

MEMORANDUM

Amended
Agenda Item No. 14(A)(1)

TO: Honorable Vice Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 19, 2020

FROM: Geri Bonzon-Keenan
Successor County Attorney

SUBJECT: Resolution approving, by a two-thirds vote of Board members present, a designated purchase pursuant to section 2-8.1(c)(3) of the Code to approve a Concession Agreement between Miami-Dade County and Haulover Marina, LLC, for the renovation, operation, and maintenance of a personal watercraft storage facility at Haulover Park located at 10800 Collins Avenue, Miami Beach for a term ending April 30, 2040, with estimated revenues to the County of \$1,845,090.00 over the term; authorizing the County Mayor to execute the Concession Agreement for and on behalf of Miami-Dade County and to exercise all rights and provisions contained therein

R-1218-20

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Geri Bonzon-Keenan
Successor County Attorney

GBK/uw

Memorandum



Date: November 19, 2020

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

From: Carlos A. Gimenez
Mayor 

Subject: Recommending Approval of a Concession Agreement Between Miami-Dade County and Haulover Marina, LLC for the Renovation, Operation, and Maintenance of a Personal Watercraft Storage Facility at Haulover Park

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a designated purchase, pursuant to Miami-Dade County Code (County Code) Section 2-8.1(c)(3), by a two-thirds vote of the Board members present, to approve a Concession Agreement (the Agreement) between the County and Haulover Marina, LLC (the Concessionaire) for the renovation, operation, and maintenance of a personal watercraft storage facility (Concession) at Haulover Park (the Park).

Scope

The Park is located at 10800 Collins Avenue, Miami Beach, within County Commission District 4, which is represented by Commissioner Sally A. Heyman. The Concession will serve and be open to all residents of Miami-Dade County; therefore, the scope is countywide.

Fiscal Impact

There will be a positive fiscal impact to the County realized through percentage fee payments included in the Agreement of 14% on gross receipts generated from the Agreement and paid on a monthly basis. It is estimated that the Agreement will generate approximately \$1,845,090 in revenue to the County over the 19-year term of the Agreement ending April 30, 2040. There will be no fiscal impact to the County in the renovation and operation of the Concession improvements, as the Concessionaire will pay the costs associated with the design, development, permitting, construction, operation, and maintenance of all improvements.

Track Record/Monitor

The County has no record of any negative performance issues with the Concessionaire. The Miami-Dade Parks, Recreation and Open Spaces (PROS) department's Assistant Director of Performance Excellence, Christina Salinas Cotter, will monitor the Agreement.

Background

Haulover Park is a heritage and significant coastal beach park operated by the County and is open from sunrise to sunset. The Park serves residents and visitors from the central and northern portions of the County seeking access to beaches and a natural tropical setting for swimming, fishing, picnicking, boating, and other leisure activities. The location of the proposed Concession has been operated since 1995 by Westrec Equities, Inc. (Westrec) as a dry boat storage facility with bait and tackle and fuel dock operations as well as towboat services and a snack bar. In August 2010, Westrec and the County executed the Amended and Restated Lease Agreement (Lease Agreement) with Westrec to provide for a one-time lease extension of 25 years in exchange for significant increase in

rental payments and for a major capital renovation and expansion of the dry boat storage facility by building a new boat barn and new bait and tackle facilities in another area of the Park. As part of its leasehold financing of the new facilities, Westrec assigned the Lease Agreement to Concessionaire (an affiliated entity).

Following construction of the new facilities, the Lease Agreement provides that PROS was to send a reclamation notice to Concessionaire to demolish and remove the existing dry stack boat storage racks on the original premises, remove the underground fuel storage tanks and associated piping/dispensers, undertake and deliver a complete tank closure and assessment report, as required by DERM, pave and restripe the original premises for parking purposes and otherwise vacate the original premises. In accordance with provisions in the Lease Agreement, PROS issued the Concessionaire the reclamation notice on or about August 2, 2019. While at the time that the Lease Agreement was executed by the County, it was contemplated that the dry stack boat storage racks on the original premises in the Lease Agreement would be demolished and paved for a parking lot, the needs of the Park patrons and the community have since changed, and there remains a community need for the storage of personal watercrafts at the Park, including jet skis, kayaks, canoes, and paddleboards. In an effort to meet the community need, the Concessionaire submitted a proposal to renovate and operate the existing west dry rack structure that was originally contemplated to be demolished, for personal watercraft storage. As a result of the on-going negotiations to enter into an agreement with the Concessionaire for the renovation and operation of the west dry rack structure, a revised reclamation notice was issued on August 14, 2020, to exclude the west dry rack from the structures to be demolished.

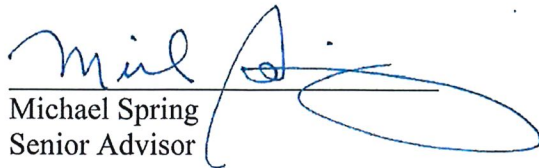
Section 1.2 of the Lease Agreement provides, among other things, that the Concessionaire has the exclusive right to provide boat storage anywhere within the Park. Accordingly, it is not practicable to issue a competitive solicitation for the Concession as it would conflict with the exclusive rights language in the Lease Agreement. It is in the best interest of the County and it is recommended to enter into an agreement with Concessionaire for the renovation, operation, and maintenance of the Concession due to the demand and community need for personal watercraft storage, the exclusive rights for boat storage throughout the Park afforded to the Concessionaire as part of the Lease Agreement, and the projected revenue to the County that will be utilized by the Park to enhance operations. It is also recommended due to the Concessionaire's extensive experience in providing watercraft storage services along with their commitment to renovating the existing west dry rack structure at their own expense.

The Concessionaire has a proven track record of an excellent partnership with the County and PROS and has met all financial and contractual obligations since their assumption of the Lease Agreement in May 1995. The Concessionaire has shown evidence throughout the performance of the Lease Agreement that they have the experience and financial capacity to fund the renovation of the existing dry rack storage, in addition to extensive experience in the operation and maintenance of a boat storage facility that is maintained in a quality and first class manner.

The Concessionaire's obligations in accordance with the Agreement (Attachment A) consists of the renovation, operation, and maintenance of a personal watercraft storage facility. The renovation of the Concession includes repainting, refinishing, replacing racks and beams where necessary, and reducing the height of the top beam to approximately 30 feet. The final conceptual plan will be

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and Members, Board of County Commissioners
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submitted to PROS for review and approval, and the improvements will be designed and constructed in accordance with the provisions of the Agreement. The Concessionaire will be solely responsible for expenses related to necessary equipment, repairs, and maintenance required to implement the provisions of the Agreement. The term of the agreement is approximately 19 years structured to be coterminous with the Lease Agreement.


Michael Spring
Senior Advisor

Attachments

**PERSONAL WATERCRAFT STORAGE CONCESSION AGREEMENT AT
HAULOVER PARK**

Concession Agreement No. ____

THIS CONCESSION AGREEMENT (the “**Concession Agreement**”) is made and entered into as of this ____ day of _____, 2020 (the “**Effective Date**”) by and between **HAULOVER MARINA, LLC**, a limited liability company organized and existing under the laws of the State of Delaware, having its principal office at 16633 Ventura Boulevard, Suite 600, Encino, California 91436 (hereinafter referred to as “**Westrec**” or the “**Concessionaire**”), and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (herein referred to as the “**County**” and jointly with Westrec referred to herein as the “**Parties**”).

RECITALS:

A. The County owns Haulover Park (the “**Park**”) for the use by patrons, Concessionaire, employees, and visitors, and which facilities are administered for the County by its Director (the “**Director**”) of the Parks, Recreation and Open Spaces Department (the “**Department**”) or designee.

B. The “Amended and Restated Lease Agreement” (as amended, the “Lease Agreement”) between Westrec (as “Lessee”) and the County (as “Lessor”) dated August 5, 2010 at Section 1.2 (titled “Exclusive Use Rights”) provides, among other things, that Westrec has the exclusive right to provide boat dry storage to the public anywhere within the Park (“Storage Exclusivity”).

C. There exists a public need for personal watercraft storage facilities at the Park.

D. The County and the Concessionaire desire to renovate, operate, and maintain a personal watercraft storage concession (the “**Concession**”) within a portion of the Park that was part of the “**Original Premises**” (as defined in the Lease Agreement), but which as of the Effective Date is deemed no longer to be subject to the Lease Agreement (such portion, the “**Site**”) in a manner that shall conform to the Scope of Services (Appendix A), all Appendices, and all addenda and attachments incorporated herein by reference, and the requirements of this Concession Agreement.

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

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

- a) The words “**Concession Agreement**” or “Agreement” shall mean collectively these terms and conditions, all associated appendices, addenda and attachments, and all other attachments hereto and all amendments issued hereto.
- b) The words “**Concession Agreement Year**” shall mean each twelve-month period running from May 1 through April 30 of the ensuing year, with a partial Concession Agreement Year starting on the Effective Date and running through April 30, 2021.
- c) The words “**Contract Manager**” shall mean Miami-Dade County’s Director, Parks, Recreation and Open Spaces Department, or the duly authorized representative designated to manage the Concession Agreement.
- d) The word “**County**” shall mean Miami-Dade County.
- e) The words “**Concession**” or “Personal Watercraft Storage Concession” shall mean the operation providing for the storage of personal watercraft at the Site, as further defined in Appendix A.
- f) The word “Concessionaire” shall mean Haulover Marina, LLC and its permitted successors and assigns.
- g) The words “**Concessionaire Project Manager**” shall mean the duly authorized representative of the Concessionaire designated to manage the Project on behalf of the Concessionaire.
- h) The words “**Construction Project Manager**” shall mean the duly authorized representative of the County designated to manage and oversee the Project, unless otherwise indicated.
- i) The word “**Days**” shall mean calendar days.
- j) The words “**directed**”, “**required**”, “**permitted**”, “**ordered**”, “**designated**”, “**selected**”, “**prescribed**” or words of like import shall mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County’s Project Manager; and similarly the words “**approved**”, “**acceptable**”, “**satisfactory**”, “**equal**”, “**necessary**”, or words of like import shall mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the reasonable opinion of the County’s Project Manager.
- k) The words “**force majeure**” shall mean any cause which is not within the reasonable control of a party including, but not limited to, acts of God or the public enemy, moratoriums, fire or other casualty, explosions, riots, strikes, shortages of labor or materials, or war.
- l) The words “**Notice to Proceed**” shall mean a letter issued by the Department advising the Concessionaire that it may begin construction of the Concession.

Concessionaire recognizes that the Department will not provide the Notice to Proceed unless and until the Florida Department of Environmental Protection ("FDEP") has reviewed and approved the Project.

- m) The phrase "**the Park**" shall mean Haulover Park, located at or around 10800 Collins Ave, Miami Beach, FL 33154.
- n) The words "**Personal Watercraft**" or "**PWC**" shall mean jet skis, eco-friendly watercraft such as kayaks, canoes, and stand-up paddleboards, and similar small vessels.
- o) The word "**Project**" shall refer to the renovation of the West Rack (as defined below).
- p) The words "**Scope of Services**" shall mean the work to be performed and the services to be provided by the Concessionaire as set forth in Appendix A.
- q) The word "**Site**" shall mean the area in the Park wherein Concessionaire is authorized and required to provide the services set forth in the Scope of Services and as specifically depicted on the Site Map attached hereto as Appendix B.
- r) The word "**sublicensee**" shall mean any person, entity, firm or corporation, other than the agents, affiliates and employees of the Concessionaire, which furnishes labor and/or materials, in connection with the Scope of Services, whether directly or indirectly, on behalf and/or under the direction of the Concessionaire and whether or not in privity of Concession Agreement with the Concessionaire.
- s) The words "**West Rack**" shall mean the existing, western boat storage rack located within the Site.

1. Property Description; Nature of Agreement: The Concession shall be located and operated at the Site. This Concession Agreement is not a lease agreement and the terms, conditions, rights and obligations covered by this Concession Agreement shall not create, nor are intended to create, any property interest in the Park. This Concession Agreement only creates the rights and obligations of the Concessionaire to operate a personal watercraft storage concession at the Site. Additionally, the Concessionaire is granted (i) non-exclusive use of existing parking and restrooms within the Park and outside of the Site for use by its customers upon the same terms as provided to the general public at Park parking locations, and (ii) five (5) decals will be issued for the non-exclusive use of existing parking and restrooms within the Park and outside of the Site for use by Concessionaire's employees free of charge.

2. Permitted Use and Operations:

A. The County hereby grants unto the Concessionaire, and the Concessionaire hereby accepts from the County for the Term specified in this Concession Agreement, at the rate and upon the covenants and conditions as set forth, the rights and obligations to renovate the Improvements and operate and maintain a

personal watercraft storage Concession and the exclusive right to utilize the Site for such purpose. The Concessionaire shall use the Site solely for the renovation, operation, and maintenance of a personal watercraft storage facility. The Concessionaire shall provide the deliverables set forth in the Scope of Services attached as Appendix A.

B. The Concessionaire shall not conduct any business nor provide any services nor sell any item or product other than Personal Watercraft storage without the prior written approval of the County. The Concessionaire shall conduct its business at all times in accordance with this Concession Agreement.

C. Except when and to the extent that (i) the Site may be unusable by reason of damage by fire or other casualty, or (ii) the West Rack and/or the Site are being repaired or renovated, the Concessionaire shall operate the Concession for purposes outlined herein, utilizing adequately trained uniformed personnel to provide the Scope of Services to customers.

D. Subject to the Concessionaire's right to use the Site and operate the Concession for the purposes specified in this Concession Agreement, the Concessionaire shall not suffer or permit the Concession or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way violate any applicable laws, rules, ordinances, orders and regulations, including Article 7 of the Miami-Dade County Home Rule Amendment and Charter ("**Applicable Laws**") of all governmental entities (each a "**Governmental Entity**") having jurisdiction over the Site and the Concession.

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

F. The Concessionaire shall furnish all labor, materials, tools, supplies, and other items required to perform the Scope of Services that are necessary for the renovation of the Improvements and the operation, and maintenance of the Concession.

3. Governmental Approvals:

A. If any governmental license or permit shall be required for the proper and lawful conduct of the Concessionaire's business in the Concession, or any part thereof, the Concessionaire, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. The Concessionaire shall at all times comply with the terms and conditions of each license and permit. The Concessionaire covenants and agrees that the Concessionaire will obtain any and all necessary permits and licenses for its operation of the Concession and that all uses of

the Site will be in conformance with all Applicable Laws. To the extent that any of the existing permits and/or licenses the Concessionaire may have for its other operations at the Park may apply to or be utilized in connection with the Concession, the Concessionaire may utilize such permits and/or licenses for such purpose, and need not obtain separate permits and/or licenses.

B. The Concessionaire understands and agrees to abide by the applicable (as determined by the Department of the Interior, National Park Service and State of Florida) Land and Water Conservation Fund (“**LWCF**”) guidelines as stated in Chapter 8, Section D, “Leasing and Concessions in Section 6(f)(3) Restricted Area” of the LWCF Manual (see https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf), to wit: (i) the County shall periodically review the performance of the Concessionaire and may terminate this Concession Agreement pursuant to the terms of this Concession Agreement (including but not limited to providing the Concessionaire with notice of default and opportunity to cure) if any of the terms and the provisions of the LWCF grant agreement, including the LWCF guidelines or standards of maintenance, public use, and accessibility, are not met; (ii) the Concessionaire shall operate the Site and Concession for public outdoor recreation purposes in compliance with the provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59), with the Site and Concession to be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, and as such operated by the Concessionaire to eliminate the perception that the Site is private (provided, however, that nothing herein shall prevent the Concessionaire from fencing and securing the Site); (iii) the Concessionaire shall ensure that all fees charged by the Concessionaire are competitive with similar facilities; and (iv) the Concessionaire shall ensure the Site and the Concession are in compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act), and such compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

4. Non-Exclusivity: This Concession Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services, products or items by other vendors or others in other parks owned and operated by the County or from authorizing other unrelated concession services within the Park; provided, however, that the County recognizes that Westrec retains the Storage Exclusivity, and nothing herein shall affect or reduce such Storage Exclusivity. The Concessionaire shall have no rights to any other location outside the Park that may be made available by the County for the purposes of storing PWC.

5. Order of Precedence: If there is a conflict between or among the provisions of this Concession Agreement and its Appendices, attachments and exhibits, the order of precedence is as follows: (1) these terms and conditions; and (2) appendices to these terms and conditions, including the Scope of Services (Appendix A), and any associated appendices, attachments, exhibits, etc.

6. Appendices and Attachments: The following Appendices listed in this paragraph and attached to this Concession Agreement are hereby incorporated in and made a part of this Concession Agreement:

Appendix A - Scope of Services

Appendix B - Site Map

Appendix C - Development Rider

Appendix D - CAD Standards, Survey Standards, PDF, and CD-DVD Requirements

7. Nature of the Concession Agreement:

A. This Concession Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Concession Agreement. The Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Concession Agreement that are not contained in this Concession Agreement, and that this Concession Agreement contains the entire agreement between the Parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

B. It is further agreed that any oral representations or modifications concerning this Concession Agreement shall be of no force or effect, and that this Concession Agreement may be modified, altered or amended only by a written amendment duly executed by both Parties hereto or their authorized representatives. For the County, appropriate authorization shall be construed to mean authorization of either the County Mayor (or his or her designee), the Contract Manager (or his or her designee), or the Board of County Commissioners (as applicable), as determined by the County.

C. Notwithstanding the foregoing, the Parties acknowledge and agree that the Lease Agreement contains certain obligations regarding demolition and restoration of the Original Premises by the Concessionaire, as more specifically set forth in the revised reclamation notice sent by the County to the Concessionaire dated August 14, 2020 and the Concessionaire shall abide by all of the obligations set forth in said reclamation notice.

8. Term: The County hereby grants this Concession Agreement to the Concessionaire to renovate, operate and maintain the Concession for a term (the "**Term**") of approximately nineteen (19) years, five (5) months, with such Term commencing upon the Effective Date of this Concession Agreement and ending on April 30, 2040.

9. Improvements: Concessionaire shall not alter or modify any portion of the Park outside of the Site without first obtaining written approval from the County.

Concessionaire shall renovate the West Rack and undertake the Project in accordance with the provisions of and subject to the timelines and deadlines set forth in the attached Development Rider (Appendix C). Construction or permanent fixtures (other than renovations and/or modifications of the West Rack and the portions of the boat basin and docks within the Site, which Concessionaire is required to renovate and improve pursuant to the terms and conditions of the Development Rider are not permitted. All proposed renovations and/or modifications within the Site (together, the “**Improvements**”) shall be coordinated with the County so as not to impede or delay any State and/or County construction projects existing at the time of execution of this Concession Agreement.

10. Ownership of Improvements:

A. During the Term of this Concession Agreement, all Improvements existing upon the Site at the Effective Date of this Concession Agreement shall be the property of the County, and all Improvements existing upon the Site which are constructed by the County or the Concessionaire after the Effective Date shall be the property of the County from and after the completion of construction.

B. Upon such expiration or earlier termination, the Concessionaire shall surrender the Site to the County free and clear of all liens and encumbrances other than those in effect as of the Effective Date, current non-delinquent taxes and matters consented to by the County; provided, however, and anything contained herein to the contrary notwithstanding, in the event that this Concession Agreement terminates prior to the originally contemplated termination date as a result of a condemnation, and if the Concessionaire is not in default under the terms of this Concession Agreement as of the date of such early termination, the Concessionaire will receive from the County (if County has received compensation for same) a sum equal to the amount paid for the Improvements constructed or repaired or renovated by Lessee, multiplied by a fraction, the numerator of which will be the remaining months under the Term from the date of early termination and the denominator of which will be the total number of months of the originally contemplated Term. Nothing herein shall prohibit Concessionaire from making a claim for any loss or damage resulting from such condemnation, if and as permitted by law, provided however: (i) any claim by Concessionaire shall not impact or lessen any compensation due to the County; and (ii) Concessionaire shall have no claim or right to apportionment against the proceeds received by the County. Nothing herein shall be construed as an admission or agreement by the County that any such claim by Concessionaire is compensable

C. All personal property purchased by the Concessionaire for use on the Site shall remain the property of Concessionaire regardless of termination of this Concession Agreement, free and clear of any lien in favor of the County. However, the Concessionaire shall remove from the Site all such personal property on or before the scheduled termination date of this Concession Agreement. If this Concession Agreement shall be terminated for any reason before its scheduled termination date, the Concessionaire shall be given a reasonable time, not to exceed sixty (60) days, to remove its personal property after such early termination.

11. Percentage of Gross Receipts - Percentage Fee: As its sole payment obligation under this Concession Agreement, the Concessionaire agrees to pay to the County, monthly, fourteen percent (14%) of gross revenues generated by the Concession for each month of the Term, based on Gross Receipts (defined below) from Personal Watercraft rack storage fees collected by the Concessionaire pursuant to the Concession (the "**Percentage Fee**"), which shall be paid to the County on or before the 20th day of the month following the month for which the Percentage Fee is due during the term of this Concession Agreement. Payment of Percentage Fees shall be made by wire transfer through wire instructions delivered by the County to the Concessionaire upon execution of the Agreement.

12. Sales Tax: As and to the extent required by Applicable Laws, the Concessionaire shall be liable for the prevailing State of Florida Sales and Use Tax imposed on payment (currently at the rate of 7%) on the Percentage Fee payments due under this Concession Agreement. This Sales and Use Tax shall be payable to the County, when applicable payment is due. The County will remit same, less authorized handling deductions, to the State.

13. Additional Taxes: If at any time during the Term of this Concession 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 payments (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, is levied against the County on account of the payment of Percentage Fees payable herein, such tax, charge, capital levy, or excise on payments or other taxes shall be the responsibility of the Concessionaire.

14. Taxes on Concessionaire's Personal Property: The Concessionaire shall be responsible for, and shall pay before delinquency, all municipal, county, or state taxes assessed against the Concessionaire's personal property of any kind, owned by or placed in, upon or about the Concession by the Concessionaire.

15. Late Payment Charge: In the event that the Concessionaire fails to make any payment on time, by the due date, as required to be paid under the provisions of this Concession Agreement, and within five (5) business days after receipt of written notice from the County, a late payment charge equal to the greater of 1.5% of the payment due and \$100.00 (the "**Late Charge**"), shall be assessed with respect to each such late payment. The right of the County to require payment of such Late Charge and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu of the County's rights to enforce other provisions herein, including termination of this Concession Agreement, or to pursue other remedies provided by Applicable Laws.

16. Application of Payments: Payments shall be applied to any unpaid balance in the following manner. Any accrued Late Charges are first deducted from the payment. The remaining payment balance is then applied proportionately to the Percentage Fee, including the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.

17. Worthless Check or Draft: In the event that the Concessionaire delivers a dishonored check or draft to the County in payment of any obligation arising under this Concession Agreement, the Concessionaire shall incur and pay a service charge equal to the greater of 1.5% of the payment due and \$40.00. For each such dishonored check, such payment shall be made within not more than five (5) days from written notice of such default. Further, in such event, County may require that future payments required pursuant to this Concession Agreement be made by cashier's check or other means reasonably acceptable to County. A second such occurrence of dishonored check during the Concession Agreement term will be a breach of contract and, at the County's option, will constitute a default hereunder.

18. Payment of Fees: The Percentage Fee as well as any other amounts payable by the Concessionaire to the County under the terms of this Concession Agreement, shall be paid promptly when due without abatement.

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

To the County:

To the Project Manager:

Miami-Dade County Parks, Recreation and Open Spaces Department
275 N.W. 2nd Street, 5th Floor
Miami, Florida 33128
Attn: Director
Phone: (305) 755-7974
Fax: (305) 755-7890

And

To the Contract Manager:

Miami-Dade County Parks, Recreation and Open Spaces Department
275 N.W. 2nd Street, 5th Floor
Miami, Florida 33128
Attn: Contracts Management Division
Phone: (305) 755-7994
Fax: (305) 755-7890

To the Concessionaire:

Haulover Marina, LLC
16633 Ventura Blvd., Suite 600

Encino, CA 91436
Attention: William Anderson and Jeffrey K. Ellis
Phone: (818) 907-0400
E-mail: jeffkellis@aol.com; and BAnder4382@aol.com

With a copy to:

c/o Westrec Marinas
801 N.E. Third St.
Dania Beach FL 33004
Attention: Gary Groenewold and John Louis
E-mail: southregion@westrec.com; and louis826@msn.com

With a copy to:

Jon Chassen, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
E-mail: jchassen@bilzin.com

or at such other address as from time to time may be designated in writing by the party receiving the notice. If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient, said notice will have the effect of being constructively received by the recipient.

20. Interpretations: This Concession Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The Concession Agreement shall not be construed in favor of one party or the other. All matters involving the Concession Agreement shall be governed by laws of the State of Florida.

21. Accord and Satisfaction: No payment by the Concessionaire or receipt by County of a lesser amount than any payment of Percentage Fee herein stipulated shall be deemed to be other than on account of the earliest Percentage Fee then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Percentage Fee be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Percentage Fee or pursue any other remedy provided in this Concession Agreement, at law or in equity. No covenant, term, or condition of this Concession Agreement shall be deemed to have been waived by County, unless such waiver be in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and the Concessionaire.

22. Gross Receipts:

A. Gross Receipts Defined: “**Gross Receipts**” means all monthly storage receipts collected by the Concessionaire for the storage of PWC within the Site by the Concessionaire, its sub-concessionaires and sublicensee(s) of the Concessionaire. Gross Receipts shall not be deemed to mean or include the following: amounts credited by the Concessionaire or its sub-concessionaires or sublicensees to Concession storage customers (each a “**Storage Customer**”); sales, excise and similar taxes; or the proceeds of sales of the Concessionaire’s trade fixtures, operating equipment or other property used by the Concessionaire or its sub-concessionaires or sublicensees in the operation of its business and not acquired or held by it for the purpose of sale.

B. Concessionaire’s Certification of Receipts: After the Concessionaire commences and for so long as the Concessionaire continues its operation of the Concession, the Concessionaire shall furnish to County statements of its computation of Percentage Fees (which shall include a statement of Gross Receipts) concurrently with each payment of Percentage Fees, to wit: on or before the 20th of each month, with respect to Gross Receipts collected for the prior month.

(i) No statements shall be necessary during any period of time that the Concessionaire is not conducting PWC storage operations and collecting Gross Receipts of same, whether as a result of discontinuation for repairs, renovations, casualty or otherwise.

(ii) The Concessionaire shall submit to County on or before the 90th day following the end of each Concession Agreement Year an Annual Written Statement, signed by a senior officer of the Concessionaire (or its parent company) and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Concession 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.

C. Examination of Concessionaire’s Books and Records: Such Books and Records as are necessary to determine the amount of any Percentage Fee payable to County shall be subject to examination by the County or its authorized representatives upon reasonable notice, at reasonable times during the Concessionaire’s business hours, at County’s expense and in such manner as not to interfere unreasonably with the conduct of the Concessionaire’s business. All information obtained by the County or its authorized representatives from the Concessionaire’s Books and Records shall be kept confidential by the County and all such representatives.

D. Concessionaire’s Gross Receipts Records: For the purpose of computing and verifying the Percentage Fee due hereunder, the Concessionaire shall prepare and keep, for a period of not less than three (3) years following the end of each Concession Agreement Year, full and accurate records of account, books and other pertinent data of

Gross Receipts (the "Books and Records") generated by PWC storage fees charged to Storage Customers pursuant to the Concession.

(i) Such Books and Records shall conform to the Concessionaire's accounting methodology (subject to the County's reasonable approval) and shall only address those transactions related to this Concession Agreement. The Concessionaire's Books and Records shall include such 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 the Concessionaire's Gross Receipts.

(ii) The acceptance by County of payments of Percentage Fees or reports thereon shall be without prejudice and shall in no case constitute a waiver of County's right to examination of the Concessionaire's Books and Records of its Gross Receipts and inventories of merchandise.

E. Audit of Concessionaire's Books and Records: County shall have the right to cause, upon five (5) business days' written notice to the Concessionaire, a complete audit of the Concessionaire's books and records to be made by a designated external auditing firm or other certified public accounting firm selected by County, or the Audit and Management Services Department of the County. The Concessionaire shall make all such books and records available for said examination at the Concession or at some other mutually agreeable location. If the result of such audit shall show that the Concessionaire's statement of Gross Receipts for any period has been understated, the Concessionaire shall pay County the amount due. If such understatement is five percent (5%) or more, the Concessionaire shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payment. The furnishing by the Concessionaire of any grossly inaccurate statement shall constitute a breach of this Concession Agreement. Any information 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.

F. If the Concessionaire fails to record, maintain, or make available its books and records as specified above, the Concessionaire may (following written notice and opportunity to cure) be deemed by the County to be in default of this Concession Agreement.

G. Pursuant to Miami-Dade County Ordinance No. 03-2, the Concessionaire will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds.

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

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

B. Changes from the original aesthetics of the Concession as set forth in the Final Plans.

C. Any use of the County's facilities outside of the Site or Concession's name other than Haulover Marine Center.

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

24. Hours of Operation: Concessionaire shall determine the operating hours for the Concession, based upon its reasonable business judgment (subject to the provisions of Paragraph 5 of the Scope of Services attached hereto as **Appendix A**). The County, in its sole discretion, may require a change in hours of operation in the event of emergency (such as hurricane or other natural disaster, and in the event that the County has declared an emergency for such matters as a pandemic, so long as the declaration of emergency applies to the Park and to the Scope of Services which Concessionaire supplies pursuant to this Concession Agreement).

25. Pricing: Concessionaire shall utilize its reasonable business judgment to determine pricing for PWC storage by Storage Customers (subject to the provisions of Paragraph 7 of the Scope of Services attached hereto as Appendix A).

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

27. Local Manager/Designee: Throughout the term of this Concession Agreement, the Concessionaire shall employ a qualified full-time manager or designee employed by the Concessionaire on-site at the Park having experience in the management of the type of operation which is the subject of the Concession, who shall be available during normal business hours and on-call at all reasonable times, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Concessionaire under this Concession Agreement.

28. Quality of Concessionaire's Service: The Concessionaire shall conduct its operations with respect to the Concession 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.

A. The Concessionaire shall be responsible for 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, the Concessionaire shall immediately take all necessary steps to correct the cause of such objection.

B. The Concessionaire shall take good care of the Site, 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 Concession Agreement or its termination in any manner, shall deliver the Site to the County in the same condition as at the commencement of this Concession Agreement, with the exception of ordinary wear and tear, or loss by fire or other casualty.

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

D. It is expressly understood and agreed that the Concessionaire's operation of the Concession shall not materially and adversely interfere in any manner with the use of public areas of the Park by the County, or materially infringe upon the normal method of operations of any other parties authorized to conduct business within the Park. The Concessionaire agrees that a determination by the County in evaluating whether its activities materially infringe on the rights of others will require the Concessionaire to fully comply with any decisions on this matter provided that the Concessionaire may thereafter challenge the County's determination and seek relief as a result thereof.

29. Services/Equipment Provided by County; Utilities: The Concessionaire shall pay all charges for gas, water, sewer, electricity, telephone and other utility services used on Site with respect to the operation of the Concession. The Concessionaire, at its own expense, will be responsible for connection to existing water, sewer, electric and any other utility within the Site and, if necessary for the Concessionaire's operations, to construct or have constructed within the Site any necessary electric, sewer, water or other utilities or extensions or widening thereto. To the extent available, the County may provide access to the following in the Site: a) electrical as existing; b) water facilities as existing; c) sewage collection facilities as existing; and d) waste collection provided none of the foregoing result in any costs or expenditures to the County. Notwithstanding anything in this paragraph or Concession Agreement to the contrary, the County shall have no obligation to construct any utilities.

30. Equipment and Service Provided by Concessionaire: The Concessionaire, at its sole cost, shall keep the Concession and the Concessionaire's equipment clean at all times. If the Concession and equipment are not kept clean in the reasonable opinion of the County, the Concessionaire will be so advised in writing, and if corrective action is not promptly taken, the County will cause the same to be cleaned and the

Concessionaire shall assume responsibility and liability for such cleaning. The Concessionaire shall ensure regular maintenance and necessary repairs are done for all of the Concessionaire's applicable equipment utilized in connection with the Concession.

31. Security and Protection: The Concessionaire acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and Concessionaire's money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Concession, outside of standard security measures supplied by the County in general. The Concessionaire may provide its own specialized security for the Concession, subject to the County's written approval.

32. Hurricane Preparedness: The Concessionaire shall follow the County's emergency evacuation and hurricane plan provided by the County to the Concessionaire from time to time or as set forth in any hurricane and/or evacuation plan provided by Westrec to the County subject to County's approval, which such approval shall not be unreasonably withheld or delayed.

33. Independent Concessionaire Relationship; Limitation on Rights of Others: The Concessionaire is, and shall be, in the performance of all work services and activities under this Concession Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Concession Agreement shall at all times, and in all places, be subject to the Concessionaire's sole direction, supervision and control. The Concessionaire shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Concessionaire's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

A. The Concessionaire does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Concession Agreement.

B. The terms of this Concession Agreement shall be binding upon, inure to the benefit of and be enforceable solely by the Parties and their permitted successors and assigns, and nothing in this Concession Agreement or by virtue of the transactions contemplated hereby, whether express or implied, shall be construed to constitute, create, or confer rights, remedies, or claims in or upon any person (as third-party beneficiary or otherwise) not a party hereto, or to create obligations or responsibilities of the parties to such persons, or to permit any person other than the Parties and their respective successors and assigns to rely upon or enforce the covenants, conditions and agreements contained herein.

34. Inspection by County: The County shall have the authority to make periodic reasonable inspections of all of the Concession, and the Concessionaire's operations during the normal operating hours thereof to determine if such are being maintained in

the condition required by this Concession Agreement, and to determine whether the Concessionaire is operating in compliance with the terms and provisions of this Concession Agreement.

35. Damage or Destruction of Property: The Concessionaire shall repair all damages to the Park caused by the Concessionaire. In the event that the Park is completely destroyed or so damaged that it will remain unusable for more than one hundred eighty (180) days, through no fault of the Concessionaire, the Concessionaire and the County shall be under no obligation to repair and reconstruct the Concession, and the portion of the Concession Agreement which pertains to such destroyed Concession shall cease and terminate unless Concessionaire elects to repair damage to the Site at its own cost (in which event this Concession Agreement shall remain in full force and effect).

36. Diminution for County's Repair: Except as otherwise specifically provided in Section 10(B) and Section 54 of this Concession Agreement, there shall be no allowance to the Concessionaire for a diminution of payment value and no liability on the part of the County by reason of inconvenience, annoyance or interference with the Concessionaire's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not materially interfere with the Concessionaire's use of the Concession and its operations at the Site.

37. Ingress and Egress: Subject to Applicable Laws and the terms of this Concession Agreement governing the use of the Concession, the Concessionaire, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have right of ingress and egress to and from the Site.

38. Assignment, Sub-Contracting and Successors in Interest:

A. The Concessionaire shall not assign, pledge or otherwise encumber this Concession Agreement or any portion thereof, nor any property (with the limited exception of personal property equipment financing) associated with this Concession Agreement without prior written approval of the County. The County shall not unreasonably withhold or delay a request for assignment of this Concession Agreement. It is agreed that all terms and conditions of this Concession Agreement shall extend to and be binding on assignees and other successors as may be approved by the County. It is further agreed by the County that storage and similar agreements between the Concessionaire and its Storage Customers are expressly permitted and do not require the approval of the County.

B. It is agreed that all terms and conditions of this Concession Agreement shall extend to and be binding on any sublicensees, including the obligation to pay Percentage Fees. The Concessionaire shall be liable for acts and omissions by any sublicensee affecting this Concession Agreement. The County reserves the right to

directly terminate (and pursue any applicable remedy) any sublicensee of the Concessionaire for any cause for which the Concessionaire may be terminated.

C. Should the Park become a part of an independent municipality, the rights and obligations granted the County under this Concession Agreement will automatically be assigned to and assumed by the applicable municipality.

39. Ownership of Concessionaire: The ownership of the Concessionaire is very important to the County. Therefore, the County reserves the right to terminate this Concession Agreement at any time if more than forty-nine percent (49%) of the ownership of the Concessionaire has not been specifically approved by the County (provided, however, that transfers of ownership of the Concessionaire in connection with estate planning and/or the administration of the estate(s) of the current owner(s) of the Concessionaire shall not be deemed to be transfers of ownership). The County may reject any proposed new owner for any reason it reasonably believes is in the best interests of the public. The Concessionaire agrees to provide to the County an accurate list of all owners of the Concessionaire, showing the percentage of ownership of each owner, within five (5) business days of receipt of written request for same from the County. Concessionaires whose stock is listed on a major stock exchange may be wholly or partially exempted from the requirements of this paragraph at the discretion of the County. The County acknowledges that it has specifically approved the current ownership of the Concessionaire.

40. County's Property Insurance: Any insurance the County may maintain shall not cover Concessionaire's Concession, improvements and betterments, contents, or personal property and/or other property of Concessionaire. The Concessionaire shall not violate, or permit the violation of, any condition imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Concession which would increase the fire or other property or casualty insurance rate on the property therein over the rate which would otherwise then be in effect (unless the Concessionaire 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 the Concessionaire, the rate of property insurance on the Concession or the Park or equipment or other property of the County shall be higher than it otherwise would be, the Concessionaire shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of the Concessionaire, which sum shall be deemed Percentage Fee for purposes of collection only. The County acknowledges that the Site will be operated as a PWC storage facility, which will include the presence of heavy machinery, flammable materials, and other dangerous items customary to such use and that such use does not and will not violate the County's insurance policies. Notwithstanding anything to the contrary in this Section, Concessionaire shall not be responsible for any increase in the County insurance rates resulting from Concessionaire's use of the Site as a PWC storage facility.

41. Indemnification and Insurance:

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

The Concessionaire shall furnish to the Department a Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

(i) Worker's Compensation Insurance as required by Florida Statute 440 for all employees of the Concessionaire and should include coverage required under the U.S. Longshoremen and Harbor Workers' Act (USL&H) and/or Jones Act as applicable, for any activities on or about navigable water.

(ii) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude Products & Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

(iii) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Concession Agreement and the Site, in an amount not less than \$300,000.00 combined single limit per occurrence for bodily injury and property damage.

Construction Phase

In addition to the insurance required in A - C above, the Concessionaire is required to provide or shall cause its contractors to provide certificates of insurance and/or policies indicating the following type of insurance coverage prior to commencement of construction:

A. Completed Value Builder's Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The Policy must name Miami-Dade County as a Loss Payee.

B. Umbrella Liability Insurance in an amount not less than \$3,000,000 per occurrence.

(i) If Excess Liability is provided must be follow form for coverages B and C above.

Operational Phase

In addition to the insurance required in A-C above, the Concessionaire is required to provide or shall cause its contractors to provide certificates of insurance and/or policies indicating the following type of insurance coverage:

A. Marina Operators Legal Liability Insurance in an amount not less than \$1,000,000 per occurrence. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

B. Protection and Indemnity Insurance, in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

* Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.

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 VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

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

The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Term. If insurance certificates are scheduled to expire during the Term, the Concessionaire 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.

NOTE: CERTIFICATE HOLDER MUST READ:

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

42. Liability for Damage or Injury or Personal Property: The County shall not be liable for damage or injury which may be sustained by any party or persons at the Concession other than the damage or injury if and to the extent caused by the negligence of the County, its agents and employees while in the course of County business, and as limited by Section 768.28, Florida Statutes. All personal property placed or moved in the licensed property above described shall be at the risk of the Concessionaire or the owner thereof. County shall not be liable to the Concessionaire or any third party for any damage to said personal property unless caused by negligence of County, County's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

43. Patent and Copyright Indemnification:

A. The Concessionaire warrants that all Improvements and the services set forth in the Scope of Services furnished hereunder, including but not limited to, wall murals, and the like, shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.

B. The Concessionaire shall be liable and responsible for any and all claims made against the County for unlawful use of or for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any wall murals, and the like, in the course of performance or completion of, or in any way connected with, the Improvements or the services set forth in the Scope of Services.

44. Temporary Ceasing of Operations Due to Emergency: The County reserves the right to require that the Concessionaire cease operations for an emergency as judged in the sole discretion of the County, for a period of time as is deemed by the County necessary to reestablish safe conditions for further operations of the Concession. Similarly, the Concessionaire reserves the right to discontinue operations for and during any emergency as judged in the reasonable discretion of the Concessionaire, for a period of time as is deemed necessary by the Concessionaire to reestablish safe conditions for further operations of the Concession.

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

46. Defaults by Concessionaire: Unless and to the extent as a result of a Force Majeure other than a Payment Default (as defined in (A) below), the occurrence of any of the following shall constitute a material default and breach of this Concession Agreement by the Concessionaire (an "**Event of Default**"):

A. Any failure by the Concessionaire to pay Percentage Fees or to make any other payment required to be made by the Concessionaire hereunder when due and

within fourteen (14) days after receipt of written notice from County (a “**Payment Default Notice**”) of such failure (a “**Payment Default**”).

B. Failure by the Concessionaire to remedy any condition within the Site posing a threat to the health or safety of the public or of the Concessionaire’s customers within fourteen (14) days after receipt of written notice from County of such condition.

C. Unapproved assignment, pledging or encumbering of the Concession Agreement that is not cured by the Concessionaire within fourteen (14) days after receipt of written notice from the County of such unapproved assignment, pledge or encumbrance.

D. Failure by the Concessionaire to (i) obtain Permits for the Improvements, and or (ii) failure by the Concessionaire to complete the renovations, repairs and replacements of portions of the West Rack within the time set forth in the Development Rider attached hereto as **Appendix C** (subject to force majeure and/or delays caused or created by the County).

E. Failure by the Concessionaire to observe and perform any other provision of this Concession Agreement to be observed or performed by the Concessionaire (including failure to comply with rules and regulations adopted by the County for the Park, and failure to comply with Applicable Laws with respect to the Scope of Services), where such failure continues for thirty (30) days after written notice thereof by County to the Concessionaire; provided however, that if the nature of such default is such that the same cannot reasonably be cured within such period, the Concessionaire shall not be deemed to be in default if the Concessionaire shall, within such period, commence such cure and thereafter diligently prosecutes the same to completion.

F. The making by the Concessionaire of any assignment for the benefit of creditors, the filing by or against Concessionaire of a petition to have the Concessionaire adjudged bankrupt or, if a petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless in the case of a petition filed against the Concessionaire the same is dismissed within 90 days) (in any such case, an “**Insolvency Default**”).

G. The Concessionaire’s abandonment or surrender of the Site or discontinuation of all operations thereon in violation of this Concession Agreement without prior written approval of the County (an “**Abandonment Default**”).

H. Unapproved change of ownership interest in the Concessionaire and/or failure to submit the ownership list within five (5) business days upon the request of the County (a “**Change of Control Default**”).

I. The failure of the Concessionaire to cease any activity which limits the County’s use of the portions of the Park other than the Site, where such failure continues for 24 hours after written notice thereof by County to the Concessionaire.

J. The institution by the Concessionaire of litigation against County which is determined by a court of competent jurisdiction in favor of the County, to have been groundless, which is either affirmed on appeal or with appeal not having been filed within the applicable time frame.

K. Notwithstanding anything to the contrary in this Concession Agreement, in the event that the Concessionaire has, four (4) times within a 12 month period, materially defaulted in the performance of or materially breached any of the terms, covenants and conditions required herein to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided herein above and the defaults or breaches are of the same nature, the Concessionaire may be determined by the County to be an "habitual violator" (together, "**Habitual Default**"). At the time that such determination is made, County shall issue to the Concessionaire a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(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 ground for immediate termination of this Concession Agreement. In the event of any such subsequent breach or default, County may cancel this Concession Agreement upon the giving of written notice of termination to the Concessionaire, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Concession, and proceed to remove all its personal property in accordance with this Concession Agreement.

47. County's Remedies: As the remedy for any Event of Default by the Concessionaire as set forth in **Paragraph 46** above which shall exist and continue uncured following applicable notice of default, County may terminate this Concession Agreement by providing the Concessionaire with at least fourteen (14) days' notice by certified or registered mail; provided, however, that if an Event of Default shall exist and continue uncured following applicable notice of default (and, as applicable, passage of time) consisting of either (i) an Insolvency Default, (ii) an Abandonment Default, or (iii) a Change of Control Default, County may terminate the Concession Agreement immediately upon subsequent written notice to the Concessionaire sent via certified or registered mail and specifying the date upon which the Concession Agreement shall terminate [any such notice being defined as a "Termination Notice" and the date set forth therein for termination of the Concession Agreement (which shall be no less than ten (10) days from the date of the Termination Notice) being defined as the "Default Termination Date"].

A. On or before the Default Termination Date set forth in the Termination Notice, the Concessionaire shall cease all operations, surrender the Site and remove all of its personal property, and County may thereafter use the Site (subject to the Storage

Exclusivity) and all remaining Improvements and personal property and eject all parties using or operating any business or concession from the Site or eject some and not others or eject none.

B. Termination of this Concession Agreement pursuant to this paragraph shall not relieve the Concessionaire from the payment of any sum then due to County under this Concession Agreement, through the date of termination, and the Concessionaire shall expressly remain liable for same.

C. Following termination of this Concession Agreement pursuant to this Paragraph, if the Concessionaire does not remove its personal property from the Site within the time provided for in **Section 10(C)**, County may at County's election use Concessionaire's patent and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage;

48. Termination for Fraud:

A. The County may immediately terminate this Concession Agreement if the Concessionaire breaches its contractual obligations to the County under this Concession Agreement through fraud, willful and material misrepresentation or willful and material misstatement.

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

49. Termination by Concessionaire: The Concessionaire shall have the right upon thirty (30) calendar days from delivery of written notice to the County by certified or registered mail to the address set forth in this Concession Agreement to terminate this Concession 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 Concession Agreement and the failure of the County to remedy such breach for a period of thirty (30) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Concessionaire, of the existence of such breach.

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

50. Termination of Concession: At the expiration or earlier termination of the term of this Concession Agreement, the Concessionaire shall cease all operations and leave the Site in as good a condition as the Site was on the Commencement Date of this Concession Agreement, ordinary wear and tear, or loss by fire or other casualty excluded. The Concessionaire's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this Concession Agreement.

51. Removal of Personal Property upon Termination of Agreement: Within sixty (60) calendar days following the termination of this Concession Agreement (or such later date as may be agreed to by County) the Concessionaire shall remove all of its personal property from the Site. Any personal property of the Concessionaire not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Concessionaire or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to the Concessionaire for the safekeeping of the Concessionaire's personal property during or after termination of this Concession Agreement. The Concessionaire shall be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by the Concessionaire. It is the intention of the Parties to this Concession Agreement that all furnishings and equipment (as defined under the laws of the State of Florida) purchased or licensed by the Concessionaire, shall be the personal property of the Concessionaire.

52. Mechanics', Materialmen's and Other Liens: The Concessionaire agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the County's interest in the Park for work or materials furnished to the Concessionaire pursuant to this Concession Agreement; it being provided, however, that the Concessionaire shall have the right to contest the validity thereof. The Concessionaire shall immediately pay any judgment or decree rendered against the Concessionaire, with all proper costs and charges, and shall cause any such lien to be released of record without cost to County.

53. Lien: All personal property of the Concessionaire used in connection with the Concession shall remain the property of Concessionaire regardless of termination of this Concession Agreement, free and clear of any lien in favor of County.

54. Limiting Legislative or Judicial Action:

A. Legislative, Administrative or Judicial Action: In the event that any municipal, state, or federal body of competent jurisdiction (other than the County) passes any law, ordinance, or regulation, or if any court of competent jurisdiction enters a final non-appealable order or final judgment that materially restricts or prohibits the use of the Park for the purposes of this Concession Agreement, this Concession Agreement will be null and void and unenforceable by any party to this Concession Agreement and the County shall have no further liability under this Concession Agreement, except as expressly set forth herein. Nothing in this Section shall preclude

Concessionaire from filing claims for damages against non-County entities related to such legislative, administrative and/or judicial action.

B. Referendum: In the event that a referendum vote of the electorate of the County in any way restricts or prohibits the use of the Concession for the purposes of this Concession Agreement, this Concession Agreement will be null and void and unenforceable by any party to this Concession Agreement and the County will not be liable to the Concessionaire for any damages and shall have no further liability under this Concession Agreement, except as expressly set forth herein. Nothing in this Section shall preclude Concessionaire from filing claims for damages arising out of the loss of the Concession as a result of such Referendum, as and to the extent permitted by Applicable Laws.

C. Concessionaire's Rights as Related to County Legislative Action: In the event that this Concession Agreement is terminated as the direct and sole result of the adoption of any law, ordinance, or regulation by the Board of County Commissioners that materially restricts or prohibits the use of the Park for the purposes of this Concession Agreement, Concessionaire has the right to seek liquidated damages from the County in an amount not to exceed the amount of money paid by Concessionaire for the construction and renovation of the Improvements, which amount is subject to straight-line depreciation over the term remaining on this Concession Agreement following the completion of the Improvements.

55. Sovereign Rights: It is expressly understood that notwithstanding any provisions of this Concession Agreement and the County's status hereunder:

A. The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under State law and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the renovation, operation and maintenance of the Concession and the Improvements or the operation thereof, or be liable for the same.

B. The County shall not by virtue of this Concession Agreement be obligated to grant the Concessionaire any approvals of applications for building, zoning, planning or development under present or future Applicable Laws of whatever nature applicable to the renovation, operation and maintenance of the Concession and the Improvements related thereto.

C. Notwithstanding and prevailing over any contrary provision in this Concession Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, the County's Building Department, DERM, or any other County, Federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be

granted, withheld, or revoked in the discretion of the County or other applicable Governmental Agencies in the exercise of its/their police power(s).

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

A. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Concession, except as provided by law.

B. 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.

C. The Concessionaire shall use the Concession 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.

D. The breach of any of the above non-discrimination covenants shall constitute a breach of this Concession Agreement which, following notice and opportunity to cure shall constitute an Event of Default, in which event the County shall have the remedies set forth above, including the right to terminate the Concession Agreement and re-enter and repossess said Concession thereon and hold the same as if said Concession 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.

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

57. Conflict of Interest: The Concessionaire represents that:

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

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

(i) is Interested on behalf of or through the Concessionaire directly or indirectly in any manner whatsoever in the execution or the performance of this Concession Agreement, or in the services, supplies or work, to which this Concession Agreement relates or in any portion of the revenues; or

(ii) is an employee, agent, advisor or consultant to the Concessionaire or to the best of the Concessionaire's knowledge any sublicensee or supplier to the Concessionaire.

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

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

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

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

A. Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County or the Scope of Services being performed hereunder, unless the Concessionaire first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the

publication of such information would be harmful to the public interest or is in any way undesirable. Nothing herein shall prohibit the Concessionaire from advertising the Scope of Services or the fact that such Scope of Services are being offered within the Park, subject to Applicable Law.

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

59. No Waiver of Right to Enforce: The waiver by County or the Concessionaire 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 Percentage Fees hereunder by County shall not be deemed to be a waiver of any preceding breach by the Concessionaire of any term, covenant, or condition of this Concession Agreement, other than the failure of the Concessionaire to pay the particular Percentage Fee so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Percentage Fee.

60. Rules and Regulations: The Concessionaire 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 the Concessionaire's operations under this Concession Agreement.

61. Authority Of The County's Project Manager:

A. The Concessionaire 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 Concession Agreement.

B. The Concessionaire must initially seek to resolve every difference concerning the Concession Agreement (a "**Dispute**") with the County's Project Manager. In the event that the Concessionaire and the County's Project Manager are unable to resolve a Dispute, the Concessionaire or the County may initiate resolution of the Dispute in accordance with the procedures set forth in this Paragraph. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

C. In the event the Concessionaire and the County's Project Manager are unable to resolve such Dispute within thirty (30) days of notification of the Dispute by either party to the other, either of the Parties to this Concession Agreement may submit the Dispute to non-binding mediation. The County Mayor or designee (who may not be the County's Project Manager or anyone associated with this project), acting personally, shall have the authority to resolve all questions arising out of, under, or in connection with, or in any way related to or on account of the Concession Agreement (including but

not limited to claims in the nature of breach of the Concession Agreement, fraud or misrepresentation arising either before or subsequent to execution hereof) on behalf of the County, and the decision of each with respect to matters within the County Mayor's or designee's purview as set forth above shall be conclusive, final and binding on the County.

D. The County Mayor or designee may base resolution of any Dispute on such assistance as may be desirable, including advice of experts, but in any event shall base the resolution on an independent and objective determination of whether the Concessionaire's performance meets the requirements of this Concession Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor or designee 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 Concession Agreement.

E. In the event that the Parties are unable to resolve any Dispute through non-binding mediation (or if neither party timely submits the Dispute to non-binding mediation), except with respect to such remedies as may be limited or waived elsewhere in the Concession Agreement, each of the Parties reserves the right to pursue any remedies available at law or in equity after exhausting the provisions of this Paragraph.

62. Mutual Obligations:

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

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

63. Rights Reserved to County: All rights not specifically granted to the Concessionaire by this Concession 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.

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

65. Local, State and Federal Compliance Requirements: The Concessionaire agrees to comply, subject to applicable professional standards, with the provisions of any and all Applicable Laws which may pertain to the Scope of Services required under this Concession Agreement, including but not limited to:

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

B. Environmental Protection Agency (EPA), as applicable to this Concession Agreement.

C. Provisions of Miami-Dade County Code, Chapter 11A, Article 3 requiring that the Concessionaire post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

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

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

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

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

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

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

67. Inspector General Reviews:

A. **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 reasonable written notice from the County, the Concessionaire shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Concession Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Concessionaire’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 Concessionaire, its officers, agents, employees, sublicensees 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 Concessionaire in connection with this Concession Agreement. The terms of this Paragraph shall not impose any liability on the County by the Concessionaire or any third party.

B. 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.

(i) The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County 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 this Concession Agreement. 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 Concessionaire, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

(ii) Upon reasonable written notice to the Concessionaire from the Inspector General or IPSIG retained by the Inspector General, the Concessionaire shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Concessionaire’s possession, custody or control which, in the Inspector General’s or IPSIG’s sole judgment, pertain to performance of this Concession Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful sublicensees 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.

68. Vendor Registration and Forms/Conflict of Interest:

A. Conflict of Interest: Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, contact the Ethics Commission hotline at (305) 579-2593.

B. Vendor Registration: The Concessionaire shall be deemed to be a registered vendor with the County's Department of Procurement Management, for the duration of this Concession Agreement. As a Registered Vendor with Miami-Dade County, the Concessionaire (which is not a "Contractor" for purposes of this Concession Agreement) confirms its knowledge of the following, and its obligation to comply with those of the following which are applicable to this Concession Agreement:

- (i) ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the County Code).
- (ii) ***Miami-Dade County Employment Disclosure Affidavit***
(Section 2-8.1(d)(2) of the County Code).
- (iii) ***Miami-Dade County Employment Drug-free Workplace Certification***
(Section 2-8.1.2(b) of the County Code).
- (iv) ***Miami-Dade County Disability and Nondiscrimination Affidavit***
(Section 2-8.1.5 of the County Code).
- (v) ***Miami-Dade County Debarment Disclosure Affidavit***
(Section 10.38 of the County Code).
- (vi) ***Miami-Dade County Vendor Obligation to County Affidavit***
(Section 2-8.1 of the County Code).
- (vii) ***Miami-Dade County Code of Business Ethics Affidavit***
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code).

- (viii) **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code).
- (ix) **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code).
- (x) **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-6011A-67 of the County Code).
- (xi) **Subcontracting Practices (Ordinance 97-35).**
- (xii) **Subcontractor / Supplier Listing**
(Section 2-8.8 of the County Code).
- (xiii) **Environmentally Acceptable Packaging**
(Resolution R-738-92).
- (xiv) **W-9 and 8109 Forms**
(as required by the Internal Revenue Service).

(xv) **FEIN Number or Social Security Number:** In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- a. Identification of individual account records.
- b. To make payments to individual/Contractor for goods and services provided to Miami-Dade County.
- c. Tax reporting purposes.
- d. To provide a unique Identifier In the vendor database that may be used for searching and sorting departmental records.

(xvi) **Office of the Inspector General**
(Section 2-1076 of the County Code).

(xvii) **Small Business Enterprises**
(Contract No. 860). The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

(xviii) **Antitrust Laws** : By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

69. First Source Hiring Referral Program: Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, a Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board (“**SFWIB**”), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the Program are available at <https://iapps.southfloridaworkforce.com/flrstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407.

70. E-Verify: The Concessionaire acknowledges and agrees to utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of (a) all persons employed by the Concessionaire to perform employment duties within Florida under this Concession Agreement during the term of the Concession Agreement; and (b) all persons (including subconsultants, sublicensees, sub vendors) assigned by the Concessionaire to perform the Scope of Services pursuant to this Concession Agreement with the County. The Concessionaire acknowledges and agrees that use of the U.S. Department of Homeland Security’s E-Verify System during the term of the Concession Agreement is a condition of the Concession Agreement with the County.

71. Florida Public Records Act: As it relates to this Concession Agreement, pursuant to Section 119.0701 of the Florida Statutes:

A. The Concessionaire understands, agrees and acknowledges that this Concession Agreement and the Concessionaire’s operations thereunder are subject to the provisions of Chapter 119 of the Florida Statutes commonly referred to as “Florida’s Public Records Laws”.

B. For purposes of this section, the term “public records” (i) shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County,

C. IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS

CONCESSION AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE MIAMI-DADE COUNTY PARKS, RECREATION AND OPEN SPACES DEPARTMENT, ATTN: MR. DAVID LIVINGSTONE, (305) 755-7824, dcl@miamidade.gov, 275 NW 2ND STREET, 5TH FLOOR, ROOM 555, MIAMI, FL 33128-1719.

D. The Concessionaire is required to keep and maintain public records required to perform under this Concession Agreement and, upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by applicable law.

E. The Concessionaire shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Concession Agreement term and following completion of the Concession Agreement if the Concessionaire does not transfer the records to the County.

F. Following expiration or earlier termination of the Concession Agreement, the Concessionaire shall transfer, at no cost, to the County all public records in possession of the Concessionaire or keep and maintain public records required by the County to perform the service. If the Concessionaire transfers all public records to the County upon completion of the Concession Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Concession Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

G. If the County does not possess public records responsive to a request to inspect or copy public records relating to this Concession Agreement, the County shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

H. If the Concessionaire does not comply with a request for records, it shall be a material breach of this Concession Agreement and the County shall have the right to the remedies set forth in Section 19 of this Concession Agreement. In addition, if the Concessionaire fails to provide the public records within a reasonable time it may be subject to penalties under s. 119.10 Florida Statutes. If there is a public records request made to Concessionaire by a third-party to which Concessionaire objects and fails to provide the public records, it will not constitute a material breach by Concessionaire of the Concession Agreement unless there is a final determination by a

court of competent jurisdiction that Concessionaire was required to provide such public records and that Concessionaire's objections were groundless.

I. The Concessionaire's obligations under this section of the Concession Agreement shall survive the termination of this Concession Agreement.

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

SIGNATURE PAGE FOLLOWS:

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

COUNTY

ATTEST: Harvey Ruvin
Clerk of the Board

MIAMI-DADE COUNTY,
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Daniella Levine Cava
County Mayor

Date: _____

Date: _____

Approved by County Attorney as to form and legal sufficiency

CONCESSIONAIRE'S SIGNATURE PAGE FOLLOWS:

CONCESSIONAIRE

WITNESSES:

Debbie Kenworthy

Witness Signature

Debbie Kenworthy

Witness Printed Name

Mary Pastore

Witness Signature

Mary Pastore

Witness Printed Name

HAULOVER MARINA, LLC, a
Delaware limited liability company

By: Jeffrey K. Ellis

Name: Jeffrey K. Ellis

Title: Vice President

(seal)

Date:

APPENDIX A

SCOPE OF SERVICES

1. Deliverables:

A. The Concessionaire shall renovate, operate, and maintain a personal watercraft storage Concession at the Park. Haulover Park is a heritage park and a significant coastal beach park operated by Miami-Dade County.

B. The Concessionaire shall renovate and modify portions of the existing West Rack structure located on the Site in order to store PWC, kayaks, canoes and stand-up paddleboards, as follows:

(i) Following completion of the renovations, repairs and replacements of portions of the West Rack, the West Rack shall be configured to accommodate and store personal watercraft as follows: (a) no fewer than 200 jet skis, and (b) no fewer than 100 eco-friendly personal watercraft such as kayaks, canoes, stand-up paddleboards and similar small vessels.

(ii) The Concessionaire will refinish and repaint the modified section of the West Rack structure, replacing racks and beams where necessary and painting the structure a camo green to blend in with the mangroves behind them.

(iii) Any County-approved fencing within the Site shall have a green print screen cloth, and the equipment to move the vessels to and from the West Rack structure shall be painted in shades of green, in order that the West Rack structure blends in with the flora of the surrounding area.

(iv) The Concessionaire shall provide a fork truck for the handling of the PWC, kayaks, canoes, and paddleboards.

(v) The perimeter of the Site shall be lined with corresponding green camo screened fencing to match the West Rack.

C. All renovations of the West Rack shall be in accordance with the terms of Appendix C. All costs associated with the renovation of the West Rack will be at the Concessionaire's sole expense.

D. The Concessionaire shall operate and maintain a high quality and customer-oriented personal watercraft storage Concession at Haulover Park with well-maintained equipment and experienced staff in accordance with the provisions of this Concession Agreement.

- E. The Concessionaire shall operate its Concession and advise its Storage Customers to act in a manner that keeps all patrons of the Park safe and to adhere to strict County published safety guidelines.
2. **Qualifications:** All required certifications must be in place prior to the start of operations of the personal watercraft storage area. The required certifications are a continuing obligation of the Concessionaire throughout the duration of the Concession Agreement.
3. **Operation and Quality of Services:** In accordance with the Scope of Services set forth above, the Concessionaire shall, in its reasonable business judgment:
- A. Use commercially reasonable efforts to staff the Concession Site in order to watch Customers and attempt to ensure that all customers comply with all applicable rules and regulations regarding the use of Haulover Park, and to enforce all published guidelines and regulations.
- B. Use commercially reasonable efforts to provide high quality Customer service and reasonably adjust program and service offerings to meet Customer demands, including establishing regular hours of operation.
- C. Pay for all operating expenses associated with the day-to-day operations of the Concession.
- D. Use commercially reasonable efforts to ensure the Site remains in safe, clean, and usable condition on a daily basis, to include, but not be limited to, removing debris from the PWC storage area, and maintaining the Site, as well as performing regular trash removal and maintenance of the Site and associated grounds, etc., as applicable, at the Concessionaire's own expense.
- E. Use commercially reasonable efforts to take proper care of the facilities within the Site and use the same in a careful manner and at its own expense, repair PROS property or facilities within the Site damaged by its (or its independent contractor(s)') operations.
- F. Store its equipment either within the Site or the Leased Premises or in other designated areas only. PROS will not be responsible for any loss or damage of the Concessionaire's equipment or supplies except as otherwise expressly set forth in the Concession Agreement.
- G. The Concessionaire shall not sell food or beverages sales from the Site.
- H. The Concessionaire shall prepare an Operations Manual for the Concession and present same to PROS for approval. Once approved, the Concessionaire shall adhere to the requirements of the Operations Manual. The

Operations Manual shall include the requirements as stated above.

4. Hours of Operation:

A. The Concessionaire shall open and operate the Concession daily. Prior to beginning operations, the Concessionaire shall submit a schedule of intended hours of operation to the Department for approval. The Department may require a change in hours of operation, if in the reasonable discretion of the Department; such a change is desirable in providing the best service to the public.

B. Special events held outside of normal hours for the Park shall be subject to the approval of PROS.

C. PROS reserves the right to schedule special events) that may preclude the Concession from operating during a given event. PROS will use reasonable efforts to notify the Concessionaire as early as possible of these special events, but in no event less than two weeks prior to the special event. PROS may also close the Park during inclement weather conditions.

5. Conditions Restrictions and Signage:

A. The nature, size, shape, and installation of the Concessionaire's business signs within the Concession or in, on, or adjacent to the Site must first be approved in writing by County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in Article 7 of the Miami-Dade County Home Rule Amendment and Charter and as reasonably approved by PROS. The Concessionaire shall post a sign, in accordance with Chapter 26 of the Park and Recreation Rules and Regulations and Article 7 of the Miami-Dade County Home Rule Amendment and Charter, when the Site is closed due to inappropriate weather or for any reason that restricts the Concession. The Concession may remain open while specific activities are closed.

B. All of the Concessionaire's signs shall be removed by the Concessionaire at the termination of the Concession Agreement and any damage or unsightly condition caused to Site because of or due to the removal of said signs shall be satisfactorily corrected or repaired by the Concessionaire.

6. Pricing:

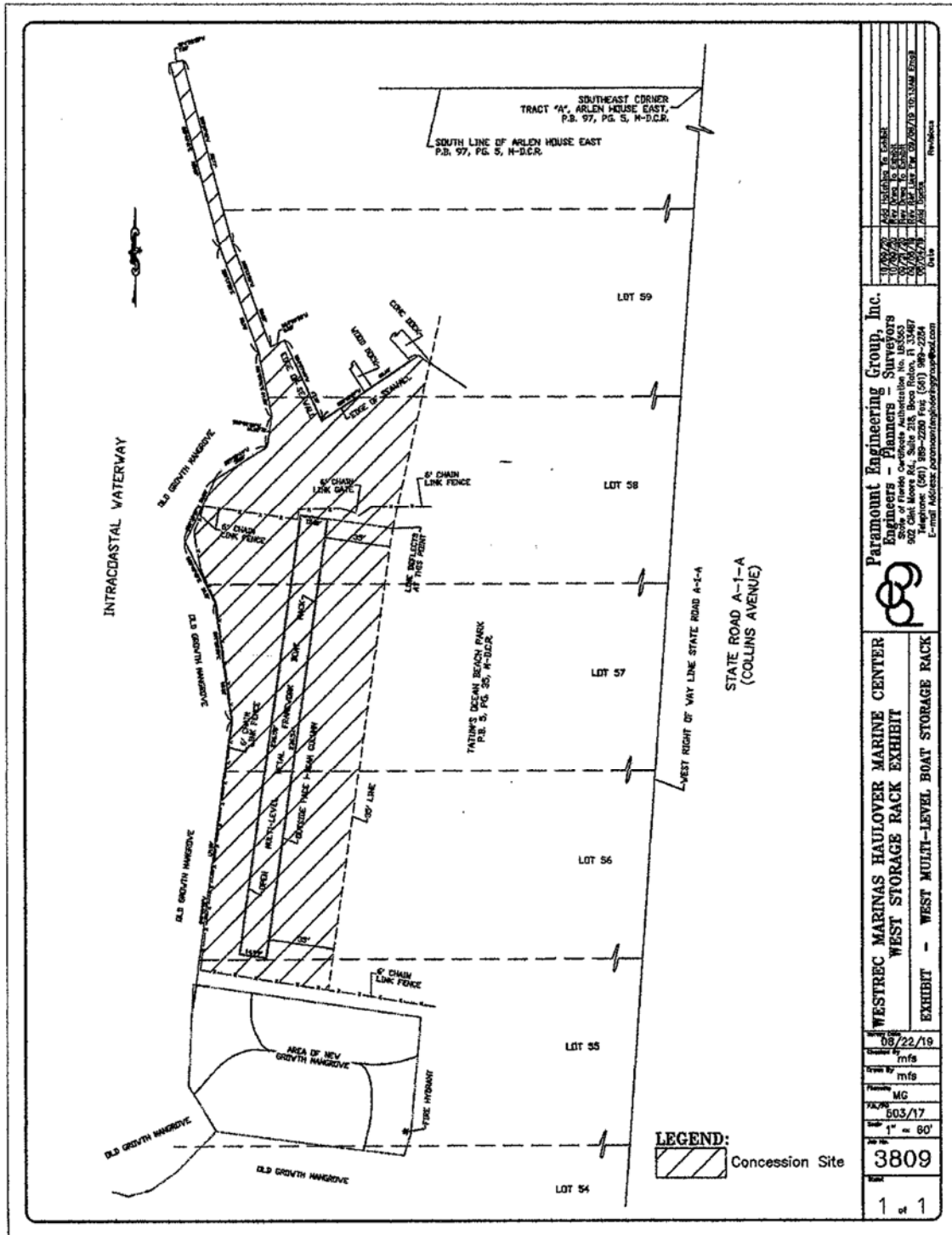
A. Pricing for storage of PWC shall not exceed the following amounts (the "**Maximum Charges**") in the first Concession Agreement Year:

- i. Jet Skis: \$425.00 per month
- ii. Kayaks and Canoes: \$100.00 per month
- iii. Stand-up paddleboards: \$100.00 per month

iv. Other PWC: \$200.00 per month

B. Concessionaire may increase such Maximum Charges by no more than five (5%) percent per Concession Agreement Year without the approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed.

APPENDIX B SITE MAP



APPENDIX C

DEVELOPMENT RIDER

This Development Rider is attached to and hereby made a part of the Concession Agreement and shall govern the renovation of the West Rack at Haulover Park (as set forth in the Concession Agreement, the "**Project**") within the Site described in Appendix B of the Concession Agreement. Words and phrases used in this Development Rider shall have the same meaning as in the Concession Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Development Rider and the provisions of the terms and conditions of the Concession Agreement during the development phase, the terms and conditions of the Development Rider will prevail.

A Construction Project Manager ("**CPM**") shall be assigned by the Department to represent Miami-Dade County during the development phase. The CPM shall monitor compliance with the terms and conditions of the Development Rider; coordinate reviews, comments and approvals; attend design phase and construction meetings; and perform periodic site visits and reviews to monitor compliance with the scope of services and schedule during the design and construction of the Project.

The Concessionaire shall remit to the County a fee for the Construction Project Management ("**CPM Fee Payment**") that shall not exceed 1.5% of the Total Development Costs. The total CPM Fee Payment shall be paid to the County in monthly installments based upon actual time and costs reasonably incurred by the County and commensurate with the progress of the work beginning with the pre-design/scoping meetings and shall be subject to an adjustment at the end of construction or upon Termination of the Concession Agreement, whichever occurs first, when the actual Total Development Cost is confirmed, and based on an audit conducted at the expense (not to exceed \$500.00) of the Concessionaire.

For purposes of this Development Rider, the Total Development Cost shall include the cost of the work including all fees and costs for registered and licensed design professionals, geotechnical testing, asbestos testing, asbestos abatement, surveyors, contractors, subcontractors, materialmen, testing and material, archeological testing, archeologist to monitor and produce reports as required.

The Concessionaire shall maintain all files, records, accounts of expenditures for the Project and improvements, including improvements performed by the Concessionaire's prime contractor and subcontractors, in a local office within Miami-Dade County. The County shall have access to such records as provided in the Concession Agreement.

CONCESSIONAIRE'S OBLIGATIONS TO DEVELOP THE PROJECT: The Concessionaire shall develop the Project in accordance with the Concession

Agreement, and with all plans hereinafter developed and approved for the following Project, as follows:

1. The Concessionaire shall renovate, repair and/or replace portions of the existing West Rack structure with space and height requirements suitable for storing jet skis, kayaks, canoes, and stand-up paddleboards. The scope of work includes renovating , refinishing, repainting, replacing racks and beams where necessary, and reducing the height of the top beam to approximately (30) feet. Racks and beams may be adjustable.
2. The Concessionaire understands and agrees that all costs associated with the design, development, permitting, and construction of the Project, and any off-site improvements related to the operation of the Project and necessary for the proper functioning of the Project or required by governmental authorities (including but not limited to the applicable building department) or by applicable law, shall be the sole responsibility of the Concessionaire. Prior to commencing construction, the Concessionaire shall provide proof, in a manner sufficient to reasonably satisfy the County that the Concessionaire has the necessary funds to complete the approved Project.
3. **Schedule.** The Concessionaire shall, prior to preparing the Final Plans and specifications, submit a schedule for the entire scope of the Project along with any proposed phasing plan and receive approval from the County. Such approval from the County shall not be unreasonably withheld or delayed, and if delayed upon 15 days, such right shall be waived by the County. The schedule shall be updated and submitted to the County with the Final Plans and as reasonably requested by the County. The terms and conditions of this Development Rider, in its entirety, shall apply to all design and construction. The construction of the Project shall be in accordance with the approved Final Plans and shall be completed no later than the second anniversary of the delivery of the approval of the Project by FDEP. The Parties acknowledge that the County submitted its request for approval to FDEP on December 3, 2020.
4. **Changes.** All requests from the Concessionaire for material modifications to the Plans and/or schedule during any phase of the development process must be submitted in writing to the CPM with sufficient documentation to justify said request. The Department will (i) consider the information provided and any mitigating circumstances prior to approving or rejecting said requests, and (ii) will not unreasonably withhold, delay or condition its approval to any request.
5. **Employ Miami-Dade Program.** Concessionaire shall, and shall require the Contractor and subcontractors for the Improvements to use SBD's hiring clearinghouse and Employ Miami-Dade Register in the Employ Miami-Dade Program set forth in Miami-Dade County Implementing Order 3-63 to recruit workers to fill needed positions for laborers on the Project. Concessionaire shall include the requirements to use SBD's hiring clearinghouse and to comply with

the Employ Miami-Dade Program in all contracts for the construction work of the Improvements.

6. **Responsible Wages.** Pursuant to Section 2-11.16 of the County Code, responsible wages applies to competitively bid County contracts in excess of \$100,000 for the construction of public buildings or public works, whether on publicly-owned or privately-owned land. Responsible Wages also apply to privately-funded construction of buildings, whether privately-owned or publicly-owned, located on County-owned land where the construction cost is equal to or greater than \$1 million. The Concessionaire shall comply with the provisions of Section 2-11.16 of the County Code, including but not limited to, the provisions therein requiring that all laborers and mechanics employed or working upon a project will be paid the full amount of wages and fringe benefits (or cash equivalent thereof) computed at rates not less than those contained in the wage determination in effect at the time the work is performed, regardless of any contractual relationship which may be alleged to exist between the Concessionaire and such laborers and mechanics.
7. **Small Business Enterprise Program.** In accordance with the County's Ordinance No. 12-05, which amended Sections 2-10.4.01 and 10-33.02 of the County Code, this Concession Agreement, and therefore the Development Project, is subject to the requirements of both the Small Business Enterprise Program-Architectural & Engineering (SBE-A&E) and the Small Business Enterprise Program-Construction (SBE-Construction). As a result, for purposes of selecting and/or hiring any architectural, landscape architectural, engineering, surveying and mapping professional services, for purposes of design and/or construction, as well as any construction services, the Concessionaire shall submit or cause to be submitted design packages as well as construction packages, for any and all such work, to the County's Small Business Development Division of the Services Department ("SBD") prior to the Selected Proposer's advertisement for such services, for review and determination of appropriate small business program measures, and the application of same. All packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above-mentioned County Code.
 - A. All privately funded construction with a total value over \$200,000 must comply with Sections 10-33.02 and 2-10.4.01 of the Code of Miami Dade County (the "**Code**"), which govern the County's Small Business Enterprise-Construction ("**SBE-Construction**") and Small Business Enterprise-Architectural & Engineering ("**SBE-A&E**") programs. The Concessionaire shall submit or cause to be submitted the Design and Construction Packages, to the Small Business Development Division of Internal Services Department ("**SBD/ISD**") for review and determination of appropriate small business program measures, and the application of same. All packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the

above-mentioned Code.

7. **Art in Public Places.** N/A

8. **Site Conditions.** The Concessionaire accepts complete responsibility for all conditions encountered at the Site, including, without limitation unforeseen site conditions, archeological findings, subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the construction plans, unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the project, and any dewatering activities necessary to construct the Project. The Concessionaire shall be responsible for the removal or relocation of man-made obstructions, abandoned foundations, utilities, and natural obstructions required for the completion of the Project. The Concessionaire shall also be responsible for any and all site conditions, including environmental conditions, caused, disturbed, or exacerbated by the construction and agrees to be responsible for and pay for all environmental remediation work that is required to be performed resulting from the construction of the Project. The Concessionaire shall be responsible for and pay for any necessary archeological testing, monitoring and reports required, and incur the cost of any delay in construction due to archeological finding. The Concessionaire further agrees not to initiate any claims or suits against the County relating to any site condition, including environmental conditions, and to indemnify, defend and hold harmless the County from and against any claims arising from an environmental condition caused or exacerbated by the Concessionaire in the construction of the Project. Notwithstanding anything in this Concession Agreement to the contrary, in the event the Parties became aware in the future of a site condition(s) that was not initially caused by the Concessionaire or its employees or agents, the cost which to remediate or otherwise remedy would be in excess of Fifty Thousand (\$50,000) Dollars as determined by a site study commissioned by the Concessionaire from a reputable firm, then the Concessionaire shall have the right, in its sole discretion, to terminate this Concession Agreement, in which event the Concessionaire shall have no ongoing or future liability for any such site condition(s).

9. **Site Control.** From and after the Effective Date, the Concessionaire shall have exclusive control over only the Site. At the time the Concessionaire is authorized by the County to commence construction, the Concessionaire shall be required to coordinate with the County as to the schedule for commencement, duration and location of any construction, staging and mobilization areas outside of the Site needed to complete the required improvements. All construction areas (including the Site, other work and staging areas) shall be covered during the development phase by the bonds and insurances required under the Concession Agreement and this Development Rider.

10. **Time of the Essence.** The timely completion of all activities set forth below is of the essence, subject to force majeure.
11. **Selecting a Design Professional.** The Concessionaire desires to, and has agreed, to retain a professional architect, engineer and/or surveyor ("Design Professional") to provide design, architectural, engineering, and/or surveying services ("Professional Services") for the development of the Project. The Design Professional may be a design-build firm or a Design Professional contracted through and in conjunction with the construction contractor. If the Concessionaire contracts with a design-build firm, the design build firm will be responsible for both the design and construction services. The Concessionaire shall enter into a written agreement with the Design Professional providing services for the Project, which agreement shall incorporate, and be consistent with, all of the terms and conditions of this Concession Agreement and be subject to the review and approval by the County prior to its execution. All fees, costs, reimbursements and/or other monies paid to Design Professionals for the Project and/or Project Enhancements for Professional Services shall be paid solely by the Concessionaire. In no event shall the County be obligated to pay for, or reimburse the Concessionaire and/or any Design Professional for any Professional Services rendered.
12. **Final Plans and Permits:**
- A. **Final Plans.** The Concessionaire, at its cost, shall prepare and deliver to Department three (3) sets of Final Plans and, if and to the extent that the plans prepared by the Design Professional for submission in connection with application for a building permit (the "**Permit Application**") includes a computer-aided design and drafting (CADD) file in compliance with the Department's CAD Standards (Appendix E) for the construction of the Project prepared by an architect and/or engineer licensed to practice in the State of Florida, and specifications comprising the Final Plans for the Project, Concessionaire shall provide such CADD file to the Department. Concessionaire shall not submit plans to the Building Department without first having the written approval for such plans from Department, which approval and authorization shall not be unreasonably withheld, delayed, or conditioned to submit to the Building Department.
- (i) The Final Plans shall show without limitation any/all work to be performed in the field, including and as applicable , site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Project, curbs, gutters and parkways; lighting; locations for outdoor signs; storage areas; and completed technical specifications; all sufficient to enable the Department to make an informed judgment about the schedule, estimate,

design and quality of construction and about any effect the Project shall have on the Park (hereinafter referred to as “**Final Plans**”). Additionally, such Final Plans of the improvements shall be in strict adherence to Applicable Law. The Project shall be designed to be constructed within the areas described in Appendix B. The Concessionaire shall also be responsible for bringing all needed utilities to the Site for the construction of the Improvements and, in the event that Concessionaire damages the Park in connection with bringing utilities to the Site, the Concessionaire is solely responsible for repairing such damages at their own cost. The Project shall be aesthetically and functionally compatible with the setting of the Park.

- (ii) Within fourteen (14) Days after the Department receives Final Plans, the Department shall either approve of them or deliver to the Concessionaire specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder.
- (iii) The Concessionaire shall resolve all comments and requests for modifications by the Department to the Final Plans and obtain written approval from the Department prior to submitting the Final Plans to the regulatory agencies for permitting.
- (iv) The approved Final Plans and all associated addenda and attachments shall be incorporated into the Concession Agreement by reference.

B. Permits. When the Concessionaire receives the Department’s written approval of the Final Plans, the Concessionaire shall immediately commence seeking from all regulatory agencies having jurisdiction over the Park and the Project all such required permits. The Concessionaire shall exercise due diligence in processing and procuring such permits. The County agrees to execute the Permit Application, provided that the Permit Application is for the Final Plans approved by the Department.

- (i) The Concessionaire shall keep the CPM informed of the progress during the permitting phase and coordinate with the Department to ensure that permitting requirements are acceptable to the Department when said requirements will materially modify the scope or aesthetics of the Project or its location within the Park.
- (ii) The Final Plans shall not be materially 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.
- (iii) The Concessionaire shall not, however, be required to seek the County’s

or the Department's approval in order to adjust any beam within the West Rack which is by its nature adjustable.

- (iv) The obtaining of 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 therefrom shall have expired, or if any appeal has been taken, until the appeal has final determinations.

13. **Selecting a Contractor and Awarding a Contract.** Unless the Concessionaire has hired a design build firm, the Concessionaire agrees to comply with the provisions of applicable laws, including the competitive selection and award provisions and exclusions from competitive selection and award provisions of Section 255.20, Florida Statutes, to select and contract with a Florida licensed contractor, which may be a design build firm (the “**Contractor**”) to undertake the Improvements and provide proof of same to the County.

A. The Concessionaire shall enter into written agreements with the Contractor(s) providing construction services for the Project, which agreements shall incorporate, and be consistent with, all of the terms and conditions of this Concession Agreement and be subject to the review and approval by the County prior to their execution.

B. The Concessionaire shall cause the Contractor to comply with the County’s Ordinances, Resolutions and Code requirements that are applicable to the Project as a condition of awarding the construction contract(s) and this Concession Agreement shall be incorporated into any construction contract and all terms in any such construction contract shall be consistent with this Concession Agreement.

C. Prior to competitively selecting or executing a contract with the Contractor, the Concessionaire shall obtain and the Contractor shall meet Small Business Enterprise – Construction Program (SBE-Con) goals established by the County’s Review Committee under the County’s SBE-Con Program, as enacted under the County’s Ordinance 97-52, as amended, and codified in Section 10-33.02 of the County Code; and Administrative Order 3-22, as amended. The Concessionaire shall cause the Contractor to comply with the County’s Resolution No. R-138-10, which mandates that the work of SBE-Con firms be identified in the Schedule of Values (“**SOV**”); and the requirements of Resolution No. R-1386-09 pertaining to sub-contracting, and the Contractor shall submit its Utilization Plan (“**UP**”) via the Business Management Workforce System (“**BMWS**”) for approval prior to commencing construction, and comply with the reporting requirements of the SBE Program. For purposes of this Concession Agreement, SOV is defined as a

detailed breakdown of each lump sum bid item in the bid form indicating a complete breakdown of labor and material for all categories of work, and shall include such items as building permit, mobilization, insurance, contractor administration, supervision, etc. The SOV shall be used as the basis to determine monthly progress payments from the Concessionaire to his prime contractor(s). For purposes of this Concession Agreement, the UP is defined as a listing of all Small Business Enterprise ("**SBE**") sub-contractors that will be utilized for scopes of work on the Project.

D. The Concessionaire shall obtain and the Contractor shall meet Community Workforce Program (CWP) goals established by the County's Review Committee under the County's CWP, as enacted under Ordinance 03-01 and 03-27, if applicable.

E. The Contractor shall not discriminate against any employee or applicant for employment in the performance of the contract with respect to their 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 when based on bona fide occupational qualifications; or because of marital status, race, color, religion, national origin or ancestry. All construction contracts/subcontracts shall include the above non-discrimination provisions.

F. The Concessionaire shall cause the Contractor to comply with the requirements of the Ordinance and Code-required affidavits and shall submit the executed documents to the Construction Project Manager for review and approval prior to awarding the construction contract, which such approval shall not be unreasonably withheld or delayed. a contract.

G. Within ten (10) business days from the date that the Concessionaire obtains all permits, the Concessionaire shall submit copies of all permits to the Department.

H. After receipt of all required permits, but prior to actual commencement by the Contractor of any work under the Project, the Concessionaire shall submit all required insurances and bonds to the Department. Within ten (10) business days after the County receives the required insurance and bonds, the County shall either approve them (such approval not to be unreasonably withheld, conditioned or delayed) or deliver to the Concessionaire specific written corrective comments.

I. The Concessionaire shall schedule a pre-construction meeting with the CPM prior to mobilization. The pre-construction meeting shall serve to review and discuss the upcoming construction activities and its impact to Park operations. Upon agreement by the CPM to all construction work activities and the associated logistics and timing, the County will issue the Notice to Proceed. Upon issuance of the Notice to Proceed, the County shall allow the Concessionaire to proceed with the Project.

14. Construction Phase:

A. Commencement and Completion of Construction. Subject to receipt of FDEP approval, the Concessionaire shall be responsible for the construction of the Project in full accordance with the approved Final Plans; the quality and workmanship shall meet or exceed the specifications; and the work shall comply with all applicable regulatory permits, authorizations and laws. The construction shall not be materially changed without the CPM's approval, which approval shall not be unreasonable withheld or delayed. The CPM will not unreasonably withhold, delay or condition its approval to any request. Such approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications is required.

1. All construction shall be performed by licensed contractors and subcontractors approved by the County, such approval shall not to be unreasonably withheld. The Concessionaire shall provide the County with a true copy of the Concessionaire's contract with the Contractor as well as a true copy(ies) of the Contractor's contract(s) with its subcontractor(s) showing a breakdown of costs and including all the requisite insurance and bonding criteria. Such contract shall give the County the right, but not the obligation, to assume the Concessionaire's obligations and rights, if the Concessionaire should default thereunder.
2. During the construction phase, the CPM shall attend weekly construction meetings, as same may be scheduled by the Concessionaire or the Contractor, and periodically visit the site to review the progress of construction to ensure adequate performance and conformity with the approved Final Plans.
3. Any limitations to ingress/egress to the Park caused by construction must be approved in writing by the County.
4. In addition to the pre-construction meeting, the Concessionaire shall schedule and coordinate a 50% progress meeting, and a 100% substantial completion walk-thru meeting with the CPM.
5. The CPM shall coordinate with the Concessionaire for the Final Acceptance of the Project once all work has been completed and all permits have been approved and closed by all regulatory agencies having jurisdiction.
6. Upon completion of construction of the Project, the Concessionaire shall, at its cost provide the Department with one copy of the "as built" drawings and a CADD file in compliance with the Department's CAD Standards (Appendix D), accurately reflecting the constructed Project, its supporting

infrastructure, and off-site improvements at the Park. In addition, the Concessionaire shall, at its cost, obtain and provide to the CPM copies of all warranties for the Project.

7. The "warranty period" shall warrant the work be free from faulty materials and workmanship for a period of not less than one (1) year from the date of final acceptance.
8. The Final Plans shall not be materially changed and/or modified without the County's approval, which approval shall not be unreasonably withheld or delayed, subject to force majeure. The County's approval shall not be deemed as a substitute for approval from any regulatory agency which issues permits and whose approval of modifications may be required. All requests for changes shall be coordinated through the CPM. The CPM will be provided sufficient notice and information (impact to scope, budget, schedule, materials; performance, etc.) to provide timely responses.
9. The Concessionaire will allow unobstructed inspection by the CPM to determine overall compliance with the intent of the approved plans and specifications throughout construction. The Concessionaire shall be responsible to provide any temporary facilities needed in support of its construction of the Project.

16. Bonds:

A. At least ten (10) days prior to commencement of any construction work on the Site, or prior to the purchase and delivery to the Site of any materials, equipment or supplies for construction, the Concessionaire shall: (1) provide the County with a payment and performance bond that satisfies all requirements of section 255.05, Florida Statutes in the full construction cost of the Project; OR (2) provide the County with an alternate form of security in the form of a certified check that satisfies the requirements of section 255.05, Florida Statutes and that the County may deposit in a County-controlled bank account or an irrevocable letter of credit in a form that is acceptable to the County ("**Alternative Security**"), in the amount of the full construction cost of the Project, each payment and performance bond or alternate security to remain in place until evidence reasonably satisfactory to the County is submitted to demonstrate all contractors performing improvements on the Project have been paid and the Project has obtained Final Completion; OR (3) (a) require that each prime contractor hired by the Concessionaire to perform work and/or make improvements on the Project shall provide a Performance Bond in accordance with section 255.05, Florida Statutes with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract to insure that his/her construction work shall be effected by the contractor or, on its default, his/her surety and shall name the County as an additional obligee and shall meet the specifications set forth below; (b) each prime contractor hired by

the Concessionaire to perform work and/or make improvements on the Project shall provide a Payment Bond in accordance with section 255.05, Florida Statutes with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract conditioned to secure the completion of the Project free from all liens and claims of sub-contractors, mechanics, laborers and material men and shall name the County as an additional obligee and payee and shall meet the specifications set forth below; and (c) the Concessionaire shall provide an alternate form of security in the amount of 5% of the contract with the Contractor that is in accordance with section 255.05, Florida Statutes.

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

The Alternative Security and Bond(s) shall comply with the requirements of Section 255.05 of the Florida Statutes.

(i) The Alternative Security shall be for the benefit of the County (so as to ensure that the Project is completed) and for all contractors hired by the Concessionaire (so as to ensure that they are paid) and the County (on behalf of all such contractors) shall be entitled to make a claim on the Alternative Security. Any irrevocable letter of credit shall be so worded as to make the Concession Agreement a part thereof and shall contain a clause providing the right of suit or action for the County (so as to ensure that the Project is completed), individually and on behalf of all contractors hired by the Concessionaire (so as to ensure that they are paid) to the same extent as if he or they were the obligee or obligees therein specifically mentioned.

(ii) All bonds shall be written through surety insurers authorized to do business in the State of Florida as a 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 amounts 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:

(a) 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;

(b) certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

(c) 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.

(iii) 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.

(iv) 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.

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

(a) 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."

(b) 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."

(c) "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."

(vi) The alternative form of security and bonds shall provide the following, without limitation:

(a) That a payment bond is obtained that is conditioned to secure the completion of the Project free from all liens and claims of contractors, subcontractors, mechanics, laborers and material men in a County approved bond form to be provided by the Concessionaire;

(b) That a performance bond is obtained that ensures that the construction work shall be effected by the general contractor or, on their default, the surety in a County approved bond form to be provided by the Concessionaire; and,

(c) That the surety will defend and indemnify Miami-Dade County and the Concessionaire 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.

17. Additional Obligations: The Concessionaire shall comply with the additional following obligations:

A. The Concessionaire shall obtain an Unconditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made. A copy of such release shall be transmitted to County's representatives no later than ten (10) business days after payment was made.

B. The Concessionaire shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after final payment is made. A copy of such release shall be transmitted to County's representatives no later than ten (10) business days after payment was made.

C. In the event the Concessionaire's contractor(s) claim non-payment(s), and/or, fail to timely provide Unconditional Releases of Lien within the timeframe stipulated under these terms, County reserves the right but not the obligation to:

- (i) reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or
- (ii) appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s).
- (iii) In either case, the Concessionaire shall within ten (10) business days of County's notification to deposit an amount equal to the reduced/disbursed amount in County's escrow account or increase the irrevocable letter of credit so as to replenish the original amount of the cash deposit(s) or security

posted. Failure to deposit the identified amount within the aforementioned time period shall result in the issuance of a Stop Work Order by the County. The Concessionaire shall immediately abide by such notice and hereby waives any rights against County from any damages/delays (direct or indirect) resulting from such work stoppage.

- (iv) In the event that, for any reason, either or both of the Performance and Payment bonds (if any) 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 Concessionaire shall pay all such claims, and indemnify, defend, and hold the County harmless against such claims.

D. If no specific periods of warranty are stated in the Concession Agreement or elsewhere in this Development Rider, for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue directly with the Concessionaire or its contractor seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11 (3) (c), Florida Statutes.

E. Once all construction is satisfactorily completed by the Concessionaire in strict accordance with the Concession Agreement, the construction contract(s), the approved plans and specifications, permits issued, and the completion of the same is demonstrated free from all liens and within the time limit specified, the said cash deposit(s) or irrevocable letter of credit posted shall be released by the County to the Concessionaire. In the event the amount of the cash deposit(s) or other security posted shall not cover any and all costs and expenses incurred by the County in implementing these conditions and making sure all contractor(s) in privity with the Concessionaire who are performing improvements to the property ultimately get paid, the Concessionaire shall be liable to the County and shall immediately pay for such difference upon notice from the County.

F. Nothing herein shall prohibit or prevent or inhibit the Concessionaire from contesting by any and all legal means any claim for payment made by any of the Concessionaire's contractors, or any subcontractor or materialman. Upon receipt by the County of any claim from any contractor, materialman, and/or supplier for payment for his/her/its labor, materials, or supplies, the County shall immediately provide notice of same to the Concessionaire and to the Surety(s). If the Surety and/or the Concessionaire fail to negotiate and settle any such claim within thirty (30) days of the County's notice, then the County shall have the right to draw down or make a claim on the Alternative Security to pay the claimant(s). Further, and although the Alternative Security may ultimately be for the benefit of the Concessionaire's contractors, or any subcontractor or materialmen, none of the Concessionaire's contractors, or any subcontractor or materialman shall be

permitted directly to draw upon the Alternative Security.

18. Additional Provisions:

- A.** No liens shall be attached to the Park or any part thereof.
- B.** The Concessionaire shall work closely with the Department in scheduling and engaging in the Concessionaire's construction activity so as not to materially disrupt Park events, including but not limited to Special Events. Where conflict may occur, the Department shall reasonably make the determination as to the Concessionaire's right to continue work and the desirability of temporarily halting or continuing activity by the Concessionaire.
- C.** The Concessionaire shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by the Concessionaire's failure to cease work in accordance with relevant provisions of this Appendix after written notice from the Department.

THE COUNTY'S CONSTRUCTION OBLIGATIONS:

- A. Conditions of the Site.** The County shall deliver physical possession of the Site to the Concessionaire in an "as is" condition so that the Concessionaire may commence construction.
- B. Staging and Delineation.** The areas within the Park to be occupied by the Concessionaire during the execution of the work shall be delineated in the construction documents plans, either the Site or other work and staging areas as reasonably agreed to between the County and the Concessionaire. The limits of the work shall be sufficient to properly undertake the necessary construction of the Project and off-site improvements within the Park site so long as normal Park operations visitor access is not materially impeded.
- C. Reasonable Access.** The County shall provide reasonable access to allow the Concessionaire to have utilities brought to the Site and to have constructed the approved improvements described in the Concession Agreement.

APPENDIX D

CAD STANDARDS, SURVEY STANDARDS, PDF, AND CD-DVD REQUIREMENTS

This document describes the Miami-Dade Parks, Recreation, and Open Spaces (PROS) Department standards for Computer Aided Design (CAD) drawings, Portable Document Format (PDF) documents, and Compact Disc/Digital Versatile Disc/Universal Serial Bus (CD/DVD/USB) submittals, if and to the extent that they are required by the Concession Agreement.

CAD Compliance Submittal Review Requirements (format and content):

- All CAD files are to be submitted as an AutoCAD .DWG format (version 2018) and AutoCAD DWF.
- Custom menus or arx applications are not allowed if it creates a requirement for the drawing to be used. No menus, custom user interface (cui) files or arx applications are to be submitted.
- Each CAD drawing should represent a single printed sheet where the file name conspicuously identifies the sheet number using PROS File naming conventions (see PROS CAD Standard Manual)
- No .zip files are allowed.

CAD Standards (For a complete reference, please review PROS CAD Standards Manual – September 2016):

- Title block
 - o All sheets are to have a title block.
 - o Title block information is to be on the right side of the sheet.
 - o Title blocks shall contain the following information, as appropriate:
 - Date
 - Project Number
 - Park Facility Number
 - Project Name
 - Sheet Name
 - Sheet Number
 - A Key Plan
 - List of Revisions
 - Consultant Company Name
 - The A/E's Seal
- Layering Format and **Line weight**
 - o Use PROS CAD Standards. Prefer method is assign **Line weight** by layer no by Color.
- Scale and Units
 - o All objects are to be drawn at full scale for the assigned unit of measure.

- o All drawings are to have a unit of measure assigned and not set to “unitless”. External references usage in CAD Documents must reference as relative.
- Area of Work
 - o CAD drawings shall include a boundary to define the Area of Work encompassing all areas, and only those areas where work is to be performed.
- Metadata shall be provided for all submitted files in the form of a matrix as a Microsoft excel file as follow:

Metadata			
Project Number:			
Project Name:			
PROS PM Name:			
File name	Drawing name	Description/Sheet Title	Data Source (company name)
Example:			
SDP03001A-XP01.dwg	A-102	Mechanical Piping Drawing	ACME Corporation

Datums and Survey related files

Drawings shall be referenced to the Florida East Zone/ NAD 83-90 HARN Feet State Plane Coordinate System. All elevations will be based on NAVD88. Architectural drawings may use architectural units on a coordinate system convenient for the project, and reference a NAD83 coordinates at each building corner. Drawings shall be in 2D with z = 0 feet. 3D and BIM documents are welcome in addition, but not in lieu of standard submittals. Only data collection devices having alphanumeric capability to record comment, descriptions, and other relevant project information are to be used. Collection of field survey data should be comprehensive. All ground features pertinent to the required end product should be collected as part of the field effort. When submitting plans that include surveyed ground surfaces, a field book files , Survey LandXML files or a ASCII text files containing all elevation points shall be delivered.

PDF Requirements:

- All documents are to be created as PDF files from the original source files, unless approved otherwise in writing by Owner.
- PDF Files shall reside in the same folder as the CAD version of the sheet.
- The CAD printer shall be Autodesk DWG to PDF.pc3 print configuration.
- Layer information shall not be included.
- All documents are to be created with a resolution of not less than 300 dpi.
- All fonts are to be embedded in the PDF.
- When compression is used, the algorithm must be LZW, CITT Group 4, or PackBits.

- The PDF document size must be the same as the original document size if the document were printed (e.g., a 24x36 print should have a PDF sheet size of 24x36).
- Each document must be submitted as a single file, as follows:
 - o A single document, such as a pre-design report or design calculations is one file.
 - o A single drawing is one file.
 - o A document larger than 11x17 inches is defined as a single document and is one file.
- No .zip files are allowed.

CD/DVD/USB Requirements:

- All CD/DVD/USB Drive document submittals required by the Agreement will be reviewed and approved by the Owner for CAD compliance and to determine completeness of the documents provided.
- The Contractor may request a CAD drawing compliance review at any time during the Project through the PROS Construction Project Manager.
- All CAD drawings shall be provided electronically to the PROS Construction Project Manager for review.

Contact Information:

Please direct all compliance-related questions to:

CADD & Survey Manager
 Miami-Dade Parks, Recreation and Open Spaces Department
 275 NW 2 ST, Miami, FL, 33128



MEMORANDUM

(Revised)

TO: Honorable Vice Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: November 19, 2020

FROM: 
Geri Bonzon-Keenan
Successor County Attorney

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

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☒ Applicable legislation requires more than a majority vote (i.e., 2/3's present ☒, 2/3 membership ☐, 3/5's ☐, unanimous ☐, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ☐, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ☐, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ☐ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved	_____	May or	Amended
Veto	_____		Agenda Item No. 14(A)(1)
Override	_____		11-19-20

RESOLUTION NO. **R-1218-20**

RESOLUTION APPROVING, BY A TWO-THIRDS VOTE OF BOARD MEMBERS PRESENT, A DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(C)(3) OF THE CODE OF MIAMI-DADE COUNTY TO APPROVE A CONCESSION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND HAULOVER MARINA, LLC, FOR THE RENOVATION, OPERATION, AND MAINTENANCE OF A PERSONAL WATERCRAFT STORAGE FACILITY AT HAULOVER PARK LOCATED AT 10800 COLLINS AVENUE, MIAMI BEACH FOR A TERM ENDING APRIL 30, 2040, WITH ESTIMATED REVENUES TO THE COUNTY OF \$1,845,090.00 OVER THE TERM; AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE THE CONCESSION AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL RIGHTS AND PROVISIONS CONTAINED THEREIN

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

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

Section 1. The foregoing recitals are incorporated into this resolution and are approved.

Section 2. This Board finds, for the reasons set forth in the accompanying memorandum, that it is in the best interest of Miami-Dade County and hereby approves, by a two-thirds vote of the Board members present, a designated purchase in accordance with the provisions of section 2-8.1(c)(3) of the Code of Miami-Dade County, to approve a concession agreement between Haulover Marina, LLC and Miami-Dade County, in substantially the form attached as Attachment "A" to the accompanying memorandum, for the renovation, operation, and

maintenance of a personal watercraft storage facility at Haulover Park located 10800 Collins Avenue, Miami Beach. The concession agreement is estimated to result in revenues to the County of \$1,845,090.00 over the term of the concession agreement which shall expire on April 30, 2040.

Section 3. The County Mayor or Mayor's designee shall have the authority to execute the concession agreement on behalf of the County and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner _____ ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Vice Chairwoman

Jose "Pepe" Diaz
Oliver G. Gilbert, III
Sally A. Heyman
Joe A. Martinez
Jean Monestime
Sen. Javier D. Souto

Sen. René García
Keon Hardemon
Eileen Higgins
Kionne L. McGhee
Raquel A. Regalado
District 8 - Vacant

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of November, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency.

MRP

Monica Rizo Perez
Melanie J. Spencer