

Memorandum

MIAMI-DADE
COUNTY

Date: July 10, 2019

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Agenda Item No. 8(F)(10)

Subject: Request for Approval of Supplemental Agreement No. 2 for Contract No. RFP803,
Development and Operation of Watersports Cable Complex at Amelia Earhart Park

Recommendation

It is recommended that the Board of County Commissioners (Board) authorize Supplemental Agreement No. 2 to *Contract No. RFP803, Development and Operation of Watersports Cable Complex at Amelia Earhart Park*, for the Parks, Recreation, and Open Spaces Department. This Supplemental Agreement authorizes a modification to the scope of services that was previously approved by the Board.

On October 2, 2012, the Board approved the award of a License Agreement to Miami Wakeboard Cable Complex LLC d/b/a Miami Watersports Complex (Licensee) through Resolution No. R-781-12 for the development and operation of a wakeboard cable complex at Amelia Earhart Park. The award was for an initial term of 20 years and includes two, five-year options to renew terms. The licensed property is located at Amelia Earhart Park at 401 East 65 Street, Hialeah, FL 33014, and comprises the 45-acre eastern side of the 91-acre North Lake (see attached Site Map). Since its inception, the contract was modified once through Supplemental Agreement No. 1, which replaced Article 60, Section B of the contract, and required the Licensee to obtain increased insurance coverage.

The Licensee is currently operating a state-of-the-art cable skiing system and water sports complex on the property, and may use the entire lake for boat lessons, tubing, standup paddle boarding, kayaking, and for any special events. Eight to ten events, which include grassroots wakeboarding and cable surfing contests during summer months, are expected per year.

Under the current agreement the County receives 8 percent on the first \$1,250,000 of yearly revenues, and 10 percent on all amounts above \$1,250,000 of yearly revenues. This new Supplemental Agreement will bring down the yearly revenues threshold to \$1,000,000 (i.e., 8% of the first \$1,000,000 of yearly revenues, and 10% on all amounts above \$1,000,000 of yearly revenues). In addition, the Licensee shall coordinate with the Park Foundation of Miami-Dade to offer one thousand (1,000) 2-hour Cable Complex or two thousand (2,000) 1-hour complimentary Aquapark passes/experiences a year, for use by youth groups before or after regularly scheduled operating hours.

Approval of attached Supplemental Agreement No. 2 will allow the Licensee, at its expense, to provide, install, operate and maintain an Aquapark and beach area on the eastern portion of the lake in Amelia Earhart Park. The location of the Aquapark and beach area will be in the same area which is currently licensed for the operation of a Watersports Cable Complex. The Aquapark will consist of an air inflatable obstacle course approximately 210' x 135' positioned and fixed in water using a combination of bungee, rope, and chain connected to concrete or screw-type anchors designed for in-water use per manufacturer's recommendations.

Accordingly, it is in the County's best interest to approve Supplemental Agreement No. 2, which will increase the recreational programs offered to park visitors and provide additional revenues to the County.

Scope

The impact of this item is countywide in nature. Amelia Earhart Park is a regional park located in Commission District 13, which is represented by Commissioner Esteban L. Bovo.

Fiscal Impact/Funding Source

The minimum estimated revenue to the County is 8 percent of Monthly Gross Receipts on the first \$1,000,000 of yearly revenues; and 10 percent on Monthly Gross Receipts on all amounts above \$1,000,000 of yearly revenues. Total contract revenues to the County were estimated to be \$840,000 for the initial contract term (2012-2032), which expires on October 31, 2032, based on the minimum annual guaranteed rent of \$42,000. Since the date of occupancy in April 2015 through January 2019, the County has received \$333,092 in revenues, or \$83,273 per year on average, which would indicate that the Licensee has exceeded the Minimum Annual Guarantee. This Supplemental Agreement will increase revenue to the County by an estimated amount of \$24,000 per year.

| Department | Estimated Revenue | Funding Source | Contact Manager |
|-----------------------------------|-------------------|----------------|------------------|
| Parks, Recreation and Open Spaces | \$840,000 | General Fund | Bernie Rodriguez |
| Total | \$840,000 | | |

Track Record/Monitor

Basia M. Pruna of the Internal Services Department is the Assistant Division Director.

Delegated Authority

The County Mayor or the County Mayor's designee will have the authority to exercise all provisions of the contract, including any renewals or extensions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Awarded Vendors

| Vendor | Principal Address | Local Address | Principal |
|---|--|---------------|--------------------|
| Miami Wakeboard-Cable Complex LLC d/b/a Miami Watersports Complex | 14700 Aerospace Parkway Orlando, FL | None | William E. Yeargin |

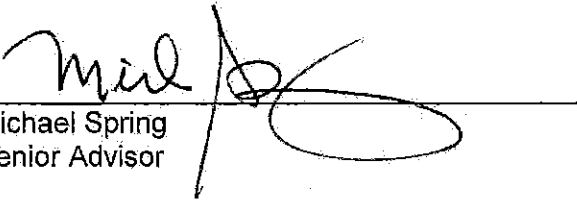
Due Diligence

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 review of performance and compliance issues through various vendor responsibility lists. The lists referenced include convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The User Access Program provision does not apply as this is a revenue generating contract.
- The Local Preference was applied.
- The Small Business Enterprise measures did not apply as this is a revenue generating contract.
- The Living Wage does not apply.

Attachment


Michael Spring
Senior Advisor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 10, 2019

FROM: Arigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(10)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(10)
7-10-19

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF SUPPLEMENTAL AGREEMENT NO. 2 WITH MIAMI WATERSPORTS COMPLEX FOR CONTRACT NO. RFP803, DEVELOPMENT AND OPERATION OF WATERSPORTS CABLE COMPLEX AT AMELIA EARHART PARK FOR THE MIAMI-DADE PARKS, RECREATION, AND OPEN SPACES DEPARTMENT, WITH AN ESTIMATED REVENUE TO BE GENERATED OF UP TO \$840,000.00 TO THE COUNTY TO PROVIDE, INSTALL, OPERATE AND MAINTAIN AN AQUAPARK AND BEACH AREA ON THE EASTERN PORTION OF THE LAKE IN AMELIA EARHART PARK AND MODIFY SCOPE OF SERVICES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT 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:

Section 1. The matters contained in the foregoing recital and the accompanying County Mayor's memorandum are incorporated in this resolution by reference; and

Section 2. This Board finds it is in the best interest of Miami-Dade County to approve the contract modification ("Supplement No. 2") to Contract No. RFP803, development and operation of watersports cable complex at Amelia Earhart Park for the Miami-Dade Parks, Recreation, and Open Spaces Department, with an estimated revenue to be generated of up to \$840,000.00 to the County to provide, install, operate and maintain an aquapark and beach area on the eastern portion of the lake in Amelia Earhart Park and modify scope of services, in substantially

the form attached hereto and made par hereof; and authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contracts 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:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of July, 2019. 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.

MJS

Melanie J. Spencer

SUPPLEMENTAL AGREEMENT NO. 2

Contract Number: RFP 803
Contract Title: Development and Operation of Watersports Cable Complex at Amelia Earhart Park
Licensee: Miami Wakeboard-Cable Complex LLC (d/b/a Miami Watersports Complex)
95 Merrick Way, Suite 380
Coral Gables, FL 33134

Miami-Dade County has agreed to allow Miami Wakeboard-Cable Complex LLC (Licensee) to provide, install, operate and maintain an Aquapark and beach area on the eastern portion of the lake in Amelia Earhart Park. The location of the Aquapark and beach area will be in an area which is currently licensed to the Licensee for the operation of a Watersports Cable Complex under this complex. Watersports Cable Complex (Complex) will include all licensed areas/activities including but not limited to the cable area, Aquapark and beach area.

In accordance with the above mentioned Contract, this supplement, when properly executed, becomes a part of the Contract, effective on the execution date, and shall provide for the following:

- 1) **Insert the following as the first WITNESSETH statement:**
WHEREAS, the County took fee title to certain lands totaling 511.71 acres, from the United States of America as surplus property, known as Amelia Earhart Park, and deeded to the County on September 14, 1967 and recorded in Official Record Book of Dade County, Florida No. 5650 at pages 408-412; hereinafter referred to as "Park" and
- 2) **Section 1, Definitions is hereby updated to include the following:**
m) The word "Aquapark" to mean an air inflatable features course approximately 210' x 135' positioned and fixed in water using a combination of bungee, rope, and chain connected to concrete or screw type anchors designed for in-water use per manufacturer's recommendations for use by Complex patrons.
- 3) **The following will be added after the first sentence of Section 15, Guaranteed Monthly Rent, Paragraph:**
The guaranteed monthly rent is due on the first of the month. If the percentage of gross receipts as calculated as described in Section 16 is greater than the guaranteed monthly rent, the amount of percentage of gross receipts above the guaranteed monthly rent is due on the 15th of the month.
- 4) **Section 15, Guaranteed Monthly Rent, Paragraph 4 is hereby replaced in its entirety as follows:**
Additionally, Licensee shall coordinate with the Park Foundation of Miami-Dade to offer one thousand (1,000) 2-hour cable or two thousand (2,000) 1-hour Aquapark passes/experiences a year, which passes shall primarily be used by youth groups to use the Complex before or after regularly scheduled operating hours.
- 5) **Section 16, Percentage of Monthly Gross Receipts - Percentage Fee, Paragraph 2 is hereby replaced in its entirety effective on the earlier of (a) the date on which the licensee commences the use of the Aquapark, (b) the date on which the licensee sells a ticket for the use of the Aquapark, or (c) on the first day of the month following the date this supplement is fully executed:**
8% (plus tax) of Monthly Gross Receipts on the first \$1,000,000 of yearly revenues; and 10% (plus tax) on Monthly Gross Receipts on all amounts above \$1,000,000 of yearly revenues, hereinafter referred to as "Percentage Fee" within 15 days following the end of each month of this Licensee Agreement.
- 6) **Section 43, Security and Protection is hereby replaced in its entirety as follows:**
43. Security and Protection: The Licensee acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Complex, outside of Standard Security Measures which are supplied by the County and subject to change at the County's sole discretion. Standard

Security Measures provided by the County includes one (1) security guard for the entire 500+ acre Park during overnight hours, subject to availability of funds. Licensee shall provide its own specialized security for the

Complex at its own expense or defate the Aquapark during non-operating hours, subject to the County's written approval. Licensee is solely responsible for keeping unauthorized people off all Complex elements.

7) **Section 60, Indemnification and Insurance is hereby amended as follows:**

The following will be added above the Continuity of Coverage subsection:

Installation of Aqua Park

A. During this phase the Builder's Risk insurance will not be required.

B. The limits of liability for Commercial General Liability and Automobile Liability must be in an amount not less than \$1,000,000.

OPERATION PHASE

A. During this phase, the Commercial General Liability Insurance limits of liability must be raised to an amount not less than \$5,000,000 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.

B. The limits of liability for the Automobile Insurance policy may be lowered back to the initial \$500,000. Coverage must be for all owned, non-owned, and hired vehicles in an amount not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

The third paragraph of the Continuity of Coverage subsection will be replaced as follows:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to strength, by A.M. Best Company, Oldwick, New Jersey.

8) **The following will be added to the end of Appendix A, Scope of Work, Section 1.3, Qualifications, Paragraph 2:**

The above referenced certifications/courses will also be applicable to the Licensee's employees who operate the Aquapark.

9) **Pursuant to Appendix A, Scope of Work, Section 18, the following language is hereby added to Appendix A, Scope of Work:**

1.8 Aquapark Beach Area

Licensee shall provide, install, operate, and maintain an Aquapark and beach area on the eastern portion of the lake as depicted in Appendix C, Site Map (Revised 01/11/2018), in accordance with manufacturer suggested operating requirements and consistent with this License Agreement and Development Rider.

The Aquapark shall have capacity for approximately 140 participants at one time. Licensee shall be responsible for the removal and maintenance of plants and submerged foliage for egress and ingress to the Aquapark. The removal and maintenance of plants and submerged foliage shall be in accordance with all regulatory agencies. All participants using the Aquapark must wear Coast Guard approved life vests.

The beach area will be approximately 25' x 210' and is intended for ingress and egress to and from the Aquapark. The beach area will be as depicted in Appendix C. Licensee may also add sand to the beach area adjacent to the water's edge.

10) The attached revised Appendix C, Site Map shall replace the current Appendix C, Site Map in its entirety.

11) Section 95, Public Records and Contracts for Services Performed on Behalf of a Public Agency has been added as follows:

95. Public Records and Contracts for Services Performed on Behalf of a Public Agency:

The Licensee shall comply with the Public Records Laws of the State of Florida, including but 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) 755-7800, MDPROSCOM@MIAMIDADE.GOV, 275 NW 2nd STREET, MIAMI, FLORIDA 33128.

All terms, covenants and conditions of the original Contract and any supplemental agreements issued thereto shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement No. 2 to County Contract No. RFP 803.

Licensee:

Miami-Dade County

By: Angela Pilkington
Name: Angela Pilkington
Title: CFO
Date: 4-26-19
Attest: Kay Annette Hess
Corporate Secretary/Notary

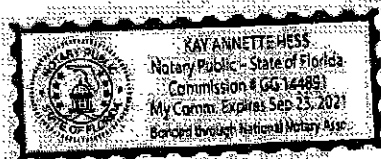
By: _____
Name: _____
Title: _____
Date: _____
Attest: _____

Clerk of the Board

Corporate Seal/Notary

Approved as to form and legal sufficiency

Assistant County Attorney



Appendix C
Site Map (Revised 01/11/2018)



Appendix C
Site Map (Revised 01/11/2018)

