



Date returned to PMS:



**REQUEST FOR PROPOSALS (RFP) No. EPPRFP-01246  
FOR  
PROVIDE AND OPERATE MECHANIZED RIDES IN REGIONAL PARKS**

**PRE-PROPOSAL CONFERENCE TO BE HELD:**

\_\_\_\_\_, 2018 at \_\_:00 AM (local time)  
111 NW 1<sup>st</sup> Street, \_\_\_ Floor, Conf. Rm. \_\_, Miami, Florida

**ISSUED BY MIAMI-DADE COUNTY:**

Internal Services Department, Strategic Procurement Division  
(Through the Expedited Purchasing Program)  
for the  
Parks, Recreation, and Open Spaces Department

**MIAMI-COUNTY CONTACT FOR THIS SOLICITATION:**

Jessica Tyrrell, Procurement Contracting Manager  
111 NW 1<sup>st</sup> Street, Suite 1300, Miami, Florida 33128  
Telephone: (305) 375-4029  
E-mail: Jessica.Tyrrell@miamidade.gov

**PROPOSALS DUE:**

**INSERT DATE AND TIME**

**IT IS THE POLICY OF MIAMI-DADE COUNTY (COUNTY) THAT ALL ELECTED AND APPOINTED COUNTY OFFICIALS AND COUNTY EMPLOYEES SHALL ADHERE TO THE PUBLIC SERVICE HONOR CODE (HONOR CODE). THE HONOR CODE CONSISTS OF MINIMUM STANDARDS REGARDING THE RESPONSIBILITIES OF ALL PUBLIC SERVANTS IN THE COUNTY. VIOLATION OF ANY OF THE MANDATORY STANDARDS MAY RESULT IN ENFORCEMENT ACTION. (SEE IMPLEMENTING ORDER 7-7)**

**Electronic proposal responses to this RFP are to be submitted through a secure mailbox at BidSync until the date and time as indicated in this document.** It is the sole responsibility of the Proposer to ensure its proposal reaches BidSync before the Solicitation closing date and time. There is no cost to the Proposer to submit a proposal in response to a Miami-Dade County solicitation via BidSync. Electronic proposal submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files. All proposals received and time stamped through the County's third party partner, BidSync, prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by technical difficulty or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal. For competitive bidding opportunities available, please visit the County's Internal Services Department website at: <http://www.miamidade.gov/procurement/>.

Requests for additional information or inquiries must be made in writing and submitted using the question/answer feature provided by BidSync at [www.bidsync.com](http://www.bidsync.com). The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date (see addendum section of BidSync Site). Proposers who obtain copies of this Solicitation from sources other than through BidSync risk the possibility of not receiving addenda and are solely responsible for those risks.

**1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS****1.1 Introduction**

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade County Parks, Recreation, and Open Spaces Department ("PROS"), is soliciting proposals from experienced and capable Proposers to provide, operate, and maintain a revenue-generated Mechanized Rides operation at various Regional Parks within Miami-Dade County.

The County anticipates awarding a contract to a single Proposer for a five-year term, with two, five-year options to renew, at the County's sole discretion.

It is the responsibility of each Proposer to conduct due diligence before submitting a proposal, to include:

- 1) Examine every component of this Solicitation and other associated information (which may not be provided by the County), as well as the draft agreement documents included in this Solicitation thoroughly and notify the County of any conflicts, errors or discrepancies in the documents that may affect submission of a Proposal, prior to deadline for receipt of questions stipulated in the RFP.
- 2) Visit the Locations to become familiar with conditions that may affect costs, progress, performance, and/or furnishing of the Services.
- 3) Take into account federal, state and local laws, regulations, permits, and ordinances that may affect costs, progress, performance, and/or furnishing of the Services.
- 4) Understand that the corresponding General Plan for each Park in question will require modifications for the provision of the Mechanized Rides.

**The anticipated schedule for this Solicitation is as follows:**

Solicitation Issued:	TBD
Pre-Proposal Conference:	See front cover for date, time, and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the ADA Coordinator at (305) 375-2013 or email <a href="mailto:hjwrig@miamidade.gov">hjwrig@miamidade.gov</a> at least five days in advance.
Deadline for Receipt of Questions:	TBD
Proposal Due Date:	See front cover for date and time.
Evaluation Process:	TBD
Projected Award Date:	TBD

**1.2 Definitions**

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

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The words "Force Majeure" to mean an occurrence outside of either party's control, including but not limited to, an act of nature, war, riot, sovereign conduct, or conduct of third parties.
4. The words "General Plan" to mean the document that guides the development of a Park and dictates all of the facilities that are planned for the Park and how they are to be arranged.
5. The words "Gross Receipts" to mean all receipts from the sale of services, sold in, upon, or from the Mechanized Rides operation, including such sales as shall in good faith be credited by Contractor in the regular course of its business at the Mechanized Rides operation, including mail, e-mail, and telephone orders received at the Mechanized Rides operation, and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Contractor for returned or defective merchandise; sales, excise and similar taxes; or the

proceeds of sales of Contractor's trade fixtures, operating equipment, or other property used by Contractor in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when Services have been served, shipped, or delivered or when charged against the purchaser on the books of Contractor, whichever of such events shall first occur.

6. The word "Locations" to mean the individual Park as further described in Section 2.1 and its respective Site Map.
7. The words "Mechanized Rides" to mean family orientated rides such as, but not limited to, carousels and Ferris wheels.
8. The word "Proposal" to mean the properly signed and completed written good faith commitment by the Proposer submission in response to this Solicitation by a Proposer for the Services, and as amended or modified through negotiations.
9. The word "Proposer" to mean the person, firm, entity or organization, as stated on the Proposal Submittal Form, submitting a proposal to this Solicitation.
10. The words "Scope of Services" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
11. The word "Solicitation" to mean this Request for Proposals (RFP) document, and all associated addenda and attachments.
12. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
13. The word "Utilities" to mean services used or consumed such as, but not limited to, electricity, gas, water, and sewerage.
14. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services, and the terms and conditions of this Solicitation.

### **1.3 General Proposal Information**

The County may, at its sole and absolute discretion, reject any and all or parts of any or all proposals; accept parts of any and all proposals; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the proposals received as a result of this process. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any Proposer regarding Proposer's responsibility after the submission deadline as the County deems necessary.

The Proposer's proposal will be considered a good faith commitment by the Proposer to negotiate a contract with the County, in substantially similar terms to the proposal offered and, if successful in the process set forth in this Solicitation and subject to its conditions, to enter into a contract substantially in the terms herein. Proposer proposal shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date and time, or upon the expiration of 180 calendar days after the opening of proposals.

As further detailed in the Proposal Submittal Form, Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law."

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible.

To request a copy of any code section, resolution and/or administrative/implementing order cited in this Solicitation, contact the Clerk of the Board at (305) 375-5126, Monday- Friday, 8:00 a.m. – 4:30 p.m.

#### 1.4 **Aspirational Policy Regarding Diversity**

Pursuant to Resolution No. R-1106-15, Miami-Dade County vendors are encouraged to utilize a diverse workforce that is reflective of the racial, gender and ethnic diversity of Miami-Dade County and employ locally-based small firms and employees from the communities where work is being performed in their performance of work for the County. This policy shall not be a condition of contracting with the County, nor will it be a factor in the evaluation of solicitations unless permitted by law.

#### 1.5 **Cone of Silence**

Pursuant to Section 2-11.1(t) of the Code of Miami-Dade County, as amended, a "Cone of Silence" is imposed upon each RFP after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff, County Commissioners or their respective staffs;
- the County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective Competitive Selection Committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Services Section, the responsible Procurement Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the Solicitation document;
- oral communications at pre-proposal conferences and oral presentations before Competitive Selection Committees during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting;
- recorded contract negotiations and contract negotiation strategy sessions; or
- communications in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response is necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at [clerkbcc@miamidade.gov](mailto:clerkbcc@miamidade.gov).

All requirements of the Cone of Silence policies are applicable to this Solicitation and must be adhered to. Any and all written communications regarding the Solicitation are to be submitted only to the Procurement Contracting Officer with a copy to the Clerk of the Board. The Proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

#### 1.6 **Communication with Competitive Selection Committee Members**

Proposers are hereby notified that direct communication, written or otherwise, to Competitive Selection Committee members or the Competitive Selection Committee as a whole are expressly prohibited. Any oral communications with Competitive Selection Committee members other than as provided in Section 2-11.1 of the Code of Miami-Dade County are prohibited.

**1.7 Public Entity Crimes**

Pursuant to Paragraph 2(a) of Section 287.133 of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**1.8 Lobbyist Contingency Fees**

- a) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

**1.9 Collusion**

In accordance with Section 2-8.1.1 of the Code of Miami-Dade County, where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer, the principals, corporate officers, and managers of the Proposer; or the spouse, domestic partner, parents, stepparents, siblings, children or stepchildren of a Proposer or the principals, corporate officers and managers thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership in another Proposer for the same contract. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

**1.10 Expedited Purchasing Program**

Pursuant to Section 2-8.1.6 of the Code of Miami-Dade County, the County created the Expedited Purchasing Program (EPP). Due to the expedited nature of County projects issued under the EPP, prospective Proposers should anticipate a shortened solicitation timeline for submission of proposals. Technical, professional and legal staff may be used to determine best value as set forth in the Solicitation documents without the need to utilize the formal Competitive Selection Committee process established by the County. The County Mayor's or designee's written recommendation to award a contract under the EPP shall be sufficient to commence the bid protest period and terminate the Cone of Silence. Any legislation contrary to the provisions of the EPP shall be deemed suspended or amended as necessary to give effect to the intent of this Program.

**1.11 Contract Measures**

This Solicitation includes contract measures for Miami-Dade County Certified Small Business Enterprises (SBE's) pursuant to Sections 2-8.1.1.1.1 and 2.1.1.1.2 of the Code of Miami-Dade County as follows:

**Subcontractor Goal:**

           % SBE subcontractor goal is applicable. The purpose of a subcontractor goal is to have portions of the work under the contract performed by available subcontractors that are certified SBEs for contract values totaling not

less than the percentage of the contract value set out in this Solicitation. Subcontractor goals may be applied to a contract when estimates made prior to Solicitation advertisement identify the quality, quantity and type of opportunities in the contract and SBEs are available to afford effective competition in providing a percentage of these identified services. Proposers shall submit a completed Schedule of Intent Affidavit (Form SBD 504) at the time of proposal identifying all SBEs to be utilized to meet the subcontractor goal. The Schedule of Intent Affidavit shall specify the scope of work and commodity code the SBE will perform. The Schedule of Intent Affidavit constitutes a written representation by the Proposer that to the best of the Proposer's knowledge the SBEs listed are available and have agreed to perform as specified, or that the Proposer will demonstrate unavailability. The Schedule of Intent Affidavit can be found at <http://www.miamidade.gov/business/library/forms/sbe-soi.pdf>.

The participating SBE firms (or joint ventures) must have a valid Miami-Dade County SBE certification by the proposal due date and time as well as meet all other requirements. Additional information regarding Miami-Dade County's Small Business Enterprise Program, including new amendments to the Program, is available on the Small Business Development's website <http://www.miamidade.gov/smallbusiness/>

(If Selection Factor, use Section 4.4 and delete above Section 1.11)

## 2.0 SCOPE OF SERVICES

### 2.1 **Background**

The Miami-Dade County Comprehensive Development Master Plan ("CDMP") Recreation and Open Space Element ("ROSE") defines Regional Parks (also known as District Parks) as Areawide Parks. Regional Parks serve the entire County, including residents in incorporated and unincorporated areas. Regional Parks can be population-based parks, which provide competition level sports facilities and large scale recreational opportunities required to serve the entire population of the County. The CDMP ROSE strives to make Regional Parks accessible to residents within 2-3 miles from their homes. Regional Parks can also be resource-based parks, which are based on a natural, historical, or cultural resource and provide a specific type of recreational opportunity or experience.

PROS requires a Mechanized Rides operation at the following five (5) Regional Parks:

#### 1. Ives Estates Park

Ives Estates Park, located at 20901 NE 16<sup>th</sup> Avenue, Miami, FL 33139, was established in 1995 as a series of purchases from a landfill site (Ojus Property) and the City of Miami Beach. The Park is 94.5 acres of the located in the NW quadrant of I-95 and Ives Dairy Road for use as a District Park. 12 acres of the Park were also used as a landfill before establishment, which ceased operation in 1977. The Park was planned to include active recreational uses, such as multipurpose athletic fields, ballfields, sports courts, and a recreational activity center. Planned passive recreational uses were also planned, such as bicycling, walking, and picnicking.

Additional considerations include tree preservation. At the time of Park establishment, the site was found to contain 6.0 acres of designated Natural Forest Communities hammock. The site contains a high density of specimen-sized Live Oak and Red Bay trees. The site also contains a sizable population of Hercules Club, one of the rarest tree species in Miami-Dade County, as well as specimen sized trees (trunk diameter >18"). Environmental Endangered Lands - Endangered Land status is also indicated on this site.

Joint use agreement with Miami-Dade County Public Schools exists for this property.

Deed Restrictions: None on file; however, Park may have restrictions related to grant funding sources that are not reflected in the deed restrictions.

**Commented [TJ(1)]:** Any chance we have annual attendance by Park? Check with Anthony or Sandy.



General Plan: The current General Plan does not contemplate Mechanized Rides. It is the selected Proposer's responsibility to participate in the General Facilities Hearing process (if required) to include, but not be limited to, participation in public meetings to modify the General Plan to include Mechanized Rides as an approved use of the Park. Participation shall be coordinated with PROS staff throughout the process. See Attachment A – Ives Estates Park General Plan.

Maps: See Attachment B – Ives Estates Park Site Map. Please note that only the designated area(s) clearly delineated on these maps are potentially available for Mechanized Rides development.

## 2. Amelia Earhart Park

Amelia Earhart Park, located at 401 E. 65<sup>th</sup> Street, Hialeah, FL 33013, is a 515-acre park located on the North side of NW 119th Street, between NW 54th avenue and NW 42nd Ave (LeJeune Rd), and bound south by the Gratigny Expressway. The land where Amelia Earhart Park is located was the former Opa Locka Naval Reserve Air Base. The Park land was purchased from the General Services Administration through the Open Space Program by the Housing and Urban Development's 1965 act creating the program; however, this is not tied to any deed restrictions on the property. The original master plan, approved in the early 1970s, consisted of picnic areas, a farm village complex, and a marina in the center. Amended plans in 1992 provided for additional recreation activities, such as bike trails, and roller hockey rinks, as well as a dog park, a skate area, archeological zone, and a special events area.

Amelia Earhart Park is located just south of the Miami-Opa Locka Executive Airport, only separated by Gratigny Expressway (SR 924), NW 135th Street, and a wedge of Industrial land use on the east side of the airport.

Height Regulations Near Airports/ Airfields: Federal Law requires that the FAA determine whether a structure that is proposed to be built or altered, 200 feet above ground level or higher, or near an airport, does not pose a hazard to the airspace. Consistent with changes to the CFR Part 77, the height of a structure identified as an obstruction is 499 feet. FAA also provides lighting and marking standards to reduce the impact on migratory bird populations. These standards will reduce the confusion and disruption to migratory bird patterns attributed to certain obstruction marking schemes.

**Deed Restrictions:** In the event of a national emergency declared by the President or Congress of the United States, the Federal Government shall have full, unrestricted possession, control, and use of premises and shall pay a fair rental for the use of any installations or structures. Consider the required use contingent upon national emergency declarations. Park may also have restrictions related to grant funding sources that are not reflected in the deed restrictions.

General Plan: The current General Plan does not contemplate Mechanized Rides. It is the selected Proposer's responsibility to participate in the General Facilities Hearing process (if required) to include, but not be limited to, participation in public meetings to modify the General Plan to include Mechanized Rides as an approved use of the Park. Participation shall be coordinated with PROS staff throughout the process. See Attachment C – Amelia Earhart Park General Plan.

Maps: See Attachment D – Amelia Earhart Park Site Map. Please note that only the designated area(s) clearly delineated on these maps are potentially available for Mechanized Rides development.

## 3. Tropical Park

Tropical Park, located at 7900 SW 40<sup>th</sup> Street, Miami, FL 33155, is a 275-acre District Park located on the SW corner of SW 40th Street (Bird Road) and the Palmetto Expressway (SR 826.) The property was originally part of a horse track. The original plan for Tropical Park was approved in 1975, designed to provide adult-oriented, high-caliber facilities that complement other youth oriented facilities already offered in local parks. Subsequent resolutions in 1992, 1997, and 1998 allowed for improvements, as well as expansion and renovation of recreational facilities. The Park is designed to support a variety of large special events and shows (such as Santa's Enchanted Forest,) as well as corporate picnics and athletic competitions. In 2015, Resolution 348-15 was passed to qualify Tropical Park for designation as a Heritage Park.

**Commented [TJ(2):** There are National Park Service Federal Lands to Parks Deed Restrictions on this Property. The NPS must review and approve any proposed concession at the site. They will want to review the draft form of agreement as well and before execution.

Contact John Barrett – Program Manager for Federal Lands to Parks, NPS Southeast Region for more info. 404.507.5689  
john\_barrett@nps.gov

Deed Restrictions: None on file; however, Park may have restrictions related to grant funding sources that are not reflected in the deed restrictions.

General Plan: The current General Plan does not contemplate Mechanized Rides. It is the selected Proposer's responsibility to participate in the General Facilities Hearing process (if required) to include, but not be limited to, participation in public meetings to modify the General Plan to include Mechanized Rides as an approved use of the Park. Participation shall be coordinated with PROS staff throughout the process. See Attachment E – Tropical Park General Plan.

Maps: See Attachment F – Tropical Park Site Map. Please note that only the designated area(s) clearly delineated on these maps are potentially available for Mechanized Rides development.

#### 4. Kendall Indian Hammocks Park

Kendall Indian Hammocks Parks, located at 11395 SW 79<sup>th</sup> Street, Miami, FL 33173, is located west of SW 107<sup>th</sup> Avenue and north of Kendall Drive (SW 88<sup>th</sup> St). In 2012, Resolution 718-12 directed the County to file an application to amend the CDMP to designate park-adjacent County-owned property as parks and recreation land use. Resolution 719-12 directed the County to amend the Kendall Indian Hammock Park General Plan to accommodate the expansion.

Archeological Findings and Sites:

- Metro-Dade Historic Preservation Board- R-9704: Dade County Hospital Annex Historic Site Designation
- Metro-Dade Historic Preservation Board- R-9703: Indian Hammock Archeological Zone Designation
- Metro-Dade Historic Preservation Board: Archeological Island Designation; Kendall Island Site No. 8Da1639
- Metro-Dade Historic Preservation Board: Archeological Zone Designation; Seminole Indian Historic Activity Area.

Miami-Dade County archaeological reports found this site to contain remains of shells, faunal zone, and pottery from the Glades I and II cultural classification, indicating a small habitation or campsite. A recommendation was made to excavate the site if further alterations were made. The archaeological zone is located on the southeast corner and northeast area of the park. Verify with Miami-Dade County Historic Preservation Board on requirements to excavate prior to alteration to the Park.

Deed Restrictions: None on file; however, Park may have restrictions related to grant funding sources that are not reflected in the deed restrictions.

General Plan: The current General Plan does not contemplate Mechanized Rides. It is the selected Proposer's responsibility to participate in the General Facilities Hearing process (if required) to include, but not be limited to, participation in public meetings to modify the General Plan to include Mechanized Rides as an approved use of the Park. Participation shall be coordinated with PROS staff throughout the process. See Attachment G – Kendall Indian Hammocks Park General Plan.

Maps: See Attachment H – Kendall Indian Hammocks Park Site Map. Please note that only the designated area(s) clearly delineated on these maps are potentially available for Mechanized Rides development.

#### 5. Homestead Air Reserve Park

Homestead Air Reserve Park, located at 27401 SW 127<sup>th</sup> Avenue, Homestead, FL 33039, was established in 2002, and is located East of SW 127<sup>th</sup> Avenue, between SW 268<sup>th</sup> (Moody Dr.) and SW 280<sup>th</sup> Streets. The Park is 280 acres, and functions as the only Regional Park in the south Miami-Dade area. This tract, formerly part of the Homestead Air Force Base (now Air Reserve Base) was conveyed to the County by the Federal Government at no cost in 1998 for public park purposes. The General Plan calls for a large recreation center, lighted ballfields, court picnic areas playground, open play areas, and a pathway system. The Family Aquatic Center includes competitive and recreational swimming areas and wet play areas.

Height Regulations Around Air Bases/ Military Bases/ Airfields: Federal Law requires that the FAA determine whether a structure that is proposed to be built or altered, 200 feet above ground level or higher, or near an airport, does not pose a hazard to the airspace. Consistent with changes to the CFR Part 77, the height of a structure identified as an obstruction is 499 feet. FAA also provides lighting and marking standards to reduce the impact on migratory bird populations. These standards will reduce the confusion and disruption to migratory bird patterns attributed to certain obstruction marking schemes.

Note potential use of this Park as a staging area in the event of a mass migration from the Caribbean basin.

Deed Restrictions: None on file; however, Park may have restrictions related to grant funding sources that are not reflected in the deed restrictions.

General Plan: The current General Plan does not contemplate Mechanized Rides. It is the selected Proposer's responsibility to participate in the General Facilities Hearing process (if required) to include, but not be limited to, participation in public meetings to modify the General Plan to include Mechanized Rides as an approved use of the Park. Participation shall be coordinated with PROS staff throughout the process. See Attachment I – Homestead Air Reserve Park General Plan.

Maps: See Attachment J – Homestead Air Reserve Park Site Map. Please note that only the designated area(s) clearly delineated on these maps are potentially available for Mechanized Rides development.

## 2.2 Qualification Requirements

Proposer(s) should have experience in the furnishing and operating of mechanized rides with similar size and scope of the requirements contained in this solicitation. Proposer(s) shall also have adequate financial strength and working capital to provide for all costs associated with the operations of the Mechanized Rides operation.

## 2.3 General Services to be Provided

- 2.3.1 Provide, install, and operate the Mechanized Rides and related services for each as applicable, as approved by the County, in a manner associated with this type of operation, in accordance with Article 7 of The Home Rule Amendment and Charter (Attachment K), and all Miami-Dade County ordinances and rules and regulations.
- 2.3.2 Provide access to persons of all ability levels and in accordance with Americans with Disabilities Act (ADA) requirements.
- 2.3.3 Manage, operate, and maintain the Mechanized Rides and provide Services in a manner that will be safe and customer-oriented with prompt service, complaint resolution, effective employee performance and training and timely initiation and completion of all Work.
- 2.3.4 Take care of the Mechanized Rides and using the same in a careful manner and, at its own expense, repair County property and Mechanized Rides damaged by its operations.
- 2.3.5 Keep all equipment and supplies necessary to maintain the Mechanized Rides in the same condition as at the commencement of any Agreement issued as a result of this RFP or better.
- 2.3.6 Provide assistance, expertise, and technical advice to the County regarding general changes in the industry rules and regulations, safety and operation of the Mechanized Rides, suggesting the types of equipment, merchandise, services, and promotional methods associated with this type of operation.
- 2.3.7 Ensure employees are distinctively uniformed or appropriately attired so as to be distinguishable as the selected Proposer's employees and not as employees of the County.
- 2.3.8 Provide all labor and materials to repair and maintain the day-to-day operations of the Mechanized Rides.
- 2.3.9 Prepare plan(s) for emergencies, including, but not limited to, fire, acts of nature, etc., and implement the approved plan(s) if instructed to do so by the County. Approved plans shall be, at a minimum, equal to that of the PROS department (Attachment L).

**Commented [TJ(3)]:** There are National Park Service Federal Lands to Parks Deed Restrictions on this Property. The NPS must review and approve any proposed concession at the site. They will want to review the draft form of agreement as well and before execution.

Contact John Barrett – Program Manager for Federal Lands to Parks, NPS Southeast Region for more info. 404.507.5689  
john\_barrett@nps.gov

**2.4 County's Rights and Responsibilities**

- 2.4.1 The County shall have the right to review and approve all proposed and subsequent revisions of: 1) prices on all Services provided by the selected Proposer to the public, and 2) selected Proposer's schedule of intended hours of operation and staffing levels which shall be implemented by the selected Proposer.
- 2.4.2 The County reserves the right to schedule special events that may preclude the selected Proposer from operating the Mechanized Rides or providing the Services, or a portion thereof, for a limited time. The County will use reasonable efforts to notify the selected Proposer as early as possible of these special events.
- 2.4.3 The County shall have the right, without limitation, to monitor and test the quality of Services of the selected Proposer, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of a shopping service, closed circuit TV, and other reasonable means.
- 2.4.4 The County shall have the authority to make periodic reasonable inspections of all the Mechanized Rides, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a safe, neat and orderly condition. The selected Proposer shall make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the selected Proposer is operating in compliance with the terms and provisions of this Contract.
- 2.4.5 The County reserves the right to determine the attractiveness and appropriateness of the Mechanized Rides and to request that the selected Proposer make changes, if necessary, and such determinations by the County shall be considered final.
- 2.4.6 The County shall have the right, without limitation, to make any repairs, alterations and additions to any structures and Mechanized Rides, including the Mechanized Rides covered under this Contract, free from any and all liability for loss of business or damages of any nature whatsoever during the making of such repairs, alteration and additions. The selected Proposer shall assume responsibility and liability for such repair, alteration, or addition costs associated.
- 2.4.7 The County shall have the right to approve or deny in writing any subcontractors in its sole discretion.
- 2.4.8 The County reserves the right to close the Mechanized Rides prior to an act of nature, in case of emergency, or as a result of a Force Majeure event and keep said Mechanized Rides closed until deemed safe in the opinion of the County. The selected Proposer shall not be entitled to remuneration from the County for losses claimed from such event or action.
- 2.4.9 Any usage of County property other than as noted herein shall be subject to the written confirmation of PROS or the County, as applicable.

**2.5 Selected Proposer's Rights and Responsibilities**

- 2.5.1 Selected Proposer shall be responsible for Utilities associated with the day-to-day operations. The Selected Proposer shall pay for all charges for Utility services used or consumed in or upon the Mechanized Rides including: electricity, water, and sewage charges under this Contract.
- 2.5.2 Selected Proposer shall not place any unacceptable load or burden on the capacity of the applicable building systems and Utility lines of the Park as determined either by the public utility providing such service or by the County in the exercise of reasonable judgment.
- 2.5.3 Selected Proposer shall be responsible for all upgrades to the applicable building systems and Utility lines of the Park that are required for the establishment, operation, and ongoing administration of the Mechanized Rides.
- 2.5.4 Selected Proposer shall be responsible for trash service, loose debris removal, grounds maintenance, and pest extermination service within the perimeter of the Mechanized Rides area. The selected Proposer shall keep the Mechanized Rides area and the Mechanized Rides and equipment clean at all times. If the Mechanized Rides and equipment are not kept clean in the opinion of the County, the selected Proposer will be advised and if corrective action is not immediately taken, the County will cause the same to be cleaned and/or treated and the selected Proposer shall assume responsibility and liability for such cleaning and/or extermination costs associated.

- 2.5.5** Selected Proposer shall be responsible for the repair, maintenance, and daily upkeep of the Mechanized Rides.
- 2.5.6** Unless otherwise approved by the County, neither the Selected Proposer nor its subcontractors shall store any equipment, supplies, or related items on the premises.
- 2.5.7** Selected Proposer shall, at its sole cost, obtain all permits, licenses, and any development approvals required for installation, operation and performance under this Contract from the Authority Having Jurisdiction (AHJ).
- 2.5.7.1** Selected Proposer shall be responsible for compliance with the Comprehensive Development Master Plan (CDMP) Amendment Process, Development Approvals, and all fees and filings required therein, as well as for compliance with the Park's approved General Plan and any other applicable entities having jurisdiction over the Park.
- 2.5.8** Selected Proposer shall comply with Miami-Dade County Ordinance No. 08-07, Chapter 26, "Miami-Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act". The selected Proposer shall ensure that all selected Proposer's management, staff, and volunteers:
- 2.5.8.1** Have had nationwide criminal background checks conducted by a Professional Background Screener.
- 2.5.8.2** Have been screened through the Florida Department of Law Enforcement Sexual Predator/Offender Database, and a check of the National Sex Offender Public Registry.
- 2.5.8.3** Have been verified as being United States Citizens or having legal immigrant status employment.
- 2.5.8.4** Complete an affidavit affirming that no work or volunteer duties will be performed on Park property owned or operated by Miami-Dade County in violation of this Ordinance and that an arrest will be reported to the selected Proposer within forty-eight (48) hours of such arrest.
- 2.5.8.5** Wear picture identification at all times while on County property and when in direct contact with patrons and the general public.
- 2.5.8.6** Retain all records demonstrating compliance with the background screening required herein for not less than three (3) years beyond the end of the contract term. The selected Proposer shall provide the County with access to these records annually, or at the request of the County.
- 2.5.9** Selected Proposer shall comply with Miami-Dade County Ordinance No. 16-58 amending Chapter 26 of the Code of Miami-Dade County by adding Rule 36 that bans polystyrene (also known as Styrofoam) in Parks under many circumstances. A polystyrene article is defined as plates, bowls, cups, utensils, cutlery, tableware, containers, lids, trays, coolers, ice chests, bags, boxes, wrappings, bottles, and all similar articles that consist of polystyrene. This rule does not apply to polystyrene articles that are used for prepackaged food that have been filled and sealed prior to receipt by the selected Proposer.
- 2.5.10** It shall be the selected Proposer's full responsibility to secure the Mechanized Rides included in this Solicitation twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. The County will not accept any responsibility for the selected Proposer's equipment, supplies, other personal property, money, etc.
- 2.5.10.1** Should the selected Proposer require a security company to secure the Mechanized Rides to prevent against theft, vandalism, etc., the selected Proposer may elect to hire and pay a security company to secure the Mechanized Rides at no cost to the County.
- 2.5.11** The selected Proposer shall ensure their emergency evacuation plan and hurricane plan coincides with the County's emergency evacuation and hurricane plan.
- 2.5.12** The selected Proposer shall employ a qualified, full-time, on-site manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the selected Proposer under this Contract and to accept all notices provided for herein throughout the term of this Contract or any extensions thereof.
- 2.5.13** A management personnel of the selected Proposer shall be on call, at all times, for emergencies

or other matters related to the operations under this Contract.

- 2.5.14** All equipment and personal property furnished by selected Proposer shall be of good quality and suitable for its purpose.
- 2.5.15** Selected Proposer shall use the Mechanized Rides only for the use permitted and shall not provide any services or sell any item, service, or product without the prior written approval of the Project Manager. Further, all activity and use shall be in accordance with Article 7 of the Home Rule Amendment and Charter.
- 2.5.15.1** No alcoholic beverages are permitted on the rides at any time and selected Proposer is responsible for conduct of patrons.
- 2.5.16** Selected Proposer shall not permit the Mechanized Rides or any part thereof to be used in any manner, or anything to be done therein, or permit anything to be brought into or kept therein, which would in any way (i) violate any Legal Requirements or Insurance Requirements; (ii) cause structural injury to the Mechanized Rides or Parks or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Mechanized Rides or Parks; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Mechanized Rides or Parks or the proper and economic functioning of any other common service facility or common utility of the Mechanized Rides or Parks; (vi) impair or interfere with the physical convenience of any of the occupants of the Mechanized Rides or Parks; or (vii) impair any of its other obligations under this Contract.
- 2.5.17** Selected Proposer shall be responsible for the timely payment (i.e., before delinquency) of any and all taxes levied on the selected Proposer, which taxes relate to, arise out of, or are a result of the operations and/or performance under any Agreement issued as a result of this RFP. The selected Proposer's liability for the payment of taxes shall encompass taxes imposed by any taxing authority including, but not limited to, state, county, and municipal taxing authorities.
- 2.5.18** Selected Proposer, at its expense, shall make promptly: all repairs, ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the Mechanized Rides or Parks as shall be required by reason of (i) the performance of any work on the Mechanized Rides; (ii) the installation, use or operation of selected Proposer's property; (iii) Selected Proposer's portion of the utility lines in the Mechanized Rides, if damaged due to selected Proposer's negligence; (iv) the moving of selected Proposer's property in or out of the Mechanized Rides or Parks; (v) the misuse or neglect of the Mechanized Rides or Park by selected Proposer or any of its employees, agents, contractors, or customers including the failure or neglect to make the repairs required. Selected Proposer shall repair all damages to the Mechanized Rides and/or Parks caused by the selected Proposer, its employees, agents, or independent contractors.
- 2.5.19** Selected Proposer shall be responsible for conduct of all individuals or groups renting the Mechanized Rides.
- 2.5.20** Selected Proposer shall refrain from utilizing outside Park surfaces for commercial advertisements including company logos. All signage must first be approved in writing by the County. All signage must also be approved by all government authorities having jurisdiction and must conform to the requirements set forth in Article 7 of the Home Rule Amendment and Charter of Miami-Dade County as amended.
- 2.5.21** Selected Proposer shall request prior written approval from Park Manager for all special events or additional usage.
- 2.5.22** Selected Proposer shall purchase, provide, and maintain County approved software and point of sale system that allows County access to real-time information and reports on sales data.
- 2.5.23** Selected Proposer shall request approval from the County in writing in advance for use of any subcontractors.
- 2.5.24** Selected Proposer shall be responsible for any costs associated with a Force Majeure event at the Mechanized Rides including, but not limited to, repairs, maintenance, loss of revenues, etc. as County will not reimburse for expenses, extend the agreement term, or abate the revenue to the County in such instances.
- 2.5.25** At the expiration or earlier termination of the term of the Agreement executed between the selected Proposer and the County, the selected Proposer shall repair and/or cure any impacts or damages to the Park property resulting from the installation and removal of the Mechanized Rides.

- 2.5.26** Selected Proposer shall submit to the County at its own expense, within sixty (60) days following each twelve (12) month period of operation under any Agreement issued as a result of this RFP, financial statements including a balance sheet, income statement, a report of gross receipts per month and the summary of activities arising from selected Proposer's operations as set forth herein.
- 2.5.27** Examination of Selected Proposer's Books and Records: Such books and records as are necessary to determine the accuracy of any reports to be submitted to County shall be subject to examination by County or its authorized representatives at reasonable times during selected Proposer's term, at County's expense and in such manner as not to interfere unreasonably with the conduct of selected Proposer's activities.
- 2.5.28** Selected Proposer agrees to maintain a County-approved accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the accuracy of required performance measures.
- 2.5.29** The Selected Proposer shall provide the County with monthly utilization reports showing the number of daily users of the Mechanized Rides, as well as related data used to determine and verify capacity utilization.

## **2.6 Additional Services**

The County, at its sole discretion, may allow the selected Proposer(s) to provide additional services and/or use additional or substitute space within the Facilities, upon such terms as the parties may agree. Any additional services must be associated with, and be incidental to, normal tennis center operations. However, any right to additional services and space by selected Proposer(s) are subordinate to the County's right to provide the additional service or use additional space itself and the County's right to contract with others. Any changes shall be added to this contract by formal written modification.

## **2.7 Additional Locations**

The County, at its sole discretion, reserves the right to add similar Mechanized Ride operations to a selected Proposer's contract or expand a selected Proposer's Services to another park if deemed to be in the best interest of the County. Any additions of locations or expansion of Services to a selected Proposer's contract may be subject to negotiations with other selected Proposers. Upon award of the additional location or expansion of Services, the selected Proposer's agreement will be supplemented, identifying additional location and/or Service and revenue information.

## **2.8 Payment of Revenue to the County**

It is the intent of the County that the best possible services be provided to the public, while generating revenues. The selected Proposer shall pay a Guaranteed Monthly Fee to the County and a Percentage of Monthly Gross Receipts (minimum of ten (10) percent) of all gross revenues for the operation and management of the Mechanized Rides and other applicable services as approved by the County.

## **3.0 RESPONSE REQUIREMENTS**

### **3.1 Submittal Requirements**

In response to this Solicitation, Proposer should **complete and return the entire Proposal Submission Package**. Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required and submitted in the manner described.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate proposals are not requested or desired.

## **4.0 EVALUATION PROCESS**

### **4.1 Review of Proposals for Responsiveness**

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all

documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

#### 4.2 Evaluation Criteria

Proposals will be evaluated by a Review Team which will evaluate and rank proposals on criteria listed below. The Review Team will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Review Team is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Review Team member.

<u>Technical Criteria</u>	<u>Points</u>
1. Proposer's (including Proposer's key personnel and/or subcontractors that are assigned to this project) relevant experience, qualifications, capabilities, and past performance	25
2. Proposer's approach to providing the services requested in this Solicitation	30
3. Proposer's pro forma and financial strength	20
<u>Revenue Criteria</u>	<u>Points</u>
4. Proposer's proposed revenue	25

#### 4.3 Oral Presentations

Upon evaluation of the criteria indicated above, rating and ranking, the Review Team may choose to conduct an oral presentation with the Proposer(s) which the Review Team deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. (See Affidavit – "Lobbyist Registration for Oral Presentation" regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentation(s), the Review Team will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

#### 4.4 Selection Factor

This Solicitation includes a selection factor for Miami-Dade County Certified Small Business Enterprises (SBE's) as follows. A SBE/Micro Business Enterprise is entitled to receive an additional ten percent (10%) of the total technical evaluation points on the technical portion of such Proposer's proposal. An SBE/Micro Business Enterprise must be certified by Small Business Development for the type of goods and/or services the Proposer provides in accordance with the applicable Commodity Code(s) for this Solicitation. For certification information contact Small Business Development at (305) 375-2378 or <http://www.miamidade.gov/smallbusiness/>

The SBE/Micro Business Enterprise must be certified by proposal submission deadline, at contract award, and for the duration of the contract to remain eligible for the preference. Firms that graduate from the SBE Program during the contract term may remain on the contract.

**OR**

A Selection Factor is not applicable to this Solicitation.

**OR**

(If no points are assigned to evaluation criteria, include the following in addition to above paragraph):



Whenever there are two best ranked proposals that are substantially equal and only one of the two so ranked proposals is submitted by a Proposer entitled to a selection factor, the selection factor shall be the deciding factor for award.

#### **4.5 Local Certified Veteran Business Enterprise Preference**

This Solicitation includes a preference for Miami-Dade County Local Certified Veteran Business Enterprises in accordance with Section 2-8.5.1 of the Code of Miami-Dade County. "Local Certified Veteran Business Enterprise" or "VBE" is a firm that is (a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and (b) prior to proposal or bid submittal is certified by the State of Florida Department of Management Services as a veteran business enterprise pursuant to Section 295.187 of the Florida Statutes. A VBE that submits a proposal in response to this solicitation is entitled to receive an additional five percent of the evaluation points scored on the technical portion of such vendor's proposal. If a Miami-Dade County Certified Small Business Enterprise (SBE) measure is being applied to this Solicitation, a VBE which also qualifies for the SBE measure shall not receive the veteran's preference provided in this section and shall be limited to the applicable SBE preference. At the time of proposal submission, the firm must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit this affirmation and a copy of the actual certification along with the Proposal Submittal Form.

#### **4.6 Revenue Evaluation**

The revenue proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The revenue evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and revenue of the contract as may be in the best interest of the County.

#### **4.7 Local Preference**

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code of Miami-Dade County, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. If, following the completion of final rankings by the Review Team a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Review Team will recommend that a contract be negotiated with said local Proposer.

#### **4.8 Negotiations**

The Review Team will evaluate, score and rank proposals, and submit the results of the evaluation to the County Mayor or designee with its recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. The County Mayor or designee, at their sole discretion, may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, and/or may request best and final offers. In any event the County engages in negotiations with a single or multiple Proposers and/or requests best and final offers, the discussions may include price and conditions attendant to price.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

Any Proposer recommended for negotiations shall complete a Collusion Affidavit, in accordance with Section 2-8.1.1 of the Code of Miami-Dade County. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

Any Proposer recommended for negotiations may be required to provide to the County:

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance

sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

#### **4.9 Contract Award**

Any proposed contract, resulting from this Solicitation, will be submitted to the County Mayor or designee. All Proposers will be notified in writing of the decision of the County Mayor or designee with respect to contract award. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

#### **4.10 Rights of Protest**

A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County, as amended, and as established in Implementing Order No. 3-21.

### **5.0 TERMS AND CONDITIONS**

The County's anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

#### **a) Vendor Registration**

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. For online vendor registration, visit the Vendor Portal: <http://www.miamidade.gov/procurement/vendor-registration.asp>.

#### **b) Insurance Requirements**

The Contractor shall furnish to the County, Internal Services Department, Strategic Procurement Division, prior to the commencement of any work under any agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

#### **c) Inspector General Reviews**

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Office of the Inspector General may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise indicated.

#### **d) Shannon Melendi Act**

Contractor 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".

### **6.0 ATTACHMENTS**

Attachment A – Ives Estates Park General Plan  
Attachment B – Ives Estates Park Site Map  
Attachment C – Amelia Earhart Park General Plan  
Attachment D – Amelia Earhart Park Site Map  
Attachment E – Tropical Park General Plan  
Attachment F – Tropical Park Site Map

Attachment G – Kendall Indian Hammock General Plan  
Attachment H – Kendall Indian Hammock Park Site Map  
Attachment I – Homestead Air Reserve Park General Plan  
Attachment J – Homestead Air Reserve Park Site Map  
Attachment K – Article 7 of The Home Rule Amendment and Charter  
Attachment L – PROS Emergency Plan  
Draft Form of Agreement

Proposal Submission Package:

Proposer Information Section

Shannon Melendi Affidavit Form

Form 1 – Revenue Proposal Schedule

Web Forms – Proposal Submittal Form, Fair Subcontracting Practices Affidavit, Subcontractor Listing, and Lobbyist  
Registration Form

Draft Form of Agreement  
(This is the form of agreement the County anticipates awarding to the selected Proposer.)

PROVIDE AND OPERATE MECHANIZED RIDES IN REGIONAL PARKS  
Contract No. EPPRFP-01246

THIS AGREEMENT made and entered into by and between \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_ (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide and operate mechanized rides in regional parks, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. EPPRFP-01246 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

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

WHEREAS, the County desires to procure from the Contractor such mechanized rides operation for the County, in accordance with the terms and conditions of this Agreement;

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

**ARTICLE 1. DEFINITIONS**

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. EPPRFP-01246 and all associated addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean \_\_\_\_\_ and its permitted successors.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" to mean additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Force Majeure" to mean an occurrence outside of either party's control, including but not limited to, an act of nature, war, riot, sovereign conduct, or conduct of third parties.
- j) The words "General Plan" to mean the document that guides the development of a Park and dictates all of the facilities that are planned for the Park and how they are to be arranged.

- k) The words "Gross Receipts" to mean all receipts from the sale of services, sold in, upon, or from the Mechanized Rides operation, including such sales as shall in good faith be credited by Contractor in the regular course of its business at the Mechanized Rides operation, including mail, e-mail, and telephone orders received at the Mechanized Rides operation, and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Contractor for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment, or other property used by Contractor in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when Services have been served, shipped, or delivered or when charged against the purchaser on the books of Contractor, whichever of such events shall first occur.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The word "Utilities" to mean services used or consumed such as, but not limited to, electricity, gas, water, and sewerage.
- n) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

#### **ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) Revenue Schedule (Form 1), 4) Miami-Dade County's RFP No. EPPRFP-01246 and any associated addenda and attachments thereof, and 5) the Contractor's Proposal.

#### **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

#### **ARTICLE 4. NATURE OF THE AGREEMENT**

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described

- and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
  - e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

**ARTICLE 5. CONTRACT TERM**

The Contract shall become effective the date of the parties' execution and shall continue through the last day of the five-year term. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of ten (10) additional years on a five-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) to the County**

- a) to the Project Manager:

Miami-Dade County  
Attention:  
Phone:  
E-mail:

and,

- b) to the Contract Manager:

Miami-Dade County  
Internal Services Department, Strategic Procurement Division  
Attention: Chief Procurement Officer  
111 N.W. 1<sup>st</sup> Street, Suite 1375  
Miami, FL 33128-1974

Phone: (305) 375-4900

E-mail: [Namita.Uppal@miamidade.gov](mailto:Namita.Uppal@miamidade.gov)

**(2) To the Contractor**

Attention:  
Phone:

E-mail:

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. REVENUE FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the revenue the Contractor will provide to the County for the Work and Services to be performed under this Contract. The revenue for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be pursuant to Form 1 – Revenue Schedule.

**ARTICLE 8. REVENUE**

Revenue shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer additional revenue to the County at any time during the Contract term, including any renewal or extension thereof. The County reserves the right to renegotiate revenues based on the following (but not limited to): sales, economic factors, and/or the best interest of the County.

**ARTICLE 9. METHOD, TIMES, AND APPLICATION OF PAYMENTS AND ASSOCIATED REQUIRED DOCUMENTATION AND PENALTIES**

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

The Guaranteed Monthly Fee payable by Contractor to the County herein shall be payable on the first day of each month following the Contract Date and shall continue through the term of this Contract and any renewal options.

Percentage of Monthly Gross Receipts shall be paid to the County on or before the 10th day following the end of each month during the term of this Contract and on or before the 10th day of the month following the expiration or earlier termination of the term.

Such payments, as well as other amounts payable by Contractor to the County under the terms of this Contract, shall be paid promptly when due, without notice for any reason whatsoever and without abatement, except as hereinafter provided.

All guaranteed monthly fees and percentage fees provided for in this Contract shall be paid or mailed to:

Miami-Dade County  
Parks Recreation and Open Spaces Department  
Financial Management Division  
275 N.W. 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
Miami, FL 33128  
Attention: Erica Hallback  
Phone: (305) 755-7975  
Email: EHALLBA@miamidade.gov

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

The County may at any time designate a different address and/or contact person by giving written notice to the Contractor.

Payments are applied to any unpaid balance in the following manner: Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Guaranteed Monthly Fee and Percentage of Monthly Gross Receipts.

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

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

The County shall have lien upon all personal property of the Contractor in/on the Facilities to secure the payment to the County of any unpaid money accruing to the County under the terms of this Contract.

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

Contractor shall submit to County on or before the 10th day following the end of each month during the term of this Contract and on or before the 10th day of the month following the expiration or earlier termination of the term, a written statement, signed by Contractor and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Contractor shall submit to the Project Manager and County Contract Manager on or before the 60th day following the end of each Contract Year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Contractor and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Contract Year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross Receipts payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Contractor's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Contractor's business. All information obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except if subject to the requirements of Florida Public Records Act.

For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of each Contract Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Contractor. Contractor shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Contractor shall keep, for at least three (3) years following the end of each Contract Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval;



(viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Contractor's Gross Receipts.

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

County shall have the right to cause, upon five (5) days' written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by PROS, or the Internal Auditing Department of the County. Contractor shall make all such records available for said examination at the Facilities or at some other mutually agreeable location. If the result of such audit shall show that Contractor's statement of Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Contract. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency.

If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, then Contractor shall be deemed to be in default under this Article.

#### **ARTICLE 10. INDEMNIFICATION AND INSURANCE**

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

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$ \_\_\_\_\_ per claim.

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength

**Commented [TJ(4):** Need recommendation from Risk.

by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

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

**The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:**

**Miami-Dade County  
111 N.W. 1st Street  
Suite 1300  
Miami, Florida 33128-1974**

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

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

#### **ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to

replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this 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 Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

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

#### **ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether

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

#### **ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this 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.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, 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 Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

#### **ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

#### **ARTICLE 17. AUDITS**

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Code of Miami-Dade County, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **ARTICLE 18. SUBSTITUTION OF PERSONNEL**

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

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

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

**ARTICLE 22. SEVERABILITY**

If this 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 Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION AND SUSPENSION OF WORK**

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

- A. Automatic Termination upon written notice by the County if any of the following occurs:
  - i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor.
  - ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue

- for a period of ninety (90) days.
- iii. Assignment by Contractor for the benefit of creditors.
  - iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.
  - v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement.
  - vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County.
  - vii. Failure to cease any activity which may cause limitation of County's use of the Crandon Park Marina.
  - viii. A final determination in a court of law in favor of the County in litigation instituted by the Contractor against the County or brought by the County against Contractor.
  - ix. In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Park for the purposes of this Contract, this Contract will be null and void and unenforceable by any party to this Contract and the County shall have no further liability under this Contract. In the event that any court or legislative body of competent jurisdiction issues an injunction substantially restricting or prohibiting the use of the Park for the purpose of the Contract, which injunction stays in force for more than thirty (30) calendar days, this Contract will be null and void, and unenforceable by any party to this agreement and the County shall have no further liability under this Contract. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Contract, this Contract will be null and void and unenforceable by any party to this Contract and the County shall have no further liability under this Contract. If the County deems the Contract null and void by function of this Article, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability under this Contract.
  - x. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
  - xi. The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Facilities and by certified or registered mail to any known address of Contractor set forth in this Agreement hereof for doing any of the following:
- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Guaranteed Monthly Fee and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.
  - ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.
- C. Termination after fourteen (14) days from receipt by Contractor of written notice having either been posted on or at the Facilities or by certified or registered mail to the address of the Contractor set forth in this Agreement:
- i. Non-performance of any covenant of this Agreement other than non-payment of Guaranteed Monthly Fee and Percentage of Monthly Gross Receipts and others listed in A and B above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
- D. In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any

time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.

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

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

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

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

The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Guaranteed Monthly Fee or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Contract, other than the failure of Contractor to pay the particular Guaranteed Monthly Fee or Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Guaranteed Monthly Fee or Percentage of Monthly Gross Receipts. No covenant, term, or condition of this Contract 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

Contractor.

#### **ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis;
  - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
  - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

#### **ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE**

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

#### **ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

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

#### **ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights,



- other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
  - c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
  - d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
  - e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

#### **ARTICLE 28. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

**ARTICLE 29. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

**ARTICLE 30. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part,

the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

#### **ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST**

##### a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit**  
(Section 2-8.1(d)(2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**  
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**  
(Resolution R-1072-17)
13. **Subcontracting Practices**  
(Section 2-8.8 of the Code of Miami-Dade County)
14. **Subcontractor/Supplier Listing**  
(Section 2-8.1 of the Code of Miami-Dade County)
15. **Form W-9 and 147c Letter**  
(as required by the Internal Revenue Service)
16. **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:
  - Identification of individual account records
  - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
  - Tax reporting purposes
  - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
17. **Office of the Inspector General**  
(Section 2-1076 of the Code of Miami-Dade County)
18. **Small Business Enterprises**  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
19. **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.

##### b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or

indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

## **ARTICLE 32. INSPECTOR GENERAL REVIEWS**

### **Independent Private Sector Inspector General Reviews**

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

#### **Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, 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. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

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

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and

contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

### **ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

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

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "h" through "m" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

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

### **ARTICLE 34. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

### **ARTICLE 35. CONFLICT OF INTEREST**

The Contractor 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 Agreement.

- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor 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 Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
  - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor 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 Article 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 Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor 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, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

**ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor 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 Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 37. BANKRUPTCY**

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

**ARTICLE 38. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

**ARTICLE 39. FIRST SOURCE HIRING REFERRAL PROGRAM**

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the 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 FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

**ARTICLE 40. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY**

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1<sup>ST</sup> STREET, SUITE 1300, MIAMI, FLORIDA 33128**

**ARTICLE 41. SIGNS**

The nature, size, shape and installation of Contractor's business signs within the Location or in, on, or adjacent to the Location must first be approved in writing by the County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in the Article 7 of the Miami-Dade Home Rule Charter. All signs shall be removed by the Contractor at the termination of this Agreement and any damage or unsightly condition caused to Location because of or due to said signs shall be satisfactorily corrected or repaired by the Contractor at no cost to the County.

**ARTICLE 42. SURVIVAL**

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

**ARTICLE 43. MECHANICS', MATERIALMEN'S, AND OTHER LIEN**

Contractor agrees that it will not permit any mechanic's, materialmen's, or other liens to stand against the Locations for work or materials furnished to Contractor; it being provided, however, that Contractor shall have the right to contest the validity thereof. Contractor shall immediately transfer any lien to a bond and thereafter pay any judgment or decree rendered against Contractor, with all proper costs and charges, and shall cause any such lien to be released off record without cost to County.

**ARTICLE 44. E-VERIFY**

Contractor 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 Contractor to perform employment duties within Florida during the term of the Agreement; and (b) all persons (including subcontractors/subconsultants/subvendors) assigned by the Contractor to perform Work pursuant to the Agreement with the County. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the Agreement is a condition of the Agreement with the County.

**ARTICLE 45. CURTAILMENT OR INTERRUPTION OF SERVICE**

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

**ARTICLE 46. HOLDING OVER**

If Contractor continues to operate the Locations after the expiration of the term of this Agreement, or any option period, without a new Agreement reduced to writing and duly executed and delivered (even if Contractor shall have paid, and County shall have accepted, Guaranteed Monthly Fees and Percentage of Monthly Gross Receipts in respect to such holding over), Contractor shall be deemed to be operating the Locations only as a Contractor from month-to-month, subject to all covenants, conditions, and agreements of this Agreement. If Contractor fails to cease operations at the Facilities upon the termination of this Agreement, then Contractor shall, in addition to any liabilities to County accruing therefrom, indemnify and hold harmless the County and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Contractor on such failure.

**ARTICLE 47. SHANNON MELENDI**

Contractor shall comply with Miami-Dade County Ordinance No. 08-07, Chapter 26, "Miami-Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act". Contractor shall ensure that all management, staff, and volunteers: 1) Have had nationwide criminal background checks conducted by a Professional Background Screener; 2) Have been screened through the Florida Department of Law Enforcement Sexual Predator/Offender Database, and a check of the National Sex Offender Public Registry; 3) Have been verified as being United States Citizens or having legal immigrant status employment; 4) Complete an affidavit affirming that no work or volunteer duties will be performed on Park property owned or operated by Miami-Dade County in violation of this Ordinance and that an arrest will be reported to the selected Proposer within forty-eight (48) hours of such arrest; 5) Wear picture identification at all times while on County property and when in direct contact with patrons and the general public; and 6) Retain all records demonstrating compliance with the background screening required herein for not less than three (3) years beyond the end of the contract term. The selected Proposer shall provide the County with access to these records annually, or at the request of the County.

**ARTICLE 48. SHANNON MELENDI**

Contractor shall comply with Miami-Dade County Ordinance No. 16-58 amending Chapter 26 of the Code of Miami-Dade County by adding Rule 36 that bans polystyrene (also known as Styrofoam) in Parks under many circumstances. A polystyrene article is defined as plates, bowls, cups, utensils, cutlery, tableware, containers, lids, trays, coolers, ice chests, bags, boxes, wrappings, bottles, and all similar articles that consist of polystyrene. This rule does not apply to polystyrene articles that are used for prepackaged food that have been filled and sealed prior to receipt by the selected Proposer.

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

Contractor

Miami-Dade County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Carlos A. Gimenez

Title: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Corporate Secretary/Notary Public

Clerk of the Board

Corporate Seal/Notary Seal

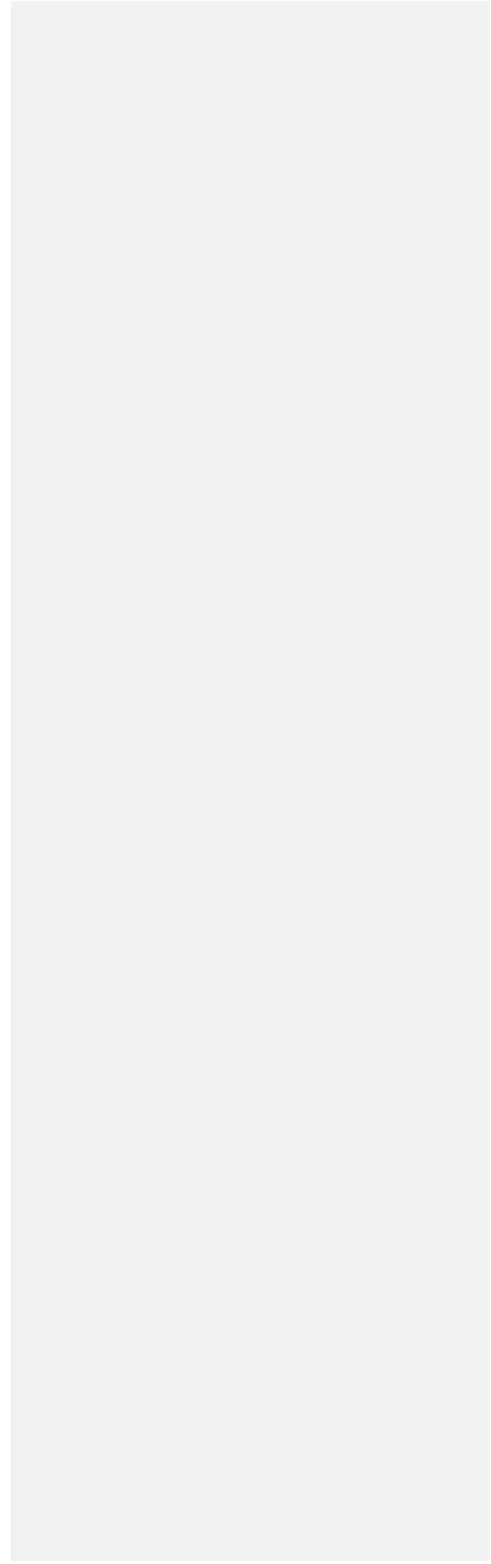
Approved as to form and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney



**Appendix A – Scope of Services**

TO BE NEGOTIATED



**PROPOSER INFORMATION****Proposer's Experience (including Key Personnel and Subcontractors) and Past Performance**

1. Describe the Proposer's past performance and experience and state the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.  
[Click here to enter text.](#)
2. Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past three years. The description should identify for each project: (i) client, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) client contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project. Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).  
[Click here to enter text.](#)
3. List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project: (i) name of the County Department which administers or administered the contract, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) County contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project.  
[Click here to enter text.](#)
4. Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last five years.  
[Click here to enter text.](#)
5. Provide an organization chart showing all key personnel, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or subconsultants and shall include the functions to be performed by the key personnel. All key personnel includes all partners, managers, seniors and other professional staff that will perform work and/or services in this project.  
[Click here to enter text.](#)
6. List the names and addresses of all first tier subcontractors, and describe the extent of work to be performed by each first tier subcontractor. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of the subcontractors who will be assigned to this project.  
[Click here to enter text.](#)
7. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including those of subcontractors, who will be assigned to this project.  
[Click here to enter text.](#)
8. Provide resumes, if available with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any key personnel of subcontractors.  
[Click here to enter text.](#)
9. Provide a list including all owners and percentage of ownership for each owner.  
[Click here to enter text.](#)
10. Describe the Proposer's or its key personnel or subcontractor's past experience with the County's General Facilities Hearing processes.  
[Click here to enter text.](#)

Note: After proposal submission, but prior to the award of any contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

### **Proposed Approach to Providing the Services**

11. Describe Proposer's specific project plan and procedures to be used in providing the services in the Scope of Services (see Section 2.0).  
[Click here to enter text.](#)
12. Describe Proposer's approach to project organization and management, including the responsibilities of Proposer's management and staff personnel that will perform work in this project.  
[Click here to enter text.](#)
13. Provide a project schedule identifying specific key tasks and duration.  
[Click here to enter text.](#)
14. Describe Proposer's approach to providing Mechanized Rides compatible in scale and aesthetics for each Location.  
[Click here to enter text.](#)
15. Describe Proposer's approach to working with PROS throughout the General Facilities Hearing process (if required), to include, but not be limited to, participation in public meetings, to modify the General Plans for each Location to include Mechanized Rides as an approved use.  
[Click here to enter text.](#)
16. Provide a sample price list the Proposer is planning to implement at each Location.  
[Click here to enter text.](#)
17. Provide preliminary action plans for emergencies, including, but not limited to Force Majeure events with preventative and corrective actions, in accordance with all legal requirements.  
[Click here to enter text.](#)
18. Provide Proposer's assessment of necessary upgrades necessary to the applicable building systems and Utility lines of each Location that are required for the establishment, operation, and ongoing administration of the Mechanized Rides to include estimated costs for said upgrades.  
[Click here to enter text.](#)
19. Provide typical and projected Utility impacts for the proposed Mechanized Rides.  
[Click here to enter text.](#)
20. Provide renderings, including photo simulations of the proposed Mechanized Rides, showing views of the overall Locations.  
[Click here to enter text.](#)
21. Describe Proposer's approach to securing the Locations when not in use.  
[Click here to enter text.](#)
22. Describe Proposer's approach to repair, maintenance, and daily upkeep of the Mechanized Rides and include sample repair and maintenance schedule.  
[Click here to enter text.](#)
23. Provide sample operating schedule/hours of operation for each Location.  
[Click here to enter text.](#)
24. Describe the accounting system to be used to generate accounting records with adequate documentation.  
[Click here to enter text.](#)

25. Provide a sample monthly utilization report showing the number of daily users of the Mechanized Rides, as well as related data used to determine and verify capacity utilization and revenues.

[Click here to enter text.](#)

26. Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the revenue implications of the exception(s).

[Click here to enter text.](#)

**Proposers Pro Forma and Financial Strength**

27. Provide information regarding financial strength of the Proposer and the Proposer's ability to provide reasonable working capital for operations and site improvements (if needed). Proposer shall provide its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

[Click here to enter text.](#)

28. Provide a Pro Forma Statement showing five (5) years of projected sales and expenses. Do not include payments to the County or improvement costs in the Pro Forma. Inflated statements or statements skewed outside normal operating ranges may be evaluated as less desirable than reasonable Pro Forma Statements.

[Click here to enter text.](#)

**FORM 1 – REVENUE PROPOSAL SCHEDULE**

The Proposer's proposed revenue shall be submitted on this Form 1 "Revenue Proposal Schedule", and in the manner stated herein. Proposer is requested to fill in the applicable blanks on this form. Proposer's proposed revenue in Sections 1 and 2 (below) must include all cost elements, including all out-of-pocket expenses, including but not limited to, employee salary, travel, goods, services, and miscellaneous costs and fees, as such expenses shall not be reimbursed separately by the County.

**1. Guaranteed Monthly Fees**

Guaranteed Monthly Fees listed below shall be received by the County from the selected Proposer on or before the first day of the month, without billing.

Service	Guaranteed Fee / Month <u>Year 1</u>	Guaranteed Fee / Month <u>Year 2</u>	Guaranteed Fee / Month <u>Year 3</u>	Guaranteed Fee / Month <u>Year 4</u>	Guaranteed Fee / Month <u>Year 5</u>
Mechanized Rides Operation at Ives Estates Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Amelia Earhart Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Tropical Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Kendall Indian Hammocks Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Homestead Air Reserve Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.

**2. Monthly Percentage of Gross Receipts**

Monthly Percentage of Gross Receipts listed below shall be received by the County from the selected Proposer on or before the tenth day of the month following the month in which revenues were received, without billing.

Service	Percentage Fee / Dollar of Gross Receipts <u>Year 1</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 2</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 3</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 4</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 5</u>
Mechanized Rides Operation at Ives Estates Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Amelia Earhart Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Tropical Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Kendall Indian Hammocks Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Homestead Air Reserve Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %

**Option-to-Renew Years**

Proposer's proposed revenue in Sections 3, 4, 5, and 6 (below) must include all cost elements, including all out-of-pocket expenses, including but not limited to, employee salary, travel, goods, services, and miscellaneous costs and fees, as such expenses shall not be reimbursed separately by the County.

**3. Guaranteed Monthly Fee**

Guaranteed Monthly Fees listed below shall be received by the County from the selected Proposer on or before the first day of the month, without billing.

Service	Guaranteed Fee / Month <u>Year 6</u>	Guaranteed Fee / Month <u>Year 7</u>	Guaranteed Fee / Month <u>Year 8</u>	Guaranteed Fee / Month <u>Year 9</u>	Guaranteed Fee / Month <u>Year 10</u>
Mechanized Rides Operation at Ives Estates Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Amelia Earhart Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Tropical Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Kendall Indian Hammocks Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Homestead Air Reserve Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.

**4. Monthly Percentage of Gross Receipts**

Monthly Percentage of Gross Receipts listed below shall be received by the County from the selected Proposer on or before the tenth day of the month following the month in which revenues were received, without billing.

Service	Percentage Fee / Dollar of Gross Receipts <u>Year 6</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 7</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 8</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 9</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 10</u>
Mechanized Rides Operation at Ives Estates Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Amelia Earhart Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Tropical Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Kendall Indian Hammocks Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Homestead Air Reserve Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %



**5. Guaranteed Monthly Fee**

Guaranteed Monthly Fees listed below shall be received by the County from the selected Proposer on or before the first day of the month, without billing.

Service	Guaranteed Fee / Month <u>Year 11</u>	Guaranteed Fee / Month <u>Year 12</u>	Guaranteed Fee / Month <u>Year 13</u>	Guaranteed Fee / Month <u>Year 14</u>	Guaranteed Fee / Month <u>Year 15</u>
Mechanized Rides Operation at Ives Estates Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Amelia Earhart Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Tropical Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Kendall Indian Hammocks Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.
Mechanized Rides Operation at Homestead Air Reserve Park	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.	\$ Click here to enter text.

**6. Monthly Percentage of Gross Receipts**

Monthly Percentage of Gross Receipts listed below shall be received by the County from the selected Proposer on or before the tenth day of the month following the month in which revenues were received, without billing.

Service	Percentage Fee / Dollar of Gross Receipts <u>Year 11</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 12</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 13</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 14</u>	Percentage Fee / Dollar of Gross Receipts <u>Year 15</u>
Mechanized Rides Operation at Ives Estates Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Amelia Earhart Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Tropical Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Kendall Indian Hammocks Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %
Mechanized Rides Operation at Homestead Air Reserve Park	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %	Click here to enter text. %

**Notes:**

1. Sections 1 and 2 will be used to determine the points for the revenue criteria as indicated in Section 4.2 of this Solicitation.
2. Sections 3, 4, 5, and 6 for Option-to-Renew Years will be used for informational purposes only and will not be scored.

Notwithstanding the proposed revenue rates for Option-to-Renew Years (Sections 3, 4, 5, and 6), the County reserves the right to negotiate the final revenue rates.