

Memorandum



Date: December 13, 2016

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

UMSA
Agenda Item No. 3B

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award Operation of Watersports Concession at Crandon Park

Recommendation

It is recommended that the Board of County Commissioners approve award of *Contract No. RFP-00181, Operation of Watersports Concession at Crandon Park*, to Miami-Kite Boarding, Inc. for the Parks, Recreation and Open Spaces Department. Under the contract, Miami-Kite Boarding, Inc. is responsible for the operation and management of a watersports concession at Crandon Park. Operational activities include a diverse array of programs and services associated with the watersports industry, such as stand-up paddleboard rentals and instruction, kite boarding rentals and instruction, and kayak rentals. The contract allows for the sale of non-alcoholic beverages and prepackaged snacks to concession customers. All operational and management activity shall be performed in conformance with the Crandon Park Master Plan.

Scope

The watersports concession is located at Crandon Park, 6747 Crandon Boulevard, in County Commission District 7, which is represented by Commissioner Xavier L. Suarez.

Fiscal Impact/Funding Source

The estimated revenue for the five-year term is \$890,000. Should the County elect to exercise, at its sole discretion, the two (2), two-year options to renew, the estimated cumulative revenue will be \$1,690,000. The estimated revenues are based on a guaranteed monthly rent of \$2,500 for the first two (2) years of the initial term and \$3,500 thereafter, including both option to renew terms. In addition, Miami-Kite Boarding, Inc. will pay the County 15 percent of the total monthly gross receipts for the entire term.

Department	Revenue	Funding Source	Contract Manager
Parks, Recreation and Open Spaces	\$890,000	Revenue Generating	Lluis Gorgoy
Total	\$890,000		

Track Record/Monitor

Yuly Chaux-Ramirez 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 December 29, 2015. Three (3) proposals were received in response to the solicitation. The Request for Proposals method was used to obtain the best value for the County by conducting a qualitative review of proposals, including qualifications, experience, technical capability, project approach, and pricing.

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*	
Miami-Kite Boarding, Inc. (SBE)	6747 Crandon Boulevard North Beach, Crandon Park Key Biscayne, FL	Same	3	Christophe Ribot
			0	
			100%	

*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.

Vendors Not Recommended for Award

Vendor	Reason for Not Recommending
Adventure Sports, Inc.	Evaluation Scores/Ranking
Beachlife, LLC d/b/a TKS Miami	

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.

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

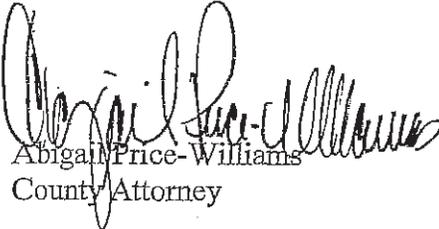


MEMORANDUM

(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-00181 TO MIAMI-KITE BOARDING, INC. FOR OPERATION OF A WATERSPORTS CONCESSION AT CRANDON PARK FOR THE PARKS, RECREATION AND OPEN SPACES DEPARTMENT WITH AN ESTIMATED REVENUE TO THE COUNTY IN AN AMOUNT OF UP TO \$1,690,000.00 FOR THE INITIAL FIVE-YEAR TERM AND TWO, TWO-YEAR OPTION TO RENEW TERMS; 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-00181 to Miami-Kite Boarding, Inc. for the operation of a watersports concession at Crandon Park for the Parks, Recreation and Open Spaces Department with an estimated revenue to the County in an amount of up to \$1,690,000.00 for the initial five-year term and two, two-year option to renew terms, 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 WATER SPORTS CONCESSION AT CRANDON PARK

License Agreement No. 00181

THIS LICENSE AGREEMENT made and entered into as of this _____ day of _____, 201 , by and between Miami-Kite Boarding, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 6747 Crandon Boulevard, Key Biscayne, FL 33149 (hereinafter referred to as the "Licensee"), and Miami-Dade County (the County), a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128, (herein referred to as the "County"),

WITNESSETH:

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

WHEREAS, the Licensee has offered to develop and operate a water sports concession ("Concession") in a manner that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposals (RFP) No. 00181 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this License Agreement; and,

WHEREAS, the Licensee has submitted a written proposal dated February 19, 2016, hereinafter referred to as the "Licensee's Proposal", which is incorporated by reference herein; and,

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

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

1. **Definitions:** The following words and expressions used in this License Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:
- a) The words "License Agreement" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 00181 and all associated addenda and attachments, the Licensee's Proposal, and all other attachments hereto and all amendments issued hereto.
 - b) The words "License Agreement Date" to mean the commencement date of this License Agreement, and shall begin on the date indicated in the first page of this License Agreement.
 - c) The words "License Agreement Year" to mean each twelve month period starting from the date on which this License Agreement is effective.
 - d) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Service Department, or the duly authorized representative designated to manage the License Agreement.
 - e) The word "County" to mean Miami-Dade County.
 - f) The word "Licensee" to mean Miami-Kite Boarding, Inc. and its permitted successors and assigns.
 - g) The word "Days" to mean Calendar Days.
 - h) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
 - i) The words "Notice to Proceed" to mean a letter issued by the County's PROS Department advising the Licensee that it may begin operation of the Concession.
 - j) The words "Notice to Proceed Date" to mean the date identified in the Notice to Proceed, as the start date of operation of the Concession.
 - k) The word "Park" to mean located at Crandon Park located at 6747 Crandon Boulevard, Miami, Florida, 33149 located between pristine Bear Cut Preserve and a world renowned swimming/sunbathing beach.
 - l) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
 - m) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Licensee.
 - n) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Licensee, who furnishes labor and/or materials, in connection with the Services, whether directly or indirectly, on behalf and/or under the direction of the Licensee and whether or not in privity of License Agreement with the Licensee.

- o) The words "Watersports Concession" or "Concession" to mean operation providing for watersports activities as detailed in Appendix A.
- p) The words "Work", "Services", Programs or "Project" to mean all documentation and any items of any nature submitted by the Licensee to the County's Project Manager for review and approval pursuant to the terms of this License Agreement, and all matters and things required to be done by the Licensee in accordance with the provisions of this License Agreement.
2. **Use:** The County hereby grants unto the Licensee, and the Licensee hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth, a License Agreement to develop and operate a Water Sports Concession. Licensee shall use the Concession only for the use permitted. The Licensee shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of County, and any sales by the Licensee of services or items not specifically authorized in writing by County may constitute a default. Licensee shall conduct its business at all times in accordance with this License Agreement.

Property Description: The Concession is located at Crandon Park located at 6747 Crandon Boulevard, Miami, Florida, 33149. The area covered by this Agreement is not a lease and only the rights to operate a water sports concession are included in this Agreement. The Concession comprises the North Concession building located at the north end of the Crandon Park beach area and shall include the surrounding beach and water area ("Site"), as depicted in the Appendix B, Site Maps. Additionally, the Licensee can use existing parking and restrooms.

3. **Operations:** Except when and to the extent that the Concession may be untreatable by reason of damage by fire or other casualty, Licensee shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein the Concession other than such minor portions thereof as are reasonably required for storage and office purposes, and any such storage and office space shall only be used in connection with the business conducted by Licensee in the Concession; and will have on the premises adequately trained uniformed personnel for efficient service to customers.
4. **Limitations on Use:** Subject to Licensee's right to use the Concession for the purposes specified in this License Agreement, Licensee shall not suffer or permit the Concession or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Concession or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Concession; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Concession or the proper and economic functioning of any other common service facility or common utility of the Concession; (vi) impair or interfere with the physical convenience of any of the occupants of the Concession; (vii) impair any of the Licensee's other obligations under this License Agreement; (viii) violate Article 7 of the Home Rule Charter, or (ix) violate the Crandon Park Master Plan, as may be amended from time to time.
5. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Licensee's business in the Concession, or any part thereof, and if failure to secure such license or permit would in any way adversely affect the County, Licensee, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Licensee shall at all times comply with the terms and

conditions of each license and permit.

6. **Non-Exclusivity:** This License Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services outside the Park, products or items by other vendors or others in other premises owned and operated by the County or from authorizing other unrelated concession services within the Park. The Licensee shall have no rights to any other location that may be made available by the County.
7. **Proposal Incorporated:** The Licensee acknowledges that it has submitted to the County a proposal ("Licensee's Proposal") that was the basis for the award of this License Agreement and upon which the County has relied.
8. **Order of Precedence:** If there is a conflict between or among the provisions of this License Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) Appendices to these terms and conditions and any associated appendices, attachments, exhibits, etc. 3) the Miami-Dade County's RFP No. 00181 and any associated addenda and attachments thereof, and 4) the Licensee's Proposal.
9. **Appendices and Attachments:**
The Appendices and Attachments listed in this Paragraph and attached to this License Agreement are hereby incorporated in and made a part of this License Agreement:

Appendix A - Scope of Services

Appendix B - Exhibits

10. **Nature of the License Agreement:**

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

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

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

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

E. The Licensee acknowledges that the County shall be responsible for making all policy

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

11. **Term:** The County hereby grants a License Agreement to manage, operate and maintain for an initial term of five (5) years, the Concession described in this License Agreement to be operated as a concession. The term and commencement date of this License Agreement, herein referred to as the License Agreement Effective Date, shall begin on the date indicated in the first page of this Agreement, and shall end on the last day of the sixtieth (60) month. The Department will issue a Notice to Proceed once a Security Deposit as stated in Article 13 below and the Insurance Certificate as stated in Article 58 is provided by the Licensee and approved by the County.
12. **Option to Renew:** This License Agreement may be renewed for two (2), two (2) year periods as follows: at the County's sole discretion and provided that there has been no default of the License Agreement by the Licensee, the Licensee may by written notice to, and upon approval by, the Department at least six months before the end of the then current term but in no event earlier than one year prior to the end of the then current term, renew the License Agreement for the first two year renewal period. Additionally, provided that there has been no default of the License Agreement by the Licensee, the Licensee may by written notice to, and upon approval by, the Department at least six months before the end of the then current term but in no event earlier than one year prior to the end of the then current term, renew the License Agreement for the second two year renewal period. All renewal periods shall run consecutively so as to make this Agreement continuous in its operation from beginning to its termination, for a period up to nine (9) years.

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

13. **Security Deposit:** Prior to the start of the License Agreement, the Licensee shall furnish a Security Deposit in cash or cashier's check payable to the Board of County Commissioners, equal to three (3) months Guaranteed Monthly Rent or \$7,500.00. The security deposit shall be received ten (10) days after the Agreement is fully executed. Redeemable at the end of the License Agreement term except for such conditions pertinent thereto, additionally, if the County must draw upon any amount owed to the County for this License Agreement, Licensee hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon. In the event the Licensee abandons its performance, the County will retain the security deposit. No interest on the Security Deposit will be owed to the Licensee.
14. **Guaranteed Monthly Rent:** In consideration of the use of the Concession, Licensee does hereby covenant and agree to pay to the County without deduction or set off of any kind the sum of \$2,500.00 (plus tax) for the first two (2) years of this Agreement, and \$3,500 (plus tax) for the following years. Payment shall be provided to the County by the 1st of the month but no later than the 10th, in advance without invoice, per month as Guaranteed Monthly Rent. Payment of the Guaranteed Monthly Rent shall commence on the Notice to Proceed Date, which shall be addressed in the Notice to Proceed letter issued by the County. If the Notice to Proceed letter date is other than the 1st of the month, the amount due for the first month shall

be pro-rated, as shall the last month of this Agreement, considering any extensions as addressed in Article 12 above.

15. **Percentage of Monthly Gross Receipts – Percentage Fee:** In addition to the Guaranteed Monthly Rent, Licensee agrees to pay to the County, monthly, an amount equal to 15% (plus tax) of Monthly Gross Receipts hereinafter referred to as "Percentage Fee" within 10 days following the end of each month during the term of this License Agreement.
16. **Sales Tax:** The Licensee shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 7%) on the amounts payable to the County, including the Guaranteed Monthly Rent and Percentage Fee payments, under this License Agreement. This Sales and Use Tax shall be payable to the County, when applicable rent is due. The County will remit same, less authorized handling deductions, to the State.
17. **Additional Taxes:** If at any time during the term of this License Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on rents (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, against the County on account of the rent or percentage fees payable herein, such tax, charge, capital levy, or excise on rents or other taxes shall be deemed to constitute real estate taxes on the Concession and the premises for the purposes of this Paragraph.
18. **Taxes on Licensee's Personal Property:** Licensee shall be responsible for, and shall pay before delinquency, all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Concession by Licensee.
19. **Late Payment Charge:** In the event that the Licensee fails to make any payments on time, by the due date, as required to be paid under the provisions of this License Agreement, a late payment charge of 1.5% or \$100.00 per month, whichever is greater, shall be assessed. The outstanding balance shall increase accordingly and interest shall accrue on the total balance, to include late payment penalties. The right of the County to require payment of such late payment charge and the obligation of the Licensee to pay same shall be in addition to and not in lieu of the County's rights to enforce other provisions herein, including termination of this License Agreement, or to pursue other remedies provided by law.
20. **Application of Payments:** Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Guaranteed Monthly Rent, then Percentage Fee, including the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
21. **Worthless Check or Draft:** In the event that the Licensee delivers a dishonored check or draft to the County in payment of any obligation arising under this License Agreement, the Licensee shall incur and pay a service charge of \$25.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within not more than five (5) days from written notice of such default. Further, in such event, County may require that future payments required pursuant to this License Agreement be made by cashier's check or other means acceptable to County. A second such occurrence of dishonored check during the License Agreement term will be a breach of contract and, at the County's option, will constitute a default allowing termination.

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

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

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

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

1. To the County:

- a) To the Project Manager:

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

and

- b) To the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-2363

2. To the Licensee:

Miami-Kite Boarding, Inc.
6747 Crandon Boulevard
North Beach, Crandon Park
Key Biscayne, FL 33149
Attention: Christophe Ribot
Phone: 786-897-8769

With copy to: Lillian A. Ser, Esq.
2100 Ponce de Leon Blvd., suite 1180
Coral Gables, FL 33134

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

24. **Interpretations:** This License Agreement and the Attachments hereto, and other documents specifically referred to herein, constitute the entire, fully integrated License Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written License Agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal Agreements expressly and clearly incorporated by reference within the four corners of this License Agreement. This License Agreement may be amended only by written document, properly authorized, executed, and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean the County Mayor (or designee) or the Contract Manager (or designee) within this License Agreement shall have approval authority or the Board of County Commissioners (as applicable). This License Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The License Agreement shall not be construed in favor of one party or the other. All matters involving the License Agreement shall be governed by laws of the State of Florida.
25. **Accord and Satisfaction:** No payment by Licensee or receipt by County of a lesser amount than any payment of Guaranteed Monthly Rent or Percentage Fee herein stipulated shall be deemed to be other than on account of the earliest stipulated Guaranteed Monthly Rent or Percentage Fee then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Guaranteed Monthly Rent or Percentage Fee be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Guaranteed Monthly Rent or Percentage Fee or pursue any other remedy provided in this License Agreement, at law or in equity. No covenant, term, or condition of this License Agreement shall be deemed to have been waived by County, unless such waiver be in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Licensee.
26. **Gross Receipts:**
- A. **License Agreement Year Defined:** "License Agreement Year" means a twelve-month period beginning on the License Agreement Effective Date and ending twelve months thereafter.
- B. **Gross Receipts Defined:** "Gross Receipts" means all monthly receipts collected by the Licensee from the sale of services or merchandise by Licensee, concessionaires of Licensee and sub-Licensee(s) of Licensee, sold in, upon or from the Concession, including such sales as shall in good faith be credited by Licensee, its concessionaires, and sub-Licensees in the regular course of its or their business to personnel employed at the time of sale at the Concession, including sub-concession Agreements or contract employee payments to the Licensee and mail, internet and telephone orders received at the Concession and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Licensee or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Licensee's trade fixtures, operating equipment or other property used by Licensee or its concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Licensee, or its concessionaires, whichever of such events shall first occur.

C. Licensee's Certification of Receipts: Licensee shall submit to County on or before the 10th day following the end of each month during the term of this License Agreement and on or before the 10th day following the expiration or earlier termination of this License Agreement, a written statement, signed by Licensee and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Licensee shall submit to County on or before the 60th day following the end of each License Agreement year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Licensee and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding License Agreement Year. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

D. Examination of Licensee's Books and Records: Such books and records as are necessary to determine the amount of any Percentage Fee payable to County shall be subject to examination by the County or its authorized representatives at reasonable times during Licensee's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Licensee's business. All information obtained by the County or its authorized representatives from Licensee's books and records shall be kept confidential by the County and all such representatives except in connection with any mortgage or assignment of this License Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Licensee's Receipts Records: For the purpose of computing and verifying the Percentage Fee due hereunder, Licensee shall prepare and keep, for a period of not less than three (3) years following the end of each License Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Licensee. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this License Agreement. Licensee shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Licensee shall keep, for at least three (3) years following the end of each License Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Licensee's Gross Receipts.

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

F. Audit of Licensee's Business Affairs and Records: County shall have the right to cause, upon five (5) business days' written notice to Licensee, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by County, or the Audit and Management Services Department of the County. Licensee shall make all such records available for said examination at the Concession or at some other mutually agreeable location. If the result of such audit shall show that Licensee's statement of Gross Receipts for any period has been understated, Licensee shall pay County the amount due. If such understatement is three percent (3%) or more, Licensee shall pay County the cost of such audit in addition to any

deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as rent. A report of the findings of said accountant shall be binding and conclusive upon County and Licensee. The furnishing by Licensee of any grossly inaccurate statement shall constitute a breach of this License Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this License Agreement for financing purposes.

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

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

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

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

- A. Changes from originally approved specifications, pricing, activities, signage, and graphics.
- B. Aesthetics of the Concession.
- C. Any use of the County's facilities or Concession's name.
- D. Hours of Operation.
- E. Uniforms to be used by employees shall be consistent with or better than those normally used by professionally-operated Concessions.

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

30. **Hours of Operation:** Operating hours for the Concession is as stated in Appendix A, Scope of Services. The Licensee shall provide sufficient staff to provide outstanding service. The County may require a change in hours of operation, if, in the reasonable discretion of the County, such a change is desirable in providing the best service to the public.

31. **Pricing:** Licensee shall maintain the pricing schedule for goods and services submitted with its Proposal, and as approved by the County. If the Licensee wishes to change its standard prices for goods and services, Licensee will provide to the County a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date, for approval or disapproval, at any time during the License Agreement term when price changes are

contemplated. Pricing for special events or services shall be expeditiously approved by the County.

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

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

33. **Signs:** The nature, size, shape, and installation of Licensee's business signs within the Concession or in, on, or adjacent to the Concession or The Park must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in Article 7 of the Miami-Dade Home Rule Charter as well as the requirements of the Crandon Park Master Plan, as it may be amended from time to time. All signs shall be removed by the Licensee at the termination of the License Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Licensee.
34. **On-Site Manager/Designee:** Throughout the term of this License Agreement, the Licensee shall employ a qualified full-time on-site Concession Manager or Designee having experience in the management of this type of operation, who shall be available during normal business hours and on-call at all times, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Licensee under this License Agreement and to accept service of all notices provided for herein.
35. **Quality of Licensee's Service:** The Licensee shall conduct its operations in an orderly manner and so as not to annoy, disturb, or be offensive to customers, patrons, or others in the immediate vicinity of such operations.

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

Licensee shall take good care of said premises, shall use the same in a careful manner, and shall, at its own cost and expense, keep, maintain, and repair and, upon the expiration of this License Agreement or its termination in any manner, shall deliver said premises to the County in the same condition as at the commencement this License Agreement, with the exception of loss by fire or other casualty.

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

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

36. **Monitoring Services:** The County shall have the right, without limitation, to monitor and test the quality of services of the Licensee, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of a shopping service, closed circuit TV, and other reasonable means.
37. **Utility Services:** Licensee shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of The Park as determined either by the public utility providing such service or by County in the exercise of reasonable judgment. Licensee shall make all repairs caused by Licensee's negligence.
38. **Services/Equipment Provided by County:** The County shall provide the following services, as existing:
- A. Electrical
 - B. Water facilities
 - C. Sewage collection facilities
 - D. Waste collection

The Licensee shall pay to the County \$200 per month for these facilities separate and in addition to other provisions of payment covered in this Agreement.

39. **Equipment and Service Provided by Licensee:**
The Licensee, at its sole cost, shall provide for the Concession:
- A. Janitorial service within the Concession. The Licensee shall keep the Concession and equipment clean at all times. If the Concession and equipment are not kept clean in the opinion of the County, the Licensee will be so advised and if corrective action is not immediately taken, the County will cause the same to be cleaned and the Licensee shall assume responsibility and liability for such cleaning.
 - B. Maintenance service for equipment necessary for the operation of the Concession. The Licensee shall ensure monthly maintenance and necessary repairs are done for all applicable equipment.
40. **Equipment Installed by Licensee:** The Licensee shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Concession. All furnishings, fixtures, and equipment acquired for the Concession shall be of a high quality as good as or better than that found at similar facilities. The County shall be afforded the opportunity to approve all furnishings, fixtures, and equipment for the Concession.

Any equipment, furnishings, signage and advertising installed by the Licensee shall be in compliance with Article 6 of the Home Rule Charter and in keeping with the appropriate standards of decor at the Park. Following the installation of any additional equipment, furnishing and improvements which the County may approve from time to time, Licensee shall provide to the County a statement setting forth the cost of such equipment, furnishings, or improvements and the date upon which the installation of such equipment, furnishings, or improvements was completed.

Licensee agrees that all new equipment, furnishings and improvements provided shall meet the

requirements of all applicable building, fire, pollution and other related codes.

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

41. **Security and Protection:** The Licensee acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Concession, outside of standard security measures supplied by the County in general. Licensee may provide its own specialized security for the Concession, subject to the County's written approval.
42. **Hurricane Preparedness:** The Licensee shall follow the County's emergency evacuation and hurricane plan as set forth for the Concession.
43. **Maintenance Responsibilities of Licensee, Appearance of Facility:** Licensee shall, at its sole cost and expense, keep and maintain the Concession in a clean and good condition. The provision of janitorial services and all interior maintenance within the Concession are the sole and exclusive responsibility of the Licensee. Upon failure of the Licensee to maintain the Concession as required in this Paragraph, County may, after fifteen (15) days written notice to the Licensee, enter upon the Concession and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall constitute Percentage Fee(s), and shall be billed to and paid by the Licensee.
44. **Independent Licensee Relationship:** The Licensee is, and shall be, in the performance of all work services and activities under this License Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this License Agreement shall at all times, and in all places, be subject to the Licensee's sole direction, supervision and control. The Licensee shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Licensee's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Licensee does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this License Agreement.
45. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Licensee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of the County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of payment or other charges, nor damages, shall be claimed by Licensee by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this License Agreement or any of Licensee's obligations hereunder be affected or reduced thereby.
46. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all of the Concession, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The

Licensee shall make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Licensee is operating in compliance with the terms and provisions of this License Agreement.

47. **Right of Entry:** The County or any of its agents shall have the right to enter upon the Concession at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Concession as the County deems necessary, but the County assumes no obligation to make repairs in the Concession other than those expressly provided for in this License Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Licensee and that the County will diligently proceed therewith to completion. The County or the County's agents shall also have the right to enter upon the Concession at reasonable times to show them to actual or prospective mortgagees, tenants, or Licensees of the Concession. During the one hundred and eighty (180) days prior to the expiration of the term of this License Agreement, the County may show the Concession to prospective tenants. If, during the last ninety (90) days of the term of this License Agreement, Licensee shall have removed all or substantially all of Licensee's property there from, the County may immediately enter, alter, renovate, and redecorate the Concession without elimination or abatement or fee or other compensation and such action shall have no effect upon this License Agreement.
48. **Permits and Regulations:** Licensee covenants and agrees that Licensee will obtain any and all necessary permits and approvals and that all uses of the Licensed property will be in conformance with all applicable laws.
49. **Damage or Destruction of Property:** In all events, Licensee shall repair all damages to the property caused by the Licensee, its employees, agents, contractors or sub-consultants. If the Concession is partially damaged, but not rendered unusable for the purposes of this License Agreement, the same shall with due diligence be repaired by the Licensee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of the Licensee's business interruption, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Licensee from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Licensee's business interruption a pro-rata adjustment shall be made as to the Guaranteed Monthly Rent. In the event said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, through no fault of the Licensee, its employee, agents, contractors or sub-consultants, the Licensee and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the Guaranteed Monthly Rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the License Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the premises in a License Agreement, the Licensee may reconstruct the premises at its own cost.
50. **Repairs, Alterations and Additions by the County:** The County, as its responsibility, and at its expense (except if the damage is caused by Licensee, its employees, agents, or independent Licensees), shall make all repairs and replacements, structural and otherwise, necessary, or

desirable in order to keep in good order and repair the foundations, roofs and structural soundness of floors and walls of the Common Areas of the Park, excluding the Concession.

The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Licensee may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of Fee or other charges, nor damages, shall be claimed by Licensee by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this License Agreement or any of Licensee's obligations hereunder be affected or reduced thereby.

Except as provided herein in this License Agreement, the County shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Concession under this License Agreement, free from any and all liability to the Licensee for loss of business or damages of any nature whatsoever during the making of such repairs, alterations, and additions, except for such damage caused by the sole negligence of the County and where not otherwise indemnified by the Licensee, subject to the limitations of Section 768.28, Florida Statutes. In making such repairs, alterations, and additions, the County shall take such reasonable measures as are necessary to minimize interference with Licensee's operations of the Concession, for short term disruption of one week or less to Licensee's business where adequate accommodations can be made to minimize the inconvenience and injury to Licensee's business. If the Licensee's business is interrupted for more than one week, as a result of any of the foregoing, a pro rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of such interruption shall be made.

51. **Diminution for County's Repair:** Except as elsewhere specifically provided in this License Agreement, there shall be no allowance to Licensee for a diminution of rental value and no liability on the part of the County by reason of inconvenience, annoyance or interference with Licensee's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Licensee's use of the Concession.
52. **Performance of Obligations:** Licensee covenants at all times to perform promptly all of the obligations of Licensee set forth in this License Agreement.
53. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this License Agreement governing the use of the Concession, Licensee, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.
54. **Assignment, Sub-Contracting and Successors in Interest:**
 - A. Licensee shall not assign, mortgage, pledge nor otherwise encumber this License Agreement or any portion thereof, nor any property associated with this License Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or

encumbering shall be grounds for immediate termination of this License Agreement. It is agreed that all terms and conditions of this License Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.

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

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

55. **Ownership of Licensee:** The ownership of the Licensee is very important to the County. Therefore, the County reserves the right to terminate this License Agreement at any time if more than 5% of the ownership of the Licensee has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in the best interests of the public. Licensee agrees to provide on 24-hour notice to the County an accurate list of all owners of the Licensee, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Licensees, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.
56. **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.
57. **County's Property Insurance:** Any insurance the County may maintain shall not cover Licensee's improvements and betterments, contents, or other property of Licensee. Licensee shall not violate, or permit the violation of, any condition imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Concession which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Concession is located or the property therein over the rate which would otherwise then be in effect (unless Licensee pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the County. If, by reason of any act or omission on the part of Licensee, the rate of property insurance on the Concession or the Park or equipment or other property of the County shall be higher than it otherwise would be, Licensee shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of Licensee, which sum shall be deemed Percentage Fee for purposes of collection only.
58. **Indemnification and Insurance:** The Licensee shall indemnify and hold harmless the County

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

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

- A. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as 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 \$300,000 combined single limit per occurrence for bodily injury and property damage.

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

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.

CONTINUITY OF COVERAGE

The Licensee shall be responsible for assuring that the insurance documentation required in conjunction with this subsection remain in force for the duration of the agreement period,

61. Patent and Copyright Indemnification:

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

b) The Licensee shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any wall murals, and the like, in the course of performance or completion of, or in any way connected with, the Works, or the County's continued use of the Work furnished hereunder. Accordingly, the Licensee at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

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

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

62. Manner of Performance:

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

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

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

D. The Licensee shall at all times cooperate with the County and coordinate its respective work

efforts to most effectively and efficiently maintain the progress in performing the Services.

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

63. Temporary Ceasing of Operations Due to Emergency:

The County reserves the right to require that Operator cease operations for an emergency as judged in the sole discretion of the County, for a period of time as is deemed by the County necessary to reestablish safe conditions for further operations of the Concession. Additionally, the County reserves the right to require that the Operator cease operations for any extended period as may be required by County following an event which may cause a sport operated by the Concession to be deemed unsafe. In this event, the County and Operator would meet to decide if the Concession should reinstate such sport and/or decide if continuing one operation of the Concession is deemed in the best interest of the County.

64. Severability:

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

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

A. Automatic Termination upon written notice by the County if any of the following occurs:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Licensee.
- ii. Institution of proceedings in involuntary bankruptcy against the Licensee if such proceedings continue for a period of ninety (90) days.
- iii. Assignment by Licensee for the benefit of creditors.
- iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.
- v. The discovery of any misstatement in the Licensee's Proposal leading to award of this License Agreement, which in the determination of the County significantly affects the Licensee's qualifications to perform under the License Agreement
- vi. Unapproved change of ownership interest in Licensee and/or failure to submit the ownership list within 24 hours upon the request of the County.
- vii. Failure to cease any activity which may cause limitation of County's use of The Park.
- viii. A final determination in a court of law in favor of the County in litigation instituted by the Licensee against the County or brought by the County against Licensee.

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

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

C. Termination after fourteen (14) calendar days from receipt by Licensee of written notice

having either been posted on or at the Concession or by certified or registered mail to the address of the Licensee set forth in this License Agreement:

- i. Non-performance of any covenant of this License Agreement other than non-payment of rent or performance fees and others listed in A and B above, and failure of the Licensee to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
- D. Revenue Control and Audit Defaults: The inability or failure of the Licensee to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this License Agreement. If after written notice from the County to Licensee to cure such failure, Licensee does not cure such failure the County shall have the right to terminate this License Agreement upon seven (7) calendar days written notice to the Licensee. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required in this License Agreement.
- E. Habitual Default: Notwithstanding the foregoing, in the event that the Licensee has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Licensee, regardless of whether the Licensee has cured each individual condition of breach or default as provided herein above, the Licensee may be determined by the County to be an "habitual violator". At the time that such determination is made, County shall issue to the Licensee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Licensee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this License Agreement. In the event of any such subsequent breach or default, County may cancel this License Agreement upon the giving of written notice of termination to the Licensee, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Licensee shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Licensee shall discontinue its operations at the Concession, and proceed to remove all its personal property in accordance with this License Agreement.

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

- F. 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, halt or terminate this Agreement by written notice to the Licensee.

In this event, the County shall not be liable for any compensation to the Licensee or responsible for any lost revenues or legal fees caused as a result of this termination.

66. Event of Default:

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

- i. the Licensee has not provided Services in accordance with provisions herein;
- ii. the Licensee has refused or failed to supply enough properly skilled Staff Personnel;
- iii. the Licensee has failed to make prompt payment to subcontractors or suppliers for any Services;
- iv. the Licensee has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Licensee's creditors, or the Licensee has taken advantage of any insolvency statute or debtor/creditor law or if the Licensee's affairs have been put in the hands of a receiver;
- v. the Licensee has failed to obtain the approval of the County where required by this License Agreement;
- vi. the Licensee has failed to provide "adequate assurances" as required under section "B" below; or
- vii. the Licensee has failed in the representation of any warranties stated herein.

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

- i. treat such failure as a repudiation of this License Agreement; and
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

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

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

68. **Remedies in the Event of Default:** If an Event of Default occurs, the Licensee shall be liable for all damages resulting from the default, including, but not limited to:
- a) lost revenues;
 - b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
 - c) such other direct damages.

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

69. **Termination and Suspension of Work:**

A. The County may immediately terminate this License Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

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

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

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

A. A breach by the County of any of the terms, covenants or conditions contained in this License Agreement and the failure of the County to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Licensee, of the existence of such breach.

B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of The Park, or any substantial part, or parts, thereof in such a manner as substantially to restrict Licensee's operations for a period of ninety (90) calendar days or more.

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

out of the Concession. Licensee's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this License Agreement.

72. **Termination of Agreement:** Following the termination of this License Agreement the Licensee, 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 License Agreement. Any personal property of Licensee not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Licensee or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Licensee for the safekeeping of Licensee's personal property during or after termination of this License Agreement. The County shall have the senior interest in the Licensee's personal property. Licensee shall not remove any equipment, supplies in bulk, or fixtures within the Concession at any time without pre-approval in writing from the County. Licensee shall be liable to the County for the fair market value of any equipment, supplies in bulk, or fixtures removed without County pre-approved written permission. Licensee shall also be liable for any expenses incurred by the County in prosecuting any action against Licensee following unapproved item removal described above. Licensee shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Licensee. It is the intention of the parties to this License Agreement that all furnishings and equipment purchased or Licensed by the Licensee except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Licensee. Upon the termination of this License Agreement and the removal of all personal property by Licensee, the Licensee shall deliver said premises to the County in the condition set forth in this Paragraph.
73. **Holding Over:** If Licensee continues to use and operate the Concession after the expiration of the term of this License Agreement, or any option period, without a new License Agreement reduced to writing and duly executed and delivered (even if Licensee shall have paid, and County shall have accepted, payment in respect to such unauthorized operations), Licensee shall be deemed to be operating and using the Concession only from month-to-month, subject to all covenants, conditions, and agreements of this License Agreement. If Licensee fails to surrender the Concession upon the termination of this License Agreement, then Licensee, in addition to any liabilities to County accruing there from, shall indemnify and hold harmless the County and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Licensee on such failure.
74. **Mechanics', Materialmen's and Other Liens:** Licensee agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the Concession for work or materials furnished to Licensee; it being provided, however, that Licensee shall have the right to contest the validity thereof. Licensee shall immediately pay any judgment or decree rendered against Licensee, with all proper costs and charges, and shall cause any such lien to be reLicensed off record without cost to County.
75. **Lien:** The County shall have a lien upon all personal property of the Licensee on the Concession to secure the payment to the County of any unpaid money accruing to the County under the terms of this License Agreement.
76. **Limiting Legislative or Judicial Action:** In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way

restricting or prohibiting the use of The Park for the purposes of this License Agreement, this License Agreement will be null and void and unenforceable by any party to this License Agreement and the County shall have no further liability under this License Agreement. In the event that a referendum vote of the electorate of the County in any way restricts or prohibits the use of the Concession for the purposes of this License Agreement, this License Agreement will be null and void and unenforceable by any party to this License Agreement and the County shall have no further liability under this License Agreement. If the County deems the License Agreement null and void by function of this Paragraph, the County will not be liable to the Licensee for damages arising there from and the County shall have no further liability under this License Agreement.

- 77. Non-Discrimination:** Licensee does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:
- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Concession, except as provided by law.
 - ii. During the performance of this License Agreement, Licensee 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, or veteran status, 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.
 - iii. By entering into this License Agreement, the Licensee 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 Licensee or any owner, subsidiary or other firm affiliated with or related to the Licensee 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 Licensee submits a false affidavit pursuant to this Resolution or the Licensee violates the Act or the Resolution during the term of this Contract, even if the Licensee was not in violation at the time it submitted its affidavit.
 - iv. The Licensee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
 - v. In the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the License Agreement and re-enter and repossess said Concession thereon and hold the same as if said License Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.
 - vi. The Licensee shall not discriminate against any employee or applicant for employment in the performance of the License Agreement with respect to hiring, tenure, terms, conditions,

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

78. Conflict of Interest:

The Licensee represents that:

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

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

- i) is interested on behalf of or through the Licensee directly or indirectly in any manner whatsoever in the execution or the performance of this License Agreement, or in the services, supplies or work, to which this License Agreement relates or in any portion of the revenues; or
- ii) is an employee, agent, advisor, or consultant to the Licensee or to the best of the Licensee's knowledge any subcontractor or supplier to the Licensee.

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

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

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

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

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

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

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

80. **No Waiver of Right to Enforce:** The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Guaranteed Monthly Rent and Percentage Fee hereunder by County shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant, or condition of this License Agreement, other than the failure of Licensee to pay the particular Guaranteed Monthly Rent and Percentage Fee so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Guaranteed Monthly Rent and Percentage Fee.

81. **Rules and Regulations:** The Licensee will observe, obey, and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Licensee's operations under this License Agreement. Failure to do so will constitute a breach of the License Agreement.

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

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

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

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

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

procedures shall be a condition precedent to any lawsuit permitted hereunder.

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

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

84. Mutual Obligations:

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

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

85. Rights Reserved to County: All rights not specifically granted to the Licensee by this License Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.

86. No Partnership or Agency: The County and the Licensee are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This License Agreement does not constitute and shall not be represented to constitute a partnership between the County and the Licensee.

87. Choice of Venue and Law: Any litigation between the County and the Licensee relating in

any way to this License Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida, and governed by the laws of Florida.

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

89. **Local, State and Federal Compliance Requirements:**

Licensee agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this License Agreement, including but not limited to:

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

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

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

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

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

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

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

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

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

90. **Inspector General Reviews:**

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Licensee shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this License Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Licensee's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Licensee, its officers, agents, employees, sub Licensees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Licensee in connection with this License Agreement. The terms of this Paragraph shall not impose any liability on the County by the Licensee or any third party.

Miami-Dade County Inspector General Review

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

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

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Licensee, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and

corruption.

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

91. Vendor Registration and Forms/Conflict of Interest:

a) Vendor Registration

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

(Article 8, Section 11A-60 11A-67 of the County Code)

- | | |
|--|---|
| <p>1. <i>Miami-Dade County Ownership Disclosure Affidavit</i>
(Section 2-8.1 of the County Code)</p> | <p>11. <i>Subcontracting Practices</i>
(Ordinance 97-35)</p> |
| <p>1. <i>Miami-Dade County Employment Disclosure Affidavit</i>
(Section 2.8-1(d)(2) of the County Code)</p> | |
| <p>3. <i>Miami-Dade Employment Drug-free Workplace Certification</i>
(Section 2-8.1 2(b) of the County Code)</p> | <p>12. <i>Subcontractor /Supplier Listing</i>

(Section 2-8.8 of the County Code)</p> |
| <p>4. <i>Miami-Dade Disability and Nondiscrimination Affidavit</i>

(Section 2-8.1.5 of the County Code)</p> | <p>13. <i>Environmentally Acceptable Packaging</i>
(Resolution R-738-92)</p> |
| <p>5. <i>Miami-Dade County Debarment Disclosure Affidavit</i>
(Section 10.38 of the County Code)</p> | <p>14. <i>W-9 and 8109 Forms</i>
(as required by the Internal Revenue Service)</p> |
| <p>6. <i>Miami-Dade County Vendor Obligation to County Affidavit</i>

(Section 2-8.1 of the County Code)</p> | <p>15. <i>FEIN Number or Social Security Number</i>
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(6) 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:</p> <ul style="list-style-type: none"> ▪ 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 |
| <p>7. <i>Miami-Dade County Code of Business Ethics Affidavit</i>

(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)</p> | <p>16. <i>Office of the Inspector General</i>
(Section 2-1076 of the County Code)</p> |
| <p>8. <i>Miami-Dade County Family Leave Affidavit</i>
(Article V of Chapter 11 of the County Code)</p> | <p>17. <i>Small Business Enterprises</i></p> |
| <p>9. <i>Miami-Dade County Living Wage Affidavit</i>
(Section 2-8.9 of the County Code)</p> | |
| <p>10. <i>Miami-Dade County Domestic Leave and Reporting Affidavit</i></p> | |

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.

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

19. **Miami-Dade County E-Verify Affidavit**
(Executive Order 11-116)

10. **Antitrust Laws**

b) **Conflict of Interest/Code of Ethics**

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. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Miami-Dade County Code relating to Conflict of Interest and Code of Ethics. In accordance with 2-11.1 (y), the Miami Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

92. **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 Licensee, 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 Licensee is free to fill its vacancies from other sources. Licensee 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 Licensee 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 Program are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407.

93. **Public records and contracts for services performed on Behalf of Miami-Dade County**

The Licensee 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 Licensee 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 Licensee Has Questions Regarding The Application Of Chapter 119, Florida Statutes, To The Licensee's Duty To Provide Public Records Relating To This Contract, Contact The Custodian Of Public Records At (305) 375-5773, lsd-vss@miamidade.gov, 111 NW 1st Street, Suite 1300, Miami, Florida 33128

94. Survival:

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

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

^{Licensee}
Miami Kiteboarding, Inc

Miami-Dade County

By: [Signature]

By: _____

Name: Christophe Ribot

Name: _____

Title: President

Title: _____

Date: 8/23/2016

Date: _____

Attest: [Signature]

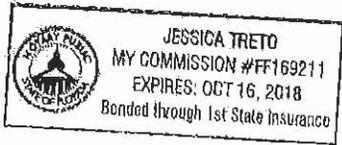
Attest: _____

Corporate Secretary/Notary Public

Clerk of the Board

Corporate Seal/Notary Seal

[Signature]
Approved by County Attorney as to form and legal sufficiency



Appendix A

OPERATION OF WATERSPORTS CONCESSION AT CRANDON PARK

1.0 Scope of Services

The Licensee shall operate a water sports Concession at Crandon Park ("Park") located at 6747 Crandon Boulevard, Miami, Florida 33149 in accordance with the provisions of this Agreement. The water sports Concession area is located between pristine Bear Cut Nature Preserve and a world renowned swimming/sunbathing beach.

2.0 Background

Miami-Dade Parks, Recreation and Open Spaces (PROS) is one of the busiest and largest leisure service agencies in the United States. Each year, 25 million people use PROS's system to safely recreate, enjoy nature, become more physically fit, and to connect with neighbors, friends, and pets.

The Licensee shall provide a safe, high quality and customer-oriented operation with well-maintained equipment and experienced staff, and offer diverse programs and services normally associated with the water sports industry. The Licensee shall operate the Concession and supervise/instruct its customers in a manner that keeps beach patrons safe and so that its customers adhere to strict guidelines as it pertains to the protection/preservation of the ecologically sensitive Nature Preserve/sand dunes, and that fully conforms to the Crandon Park Master Plan ("CPMP"), as such plan may be amended from time to time.

Examples of services to be provided include the following:

2. Stand-up paddleboard rentals and instruction.
3. Kite boarding rentals and instruction.
4. Kayak Rentals

Summer Camps and Educational Programs

The licensee may provide summer camps and educational programs during the term of the Agreement. However, a maximum of 45 children/teenagers will be allowed at one time (per day).

3.0 Site Description Watersport Activities Crandon Park:

Operations at Crandon Park are to be based out of the North Concession building located at the north end of the Crandon Park beach area and shall include the surrounding beach and water area ("Site"). See attached Site Maps (Exhibits A1, A2 and A3 "Exhibits") – Crandon Kiteboarding area exhibits with information concerning the following:

Kayak and stand-up paddleboard Activities

The kayak and stand-up paddleboard designated launching/landing area shall be located east of the North Concession Building, between lifeguard towers #2 and #3 and marked by buoys. Rental customers for these activities shall be instructed to only enter/exit the water in this area and to stay clear of the swimming areas on either side of the launching/landing area. Kayak/paddle boarders will be instructed by the Beach Marshal to stay north of lifeguard tower 3, maintain a minimum distance of 300 feet (100 yards) from the shoreline at all times, and a maximum of 600 feet (200 yards) from shore. Rental kayaks and stand-up paddleboards may not travel south of the launching/landing area nor may they approach the shore anywhere along Crandon Beach other than the designated launching/landing

area. All kayaks must stay clear of any group activity near the shore on field trips with the Nature Center. The Beach Marshal shall restrict areas where patrons may go based on their ability to return safely to the designated launch area.

A maximum of 20 stand-up paddleboards and 30 kayaks will be allowed on the water at any given time. These limitations may be reviewed by PROS at the request of the Licensee. The Licensee may seek PROS approval in advance for a temporary increase to accommodate special events.

Kiteboarding Activities

Kite boarders must possess a minimum of IKO and/or PASA Level 3 or above certification to kiteboard out of Crandon Park without an instructor.

Patrons enter through the north beach entrance paying the appropriate parking fee and checking in with Crandon Park Watersports Concessionaire.

The Kite Boarding is open daily. Kiteboarding hours of operation are covered under section 10.

Kiteboarding activity may not take place until a lifeguard is on duty in Lifeguard Tower 1, 2, or 3 and until a Beach Marshal is present to sign in patrons and ensure rules are followed. A Beach Marshal must be present before Kiteboarders may enter the designated Kiteboarding area and at all times during the Kiteboarding approved activity to ensure rules are followed. Licensee shall require all pass holders and daily kiteboarders to sign in before entering the designated kiteboarding area. The sign in/out sheet must include printed name, date, time in, time out, pass holder number and description of the kite. Kiteboarding activities stop when the Lifeguards leave the towers and must exit the Park by sunset as with all park patrons.

A maximum of 30 kite boarders shall be allowed in the water at any given time. These limitations may be reviewed by PROS at the request of the Licensee. The Licensee may seek PROS approval in advance for a temporary increase to accommodate special events.

It is the responsibility of the Licensee to maintain this control and advise others not to enter the water.

There shall be no activity/entrance (on shore, 600 feet from shore, 900 feet from swimmers/boaters, paddle boards, kayaks, groups on Nature Center field trips or Eco Adventures™ guided tours) of any/all Kiteboarders, including instructors, students and kiteboarding equipment allowed north of lifeguard tower #1, this area known as Bear Cut Preserve is a protected natural area. The Beach Marshal shall restrict areas where patrons may go based on their ability to return safely to the designated launch area.

Kiteboarding Entrance Procedures - Specifically

The kiteboarding designated launching/landing area shall be restricted to north of the North Concession Building, between lifeguard towers #1 and #2. Rental patrons or students taking lessons for this activity shall be instructed to only enter/exit the water in this area.

Kite boarders may travel either north or south, but must maintain a minimum distance of 600 feet (200 yards) from the shoreline at all times when not launching or returning to the

shore (the Licensee will place marker buoys to mark the 600 foot minimum distance to aid kite boarders in maintaining a safe distance).

To the north of lifeguard tower 1, the Licensee shall direct kite boarders to stay east of a line of distinctive sandbars. Kite boarders must maintain a minimum of 900 feet (300 yards) from swimmers, boaters, paddle boards, kayaks, groups on Nature Center field trips or Eco Adventures™ guided tours.

For the safety of the beach patrons and the preservation of Crandon Park's Natural areas, Licensee will have a zero tolerance rule. Any/All Kite Boarders, including instructors and students, in the swimming area (South of Lifeguard Tower 2 on shore, 600 feet from shore, 900 feet from swimmers) or in the Bear Cut Nature Preserve (North of Lifeguard Tower 1 on shore, 600 feet from shore, 900 feet from swimmers) will be asked to leave for that day by the Licensee.

4.0 Qualifications/Training

The Licensee has:

1. Five (5) years of diverse experience in kite boarding, paddle boarding and water sports programs;
2. Knowledge of business operations and the legal requirements associated with this type of operation;
3. Experience in the design, permitting and operation of a water sports area;
4. Adequate financial capacity to develop the Site and maintain operations;
5. Ability to acquire and maintain required licenses to operate the water sports area;
6. Open Water Lifeguard Certification;
7. CPR/First Aid Certification;
8. IKO or PASA certification utilizing IKO or PASA certified instructors.
9. All Licensee's employees must be approved by MDRF Lifeguard Chief and the Crandon Park Manager before operating an ATV or watercraft. Additionally, the Licensee's employees who will operate motorized boats (for assisting with rescues and other emergencies, as required) shall complete the following:
 - PWC Vessel Training
 - Approved ATV Training
 - Safe Boating course (only applicable for boat operators)

*Note: All required certifications must be in place prior to the start of operations of the water sports Concession. The required certifications are a continuing obligation of the Licensee throughout the duration of this Agreement. **A copy of the required certifications must be provided to PROS prior to the start of any watersports activities and kept current.** Also, the Licensee must keep a plastic folder at the Concession Building with copies of the current certifications to be reviewed at any time by the County.*

5.0 Staffing Requirements

Management - One (1) Manager is required to be on Site during all hours of operation. The Manager must have the qualifications listed above. Staffing levels may not include instructors. Instructors while with a student, act in the capacity of an instructor only, and cannot at the same time be a Manager, Bear Cut Preserve/Swim Area monitor, check in staff member, Concession Attendant, or Beach Marshal. -

1. Paddle Board and Kayaks minimum staffing levels before activity may begin are as follows:

Weekdays

The minimum staffing levels required to rent paddle boards and kayaks is one (1) interior Concession Attendant (Manager may be used as the Concession Attendant in this case only) and one (1) Beach Marshal that is required to be located on the beach at the launch and returning location.

Weekends/Holidays

The minimum staffing levels required to rent paddle boards and kayaks is one (1) interior Concession Attendant and one (1) Beach Marshal that is required to be located on the beach at the launch and returning location.

2. Kiteboarding minimum staffing levels before activity may begin are as follows:

(wind speeds are based on the Kite Surfing/U of M recorded wind speeds or those agreeable to Licensee and PROS):

Weekdays - Weekday wind speeds exceeding 12 mph requires a minimum of one (1) Beach Marshal to be located on the beach at the launch and returning location and one (1) Concession Attendant. Weekday wind speeds of 19 mph to 24 mph requires a minimum of one (1) Bear Cut Preserve/Swim area monitor, one (1) Beach Marshal that is required to be located on the beach at the launch and returning location, and one (1) Concession Attendant. Weekday wind speeds from 25 mph to 29 mph requires a minimum of one (1) Bear Cut Preserve/Swim Area monitor, one (1) check in staff member, one (1) Beach Marshal that is required to be located on the beach at the launch and returning location, and one (1) Concession Attendant

Weekends/Holidays - Weekend/Holidays wind speeds of 12 mph to 18 mph requires a minimum of one beach front sign in staff member, one (1) Beach Marshal, and one (1) Concession Attendant. Weekend/holiday wind speeds of 19 mph to 24 mph requires a minimum of one Bear Cut Preserve/Swim Area monitor, one (1) beach front sign in staff member, one (1) Beach Marshal, and one (1) Concession Attendant. Weekend/holiday wind speeds from 25 mph to 29 mph requires a minimum of one (1) Bear Cut Preserve/Swim Area monitor, one (1) check in staff member, one (1) Beach Marshal, one (1) Concession Attendant, and one (1) on Water Monitor.

6.0 Operation and Quality of Services

Licensee shall ensure that all patrons using kite boards, renting kayaks and standup paddle boards are of a sufficient skill level to adequately operate the craft, know how to execute proper safety procedures and are capable of returning to the designated area safely.

1. Detailed maps (Appendix B) clearly state the strict areas allowed for water sports activities. There is a zero tolerance protocol, enforced by the Licensee, for all individuals participating in water sports activities, who enter the Bear Cut Preserve, enter sand dunes, enter beach areas, ignore launching/landing designated areas or violate the distance from shore restrictions. Excessive winds, unfavorable winds, inadequately trained customers and staff, understaffing etc. are not valid excuses for violations of the strict operational rules. Strict compliance with the zero tolerance protocol will require

the appropriate staffing levels and equipment (megaphones, 4 x 4 ATV, wave runner, etc.) for supervision of the Licensee's patrons. The water sports Concession shall close immediately if the Licensee is unable to supervise its patrons to a level acceptable to the Park Manager.

2. Individual kite boarders that come and practice their sport with their own equipment in the designated kite boarding area must follow the kite boarding safety guidelines set by Crandon Park. It shall be the duty and obligation of the Licensee to enforce those safety guidelines.
3. Licensee instructors shall provide adequate and proper kite boarding instructions to insure that participants are familiar with Crandon Park rules governing kite boarding and that they have an understanding of the basic skills necessary for kite boarding and can demonstrate those skills to the instructor's satisfaction. Licensee shall at all times maintain supervision on the beach to watch and ensure that kite boarders comply with all applicable rules and regulations regarding use of Crandon Park. Please refer to 3.0 above pertaining to requirement to kite boarding at Crandon Park without an instructor. Minimum Supervision/Staff requirements are weather dependent. Additional/more specific requirements are included in this Concession Agreement.
4. Licensee shall require all kayak renters, paddleboard renters, kite boarding pass holders, daily guests, patrons that are renting kite boarding equipment from the Licensee and/or are obtaining kite boarding instruction from Licensee to sign a waiver and full release of liability form against the County, its agents and employees ("Waiver") which will be provided by the Licensee and approved by PROS. The Licensee shall provide a signed, updated monthly, set (copy) of full release liability forms at the Crandon Park office. New forms will be required to be signed by patrons on a yearly basis. The Licensee agrees to keep and store in a safe location all such Waivers for the entire term of this Concession Agreement and, at the expiration or earlier termination of this Concession Agreement, to deliver all such records to the PROS at Crandon Park Office.
5. Licensee shall require all kayak renters, paddleboard renters, kite boarding pass holders, daily guests, patrons that are renting kite boarding equipment from the Licensee and/or are obtaining kite boarding instruction from Licensee to sign a detailed set of Crandon Park Kite Boarding Rules with map showing approved activity sites and prohibited areas provided by the Licensee and approved by PROS. The Licensee shall provide a signed, updated monthly, set (copy) of signed rules at the Crandon Park office. New forms will be required to be signed by patrons on a yearly basis. The Licensee agrees to keep and store in a safe location all such forms for the entire term of this Concession Agreement and, at the expiration or earlier termination of this Concession Agreement, to deliver all such records to the PROS at Crandon Park Office.
6. Licensee shall require all pass holders, instructors, students and daily kite boarders to sign in before entering the designated kite boarding area between lifeguard tower 1 and 2 and out before leaving. The sign in/out sheet must include printed name, date, time in, time out, pass holder number and description of the kite.
7. Provide an operation that is safe and customer-oriented with prompt complaint resolution by well-trained and professional staff.
8. Provide high quality customer service and reasonably adjust program and service

- offerings to meet customer demands, including establishing regular hours of operation, subject to approval by PROS.
9. Provide all services, and concessions prices must be approved in advance by PROS. Such services, types of concessions, and charges may be modified only by written request of the Licensee to PROS and upon approval by PROS. Such approval shall be in writing at least 30 days prior to implementation of the modification.
 10. Pay for all operating expenses associated with the day-to day operations of the water sports area. This shall include utilities expenses. The Licensee shall pay to the County \$200.00 per month to cover utilities and trash removal.
 11. Install and maintain signage in accordance with the Crandon Park Master Plan and Article 7, and as approved by PROS. At a minimum, signage shall include hours of operation, fees, map of permitted usage/prohibited areas and required safety requirements.
 12. Supply, within 15 days of the Notice to Proceed date, and maintain an Operations manual to be approved by PROS.
 13. Include in Operations Manual an emergency plan and hurricane plan, to include how the Licensee shall handle accidents, emergencies and how Licensee will secure the Site in the event of an emergency/hurricane.
 14. Ensure that employees are distinctively uniformed and with name tags so as to be distinguishable as the Licensee staff and not PROS employees.
 15. Promote the Park's offerings through marketing and the quality provision of all concession services with the highest level of service to the public. Promotional flyers or advertisements for special events shall include the Miami-Dade County or PROS logo. The Licensee shall submit sample or mock-up of such publicity or materials to PROS for review and approval.
 16. Enforce strict adherence to federal, state and local safety guidelines required for all water sports, including requiring participants to wear U.S. Coast Guard-approved life jackets for all water sports; chest protectors, personal flotation device (PDF), break-away tethers while kite boarding, and making such safety gear available for use at an approved rental fee.
 17. Ensure the water sports area remains in safe, clean, and usable condition on a daily basis, to include, but not be limited to, removing debris from the water sports area and shoreline, inspecting and maintaining all equipment, and maintaining the Concession area, as well as performing regular trash collection and maintenance of the Site and associated grounds, etc., as applicable, at its own expense.
 18. Take proper care of the facilities and use the same in a careful manner and shall, at its own expense, repair PROS property or facilities damaged by its operations.
 19. Store equipment on Site in designated areas only. PROS will not be responsible for any loss or damage of the Licensee's equipment or supplies.

20. Licensee may place up to 10 umbrellas, 20 chairs and 2 tables (PROS approved) east of the North Concession Stand for their customers use. Tables and chairs may not be rented and must be removed from the beach before the close of business each day. Licensee will be responsible for cleanup and trash collection/removal from this area by the close of business each day.
21. The Licensee may use a water trampoline weekdays only during summer camps provided they have proper supervision and it is anchored in an area of adequate water depth per manufacture recommendation at low tide. The water trampoline must be removed before the close of business hours daily and stored off the beach. Additional usage of the trampoline may be granted by prior PROS approval.
22. The Licensee must keep an emergency access roadway open and clean of water sports activities in front of the North Concession Stand and between Lifeguard Tower 1 and 3. The Licensee must purchase and install orange cones designating the area between Tower 1 and 2. The Licensee is responsible for ensuring the setup of the cones each day, as well as monitoring that the cones remain in place.
23. Operator shall have the right to sell non-alcoholic sports-type beverages and prepackaged snacks at the permitted premises. No ice cream, cooking or food preparation of any kind will be permitted on Site. Additional food concession items may be granted with prior approval of PROS. Operator may sell equipment and supplies directly associated with approved activities. The currently approved activities include Kiteboarding, Paddle boarding and Kayaking. Operator shall submit a list of items in advance for approval of sale items.
24. Utilize an electronic cash register for all transactions. The cash register must have the ability to produce "Z" reports (i.e., sales totals for each day) and "X" reports (i.e., sales totals at any given time); run dual tapes, or have the ability to print out an itemized account of each transaction each day; and print the date and time on journal tape and on each individual sales receipt.
25. Develop a process for coordinating requests from the public or outside entities requesting use of the water sports area (e.g., for competitions, tournaments, or training purposes).
26. Employ a qualified, full-time on-Site Manager or designee who will be available during normal business hours and be on call, at all times, for emergencies or other matters related to the water sports area.
27. The Licensee's working staff will be afforded free parking per a bi-weekly schedule provided to the Park Manager in advance. Separate from the 2 vehicles allowed to be parked at the north concession stand, all additional staff members are required to park their cars in the parking lot. In the event the Park transfers to a pay-by-phone parking system or similar, the Licensee will be responsible for identifying staff members' vehicles using a PROS approved sticker, tag or similar decal.
28. Provide any additional services with associated fees by mutual agreement of the Licensee and PROS.
29. PROS reserves the right to schedule special events that may preclude the water sports

area from operating during a given event. PROS will use reasonable efforts to notify the Licensee as early as possible of these special events, but in no event later than two weeks prior to the special event. PROS may also close the park during inclement weather conditions.

30. Removable sign(s) will be installed on-Site daily by the Licensee in accordance with Crandon Park Master Plan and Article 7 of the Charter of Miami-Dade County. Sign(s) will display: guidelines and boundaries, as well as registration requirements. Information signs shall be placed at the tollbooth North entrance and Crandon Park Office to remind patrons of necessary registration before riding and the maximum number of riders on the water. Signs shall be removed and stored at the time of closing.

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

7.0 Payment Schedule

Payment provisions are as stated in terms and conditions of the Agreement, including Articles 13, 14, 15, and 38 and any other payment related provisions therein. All paid activities occurring at the Concession or emanating from or utilizing Crandon Park in any way are considered part of Gross Receipts, as further defined in terms and conditions of the Agreement Article 26, for this Concession regardless of how the activity was arranged and includes via internet at any other location or through any other method.

8.0 Background Screening

In accordance with Miami-Dade County Ordinance No. 08-07 titled Chapter 26, Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act, all Licensee's personnel and volunteers that will provide any service at the Concession or related activities must be in compliance with the requirements set forth under the Act prior to the scheduled start of employment or volunteerism.

9.0 Lifeguard Requirements

Licensee shall prohibit staff Kiteboarding, pass holder/patrons Kiteboarding, Kiteboarding Lessons, Kayaking, Paddle Boarding or any other PROS approved watersport activity in their area of responsibility, without a Miami Dade Fire Rescue Certified Lifeguard occupying Lifeguard Tower 1 and/or 2 and/or 3.

10.0 Instructions/Lessons

The designated area for lessons is a minimum of 300 feet from shore utilizing the sand bar that lies east of Lifeguard Tower 1 and extends to the north-east. Students may enter the teaching area from adjacent to Life Guard Tower 1 east, north east along the sand bar. Lessons are to be given along the eastern edge of the sandbar to the north and toward the east. No students or instructors are allowed to enter the Bear Cut Nature Preserve.

Lessons may be given under the same strict rules and hours as documented in this Scope with one exception. From Memorial Day weekend through the weekend before Miami-Dade public schools start and Labor Day including WEEKENDS/HOLIDAYS, Basic Lessons, only, may be offered in the designated teaching area that does not include the usage of a board outside of the area between Lifeguard Towers 1 and 2.

Instructors are not allowed to ride a board during summer weekends and holidays.

11.0 **Hours of Operation**

Licensee will be open daily at Crandon Park (unless inappropriate weather conditions do not allow kite boarding, kayak and paddle boarding). Kite boarding, kayak and paddle boarding are allowed only during regular hours of operation of the Licensee, when there are minimum staffing levels and lifeguards are present. With the exception of one (1) staff member and one (1) Manager, ALL patrons and staff MUST exit Crandon Park by SUNSET. It is the responsibility of the Licensee to inform its customers of this Crandon Park rule in advance of their participation in their prospective water sport. Additionally, it is the responsibility of the Licensee to cease operations and call in its customers from the water at the appropriate time to meet the Crandon Park closing deadline. The Licensee is responsible for all watersports activities occurring at the Concession.

The Licensee shall fly a distinctive color flag designating when the Concession is OPEN and fly a distinctive color flag designating when the Concession is CLOSED.

The specific hours of operation of the Concession will be as follows:

1. During summer (from Memorial Day weekend to September, Labor Day) - weekdays only (Monday to Friday) from 9:30 AM to 6:30 PM.
2. During fall (day after Labor Day until Eastern Standard day) all week and weekends from 9:30 AM to 6:30 PM.
3. During winter (Daylight Savings day to one day before time change) - all week and weekends from 9:30 AM till 4:30 PM
4. During Spring (from time change day to one day before Memorial Day) all week and weekends from 9:30 AM to 6:30 PM

Licensee may not offer kite boarding and lessons to the public during weekends and holidays from Memorial Day weekend through the weekend before Miami-Dade County public schools start. The no kite boarding restriction shall include Labor Day weekend. Licensee shall not offer kite boarding, lessons, paddle boarding or kayaking during the annual County sponsored tennis tournament (Tennis Tournament) occurring at Crandon Tennis Center. No Kite boarding, including lessons, will be offered on Easter Sunday, Mother's Day and during the Tennis Tournament. Concession operation may close temporarily or for a period of time due to beach closures associated with weather, beach maintenance or water quality.

Licensee may request in advance to open outside of the hours of operations listed above under the following restrictions:

1. Advance approval from the Park Manager; and,
2. A Miami Dade County Lifeguard is hired by Licensee through MDFD Special Events hiring process; and,
3. Concession operations do not begin before ½ HOUR AFTER SUNRISE AND extend beyond ½ HOUR BEFORE SUNSET.

12.0 **Safety Closure of Kite Boarding, Kayaks and Paddle Boarding**

Paddle Boarding and Kayaks - The Licensee shall cease the rental of paddle boards and kayaks under the following conditions:

1. Unsafe wind speed (14 mph sustained)
2. Unsafe waves
3. Unsafe tides/currents

Kite Boarding

1. Sustained wind speeds in excess of 30 Knots (34 mph) requires closure of kite boarding activities.
2. Wind conditions occurring such that kite boarders are unable to stay out the minimum distance of 600 ft. from the beach.

Licensee MUST request permission to close the Concession stand in advance from the Park Manager. A sign will be posted by the Licensee at the toll booth when the Concession is closed due to inclement weather or for any reason that restricts the kite boarding, kayak or paddle board usage.

If the Licensee requests to close operations for any reason, it does not release the Licensee of the responsibility to provide adequate supervision of its area of responsibility. A staff member of the Licensee is required to be present during the hours of operation to inform its customers that the concession is closed.

13.0 Access and Use of Kayak Concession Building at Crandon Park by University of Miami and County

The Licensee will have access and use of the North Concession Building as part of this Agreement. The University of Miami (the "University") has been authorized by PROS to conduct ongoing tidal research at Crandon Park, which requires the placement of testing equipment in a secured closet located within the North Concession building. Licensee shall allow University of Miami personnel to access this equipment during normal business hours and to at no time interfere, tamper or in any way disturb the University's testing equipment or the University's access to the area containing the testing equipment. In addition, Eco Adventures, a County entity, will have access to the Concession Building for storage and operations, which will not impede the operations of Licensee and Licensee shall also allow PROS staff and any other individual(s) authorized by the County use of the Concession Building during times of emergencies (i.e. Hurricanes) and/or for reasons of public welfare.

14.0 Crandon Park Master Plan

1. Licensee shall review and at all times abide by the terms and conditions contained in the Crandon Park Master Plan. There shall be no logos, signs, banners, flags, balloons, vending machines or any other means of sales or promotion visible from outside of any structure, whether temporary or permanent. At the time of all events, temporary directional signs may be set up not sooner than the day before the event and these signs must be removed not later than the day after the last day of event. Such signs shall not include the names of sponsors. No logos shall be used on these signs. Signs shall not be placed in such a manner that they obscure any permanent signs, and in no case should they be nailed or otherwise fastened to any tree or existing sign. Signs shall not include electrical lighting, reflectors or any moving parts. The temporary directional signs shall be placed below the regular sign.
2. All advertising, promotion or merchandising, either expressed or implied, including but not limited to visual, organoleptic (taste and color), verbal or audio, shall be prohibited on exterior surfaces, on interior of windows if visible from any area surrounding the buildings, on any vehicles parked by the watersports concession building or any areas within Crandon Park. Advertising, promotional, or identifying umbrellas, banners, balloons or similar devices, outdoor vending machines, or merchandise awnings, bench

advertising and similar devices, shall be prohibited on Crandon Park.

3. There shall be no overnight vehicle storage and/or trailer storage of any kind in Crandon Park without advance approval by PROS. Only one ATV and two vessels ("jetski") will be allowed for overnight storage for safety purposes.
4. All promotional literature, telecasts, broadcast, or any other advertising promotion or medium, including flyers, prepared or organized by Licensee for kite boarding, stand-up paddle boarding and kayaking at Crandon Park shall identify and credit its location as "Crandon Park, Miami, Florida."

15.0 Responsibilities of PROS

PROS will provide Licensee with two (2) parking spaces reserved for its vehicles, located at the North Concession Stand. Working staff members will be allowed to enter Crandon Park for free.

Appendix B

EXHIBITS





