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MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: November 1, 2016

Agenda Item No. 14(A)(1)

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

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval of a Designated Purchase for the Concession and Operation of Food and Beverage and Gift and Novelty Sales at Zoo Miami with Service Systems Associates, Inc.

Resolution No. R-1072-16

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the award of a designated purchase contract with Service Systems Associates, Inc. (SSA) to provide concession food, beverage, gift, and novelty sales services at Zoo Miami, pursuant to Section 2-8.1(b) (3) of the Code of Miami Dade County, Florida (Code), to amend the existing agreement and to extend the term thereof. The Amended and Restated Concession Agreement (Concession Agreement), attached as Exhibit A, extends the term of the Agreement for a period of ten (10) years and is recommended for approval, as it is not practicable for the County to solicit any other concession service provider at this time for two (2) primary reasons: (1) SSA's current agreement with the County does not expire until May 2024, and until such time, SSA has exclusive rights to run all of the food and beverage concessions, and retail concessions in the zoo; and (2), as part of the Florida Exhibit and new entrance to the Zoo, the County has developed shell spaces for new concession and novelty retail spaces (that only SSA can operate) but has no funds for the build-out. Accordingly, the County's only option at this time is to leave those spaces vacant for the next eight (8) years until SSA's contract expires, at which time it can issue a new solicitation requiring a concessionaire to make the capital improvements to the new concession spaces, or negotiate with SSA to provide all of the funds to complete the capital build-out and improvements in exchange for additional time on the contract to amortize those improvements. Upon execution of the new Agreement, SSA has committed to invest an additional $2 million in capital improvements to complete the build-out and make improvements at four (4) food and beverage locations, and one (1) new gift and novelty sales location.

This recommendation was unanimously endorsed by the Zoo Oversight Board at its May 26, 2015 meeting.

Scope

Zoo Miami is located at 12400 SW 152 Street within Commission District 9, which is represented by County Commissioner Dennis C. Moss. The impact of this agenda item is countywide, as Zoo Miami is a regional asset and a tourist attraction for residents and visitors throughout Miami-Dade County.

Fiscal Impact/Funding Source

The County will receive $2 million in additional capital improvements to support its concession services. Additionally, the guaranteed annual rent will increase by 36 percent (from $0.147 per visitor to $0.20 per visitor) and the percentage of gross sales revenue would increase by one (1) percent on second tier sales in the new Concession Agreement (from 20 to 21 percent on food sales over $1.5 million and retail sales over $800,000.00). Based on the fiscal year 2015 actual attendance of 972,454, it is very

conservatively estimated that the Zoo would earn an additional $150,000.00 annually in revenue. Zoo Miami has received over $9.2 million in commissions and $1.8 million in capital investment since 2005 under the current agreement.

Track Record/Monitor

SSA has operated the food and beverage and gift and novelty sales concessions since May of 2005. SSA has provided a high level of service to the County and Zoo Miami customers that exceeds the requirement of the current agreement. The remittance of monthly fees has been consistent and timely. Additionally, SSA has an outstanding track record at Zoo Miami, as well as nationally in the zoo and aquarium industry, providing excellent customer service and satisfaction. The Concession Agreement will continue to be managed by the Parks, Recreation and Open Spaces Department's (PROS) Contract Manager, Jessica Tyrell.

Background

The existing concession agreement with SSA for the exclusive operation of food and retail services within Zoo Miami was executed May 17, 2005 following a competitive Request For Proposal solicitation process. The current agreement has an initial five-year term, with two (2) additional options to renew for two (2) years each, and two (2) additional options to extend for five (5) years each if capital investment thresholds are met, for a total maximum term of 19 years. The County has now exercised all of its options to renew and extend, and SSA has met and exceeded the required capital investment thresholds. The current term is set to expire May 16, 2024.

While a new gift shop is under construction as part of the new entry plaza, the old gift shop building was slated to be replaced by a new exhibit building as part of the new Florida: Mission Everglades project. However, the bids for construction exceeded the cost estimates prepared by the consultant and, as a result, the new building was eliminated due to lack of funding. Left with the existing gift shop, Zoo Miami saw an opportunity to convert the building into an air conditioned food service facility to support the new Florida exhibit. The zoo currently has no air conditioned dining space, an often requested visitor amenity, and recognized that the location of the existing building near the front entrance would be ideal. Furthermore, existing food and beverage concession locations are strained beyond capacity on busy days and cannot meet current demand, resulting in less than satisfactory guest service and loss of revenue.

Market research conducted by both the County's Internal Services Department and PROS confirmed that the terms of this Concession Agreement are consistent with or better than the capital investment terms of other zoos with comparable attendance and that have SSA as a concession provider. Only these zoos were considered for comparison since SSA has exclusive rights until May 2024 under the current agreement. Zoo Miami's annualized rate of capital investment of $200,000.00 compares favorably with the average annualized rate of capital investment of $92,900.00 for five (5) other client zoos with attendance exceeding 900,000 (Cincinnati, Dallas, Louisville, Nashville, and Pittsburgh).

Upon approval of the Concession Agreement, SSA will immediately begin to invest an additional $2 million in capital improvements for much needed visitor amenities, including the conversion of an old gift shop into an air conditioned food service facility to support the new Florida: Mission Everglades exhibit opening fall 2016, and is required to complete all of the capital improvements and investment before May 16, 2020. The Concession Agreement will extend the term of the original agreement by ten (10) years so that the term will now expire on May 16, 2034. Additionally, the guaranteed annual rent will increase by 36 percent (from $0.147 per visitor to $0.20 per visitor) and the percentage of gross

sales revenue will increase by one (1) percent on second tier sales in the new Concession Agreement (from 20 to 21 percent on food sales over $1,500,000.00 and retail sales over $800,000.00). All other business terms under the new agreement are consistent with the current agreement.

The National Park Service has reviewed the Concession Agreement and given its concurrence, as per terms of the Quitclaim Deed that transferred the Zoo Miami property from the Department of the Interior to the County.

This Concession Agreement is in the best interest of the residents and visitors of Miami-Dade County, and the additional capital improvements and revenues resulting from this agreement will help support Zoo Miami's growth and will benefit the entire County.

Michael Spring
Senior Advisor

EXHIBIT A

ZOO MIAMI
AMENDED AND RESTATED
FOOD AND BEVERAGE CONCESSION AND GIFT AND NOVELTY
SALES OPERATING AGREEMENT

This Amended and Restated Food and Beverage Concession and Gift and Novelty Sales Operating Agreement (the "Agreement") is made and entered into as of this _____ day of _____, 2016 (the "Effective Date") by and between Service Systems Associates, Inc. a corporation organized and existing under the laws of the State of Colorado, having its principal office at 4699 Marion Street, Denver, Colorado, 80216 (the "Concessionaire"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County" and, along with Concessionaire, referred to herein as the "Parties").

WITNESSETH:

WHEREAS, the County owns and operates Zoo Miami located at 12400 SW 152nd Street, Miami, Florida (the "Zoo") for the recreation and enjoyment of Zoo patrons, and which is administered for the County by its Director of the Parks, Recreation and Open Spaces Department (the "Department"), or designee; and

WHEREAS, the Concessionaire currently operates both the Food & Beverage Concession Areas and Gift and Novelty Shops (the "Facilities") under a Concession Agreement entered into between the Parties on May 17, 2005 (the "Original Agreement") and which Original Agreement was extended in accordance with its terms so that it now expires on May 16, 2024; and

WHEREAS, the Parties desire to amend and restate the Original Agreement in its entirety pursuant to this Agreement in order to allow major capital renovation to certain concession facilities within the Zoo and to extend the term of the Original Agreement,

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

1. **Effectiveness:** From the Effective Date of this Agreement until the expiration or earlier termination of this Agreement, this Agreement shall supersede the Original Agreement in all respects and shall govern the relationship and all rights and responsibilities between the Parties.

2. **Use**: The County hereby grants unto the Concessionaire and the Concessionaire hereby accepts from the County, for the term of this Agreement and at the rate and upon the covenants and conditions as set forth in this Agreement, the right to use the Facilities (as such term is defined in Section 8 of this Agreement) within the Zoo. Concessionaire shall use the Facilities only for the use permitted herein which permitted use is specifically set forth in Attachment "A" to this Agreement titled "Scope of Services." The Concessionaire shall not conduct any business nor provide any services nor sell any item or product beyond those specifically set forth in Attachment "A" to this Agreement without the prior written approval of

the Department, and any sales by the Concessionaire of services or items not specifically authorized in writing by the Department may constitute a default of this Agreement as determined by the County. Any unauthorized services or items shall be discontinued immediately by the Concessionaire, upon written notice from the Department. Concessionaire shall conduct its business at all times in accordance with this Agreement.

3. **Operations:** Except when and to the extent that the Facilities may be untenantable by reason of damage by fire or other casualty, Concessionaire shall continuously and uninterruptedly use, occupy and operate all of the Facilities for the purposes set forth in, and in accordance with the provisions of, Attachment "A" to this Agreement, other than such minor portions of such Facilities as are reasonably required for storage and office purposes. Such storage and office space shall only be used in connection with the business conducted by Concessionaire in the Facilities under this Agreement. Concessionaire shall have on the Facilities adequately trained personnel for efficient service to customers.

4. **Limitations on Use:** Concessionaire's right to use the Facilities or anything to be done therein, or suffer or permit anything to be brought into or kept therein, is subject to and is limited by anything which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Facilities or Zoo or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Facilities or Zoo; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Facilities or Zoo or the proper and economic functioning of any other common service facilities or common utility of the Facilities or Zoo; (vi) impair or interfere with the physical convenience of any of the occupants of the Facilities or Zoo; or (vii) impair any of the Concessionaire's obligations under this Agreement.

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

6. **Exclusivity and Non-exclusivity:** This Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services, products or items by other concessionaires or others in premises other than the Zoo or from authorizing other concessions unrelated to the food and retail offered by the Concessionaire within the Zoo. Notwithstanding and prevailing over the foregoing, if at any time during the Term (as such term is defined in Section 9 of this Agreement), the County makes available additional space within the Zoo for food, beverage, gift, retail or any other concession services ("Additional Facilities"), and the Concessionaire declines to use and operate any or all of such Additional Facilities under the same terms and conditions that it uses and operates the Facilities under this Agreement, then the County shall have the right to contract with any other third party or concessionaire for the use and operate of the Additional Facilities, irrespective of whether such services and products to be sold within such Additional Facilities will compete with the Concessionaire. The Concessionaire shall have no rights to any other location or concession that may be made available by the County. The Concessionaire has acknowledged the County's intent to develop a restaurant to be located adjacent to the Zoo entrance and the Concessionaire acknowledges and agrees that this

Agreement confers no rights whatsoever upon Concessionaire with respect to such restaurant. The Concessionaire further acknowledges that the Concessionaire shall have no rights under this Agreement respecting concession services for any facility that is situated outside the line depicted in Attachments "B-1" and "B-2" encircling the Zoo.

7. **Attachments:** The Attachments listed in this Paragraph and attached to this Agreement are hereby incorporated in and made a part of this Agreement:

Attachment A:	Scope of Services
Attachment B-1:	Facilities Map Gift and Novelty Concession Sites
Attachment B-2:	Facilities Map Food and Beverage Concession Sites
Attachment C:	Additional Capital Improvements
Attachment D:	Minimum Operating Standards for Foodservice

8. **Property Description:** The Zoo is located at 12400 SW 152nd Street, Miami, Florida, as its boundaries are shown on Attachments B-1 and B-2, attached hereto and incorporated herein by reference. The Facilities consist of those food and beverage concession locations and gift and novelty sale concession locations specifically described in Attachment A, and extend 25 feet from the structures comprising each such Facilities as shown on Attachments B-1 and B-2 and include all columns and core areas within the perimeters of the Facilities.

9. **Term:** Under the provisions of the Original Agreement, the Original Agreement was set to expire on May 17, 2024. The Parties desired to extend that expiration date in the Original Agreement by ten (10) years. Accordingly, the term of this Agreement is from its Effective Date and expires on May 16, 2034 ("Term").

10. **Additional Capital Improvements:** On or before, May 17, 2020, Concessionaire shall invest at least $2,000,000.00 in permanent improvements and equipment to the Facilities, as described generally in Attachment "C" to this Agreement. Permanent improvements shall mean constructing new structures or infrastructure (permanent new utilities, facilities, equipment, or other improvements of a capital nature) to the Facilities, including ensuring that the Facilities identified in Attachment "A" as the main gift shop, and Flamingo, Cypress Landing and Nourish 305 food service facilities shall be fully operational and open to the public on or before May 16, 2020. All such additional capital improvements shall comply with County and Department regulations. Only the actual cost of constructing the permanent capital improvement shall be considered towards meeting the $2,000,000.00 minimum investment requirement. No design, legal, accounting, financial, permit, bond, insurance, tax, personal property, or like costs in excess of 8% of the actual hard, capital costs of such improvements shall be considered towards satisfying the $2,000,000.00 capital investment requirement. Furthermore, no cost expended by the Concessionaire to fulfill its already-existing obligations under this Agreement to undertake maintenance, normal repair and replacement of the Facilities shall be considered towards satisfying the $2,000,000.00 capital investment requirement.

11. **Guaranteed Monthly Rent:** Concessionaire, in consideration of the use and occupancy of the Facilities, shall pay to the County without deduction or set off of any kind the following sums:

A. **For food & beverage service operations, $126,000.00** per annum paid in monthly installments of $10,500.00 as Guaranteed Monthly Rent and due on the first day of each month without billing.

B. **For gift & novelty retail operations, $54,000.00 (plus tax)** per annum paid in monthly installments of $4,500.00 (plus tax) as Guaranteed Monthly Rent and due on the first day of each month without billing.

12. **Percentage of Monthly Gross Receipts:** In addition to the Guaranteed Monthly Rents, Concessionaire agrees to pay to the County, monthly as follows:

A. **Food and Beverage and Catering Gross Receipts.** For the first $1,500,000.00 of food and beverage service and catering gross receipts during each Contract Year, an amount equal to 15% of Concessionaire's monthly food and beverage service and catering gross receipts, and for all food and beverage service and catering gross receipts in excess of $1,500,000.00 during each Contract Year:

i. from the Effective Date through May 16, 2020, 20% of Concessionaire's monthly food & beverage service and catering gross receipts; and

ii. from May 17, 2020 through the expiration or earlier termination of this Agreement, 21% of Concessionaire's monthly food & beverage service and catering gross receipts.

B. **Gift and Novelty Retail Gross Receipts.** For the first $800,000.00 of gift and novelty retail gross receipts during each Contract Year, an amount equal to 15% (plus tax) of Concessionaire's monthly gift and novelty retail gross receipts, and for all gift and novelty retail gross receipts that are in excess of $800,000 during each Contract Year:

i. from the Effective Date through May 16, 2020, 20% of Concessionaire's monthly gift and novelty retail gross receipts; and

ii. from May 17, 2020 through the expiration or earlier termination of this Agreement, 21% of Concessionaire's monthly gift and novelty retail gross receipts.

C. **Sales Tax:** The Concessionaire shall pay the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 7%, adjusted accordingly) on the amounts payable to the County, including Monthly Guaranteed Rent payments and Percentage of Monthly Gross Receipt Payments for gift and novelty sales, under this Agreement. This Sales and Use Tax shall be payable to the County, when rent is due, which in turn will remit same, less authorized handling deductions, to the State. Said tax is applicable to Monthly Guaranteed Rent and Percentage of Monthly Gross Receipts for merchandise and gift sales unless otherwise determined

by the State of Florida. The Florida Department of Revenue currently exempts food & beverage service concessions in recreational settings from sales tax.

13. **Annual Rent Review:** The Guaranteed Monthly Rent is based on an Annual Attendance at the Zoo of 900,000. At the close of each Contract Year, the Guaranteed Monthly Rent will be proportionally adjusted up or down based on the prior year Annual Attendance. For purposes of this Section, "Annual Attendance" shall be the Total Attendance as determined by the Department as of the Effective Date of this Agreement, less attendance at any special events that occur outside the public operating hours of the Zoo, if none of Concessionaire's services are open at such time. "Total Attendance" also does not include employees, volunteers, or independent contractors who are providing services to Concessionaire, Zoo or County. The daily business records maintained by the Zoo in connection with its admissions function shall be authoritative as to the Total Attendance number. The Department shall provide Concessionaire with monthly reports of Total Attendance within five (5) days after the end of each calendar month. The County may adjust any monthly attendance report up to, but no later than, ten (10) days after that month's end.

At the end of each Contract Year, the Annual Attendance number as defined above shall be divided by the base attendance of 900,000. The Guaranteed Monthly Rent due for the applicable Contract Year shall be adjusted up or down by the multiplying resulting percentage. To the extent that the Guaranteed Monthly Rent due is: (i) adjusted upwards, the Concessionaire shall pay the County the additional sums due within thirty (30) days from notice from the County of the adjusted Guaranteed Monthly Rent; or (ii) adjusted downwards, the Concessionaire shall deduct from the next month's Guaranteed Monthly Rent such amount that Concessionaire paid during the prior Contract Year that exceeded the adjusted Guaranteed Monthly Rent based on Annual Attendance for that Contract Year.

14. **Additional Taxes:** If at any time during the term of this Agreement including 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 the responsibility of the Concessionaire.

15. **Property Ownership; Ad Valorem Taxation:** This Agreement is not intended to and shall not be construed to vest the Concessionaire any title, estate, possessory interest or property right in any properties or equipment of the County or in any part thereof, including without limitation the Facilities and the existing equipment. The County does not by this Agreement relinquish, convey, or qualify in any degree its respective possession, title, control, or management of any properties or equipment. The Concessionaire covenants and agrees that all rights granted pursuant to this Agreement are subject to all easements, covenants, or other encumbrances of record, including in particular the reservations, exceptions, restrictions, conditions, and covenants contained in that certain Quitclaim Deed between the United States of America, as Grantor therein, and the County, as Grantee therein, executed and delivered on October 1, 1974, and recorded in Official Record Book of Dade County, Florida No. 8799 at pages 1589-1597, and that certain Corrective Quitclaim Deed between said Grantor and Grantee

executed and delivered on September 30, 1975, and recorded in Official Record Book of Dade County, Florida No. 9159 at pages 926-937, including therein the approved Program of Utilization submitted by the County on June 13, 1973, as amended (hereinafter collectively "Quitclaim Deed").

The parties acknowledge that as of the date of this agreement, the Concessionaire is not subject to real property (ad valorem) taxation. If, during the term of this agreement, a contrary determination is made by the taxing authority or a court of competent jurisdiction (and after all appeals of that decision have been exhausted), then as its sole and exclusive relief, Concessionaire shall have the right to terminate this agreement for convenience, provided however that Concessionaire's termination of this agreement shall not relieve Concessionaire of any liability for taxes due prior to termination.

16. **Taxes on Concessionaire's Personal Property:** Concessionaire 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 Facilities by Concessionaire.

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

18. **Application of Payments:** Payments by the Concessionaire to the County are applied to any unpaid balance in the following manner: (a) Any accrued late fees are first deducted from the payment; (b) The remaining payment balance is then applied proportionately to the Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts and the associated sales and use tax; (c) Any remaining balance in the payment will be applied to any other "Additional Rents" which are any monies due to the County above and beyond Guaranteed Monthly Rent and Percentage of Monthly Gross Receipts.

19. **Worthless Check or Draft:** In the event that the Concessionaire delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay to the County a service charge of $10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment and service charge shall be made within five (5) days from written notice of such default. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department. A second such occurrence of dishonored check or draft during the Agreement term will constitute a default allowing termination of this Agreement by the County.

20. **Payment of Fees:** The Guaranteed Monthly Rent payable by Concessionaire to the County herein shall be payable in twelve (12) equal monthly installments on the first day of each month during the term of this Agreement. Such payments, as well as other amounts payable

by Concessionaire to the County under this Agreement, all of which shall be deemed to be Additional Rent for the purposes of collection only herein, shall be paid promptly when due, without notice for any reason whatsoever and without abatement, except as hereinafter provided. Percentage of Monthly Gross Receipts shall be paid to the County on or before the 15th day following the end of each month during the term of this Agreement and on or before the 15th day of the month following the expiration or earlier termination of this Agreement. All rental and percentage fees provided for in this Agreement shall be submitted to:

Miami-Dade Parks, Recreation and Open Spaces Department
Contract Management Section
275 N.W. 2nd Street, 5th Floor
Miami, FL 33128

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

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

22. **Gross Receipts:**

A. Contract Year Defined: "Contract Year" means the annual period beginning May 17 of any given year.

B. Gross Receipts Defined: "Gross Receipts" means all receipts from the sale of services or merchandise by Concessionaire and sub-concessionaire(s) of Concessionaire, sold in, upon or from the Facilities, including such sales as shall in good faith be credited by Concessionaire and sub-Concessionaires in the regular course of its or their business to personnel employed at the time of sale at the Facilities, and mail and telephone orders received at the Facilities and off-premises sales, but shall not be deemed to mean or include the following: amounts paid to the Concessionaire by sub-concessionaires in excess of percentage fees paid directly to the County by the sub-concessionaire; amounts credited by Concessionaire or its sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; goods provided to the County or Concessionaire employees at its cost (plus shipping and handling charges); any credit card merchant or bank transaction processing fees levied, upon the transaction and remitted as such by Concessionaire; the proceeds of sales of Concessionaire's trade fixtures, operating equipment

or other property used by Concessionaire or its sub-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 Concessionaire, or its sub-concessionaires, whichever of such events shall first occur.

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

E. Concessionaire's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Concessionaire shall prepare and keep, for a period of not less than three (3) years following the end of each Contract Year and in a location within Miami-Dade County, 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 Concessionaire. Concessionaire 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. Concessionaire shall keep, for at least five (5) years following the end of each Agreement Year, all pertinent original sales records, which records

shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail orders; (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 Concessionaire's Gross Receipts.

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

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

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

23. **Discounts:** The Concessionaire shall extend a 20% discount on food and beverage items and gift shop merchandise to employees of Zoo Miami, employees of the Zoo Miami Foundation and working volunteers of either entity. Further, the Concessionaire shall extend a 10% discount on gift shop merchandise only, to members of the Zoo Miami Foundation and to Miami-Dade County Employees.

24. **Security Deposit:** Prior to the Effective Date the Concessionaire shall furnish a Security Deposit in cash equal to three (3) months Guaranteed Monthly Rent redeemable at the end of the Agreement term except for such conditions pertinent thereto, or in such other media, as further described, acceptable to the County.

The Concessionaire may, in lieu of a Security Deposit with the County, provide a Performance Bond or Irrevocable Letter of Credit in the same amount. This Bond or Letter of Credit will be conditioned on the full and faithful performance of all covenants of this Agreement.

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

25. **County Approval:** The Concessionaire shall obtain prior written approval from the Department in all of the following matters:

A. Changes from originally approved specifications, pricing, activities, signage, and graphics;

B. Equipment Concessionaire plans to install requiring any building modifications;

C. Aesthetics of Facilities;

D. Any use of the County's, Zoo's, or Facilities name;

E. Hours of Operation;

F. Uniforms to be used by employees which shall be consistent with or better than those normally used by professionally operated facilities.

Further it is understood by the Concessionaire that should any of the above items be disapproved, Concessionaire may offer alternative solutions. The County reserves the right with stated just cause to require the Concessionaire 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.

26. **Public Contact of Concessionaire's Employees:** Concessionaire's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the County to demand his or her removal from duties in the Facilities. Concessionaire's employees will not be considered agents of the County. In accordance with the Shannon Melendi Act, County Ordinance No. 08-07 (as it may be amended for time to time), all of the Concessionaire's employees, volunteers, contractors, consultants and any other entity or persons that will perform any work at the Zoo must comply with the Shannon Melendi Act before the scheduled start of such employment, volunteerism, or work.

27. **Hours of Operation:** The Facilities shall be operated seven (7) days a week during those hours approved by the County. Sufficient Concessionaire staff shall be available to provide outstanding service. The County may require a change in hours of operation, if, in the reasonable discretion of the County, such a change is desirable in providing the best service to

the public.

28. **Pricing:** Concessionaire shall maintain the pricing approved by the Department. If the Concessionaire wishes to change its standard prices, Concessionaire will provide to the Department a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date, for approval or disapproval by the County, at any time during this Agreement Term when price changes are contemplated. Pricing for special events or services shall be expeditiously approved/disapproved by the Department.

29. **Personnel:** The Concessionaire shall provide the Department with the name and telephone number of a management person of the Concessionaire who will be on call, at all times, for emergencies or other matters related to the operations under this Agreement. The Concessionaire shall ensure that all of its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. The Concessionaire shall ensure that all employees having public contact are able to understand and communicate in spoken English. Should the County find that an employee of the Concessionaire is objectionable, the Concessionaire shall promptly remove said employee from the Facilities operations permanently.

30. **Signs:** The nature, size, shape and installation of Concessionaire's business signs within the Facilities or in, on or adjacent to the Facilities or Zoo must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction on Zoo grounds. With the exception of those signs or sign structures that the County requests to retain, all signs shall be removed by the Concessionaire at the termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Concessionaire.

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

32. **Quality of Concessionaire's Service:** The Concessionaire 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 Concessionaire shall control the conduct, demeanor and appearance at all times or on-site of its officers, members, employees, agents, representatives, and upon objection of the County concerning the conduct, demeanor or appearance of any such person, Concessionaire shall immediately take all necessary steps to correct the cause of such objection.

Concessionaire shall take good care of the Facilities, shall use the same in a careful manner and shall, at its own cost and expense, keep, maintain, and repair and, upon the expiration of this Agreement or its termination in any manner, shall deliver said Facilities to the County in the same condition as at the commencement of this Agreement or in the condition any such Facility was at the time it received a certificate of occupancy after capital improvements were undertaken during the Term of this Agreement, with the exception of loss by fire or other

casualty and normal wear and tear. Concessionaire shall furnish good, prompt and efficient service, adequate to meet all reasonable demands. Therefore, it is expressly understood and agreed that 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 Zoo. The Concessionaire agrees that a determination by the County will be accepted as final in evaluating whether Concessionaire's activities infringe on the rights of others as described above and that Concessionaire will fully comply with any decisions on this matter.

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

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

A. Electrical as existing.

B. Water facilities as existing.

C. Sewage collection facilities as existing.

D. Access to waste disposal equipment. The Zoo will provide access to its on-site garbage truck to the Concessionaire for disposal of Concessionaire's trash. Concessionaire will transport its trash to designated containers, which the Zoo will empty into the garbage truck. In consideration of the Zoo's transport and tipping fees associated with Concessionaire's trash disposal, Concessionaire will pay to the County annually an amount equal to 28.5% of the actual prior year costs paid by the Zoo for solid waste disposal, which amount shall not exceed $50,000.00 annually. Payments shall be made in equal monthly installments on the first day of the Month to the Department's Contract Management Section as stated herein. Any adjustments to the percentage of waste disposal costs shall be mutually agreed upon in writing by both parties.

35. **Transactions between the Parties:** The Department shall be allowed to purchase food, beverages, supplies and merchandise from the Concessionaire at cost (plus applicable shipping and handling), and to make payment to the Concessionaire through the County's direct bill process.

36. **Equipment and Services Provided by Concessionaire:** The Concessionaire, at its sole cost, shall provide at the Facilities:

A. Janitorial service within the Facilities.

The Concessionaire shall keep the Facilities and equipment clean at all

times. As noted in this Agreement, the Concessionaire's janitorial responsibility shall extend to a 25-foot perimeter of the concession structures. The provision of janitorial services and all interior maintenance within the Facilities are the sole and exclusive responsibility of the Concessionaire. Upon failure of the Concessionaire to maintain the Facilities as required in this Paragraph, the Department may, after fifteen days written notice to the Concessionaire, enter upon the Facilities and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall constitute Additional Rental(s), and shall be billed to and paid by the Concessionaire.

B. Pest extermination.

C. Concessionaire shall provide and place in and around the Facilities approved covered receptacles, provided by the Department for trash, garbage and other refuse. Concessionaire shall provide for proper handling, transfer and disposal of trash, garbage and other refuse caused as a result of its operation into the Zoo garbage truck.

37. **Equipment Installed by Concessionaire:** The Concessionaire shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the Facilities. All furnishings, fixtures and equipment acquired for the Facilities shall be of a high quality as good or better than that found at other Zoos and Attractions/Concession facilities. The County shall be afforded the opportunity to approve all furnishings, fixtures and equipment for the Facilities. Any equipment, furnishings, signage and advertising installed by the Concessionaire shall be in keeping with the appropriate standards of decor at the Zoo. Following the installation of any additional equipment, furnishing and improvements which the County may approve from time to time, Concessionaire shall provide to the County a statement setting forth the cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed. Concessionaire agrees that all new equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes. Concessionaire shall not alter or modify any portion of the Facilities or the improvements constructed therein without first obtaining written approval from the County.

38. **Ownership of Improvements:** Upon the expiration or earlier termination of this Agreement for any reason, all existing and subsequently installed fixtures, equipment, improvements and appurtenances attached to or built into the Facilities in such a manner as to become part of the freehold, whether or not by or at the expense of Concessionaire, shall become and remain a part of and be surrendered with the Facilities. Any furniture, furnishing, equipment or other articles of movable personal property owned by Concessionaire and located in the Facilities (except for any furniture or equipment purchased by Concessionaire with $2,000,000.00 capital improvement investment required by Section 10 of this Agreement), shall be and shall remain the property of Concessionaire and may be removed by it at any time during the term of this Agreement so long as Concessionaire is not in default of any of its obligations under this Agreement, and the same have not become a part of the freehold, and so long as such

does not materially affect Concessionaire's ability to use the Facilities and conduct its business as required herein. However, if any of Concessionaire's property is removed and such removal causes damage to the Facilities, Concessionaire shall repair or pay the cost of repairing any damage to the Facilities resulting from such removal. Any property belonging to Concessionaire and not removed by Concessionaire at the end of the Agreement including any renewal or extension period, shall, at the election of the County, be deemed to be abandoned by Concessionaire, and the County may keep or dispose of such property and restore the premises to good order within ten (10) days after vacating property therefore. At the end of the Agreement including any renewal or extension period, Concessionaire shall deliver to the County the keys and combinations to all safes, cabinets, vaults, doors and other locks left by Concessionaire on the Facilities.

39. **Security and Protection:** The Concessionaire acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection with the requirements of this Agreement. The County makes no warranties as to any obligation to provide security for the Facilities or Zoo, outside of standard security measures supplied by the County in general. Concessionaire may provide its own specialized security for the Facilities, subject to the County's written approval. Absence of said Concessionaire security measures shall not increase the County's security obligation.

40. **Hurricane Preparedness:** In the event of a hurricane the Zoo will follow the County's Emergency Operations Center plan of action. The Concessionaire shall follow the County's emergency evacuation and hurricane plan as set forth for the Facilities or Zoo.

41. **Utility Services:** The County has caused all necessary utility lines and services to be brought to the Facilities. Concessionaire shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Zoo as determined either by the public utility providing such service or by the Department in the exercise of reasonable judgment. Concessionaire shall make all repairs caused by Concessionaire's negligence.

42. **Payment of Utility Services:** Concessionaire agrees to pay for all charges for utility service used or consumed in or upon the Facilities including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such utility charges are separately measured by metering or otherwise, Concessionaire agrees to pay the actual cost thereof, without addition or surcharge by the County. To the extent that such utility charges are not separately metered, Concessionaire agrees to pay Concessionaire's pro-rata share thereof, as determined by the County. In the event of a dispute between the parties regarding the amount of any utility or service provided by the County and not separately metered, the County and the Concessionaire shall have the right to engage a registered Professional Engineer to compute Concessionaire's utility usage, and determine an equitable utility charge to Concessionaire based upon such usage.

43. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Concessionaire 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 performed 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 Concessionaire or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of rent or other charges, nor damages, shall be claimed by Concessionaire by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Concessionaire's obligations hereunder be affected or reduced thereby.

44. **Damages:** Concessionaire shall repair all damages to the Facilities or Zoo caused by the Concessionaire, its employees, agents, licensees, invitees, or independent contractors.

45. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all the Facilities, equipment, and operations during the normal operating hours thereof to determine among other things, if such are being maintained in a neat and orderly condition. The Concessionaire shall be required to make any improvements in cleaning or maintenance methods as required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Concessionaire is operating in compliance with the terms and provisions of this Agreement.

46. **Right of Entry:** The County shall have the right to enter upon the Facilities at all times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Facilities as the County deems necessary, however, the County assumes no obligation to make repairs in the Facilities other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Concessionaire 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 Facilities to show the Facilities to actual or prospective mortgagees, tenants, or Concessionaires of the Zoo. During the one hundred and eighty (180) days prior to the expiration of the term of this Agreement, the County may show the Facilities to prospective tenants.

47. **Damage or Destruction of Facilities:** If any of the Facilities are partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall with due diligence be repaired by the County from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Monthly Guaranteed Rent payable hereunder for the period of the Concessionaire's business interruption, shall be made. If the damage shall be so extensive as to render such Facilities unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the County from the proceeds of the insurance coverage and/or at its own cost and expense, and for the period of Concessionaire's business interruption a pro-rata adjustment shall be made as to the Monthly Guaranteed Rent and utility fees.

In the event the said Facilities are completely destroyed or so damaged that they will remain unusable for more than thirty (30) days, the Concessionaire and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the 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 Facilities operations in this Agreement, the County or the Concessionaire may reconstruct the premises upon such terms and conditions as the parties may agree.

48. **County's Repair, Facilities Repairs, Alterations and Additions by the County:** The County, as its responsibility, and at its expense (except if the damage is caused by Concessionaire), 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 Facilities and the Common Areas of the Zoo. The Concessionaire, at its own cost and expense, shall be responsible for all repairs, replacements, additions and work necessary to be done to the interior and to the systems of the Facilities in order to keep such Facilities in good order and repair. There shall be no allowance to Concessionaire for a diminution of rental value for interruption of business and no liability on the part of the County by reason of inconvenience, annoyance, or injury to business arising from the County, Concessionaire or others making any repairs, alterations, addition, improvements, restorations, or replacements, in or to any portion of the Facilities or Zoo, or to fixtures, appurtenances, or equipment thereof. The County shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Facilities under this Agreement, free from any and all liability to the Concessionaire 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 Concessionaire, 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 Concessionaire's operation of the Facilities, for short term disruption to Concessionaire's business of one week or less the County will attempt to make accommodations to minimize the inconvenience and injury to Concessionaire's business. If the Concessionaire's business is interrupted for more than one week, a pro rata adjustment of the Guaranteed Monthly Rent payable hereunder for the period of such interruption shall be made. However, at the option of the County, and through negotiations pertaining to all matters for continuing the Facilities operations in this Agreement, the County or the Concessionaire may make repairs, alterations and additions to facilities upon such terms and conditions as the parties may agree.

49. **Concessionaire's Work and Concessionaire's Design Criteria:** All construction work other than County's Work shall be accomplished by Concessionaire at Concessionaire's sole expense and in accordance with this Agreement. In no event shall Concessionaire do any work without the express written consent of the County.

50. **Performance of Obligations:** Concessionaire covenants at all times during the term of this Agreement to perform promptly all of the obligations of Concessionaire set forth in this Agreement.

51. **Ingress and Egress:** Subject to the Zoo's rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Facilities, Concessionaire, 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 Facilities.

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

A. Concessionaire shall not assign, mortgage, pledge, transfer nor otherwise encumber this Agreement nor any portion thereof, nor any property associated with this Agreement without prior written approval of the County, which consent shall be subject to the applicable terms, conditions, and requirements set forth in the Quitclaim Deed. Unapproved assignment, mortgaging, pledging, transferring or encumbering shall be grounds for immediate termination of this Agreement by the County. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.

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

Any services rendered hereunder pursuant to a sub-agreement must be made available and accounted for through the Concessionaire so as to provide seamless service to the public as if provided directly by the Concessionaire.

53. **Ownership of Concessionaire:** The ownership of the Concessionaire is very important to the County. Therefore, the County reserves the right to terminate this Agreement at any time if more than 10% of the ownership of the Concessionaire has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in its best interests. Concessionaire agrees to provide, on 24-hour notice from the County, an accurate list of all owners of the Concessionaire, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. If Concessionary stock is listed on a major stock exchange, it may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

54. **County's Property Insurance:** Any insurance the County may maintain shall not cover Concessionaire's improvements and betterments, contents, or other property of Concessionaire. Concessionaire shall not violate, or permit the violation of, any condition

imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Facilities which would increase the fire or other property or casualty insurance rate of the building or buildings in which the Facilities is located or the property therein over the rate which would otherwise then be in effect (unless Concessionaire pays the resulting increased amount of premium as provided under 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 Concessionaire, the rate of property insurance on the Facilities or Zoo or equipment or other property of the County shall be higher than it otherwise would be, Concessionaire 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 Concessionaire, which sum shall be deemed Additional Rent for purposes of collection only.

55. **Concessionaire's Insurance:** The Concessionaire shall furnish to Miami-Dade Park, Recreation and Open Spaces Department (275 NW 2nd Street, 5th Floor Miami, Florida 33128), Certificate(s) of insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the Concessionaire as required by Florida Statute 440.

B. Commercial General Liability Insurance in an amount mot less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. This policy must include Products & Completed Operations Liability and Liquor Legal Liability coverage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

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

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

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

OR

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

NOTE: CERTIFICATE HOLDER MUST READ:

MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128

56. **Release and Indemnification:** Concessionaire shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners principals or subcontractors. Concessionaire 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. Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Concessionaire 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.

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

A. Automatic Termination:

i. Institution of proceedings in voluntary bankruptcy or reorganization by the Concessionaire.

ii. Institution of proceedings in involuntary bankruptcy against the Concessionaire if such proceedings continue for a period of ninety (90) days.

iii. Assignment by Concessionaire 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. Unapproved change of ownership interest in Concessionaire and/or failure to submit the ownership list within 24 hours upon the request of the County.

vi. Failure to cease any activity which may cause limitation of County's use of the Zoo.

B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Facilities and by certified or registered mail to the known address of Concessionaire set forth in this Agreement.

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 Concessionaire 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 Additional Rent and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.

ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

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

i. Non-performance of any covenant of this Agreement other than non-payment of rent or performance fees as provided for in Section B above and listed in A and B above, and failure of the Concessionaire to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.

D. A final determination in a court of law in favor of the County in litigation instituted by the Concessionaire against the County or brought by the County against Concessionaire.

E. Revenue Control and Audit Defaults: The inability or failure of the Concessionaire to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Concessionaire. 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 or Performance Bond or Line of Credit required in this Agreement.

F. Habitual Default: Notwithstanding the foregoing, in the event that the Concessionaire has repetitively defaulted 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 Concessionaire, regardless of whether the Concessionaire has cured each

individual condition of breach or default as provided herein above, the Concessionaire may be determined by the Director of the Department to be a "habitual violator". At the time that such determination is made, the Department shall issue to the Concessionaire a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(s) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may cancel this Agreement upon the giving of written notice of termination to the Concessionaire, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Zoo, and proceed to remove all its personal property in accordance with this Agreement.

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

A. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Concessionaire, 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 Zoo, or any substantial part, or parts, thereof in such a manner as substantially to restrict Concessionaire's operations for a period of ninety (90) calendar days or more.

59. **Surrender of Facilities:** At the expiration or earlier termination of the term of this Agreement, and subject to the applicable reservations, exceptions, restrictions, terms, conditions, and covenants contained in the Quitclaim Deed, Concessionaire shall peaceably surrender the Facilities in as good a condition as the Facilities were on the Effective Date of this Agreement, or in the condition any such Facility was at the time it received a certificate of occupancy after capital improvements were undertaken during the Term of this Agreement, ordinary wear and tear and damage by condemnation, fire or other casualty excepted. Concessionaire shall deliver all keys for the Facilities 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 Facilities. Ordinary wear and tear shall be deemed not to include damage or

injury caused by moving Concessionaire's property or trade fixtures into or out of the Facilities. Concessionaire'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 Agreement.

60. **Conduct and Delivery Upon Termination:** Following the termination of this Agreement the Concessionaire, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property not acquired under the terms of this Agreement. Any personal property of Concessionaire not removed in accordance with this Paragraph may be removed by the County for storage at the cost of the Concessionaire 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 Concessionaire for the safekeeping of Concessionaire's personal property during or after termination of this Agreement. The County shall have the senior interest in the Concessionaire's personal property. Concessionaire shall not remove any equipment, supplies in bulk, or fixtures within the Facilities at any time without pre-approval in writing from the County. Concessionaire shall be liable to the County for the fair market value of any County owned equipment, supplies in bulk, or fixtures removed without County pre-approved written permission. Concessionaire shall also be liable for any expenses including attorney's fees and cost incurred by the County in prosecuting any action against Concessionaire following unapproved item removal described above. Concessionaire shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Concessionaire. It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by the Concessionaire except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Concessionaire.

61. **Holding Over:** If Concessionaire remains in possession of the Facilities after the expiration of the term of this Agreement, or any renewal or extension period, without a new Agreement reduced to writing and duly executed and delivered (even if Concessionaire shall have paid, and County shall have accepted, rent in respect to such holding over), Concessionaire shall continue to subject to all covenants, conditions, and agreements of this Agreement unless the County elects to negotiate said covenants, conditions and agreements. If Concessionaire fails to surrender the Facilities upon the termination of this Agreement, then Concessionaire, 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 Concessionaire on such failure.

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

63. **Limiting Legislative or Judicial Action:** In the event that any municipal, county (including Miami-Dade County), state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Zoo for the purposes of this Agreement, this Agreement will be terminate and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and

cancellation hereof. Accordingly, the respective obligations of the Concessionaire and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

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

i. No person on the ground of race; color; religion; ancestry; national origin; age; sex; pregnancy; disability; marital status; familial status; gender identity; gender expression; sexual orientation; actual or perceived status as a victim of domestic violence, dating violence, or stalking, of any individual or of any person associated with that individual; or residency within or outside Miami-Dade County, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Facilities, except as provided by law.

ii. No person on the ground of race; color; religion; ancestry; national origin; age; sex; pregnancy; disability; marital status; familial status; gender identity; gender expression; sexual orientation; actual or perceived status as a victim of domestic violence, dating violence, or stalking, of any individual or of any person associated with that individual; or residency within or outside Miami-Dade County, shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in employment, except as provided by law.

iii. That the Concessionaire 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.

That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Agreement and re-enter and repossess said Facilities thereon and hold the same as if said Agreement had never been made or issued.

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

65. **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 or Additional Rent or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver

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

66. **Rules and Regulations:** The Concessionaire shall 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 Concessionaire's operations under this Agreement, including County Ordinance No. 16-58 banning the sale, use, provision of food in, or offering of polystyrene articles in parks, except where those articles are used for prepackaged food that was filled and sealed prior to receipt by the Concessionaire. Failure to do so will constitute a breach of this Agreement.

The Parties hereto expressly acknowledge and agree that the reservations, exceptions, restrictions, terms, conditions, and covenants contained in the Quitclaim Deed apply in every respect and to the fullest degree to the terms and conditions set forth in this Agreement. To the extent that any acts, omissions, uses, occupancy, consents, approvals, or other matters contemplated in this Agreement are or may be subject to those reservations, exceptions, restrictions, terms, conditions, and covenants contained in the Quitclaim Deed, the Parties understand that the United States, as Grantor in the Quitclaim Deed, shall not be limited, restricted, or otherwise restrained in the exercise of such rights, privileges, and authority as may be reserved unto or reposed in the United States in and pursuant to the Quitclaim Deed.

67. **Notices:** Any notices submitted or required by this Agreement shall be sent by registered or certified mail addressed to the parties as follows:

County:	Miami-Dade Parks, Recreation and Open Spaces Department 275 NW 2nd Street, 5th Floor Miami, Florida 33128 Attn: Park and Recreation Director
Concessionaire:	Service Systems Associates, Inc. 4699 Marion Street Denver, Colorado 80216 Attn: Contract Compliance Department

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

68. **Rights to be Exercised by Department:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

69. **Interpretations:** This Agreement and the attachments hereto, and other documents and agreements specifically incorporated by referenced herein, constitute the entire, fully integrated Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may be amended only by written document, properly authorized, executed, and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean appropriate formal action by the Department or the Board of County Commissioners. This Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida.

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

71. **Entirety of Agreement:** The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

72. **Headings:** The headings of the various Paragraphs and Sections of this Agreement, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

73. **Waiver:** Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

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

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

76. **Inspector General and Independent Private Sector Inspector General:**

A. Office of Inspector General. The attention of the Parties is hereby directed to Section 2-1076 of County Code establishing the Miami-Dade County

Office of the Inspector General, which has the authority and power to investigate County affairs and review past, present and proposed County programs, accounts, projects, contracts and transactions. 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 Inspector General shall have the power and authority to perform audits on all County contracts. 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 Developer, 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 Concessionaire from the Inspector General or IPSIG retained by the Inspector General, Concessionaire 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 IPC'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.

The Inspector General shall have any and all other rights of an IPSIG as set forth below.

B. Independent Private Sector Inspector General.

i. Pursuant to Board Resolution No. R-516-96 and Administrative Order 3-20, the County may authorize, retain and coordinate the services of an independent private sector inspector general ("IPSIG") for construction, capital development, procurement, retail, concession, lease and management agreements and/or contracts and other agreements exceeding $1 million. The County has, at its expense, appointed the Inspector General as its IPSIG for the Project. The IPSIG may audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of IPC and the County in connection with project design and construction matters under this Agreement. The scope of services performed by the IPSIG may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

ii. The IPSIG may perform its services at all levels of the construction contracting and procurement process under this Agreement, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of Concessionaire and their officers, agents and employees, lobbyists and the County staff and elected officials. Upon fifteen (15) days' written notice from the IPSIG, Concessionaire shall make all requested project-related records and documents available to the IPSIG for inspection and copying. .

iii. The IPSIG shall have the right to examine all documents and records in Concessionaire's possession, custody or control which, in the IPSIG's reasonable judgment, pertain to this Agreement, including but not limited to, original estimate files; Change Order estimate files; worksheets; proposals and agreements from and with subcontractors and suppliers; all Project related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; 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.

iv. The provisions in this Section shall apply to Concessionaire and its officers, agents and employees. Nothing in this Section shall

impair any independent right Concessionaire may grant to the County to conduct audit or investigative activities. The provisions in this Section are neither intended nor shall they be construed to impose any liability on the County, Concessionaire or third parties.

77. **Sovereign Rights.**

A. The County retains all of its sovereign prerogatives and rights as a county under State law with respect to this Agreement. It is expressly understood that notwithstanding any provisions of this Agreement and the County's status thereunder:

i. The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature of general applicability which is applicable to this Agreement, or be liable for the same, including any approvals needed for construction of the capital improvements; and

ii. The County shall not by virtue of this Agreement be obligated to grant Concessionaire any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature of general applicability which is applicable to the planning, design, construction, development and/or operation of the capital improvements to the Facilities or elsewhere at the Zoo; and

iii. Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, the County's Planning and Zoning Department, RER, or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power.

78. **Public Records.** Documents pertaining to obligations and responsibilities of Concessionaire in carrying out the terms of this Agreement are subject to public records law. Pursuant to Florida Statutes 119.0701(2), Concessionaire agrees to comply with Florida's public records law, specifically to: (a) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services set forth in this Agreement; (b) provide 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 Florida Statutes Chapter 119.07, et seq., or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of Concessionaire upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: [305-251-0400, JCK@miamidade.gov, 12400 SW 152 Street, Miami FL 33177.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as defined herein and set forth above. By the signatures below, each part hereby represents and warrants that each individual is duly authorized to enter into and execute this Agreement for and on behalf of the respective organizations.

Service Systems Associates, Inc.

By: _____

Name: Sean K. McNicholas

Title: President & CEO

Date: 8/18/2016

Attest: _____

Corporate Secretary

Miami-Dade County

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Clerk of the Board

_____

Approved by County Attorney
(As to Form and Legal Sufficiency)

Attachment "A"

SCOPE OF SERVICES

Food and Beverage Services

The Concessionaire shall provide concession services in a manner that provides a high level of service and quality to Zoo patrons. At a minimum, concession services must be provided on a set schedule, during the regularly scheduled operating hours of Zoo Miami, subject to approval by the Department.

The Concessionaire shall provide all furnishings, fixtures, and equipment necessary for this operation.

Gift and Novelty Sales

The Concessionaire shall provide retail services in a manner that provides a high level of service and quality to Zoo patrons. At a minimum, retail services must be provided on a set schedule, during the regularly scheduled operating hours of Zoo Miami, subject to approval by the Department. The Concessionaire shall be experienced in the provision of retail sales plus any other related activities including knowledge of the legal requirements that are involved in this type of operation. The Concessionaire shall provide all furnishings, fixtures, and equipment necessary for this operation.

REQUIREMENTS AND SERVICES TO BE PROVIDED

CONCESSION SERVICES

The Concessionaire shall:

a. Provide an operation that will be safe, customer oriented with prompt service, complaint resolution, effective employee performance and training and timely initiation and completion of all work;

b. Furnish good, prompt and efficient service, adequate to meet all reasonable demands, including establishing a minimum schedule for hours of operation, subject to approval by the Department. Minimum foodservice standards are attached to the sample agreement as Attachment D;

c. Mandate that all employees will be distinctively uniformed or appropriately attired. (All personnel must meet the Zoo's standards for appearance and standards of conduct. The Zoo Miami has an absolute right of approval over selection and tenure of all on-site management.);

d. Take good care of Facilities and use the same in a careful manner and shall at its own cost and expense repair County property or Facilities damaged by its operations under this Agreement;

e. Provide high quality mobile carts for concession service throughout Zoo designated areas;

f. Promote the Zoo through marketing and the quality provision of food and beverages with the highest level of service to the public;

g. Be responsible for the daily upkeep of the food service and carts. The floors will be kept free of debris, displays will be kept stocked and clean, window displays will be rotated regularly and seasonally appropriate stock levels will be maintained.

SPECIAL EVENTS CATERING

This Agreement does not include exclusive catering rights for special events at Zoo Miami. However, Zoo Miami and the Concessionaire will jointly pursue development of catering and rental opportunities for parties, receptions, corporate retreats, and after-hour functions as a business strategy for Zoo Miami.

SPONSORSHIPS

The Zoo reserves the right to enter into sponsorship agreements with Concessionaire and other entities. The Concessionaire shall work in good faith to meet the terms and conditions of any sponsorship agreements, and the Zoo or its assignees shall be entitled to all sponsorship income and/or commissions relating thereto. Further, the Concessionaire shall work in good faith with the Zoo to accommodate the requirements of future sponsorship arrangements Zoo Miami may pursue with Concessionaire or other entities.

DESCRIPTION OF FOOD SERVICE OPERATIONS

The Concessionaire shall operate the following locations:

The primary food service facility, Oasis Grill and Outpost, are located centrally in the Zoo and adjacent to a children's play area. This location (approximately 2,200 sq. ft.) offers full beverage and food service through four (4) service windows and includes a commissary kitchen. There is an adjacent covered outdoor eating area with seating for approximately 200, as well as two air conditioned shelters (approximately 1,000 sq. ft. each) with seating for 96 in each. The Outpost is a themed modular unit adjacent to the Grill that provides beverages and treats out of one service window.

The Carousel Café , (approximately 700 sq. ft.), is located in the children's zoo, and also offers full beverage and food service through four (4) service windows. There is an adjacent outdoor patio with seating for approximately 80. Across from the Carousel Café, within the same building, is additional interior space (approximately 200 sq. ft.) that can be used by the Concessionaire to provide additional food and beverage service in support of the Children's Zoo area.

The Fiesta Café, (approximately 720 sq. ft.), is located in the Amazon & Beyond plaza, and offers limited beverage and food service along an open counter. There is an adjacent outdoor patio with seating for approximately 60.

The Flamingo food service facility, (approximately 230 sq. ft.), is located just inside the entrance across from the Florida wading bird exhibit. This location offers limited beverage and food service through two (2) service windows. There is adjacent outdoor seating for approximately 30. This facility is scheduled to open in 2016.

The Cypress Landing food service facility, (approximately 260 sq. ft.), is located in The Florida exhibit adjacent to the just inside the entrance across from the wading bird exhibit. This location offers limited beverage and food service through three (3) service windows. There is adjacent outdoor seating for approximately 30. This facility is scheduled to open in 2016.

The Nourish 305 Café, (approximately 3,200 sq. ft.), is located near the front of the Zoo, adjacent to the Florida exhibit in the original gift shop building. This facility will offer full beverage and food service and air conditioned seating for approximately 100. This facility is scheduled to open in 2017.

The Concessionaire shall also operate a variety of vendor-owned mobile carts and temporary stands for product-specific sales, such as frozen lemonade, snow cones, cotton candy, and ethnic specialties. The number of mobile carts varies with attendance.

A commissary/warehouse (approximately 2,240. sq. ft.), with office space, is to be used by Concessionaire for bulk storage, and contains walk-in refrigerators and freezers.

GIFT AND NOVELTY SALES REQUIREMENTS

The Concessionaire shall:

a. Provide an operation that will be safe, customer oriented with prompt service, complaint resolution, effective employee performance and training and timely initiation and completion of all work;

b. Furnish good, prompt and efficient service, adequate to meet all reasonable demands, including establishing a minimum schedule for hours of operation, subject to approval by the Department;

c. Mandate that all employees shall be distinctively uniformed or appropriately attired. (All personnel must meet the Zoo's standards for appearance and

standards of conduct. The Zoo has an absolute right of approval over selection and tenure of all on-site management.);

d. Take good care of facilities and shall use the same in a careful manner and shall at its own cost and expense repair County property or Facilities damaged by its operations under this Agreement;

e. Promote the Zoo through marketing and the quality provision of retail sales with the highest level of service to the public;

f. Be responsible for the daily upkeep of the gift shops. The floors will be kept free of debris, displays will be kept stocked and clean, window displays will be rotated regularly and seasonally appropriated stock levels will be maintained.

DESCRIPTION OF RETAIL OPERATIONS

The Concessionaire shall operate the following locations:

The main gift shop, (approximately 3,200 sq. ft.), is located at the front of the Zoo, facing the Entry Plaza. This facility is scheduled to open in 2016.

The Concessionaire shall also operate a variety of vendor-owned mobile carts, temporary stands and various kiosks for product-specific retail sales, such as hats, fans, sundries, specialty and seasonal merchandise. The number of additional facilities varies with attendance.

OTHER SERVICE REQUIREMENTS

It is the intent of the Department to provide the best possible service to the public. It is the Department's further intent to gain revenues. However, the Department makes no guarantee the Department or the County will act, promote, approve, assist, or cooperate in any manner to assure that this project will be a financial success for the County or for the Concessionaire.

Attachment "B-1"

ZOO MIAMI

Gift and Novelty Concession Sites

Attachment " B-2"

ZOO MIAMI

Food And Beverage Concession Sites

Attachment C - Additional Capital Improvements

Project Name	Scope of Work	Estimated Cost	Estimated Completion Date
Entry Plaza Gift Shop	Build out of interior to new gift shop	$ 350,000	7/1/2016
Flamingo Concession	Build out of interior to new concession stand	$ 60,000	7/1/2016
Miami ICEE Concession	Remodel old Toad Stool at Children's Zoo into new concession	$ 250,000	9/1/2016
Cypress Landing Concession	Build out of interior to new concession stand	$ 40,000	11/1/2016
Nourish Café	Remodel old gift shop into a new café	$1,000,000	3/1/2017
Contingency/Future Projects	For above projects as required or other needs TBD	$ 300,000	Prior to 2020
		$2,000,000	

Attachment D

Minimum Operating Standards for Foodservice

FOOD HANDLING AND PRODUCTION

Contract Officer or Park/Facility Manager

- May direct the Foodservice Contractor to improve the quality of his offerings and the method in which they are produced, held, and served.
- At all times the Contract Officer and/or the Facility or Park Manager shall have access to all foodservice facilities and areas.

Foodservice Employee Hygiene

- Employees with boils, infected wounds, respiratory infections, or other communicable diseases shall be prohibited in areas where there is a likelihood of transmission of disease to patrons or to other employees.
- Employees shall be prohibited from smoking or using other tobacco products in any form while in food production or service areas.
- Employees shall thoroughly wash their hands and exposed portions of their arms with soap and warm water before starting work, during work, or as often as necessary to keep them clean, especially after smoking, eating, drinking, or using the restroom.
- Employees shall keep their fingernails clean and trimmed.
- Employees will consume food only in designated areas.
- Employees will wear hairnets or hats to keep hair from contaminating food.
- Uniforms shall be kept clean. One contact with soiled clothing is enough to start the contamination cycle: from clothing to hands to food.
- Employees who may come into contact with food shall use disposable latex or plastic food handler's gloves. They are to be changed after each task with hand washing and sanitizing in between glove changes.

Minimum Purchase Specifications

- All meats, meat products, poultry, poultry products, and fish must be U.S. Government inspected.
- Beef, lamb, and veal shall be U.S.D.A. Grade Choice or better.
- Pork shall be U.S. No. 1.
- Poultry shall be U.S. Government Grade A.
- Fresh fish and seafood shall be top grade; frozen fish and seafood shall be a nationally distributed brand, packed under continuous inspection of the U.S.D.A.
- Dairy products:
  - Eggs- fresh U.S.D.A. or state graded "A".
  - Butter- U.S.D.A. Grade "A" (92) score.
  - Cheese- U.S.D.A. Grade "A" for all graded cheese.
  - Milk and milk products- U.S.D.A. Grade "A".

- Fresh fruits and vegetables- U.S.D.A. fancy to U.S.D.A. Number "1" shall be used for all graded fresh vegetables and fruit as a minimum specification.
- Dry stored items and canned goods- Grade "A" fancy.
- Frozen fruits and vegetables. U.S.D.A. Grade "A".

Cross-Contamination Prevention of Food [1]

- Raw meats, fish, and poultry shall be prepared in separate areas from produce or cooked and ready-to-eat foods. (If space is unavailable, these items shall be prepared at different times.)
- Specific equipment shall be assigned (cutting boards, utensils, and containers) to each type of food product.
- After each task, all work surfaces, equipment, and utensils used shall be cleaned and sanitized.
- Cloths or towels used for wiping spills shall not be used for any other purpose.
- All transportation of food will be made in enclosed containers.

Thawing of Food [2]

- Foodservice Contractor shall utilize only the following procedures (one or more) to thaw food. Any other means will be unacceptable.
  - In a refrigerator at a temperature of 41°F (5°C) or lower.
  - Submerged under actively running potable water at a temperature of 70°F (21°C) or lower.
  - In a microwave oven.
  - As part of a cooking procedure, given the product meets the required minimum internal cooking temperature.

Cooking of Food [3]

- Prior to cooking, food will be handled properly.
- Minimum internal cooking standards shall be reached and held for the specified amount of time per food product. (All thermometers utilized shall be properly calibrated.)
  - Poultry- 165°F (74°C) for 15 seconds.
  - Stuffing, Stuffed Meats, Casseroles and dishes that combine raw and cooked food- 165°F (74°C) for 15 seconds.
  - Pork- 145°F (63°C) for 15 seconds.
  - Ground or Flaked Meats- 155°F (68°C) for 15 seconds.
  - Beef or Pork Roasts- 145°F (63°C) for 3 minutes.
  - Beef Steak, Veal, Lamb, or Commercially Raised Game Animals- 145°F (63°C) for 15 seconds.
  - Fish or Food Containing Fish- 145°F (63°C) for 15 seconds.
  - Shell Eggs (for immediate service)- 145°F (63°C) for 15 seconds.

Cooling of Food [4]

- Food that will not be served immediately shall be cooled as quickly as possible. The Foodservice Contractor shall utilize only the below means to cool food; any other means will be unacceptable.

---

[1] National Restaurant Association. ServeSafe® Essentials. U.S.A. 1999.
[2] Ibid.
[3] Ibid.
[4] Ibid.

- One stage method- cool hot cooked food from 140°F to 41°F (60°C to 5°C) within four hours.
- Two stage method- cool hot cooked food from 140°F to 70°F (60°C to 21°C) within two hours, and then to 41°F (5°C) or lower in additional four hours (total cooling time of six hours).

- Food that cannot cool within the aforementioned time parameters shall be discarded, without exception.

Food Time and Temperature Control [5]

- Thermometers shall be available in areas where needed and employees shall be trained to use them properly.
- Time and temperature controls shall be built into each recipe.
- Only freshly prepared products shall be served. Cook, hold and cool (if necessary). No leftovers will be used.
- Food will be discarded if it spends more than four hours total in the temperature danger zone, which is defined as 41°F to 140°F (5°C to 60°C).

Food Packaging

- Foodservice Contractor shall comply with Department policy prohibiting the use the below items:
  - Straws
  - Glass Bottles
  - Metal Cans
  - Glass Containers

Contractor shall adhere to a Hazard Analysis Critical Control Point plan (HACCP), which is outlined in subsequent *Sanitation and Food Safety* section. The Contract Officer must approve this HACCP plan.

SANITATION AND FOOD SAFETY

Upon receipt, the Foodservice Contractor shall make available all heath department inspections to the Contract Officer and or Park/Facility Manager.

All foodservice employees shall possess current food handlers' certification from the governing local or state jurisdiction.

All foodservice managers shall possess a valid National Restaurant Association ServSafe® certification.

Foodservice Contractor will implement a physical plant cleaning schedule for all outlets operated. This plan must be submitted to and approved by the Contract Officer.

HACCP Plan [6]

Although HACCP plans currently are not mandated by every health department, many are beginning to require them. Therefore, the Foodservice Contractor shall create and codify a HACCP plan. This plan will describe the procedures to be followed in order to:

[5] Ibid.
[6] Ibid.

- Identify foods and procedures most likely to cause foodborne illness.
- Develop procedures that will reduce the risk of a foodborne illness outbreak.
- Monitor procedures to keep food safe.
- Verify that the food served will be consistently safe.

Plan Principles

The plan created, written, and strictly followed by the Foodservice Contractor shall consist of the seven basic HACCP principles.

- Conduct a Hazard Analysis.
- Determine Critical Control Points.
- Establish Critical Limits.
- Monitor Critical Control Points (regularly).
- Perform Corrective Action (as necessary).
- Verify Procedures (regularly).
- Establish Record-Keeping and Documentation Procedures (on-going).

Plan Implementation

Once the HACCP plan has been submitted and approved by the Contract Officer, the Foodservice Contractor will implement it.

Logbooks shall be created and consistently used to regularly document activities. Examples of records include time-temperature logs, procedures for taking temperatures, standard operating procedures, calibration records, corrective actions, monitoring schedules, employee hand washing, and product specifications.

Contract Officer and/or Park/Facility Manager shall have full access to these logbooks.

CUSTOMER STANDARDS AND PROCEDURES

In addition to service standards agreed to by the Foodservice Contractor (Second Amendment to License and Concession Agreement dated 4 March 1986 section 6 titled Service Standards), the Foodservice Contractor will:

- Regularly conduct quarterly customer service seminars with all foodservice employees.
- Recognize and accommodate the needs and preferences of a diverse customer base by providing through varied men51u choices.
- Ensure customers will be greeted with a courteous greeting and thanked for each sale.
- Provide sufficient resources to insure that no wait in line is longer than 5 minutes from the time of entry until an order is taken and not more than 4 minutes from the placing of an order for the delivery of food.
- Develop a marketing plan with monthly promotions and submit to Contract Officer in advance.

PREVENTIVE MAINTENANCE PROGRAMS

Foodservice Contractor will provide and pay for routine maintenance and repairs for all Contractor-owned equipment.

Client will provide and pay for routine maintenance and repairs for all foodservice equipment.

Equipment Records

- For each piece of equipment, the Foodservice Contractor shall prepare and maintain equipment records as part of the preventive maintenance program. Records may be prepared and maintained either manually or electronically (computerized).
- Contract Officer shall have full access to these equipment records.
- The equipment record shall be the comprehensive record of history for each piece of equipment.
  - The initial step in this preventive maintenance program will be to comprehensively inventory all foodservice equipment.
  - Each piece of equipment shall have an equipment record filled out completely.
  - These records shall be regularly maintained

- The following items shall be included on the equipment record card for each piece of equipment.
  - Maintenance Service Log number.
  - Maintenance Service Log location.
  - Equipment type.
  - Inventory number.
  - Date purchased.
  - Date installed.
  - Manufacturer.
  - Model number.
  - Serial number.
  - New/used at date of purchase.
  - Company/person purchased from.
  - Utility information.
  - Standard warranty information.
  - Safety requirements.
  - Additional warranty/service contract information.
  - Services and parts manual location.
  - Preventive maintenance information location.
  - Replacement parts log.
  - Additional information/comments.

Maintenance Service Log

- The purpose of this Log shall be to record all service performed for each piece of equipment.

- Foodservice Contractor shall maintain and update (as needed) this detailed specific record of service performed on each piece of equipment.

- Information contained within this Maintenance Service Log shall include:
  - Extent and frequency of repair.
  - Evaluation of preventive maintenance costs (parts and labor).
  - Adjustment of preventive maintenance schedules respective of cost impact.
  - Parts and labor costs to assist in developing financial projections.
  - Information to determine equipment depreciation and replacement costs (to make decisions on whether to repair or buy new).

MEMORANDUM
(Revised)

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

DATE: November 1, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **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
Veto _____
Override _____

Agenda Item No. 14(A)(1)
11-1-16

RESOLUTION NO. R-1072-16

RESOLUTION AUTHORIZING, BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT AND PURSUANT TO SECTION 2-8.1(B)(3) OF THE CODE OF MIAMI-DADE COUNTY, THE DESIGNATED PURCHASE OF CONCESSION AND OPERATION OF FOOD AND BEVERAGE AND GIFT AND NOVELTY SALES SERVICES FROM SERVICE SYSTEMS ASSOCIATES, INC. (SSA) AT ZOO MIAMI WHICH SHALL EXTEND THE CONTRACT TERM FOR 10 YEARS, REQUIRE SSA TO INVEST $2,000,000.00 IN ADDITIONAL CAPITAL IMPROVEMENTS, INCREASE THE GUARANTEED ANNUAL RENT PAID TO THE COUNTY BY 36 PERCENT, AND INCREASE THE PERCENTAGE OF GROSS SALES REVENUE PAID TO THE COUNTY BY 1 PERCENT ON SECOND-TIER SALES; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE CONCESSION AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN CONSISTENT WITH CODE SECTION 2-8.1 AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board has adopted § 2-8.1(b)(3) of the Code of Miami-Dade County, which creates and provides for a designated-purchase procedure in instances in which formal sealed bids for the purchase of services is not practicable; and

WHEREAS, this Board has authorized the use of the designated-purchase procedure for the purchase of unique professional services not governed by the Consultants' Competitive Negotiations Act, § 287.055, Fla. Stat.; and

WHEREAS, the services to be performed by SSA under the Concession Agreement (attached to the accompanying memorandum as Exhibit A) are not governed by the Consultants' Competitive Negotiation Act; and

WHEREAS, pursuant to the deed dated September 30, 1975 conveying the Zoo Miami property to the County, the National Park Service (NPS) is required to approve concession agreements with third parties, such as the Concession Agreement with SSA; and

WHEREAS, the Concession Agreement has been reviewed by the NPS and the NPS has given its concurrence; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board, by a two-thirds (2/3) vote of the Board members present, finds it is in the best interest of Miami-Dade County to authorize the designated purchase of concession services from SSA, which shall extend the contract term for 10 years; require SSA to invest $2,000,000.00 in additional capital improvements; increase the guaranteed annual rent paid to the County by 36 percent; and increase the percentage of gross sales revenue paid to the County by 1 percent on second-tier sales.

Section 2. This Board approves the Concession Agreement, in substantially the form attached to the accompanying memorandum as Exhibit A and made a part hereof, for concession services at Miami-Dade County's Zoo Miami.

Section 3. This Board further authorizes the County Mayor or designee to execute the Concession Agreement, and to exercise all rights conferred therein, including the amendment and termination provisions, consistent with Section 2-8.1 of the County Code and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Audrey M. Edmonson** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of November, 2016. 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. EWF for

Miguel A. Gonzalez