

Memorandum

MIAMI-DADE
COUNTY

Date: December 13, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

UMSA
Agenda Item No. 3A

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award: Operation of Crandon Park Marina Concession
and Fuel Services

Recommendation

It is recommended that the Board of County Commissioners approve award of *Contract No. RFP-00318, Operation of Crandon Park Marina Concession and Fuel Services*, to Westrec Marina Management, Inc. (Westrec) for the Parks, Recreation and Open Spaces Department. Under the contract, Westrec is responsible for the operation and management of the marina and fuel dock at Crandon Park. More specifically, Westrec will operate and manage the park's bait and tackle shop, boat rental facility, and fuel dock. All operational and management activity shall be performed in conformance with the Crandon Park Master Plan.

Scope

The marina and fuel dock are located at Crandon Park, 4000 Crandon Boulevard, in County Commission District 7, which is represented by Commissioner Xavier L. Suarez.

Fiscal Impact/Funding Source

The fiscal impact from estimated revenues during the five-year initial term is \$1,012,000. Should the County choose to exercise, at its sole discretion, the one (1), five-year option to renew, the contract's estimated cumulative revenue would be \$2,292,000. The revenue projections are based on a guaranteed monthly fee for operation of the shop and boat rental plus 10 percent of monthly gross receipts from goods and services sold at the shop, boat rental, and fuel dock.

Department	Revenue	Funding Source	Contract Manager
Parks, Recreation and Open Spaces	\$1,012,000	Revenue Generating	Jessica Tyrrell
Total	\$1,012,000		

Track Record/Monitor

Caroline Burgos 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 all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38, including any cancellation, renewal and extension provisions.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition on February 25, 2016. The Request for Proposals method of award was used to obtain the best value for the County by conducting a qualitative review of proposals, including qualifications, experience, and financial capability. One (1) proposal was received in response to the solicitation.

Awardee	Principal Address	Address of Branch Offices or Headquarters in Miami-Dade or Broward*	Number of Employee Residents	Principal
			1)Miami-Dade 2)Broward 3)Percentage*	
Westrec Marina Management, Inc.	16633 Ventura Boulevard Sixth Floor Encino, CA	801 NE Third Street Dania Beach, FL	19	William W. Anderson
			61	
			18%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County or Broward County as compared to the vendor's total workforce.

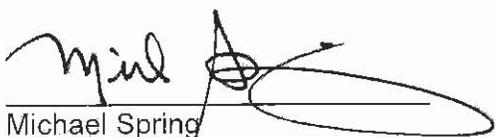
Due Diligence

Pursuant to Resolution No. R-187-12, 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 bidders, debarred bidders, delinquent contractors, suspended bidders, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Additionally, pursuant to Resolution No. R-140-15, prior to the re-procurement of this replacement contract, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment and holding multiple meetings and drafting sessions with the Parks, Recreation and Open Spaces Department.

Applicable Ordinances and Contract Measures

- The two (2) percent User Access Program provision does not apply.
- The Small Business Enterprise Selection Factor did not apply to the solicitation as this is a revenue-generating contract.
- Local Preference was applied in accordance with the ordinance.
- The Living Wage Ordinance does not apply.

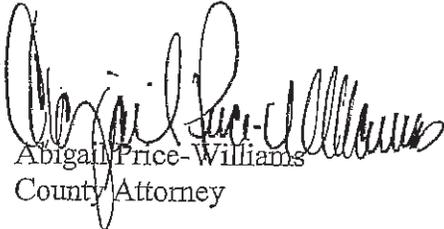

 Michael Spring
 Senior Advisor to the Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: January 24, 2017

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No.

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No.

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-00318 TO WESTREC MANAGEMENT, INC. FOR OPERATION AND MANAGEMENT OF THE CRANDON PARK MARINA CONCESSION AND FUEL SERVICES FOR THE PARKS, RECREATION AND OPEN SPACES DEPARTMENT WITH AN ESTIMATED REVENUE TO THE COUNTY IN AN AMOUNT OF UP TO \$2,292,000.00 FOR THE INITIAL FIVE-YEAR TERM AND ONE, FIVE-YEAR OPTION TO RENEW TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL PROVISIONS CONTAINED THEREIN, INCLUDING ANY CANCELLATION, RENEWAL AND EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

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 award of Contract No. RFP-00318 to Westrec Management, Inc. for the operation of the Crandon Park Marina Concession and Fuel Services for the Parks, Recreation and Open Spaces Department with an estimated revenue to the County in an amount of up to \$2,292,000.00 for the initial five-year term and one, five-year option to renew term, in substantially the form attached hereto and made a part hereof, as set forth in the incorporated memorandum; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and exercise all provisions contained therein, including any cancellation, renewal and extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

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:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Joe A. Martinez	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of January, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County 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.

MAG

Miguel A. Gonzalez

OPERATION OF CRANDON PARK MARINA CONCESSION AND FUEL SERVICES
Contract No. RFP-00318

THIS AGREEMENT made and entered by and between Westrec Marina Management, a corporation organized and existing under the laws of the State of California, having its principal office at 16633 Ventura Blvd, 6th Floor, Encino, California 91436 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide services to operate the Crandon Park Marina Bait and Tackle Shop, Boat Rental Facility, and Fuel Dock ("Facilities"), on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 00318 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated March 26, 2016, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such services to operate the Crandon Park Marina Bait and Tackle Shop, Boat Rental Facility, and Fuel Dock ("Facilities") for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 00318 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The words "Contract Year" to mean a twelve-month period beginning the date of the execution of this Contract.
- e) The word "Contractor" to mean Westrec Marina Management, Inc. and its permitted successors.
- f) The word "Days" to mean Calendar Days.
- g) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.
- h) The words "Developed Works" to mean all rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County. All Developed Works shall become the property of the County.
- i) 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 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 Project Manager.

- j) The words "Extra Work" or "Additional Work" to mean additions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- k) The word "Facilities" to mean the Crandon Park's Bait and Tackle Shop, Boat Rental Facility, and Fuel Dock as defined in Appendix A.
- l) The word "Goods" to mean items such as food, bait, tackle, beverages, fuel, etc. to be sold at agreed upon prices.
- m) The words "Gross Receipts" to mean all receipts from the sale of services or merchandise by Contractor, sold in, upon, or from the Facilities, including such sales as shall in good faith be credited by Contractor in the regular course of its business by personnel employed at the time of sale at the Facilities, including mail, e-mail, and telephone orders received at the Facilities and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Contractor for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment, or other property used by Contractor 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 Contractor, whichever of such events shall first occur.
- n) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- o) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- p) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- q) The word "Utilities" to mean services used or consumed such as, but not limited to, electricity, gas, water, and sewerage.
- r) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) Revenue Schedule (Form 1) 4) the Miami-Dade County's RFP No. 00318 and any associated addenda and attachments thereof, and 5) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this 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 Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
 - c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
 - d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the Project Manager.
 - e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor 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.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective the date of the parties' execution and shall continue through the last day of the last month of the five (5) year term. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of five (5) additional years. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract 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.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

- a) to the Project Manager:

Miami-Dade County
Parks, Recreation, and Open Spaces Department
275 NW 2nd Street, 5th Floor
Miami, FL 33128
Attention: Jessica Tyrrell
Phone: (305) 755-7872
E-mail: tyrrell@miamidadegov

and,

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Division
111 N.W. 1st Street, Suite 1300

Miami, FL 33128-1974
Attention: Caroline Burgos
Phone: (305) 375-2037
E-mail: ctburgo@miamidade.gov

(2) To the Contractor

Westrec Marina Management, Inc.
801 NE Third Street
Dania Beach, FL 33004
Attention: Gary Groenewold
Phone: 954-926-0300 x 4
E-mail: southregion@westrec.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. REVENUE FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the revenue the Contractor will provide to the County for the Work and Services to be performed under this Contract. The revenue for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be pursuant to Form 1 – Revenue Schedule.

ARTICLE 8. REVENUE

Revenue shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer additional revenue to the County at any time during the Contract term, including any renewal or extension thereof. The County reserves the right to renegotiate revenues based on the following (but not limited to): sales, economic factors, and/or the best interest of the County.

ARTICLE 9. METHOD, TIMES, AND APPLICATION OF PAYMENTS AND ASSOCIATED REQUIRED DOCUMENTATION AND PENALTIES

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

The Guaranteed Monthly Fee payable by Contractor to the County herein shall be payable on the first day of each month following the Contract Date and shall continue through the term of this Contract and any renewal options.

Percentage of Monthly Gross Receipts shall be paid to the County on or before the 10th day following the end of each month during the term of this Contract and on or before the 10th day of the month following the expiration or earlier termination of the term.

Such payments, as well as other amounts payable by Contractor to the County under the terms of this Contract, shall be paid promptly when due, without notice for any reason whatsoever and without abatement, except as hereinafter provided.

All guaranteed monthly fees and percentage fees provided for in this Contract shall be paid or mailed to:

Miami-Dade County
Parks Recreation and Open Spaces Department
Financial Management Division
275 N.W. 2nd Street, 3rd Floor
Miami, FL 33128
Attention: Erica Hallback
Phone: (305) 755-7975
Email: EHALLBA@miamidade.gov

(Checks shall be made payable to the "Miami-Dade County Parks".)

The County may at any time designate a different address and/or contact person by giving written notice to the Contractor.

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 Fee and Percentage of Monthly Gross Receipts.

In the event that the Contractor fails to make any payments on time, as required to be paid under the provisions of this Contract, a penalty at the rate of 1.5% per month or any portion of a month shall accrue from the due date, against the delinquent payment(s) until same are paid. The right of the County to require payment of such late payment charge and the obligation of the Contractor to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Contract, or to pursue other remedies provided by law.

In the event that the Contractor delivers a dishonored check or draft to the County in payment of any obligation arising under this Contract, the Contractor 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 is to be made within five (5) days from written notice of such default. Further, in such event, the County may require that future payments required pursuant to this Contract be made by cashier's check or other means acceptable to the County. A second such occurrence of dishonored check during the Contract term will be a breach of contract and, at the County's option, will constitute a default allowing termination.

The County shall have lien upon all personal property of the Contractor in/on the Facilities to secure the payment to the County of any unpaid money accruing to the County under the terms of this Contract.

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

Contractor shall submit to County on or before the 10th day following the end of each month during the term of this Contract and on or before the 10th day of the month following the expiration or earlier termination of the term, a written statement, signed by Contractor and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Contractor shall submit to the Project Manager and County Contract Manager on or before the 60th day following the end of each Contract Year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Contractor and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Contract 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.

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

For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of each Contract 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 Contractor. Contractor 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. Contractor shall keep, for at least three (3) years following the end of each Contract 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; (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 Contractor's Gross Receipts.

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

County shall have the right to cause, upon five (5) days' written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by PROS, or the Internal Auditing Department of the County. Contractor shall make all such records available for said examination at the Facilities or at some other mutually agreeable location. If the result of such audit shall show that Contractor's statement of Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor 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. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Contract. 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.

If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, then Contractor shall be deemed to be in default under this Article.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Contractor 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. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor 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 Contractor shall furnish to the Internal Services Department / Procurement Management Services, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes, including, if applicable, coverage under the U.S. Longshoremen and Harbor Workers' Act.
- B. Marine General Liability Insurance to include Products and Liquor Legal Liability on a comprehensive basis, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- D. Watercraft Liability to include Protection and Indemnity Insurance and Collision Liability in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policy shall be endorsed to include coverage for Bareboat Charter. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

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

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

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

or

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

NOTE: 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 Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10)

business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, 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 Contractor 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 Contract 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 contract.

Should the Contractor and County agree to allow for Facility improvements requiring construction, both parties should revisit insurance requirements with the County's Risk Management Division to determine appropriate insurance coverages.

Any insurance the County may maintain shall not cover Contractor's improvements and betterments, contents, or other property of Contractor. Contractor 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 Facilities which would increase the fire or other property or casualty insurance rate on the Facilities or Park over the rate which would otherwise then be in effect (unless Contractor 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 Contractor, the rate of property insurance on the Facilities or Park or equipment or other property of the County shall be higher than it otherwise would be, Contractor 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 Contractor.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor 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 Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor 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 Contractor agrees to adjust its personnel staffing levels or to replace any 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.
- d) The Contractor 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.
 - e) The Contractor 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.
 - f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this 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 Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor'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 Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE PROJECT MANAGER

- a) The Contractor hereby acknowledges that the 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 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 Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; changes from originally agreed Services, signage, request for building modifications, use of County's, Park's, or Facility's name, and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. 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 Agreement authorize the County Mayor or designee, who may not be the 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 Agreement (including but not limited to claims in the nature of breach of contract, 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 Contractor's performance or any Deliverable meets the requirements of this 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 Agreement. All such disputes shall be submitted in writing by the Contractor 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 judgement or to make a determination or form an opinion pursuant to the provisions of this Article, 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 Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this 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.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, 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 Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies, shall until the expiration of five (5) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Miami-Dade County Code, the Contractor 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 Contractor 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.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's

Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor 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 therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this 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 Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

The occurrence of any of the following may cause this Agreement to be terminated by the County upon the terms and conditions 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 Contractor.
 - ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days.
 - iii. Assignment by Contractor for the benefit of creditors.
 - iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.
 - v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement.
 - vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County.
 - vii. Failure to cease any activity which may cause limitation of County's use of the Crandon Park Marina.
 - viii. A final determination in a court of law in favor of the County in litigation instituted by the Contractor against the County or brought by the County against Contractor.
 - ix. 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 Contract, this Contract will be null and void and unenforceable by any party to this Contract and the County shall have no further liability under this Contract. In the event that any court or legislative body of competent jurisdiction issues an injunction substantially restricting or prohibiting the use of the Park for the purpose of the Contract, which injunction stays in force for more than thirty (30) calendar days, this Contract will be null and void, and unenforceable by any party to this agreement and the County shall have no further liability under this Contract. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Contract, this Contract will be null and void and unenforceable by any party to this Contract and the County shall have no further liability under this Contract. If the County deems the Contract null and void by function of this Article, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability under this Contract.
 - x. 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.
 - xi. 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 Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Facilities and by certified or registered mail to any known address of Contractor set forth in this Agreement hereof for doing any of the following:
- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s)

- during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Guaranteed Monthly Fee and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.
- ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.
- C. Termination after fourteen (14) days from receipt by Contractor of written notice having either been posted on or at the Facilities or by certified or registered mail to the address of the Contractor set forth in this Agreement:
- i. Non-performance of any covenant of this Agreement other than non-payment of Guaranteed Monthly Fee and Percentage of Monthly Gross Receipts and others listed in A and B above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
- D. In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- E. Revenue Control and Audit Defaults: The inability or failure of the Contractor to provide the County with an unqualified certified statement of Gross Receipts, or to strictly adhere to the revenue control procedures established in this Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Contractor.
- F. Habitual Default: Notwithstanding the foregoing, in the event that the Contractor has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Contractor, regardless of whether the Contractor has cured each individual condition of breach or default as provided herein above, the Contractor may be determined by the County to be an "habitual violator". At the time that such determination is made, County shall issue to the Contractor a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Contractor that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may cancel this Agreement upon the giving of written notice of termination to the Contractor, 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 Contractor shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Contractor shall discontinue its operations at the Facilities, and proceed to remove all its personal property in accordance with this Agreement.

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

Following the termination of this Contract the Contractor, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property not acquired under the terms of this Contract. Any personal property of Contractor not removed in accordance with this Article may be removed by the County for storage at the cost of the Contractor 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 Contractor for the safekeeping of Contractor's personal property during or after termination of this Contract. The County shall have the senior interest in the Contractor's personal property. Contractor shall not remove any equipment, supplies in bulk, or

fixtures within the Facilities at any time without pre-approval in writing from the County. Contractor 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. Contractor shall also be liable for any expenses incurred by the County in prosecuting any action against Contractor following unapproved item removal described above. Contractor shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Contractor. It is the intention of the parties to this Contract that all furnishings and equipment purchased or leased by the Contractor, except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Contractor. Upon the termination of Contract and the removal of all personal property by Contractor, the Contractor shall deliver said Facilities to the County in the same or better condition as the beginning of the Contract.

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 Fee or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Contract, other than the failure of Contractor to pay the particular Guaranteed Monthly Fee or Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Guaranteed Monthly Fee or Percentage of Monthly Gross Receipts. No covenant, term, or condition of this Contract 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 Contractor.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. 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 Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
 - viii. the Contractor has failed to maintain compliance with the Crandon Park Master Plan.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this 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 Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor 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 Contractor 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 Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor 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 re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

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

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor 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 Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor 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 programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor 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.
- d) In the event any Deliverable 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 Contractor 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 Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor 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 Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable 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.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services

performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. 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.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all Information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and

to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a and b above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) **Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor 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.
 - b) **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, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. 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 Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-38; (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 shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor 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 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 contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment without regard to race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran 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 Contractor agrees to post in a 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.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take

affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor 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 Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor 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 Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor 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 Article 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 Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor 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, Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor 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 Work being performed hereunder, unless the Contractor 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 Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor 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 Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

ARTICLE 39. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/>.

ARTICLE 40. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 41. SURVIVAL

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

ARTICLE 42. CURTAILMENT OR INTERRUPTION OF SERVICE

The County reserves the right to interrupt, curtail, or suspend the provision of any Utility service to which Contractor 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. The County shall in no respect be liable for any failure of the Utility companies or governmental authorities to supply Utility service to Contractor or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of Guaranteed Monthly Fee or Percentage of Monthly Gross Receipts other charges, nor damages, shall be claimed by Contractor by reason of the County's or other individual's interruption, curtailment or suspension of a Utility service, nor shall this Contract or any of Contractor's obligations hereunder be affected or reduced thereby.

ARTICLE 43. HOLDING OVER

If Contractor continues to operate the Facilities after the expiration of the term of this Agreement, or any option period, without a new Agreement reduced to writing and duly executed and delivered (even if Contractor shall have paid, and County shall have accepted, Guaranteed Monthly Fees and Percentage of Monthly Gross Receipts in respect to such holding over), Contractor shall be deemed to be operating the Facilities only as a Contractor from month-to-month, subject to all covenants, conditions, and agreements of this Agreement. If Contractor fails to cease operations at the Facilities upon the termination of this Agreement, then Contractor shall, in addition to any liabilities to County accruing therefrom, 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 Contractor on such failure.

ARTICLE 44. OWNERSHIP OF IMPROVEMENTS

Upon the expiration or earlier termination of this Contract for any reason, all existing and future installed fixtures, equipment, improvements and appurtenances attached to or built into the Facilities in such a manner as to become part of the freehold, whether or not by or at the expense of Contractor, shall become and remain a part of and be surrendered at the end of the Contract. Any furniture, furnishing, equipment or other articles of movable personal property owned by Contractor and located in the Facilities, shall be and shall remain the property of Contractor and may be removed by it at any time during the term of this Contract so long as Contractor is not in default of any of its obligations under this Contract, and the same have not become a part of the freehold, and so long as such does not materially affect Contractor's ability to use said Facilities and conduct its business as provided herein. However, if any of Contractor's property is removed and such removal causes damage to the Facilities, Contractor shall repair or pay the cost of repairing any damage to the Facilities resulting from such removal. Any property belonging to Contractor and not removed by Contractor at the end of the Contract Term or a renewal, if applicable, shall, at the election of the County, be deemed to be abandoned by Contractor, and the County may keep or dispose of such property and restore the Facilities to good order within ten (10) days. At the expiration of the term of this Contract, Contractor shall deliver to the County the keys and combinations to all safes, cabinets, vaults, doors and other locks left by Contractor on the Facilities.

ARTICLE 45. CONTRACTOR'S CONDITIONS FOR MAKING CHANGES

Subject to approval of the County in writing, which approval may be withheld by the County with or without cause, Contractor may at any time, at its expense, make alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called "Changes") in and to the Facilities, excluding structural changes. Any Changes are subject to the following conditions:

- i. The outside appearance or structural integrity of the Facilities shall not be affected.
- ii. No part of the Park not included within the Facilities shall be physically affected.
- iii. The proper functioning of any of the material, electrical, sanitary, fire protection and other service systems shall not be adversely affected.
- iv. Contractor shall be required to obtain all necessary governmental permits and certificates for the commencement of Contractor's Changes and shall maintain compliance with all applicable laws and requirements of public authorities, and with all applicable requirements of insurance bodies, and in good workmanlike manner, using materials and equipment at least equal in quality and class to the original installations of the Facilities or Park, and so as not to impose any additional expense upon the County.
- v. Contractor shall construct the improvements in accordance with County approved plans and in compliance with this Contract.
- vi. In performing the work involved in making such Changes, Contractor shall be bound by and observe all of the conditions and covenants contained in this Article.
- vii. At the expiration or any earlier termination of this Contract, on the County's written request, Contractor shall restore the Facilities to their condition prior to the making of any Change permitted by this Article, reasonable wear and tear excepted, unless waived by the County in writing. Reasonable wear and tear shall be deemed not to include damage or injury caused by moving Contractor's property or trade fixtures into or out of the Facilities.
- viii. Contractor's obligation to observe and perform the covenants set forth in this Article shall survive the expiration or earlier termination of the term of this Contract.

ARTICLE 46. DAMAGE OR DESTRUCTION OF FACILITIES

In all events, Contractor shall repair all damages of the property caused by the Contractor, its employees, agents, contractors or sub-consultants. If the Facilities are partially damaged, but not rendered unusable for the purposes of this Contract, the same shall with due diligence be repaired by the Contractor from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Monthly Guaranteed Fee payable hereunder for the period of the Contractor's business interruption, shall be made. If the damage shall be so extensive as to render such Facilities unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Contractor from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Contractor's business interruption a pro-rata adjustment shall be made as to the Monthly Guaranteed Fee and Utility fees.

In the event the said Facilities are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, the Contractor and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the Monthly Guaranteed Fee payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Contract 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 operations in the Facilities under the Contract, the Contractor may reconstruct the premises at its own cost.

ARTICLE 47. SIGNS

The nature, size, shape and installation of Concessionaire's business signs within the Concession or in, on or adjacent to the Concession must first be approved in writing by Owner. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in the Article 7 of the Miami-Dade Home Rule Charter and the Crandon Park Master Plan. All signs shall be removed by the Concessionaire at the termination of this Concession 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 Concessionaire.

ARTICLE 48. MECHANICS', MATERIALMEN'S, AND OTHER LIEN

Contractor agrees that it will not permit any mechanic's, materialmen's, or other liens to stand against the Facilities for work or materials furnished to Contractor; it being provided, however, that Contractor shall have the right to contest the validity thereof. Contractor shall immediately transfer any lien to a bond and thereafter pay any judgment or decree rendered against Contractor, with all proper costs and charges, and shall cause any such lien to be released off record without cost to County.

ARTICLE 49. 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.

ARTICLE 50. SHANNON MELENDI ACT

Contract shall conduct background checks on all owners, staff and volunteers pursuant to Miami-Dade County Ordinance No. 08-07 and ensure the safety of the patrons of the Park by meeting the requirements of Chapter 26 "Miami-Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act."

IN WITNESS WHEREOF, the parties have executed this Contract No. RFP-00318.

Contractor

Miami-Dade County

By: *Jeffery K. Ellis*
Name: JEFFERY K. ELLIS
Title: VILL PRESIDENT
Date: 8/25/2016
Attest: *Michael M. Sealy*
Corporate Secretary/Notary Public

By: _____
Name: Carlos A. Gimenez
Title: MAYOR
Date: _____
Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency

Assistant County Attorney

APPENDIX A – SCOPE OF SERVICES

1.0 Current Facility Environment

Location for Services

Crandon Park Bait & Tackle Shop, Boat Rental Facility, and Fuel Dock facilities (Facilities) at Crandon Park (Park), located at 4000 Crandon Boulevard, Miami, Florida 33149

Bait and Tackle Shop

The Bait and Tackle Shop occupies the first floor of the Dock Master Facility. The Bait and Tackle Shop is approximately 1,080 square feet including a small, storage room/office space (approximately 35 square feet). The facility provided does not include any furniture or fixtures such as counters, chairs, computers, freezers, shelving, etc. An outdoor, uncovered Courtyard is adjacent to the Bait and Tackle Shop that contains County owned and maintained A/C condenser unit, clothes washer and dryer, and shower facilities. The County, in its sole discretion, may allow Contractor to use the Courtyard for minimal storage. For Bait and Tackle Shop layout, see Attachment F - Bait and Tackle Shop Floor Plan.

Boat Rental Facility

One (1) 75-foot slip is provided by the County for the purposes of boat rentals. The slip has dockage on both sides. The Boat Rental Facility also includes one (1) Pump Out station to be operated by the Contractor.

Fuel Dock

The Fuel Dock has three (3) fuel pumps associated with three (3) 10,000 gallon fuel tanks. One (1) 10,000 gallon tank is for diesel fuel, one (1) 10,000 gallon tank is for premium fuel, and one (1) 10,000 gallon tank is for midgrade fuel. All fuel costs shall be paid directly by the Contractor.

Utilities

The County shall provide access to the following: electrical as existing, water facilities as existing, and sewage collection facilities as existing. Contractor shall be responsible for all costs associated with Utility usage at the Facilities, with the exception of waste collection services which shall be provided by the County to the Contractor at no charge.

2.0 Qualifications

The Contractor should have:

- 2.1 Experience in the marine industry (including the operation of marina concession services such as bait and tackle, boat rental facilities, and fuel services) and related activities in a marina setting.
- 2.2 Knowledge of the legal requirements that are involved in the specific type of operation in this contract.
- 2.3 Adequate financial strength and working capital to provide for all services, improvements (if any), and operations of the Facilities.

3.0 Facility Operation Requirements

- 3.1 The Facilities shall be open to the general public and Services shall be provided, at a minimum, seven (7) days a week between the hours of 7:00 am until sunset. The County will work with Contractor to establish a standard closing time that is expected to be around sunset.
- 3.2 Outside surfaces of the Facilities shall not be used for the purpose of commercial advertising.
- 3.3 Any equipment, furnishings, signage, and advertising installed, uninstalled, or replaced within the Facilities, Park, or in, on, or adjacent to the Facilities or Park, as well as all use and operations of

the Park by the Contractor shall be in compliance with Article 7 of the Home Rule Charter, the Crandon Park Master Plan, all governmental authorities having jurisdiction, and in keeping with the appropriate standards of decor at the Park, and must be approved by the County prior to installation. All new equipment, furnishings, signage, and advertising provided shall meet the requirements of all applicable building, fire, pollution and other related codes.

4.0 General Services to be Provided

The Contractor shall provide the following services:

- 4.1 Operate the Facilities including Bait and Tackle Shop, Boat Rental Facility, Fuel Dock; and related services for each as applicable, as approved by the County, in a manner normally associated with this type of operation and the marine industry, in accordance with Crandon Park Master Plan (Attachment A), or amended through the date of this Agreement, Article 7 of The Home Rule Amendment and Charter as amended November 4, 2014 (Attachment B), Crandon Park Signage Guidelines and Standards (Attachment C), and South Florida Vernacular Architectural Standards (Attachment D).
- 4.2 Furnish prompt and efficient service that meets the fishing and boating patrons' needs and all other reasonable demands, including the established minimum schedule and hours of operation for marina patrons, subject to the approval of the County;
- 4.3 Provide an operation that will be safe, customer oriented with prompt service, complaint resolution, effective employee performance and training and timely initiation and completion of all work;
- 4.4 Manage, operate and maintain the Facilities and provide Services and activities in accordance with legal requirements and safety practices required for the safe operation;
- 4.5 Take good care of the Facilities and using the same in a careful manner and, at its own expense, repair County property and facilities damaged by its operations;
- 4.6 Keep all equipment and supplies necessary to maintain the Facilities in the same condition as at the commencement of this agreement or better;
- 4.7 Provide assistance, expertise, and technical advice to the County regarding general changes in the industry rules and regulations, safety and operation of the Facilities, suggesting the types of equipment, merchandise, services, and promotional methods associated with this type of operation;
- 4.8 Ensure employees are distinctively uniformed or appropriately attired so as to be distinguishable as the Contractor's employees and not as employees of the County;
- 4.9 Provide all labor to repair and maintain the day-to-day operations of the Facilities;
- 4.10 Prepare plan(s) for emergencies, including, but not limited to, fire, acts of nature, fuel spills, etc., and implement the approved plan(s) if instructed to do so by the County;
- 4.11 Promote and provide information related to weather, marine industry, and other associated activity to marina patrons; monitor marine radio frequencies during approved hours of operation and respond appropriately to emergencies;

5.0 Services to be Provided for Bait and Tackle Shop

- 5.1 Provide resale items such as, but not limited to, bait, fishing tackle, boating supplies, ice, pre-wrapped food items, candy, soda, beer, chips, ice cream, cookies, etc.
- 5.2 Repair, maintain, and/or replace all above ground lights, furniture, fixtures, and equipment provided as needed at no cost to the County.
 - 5.2.1 Contractor shall obtain appropriate licenses and/or permits required to perform repairs, maintenance, and replacements of Facility and/or Facility equipment.

6.0 Services to be Provided for Boat Rental Facility

- 6.1 Provide boat rental, related services, and instruction to patrons with a rental fleet of no more than six (6) outboards no larger than 24' in length. Sailboat rental and related services may become available in the future.

- 6.2 Provide pump out services to boats as needed.
- 6.3 Repair, maintain, and/or replace all above ground lights, sea-wall, pump-out station, furniture, fixtures, and equipment provided as needed.
 - 6.3.1 Contractor shall obtain appropriate licenses and/or permits required to perform repairs, maintenance, and replacements of Facility and/or Facility equipment.

7.0 Services to be Provided for Fuel Dock

- 7.1 Manage fuel (gasoline and diesel) operations by ordering fuel and selling fuel at the Fuel Dock above cost.
- 7.2 Collect all fuel revenues and remit a percentage of gross receipts to the County.
- 7.3 Repair, maintain, and/or replace all above ground fueling equipment, lights, fixtures, and equipment provided, as needed.
 - 7.3.1 Contractor shall obtain appropriate licenses and/or permits required to perform repairs, maintenance, and replacements of Facility and/or Facility equipment.

8.0 Payment of Revenue to the County

In accordance with Form 1 – Revenue Schedule:

The Contractor shall pay a guaranteed monthly fixed fee to the County, exclusive of Utilities payment for the operation and management of the following two facilities:

- Bait and Tackle Shop
- Boat Rental Facility

AND

The Contractor shall pay a percentage of monthly gross revenues/receipts, exclusive of Utilities payment as required for the operation and management of the following three facilities:

- Bait and Tackle Shop
- Boat Rental Facility
- Fuel Dock Operation

NOTE: The Crandon Park Master Plan requires payment of at least 10% of the gross revenues/receipts to the County. This shall be calculated using all types of revenue generated combined for all Facilities.

9.0 County's Rights and Responsibilities

- 9.1 The County shall have sole discretion in determining what related services may or may not be provided. The County may allow the Contractor to provide additional services and/or use County adjacent space or within the Park, upon such terms as the parties may agree. Such additional services must follow the theme of the approved purpose of any agreement issued as a result of this solicitation.
- 9.2 The County shall have the right to request revision of prices on all Goods and Services provided by the Contractor.
- 9.3 The County reserves the right to schedule special events that may preclude the Contractor from operating in the Facilities or providing the Services, or a portion thereof, for a limited time. The County will use reasonable efforts to notify the Contractor as early as possible of these special events.
- 9.4 The County shall have the right, without limitation, to monitor and test the quality of Services of the Contractor, 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.
- 9.5 The County shall have the authority to make periodic reasonable inspections of all the Facilities, equipment, and operations during the normal operating hours thereof to determine if such are

being maintained in a neat and orderly condition. The Contractor shall be required to make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of this Contract.

- 9.6 The County reserves the right to determine the attractiveness and appropriateness of the Facilities and to request that the Contractor make changes, if necessary, and such determinations by the County shall be considered final.
- 9.7 The County shall have the right, at its sole cost and expense, without limitation, to make any repairs, alterations and additions to any structures and facilities, including the Facilities covered under this Contract, free from any and all liability for loss of business or damages of any nature whatsoever during the making of such repairs, alteration and additions.

10.0 Proposer's Rights and Responsibilities

- 10.1 The Contractor shall be responsible for all operating expenses, including Utilities associated with the day-to-day operations, with the exception of waste collection services which will be provided by the County at no cost to the Contractor. The Contractor shall pay for all charges for Utility services used or consumed in or upon the Facilities including, but not limited to: electricity, water, and sewerage charges under this Contract. Such charges are separately measured by metering or otherwise. Contractor shall transfer service into the name of the Proposer and pay the actual cost thereof. Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Park as determined either by the public utility providing such service or by the County in the exercise of reasonable judgment.
- 10.2 Contractor shall be responsible for janitorial service and pest extermination service within the Facilities. The Contractor shall keep the Facilities and equipment clean at all times. If the Facilities and equipment are not kept clean in the opinion of the County, the Contractor will be advised and if correction action is not immediately taken, the County will cause the same to be cleaned and/or treated and the Contractor shall assume responsibility and liability for such cleaning and/or extermination costs associated.
- 10.3 The Contractor shall, at its sole cost, obtain all permits, licenses, and approvals required for operation and performance under this Contract.
- 10.4 It shall be the Contractor's full responsibility to secure the Facilities included in this Solicitation twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. The County will not accept any responsibility for the Contractor's equipment, supplies, other personal property, money, etc.
- 10.5 The Contractor shall follow the County's emergency evacuation and hurricane plan as set forth for the Facilities or Park.
- 10.6 Contractor shall repair all damages to the Facilities or Park caused by the Contractor, its employees, agents, or independent contractors.
- 10.7 The Contractor shall employ a qualified, full-time, on-site manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Contractor under this Contract and to accept all notices provided for herein throughout the term of this Contract or any extensions thereof.
- 10.8 A management person of the Contractor shall be on call, at all times, for emergencies or other matters related to the operations under this Contract.
- 10.9 All equipment and personal property furnished by Contractor shall be of good quality and suitable for its purpose.
- 10.10 Contractor shall use the Facilities only for the use permitted and shall not provide any services or sell any item or product without the prior written approval of the Project Manager. Further, all activity and use shall be in accordance with Article 7 of the Home Rule Charter of Miami-Dade County and Crandon Park Master Plan.

- 10.11 Contractor shall not permit the Facilities or any part thereof to be used in any manner, or anything to be done therein, 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 Facilities or Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Facilities or Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Facilities or Park or the proper and economic functioning of any other common service facility or common utility of the Facilities or Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Facilities or Park; or (vii) impair any of the It's other obligations under this Contract.
- 10.12 Throughout the term of this Agreement, including any renewal term, the Contractor shall be responsible for the timely payment (i.e., before delinquency) of any and all taxes levied on the Contractor, which taxes relate to, arise out of, or are a result of the operations and/or performance under this Agreement. The Contractor's liability for the payment of taxes shall encompass taxes imposed by any taxing authority including, but not limited to, state, county, and municipal taxing authorities.
- 10.13 Contractor, at its expense, shall make promptly: All repairs, ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the Facilities or Park as shall be required by reason of (i) the performance of any work on the Facilities; (ii) the installation, use or operation of Contractor's property; (iii) Contractor's portion of the utility lines in the Facilities, if damaged due to Contractor's negligence; (iv) the moving of Contractor's property in or out of the Facilities or Park; (v) the misuse or neglect of the Facilities or Park by Contractor or any of its employees, agents, contractors, or customers including the failure or neglect to make the repairs required.
- 10.14 In accordance with Miami-Dade County Ordinance No. 16-58, the Contractor shall not sell, use, provide food in, or offer the use of Polystyrene articles on Park Property and in all facilities located within Parks. If the Contractor violates this ordinance, the Contractor shall be deemed in default of the contract.

FORM 1 – REVENUE SCHEDULE

Proposer's revenue to the County in Sections 1 and 2 (below) includes all cost elements, including all out-of-pocket expenses, including but not limited to, employee salary, travel, goods, services, and miscellaneous costs and fees, as such expenses shall not be reimbursed separately by the County.

1. Guaranteed Monthly Fees

Guaranteed Monthly Fees listed below shall be received by the County from the Contractor on or before the first day of the month, without billing.

Service	Guaranteed Fee / Month <u>Year 1</u>	Guaranteed Fee / Month <u>Year 2</u>	Guaranteed Fee / Month <u>Year 3</u>	Guaranteed Fee / Month <u>Year 4</u>	Guaranteed Fee / Month <u>Year 5</u>
Operation of Bait & Tackle Shop	\$ 500	\$ 525	\$ 551.25	\$578.81	\$ 607.75
Operation of Boat Rental Facility	\$ 250	\$ 262.50	\$ 275.63	\$ 289.41	\$ 303.88

2. Monthly Percentage of Gross Receipts

Monthly Percentage of Gross Receipts listed below shall be received by the County from the Contractor on or before the tenth day of the month following the month in which revenues were received, without billing.

Service	Percentage Fee / Dollar of Gross Receipts <u>Year 1</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 2</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 3</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 4</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 5</u>
Operation of Bait & Tackle Shop	10 %	10 %	10 %	10 %	10 %
Operation of Boat Rental Facility	10 %	10 %	10 %	10 %	10 %
Operation of Fuel Dock	10 %	10 %	10 %	10 %	10 %

Option-to-Renew Years

Proposer's revenue to the County in Sections 3 and 4 (below) includes all cost elements, including all out-of-pocket expenses, including but not limited to, employee salary, travel, goods, services, and miscellaneous costs and fees, as such expenses shall not be reimbursed separately by the County.

3. Guaranteed Monthly Fee

Guaranteed Monthly Fees listed below shall be received by the County from the Contractor on or before the first day of the month, without billing.

Service	Guaranteed Fee / Month <u>Year 6</u>	Guaranteed Fee / Month <u>Year 7</u>	Guaranteed Fee / Month <u>Year 8</u>	Guaranteed Fee / Month <u>Year 9</u>	Guaranteed Fee / Month <u>Year 10</u>
Operation of Bait & Tackle Shop	\$ 638.14	\$ 670.05	\$ 703.55	\$ 738.73	\$ 775.66
Operation of Boat Rental Facility	\$ 319.07	\$ 335.02	\$ 351.78	\$ 369.36	\$ 387.83

4. Monthly Percentage of Gross Receipts

Monthly Percentage of Gross Receipts listed below shall be received by the County from the Contractor on or before the tenth day of the month following the month in which revenues were received, without billing.

Service	Percentage Fee / Dollar of Gross Receipts <u>Year 6</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 7</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 8</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 9</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 10</u>
Operation of Bait & Tackle Shop	10 %	10 %	10 %	10 %	10 %
Operation of Boat Rental Facility	10 %	10 %	10 %	10 %	10 %
Operation of Fuel Dock	10 %	10 %	10 %	10 %	10 %

Notes:

1. Notwithstanding the revenue rates for Option-to-Renew Years (Sections 3 and 4), the County reserves the right to negotiate the final revenue rates.