

DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☒ New contract

☐ OTR

☐ CO

☐ SS

☐ BW

☐ Emergency

Previous Contract/Project No.
PROS-PTCB

☐ Re-Bid

☐ Other

LIVING WAGE APPLIES: YES X NO

Project No: EPPRFP-01820

Term of Contract: 3 Years +1 Year OTR

Project Title: Crandon Golf at Key Biscayne Restaurant Operation

Requisition Number: RQID2100424

Description:

Miami-Dade County, is soliciting proposals for restaurant operations at Crandon Golf at Key Biscayne, located at 6700 Crandon Boulevard, Key Biscayne, Florida.

User Department(s): Miami-Dade County Parks, Recreation and Open Spaces Department

Issuing Department: Strategic Procurement Division

Contact Person: Jason Edelstein

Phone: 305-375-4211

Estimated Revenue: \$270,000.00

Funding Source: Revenue Generating

Revenue Generating: Yes

ANALYSIS

Commodity/Service No: 16547, 393, 91852, 96115, 96219, 99844			
Trade/Commodity/Service Opportunities			
<div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;">Contract/Project History of Previous Purchases For Previous Three (3) Years Check Here X if this is a New Contract/Purchase with no Previous History</div>			
<u>PREVIOUS CONTRACT</u>		<u>2ND YEAR</u>	<u>3RD YEAR</u>
Contractor:	No Previous Contract - PERMIT		
Small Business Enterprise:			
Estimated Revenue To Date:			
Comments:			
Continued on another page (s): <u> </u> Yes <u>X</u> No			

RECOMMENDATION:

Basis of Recommendation:

Signed: Jason Edelstein

Date to SBD: 05/06/2022



**REQUEST FOR PROPOSALS (RFP) No. EPPRFP-01820
FOR
MIAMI-DADE COUNTY CRANDON GOLF RESTAURANT OPERATIONS**

ISSUED BY MIAMI-DADE COUNTY:

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

MIAMI-COUNTY CONTACT FOR THIS SOLICITATION:

Jason Edelstein, Procurement Contracting Officer III
111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-4211
E-mail: jason.edelstein@miamidade.gov

**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. 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 (PROS) Department, is soliciting proposals for the operation of a restaurant located in Miami-Dade County Crandon Park.

The County anticipates awarding a contract for a three (3) year term with a one (1) year Option to Renew.

Pre-proposal Conference and Site Visit: See Section 1.7

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 words “**Agreement**” or “**Contract**” to mean collectively terms and conditions, Scope of Services, all other appendices, attachments and amendments to the Agreement/Contract, this RFP and all associated addenda, and the Contractor’s Proposal.
2. 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”.
3. The word “**County**” to mean Miami-Dade County, a political subdivision of the State of Florida.
4. The words “**Crandon Park Master Plan**” to mean that plan approved by the Board of County Commissioners in 1996 that describes all permitted uses of various areas on the Crandon Park lands, including guidelines and standards for the type, location, size, color, landscaping and other features of all structures, improvements and recreational and other facilities to be located in Crandon Park or on the Crandon Park lands.
5. The terms “**Department**” or “**PROS**” shall mean the Miami-Dade County Parks, Recreation, and Open Spaces Department. Wherein in this Solicitation document, rights are reserved to the County, PROS may exercise such rights.
6. The words “**Facility**”, **Miami-Dade County Crandon Golf Restaurant**” or “**Restaurant**” to mean the PROS Crandon Golf Restaurant as further described in Section 2.5 of this Solicitation.
7. The words “**Gross Revenue(s)**” to mean all revenues generated by the Contractor and authorized third-party entities arising out of or relating to the provision of all activities or items for which price, charge, trade/barter or fee is imposed, as well as all revenues or other consideration charged for or received by the Contractor, as herein defined, for all services rendered, all sales made, and all transactions engaged in under the authority of this Agreement from any source whatsoever and whether such activities were on the Site or off-Site. Gross Revenues further includes, but is not limited to, those revenues received from the rights paid to Contractor for the use or licensing of all media, the sales of all media, from ticket sales, from sponsorship sales, tournament parking, concession revenues, retail revenues, advertising space and/or services, hospitality sales, merchandise (including without limitation retail, wholesale, direct response, mail order, internet or otherwise. All third-party contracts shall be in writing and on market terms. If such conditions are not on market terms and/or have resulted in a direct or indirect tangible economic benefit to Contractor, then the actual market value of the economic benefit provided shall be included in Gross Revenue. The only revenues and other considerations which may be excluded from Gross Revenues are taxes imposed by law and paid by a customer and directly payable by Contractor to a taxing authority, credit card processing fees, and pass-through or reimbursable expenses paid by third parties through the Contractor to another third-party.

8. The words “**Home Rule Charter**” to mean the Miami-Dade County Home Rule Charter as amended through November 6, 2018.
9. The words “**Joint Venture**” to mean an association of two or more persons, partnerships, corporations, or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.
10. The words “**Mobile Concession Unit**” to mean a stand-alone cart that can accommodate the sale of food and beverages for mobile concession services.
11. The words “**Project Manager**” to mean the Miami-Dade County Parks, Recreation and Open Spaces Department Director or the duly authorized representative designated to manage the Project.
12. 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.
13. The word “**Proposer**” to mean the person, firm, entity or organization, as stated on the Submittal Form, submitting a proposal to this Solicitation.
14. The words “**Review Team**” to mean the group of individuals who are tasked with reviewing, evaluating and scoring the Proposals submitted in response to this RFP.
15. The words “**Scope of Services**” to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
16. The word “**Solicitation**” to mean this Request for Proposals (RFP) and all associated addenda and attachments.
17. 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.
18. The “**Utilities**” to mean services used or consumed such as, but not limited to, gas, sewage, cable/satellite and waste collection, associated with the day-to-day operations, with the exception of electricity and water which is paid for by the County.
19. The words “**Work**”, “**Services**”, 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 non-responsive. 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 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 or Request for Qualifications (RFQ) after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs 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 Outreach and Support Services Section, the responsible Procurement Contracting Officer (designated as the County's contact on the face of the Solicitation), 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 (the "Board") 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 or RFQ 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 or RFQ 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.

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 Review Team Members

Proposers are hereby notified that direct communication regarding this Solicitation, written or otherwise, with Review Team Members, or Review Team as a whole, **are expressly prohibited**. Any oral communications with Review Team Members other than as provided in Section 2-11.1 of the Code of Miami-Dade County are prohibited.

1.7 Pre-Proposal Conference and Site Visit

It is highly recommended that Proposers attend the Pre-Proposal Conference and Site Visit to become familiar with any conditions which may, in any manner affect the services to be provided. No additional allowances will be made because of lack of knowledge of these conditions. The Pre-Proposal Conference and Site Visit has been scheduled as follows:

Pre-Proposal Conference and Site Visit will be held on May 11th, 2022 at 2:00PM (Eastern Standard/Daylight Time) at PROS Crandon Golf Restaurant located at 6700 Crandon Boulevard, Key Biscayne, Florida 33149.

Proposers that wish to attend shall arrive promptly as the meeting will start on time. Proposers are requested to have a copy of the Solicitation handy during the Pre-Proposal Conference and Site Visit. The Cone of Silence is exempted for the purposes of this meeting, allowing for any questions to be addressed with representatives from Miami-Dade County. This is a public meeting and multiple members of individual community councils may be present. The County is not responsible for any costs incurred by potential Proposers to attend the Pre-Proposal Conference.

If you need a sign language interpreter or materials in accessible format for this even please contact the following ADA Coordinator at least five days in advance:

Name: Gisel Prado (Programs and Services)
Email Address: gisel.prado@miamidade.gov
Phone Number: 305-755-7848

1.8 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.

1.9 **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.

1.10 **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.

1.11 **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.

2.0 SCOPE OF SERVICES

2.1 **Background**

PROS Crandon Park is located at 6700 Crandon Boulevard, Key Biscayne, Florida 33149. The park currently operates daily from sunrise to sunset; however, the Restaurant must maintain operating hours between 7:00 AM and 10:00 PM daily, including holidays. Approximately 50,000 golfers visit Crandon Golf at Key Biscayne (Crandon Golf) each year. The golf course is ranked one of the most beautiful and challenging par 72 public golf courses in the State of Florida. The course has been rated in the top ten courses by Golfweek, and one of America's top 75 upscale courses by Golf Digest.

All of Crandon Park, including the golf course and restaurant facilities, are subject to Article 7 of the Home Rule Charter which can be found at the following link: <http://www.miamidade.gov/charter/library/charter.pdf> and Exhibit 4 - Crandon Park Master Plan (CPMP). Proposers must familiarize themselves with Article 7 and the CPMP. The Restaurant must be in compliance with the same. Proposers must be in alignment with the mission and vision of nature based stewardship and conservation outlined in these documents.

2.2 Sustainable Procurement Practices

The County is committed to responsible stewardship of resources and to demonstrating leadership in sustainable business practices. Accordingly, the County has adopted sustainability policies which are incorporated into this Solicitation. The County will continue to explore and pursue sustainable procurement, development and business practices that: (a) reduce greenhouse gases; (b) foster and integrate supplier small business opportunities; (c) support safe and fair labor practices and ethical behavior throughout the supply chain, and (d) maximize fiscally responsible “high value, high impact” actions.

2.3 Objective

The Contractor shall provide Services which include a) operating and maintaining the Restaurant, and providing food and beverage services; b) providing mobile concession Services on the golf course; and c) marketing the Restaurant and mobile concession services.

2.4 License/Certifications

The Contractor shall, at its sole cost, obtain all permits, licenses, certifications and approvals required for operation and performance herein, and as may be required by any and all entities that have jurisdiction, including:

1. Alcoholic Beverages License:

The Contractor shall meet all requirements of the Florida Division of Alcoholic Beverages and Tobacco for a 4COP/SFS License (formerly known as an SRX license). The license shall be attained by the Contractor, held at its sole liability, and maintained for the duration of the Agreement.

2. Food Service Certifications:

- a) Food Manager Certification** – In accordance with Florida Statute 509.039, a manager of a food service establishment shall have demonstrated a knowledge of basic food protection practices, and shall complete training and pass a certification exam within 30 days of hire by the Contractor.
- b) Food Handler Certification** – In accordance with Florida Statute 509.049, all food service employees shall be trained and certified on correct food handling, safety, and hygiene practices within 60 days of hire by the Contractor.

2.5 Crandon Park Restaurant Facility

- 1.** As part of the clubhouse for Crandon Golf, PROS has available a 3,457 square foot facility (Restaurant), with maximum seating capacity for 212 persons. The Restaurant also includes a kitchen and food preparation area encompassing 2,400 square feet. PROS will make available to the Contractor, access to a covered patio area approximately 3,500 square feet for outside dining, as shown on Exhibit 1 - Crandon Golf Restaurant Site Map.
- 2.** The Restaurant is provided in as-is condition. It may require repainting of walls, refurbishing of furniture and floors, and other minor improvements and/or repair by Contractor. The County has a limited amount of furnishings (table and chairs) and kitchen equipment that is available for use by the Contractor at the Restaurant. The County reserves the right to retain any new furniture items purchased by the Contractor upon expiration of the Contract. These items are indicated in Exhibit 2 - List of Equipment. Should any of these items offered by the County require repair or replacement, it shall be at the expense of the Contractor.
- 3.** Any equipment, furnishings, signage, and advertising installed, uninstalled, or replaced within the Restaurant, or in, on, or adjacent to the Restaurant, as well as all use and operations of the Restaurant by the Contractor shall be in compliance with Article 7 of the Home Rule Charter, the

CPMP, and all governmental authorities having jurisdiction, and in keeping with the appropriate standards of decor at the Restaurant, and must be approved by the County prior to installation or removal. All new equipment, furnishings, signage, and advertising provided shall meet the requirements of all applicable building, fire, pollution, and other related codes. Refer to Article 68 of the Draft Form of Agreement regarding signs.

2.6 Mobile Concession Unit

1. The Mobile Concession Unit is provided by PROS in as-is condition. It is a gas-powered Yamaha UMAX Bistro™ cart with a four-lid ice chest, a sliding snack tray, a coffee cambro, and slanted shelves for displaying merchandise. After an 18 month period, the Mobile Concession Unit will be replaced by the County. For further details, access <https://www.yamahagolfcar.com/golf-car/golf/umax-fairway-lounge/>. All costs incidental to or necessary for providing fuel for the Mobile Concession Unit shall be borne by the Contractor for the duration of the Agreement and any extensions or renewals thereof.
2. The Contractor shall perform cleaning and non-warranty repairs in addition to all required maintenance on the Mobile Concession Unit (i.e. maintain tire pressure, air filter cleaning, etc.).

2.7 Restaurant Services to be Provided

The Contractor shall:

1. Provide food and beverage provisions ensuring a high-level of service and quality to all customers. At a minimum, food and beverage services shall be provided on a set schedule (early breakfast, lunch and dinner) during operating hours, in a manner associated with this type of operation and the restaurant industry.
2. Furnish prompt and efficient service that shall be customer-oriented, with resolutions for complaints, and meets the Crandon Park and Restaurant patrons' needs and all other reasonable demands.
3. Maintain a menu, including full alcohol/liquor beverages, that is reflective of current trends in this type of operation and the restaurant industry, as well as the local consumer market.
4. Clean and prepare the Restaurant for the next day's business at the close of every business day. This includes cleaning the kitchen and restrooms, and emptying all trash receptacles, as well as any hood/duct or grease trap cleaning.
5. Provide Services and related activities in accordance with legal requirements and safety practices. Related activities may include hosting banquets, private functions, fundraisers, weddings, receptions, and special events with prior coordination with PROS designated staff.
6. Keep all equipment and supplies necessary to maintain the Restaurant in the same condition, or better, as at the commencement of the agreement issued as a result of this RFP.
7. Provide assistance, expertise, and technical advice to the County regarding general changes in the industry rules and regulations, safety and operation of the Restaurant, suggesting the types of equipment, merchandise, services, and promotional methods associated with this type of operation.
8. Provide all labor to maintain the day-to-day operations and maintenance of the Restaurant.
9. Prepare plan(s) for emergencies, including fire, acts of nature, and pandemic(s), and implement the approved plan(s) if instructed to do so by the County. These plans are separate and apart from the County's established emergency evacuation and hurricane plan.

10. Maintain all food service areas and equipment in a safe manner as outlined in Exhibit 3 - Minimum Operating Standards for Food Service. Contractor is encouraged to exceed these minimum operating standards.
11. Maintain and provide the necessary inventory of food and beverage products required to satisfy customer demand.
12. Utilize its own cash register/point-of-sale system for food and beverage sales transactions which shall produce daily sales totals for reporting gross revenues and be able to provide a monthly reconciliation of daily sales in a format approved by PROS. In addition, provide multiple payment options to customers, including cash, credit card and debit card payment, and remain in compliance with the Payment Card Industry (PCI) Security Standards published by the PCI Security Standards Council in effect and at all times. Refer to Article 72 of the Draft Form of Agreement.
13. Establish high standards for food, service, and maintenance of all related items, including menus.

2.8 Mobile Concession Services

The Contractor shall:

1. Provide food and beverage (including alcohol) Services on the golf course via the PROS-provided Mobile Concession Unit ensuring a high-level of service and quality to all customers. At a minimum, food and beverage services shall commence daily no later than two (2) hours after first scheduled tee time. All beverages sold on the golf course shall be distributed in individual non-polystyrene cups or cans. Glass bottles are not permitted on the golf course.
2. Maintain all food service equipment in a safe manner as outlined in Exhibit 3 - Minimum Operating Standards for Food Service. Contractor is encouraged to exceed these minimum operating standards.
3. Utilize its own cash register/point-of-sale system for food and beverage sales transactions which shall produce daily sales totals for reporting gross revenues and be able to provide a monthly reconciliation of daily sales in a format approved by PROS. In addition, provide multiple payment options to customers, including cash, credit card and debit card payment, and remain in compliance with the Payment Card Industry (PCI) Security Standards published by the PCI Security Standards Council in effect and at all times. Refer to Article 72 of the Draft Form of Agreement.

2.9 Marketing the Restaurant and Mobile Concession Services

The Contractor shall actively market the Restaurant and Mobile Concession services for the duration of the Agreement, in an effort to promote awareness and increase sales through external or online publications. Contractor shall not place any visible advertisements on the Mobile Concession Unit, at the Facility or within any part of Crandon Park. advertising nor advertise for its own business. Contractor shall not place or sell any advertisements on the Mobile Concession Unit. Refer to Article 68 of the Draft Form of Agreement regarding signs.

2.10 County's Rights and Responsibilities

1. The County shall approve the original menu items and prices, and any revisions thereafter. The County shall have the right to request revisions of menu items and prices on all Services provided by the Contractor.
2. The County reserves the right to schedule special events that may preclude the Contractor from operating in the Restaurant or providing the Services, or a portion thereof, for a limited time. The County will provide a two-week notification to the Contractor of these special events. The County

shall be free from any and all liability for Contractor's loss of business as a result of these special events.

3. The County shall have the right, without limitation, to monitor and test (i.e. secret shopper) the quality of Services of the Contractor, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of a shopping service, closed circuit television, and other reasonable means.
4. The County shall have the authority to make periodic reasonable inspections of the Restaurant, equipment, and operations during normal operating hours to determine if such are being maintained as agreed to. The Contractor shall be required to make any improvements in cleaning or maintenance methods reasonably required by the County. If corrective action is not immediately taken, the County will cause the same to be cleaned, and the Contractor shall assume responsibility and liability for such cleaning. Periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of the Agreement.
5. The County reserves the right to determine the attractiveness and appropriateness of the Restaurant, and to require that the Contractor make changes, if necessary, and such determinations by the County shall be considered final.
6. The County shall have the right, at its sole cost and expense, without limitation, to make any repairs, alterations and additions to any structures and facilities, including the Restaurant covered herein, 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.

2.11 Contractor's Rights and Responsibilities

1. The Contractor shall be responsible for all operating expenses, including Utilities. The Contractor shall place all Utilities for which they are responsible for into its name and pay the actual cost thereof. Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of Crandon Park as determined either by the public utility providing such service or by the County in the exercise of reasonable judgment.
2. The Contractor shall be responsible for janitorial service and pest control/extermination service within the Restaurant. The Contractor shall keep the Restaurant and equipment clean and stocked with County-provided supplies/toiletries at all times.
3. The Contractor shall secure the Restaurant premises included in this Solicitation. The County will not accept any responsibility for the Contractor's equipment, supplies, personal property, money, etc.
4. The Contractor shall follow the County's emergency evacuation and hurricane plan as set forth for the Restaurant and Crandon Park.
5. The Contractor shall ensure that its employees are distinctively uniformed or appropriately attired so as to be distinguishable as the Contractor's employees and not as employees of the County.
6. The Contractor shall ensure that its employees are trained and certified to effectively perform the Services under this contract, as well as provide on-going/as-needed training throughout the term of the Contract.
7. The Contractor shall employ a qualified, full-time, on-site manager having experience in the management of this type of operation, who shall be available during normal operating hours, and

be delegated authority to ensure the competent performance and fulfillment of the responsibility of the Contractor herein and to accept all notices provided for herein.

8. The Contractor shall employ a management person(s) who shall be on call and available for emergencies or other matters related to the operations herein (i.e. theft, vandalism, maintenance issues), outside of normal operating hours.
9. The Contractor shall provide all furnishings, fixtures, soft goods, equipment and personal property (i.e. appliances, dishes, cutlery, utensils, paper goods) to fulfill the requirements herein, which shall be of good quality and suitable for its purpose, as approved by PROS designated staff. All such items purchased or leased by the Contractor, except those permanently affixed to the building, shall remain the property of the Contractor following the expiration or termination of this contract.
10. The Contractor shall use the Restaurant primarily for the use permitted and shall not provide any services or sell any item or product without the prior written approval of the County Project Manager. Other services, including catering services, shall may be allowed upon prior approval by the County Project Manager. Under no circumstances shall any permitted other service compete or take priority over providing services in the Restaurant and Mobile Concession.
11. The Contractor shall not permit the Restaurant 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 Restaurant or Crandon Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Restaurant or Crandon Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Restaurant or Crandon Park or the proper and economic functioning of any other common service facility or common utility of the Restaurant or Crandon Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Restaurant or Crandon Park; or (vii) impair any of its other obligations herein.
12. The Contractor shall be responsible for the timely payment (i.e., before delinquency) of any and all taxes levied on the Contractor, which taxes relate to, arise out of, or are a result of the operations and/or performance herein. The Contractor'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.
13. The Contractor, at its expense, shall promptly make all repairs to furnishings, surfaces, walls, coatings, décor, entryways, walkways and any other areas ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the Restaurant. In addition, Contractor shall repair all damages to the Restaurant or Crandon Park caused by the Contractor, its employees, agents, or contractors as shall be required by reason of (i) the performance of any Work on the Restaurant; (ii) the installation, use or operation of Contractor's property; (iii) Contractor's portion of the utility lines in the Restaurant, if damaged due to Contractor's negligence; (iv) the moving of Contractor's property in or out of the Restaurant or Park; (v) the misuse or neglect of the Restaurant or Crandon Park by Contractor or any of its employees, agents, contractors, or customers including the failure or neglect to make the repairs required. Contractor shall obtain appropriate County approval and obtain all applicable licenses and/or permits required to perform repairs, maintenance, and replacements of Facility and/or Facility equipment. All improvements shall become the property of the County at the end of the contract period or earlier termination of the contract term. Any building repairs/improvements must be in accordance with the South Florida Building Code.
14. The Contractor shall refrain from any activity which may interfere with the operation of Crandon Park.

15. Contractor shall comply with all applicable rules and regulations adopted by the County and all laws, ordinances, and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Contractor's operations, maintenance, and repair of the Restaurant.
16. The Contractor shall work closely and cooperate with PROS and the incumbent contractor to ensure seamless transition of the Services.

2.12 **Payments to the County**

1. It is the intent of the County that the best possible Services be provided to the public, while generating revenues. The Contractor shall pay the greater of the following variable revenue to the County:

- a) **Monthly Guarantee**

For consideration of providing services at Crandon Park for the operation and maintenance of the Crandon Golf Restaurant and Mobile Concession Unit, the County desires payment of no less than five thousand, seven hundred and fifty dollars and zero cents (\$5,750.00) plus tax, per month, exclusive of Utilities payment, which shall be received by the County from the Contractor on or before the first day of the month, without billing.

- b) **Percentage of Monthly Gross Revenues**

For consideration of providing services at Crandon Park for the operation and maintenance of the Crandon Golf Restaurant and Mobile Concession Unit, the County shall receive a Percentage of Gross Revenue of no less than 10 percent (10%), plus tax, per month, exclusive of Utilities payment.

Note: The Crandon Park Master Plan (CPMP) requires a minimum of 10% of all gross revenue for activities occurring on the Crandon Park lands for which a price, charge, trade, barter, or fee is imposed.

2. **Additional Payments:**

The following fees are to be paid separately by the Contractor and not included as part of the above Monthly Guarantee or Percentage of Monthly Gross Revenues payment. These are the County's current rates which may be subject to change.

- a) The Contractor shall pay a monthly lease fee of \$267.83, plus tax, for the Mobile Concession Unit.
 - b) The Contractor shall pay a monthly waste collection fee of \$172 (unless they have established their own service per Section 2.11.1 herein).

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 executives, professionals and subject matter experts within the County or from private or non-profit sectors, other governmental/quasi-governmental organizations, and retired executives 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 thousand (1,000) points per Review Team Member.

TECHNICAL EVALUATION	
TECHNICAL CRITERIA (Attachment 1)	POINTS
Proposer's Approach to Providing the Services	250
Proposer's, Subcontractor's and key personnel's relevant experience, qualifications, capabilities, and past performance providing Services.	250
Proposer's Financial Capacity	200
Proposer's Transition Plan and Implementation of Timeline	50
Proposer's Sustainable Practices	50
TOTAL TECHNICAL POINTS	800
REVENUE EVALUATION	
REVENUE CRITERIA (Attachment 2)	POINTS
Monthly Guarantee and Percentage of Gross Revenue	200
TOTAL REVENUE POINTS	200
TOTAL MAXIMUM EVALUATION POINTS PER REVIEW TEAM MEMBER	1,000

Any Proposer, whether a Joint Venture or otherwise, may proffer the experience or qualifications of its corporate parent, sister, or subsidiary ("an affiliated company"). However, given the unique nature of individual corporate relationships, Proposers seeking to rely on the experience or qualifications of an affiliated company are advised that the Review Team shall have the discretion to determine what weight, if any, it wishes to give such proffered experience or qualification on a case-by-case basis. Review Team may base such decision on the particulars of the relationship between the Proposer and the affiliated company, as evidenced by the information and documentation provided in the Proposer Information Section, during Oral Presentations, or otherwise presented at the request of the Review Team.

4.3 **Oral Presentations**

Upon evaluation of the criteria indicated above (Technical and Revenue), 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 for "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 (SBEs) as follows. An 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 Division 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 Division at (305) 375-3111 or <http://www.miamidade.gov/smallbusiness/>. Additionally, the Small Business Development Division can be reached at Sbdnow@miamidade.gov or Sbdcert@miamidade.gov.

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.

Any Proposer may enter into a Joint Venture with a Small Business Enterprise firm for the purposes of receiving an SBE Selection Factor. Joint Ventures will be considered as one entity by the County during the evaluation of the proposal in response to this Solicitation. Joint Ventures must be pre-approved by Small Business Development and meet the criteria for the purposes of receiving an SBE Selection Factor pursuant to this Section.

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 (5%) 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 Submittal Form.

4.6 Revenue Evaluation

The revenue schedule 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 and conditions 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 better offers. In any event the County engages in negotiations with a single or multiple Proposers and/or requests better 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.) Additionally, any Proposer recommended for negotiations shall comply with the Lobbyist registration requirements of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance pursuant to Section 2-11.1(s) of the Code. A principal of any corporation, partnership or other entity who appears as a lobbyist on behalf of an entity, without special compensation or reimbursement for the appearance, shall register with the Clerk as required by the Ordinance 73-21, but shall not be required to pay any registration fees.

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 (3) years.
- c) Disclosure of any lawsuits which include allegations of discrimination in the last ten (10) years prior to date of Solicitation, the disposition of such lawsuits, or statement that there are NO such lawsuits, in accord with Resolution No. [R-828-19](#).

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 **Draft Form of Agreement** (Attachment 3) is attached herein. Proposers should review the document in its **ENTIRETY**. The terms and conditions summarized below are of special note and can be found in their entirety in the Agreement:

a) Supplier Registration

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Supplier Registration Package. For online vendor registration, visit the **Supplier Portal**: <https://supplier.miamidade.gov>. **Refer to Article 46 of the Draft Form of Agreement.**

b) Insurance

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. **Refer to Article 21 of the Draft Form of Agreement.**

c) Security Deposit

Within thirty (30) days from the execution of the Contract, the Contractor shall furnish to the County, Parks, Recreation and Open Spaces Department, Performance Excellence Division at 275 N.W. 2nd Street, Miami, Florida 33128 ATTN: Sarah Vickery, a security deposit in cash equal to three (3) months Monthly Guarantee, redeemable at the end of the Contract term except for such conditions pertinent thereto. In lieu of the Contractor furnishing a Security Deposit, the Contractor can provide a Performance Bond or Irrevocable Letter of Credit, equal to three (3) months of the Monthly Guarantee. **Refer to Article 18 of the Draft Form of Agreement.**

d) 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. The cost of the audit, if applicable, shall be one quarter (1/4) of one (1) percent of the total Contract amount and the cost shall be included in any proposed price. The audit cost will be deducted by the County from progress payments to the Contractor, if applicable. **Refer to Article 47 of the Draft Form of Agreement.**

e) 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 Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF 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 CSSF. **Refer to Article 62 of the Draft Form of Agreement.**

f) Shannon Melendi Act

The 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 Crandon Park by meeting the requirements of Chapter 26 "Miami -Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act". **Refer to Article 69 of the Draft Form of Agreement.**

g) Polystyrene Products Ban

The Contractor shall comply with Ordinance 16-58 – Polystyrene Products Ban. Ordinance 16-58 amended Chapter 26 of the Code of Miami-Dade County adding Rule 36 that bans polystyrene (also known as Styrofoam) in Parks under many circumstances. **Refer to Article 70 of the Draft Form of Agreement.**

6.0 ATTACHMENTS

6.1 Proposer Submission Package:

Attachment 1 – Proposer Information

Attachment 2 – Revenue Schedule

Attachment 3 – Draft Form of Agreement

6.2 Exhibits:

- Exhibit 1 - Crandon Golf Restaurant Site Map
- Exhibit 2 - List of Equipment
- Exhibit 3 - Minimum Operating Standards for Food Service
- Exhibit 4 - Crandon Park Master Plan
- Exhibit 5 - Current Menu/Prices

6.3 Web Forms (provided via BidSync for electronic submission):

- Proposal Submittal Form
- Subcontracting Form
- Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation

Note: **Proposal Submission Package** includes: Attachment 1, Attachment 2, and Web Forms.

ATTACHMENT 1 - PROPOSER INFORMATION

Proposed Approach to Providing the Services

1. Describe Proposer's specific plan and procedures to be used in providing the Services outlined throughout the Solicitation.
 - a. Proposed approach to providing a high-level of service and quality to all customers;
 - b. Proposed approach to maintaining safety;
 - c. List of specific reports and tasks utilized to provide the Services in a consistent and effective manner, including inventory and sales;
 - d. Identify the work shifts proposed with staffing levels.
2. Describe Proposer's approach to organization and management, including the responsibilities of Proposer's management and staff personnel that will perform work on this contract.
3. Provide the food and beverage menu the Proposer intends to offer at both the Restaurant and on the Mobile Concession Unit. Include the price and description of all proposed menu items. Prices must reflect recent trends for pricing in the industry for this type of operation.
4. Provide a detailed description of Proposer's customer service program including the approach to ensuring customer satisfaction. Details should include efficiency standards, addressing products and services inquiries, resolutions for complaints, response times and escalation procedures.
5. Describe the legal requirements and issues that affect this type of operation and describe the Proposer's approach to addressing and mitigating effects of the same.
6. Provide historical information detailing if the Proposer has ever obtained or has had any issues obtaining a 4COP/SFS License (formerly known as an SRX license).
7. Provide a detailed description of the Proposer's training program including how assessments for staff will be performed. Describe if training will be conducted in-person and/or through on-line tutorials/web seminars, will be available via the web. Provide samples of outlines or instruction manuals that will be used. Describe standards and methods that address the services to be performed under this contract, including the following:
 - a. General orientation and areas of responsibility;
 - b. Procedures, performance standards, remedial action and retraining programs;
 - c. Tools and equipment, operation and safety;
 - d. Customer service training for all personnel having contact with the public;
 - e. Measures taken to allow for safe business operations as a response to the COVID-19 pandemic.
8. Provide a preliminary action plan(s) for emergencies, including fire, acts of nature, and pandemic(s), and with remedial action readily available.
9. Describe the Proposer's marketing strategy and advertising plan to actively promote the Restaurant and Mobile Concession services in an effort to promote awareness and increase sales including media planning, signage, and marketing goals.
10. Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s). Only those exceptions identified herein will be considered by

the County. Exceptions not specifically delineated will not be accepted from any Proposer(s) that may be invited to participate in negotiations as outlined in Section 4.8 of the Solicitation.

Proposer, Subcontractor and Key Personnel's Relevant Experience, Qualifications, Capabilities and Past Performance Providing Services

11. Describe the Proposer's past performance and experience managing, operating, and maintaining a restaurant of similar capacity to that of the facility specified including table-side service, special events, and banquet operations.
12. Describe the Proposer's experience in the provision of food and beverage service to other resort or golf facilities in the South Florida market providing similar Services to those specified in the Solicitation.
13. State the number of years that the Proposer has been in existence and the current number of employees.
14. 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 five (5) years. In lieu of the comparable contracts from the Proposer, the County will consider the contractual experience from Proposer's proposed Subcontractor or proposed key personnel, in accordance with Resolution No. 1122-21.

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/ key personnel/Subcontractor 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).

15. 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.
16. Provide a detailed list and description of any published reviews or awards of all related and relevant projects.
17. Describe the experience of the proposed on-site manager including education and certifications. Provide specific details on restaurant operations and management experience with similar responsibility in a comparably sized facility as well as a copy of the individual's resume, job description, and other detailed qualification information.
18. Provide an organization chart showing all key personnel, including their titles, to be assigned to this contract. 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. Key personnel include all partners, managers, and other professional staff that will perform work on this contract.
19. Identify Subcontractors, if any. 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 contract
20. Provide resumes which detail the experience, qualifications, language(s) spoken, and other vital information of all key personnel, including those of subcontractors, who will be assigned to this contract. Include copies of

applicable licenses and certifications/accreditations of Proposer's employees who will be assigned to this contract, other than key personnel.

21. Provide the name and title, and address relevant experience, qualifications and past performance on previous similar contracts that qualifies the key personnel to perform the services as specified in the Scope of Services (see Section 2.0 of the Solicitation).

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.

Proposer's Financial Capacity

22. Provide Proposer's 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.
23. Provide a pro forma financial statement in US Dollars, with detailed information evidencing the potential revenue projected for this contract. The pro forma shall be incorporated into the Agreement as an attachment. Proposers are to title the pro forma in their Proposal as "Pro Forma Financial Statement".
24. Provide a Financial Plan which will indicate:
 - a. the source of funding to be used for start-up costs, including equipment, furniture and fixtures; and,
 - b. the total amount of working capital and reserves the Proposer determines will be required to maintain operations.
25. Provide the Proposer's minimum investment (i.e., furnishings, equipment) and total value of improvements (i.e., minor improvements, repairs), as further indicated in Section 2.4.2 of the Solicitation.
26. List and describe all bankruptcy petitions (voluntary or involuntary) which has been filed by or against the Proposer, its parent or subsidiaries, predecessor organization(s), or any wholly-owned subsidiary during the past three (3) years. Include in the description the disposition of each such petition.

Proposer's Transition Plan and Implementation of Timeline

27. Provide an implementation timeline identifying specific key tasks including a transition schedule commencing post contract award with specific tasks and duration of each task. Describe how the Proposer plans to start operations with a smooth transition of Services from the incumbent Contractor. The County desires that the Proposer be in full operation to provide food and beverage service within thirty (30) days following the commencement date of the contract award.

Proposer's Sustainable Practices

28. Describe in detail Proposer's sustainable business practices, by addressing the three pillars of sustainability: environmental, social, and economic
 - a. Environmental – Consideration of Product Attributes

- i. Explain how Proposer will perform the Work required in this project by using durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste, post-industrial and/or recyclable content, without significantly affecting the intended use of the goods or services required.
 - ii. Provide Proposer's environmental policies, programs, certifications, in addition to specific requirements
- b. Social/Fair Labor Standards - Contributions to the health, well-being and development of its employees
 - i. Describe Proposer's criteria in support of safe, fair, and equitable work practices and ethical behavior, to include:
 - a) Job classification descriptions of any and all services to be performed
 - b) Geographic area within which the services are to be performed, under safe and accessible working conditions
 - c) Equitable wage/benefit determination practices
- c. Economic - Equal access to small, diverse and disadvantaged suppliers
 - i. Identify Proposer's direct efforts to develop supplier diversity initiatives used to increase the participation of small, diverse and disadvantaged enterprises, in contracting opportunities.

ATTACHMENT 2 – REVENUE SCHEDULE**Commented [TJ(1):** What about space for OTR amounts?

Proposers shall list their Monthly Guarantee and Percentage of Monthly Gross Revenues. These amounts shall be seen as consideration retained by the County for allowing the Contractor to engage in business at Crandon Park.

Proposer is requested to fill in the applicable blanks on this form.

Monthly Guarantee:

Operation and Maintenance of Crandon Golf Restaurant and Mobile Concession Unit	Monthly Guarantee (paid per month)
Year 1	\$
Year 2	\$
Year 3	\$

Percentage of Monthly Gross Revenues:

Operation and Maintenance of Crandon Golf Restaurant and Mobile Concession Unit	Percentage of Monthly Gross Revenues (paid per month)
Year 1	%
Year 2	%
Year 3	%

Minimum Acceptable Amount: Proposer shall offer a minimum of **10%** of all gross revenue in accordance with the Crandon Park Master Plan requirements.

Option to Renew (One Year)

Monthly Guarantee	Percentage of Monthly Gross Revenues (paid per month)
\$	%

REVENUE SCHEDULE ACKNOWLEDGMENT

The Proposer's revenue data shall be submitted on this Attachment 2, Revenue Schedule, and in the manner stated herein. Proposers who do not submit revenue pricing in accordance with the Solicitation document and this Attachment 2 may be deemed non-responsive. The amounts entered on this Attachment 2, Revenue Schedule shall be used to determine points awarded for the revenue criteria as indicated in Section 4.2, Evaluation Criteria, of this Solicitation. Notwithstanding the proposed revenue rates, the County reserves the right to negotiate the final revenue rates prior to award.

(This is the ~~draft~~ form of agreement the County anticipates awarding to the selected Proposer.)

~~Crandon Golf at Key Biscayne~~ Miami-Dade County Crandon Golf Restaurant ~~Restaurant~~ Operations
Contract No. EPPRFP-01820

Recitals:

THIS AGREEMENT made and entered into as of this _____ day of _____ hereby understood as the Effective Date, by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (the "County") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Contractor has offered to provide operation and maintenance of the restaurant and mobile concession unit located ~~in Key Biscayne~~ at Crandon Park., on a non-exclusive basis, that shall conform to the Scope of Services (Article 7), Miami-Dade County's Request for Proposal ("RFP") No. EPPRFP-01820 and all associated addenda and attachments, and the requirements of this Agreement; and

WHEREAS, the Contractor has submitted a written proposal dated _____ (the "Contractor's Proposal") which is incorporated herein by reference; and

WHEREAS, the County desires to procure from the Contractor such operation and maintenance of the restaurant and mobile concession unit 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 "**Agreement**" or "**Contract**" to mean collectively terms and conditions, Scope of Services, all other appendices, attachments and amendments to the Agreement/Contract, this RFP No. EPPRFP-01820 and all associated addenda, and the Contractor's Proposal.
- b) The words "**Article**" or "**Articles**" to mean the terms and conditions delineated in this Agreement.
- c) The words "**Contract Manager**" to mean the 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~~ The word "**County**" to mean Miami-Dade County, a political subdivision of the State of Florida.
- f) The words "**Crandon Golf**" or "**Crandon Park**" or "**Park**" to mean golf course and park located at 6700 Crandon Boulevard, Key Biscayne, Florida 33149.
- g) ~~The words~~ The words "**Crandon Park Master Plan**" to mean the park plan approved by the Board of County Commissioners that sets general guidelines for use with regard to public need for facilities, its impact upon the surrounding community, and other similar considerations (See Exhibit 4).
- h) The word "**Days**" to mean calendar days.
- i) The word "**Deliverables**" to mean all documentation and any items of any nature submitted by the Contractor to the Project Manager for review and approval pursuant to the terms of this Agreement.

- k) The terms "**Department**" or "**PROS**" shall mean the Miami-Dade County Parks, Recreation, and Open Spaces Department. Wherein in this Solicitation document, rights are reserved to the County, PROS may exercise such rights.
- l) The words "**Developed Works**" to mean 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.
- l) The words "**Effective Date**" to mean the date entered on the Recitals of this Agreement.
- m) The words "**Facility**" or "**Restaurant**" to mean the Crandon Golf at Key Biscayne Restaurant as further described in
- n) The words "**Force Majeure**" to mean acts of civil or military authority (including courts and regulatory agencies), acts of nature (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods, or acts or decisions of Federal agencies. Commercial impacts of COVID-19 are currently known, and any commercial impacts related to COVID-19 shall not constitute force majeure events.
- o) The words "**Gross Revenue(s)**" to mean all revenues generated by the Contractor and authorized third-party entities arising out of or relating to the provision of all activities or items for which price, charge, trade/barter or fee is imposed, as well as all revenues or other consideration charged for or received by the Contractor, as herein defined, for all services rendered, all sales made, and all transactions engaged in under the authority of this Agreement from any source whatsoever and whether such activities were on the Site or off-Site. Gross Revenues further includes, but is not limited to, those revenues received from the rights paid to Contractor for the use or licensing of all media, the sales of all media, from ticket sales, from sponsorship sales, tournament parking, concession revenues, retail revenues, advertising space and/or services, hospitality sales, merchandise (including without limitation retail, wholesale, direct response, mail order, internet or otherwise. All third-party contracts shall be in writing and on market terms. If such conditions are not on market terms and/or have resulted in a direct or indirect tangible economic benefit to Contractor, then the actual market value of the economic benefit provided shall be included in Gross Revenue. The only revenues and other considerations which may be excluded from Gross Revenues are taxes imposed by law and paid by a customer and directly payable by Contractor to a taxing authority, credit card processing fees, and pass-through or reimbursable expenses paid by third parties through the Contractor to another third-party.
- p) The words "**Home Rule Charter**" to mean the Miami-Dade County Home Rule Charter as amended through November 6, 2018.
- q) The words "**Joint Venture**" to mean an association of two or more persons, partnerships, corporations, or other business entities under a contractual agreement to conduct a specific business enterprise for a specified period with both sharing profits and losses.
- r) The words "**Licensed Software**" to mean the software component(s) provided pursuant to the Contract.
- s) The words "**Mobile Concession Unit**" to mean a stand-alone cart that can accommodate the sale of food and beverages for mobile concession services on the golf course.
- t) The words "**Project Manager**" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- u) The word "**Restaurant**" to mean the Crandon Golf at Key Biscayne Restaurant.
- v) The words "**Scope of Services**" to mean Article 7 which details the work to be performed by the Contractor.

Commented [TJ(1)]: How does that relate to this agreement?

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- v) The words **"Service"** or **"Services"** or **"Work"** or **"Project"** to mean the provision of Crandon Golf at Key Biscayne Restaurant operations, in accordance with the Scope of Services and all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.
- w) 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.
- x) The **"Utilities"** to mean services used or consumed such as, but not limited to, gas, sewage, cable/satellite and waste collection, associated with the day-to-day operations, with the exception of electricity and water which is paid for by the County.

Commented [TJ(2)]: How does this relate to V) above?

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 (Article 7), 3) the Miami-Dade County's EPP-RFP-01820 and any associated addenda and attachments thereof, and 4) 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 terms **"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 Project Manager.
- e) The terms **"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 Project Manager.
- f) 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 the 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 Work 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 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 necessary for the completion of this Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.
- e) The Contractor acknowledges that the County shall make all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor shall implement 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 on the Effective Date, as defined in the recitals of this Agreement, and shall continue through the last day of the 6036th month, ~~thereafter~~. The County, at its sole discretion, may renew this Contract for threeone, additional one-year periods. The County may extend this Contract for up to an additional 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 (the "Board").~~

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: (i) Registered or Certified Mail, with return receipt requested; (ii) personally by a by courier service; (iii) Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or (iv) via facsimile or e-mail (if provided below) with delivery of hard copy pursuant to (i), (ii), or (iii) in this paragraph. The addresses for such notice are as follows:

(1) To the County

- a) to the Project Manager:

Miami Dade County Parks, Recreation and Open Spaces Department
275 N.W. 2nd Street
Miami, FL 33128
Attention:
Phone:
E-mail:

and

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 NW 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-4900

Commented [SM(3)]: CPMP says 3 years with 1 year OTR.

Commented [WM(4R3)]:

on which the County may contract with any lessee, concessionaire or other party for the operation of the Golf Course or Clubhouse, including the Pro-Shop or other spaces within the Clubhouse (except restaurant). Following the Adoption Date, the County may elect to contract with a lessee or concessionaire for operation of the Clubhouse restaurant and/or driving range for terms of no more than three years in length with three, one year options to renew in each instance.

Commented [EJ(5R3)]: Updated and removed lines from the revenue below.

E-mail: 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. SCOPE OF SERVICES

The finalized Scope of Services will be inserted during the negotiation phase.

ARTICLE 8. USE OF LOCATION

The Contractor shall provide food and beverage services for Restaurant and Mobile Concession Unit operations, and related activities, for the term, at the rate, and upon the covenants and conditions as set forth in this Agreement. The Contractor shall not conduct any business nor provide any services, nor sell any item or product without the prior written approval of the County. Any sales by the Contractor of services or items not specifically authorized in writing by the County may constitute a default. Contractor shall conduct its business at all times in accordance with this Agreement. The Contractor shall use the amenities within the park identified within this Agreement and within any attachments (if applicable), only for the provision of food and beverage services for Restaurant and Mobile Concession Unit operations, and related services, and accepts such amenities in the condition they are in at the execution of this Agreement.

ARTICLE 9. LIMITATIONS ON USE

Subject to Contractor's right to use the Park for the purposes specified in this Agreement, Contractor shall not suffer or permit the site or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the park identified in this Agreement or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the park identified herein; (v) materially impair or interfere with the proper and economic cleaning of such park or the proper and economic functioning of any other common service facility or common utility of the park; (vi) impair or interfere with the physical convenience of any of the occupants of the Park, (vii) violate any provisions of the Crandon Park Master Plan or Article 7 of the Miami-Dade Home Rule Charter; or (viii) impair any of the Contractor's other obligations under this Agreement.

Commented [SM(6)]: I would add violation of CPMP and violation of Article 7 here as well.

ARTICLE 10. GOVERNMENT APPROVALS

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

ARTICLE 11. PAYMENT 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 price the Contractor will charge to provide the Services to be performed under this Contract. The County shall have no obligation to retain funds in excess of the negotiated rates (which will be memorialized as an attachment to this Agreement), except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 12. ~~MINIMUM~~ MONTHLY GUARANTEE / PERCENTAGE OF MONTHLY GROSS REVENUES

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 ~~Minimum~~ Monthly Guarantee and Percentage of ~~Monthly~~ Gross Revenues.

All revenue produced at Crandon Park by the Contractor shall be processed by the County through the Contractor's cash register/point of sale system.

The Contractor, in consideration for the right to provide Services at Crandon Park, does hereby covenant and agree that the County will retain monthly, without deduction or set off of any kind, (plus tax) the greater of the ~~Minimum~~ Monthly Guarantee ~~or and an amount equal to (plus tax) of Monthly Gross Revenue or payment of~~ at least 10% of Percentage of Monthly Gross Revenues to the County that shall be calculated using all types of revenue generated combined for the operation and maintenance of the Crandon Golf Restaurant and Mobile Concession Unit. Amounts due to the County shall be paid pursuant to the following Revenue Schedule:

~~Guaranteed Monthly Fees~~ Monthly Guarantee:

Operation and Maintenance of Crandon Golf Restaurant and Mobile Concession Unit	Guaranteed Fee Monthly Guarantee per Month
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$

Monthly Percentage of ~~Monthly~~ Gross Revenues:

Operation and Maintenance of Crandon Golf Restaurant and Mobile Concession Unit	Percentage of Monthly Gross Revenues per Month Monthly Percentage Fee per Dollar of Gross Revenue
Year 1	%
Year 2	%
Year 3	%
Year 4	%
Year 5	%

Option to Renew (One Year)

Monthly Guarantee	Percentage of Monthly Gross Revenues (paid per month)
\$	%

Payments by the Contractor to the County as described shall be guaranteed and persist throughout the term and conclusion of the Contract and all subsequent extensions thereof. All Services undertaken by the Contractor before the County's approval of the Contract shall be at the Contractor's risk and expense.

The amount due to the County is considered taxable revenue to the County. The County shall collect all revenues produced by the Contractor, including sales tax for those items that are taxable, and shall remit payment to the Contractor within fifteen (15) days of the last day of that month for food and beverage services for Restaurant and ~~Mobile Concession Unit~~ operations, and related services, to include any sales taxes collected, minus the ~~Minimum~~ Monthly Guarantee or Percentage of Monthly Gross Revenues, as applicable.

ARTICLE 13. METHOD AND TIMES OF PAYMENT

In accordance with Miami-Dade County Implementing Order No. 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.

Invoices and associated back-up documentation shall be submitted electronically or in hard copy format by the Contractor to the County as follows:

Miami-Dade County
Parks, Recreation and Open Spaces Department
Heritage Parks Beaches and Marinas Region Office at Crandon Park
6747 Crandon Boulevard
Key Biscayne, FL 33149
Attention: Mark Richard, Senior Regional Manager
Phone: (305) 365-3015
E-mail: Mark.Richard@miamidade.gov

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

ARTICLE 14. SALES TAX

The Contractor shall be liable for the prevailing State of Florida Sales and Use Tax imposed (currently at the rate of seven percent (7%) on the amounts payable to and retained by the County under this Agreement. This tax shall be payable to and retained by the County, when applicable payment is due. The County will remit same, less authorized handling deductions, to the State of Florida. Said tax is applicable to ~~Minimum~~ Monthly Guarantee, or the Percentage of Monthly Gross Revenues, whichever is due, unless otherwise determined by the State of Florida.

ARTICLE 15. WORTHLESS CHECK OR DRAFT

In the event that the Contractor delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Contractor shall incur and pay a service charge of ten dollars (\$10.00) or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within not more than five (5) days from writer 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 mean acceptable to the County.

ARTICLE 16. PRICING FOR SERVICES RENDERED

Menu pricing for food and beverage services for Restaurant and ~~Mobile Concession Unit~~ operation, and for related services, rendered by the Contractor to patrons shall remain fixed and firm for no less than twelve (12) months from the effective date of the Agreement. The Contractor may request an increase or decrease to said menu pricing by no more

than five percent (5%) of the current cost of that item(s) per year. Such cost increases or decreases must be submitted to the Project Manager and Contract Manager no later than forty-five (45) days from the anniversary date of the Agreement. Approval shall be at the sole discretion of the Project Manager, provided in writing. The Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof. The County shall have the right to request revisions of menu items and prices on all Services provided by the Contractor.

ARTICLE 17. ACCORD AND SATISFACTION

No payment by Contractor or receipt by County of a lesser amount than any payment herein stipulated, shall be deemed to be other than amount of the earliest stipulated ~~Minimum~~ Monthly Guarantee or Percentage of Monthly Gross ~~Receipts~~ ~~Revenues~~ then due and payable. No endorsement, state on any check, any letter accompanying any check or payment for ~~Minimum~~ Monthly Guarantee or Percentage of Monthly Gross ~~Revenues~~ ~~Receipts~~ shall 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 ~~Minimum~~ Monthly Guarantee or Percentage of Monthly Gross ~~Revenues~~ ~~Receipts~~ or pursue any other remedy provided in this Agreement, at law or in equity.

ARTICLE 18. SECURITY DEPOSIT

Within thirty (30) days from the execution of the Contract, the Contractor shall furnish to the County, Internal Services Department, Strategic Procurement Division, a Security Deposit in cash equal to three (3) months of the ~~Minimum~~ Monthly Guarantee, redeemable at the end of the Contract term except for such conditions pertinent thereto. In lieu of the Contractor furnishing a Security Deposit, the Contractor can provide a Performance Bond or Irrevocable Letter of Credit, equal to three (3) months of the ~~Minimum~~ Monthly Guarantee. This Performance Bond or Letter of Credit will be conditioned on the full and faithful performance of all covenants of this Contract. If the Contractor provides a Performance Bond, the following specifications shall apply: All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond Amount	Best Rating
500,001 to 1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,001 to 10,000,000	A VIII
Over 10,000,000	A IX

- a) On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
1. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
 2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code; and
 3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

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

- b) For contracts in excess of 500,000 the provisions of Section B will be adhered to plus the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.
- c) Surety Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

- d) In lieu of a Performance Bond, an Irrevocable Letter of Credit will be acceptable. All interest will accrue to Miami-Dade County during the life of this contract and as long as the funds are being held by Miami-Dade County.
- e) The attorney-in-fact or the officer who signs a contract bond for a surety company must file with such bond a certified copy of power of attorney authorizing the officer to do so. The contract bond must be counter signed by the surety's resident Florida agent.

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

ARTICLE 19. GROSS RECEIPTS

- a) Gross Receipts Defined: "Gross Receipts" means all receipts from the sale of services by the Contractor, and subcontractor(s) of Contractor, sold in, upon or from the Crandon Golf Restaurant and Mobile Concession Unit, including such sales as shall in good faith be credited by Contractor, its Contractors, and subcontractors in the regular course of its or their business to personnel employed at the time of sale at the Crandon Golf Restaurant and Mobile Concession Unit, including sub-concession agreements or contract employee payments to the Contractor and mail and telephone orders received at the Crandon Golf Restaurant and Mobile Concession Unit and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Contractor or its Contractors or subcontractors for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment or other property used by Contractor or its subcontractors in the operation of its business and not acquired or held by it for the purpose sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Contractor, or its subcontractors whichever of such events shall first occur.
- b) Examination of Contractor's Books and Records: Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross ~~Receipts-Revenues~~ 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 a manner as not to interfere unreasonably with the conduct of Contractor's business. All informational obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except in connection with mortgage or assignment of this Contract for financing purposed or if subject to the requirements of Florida Public Records Act.
- c) Contractor's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross ~~Revenues~~ ~~Receipts~~ due hereunder, if any, 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 and purchases, and other pertinent transactions by the Contractor. County shall at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash registers/point of sales system having a cumulative total.
- d) Audit of Contractor's Business Affairs and Records: County shall have the right to cause, upon five (5) days written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the County. Contractor shall make all such records available for said examination at a mutually agreeable location. If the result of such audit shall show that Contractor's Gross Receipts for any period has been understated, Contractor shall pay the County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payments. A report of the findings of said accountant shall be binding and conclusive upon County

and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this 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, or except in connection with any mortgage or assignment of this Contract for financing purposes.

- e) If Contractor fails to record, maintain or make available sales supporting documentation as specified above

ARTICLE 20. INDEMNIFICATION

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.

ARTICLE 21. INSURANCE

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, certificate(s) 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 Chapter 440, Florida Statutes.
2. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. Policy must be endorsed to include coverage for Products & Completed Operations. **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. Liquor Liability, if applicable, in an amount not less than \$1,000,000.

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

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

OR

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

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

Miami-Dade County
111 NW 1st Street
Suite 2340
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.

Commented [SM(7)]: Make sure Risk reviews.

Commented [WM(8R7)]: Risk provided these requirements for this procurement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the certificate of insurance is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five 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 certificate 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 of insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed certificate of insurance to the County before such expiration. If expired certificate of insurance is/are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificate is/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 22. NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the Park shall be at the risk of the Contractor or the owner thereof. The County shall not be liable to the Contractor or any third party for any damage to said personal property unless caused by or due to negligence of the County, the County's agents or employees, subject to all limitations of Florida Statutes, Section 786.28.

ARTICLE 23. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Work 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 Work described herein and to full and prompt cooperation by the Contractor in all aspects of the Work. At the request of the County, the Contractor shall promptly remove from the Project any Contractor's employee, Subcontractor, or any other person performing Work 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 all claims, suits, actions, damages, and costs (including attorneys' 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 always agrees that it will employ, maintain, and assign to the performance of the Work 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 Work described herein, in a competent and professional manner.
- e) The Contractor shall always cooperate with the County and coordinate its respective work efforts to maintain the progress most effectively and efficiently in performing the Work.
- 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 24. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall 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 25. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all Work 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 performed or Services provided pursuant to this Agreement shall always, 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 26. 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 27. DISPUTE RESOLUTION PROCEDURE

- a) The Contractor hereby acknowledges that the 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.
- f) 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.
- g) 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.**
- h) In the event of such dispute, the Parties 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 the Parties. Any such dispute shall be brought, if at all, before the County Mayor within ten (10) days of the occurrence, event or act out of which the dispute arises.
- i) 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 regarding 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.
- j) This Article will survive the termination or expiration of this Agreement.

ARTICLE 28. 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 the 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 such defense or settlement costs from the Contractor.

ARTICLE 29. 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 Agreement. The Contractor and its Subcontractors and suppliers shall retain such records, and all other documents relevant to the Work furnished under this Agreement for a period of three years from the expiration date of this Agreement and any extension thereof.

ARTICLE 30. AUDITS

The County, or its duly authorized representatives and governmental agencies, shall until the expiration of three 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, 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 within five business days of the Commission Auditor's request. 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 31. SUBSTITUTION OF PERSONNEL

In the event the Contractor needs 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. However, such substitution shall not become effective until the County has approved said substitution.

ARTICLE 32. 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 33. SUBCONTRACTUAL RELATIONS

- a) If the Contractor causes 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, omissions, 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 Work, will state in writing to the County the name of the proposed Subcontractor, the portion of the Work 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 Work to be performed. Such Work

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 Work 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 Work 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 Subcontractor 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 34. 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 35. 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 36. TERMINATION AND SUSPENSION OF WORK

- a) This Agreement may be terminated for cause by the County for reasons including, but not limited to, (i) the Contractor commits an Event of Default (as defined below in Article 37) and fails to cure said Event of Default (as delineated below in Article 38), or (ii) Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- b) This Agreement may also be terminated for convenience by the County. Termination for convenience is effective on the termination date stated in the written notice provided by the County.
- c) If County terminates this Agreement for cause under Article 36(a) above, the County may, in its sole discretion, also 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 pay all direct or indirect costs associated with such termination or cancellation, including attorneys' fees.
- d) The foregoing notwithstanding, if the Contractors attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from County contracting 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 Code.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop Work on the date specified in the notice (the "Effective Termination Date");

- ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
- All compensation pursuant to this Article are subject to audit.
- g) In the event the Contractor fails to cure an Event of Default timely, the County may terminate this Agreement, and the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports, and data.

ARTICLE 37. EVENT OF DEFAULT

- a) An Event of Default is a material breach of this Agreement by the Contractor, and includes but is not limited to the following:
- i. the Contractor has not delivered Deliverables and/or Services 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; or
 - 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 Work 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 Work 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 and/or material breach 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

Work or any part thereof either by itself or through others.

ARTICLE 38. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall notify the Contractor (the "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 Work upon the Effective Termination Date.

ARTICLE 39. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, whether or not the County elects to terminate this Agreement as a result thereof, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the County elects to terminate the Agreement, 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 40. EXPIRATION OR TERMINATION OF CONTRACT

Following the expiration or termination of this Agreement the Contractor, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property from the Park. Any personal property of Contractor not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Contractor or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Contractor for the safekeeping of Contractor's personal property during or after expiration or termination of this Agreement. The County shall have the senior interest in the Contractor's personal property.

ARTICLE 41. NO WAIVER OR RIGHT TO ENFORCE

The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of ~~Minimum~~ Monthly Guarantee or Percentage of Monthly Gross Revenues hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Agreement.

ARTICLE 42. 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 43. 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 for 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) 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 44. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of the public records laws of the State of Florida (the "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 (the "Computer Software"). All third-party license agreements must also be honored by the Contractor and its 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 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 45. 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 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 46. 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 vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. 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
- Payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- Provision of unique identifier in the vendor database used for searching and sorting departmental records

The Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
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| <p>1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>2. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8.1(d)(2) of the Code of Miami-Dade County)</p> <p>3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the Code of Miami-Dade County)</p> <p>4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the Code of Miami-Dade County)</p> <p>5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County)</p> <p>6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)</p> <p>7. Miami-Dade County Code of Business Ethics Affidavit
(Article I, Section 2-8.1(i) of the Code of Miami-Dade County)</p> <p>8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the Code of Miami-Dade County)</p> <p>9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the Code of Miami-Dade County)</p> | <p>10. Miami-Dade County Domestic Leave and Reporting Affidavit (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)</p> <p>11. Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit
(Section 448.095, of the Florida State Statutes)</p> <p>12. Miami-Dade County Pay Parity Affidavit
(Resolution No. R-1072-17)</p> <p>13. Miami-Dade County Suspected Workers' Compensation Fraud Affidavit
(Resolution No. R-919-18)</p> <p>14. Office of the Inspector General
(Section 2-1076 of the Code of Miami-Dade County)</p> <p>15. 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.</p> <p>16. 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.</p> |
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b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. 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 relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1(y) of the Code, the Miami-Dade County Commission on Ethics and Public Trust 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 47. INSPECTOR GENERAL REVIEWS**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order No. 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "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, 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 of one percent (0.25%) 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 of one percent (0.25%) 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 Board; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Implementing Order No. 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 of one percent (0.25%) 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 Trust contracts, transactions, accounts, records, and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of IPSIGs 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 48. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

As applicable, Contractor shall comply, subject to applicable professional standards, with the provisions of 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 clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b) Miami-Dade County Small Business Enterprises Development Participation Provisions.
- c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.
- d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).
- f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".
- g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".
- h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- i) 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.
- j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).
- k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".
- m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- o) Any other laws prohibiting wage rate discrimination based on sex.
- p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. 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 "f" through "k" 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), and permit(s) 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 49. 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 50. 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, Deliverables 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 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 regarding remedying the situation.

ARTICLE 51. 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 Work 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 Work, Deliverables or Services provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 52. BANKRUPTCY

The County may 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 53. 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 in Miami-Dade County.

ARTICLE 54. DAMAGE OR DESTRUCTION OF PREMISES

Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to Force Majeure causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The parties agree that the commercial impacts of COVID-19 are currently known to the parties, and that commercial impacts related to COVID-19 shall not constitute Force Majeure events.

In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay. In all events, Contractor shall repair all damages to the Park caused by the Contractor, its employees, agents, contractors and/or sub-contractors at its own cost and expense. In the event the Park is damaged or destroyed, through no fault of the Contractor, its employee, agents, contractors or sub-contractors, the Contractor and the County shall be under no obligation to repair and/or reconstruct the premises and an adjustment of the Minimum Monthly Guarantee or Percentage of Gross Revenues retained hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County and through negotiations pertaining to all matters for continuing the Services, the Contractor may reconstruct the premises at its own cost.

ARTICLE 55. DIMINUTION FOR COUNTY'S REPAIR

Except as elsewhere specifically provided in this Agreement, there shall be no allowance to Contractor for a diminution of payment and no liability on the part of the County by reason of inconvenience, annoyance or interference with Contractor's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Park or the building or buildings contained within the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Contractor's use of the Park.

ARTICLE 56. ASSIGNMENT, SUB-CONTRACTING AND SUCCESSORS IN INTEREST

- a) Contractor shall not assign, mortgage, pledge nor otherwise encumber this Agreement nor any portion thereof, nor any property associated with this Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.
- b) Contractor shall not enter into any sub-contract for services required to be provided under this Agreement without prior written approval of the County. Unapproved sub-contracting shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on any subcontractors, including percentage payments on ~~gross~~ Gross Revenues as defined in this Agreement. Contractor shall be liable for acts and omissions by any subcontractor affecting this Agreement. The County reserves the right to directly terminate (and pursue any applicable remedy) any subcontractor of the Contractor for any cause for which Contractor may be terminated.

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

ARTICLE 57. OWNERSHIP OF CONTRACTOR

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

ARTICLE 58. RIGHTS RESERVED TO COUNTY

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

ARTICLE 59. COUNTY USER ACCESS PROGRAM (UAP)

Does not apply to this Agreement.

ARTICLE 60. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 61. LIENS

The Contractor is prohibited from placing a lien on County property. This prohibition shall apply to all Subcontractors.

ARTICLE 62. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, 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 Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF 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 CSSF. 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 CSSF 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 First Source Hiring Referral Program are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 63. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws, 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, Florida Statutes, 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 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 64. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Does not apply to this Agreement.

ARTICLE 65. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 66. 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 67. ADDITIONAL SERVICES – MODIFICATIONS

The County, at its sole discretion, may allow the Contractor to provide additional services, upon such terms as the parties may agree. Any additional services must be associated with, and be incidental to, normal restaurant/food service operation. However, any right to additional services by Contractor are subordinate to the County's right to provide the additional service itself and the County's right to Agreement with others. Any changes shall be added to this Agreement by formal written modification.

ARTICLE 68. SIGNS

The nature, size, shape and installation of Contractor's business signs within the facility or in, on or adjacent to the facility 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 and Chapter 26 of the County Code. All signs shall be removed by the Contractor at the termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Contractor.

ARTICLE 69. SHANNON MELENDI ACT

The 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". The Contractor shall ensure that all management, staff, and volunteers:

- Have had nationwide criminal background checks conducted by a Professional Background Screener.
- Have been screened through the Florida Department of Law Enforcement Sexual Predator/Offender Database, and a check of the National Sex Offender Public Registry.
- Have been verified as being United States Citizens or having legal immigrant status employment.
- Complete an affidavit affirming that no Services 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 Contractor within forty-eight (48) hours of such arrest.
- Wear picture identification at all times while on County property and when in direct contact with patrons and the general public.
- 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 Contractor shall provide the County with access to these records annually, or at the request of the County.

ARTICLE 70. POLYSTYRENE PRODUCTS BAN

The Contractor shall comply with Ordinance 16-58 – Polystyrene Products Ban. Ordinance 16-58 amended Chapter 26 of the Code of Miami-Dade County 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 Contractor.

ARTICLE 71. FORCE MAJEURE

Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its subcontractors or suppliers. The Parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: (a) acts of civil or military authority (including courts and regulatory agencies); (b) acts of God (excluding normal or seasonal weather conditions); (c) riot or insurrection; (d) inability to obtain required permits or licenses; (e) blockades, embargoes, sabotage, epidemics and unusually severe floods; or (f) acts or decisions of governmental agencies/authorities having jurisdiction. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay. The Parties agree that the commercial impacts of COVID-19 are currently known to the parties, and that commercial impacts related to COVID-19 shall not constitute force majeure events.

In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection a) above the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

ARTICLE 72. PAYMENT CARD INDUSTRY COMPLIANCE

The Contractor shall comply with the Payment Card Industry ("PCI") Security Standards in effect and at all times throughout the term of the resultant agreement. If at any time any of the components, including but not limited to the Contractor's system, equipment, hardware, software or policies, becomes non-PCI compliant, the Contractor is responsible for correcting such non-compliance within thirty (30) days of identification, including all costs, in order to reestablish PCI compliance.

- a. The Contractor confirms its knowledge of and commitment to comply by providing the following proof that Contractor's devices/applications/processes meet current, published, PCI compliance requirements:
 1. Contractor's current annual PCI compliance certification if applicable. The County has right to audit Contractor compliance by requesting copies of the Contractor PCI compliance certifications at any time.
 2. During an installation or a major system upgrade, the Contractor must provide implementation manuals and detailed diagram(s) that show all cardholder data flows across County systems and networks, the internet and the processor network
 3. Vendor Form – Payment Application(s) – Only applicable to the Contractor who is installing the product in County environment.
- b. Contractor shall resubmit the aforementioned passing, updated, completed and signed PCI compliance documents annually to the County. Furthermore, the Contractor shall update their solution, when required, to remain compliant with all changes to the PCI standards and requirements by the implementation dates mandated by the PCI Security Council and remediate any critical security vulnerabilities within thirty (30) days of identification.
- c. Sensitive Authentication data and Primary Account number shall not be stored by the Contractor application at any point, even if masked. Any other Card holder data should not be stored by the Contractor application unless it is absolutely needed for County's operations.
- d. Point of Sale ("POS"), must be routed directly to the County's merchant provider (ELAVON) and must be EMV (EuroPay, Mastercard, and Visa) compliant. All POS must be capable of accepting NFC (near field communications) payment methods such as Google Wallet, ApplePay, or Samsung Wallet.
- e. Cashiering Application systems that utilize the County network for payment processing must be a validated PCI Point-to-Point Encryption ("P2PE") solution and transactions routed through our approved County merchant processor. The County's approved P2PE solution is Elavon's PCI Safe T P2PE Link Protect services. Confirmation of validated P2PE solution shall be provided as found on the PCI Council's P2PE Solutions website: (https://www.pcisecuritystandards.org/assessors_and_solutions/vpa_agreement?return=%2Fassessors_and_solutions%2Fpoint_to_point_encryption_solutions). Prior to production going live, the P2PE Instruction Manual shall be provided as found on PCI website: (https://www.pcisecuritystandards.org/documents/P2PE_v2_PIM_Template.docx).
- f. Internet transactions and all other applications must be routed through the County's Internal Payment Gateway (Payment Card).
- g. Exceptions shall require written justification by the Department Director prior to purchase of software/hardware, including a cost/benefit analysis, and require written approval by both the County Chief Financial Officer and Chief Information Officer.
- h. Transactions processed through the County Internal Payment Gateway are prohibited from accepting / processing PIN numbers for security reasons. The County provides three (3) basic services that allow Contractor applications to interact with its Payment Gateways:
 1. Web-based Credit Card Transaction Service
 2. Recurring Payment Service (for monthly or yearly recurring payments). This service will allow merchants to develop recurring credit card payments on behalf of their payers. This is a SOAP (Simple Object Access Protocol) Web Service, and the County will provide the service WSDL (Web Services Description Language) and the necessary documentation. The Recurring Payment Service is PCI-compliant, and all the sensitive credit card data is stored offsite in the County's clearinghouse.

There are two different ways that a merchant customer can handle the Credit Card transaction processing;

- a. Option #1:

The Contractor application interfaces directly with the County's Payment Gateway via a RESTful web-service. The County will provide the XML schemas to all basic services: web payment processing, void, refund, and recurring payments. The County will also provide all the necessary URLs for these services, as well as, documentation detailing fields and response codes. All services will respond with the same XML receipt.

This solution will require the client application to fully interact with the County's Payment Gateway, reacting to processing and system errors. Even though this solution requires more development and integration from a Contractor, it will offer the greatest flexibility and customization level. This option also requires for the Contractor application to be hosted on a server inside the County's managed network, since the County's Payment Gateway is not accessible from the Internet. If the application is outside of the County's managed network, the County can develop a Payment Module Application (option #2) that will service the Contractor's application.

b. Option #2:

A Contractor application will utilize a Payment Module Web Application developed and maintained by the County. This solution can be a standard web application, a mobile web application, or both. A link will be provided on the Contractor application that sends payers to the Payment Module Application. For example, once the payer has selected the items to purchase (from the Contractor's application), there would be a "Pay Now" button that will redirect the payer to the County Payment Module via HTTPs post, carrying all the necessary data to begin the payment process (User ID, Amount). This requires only minor development effort on the Contractor side. The Contractor will agree on custom fields to be passed to the County Payment Module via HTTP protocol over TLS 1.2 or higher (only secure connections are accepted; SSL protocol is not accepted). In turn, the County Payment Module will collect the payment information and process the transaction via the County Internal Payment Gateway. Results will be posted back (post back URL is provided by the client application) to the Contractor application. This solution will not require the client application to be hosted in the County's managed network. The County Payment Module handles all processing and system errors, simplifying the integration effort on the Contractor side.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the last date that the Agreement is executed below,

Contractor

Miami-Dade County

By: _____
Name: _____
Title: _____
Date: _____
Attest: _____
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

By: _____
Name: Daniella Levine Cava
Title: Mayor
Date: _____
Attest: _____
Clerk of the Board

Approved as to form
and legal sufficiency

Assistant County Attorney