approval from the Department prior to proceeding with the permitting.

D. Permits. Not later than the date that Licensee receives the Department's written approval of the Final Plans for each phase, Licensee shall commence seeking from all governmental agencies having jurisdiction over the Park and the Facility all such required permits, and Licensee shall exercise due diligence in attempting to obtain such permits.

The Licensee shall keep the PM informed of the progress during the permitting phase and coordinate with the Department to ensure that permitting requirements are acceptable to the Department when said requirements will modify the scope or aesthetics of the Facility or its location within the Park. The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

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

If Licensee is unable to obtain such permits within 180 days from the date Licensee receives County's approval of the Final Plans, the County shall have the right to terminate the License Agreement upon notice to the Licensee. The County shall have the right, in its sole discretion and only for good cause shown, to extend the time within which Licensee must obtain such permits. However, the County shall be under no obligation to grant such extensions of time.

When Licensee obtains all such permits, it shall deliver copies of them to the Department.

E. Commencement and Completion of Construction of the Project. Within 30 days from the date that the Licensee obtains all permits required to begin construction of the Facility for each phase, the Licensee shall submit copies of all permits, updated Total Development Cost Estimate, proof that funding is available for construction a Schedule of Values (SOV) for construction, and updated CPM schedule indicating

construction start and completion dates, as well as major milestones for the Facility. Within 15 days after the Department receives copies of all permits, updated Total Development Cost Estimate, proof that funding is available, SOV, and CPM schedule, the Department shall either approve them or deliver Licensee specific corrective comments to the Licensee. The Department shall not be unreasonable in exercising its approval rights hereunder. Licensee shall resolve all comments and requests for modifications by the Department. Once all comments have been satisfactorily addressed by the Licensee, the Department shall issue a Notice-to-Proceed - 1 (NTP-1) to the Licensee for each phase.

The Licensee shall have 15 days from the date of the NTP-1 to submit all required insurances and bonds for each phase to the Department prior to commencing construction. The Licensee shall schedule a Pre-Construction meeting with the PM prior to mobilization for each phase. The pre-construction meeting shall serve to review all completed work to date, and discuss the upcoming construction actives and its impact to Park operations. Upon agreement by the PM to all construction work activities and the associated logistics and timing, and after the County reviews and approves the Licensee's insurance and bonds, a NTP-2 and Authorization to Occupy the Site shall be issued, turning over possession of the Facility Site to Licensee. Licensee shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Facility shall be in accordance with the Final Plans.

The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required. All requests for changes shall be coordinated through the PM. The PM will be provided sufficient notice and information (impact to scope, budget, schedule, materials; performance, etc.) to provide timely responses. All work in connection with the construction of each phase of the Facility shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws. Licensee will allow unobstructed inspection by the Department's staff to determine compliance with the approved plans and specifications throughout construction. The Licensee shall be responsible to provide any temporary facilities needed in support of its construction of the Facility.

The Licensee shall not discriminate against any employee or applicant for employment in the performance of the License Agreement with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except when based on bona fide occupational qualifications; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts/subcontracts shall include the above non-discrimination provisions.

Construction of the Facility shall be completed within 12 months of the date of the NTP-2 for construction.

Upon completion of construction of the Facility, Licensee shall, at its cost, obtain a survey of the Facility and surrounding impacted areas and deliver said survey to the Department, along with one copy of the "as built" drawings and a CADD file, accurately reflecting the constructed Facility, its supporting infrastructure, and off-site improvements at the Park. The as-built information showing the exact location of the Facility at the Park shall be incorporated into the License Agreement and provided by the County to the Licensee.

F. Provisions Applicable during each phase of the Construction of the Facility. In addition to the other provisions of the License Agreement, the following provisions shall be applicable during the period of time that Licensee constructs Project:

1. All construction shall be performed by Licensed contractors approved by the Department. Licensee shall furnish the Department with a true copy of Licensee's contract with the general contractor showing a breakdown of costs.

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2. In addition to weekly/monthly construction meetings, the Licensee shall schedule and coordinate a pre-construction meeting, 50% progress meeting, 75% progress meeting and 100% substantial completion walk-thru meetings with the PM.

3. Throughout the construction of the Facility, the PM shall attend weekly/monthly construction meetings and periodically inspect and review the progress of construction to ensure adequate performance and conformity with the approved plans.

4. The PM or appropriate designee shall provide input to the construction punch-list items and shall issue a Final Acceptance of the Facility once all work has been completed and all permits have been approved and closed by all agencies having jurisdiction. Upon issuance of Final Acceptance, the facility may be occupied and opened for its desired intent.

5. Any changes requested by the Licensee modifying the approved Final Plans must be in writing and approved by the Department prior to implementation. All requests for changes shall be coordinated through the PM. The PM will be provided sufficient notice and information (impact to scope, budget, schedule, materials, performance, etc.) to provide timely decisions.

6. Within 30 days after the specified one (1) year warranty period, the Licensee shall schedule a walk-thru of the Facility with the PM and its contractor, to inspect all construction systems and ensure it's intended functionally and expected workmanship. The "warranty period" warrants the work under the construction improvements, defined in the License Agreement, to be free from faulty materials and workmanship for a period of not less than one (1) year from the date of final acceptance. This one-year period shall be covered by the Surety Performance Bond as required by this Development Rider. After the warranty inspection is completed with satisfactory results as determined by the PM, the close-out period is concluded, except as provided for under Florida Statue 95.11 (3) (c).

G. Bonds and Insurance:

1. The Licensee shall have 15 days from the date of NTP-1 to submit all required insurances, pursuant to the License Agreement, and bonds to the Department prior to any construction work on the Facility Site, and prior to the purchase of any materials, equipment or supplies for construction. The Licensee shall deliver to the County and record in the public records of Miami-Dade County, Florida, a performance and payment bond which satisfies the requirements of Section 255.05 of the Florida Statutes with a surety insurer authorized to do business in the State of Florida as a surety in the full amount of the construction cost of the Facility. Such bond shall be submitted in a form acceptable to the County, and shall name the Licensee as the principal and the County as the obligee.

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

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

| Bond Amount | Best's Rating |
|---|---|
| $500,001 to $1,500,000 | B V |

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| | |
|---|---|
| $1,500,001 to $2,500,000 | A VI |
| $2,500,001 to $5,000,000 | A VII |
| $5,000,001 to $10,000,000 | A VIII |
| Over $10,000,000 | A IX |

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

1. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued,

2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

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

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

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

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

"A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection."

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

"No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the

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Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies."

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

a. That a payment bond in an amount not less than one-hundred percent (100%) of the cost of construction of the Facility is obtained that is conditioned to secure the completion of the Facility free from all liens and claims of contractors, subcontractors, mechanics, laborers and material men in a County approved bond form to be provided by Licensee;

b. That a performance bond in an amount not less than one-hundred percent (100%) of the cost of construction of the Facility is obtained that insures that the construction work shall be effected by the general contractor or, on their default, the surety in a County approved bond form to be provided by Licensee; and,

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

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

5. If no specific periods of warranty are stated in the Agreement or elsewhere in this Development Rider, for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue directly with the Licensee or its contractor seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11 (3) (c), Florida Statues.

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

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

1. No liens shall be attached to the Park or any part thereof.

2. Prior to the commencement of any work, Licensee shall demonstrate to the Department's satisfaction that all construction financing is in place.

3. Licensee shall work closely with the Department in scheduling and engaging in Licensee's construction activity so as not to disrupt Park events, including but not limited to Special Events. Where conflict may occur, the Department shall solely make the determination as to Licensee's right to continue work and the desirability of temporarily halting or continuing activity by Licensee.

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4. Licensee shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by Licensee's failure to cease work after written notice from the Department.

II. THE COUNTY'S CONSTRUCTION OBLIGATIONS

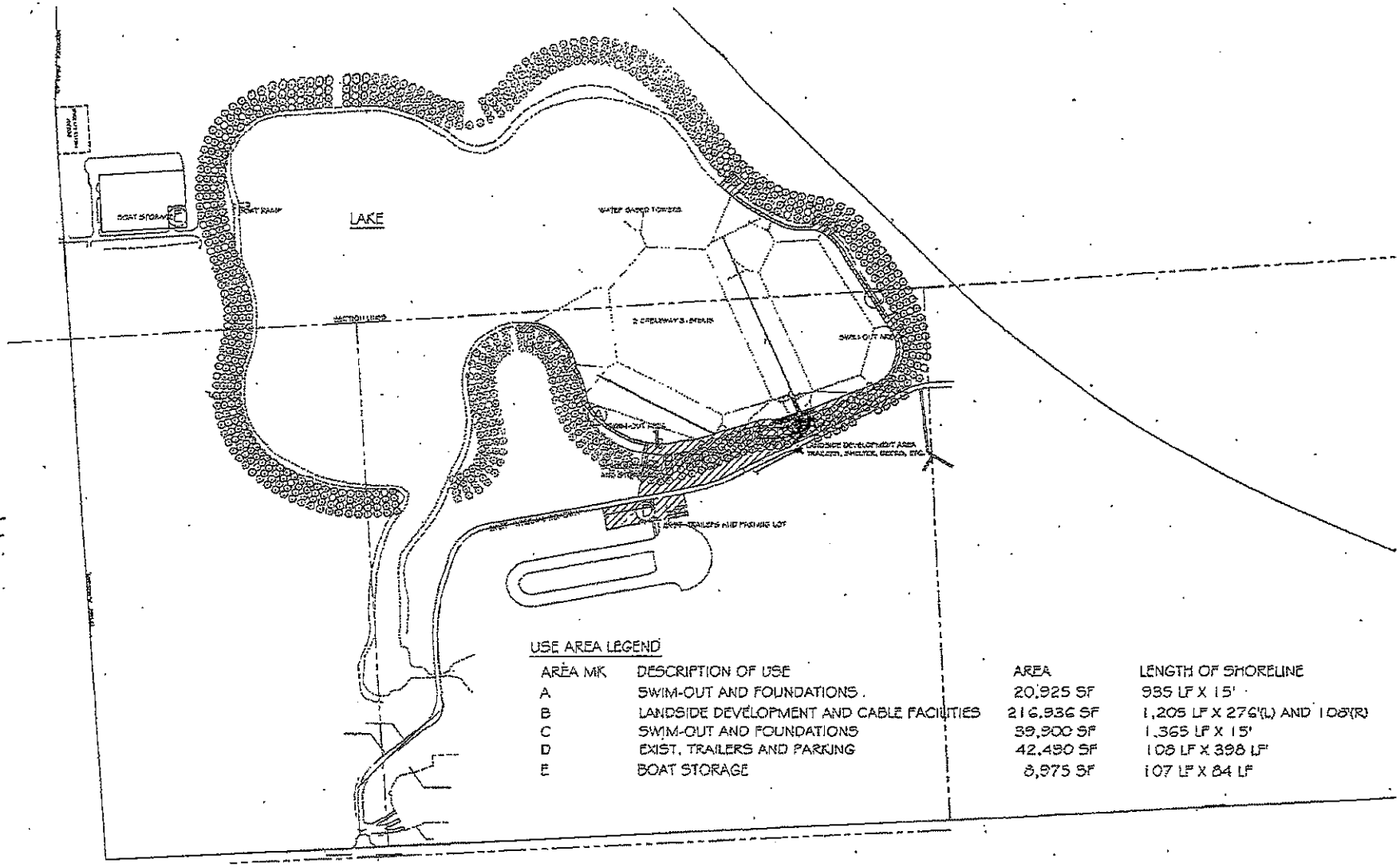
A. Conditions of Facility Site. The County shall deliver physical possession of the Facility Site to Licensee in an "as is" condition so that Licensee may commence construction.

The areas within the Park to be occupied by the Licensee during the execution of the work shall be delineated in the construction documents plans as agreed to between the County and Licensee. The limits of the work shall be sufficient to properly undertake the necessary construction of the Facility and off-site improvements within the Park site so long as normal operations are not impeded.

B. Reasonable Access. The County shall provide reasonable access to allow Licensee to have utilities brought to the Facility Site and to have constructed the approved improvements described in the License Agreement.

C. Prevailing Wages. As applicable, the Licensee is responsible to meet requirements of Section 2-11.16 of the Miami-Dade County Code as it pertains to Responsible Wages.

Appendix L




USE AREA LEGEND

| AREA MK | DESCRIPTION OF USE | AREA | LENGTH OF SHORELINE |
|---|---|---|---|
| A | SWIM-OUT AND FOUNDATIONS | 20,925 SF | 935 LF X 15' |
| B | LANDSIDE DEVELOPMENT AND CABLE FACILITIES | 216,936 SF | 1,205 LF X 276'(L) AND 108'(R) |
| C | SWIM-OUT AND FOUNDATIONS | 39,900 SF | 1,365 LF X 15' |
| D | EXIST. TRAILERS AND PARKING | 42,430 SF | 108 LF X 398 LF |
| E | BOAT STORAGE | 8,975 SF | 107 LF X 84 LF |