

**BATTING CAGE FACILITY AGREEMENT**

**Contract No. EPP-RFP 606**

THIS AGREEMENT made and entered into as of this 27<sup>th</sup> day of October, 2008 by and between Hit Zone, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal office at 8211 S.W. 45<sup>th</sup> Street, Miami, Fl 33155 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, the County owns Tropical Park ("the Park") for the recreation and enjoyment of park patrons, which facilities are administered for the County by the Park and Recreation (the "Department") Director or designee (the "Director"); and,

WHEREAS, the Contractor has offered to operate the Batting Cage Facility at 7900 SW 40<sup>th</sup> Street, Miami, Florida in a manner that shall conform to the Scope of Services (Appendix A), Miami-Dade County's Request for Proposals (EPP-RFP) No. 606 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated February 14, 2008, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the proposal of the Contractor is recommended as being in the best interest of the County, and formed the basis for award of this Agreement,

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

1. **Use:** The County hereby grants unto the Contractor, and the Contractor hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth, this Agreement to operate the Batting Cage Facility at the Park. Contractor shall use the Batting Cage Facility only for the use permitted. The Contractor shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of the Department, and any sales by the Contractor of services or items not specifically authorized in writing by the Department shall constitute a default. Any services or items not approved shall be discontinued immediately by the Contractor. Contractor shall conduct its business at all times in accordance with this Agreement.
2. **Operations:** Except when and to the extent that the Batting Cage Facility may be untenable by reason of damage by fire or other casualty, Contractor shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein all of the Batting Cage Facility other than such minor portions thereof as are reasonably required for storage and office purposes, and such storage and office space shall only be used in connection with the business conducted by Contractor in the Batting Cage Facility. The Contractor shall have on the premises adequately trained personnel for efficient service to customers.
3. **Limitations on Use:** Subject to Contractor's right to use the Batting Cage Facility for the purposes specified in this Agreement, Contractor shall not suffer or permit the Batting Cage Facility or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Batting Cage Facility or Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Batting Cage Facility or Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Batting Cage Facility or Park or the proper and economic functioning of any other common service facility or common utility of the Batting Cage Facility or Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Batting Cage Facility or Park; or (vii) impair any of the Contractor's other obligations under this Agreement.

4. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Contractor's business in the Batting Cage Facility, or any part thereof, or if failure to secure a license or permit would in any way adversely affect the County, the Contractor at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Contractor shall at all times comply with the terms and conditions of each license and permit.
5. **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 other premises owned and operated by the County or from authorizing other concession services within the Park. The Contractor shall have no rights to any other location or concession that may be made available by the County.
6. **Appendixes:** The appendixes listed in this Paragraph and attached to this Agreement are hereby incorporated in and made a part of this Agreement:
  - Appendix A: Scope of Services
  - Appendix B: Map
  - Appendix C: Design and Construction Timeline
  - Appendix D: Construction Rider
  - Appendix E: Initially Approved Hours of Operation, Retail Items and Prices
7. **Property Description:** The Batting Cage Facility site is located at 7900 SW 40<sup>th</sup> Street, Miami, FL as shown on Appendix B, attached hereto and incorporated herein by reference.
8. **Business Application and Forms:** The Contractor shall be a registered vendor with the County -- Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling

financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

9. **Term:** The County hereby grants an Agreement to the Contractor for a term of ten (10) years, the premises described in this Agreement to be operated as a Batting Cage Facility. The term and Commencement Date of this Agreement shall begin on the 1<sup>st</sup> day of the month following execution of this Agreement.
10. **Option to Renew:** The County, at its sole option, can renew the Agreement for two (2), five (5) year periods.
11. **Initial Guarantee:** Contractor, in consideration of the use of the land does hereby covenant and agree with the County to pay to the County without deduction or set off of any kind the sum of \$500 (including tax) per month for the Initial Guarantee period on the first day of each month without billing beginning on the Commencement Date of this Agreement through the Date of Beneficial Occupancy (as defined below).

The term "Date of Beneficial Occupancy" (DBO) shall mean the earliest of (i) the date on which substantial completion of the Batting Cage Facility has occurred, and the appropriate code enforcement agency has issued a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) that enables the Contractor to occupy or utilize the Batting Cage Facility in a manner for its intended use; (ii) the date on which the Contractor commences the use of any portion of the Batting Cage Facility for its intended use (with or without a TCO or CO); or (iii) the date on which substantial completion of the Batting Cage Facility would have occurred and on

which the appropriate code enforcement agency would have issued a TCO or CO but for the occurrence of Contractor's delays, all as determined in the sole reasonable discretion of the County.

12. **Monthly Guarantee:** Contractor, in consideration of the use and occupancy of the Batting Cage Facility, does hereby covenant and agree with the County to pay to the County without deduction or set off of any kind the sum of \$18,000 (including tax) per annum as Monthly Guarantee in monthly installments of \$1,500 (including tax) on the first day of each month without billing effective during the period from the DBO to the termination date of the Agreement.
13. **Percentage of Monthly Gross Receipts:** In addition to the Monthly Guarantee, Contractor agrees to pay to the County, monthly, an amount equal to five percent (plus tax) of monthly gross receipts, hereinafter referred to as "Percentage of Monthly Gross Receipts" effective during the period from the DBO to the termination date of the Agreement. The County reserves the right to re-negotiate with the Contractor the Percentage of Monthly Gross Receipts should the County decide to exercise the first Option to Renew.

As an incentive, should the Contractor complete the design and construction of the Batting Cage Facility in the time specified in Appendix C, including the Grand Opening, the Contractor shall not be required to pay the Percentage of Monthly Gross Receipts for the first 60 days after DBO.

14. **Sales Tax:** The Contractor shall be liable for the prevailing State of Florida Sales and Use Tax imposed on payments (currently at the rate of 7%) on Monthly Gross Receipt payments. This Sales and Use Tax shall be payable to the County, when payments are due, which in turn will remit same, less authorized handling deductions, to the State.
15. **Additional Taxes:** If at any time during the term of this Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on guarantees (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, against the County on account of the payments or percentage fees payable

herein, such tax, charge, capital levy, or excise on guarantees or other taxes shall be deemed to constitute real estate taxes on the Batting Cage Facility and the premises for the purposes of this Paragraph.

16. **Taxes on Contractor's Personal Property:** Contractor 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 Batting Cage Facility by Contractor.
17. **Late Payment Charge:** In the event that the Contractor fails to make any payments to the County 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 are paid. The right of the County to require payment of such late payment charge and the obligation of the Contractor to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.
18. **Application of Payments:** Payments to the County by the Contractor will be applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Monthly Guarantee and Percentage of Monthly Gross Receipts and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
19. **Worthless Check or Draft:** In the event that the Contractor delivers a dishonored check or draft to the County in payment of any obligation arising, the Contractor shall incur and pay a service charge of \$25.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment to be made within not more than 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 a dishonored check may be considered a breach of this Agreement and, at the County's option, may constitute a default allowing for

termination of the Agreement by the County.

20. **Payment of Fees:** The Monthly Guarantee payable by the Contractor 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 Contractor to the County under the terms of this Agreement, all of which shall be deemed to be additional payments 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. The Percentage of Monthly Gross Receipts shall be paid to the County on or before the 10th day following the end of each month for the previous month during the term of this Agreement and on or before the 10th day of the month following the expiration or earlier termination of the Agreement. All guarantees and percentage fees provided for in this Agreement shall be paid or mailed to:

Miami-Dade Park and Recreation Contract Management Section  
275 N.W. 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
Miami, FL 33128

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

21. **Accord and Satisfaction:** No payment by Contractor or receipt by County of a lesser amount than any payment of Monthly Guarantee or additional payments or Percentage of Monthly Gross Receipts herein stipulated shall be deemed to be other than on account of the earliest stipulated Monthly Guarantee or additional payments 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 Monthly Guarantee or additional payments 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 Monthly Guarantee or additional payments or Percentage of Monthly Gross Receipts or pursue any other remedy provided in this Agreement, at law or in equity.
22. **Gross Receipts:**
- A. Agreement Year Defined: "Agreement Year" means a twelve-month period beginning on the

effective date of this Agreement and every year thereafter that the Agreement is in effect.

- B. **Gross Receipts Defined:** "Gross Receipts" means all receipts from the sale of services or merchandise by Contractor, concessionaires of Contractor and sub-Contractor(s) of Contractor, sold in, upon or from the Batting Cage Facility, including such sales as shall in good faith be credited by Contractor, its concessionaires, and sub-Contractors in the regular course of its or their business to personnel employed at the time of sale at the Batting Cage Facility, including sub-concession agreements or contract employee payments to the Contractor and mail and telephone orders received at the Batting Cage Facility and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Contractor or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment or other property used by Contractor or its concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Contractor, or its concessionaires, whichever of such events shall first occur.
- C. **Contractor's Certification of Receipts:** Contractor shall submit to County on or before the 10th day following the end of each month during the term of this Agreement and on or before the 10th day of the month following the expiration or earlier termination of the term, a written statement, signed by Contractor and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Contractor shall submit to County on or before the 60th day following the end of each Agreement Year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Contractor and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Agreement Year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.
- D. **Examination of Contractor'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 Contractor's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Contractor's business. All information obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except 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. Contractor's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of each Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Contractor. Contractor shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Contractor shall keep, for at least three (3) years following the end of each Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with sub-Contractors, 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 Contractor's Gross Receipts.

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

- F. **Audit of Contractor's Business Affairs and Records:** County shall have the right to cause, upon five (5) days written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County. Contractor shall make all such records available for said examination at the Batting Cage Facility or at some other mutually agreeable location. If the result of such audit shall show that Contractor's statement of Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payments. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Agreement for financing purposes.
- G. If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, the Contractor shall be deemed to be in default of this Agreement.
- H. Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, sub-Contractors and assignees. Nothing contained in this provision shall impair any independent

right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review. According to Section 2-1076 of the Code of Miami-Dade County, 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.

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

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to

performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful sub-Contractors 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.

23. **New Construction:** The Department's approval is required prior to all construction, all installation and all use of facilities. The Contractor shall bear all costs associated with such construction, installation and use. Contractor shall spend approximately \$273,986.33 for immediate improvements, as represented in the Contractor's Proposal. All improvements shall become the property of the County at the termination of the Agreement. All construction shall be accomplished in according with the Construction Rider.
24. **Security Deposit:** Contractor shall furnish a Security Deposit in cash equal to three (3) months Monthly Guarantee redeemable at the end of the Agreement except for such conditions pertinent thereto, or in such other media, as further described, acceptable to the County. The Contractor 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 Contractor 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 Contractor 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, Contractor hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon.
25. **County Approval:** The Contractor agrees that it will 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 Contractor plans to install requiring any building modifications?
- C. Aesthetics of Batting Cage Facility;
- D. Any use of the County's, Park's or Facility's name;
- E. Hours of Operation; and
- F. Uniforms to be used by employees which shall be consistent with or better than those normally used by professionally operated tennis facilities.

Further it is understood by the Contractor that should any of the above items be disapproved, Contractor may offer alternative solutions. The County reserves the right with stated just cause to require the Contractor 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 Contractor's Employees:** Contractor'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 request his or her removal from duties in the Batting Cage Facility. Contractor's employees are not agents of the County.
27. **Hours of Operation:** The Batting Cage Facility shall operate seven (7) days a week during those hours approved by the County. Sufficient staff will be provided by the Contractor to provide customer 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:** Contractor shall maintain the pricing schedule attached hereto, and as approved by the Department. If the Contractor wishes to change its standard prices, Contractor will provide to the County a schedule of such proposed changes not later than thirty (30) days prior to the intended implementation date, for approval or disapproval, when price changes are contemplated. Pricing for special events or services shall be expeditiously approved by the Department.
29. **Personnel:** The Contractor shall provide the Department with the name and telephone number of a management person of the Contractor who will be on call, at all time, for emergencies or other matters related to the operations. The Contractor shall ensure that all its personnel are courteous and

cooperative and present a neat, clean and professional appearance at all times. The Contractor shall ensure that all employees having public contact are able to understand and communicate in spoken English.

30. **Signs:** The nature, size, shape and installation of Contractor's business signs within the Batting Cage Facility or in, on or adjacent to the Batting Cage Facility or Park must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in the Article 7 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Contractor 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 Contractor.
31. **On-Site Manager:** The Contractor shall employ a qualified full-time on-site manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Contractor and to accept service of all notices provided for herein.
32. **Quality of Contractor's Service:** The Contractor 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 Contractor shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, and upon objection of the County concerning the conduct, demeanor or appearance of any such person, Contractor shall immediately take all necessary steps to correct the cause of such objection.

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

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

therefore.

It is expressly understood and agreed that the said operation shall not interfere in any manner with the use of public areas or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Contractor agrees that a determination by the County will be accepted as final in evaluating whether its activities infringe on the rights of others and that Contractor 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 Contractor, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means.

34. **Equipment and Services Provided by Contractor:** The Contractor, at its sole cost, shall provide at the Batting Cage Facility:

A. Janitorial Service within the Batting Cage Facility

The Contractor shall keep the Batting Cage Facility and equipment clean at all times. If the Batting Cage Facility and equipment are not kept clean in the opinion of the Department, the Contractor will be so advised and if corrective action is not immediately taken, the Department will cause the same to be cleaned and the Contractor shall assume responsibility and liability for such cleaning.

B. Pest Extermination

The Contractor shall follow the guidelines of the County's Integrated Pest Management Program.

35. **Equipment Installed by Contractor:** The Contractor shall furnish and install all furnishings, fixtures and equipment necessary for the operation of the facilities. All furnishings, fixtures and equipment acquired for the Batting Cage Facility shall be of a high quality as good as or better than that found at similar facilities. The County shall be afforded the opportunity to approve all furnishings, fixtures and equipment for the Batting Cage Facility.

Any equipment, furnishings, signage and advertising installed by the Contractor shall be in

compliance with Article 7 of the Home Rule Charter and in keeping with the appropriate standards of decor at the Park. Following the installation of any additional equipment, furnishing and improvements which the County may approve from time to time, Contractor 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.

Contractor agrees that all new equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes. Contractor shall not alter or modify any portion of the Batting Cage Facility, or the improvements constructed therein without first obtaining written approval from the County.

36. **Security and Protection:** The Contractor acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Batting Cage Facility or Park, outside of standard security measures supplied by the County in general. Contractor may provide its own specialized security for the Batting Cage Facility, subject to the County's written approval.
37. **Hurricane Preparedness:** The Contractor shall follow the County's emergency evacuation and hurricane plan as set forth for the Park in conjunction with the Batting Cage Facility's emergency evacuation and hurricane plan.
38. **Maintenance Responsibilities of Contractor, Appearance of Facility:** Contractor shall, at its sole cost and expense, keep and maintain the Batting Cage Facility in a clean and good condition. The provision of janitorial services and all interior maintenance within the Batting Cage Facility are the sole and exclusive responsibility of the Contractor. Upon failure of the Contractor to maintain the Batting Cage Facility as required in this Paragraph, the Department may, after fifteen days written notice to the Contractor, enter upon the Batting Cage Facility 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 Contractor.
39. **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.

40. **Utility Services:** The County has caused all necessary utility lines and services to be brought to the Batting Cage Facility. Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Park as determined either by the public utility providing such service or by the Department in the exercise of reasonable judgment. Contractor shall make all repairs caused by Contractor's negligence.
41. **Payment of Utility Services:** Contractor agrees to pay for all charges for utility service used or consumed in or upon the Batting Cage Facility including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such charges are separately measured by metering or otherwise, Contractor agrees to pay the actual cost thereof, without addition or surcharge by the County.
42. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Contractor may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Contractor or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of payments or other charges, nor damages, shall be claimed by Contractor by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Contractor's obligations hereunder be affected or reduced thereby.
43. **Damages:** Contractor shall repair all damages to the Batting Cage Facility or Park caused by the Contractor, its employees, agents, sub-Contractors or independent Contractors.

44. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all the Batting Cage Facility, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Contractor shall make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of this Agreement.
45. **Right of Entry:** The County shall have the right to enter upon the Batting Cage Facility at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Batting Cage Facility as the County deems necessary, but the County assumes no obligation to make repairs in the Batting Cage Facility 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 Contractor 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 Batting Cage Facility at reasonable times to show them to actual or prospective mortgagees, tenants, or Contractors of the Park. During the one hundred and eighty (180) days prior to the expiration of this Agreement, the County may show the Batting Cage Facility to prospective tenants. If, during the last ninety (90) days of the term of this Agreement, Contractor shall have removed all or substantially all of Contractor's property there from, the County may immediately enter, alter, renovate, and redecorate the Batting Cage Facility without elimination or abatement of payments or other compensation and such action shall have no effect upon this Agreement.
46. **Damage or Destruction of Premises:** If either the Batting Cage Facility or the building is partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall with due diligence be repaired by the Contractor from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the Monthly Guarantee payable hereunder for the period of the Contractor's business interruption, shall be made. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within

thirty (30) days, the damage shall be repaired with due diligence by the Contractor from the proceeds of the insurance coverage policy and/or at its own cost and expense, and for the period of Contractor's business interruption a pro-rata adjustment shall be made as to the Monthly Guarantee and utility fees.

In the event the said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, the Contractor and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the payments 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 premises in an Agreement, the Contractor may reconstruct the premises at its own cost.

47. **Repair, Facility Repairs, Alterations and Additions:** The Contractor, as its responsibility, and at its expense (except if the damage is caused by Contractor), 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 Batting Cage Facility. There shall be no allowance to Contractor 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, Contractor or others making any repairs, alterations, addition, improvements, restorations, or replacements, in or to any portion of the Batting Cage Facility or Park, 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 Batting Cage Facility, free from any and all liability to the Contractor 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 or intentional misconduct by the County, subject to the limitations of Section 768.28, Florida Statutes, and where not otherwise indemnified

by the Contractor. In making such repairs, alterations, and additions, the County shall take such reasonable measures as are necessary to minimize interference with Contractor's operations of the Batting Cage Facility, for short term disruption of one week or less to Contractor's business where adequate accommodations can be made to minimize the inconvenience and injury to Contractor's business. If the Contractor's business is interrupted for more than one week, a pro rata adjustment of the Monthly Guarantee payable hereunder for the period of such interruption shall be made.

48. **Diminution for County's Repair:** Except as elsewhere specifically provided in this Agreement, there shall be no allowance to Contractor for a diminution of rental value and no liability on the part of the County by reason of inconvenience, annoyance or interference with Contractor's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Batting Cage Facility, the Park or the building or buildings contained within the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Contractor's use of the Batting Cage Facility.
49. **Performance of Obligations:** Contractor covenants at all times during the term of this Agreement to perform promptly all of the obligations of Contractor set forth in this Agreement.
50. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Batting Cage Facility, Contractor, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.
51. **Assignment, Sub-contracting, and Successors in Interest:**
- A. Contractor shall not assign, mortgage, pledge nor otherwise encumber this Agreement or any portion thereof, nor any property associated with this Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging 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. Contractor shall not enter into any sub-contract for services required to be provided without prior written approval of the County. Unapproved sub-contracting shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on any sub-Contractors, including percentage payments on gross receipts as defined in this Agreement. Contractor shall be liable for acts and omissions by any sub-Contractor affecting this Agreement. The County reserves the right to directly terminate (and evict or pursue any applicable remedy) any sub-Contractor of the Contractor for any cause for which Contractor may be terminated.

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

C. Should the Batting Cage Facility reside in a geographic area that incorporates, becoming an independent municipality, the rights and obligations granted the County may be assigned upon the Park's conveyance to the municipality or may be terminated by 30 days notice by either party to the other party.

52. **Ownership of Contractor:** The ownership of the Contractor 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 Contractor has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in the best interests of the public. Contractor agrees to provide on 24-hour notice to the County an accurate list of all owners of the Contractor, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Contractors, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

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

policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Batting Cage Facility which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Batting Cage Facility is located or the property therein over the rate which would otherwise then be in effect (unless County agrees and Contractor pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the County. If, by reason of any act or omission on the part of Contractor, the rate of property insurance on the Batting Cage Facility or Park or equipment or other property of the County shall be higher than it otherwise would be, Contractor shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of Contractor, which sum shall be deemed additional payments for purposes of collection only.

54. **Contractor's Insurance:** The Contractor shall furnish to the County Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Workmen's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Public Liability Insurance - this policy shall be endorsed to include products & completed operations liability insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

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

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

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of 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 Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

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

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

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor

shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

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

55. **Release and Indemnification:** Contractor shall hereby release and relieve the County and hold and defend the County harmless from and against any and all liabilities, obligations, damages, penalties, claims, cost, charges, and expenses which may be imposed upon or incurred by the County by reason of loss of life, personal injury, and/or damages to property occurring in any part of the Batting Cage Facility or Park, or business losses, occasioned in whole or in part by the negligence of Contractor, its agents or employees. Contractor shall defend, indemnify, and save harmless Miami-Dade County and its agents and employees against and from all liabilities, obligations, damages, penalties, claims, costs, expenses, and attorney's fees which may be imposed upon or incurred by or asserted against Miami-Dade County and/or its agents arising from Contractor's use of the Batting Cage Facility, during the term of this Agreement or during any period of time that Contractor may have been given access to or possession of all or any part of the Batting Cage Facility. The County shall not be liable for any damages or injury which may be sustained by any party or person on the Batting Cage Facility, other than the damage or injury caused solely by the negligence of the County subject to all limitations of Florida Statutes Section 768.28.

56. **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 also set forth below.

- A. The County may automatically terminate the Agreement if any of the following occur.
- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor;
  - ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days;
  - iii. Assignment by Contractor for the benefit of creditors;
  - iv. Abandonment or discontinuation of operations for more than a 24-hour period without prior written approval from the County;
  - v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement;
  - vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County; or
  - vii. Failure of Contractor to cease any activity which may cause limitation of County's use of the Park.
- B. The County may terminate the Agreement after seven (7) calendar days, by written notice either by posting on or at the Batting Cage Facility and by certified or registered mail, to any known address of Contractor set forth in this Agreement if any of the following occur.
- i. Non-payment of any sum due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. (Additionally, the County may sue for Monthly Guarantee and additional payments and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.); or
  - 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. The County may terminate Agreement after fourteen (14) days from receipt by Contractor of

written notice having either been posted on or at the Batting Cage Facility or by certified or registered mail to the address of the Contractor set forth in this Agreement if any of the following occur.

- i. Non-performance of any covenant of this Agreement other than non-payment of payments or performance fees and others listed in A and B above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice
  - ii. A final determination in a court of law in favor of the County in litigation instituted by the Contractor against the County or brought by the County against Contractor.
- D. Revenue Control and Audit Defaults: The inability or failure of the Contractor 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 Contractor. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required in this Agreement.
- E. Habitual Default: Notwithstanding the foregoing, in the event that the Contractor has repetitively defaulted (4) four times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Contractor, regardless of whether the Contractor has cured each individual condition of breach or default as provided herein above, the Contractor may be determined by the Director of the Department to be an "habitual violator". At the time that such determination is made, the Department shall issue to the Contractor a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Contractor that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach (es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and,

collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may cancel this Agreement upon the giving of written notice of termination to the Contractor, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Contractor shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Contractor shall discontinue its operations at the Park, and proceed to remove all its personal property in accordance with this Agreement.

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

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

58. **Surrender of Premises:** At the expiration or earlier termination of this Agreement, Contractor shall peaceably surrender the Batting Cage Facility in as good a condition as the Batting Cage Facility was on the Commencement Date of this Agreement, ordinary wear and tear and damage by

condemnation, fire or other casualty excepted. Contractor shall deliver all keys for the Batting Cage Facility to the County at the place then fixed for the payment of payments, and shall notify the County in writing of all combinations of locks, safes and vaults, if any, in the Batting Cage Facility. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Contractor's property or trade fixtures into or out of the Batting Cage Facility. Contractor'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.

59. **Termination of Contract:** Following the termination of this Agreement the Contractor, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property not acquired under the terms of this Agreement. Any personal property of Contractor not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Contractor or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Contractor for the safekeeping of Contractor's personal property during or after termination of this Agreement. The County shall have the senior interest in the Contractor's personal property. Contractor shall not remove any equipment, supplies in bulk, or fixtures within the Batting Cage Facility at any time without pre-approval in writing from the County. Contractor shall be liable to the County for the fair market value of any equipment, supplies in bulk, or fixtures removed without County pre-approved written permission. Contractor shall also be liable for any expenses incurred by the County in prosecuting any action against Contractor following unapproved item removal described above. Contractor shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Contractor. It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by the Contractor except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Contractor. Upon the termination of this Agreement and the removal of all personal property by Contractor, the Contractor shall deliver said premises to the County in the condition set forth in this Paragraph. The County reserves the

right to avail itself of all remedies and procedures contained in Chapter 83 of the Florida Statutes regarding Landlord/Tenant provisions for eviction and Chapter 51 of Florida Statutes regarding summary proceeding.

60. **Holding Over:** If Contractor fails to surrender the Batting Cage Facility upon the termination of this Agreement, then Contractor, 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 Contractor on such failure.
61. **Lien:** The County shall have a lien upon all personal property of the Contractor on the Batting Cage Facility to secure the payment to the County of any unpaid money accruing to the County under the terms of this Agreement.
62. **Limiting Legislative or Judicial Action:** In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability. If the County deems the Agreement null and void by function of this Paragraph, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability.
63. **Non-Discrimination:** Contractor does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:
- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Batting Cage Facility, except as provided by law.

- ii. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except as provided by law.
- iii. That the Contractor 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 Batting Cage Facility thereon and hold the same as if said Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.

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

64. **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 Monthly Guarantee or additional payments or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Agreement, other than the failure of

Contractor to pay the particular Monthly Guarantee or additional payments or Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Monthly Guarantee or additional payments or Percentage of Monthly Gross Receipts. No covenant, term, or condition of this Agreement shall be deemed to have been waived by 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 Contractor.

- 65. **Rules and Regulations:** The Contractor will observe, obey, and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Contractor's operations. Failure to do so will constitute a breach of the Agreement.
- 66. **Notices:** Any notices submitted or required by this Agreement shall be sent by registered or certified mail addressed to the parties as follows:

1. To the County:

- a) To the Project Manager (the duly authorized representative designated to manage the Project) :

Miami-Dade Park and Recreation Department  
275 NW 2<sup>nd</sup> Street, 5<sup>th</sup> Floor  
Miami, Florida 33128  
Attn: Park and Recreation Director

And

- b) To the Contract Manager (the duly authorized representative designated to manage the Contract):

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974  
Attention: Director  
Phone: (305) 375-5548  
Fax: (305) 375-2316

2. To the Contractor:

Hit Zone, Inc.  
8211 SW 45<sup>th</sup> Street

Miami, FL 33155  
Attention: Steven Zelenka  
Phone: 305-303-8107  
E-mail: hitzone@bellsouth.net

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 Batting Cage Facility. 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.

**67. Authority of the County's Project Manager:**

- A. The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- B. The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- C. The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- D. In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting

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

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

68. **Interpretations:** This Agreement and the attachments hereto, and other documents specifically referred to 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 and executed by, and delivered to both parties hereto. For the County, appropriate authorization shall mean the County Manager (or designee) or the Contract Manager (or designee) within this Agreement or the Board of County Commissioners (as applicable). 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.

69. **Rights Reserved to County:** All rights not specifically granted to the Contractor 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.
70. **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.
71. **Headings:** The headings of the various Paragraphs and Sections of this Agreement, and its Table of Contents, 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.
72. **Waiver:** Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.
73. **No Partnership or Agency:** The County and the Contractor 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 Contractor.

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

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

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

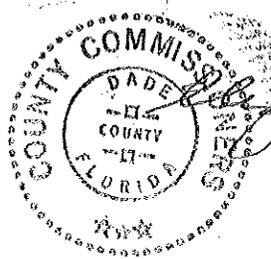
Contractor

Miami-Dade County

By: [Signature]  
Name: STEVEN ZELEUKA  
Title: President  
Date: 7/31/08  
Attest: [Signature]  
Corporate Secretary

By: [Signature]  
Name: AMOS C. Roundtree  
Title: Director, Purchasing Division  
Date: 10/9/08

Approved by County Attorney as to Form and Legal Sufficiency



[Signature]

## APPENDIX A - SCOPE OF SERVICES

### 1.1 INTRODUCTION

The Contractor shall develop a batting cage facility and provide batting practice services to the general public. The Contractor shall have to use the area as shown on the attached site aerial (Exhibit B) which includes a 17,200 square foot area available for the development of the batting cage facility and an existing 630 square foot building.

### 1.2 DESIGN

- 1.2.1 The batting cage facility shall be an open air batting cage facility that incorporates design elements that make it compatible with Tropical Park. There are no exceptions allowed to the open air design of the batting cage facility. The facility design shall meet all applicable building codes and shall be in compliance with the requirements contained in Article 7 of the Miami Dade County Home Rule Charter. The appearance of the batting cage facility is subject to approval by the Department, at its sole discretion.
- 1.2.2 The Contractor shall submit for approval the Conceptual Plan illustrating the assessment and design of an open air batting cage facility to the Department. Further, the Contractor shall submit to the Department Preliminary and Final Plans pursuant to the Department's then current Construction Rider (Exhibit D).

### 1.3 FACILITY IMPROVEMENTS

The current batting cage area is provided in as-is condition. Improvements of the batting cage facility shall occur with minimum impact to the public's enjoyment of Tropical Park.

- 1.3.1 The Contractor shall perform all facility improvements in compliance with the South Florida Building Code, acquiring all necessary permits. The Contractor shall obtain Departmental approval prior to starting construction of the facility improvements and pursuant to the Department's then current Construction Rider sample.
- 1.3.2 The Contractor shall submit a comprehensive timeline for the start-up of the batting cage facility, including the improvement phase, to the Department for its approval.
- 1.3.3 The Contractor shall complete the facility improvements and begin full operation not later than 365 days after obtaining all required permits. In the case that delays are beyond the control of the Contractor, the County may, at its sole discretion, grant a written extension.
- 1.3.4 The total cost of the construction, as defined per Florida Statute 255.20, for the batting cage facility shall not exceed \$200,000. The threshold amount of \$200,000 must be adjusted by the percentage change in the Consumer Price Index from January 1, 1994 to January 1 of the year in which the project is scheduled to begin. There are no exceptions allowed to exceed the stated construction cost. The Contractor shall submit for approval to the Department the estimated cost of the construction certified by a Certified Public Accountant (CPA) pursuant to the Generally Accepted Accounting Principles (GAAP).
- 1.3.5 The Contractor shall bear all costs associated with all improvements and installations of the batting cage facility and all such improvements and installations shall become the property of the County at the termination of any agreement as a result of this Solicitation.

### 1.4 OPERATION

The Contractor shall maintain the batting cage facility in the same condition, order and repair as at the commencement date, or better, excepting only reasonable wear and tear arising from the use thereof under the agreement. The Contractor shall secure the facility and all equipment. The County will not accept any responsibility for the Contractor's furnishing, fixtures, equipment, or supplies stored in the facility.

- 1.4.1 The Contractor shall provide the following services:

- A. If not otherwise available, the Contractor shall provide all things necessary to fulfill the requirements herein, including furnishings, fixtures, and equipment. All equipment and personal property furnished by Contractor shall be of good quality and suitable for its purpose.
- B. The Contractor shall provide adequate lighting in order for the facility to function without the support of any external lighting from Tropical Park. The Contractor shall install any additional lighting, electrical work prior to beginning operation of the batting cage facility and reactivate the meter of the facility.
- C. The Contractor shall coordinate activities with the Department during operations. The Contractor shall not undertake any activity which interferes with the operation of Tropical Park.
- D. The Contractor shall comply with all applicable 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 Contractor's operations of the batting cage facility.
- E. The Contractor shall provide services at the batting cage facility; open to the general public from 10 am until park closing on weekends and from 2 pm until park closing on weekdays.
- F. The Contractor shall have the option of providing the public with limited food and beverage concession, i.e. drinks and snacks, and retail merchandise related to the batting cage facility operation. The food and concession area of the batting cage facility shall be in compliance with the requirements contained in Article 7 of the Miami Dade County Home Rule Charter. No exceptions are allowed on the requirements of this sub-section "F". All goods and services provided and prices charged by the Contractor shall have prior approval by the Department. The prices for the goods and services may be modified only by written request from the Contractor to the Department and upon approval by the Department Director.
- G. The Contractor and its employees or hired staff shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Contractor's employees or hired staff and not as employees of the Department.
- H. The Contractor shall be diligent in ensuring the safety of the patrons of Tropical Park by meeting the requirements of Chapter 26 - Park and Recreation Department Rules and Regulations, Section 2, Article III entitled "The Shannon Melendi Act", for all owners, employees, and volunteers that will provide any services at the Park prior to the scheduled start of employment or volunteerism.
- I. The Contractor shall furnish good, prompt and efficient service, adequate to meet all reasonable customer demands subject to approval by the Department. Minimum service levels shall be:
- 1) The Contractor shall provide services that meet the users' needs and is suitable for the facility as approved by the Department.
  - 2) The Contractor shall provide batting cage services that can be utilized by both children and adults, and equipment for both baseballs and softballs.
  - 3) The Contractor shall have exclusive rights only to the batting cage area and will be permitted to operate only to the extent that there is no interference with the normal operation of Tropical Park. Such determinations of interference will be made by the Department.
- J. The facility shall be operated seven days a week during those hours of operation necessary to serve the public as approved by the Department. Sufficient attendants shall provide customer service to the public during the hours of operation. Prior to beginning operations, the Contractor

shall submit a schedule of intended hours of operation and staff levels to the Department for approval. The Department may require changes in hours of operation or staff levels if, in the discretion of the Department, such a change is desirable or necessary in providing services.

K. The Contractor shall provide the Department its emergency evacuation plan and hurricane plan stating how the Contractor shall secure the equipment and the facility in the event of an emergency.

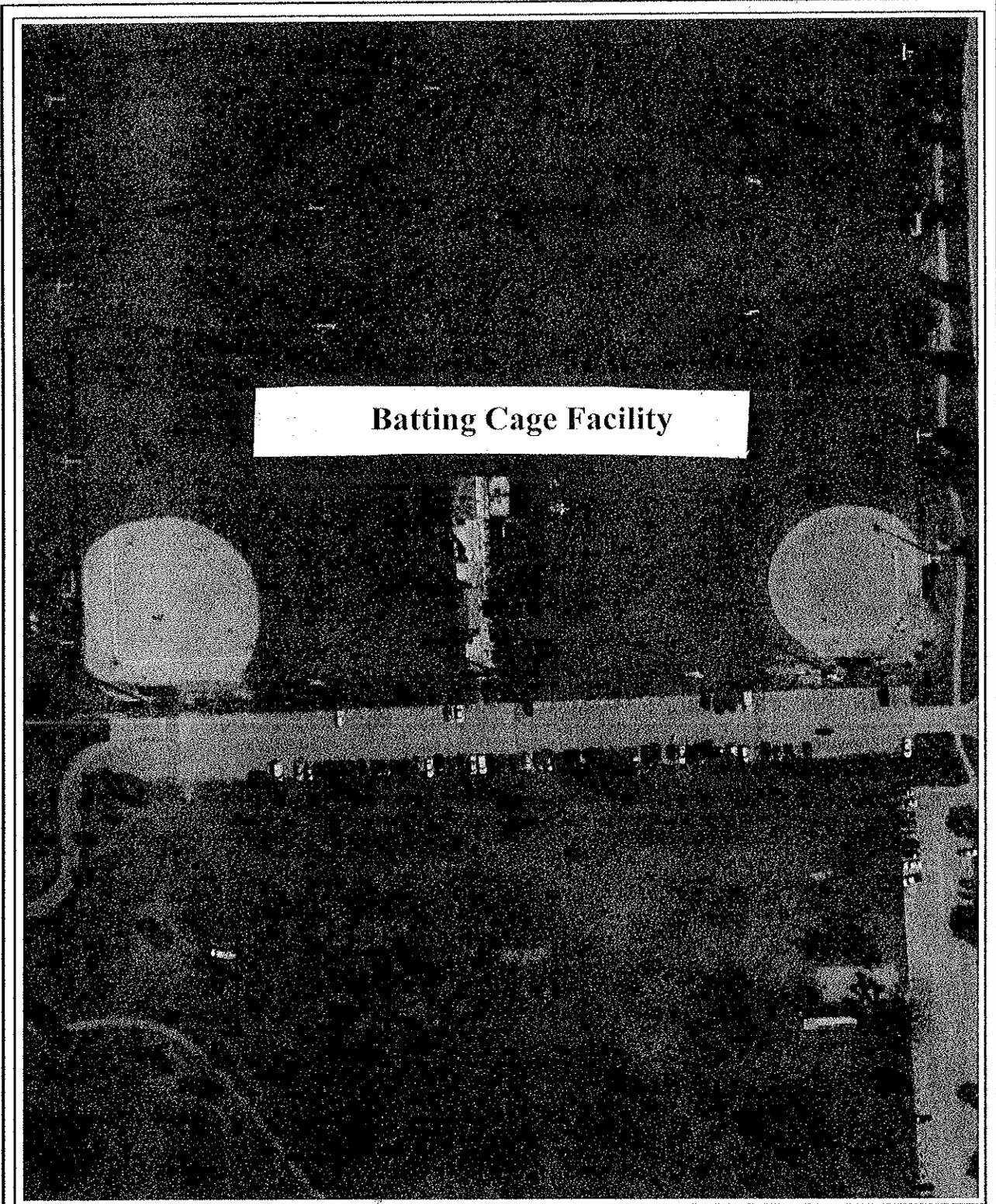
L. The Contractor shall take good care of facility and shall use the same in a careful manner and shall, at its own cost and expense, repair County property or facility damaged by the Contractor's operations under this Solicitation.

### **1.5 Marketing**

The County shall promote the batting cage facility, whenever possible, utilizing the following marketing devices available by the Department:

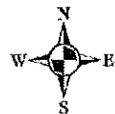
- 1.5.1 Park's News Release of the grand opening of the batting cage facility.
- 1.5.2 Website link of the batting cage facility from the Park's website ([www.miamidade.gov/parks](http://www.miamidade.gov/parks)).
- 1.5.3 Marquee located in front of the Park to be utilized for the grand opening, special events, etc.
- 1.5.4 Excerpts in Park Life Magazine (printed and online) highlighting the services offered at the batting cage facility.
- 1.5.5 Excerpts in marketing materials printed for summer camps, youth sport leagues and/or softball/baseball leagues at the Park highlighting the services offered at the batting cage facility.

**Batting Cage Facility**

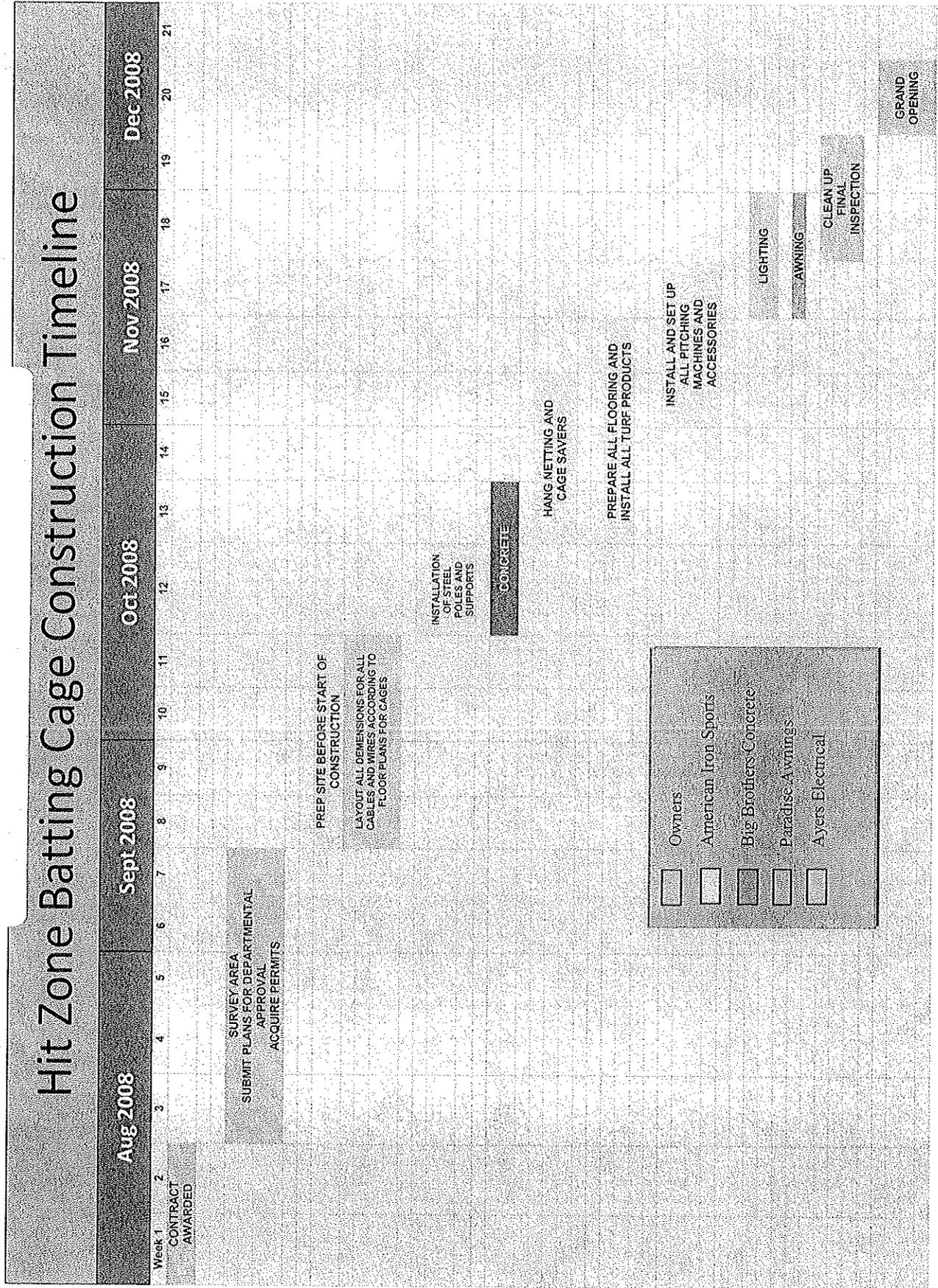


MAP PREPARED BY:  
MIAMI-DADE COUNTY  
PARK AND RECREATION  
PLANNING AND RESEARCH DIVISION  
JUNE, 2007

1 inch equals 40 feet



# APPENDIX C Design and Construction Timeline



Construction phase should only take twenty(20) weeks. Our goal is to have our grand opening on Dec. 13, 2008. However, if delays present themselves that are beyond this proposer's control (i.e. Hurricane), we will present the County with a new timeline immediately for their approval.

APPENDIX D  
CONSTRUCTION RIDER

Premises: Tropical Park, Miami Dade County

Facility/Project: Batting Cages

This Construction Rider is attached to and hereby made a part of the Agreement covering certain premises at the location above (the "Park") as provided in Exhibit B of the Agreement, Batting Cages at Tropical Park (the "Facility"). Words and phrases used in this Construction Rider shall have the same meaning as in the Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Construction Rider and the provisions of the terms and conditions of the Agreement, the terms and conditions of the Agreement will prevail.

I. CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES

For the purposes of this Construction Rider, Improvements shall mean the structure or public utility or any other installation or physical change made to the Facility to increase its value and utility or to improve its appearance. The Improvements the Contractor constructs at the premises shall be constructed in accordance with the provisions of this Agreement and such costs associated with the Improvements shall be limited to the requirements defined in Florida Statute 255.20 section (1).

A. Conceptual Plans. The Department shall have 60 days from receipt of the Conceptual Plan to review the Conceptual Plans and to solicit input from other government agencies in order to provide feedback to the Park regarding the general aesthetics, layout, traffic and pedestrian flow, site orientation and design of the proposed Improvements.

B. Sustainable Buildings Program. The Contractor shall cooperate and shall cause its subcontractors and subconsultants to cooperate with the County's Sustainability Manager incorporating green building practices into the planning and design of the Facility, pursuant to County Ordinance Number 07-65 concerning the County's Sustainable Buildings Program.

The Contractor shall cause each of its subcontracts to include a provision that the subcontractor and/or subconsultant:

1. shall comply with all requirements of the County's Sustainable Building Program;
2. will maintain all files, records, accounts of expenditures for contractor's or consultant's portion of the Project;
3. that such records shall be maintained within Miami-Dade County; and
4. that County shall have access thereto as provided in this Agreement.

C. Preliminary Plans and Specifications. Within 90 days after the Department notifies Contractor that the Department has approved the Conceptual Plan or provided notification to Contractor detailing required modifications, Contractor, at its cost, shall prepare and deliver to the Department five (5) "Preliminary Plans," including one Mylar set (A CADD file may be submitted in lieu of the Mylar set) for the construction of the Improvements, reference as Batting Cage Facility at Tropical Park, at the Premises prepared by an architect or engineer licensed to practice as such in Florida, which Preliminary Plans shall include and show, without limitation, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from the Park, curbs, gutters, parkways, lighting,

design and locations for outdoor signs, storage areas, landscaping, and structures all sufficient to enable reasonably accurate cost estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect the Facility shall have on the Park. Such Preliminary Plans shall be based on Conceptual Plans previously submitted by Contractor to the Department. Additionally, such Preliminary Plans of the improvements shall be in strict adherence to Article 7 of the Miami-Dade County Home Rule Charter. The Project shall be constructed within the exterior property lines of the Premises; provided that required work beyond the Premises or utilities, access and conditional use requirements will not violate this provision. The Facility shall be aesthetically and functionally compatible with the setting of the Park.

Within 60 days after the Department receives Preliminary Plans as required in the preceding paragraph, the Department shall either approve of them or deliver to Contractor specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Contractor shall exercise reasonable diligence in attempting to resolve any objections by the Department to the Preliminary Plans.

If the parties are unable to resolve any objections by the Department to the Preliminary Plans within 30 days after Contractor has received the Department's objections, the Department shall have the right to terminate the Agreement upon notice to the other party, the parties being thereafter relieved of any liability hereunder and under the Agreement.

D. Final Plans. Within 90 days after the Preliminary Plans and specifications are approved between the parties, the Contractor, at its cost, shall prepare and deliver to the Department five (5) sets of Final Plans, including one Mylar set or CADD file, and specifications and working drawings ("Final Plans") covering the Project, which Final Plans must be consistent with the approved Preliminary Plans and signed and sealed by an architect or professional engineer licensed to practice as such in Florida. The Final Plans and all associated addenda and attachments shall be incorporated to the Agreement by reference.

E. Permits. Not later than the date that Contractor receives the Department's approval of the Final Plans as required in this Section, Contractor shall commence seeking from all governmental agencies having jurisdiction over the Park and the Facility all such required permits, and Contractor shall exercise due diligence in attempting to obtain such permits.

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

If Contractor is unable to obtain such permits within 120 days from the date Contractor delivers copies of the Final Plans to the Department as herein required, the Department shall have the right to terminate the Agreement upon notice to the other party. If Contractor is unable to obtain such permits within such period of time due solely to delays beyond the reasonable control of Contractor, including, without limitation, acts of God, inclement weather, and like matters as mutually agreed between the Contractor and the Department, such period of time may be extended by the Department up until such permits have been obtained. However, if such permits are not obtained within 270 days from the date Contractor delivers copies of the Final Plans to the Department, notwithstanding the reason therefore, or by such deadline as parties may reasonably agree the Department shall have the right to terminate the Agreement upon notice to the other party.

*When Contractor obtains all such permits it shall deliver copies of them to the Department.*

F. Commencement and Completion of Construction of the Project. Within 30 days from the date that the Department receives copies of the permits and authorizations regarding construction of the Project, which permits and authorizations shall be delivered to the Department within 3 business days of receipt by the Contractor, the Department shall deliver a Notice to Proceed with Construction and shall turn over possession of the Facility to Contractor, and Contractor shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Project shall be in accordance with the Final Plans. The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

All work in connection with the construction of the Project shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws. Contractor will permit unobstructed inspection by the Department's staff to determine compliance with the approved plans and specifications throughout construction.

The Contractor nor its subcontractors shall discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to his/her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap except where based on a bona fide occupational qualification; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts between the Contractor and its subcontractors shall include the above non-discrimination provisions.

Contractor agrees that construction of the Project shall be completed in the time specified in Appendix C of the Agreement. However, both parties agree that Contractor's obligation to commence construction of the Project and diligently pursue completion thereof is subject to delays resulting from causes beyond the reasonable control of Contractor including, without limitation, acts of God, inclement weather, and like matters.

Upon completion of construction of the Project, Contractor shall, at its cost, obtain a survey of the Facility and deliver to the Department "as built" drawings, including copies all of CADD drawing, accurately reflecting the Project at the Park. Both parties agree to execute and attach to the Agreement, a new Exhibit B showing the exact location of the Facility at the Park.

G. Provisions Applicable during Construction of Project In addition to the other provisions of the Agreement, the following provisions shall be applicable during the period of time that Contractor constructs Project:

1. Contractor shall notify the Department of Contractor's intention to commence construction of the Project at least twenty (20) days before the delivery of the Notice to Proceed by the Department.
2. All construction shall be performed by licensed contractors approved by the Department. Contractor shall furnish the Department with a true copy of Contractor's contract with the general contractor showing a breakdown of costs. Such contract shall give Contractor the right, but not the obligation, to assume the general contractor's obligations and rights under that contract if the general contractor should default.
3. During the construction of the Improvements, the Department or its designee shall periodically inspect the construction to ensure conformity with the approved improvement

documents, and any changes thereto requested by the Contractor and approved by the Department in writing.

H. Construction Bonds:

1. At least ten (10) days prior to any construction work on the Premises is commenced, or prior to the purchase of any materials, equipment or supplies for construction, the Contractor shall deliver to the County and record in the public records of Miami-Dade County, Florida, a payment and performance bond with a surety insurer authorized to do business in the State of Florida as a surety in the full amount of the construction cost of the Improvements. Such bond shall be in the form provided and attached hereto as part of the Construction Rider, and shall name the Contractor as the principal and the County as the obligee.

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

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

<u>Bond Amount</u>	<u>Best's Rating</u>
500,001 to 1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,001 to 10,000,000	A VIII
Over 10,000,000	A IX

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

1. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued,
2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

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

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

The Contractor may in lieu of a surety bond, submit a cash bond, conditioned upon the faithful performance of the work in strict accordance with this Contract and with the Plans and Specifications and the completion of the same free from all liens and within the time limit herein specified; the said Bond shall be so worded as to make the Contract a part thereof and shall contain a clause providing the right of suit or action for whose benefit said bond

shall be executed as disclosed by the text of said Bond and Contract to the same extent as if he or they were the obligee or obligee therein specifically mentioned, and all such persons shall be held or deemed to be obligee thereof.

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

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

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

"No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies."

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

a. That a payment bond in an amount not less than the cost of construction of the Project is obtained that is conditioned to secure the completion of the Project free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen in substantially the form attached hereto;

b. That a performance bond in an amount not less than the cost of construction of the Project is obtained that insures that the construction work shall be effected by the general contractor or, on their default, the surety in substantially the form attached hereto; and,

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

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

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

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

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

2. Prior to the commencement of any work, Contractor shall demonstrate to the Department's satisfaction that all construction financing is in place.
3. Contractor shall work closely with the Department in scheduling and engaging in Contractor's construction activity so as not to disrupt Park events, including but not limited to Special Events. Where conflict may occur, the Department shall solely make the determination as to Contractor's right to continue work and the desirability of temporarily halting or continuing activity by Contractor.
4. Contractor shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by Contractor's failure to cease work after written notice from the Department.

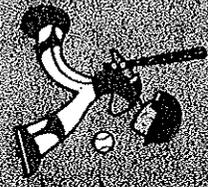
## II. THE DEPARTMENT'S CONSTRUCTION OBLIGATIONS

A. Conditions of Premises. The Department shall deliver physical possession of the Premises to Contractor in an "as is" condition so that Contractor may commence construction.

B. Reasonable Access. The Department shall provide reasonable access to allow Contractor to have utilities brought to the Premises and to have constructed the approved improvements described in this Agreement.

C. Liquidated Damages. N/A

APPENDIX E

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
8am-9am	8am-10am Hit Hit Off Toss!!!	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	Fee Lesson First Saturday of the Month
9am-10am	OPEN FOR BUSINESS 8AM - 8PM	OPEN FOR BUSINESS 8PM - 9PM	OPEN FOR BUSINESS 3PM - 9PM	OPEN FOR BUSINESS 3PM - 9PM	OPEN FOR BUSINESS 3PM - 9PM	OPEN FOR BUSINESS 3PM - 9PM	OPEN FOR BUSINESS 8AM - 8PM
10am-11am							
11am-12pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
12pm-1pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
1pm-2pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
2pm-3pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
3pm-4pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
4pm-5pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
5pm-6pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
6pm-7pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
7pm-8pm	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED	CLOSED
8pm-9pm	Close-out and Inventory Check 8pm-9pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 8pm-9pm
9pm-10pm	Close-out and Inventory Check 8pm-9pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 9pm-10pm	Close-out and Inventory Check 8pm-9pm

Hours of Operation

Monday - Friday 3pm - 9pm Saturday - Sunday 8am - 8pm  
 Any changes to our hours of operation will be done in writing and sent to the county for approval.  
 (Example: Extending hours on holidays and during the summer break for summer camps etc.)

APPENDIX E

Price List

<p><b><u>Batting Cages</u></b> (Tax Included)</p> <p>1 token = 18 balls                  \$2 per token                  \$10 for six (6) tokens                  \$100 for fifty (50) tokens and One 30 minute hitting lesson</p> <p>30 minutes cage time    \$25</p> <p>Sunday Special Half off (8am-10am)                  1 token = \$1</p>	<p><b><u>Practice Cages</u></b> (Tax Included)</p> <p>40 practice balls (rental)    \$5                  30 minutes cage time    \$15                  60 minutes cage time    \$25</p> <p>County Leagues get \$5 off every 60 minute cage time (must show county receipt)</p>
<p><b><u>Private Pitching, Hitting and Throwing lessons By a Former Major League Baseball Player</u></b> (Tax Included)</p> <p>30 minutes    \$30                  60 minutes    \$45</p> <p>Six(6) 30 minute lessons    \$150</p>	<p><b><u>Birthday Parties</u></b> (Tax Included)</p> <p>\$200 Rental + \$50 Deposit = Totals \$250                  Includes: 75 tokens or One 60 minutes batting cage, Hot Dog or Pizza and refreshments for 15 people, One 60 minutes practice cage time w/ instructor</p> <p>Each additional person \$6                  \$10 additional 30 minutes practice cage time                  \$20 additional 30 minutes batting cage time</p>
<p><b>Training Sessions Monday – Thursday \$30 per class / \$250 for a 10 pack</b></p> <p><b>Free</b> Introductory Pitching, Throwing or Batting Lesson and Evaluation</p> <p><b>First Saturday of Every Month (8am-10pm) the First fifteen (15) Little Leaguers will get a free Pitching, Hitting and Throwing Lesson by a former Major League Baseball Player.</b></p>	
<p><b><u>Food and Beverages</u></b>                  (Tax Included)</p> <p>\$1    Drinks (12oz Soda, 20oz Gatorade, 16oz Water)                  \$1    Candy (Individual Size)                  \$.50    Chips (1oz bags)                  \$1    Ice Cream (Individual Size)</p>	<p><b><u>Merchandise</u></b>                  (Tax Included)</p> <p>\$5-\$25                  Apparel    \$22-\$200                  Softball Bats    \$30-\$100                  Baseball Bats    \$10-\$40                  Batting    \$30-\$150                  Gloves                  Mitts</p>