

This document is a draft of a planned solicitation and is subject to change without notice.



**REQUEST FOR PROPOSALS (RFP) No. 00000
FOR
HOMESTEAD BAYFRONT PARK CONCESSION**

PRE-PROPOSAL CONFERENCE TO BE HELD:

_____, 2014 at ____:00 AM (local time)
111 NW 1st Street, 13th Floor, Conf. Rm. __, Miami, Florida

ISSUED BY MIAMI-DADE COUNTY:

Internal Services Department, Procurement Management Services Division
for
Parks, Recreation and Open Spaces Department

COUNTY CONTACT FOR THIS SOLICITATION:

Pearl P. Bethel, Procurement Contracting Officer 2
111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-2102
E-mail: pbethel@miamidade.gov

**PROPOSAL RESPONSES DUE:
INSERT DATE AND TIME**

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).

The submittal of a proposal by a Proposer will be considered by the County as constituting an offer by the Proposer to perform the required services at the stated prices. 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 an experienced and qualified firm to operate a food and beverage concession for Homestead Bayfront Park.

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

The anticipated schedule for this Solicitation is as follows:

Solicitation Issued:

Pre-Proposal Conference:

See front cover for date, time, and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the ADA Coordinator at (305) 375-2013 or email hiwrig@miamidadade.gov at least five days in advance.

Deadline for Receipt of Questions:

Proposal Due Date:

See front cover for date and time.

Evaluation Process:

Projected Award Date:

1.2 Definitions

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

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The word "Proposer" to mean the person, firm, entity or organization, as stated on the Solicitation Submittal Form, submitting a response to this Solicitation.
4. The words "Scope of Services" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
5. The word "Solicitation" to mean this Request for Proposals (RFP) document, and all associated addenda and attachments.
6. 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.
7. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.

1.3 General Proposal Information

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; 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 responses received as a result of this process. A proposal shall be the Proposer's firm commitment to provide the goods and services solicited in the manner requested in the Solicitation and described in the proposal. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any respondent regarding respondent's responsibility after the submission deadline as the County deems necessary.

Proposals 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 or upon the expiration of 180 calendar days after the opening of proposals.

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". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the County request the withdrawal of the confidentiality restriction if such communication would in the County's sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

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 ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

1.4 Cone of Silence

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or 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 selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, 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 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. Proposers are hereby notified that direct communication written or otherwise, to Selection Committee members or the Selection Committee as a whole are expressly prohibited. Any oral communications with Selection Committee members other than as provided in Section 2-11.1 of the Miami-Dade County Code are prohibited. The Cone of Silence shall not apply to oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting 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, RFQ or bid documents. 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.

1.5 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133, 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 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.6 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.

1.7 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 or the principals 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 interest 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.

2.0 SCOPE OF SERVICES

2.1 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 from experienced and capable parties to operate a food and beverage concession (the "Concession") for Homestead Bayfront Park. Homestead Bayfront Park is located at 9698 N. Canal Drive, Homestead, FL 33033, and is owned and operated by PROS. As part of the Park Office, PROS has available a concession facility that is approximately 6,834 square feet to serve park patrons.

The selected Proposer shall have the use of the Concession facility as shown on the attached site map (Attachment A), Building Plan (Attachment B), and space to store a limited number of beach chairs, umbrellas, and a mobile concession unit. In addition to providing a wide variety of food and beverages, the Concession facility shall also operate a mobile concession unit to provide food and beverage services to the parks beach patrons. The Concession facility shall provide twenty-five (25) beach chairs, and twenty-five (25) beach umbrellas for park patrons using the beach. Beach chairs and umbrellas shall be stacked, secured and removed from the beach daily.

2.2 Minimum Qualification Requirement

The minimum qualification requirements for this Solicitation are:

1. Proposer must have a Food Dispensing License issued by the State of Florida, Department of Business and Professional Regulations (DBPR) Division of Hotels and Restaurants (H&R) as of proposal due date.
2. Proposer must have a Mobile Food Dispensing Vehicle License issued by the State of Florida, Department of Business and Professional Regulations (DBPR) Division of Hotels and Restaurants (H&R) as of proposal due date.
3. Proposer must have a Food Service Management Certificate issued by the Florida Department of Health as of proposal due date.
4. Proposer must have a valid Series 13 CT License to sell, provide and serve alcoholic beverages issued by the Division of Alcoholic Beverages as of proposal due date.

Note: These requirements are a continuing condition of award, and are required throughout the duration of the contract.

2.3 Preferred Qualifications

1. Proposer shall have a minimum of five (5) years' experience in providing retail food and beverage concessions serving large public venues, preferably in a park, beach, or arena setting.
2. Knowledge of the legal requirements that are needed for the operation of food and beverage service facilities.
3. Adequate financial strength to provide all equipment, start-up operations and reasonable working capital to operate the Concession.

2.4 Requirements and Services to be Provided

The Concession area will be provided in its "as-is" condition. The County will not pay for or reimburse the selected Proposer to paint or improve the Concession facility. The selected Proposer shall perform any and all Concession facility improvements, in compliance with the South Florida Building Code, and in accordance with the Agreement.

The selected Proposer shall bear all costs associated with all improvements to the Concession facility and all such improvements which are fixed to the premises shall become the property of the County at the termination of any agreement as a result of this Solicitation.

A. Operation

The selected Proposer shall:

1. Provide an operation that will be safe, customer-oriented, courteous, prompt, have efficient service, adequate to meet all reasonable customer demands;
2. Be in full operation to provide food and beverage service no later than thirty (30) days following the award date of the contract. PROS reserves the right to extend this time-frame if necessary;
3. Operate the Concession 365 days a year during the hours of operation necessary to serve an early breakfast (optional), lunch, dinner and snack type services for the balance of the operating day, subject to approval by PROS;
4. Operate a high quality mobile concession unit, providing food and beverage service to all Homestead Bayfront Park beach patrons (take orders and deliver food to patrons) on the beach grounds; and
5. Develop and submit a detailed operation and marketing plan to the County's Project Manager for review and approval within thirty (30) days from contract award. At a minimum, the plan shall include the budget for operation and marketing of the Concession including advertising, signage, marketing, and promotions that target the Park's diverse constituencies and will best serve their needs and encourage sales.

B. General Services

The selected Proposer shall:

1. Establish a quality food service concession providing quality products, and a wide variety of food, including healthy choices and beverage services for breakfast (optional), lunch, and dinner type service meeting the patrons' needs and suitable for the style of menu and prices approved by PROS;
2. Provide an original menu, and menu pricing for PROS approval whereas changes in the menu and menu pricing require PROS's prior written authorization;
3. Provide all furnishings, fixtures, equipment, soft goods, and mobile concession unit required to provide the services except those which the County specifically agrees to provide whereby all equipment and personal property used by the selected Proposer shall be of good quality and suitable for its purpose;
4. Secure and provide security for the mobile concession unit at Homestead Bayfront Park. The County will not accept any responsibility for the selected Proposer's fixtures, equipment, soft goods, mobile concession unit, or supplies;
5. Provide outdoor signage, and banners to promote the concession that have been approved by PROS prior to installation;
6. Utilize equipment (i.e., storage boxes, mobile cart, beach chairs and umbrellas) that is in excellent working condition whereby the appearance of all equipment shall be maintained at like-new appearance and cleaned or refreshed as needed;
7. Maintain the existing concession facility in a consistent and effective manner, where maintenance shall be performed regularly. No alterations, changes or additions to the space shall be made by the selected Proposer without the prior written consent of PROS. All work shall be in compliance with applicable building codes, including, but not limited to the American with Disabilities Act (ADA), and performed by licensed and insured contractors;
8. At its own cost and expense, repair any County property damaged by selected Proposer's Concession operations;
9. Provide receptacles for recycling of aluminum cans and plastic bottles. The selected Proposer shall remove and properly recycle aluminum cans and plastic bottles generated as a result of the selected Proposer's Concession operations. The use and distribution of plastic straws is prohibited;
10. Provide for the removal and disposal of all garbage and trash on a daily basis originating from the concession operations and shall keep the immediate areas surrounding the Concession (within fifty (50) feet of food concession area) in a clean condition satisfactory to the County's Project Manager. Trash cans should be emptied when filled to capacity; at no time should any trash can have trash overflowing. Additionally, plastic bags with trash and garbage shall not be stored for any duration behind or around concession area;
11. Not perform any mechanical, maintenance or repair of the selected Proposer's equipment anywhere on County property.

Note: PROS shall retain the right to provide services during special events and to schedule special events that may preclude the selected Proposer from operation during a given event.

C. Personnel

The selected Proposer shall:

1. 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";
2. Pursuant to Section 509.039, Florida Statutes, employ a qualified full-time on-site certified professional food manager with experience in the management of a concession or similar type of operation. The manager shall be available during all business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of the selected Proposer;

3. Have adequate staffing at all times to provide good, prompt and efficient service to meet all reasonable demands; and
4. Ensure that employees are distinctively uniformed or appropriately attired and displaying name tags so as to present a neat, clean and professional appearance at all times, and be distinguishable as the selected Proposer's employees or hired staff and not as employees of PROS.

D. Compliance Requirements

The selected Proposer shall:

1. Comply with all applicable rules and regulations adopted by the County, and any and all laws, ordinances and/or rules and regulations of other governmental entities and/or authorities having lawful jurisdiction, which may be applicable to selected Proposer's operation of the Concession;
2. Comply with Division of Alcoholic Beverages and Tobacco, Bureau of Licensing, Florida Statute 561.20 13CT;
3. Be responsible for obtaining all permits, licenses, and certifications required by federal, state and local laws and regulations for the performance of the services required herein;
4. Adhere to the standards set forth by Florida Statutes and the Department of Health regarding food preparation and safety, and agrees to inspection by same at any reasonable time;
5. Maintain all foodservice areas and equipment, at minimum, in a safe manner as outlined in the Food and Drug Administration Food Code, Chapter 64E-11, Florida Administrative Code, and in compliance with the Florida Department of Business & Professional Regulation; and
6. Ensure all food is packaged, stored and transported in a manner to protect against potential contamination; including dust, insects, rodents, unclean equipment, utensils and unnecessary handling.

2.5 Parking, and Storage Requirements

1. County parking fees will be charged to all patrons entering the park and marina, including concession patrons.
2. No equipment shall be left on the beach overnight other than beach chairs stacked neatly and locked and storage bins for the umbrellas and cushions. All removable equipment shall be stored in the area designated for storage.

2.6 Hurricane Preparation

The selected Proposer shall have in place (in writing) a hurricane preparation manual. All equipment shall be removed from the beaches and properly secured no later than seventy-two (72) hours prior to expected landfall of a named hurricane or tropical storm. The Selected Proposer shall pay careful attention to all evacuation watches/warnings from the responsible authorities.

2.7 Payments to County

The selected Proposer shall pay the County as follows:

1. The Minimum Annual Guarantee to the County shall be paid monthly on the first (1st) day of each month as of the effective date of the contract. Partial months will be pro-rated.
2. In addition to the Minimum Annual Guarantee, the selected Proposer shall pay the County a Percentage of Monthly Gross Receipts from the sale of all goods and services provided at the Concession as of the first (1st) date of operation.
3. The selected Proposer shall be responsible for a monthly building operational fee for Water and Electricity (sales tax does not apply) currently estimated at \$_____ per month (Fee based on usage and reconciled on an annual basis based on sub-meter readings).

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

<u>Technical Criteria</u>	<u>Points</u>
1. Proposer's relevant experience, qualifications, and past performance	40
2. Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	15
3. Proposer's approach to providing the services requested in this Solicitation	25
 <u>Price Criteria</u>	 <u>Points</u>
4. Proposer's Financial capabilities, Pro-forma statement, Monthly Guarantee, and Percentage of Monthly Gross Receipts	20

4.3 Oral Presentations

Upon completion of the technical criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. (See Affidavit – "Lobbyist Registration for Oral Presentation" regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentation(s), the Evaluation/Selection Committee 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

A Selection Factor is not applicable to this Solicitation.

4.5 Local Certified Service-Disabled Veteran's Business Enterprise Preference

This Solicitation includes a preference for Miami-Dade County Local Certified Service-Disabled Veteran Business Enterprises in accordance with Section 2-8.5.1 of the Code of Miami-Dade County. A VBE is entitled to receive an additional five percent (5%) of the total technical evaluation points on the technical portion of such Proposer'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.

4.6 Price Evaluation

The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing 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, 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 Evaluation/Selection Committee 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 Evaluation/Selection Committee will recommend that a contract be negotiated with said local Proposer.

4.8 Negotiations

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

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

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

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

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

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.

4.9 Contract Award

Any contract, resulting from this Solicitation, will be submitted to the County Mayor or designee for approval. All Proposers will be notified in writing when the County Mayor or designee makes an award recommendation. 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 County Code, as amended, and as established in Implementing Order No. 3-21.

5.0 TERMS AND CONDITIONS

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

a) Vendor Registration

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the website at <http://www.miamidade.gov/procurement/vendor-registration.asp> or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

b) Insurance Requirements

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

c) Inspector General Reviews

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise 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.

d) User Access Program

Pursuant to Section 2-8.10 of the Miami-Dade County Code, any agreement issued as a result of this Solicitation is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Solicitation and the utilization of the County contract price and the terms and conditions identified therein, are subject to the two percent (2%) UAP.

6.0 ATTACHMENTS

Draft Form of Agreement
Proposal Submission Package
Attachment A – Site Map
Attachment B – Building Plan
Attachment C – Sample Pro Forma

Homestead Bayfront Park Concession

Contract No. RFP 00000

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

WITNESSETH:

WHEREAS, the County owns the Homestead Bayfront Park ("the Park") located at 9698N. Canal Drive, Homestead, Florida, for the recreation and entertainment of park patrons, which is administered for the County by the Park, Recreation and Open Spaces (PROS) Department or designee and,

WHEREAS, the Contractor has offered to operate a food, and beverage concession ("the Concession") at the Park, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 00000 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

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

WHEREAS, the County desires to procure from the Contractor such food and beverage concession services for the County, in accordance with the terms and conditions of this Agreement;

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

ARTICLE 1. DEFINITIONS

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

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 00000 and all addenda, and the Contractor's Proposal.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean _____ and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) appendices to these terms and conditions, the Scope of Services (Appendix A) and Price Schedule (Appendix B), 3) the Miami-Dade County's RFP No. 00000 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 titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

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

- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. USE:

The County hereby grants unto the Contractor, and the Contractor hereby accepts from the County for the term, at the rate and upon the covenants and conditions as set forth, this Agreement to manage and operate the Concession. 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 sites within the Park identified in Appendix A, Scope of Service, only for the provision of the Concession and accepts such sites in the condition they are in at the execution of this Agreement.

ARTICLE 6. LIMITATIONS ON USE:

Subject to Contractor's right to use the site 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 or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Park; (v) materially impair or interfere with the proper and economic cleaning, of the Park or the proper and economic functioning of any other common service facility or common utility of Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Park; or (vii) impair any of the Contractor's other obligations under this Agreement.

ARTICLE 7. GOVERNMENTAL 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 to inspection by the County. Contractor shall at all times comply with the terms and conditions of each license and permit.

ARTICLE 8. CONTRACT TERM

The Contract shall become effective on the date specified on the front page and shall continue through the last day of the 60th month. The County, at its sole discretion, reserves the right to exercise the option-to-renew this Contract for two additional two-year periods. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 9. NOTICE REQUIREMENTS

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

(1) to the County

a) to the Project Manager:

Miami-Dade County Parks, Recreation and Open Spaces
275 N.W. 2nd Street, 3rd Floor
Miami, FL 33128
Attention: Department Director
Phone: (305) 755-7903
Fax: (305) 755-7946

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Division
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Assistant Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Attention:
Phone:
Fax:
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 10. Minimum Annual Guarantee

The Contractor, in consideration of the use of the specified site within the Park to provide the Concession services, does hereby covenant and agree to pay to the County during the term of this Agreement without deduction or set off of any kind the sum of \$TBD (plus tax) per annum as the Minimum Annual Guarantee in monthly installments of \$TBD (plus tax) on the first day of each month without billing. The Minimum Annual Guarantee shall be adjusted upward at the end of each Agreement Year, at a rate consistent with the latest Consumer Price Index (CPI), under the City of Miami Group, for All Urban Consumers, All Items.

ARTICLE 11. Percentage of Monthly Gross Receipts:

In addition to the Minimum Annual Guarantee, Contractor agrees to pay to the County, monthly, an amount equal to ____% of monthly Gross Receipts hereinafter referred to as "Additional Rent" within 10 days following the end of each month during the term of this Agreement.

ARTICLE 12. SALES TAX:

The Contractor shall be liable for the prevailing State of Florida Sales and Use Tax imposed on payment (currently at the rate of 7%) on the amounts payable to the County under this Agreement. This Sales and Use Tax shall be payable to the County, when Fee is due, which in turn will remit same, less authorized handling deductions, to the State. Said tax is applicable to Minimum Annual Guarantee and Percentage Fee, unless otherwise determined by the State of Florida.

ARTICLE 13. LATE PAYMENT CHARGE:

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

ARTICLE 14. APPLICATION OF PAYMENTS:

Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Minimum Annual Guarantee and Percentage of Monthly Gross Receipts and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.

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 \$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 written notice of such default. Further, in such event, the County may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the County.

ARTICLE 16. PAYMENT OF FEES:

The Minimum Annual Guarantee by the Contractor to the County shall be payable on the first day of the month after the effective date of Agreement and throughout the term of this Agreement. Such payments, as well as other amounts payable by the Contractor to the County under the terms of this Agreement, shall be paid promptly when due, without notice for any reason whatsoever and without abatement, except as hereinafter provided. Percentage Fee shall be paid to the County on or before the 10th day following the end of each month during the term of this Agreement and on or before the 10th day of the month following the expiration or

earlier termination of the Agreement. All fees provided for in this Agreement shall be paid or mailed to:

Miami-Dade County Parks, Recreation and Open Spaces
Contract Management Section
275 N.W. 2nd Street, 3rd Floor
Miami, FL 33128

(Checks shall be made payable to "Miami-Dade County Parks, Recreation and Open Spaces.")

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

ARTICLE 17. ACCORD AND SATISFACTION:

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

ARTICLE 18. SECURITY DEPOSIT:

Within 30 days from the execution of this Agreement, Contractor shall furnish to the County a Security Deposit in cash equal to six (6) months Minimum Annual Guarantee redeemable at the end of the Agreement term except for such conditions pertinent thereto.

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

In the event that Contractor abandons performance or fails to perform as required, the County will execute on the Bond, draw upon the irrevocable letter of credit or retain the cash deposit, whichever is the case, and Contractor will be responsible for the balance of the debt, if any, that is owed. Additionally, if the County must draw upon any portion of the form of security provided, Contractor 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. Agreement Year Defined: "Agreement Year" means a twelve-month period beginning on the Contract Agreement Effective Date and ending twelve months thereafter.

B. Gross Receipts Defined: "Gross Receipts" means all monthly receipts collected by the Contractor from the sale of services or merchandise by Contractor, concessionaires of

Contractor and sub-contractor(s) of Contractor, sold in, upon or from the Concession, including such sales as shall in good faith be credited by Contractor, its concessionaires and sub-Contractors in the regular course of its or their business to personnel employed at the time of sale at the Concession, including sub-concession Agreements or contract employee payments to the contractor and mail and telephone orders received at the ~~Concession and off-premises sales. Gross Receipts shall not be deemed to mean or~~ include the following: amounts credited by Contractor or its concessionaires or sub-concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment or other property used by Contractor or its concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Contractor, or its concessionaires, whichever of such events shall first occur.

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

D. Examination of Contractor's Books and Records: Such books and records as are necessary to determine the amount of any Percentage Fee payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Contractor's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Contractor's business. All information obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except in connection with any mortgage or assignment of this Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

E. Contractor's Receipts Records: For the purpose of computing and verifying the Percentage Fee due hereunder, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of the applicable Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Contractor. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement. Contractor shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Contractor shall keep, for at least three (3) years following the end of the applicable Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of

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

~~F. Audit of Contractor's Business Affairs and Records:~~ County shall have the right to cause, upon five (5) business 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 or the Audit and Management Services Department of the County. Contractor shall make all such records available for said examination at the Concession or at some other mutually agreeable location. If the result of such audit shall show that Contractor's statement of Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payment. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.

G. If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, then Contractor may be deemed by the County to be in default of this Agreement.

ARTICLE 20. INDEMNIFICATION AND INSURANCE

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

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

1. ~~Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.~~
2. ~~Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.~~

Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$_____ per claim.

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

OR

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

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

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

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

ARTICLE 21. NO LIABILITY FOR PERSONAL PROPERTY:

All personal property placed or moved in the Park shall be at the risk of Contractor or the owner thereof. County shall not be liable to Contractor or any third party for any damage to said personal property unless caused by or due to negligence of County, County's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

ARTICLE 22. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 23. EMPLOYEES OF THE CONTRACTOR

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

ARTICLE 24. 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 25. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly

authorized representatives of both parties.

- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 26. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

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

ARTICLE 27. AUDITS

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

Pursuant to Section 2-481 of the Miami-Dade County 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. 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 28. SUBSTITUTION OF PERSONNEL

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

ARTICLE 29. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will

state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option 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 30. 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 31. 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 32. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) 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 noncancelable 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
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article 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. noncancelable 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.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 33. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
 - viii. the Contractor delivers a dishonored check or draft to the County for a second time, at the County's option.
 - ix. the Contractor violates or fails to comply with any other term, provision, or requirement of this Agreement not otherwise specified within this subsection.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

ARTICLE 34. TERMINATION BY COUNTY:

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

- A. Automatic Termination upon written notice by the County if any of the following occurs:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor.
 - ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days.
 - iii. Assignment by Contractor for the benefit of creditors.
 - iv. ~~Abandonment or discontinuation of operations for more than a 24-hour period without prior written approval from the County.~~
 - v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement.
 - vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County.
 - vii. Failure to cease any activity which may cause limitation of County's use of the Park.
 - viii. A final determination in a court of law in favor of the County in litigation instituted by the Contractor against the County or brought by the County against Contractor.
- B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Concession and by certified or registered mail to any known address of Contractor set forth in this Agreement hereof for doing any of the following:
- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Minimum Annual Guarantee and Percentage Fee for the unexpired term of this Agreement.
 - ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.
- C. Termination after fourteen (14) days from receipt by Contractor of written notice having either been posted on or at the Concession or by certified or registered mail to the address of the Contractor set forth in this Agreement:
- i. Non-performance of any covenant of this Agreement other than non-payment of any sum or sums due or performance fees and others listed in A and B above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
- D. Revenue Control and Audit Defaults: The inability or failure of the Contractor to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Contractor. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required in this Agreement.
- E. Habitual Default: Notwithstanding the foregoing, in the event that the Contractor has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Contractor, regardless of whether the

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

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

ARTICLE 35. TERMINATION AND SUSPENSION OF WORK:

A. The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

B. The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

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

ARTICLE 36. LIMITING LEGISLATIVE OR JUDICIAL ACTION:

In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the County deems the Agreement null and void by function of

this Paragraph, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability under this Agreement.

ARTICLE 37. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

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

ARTICLE 38. REMEDIES IN THE EVENT OF DEFAULT

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

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

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

ARTICLE 39. TERMINATION OF CONTRACT:

Following the termination of this Agreement the Contractor, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property 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 termination of this Agreement. The County shall have the senior interest in the Contractor's personal property.

ARTICLE 40. NO WAIVER OF RIGHT TO ENFORCE:

The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Minimum Annual Guarantee or Percentage Fee or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Agreement, other than the failure of Contractor to pay the particular Minimum Annual Guarantee or Percentage Fee or Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time

of acceptance of such Minimum Annual Guarantee or Percentage Fee.

ARTICLE 41. PATENT AND COPYRIGHT INDEMNIFICATION

- a) 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 patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) 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.
- c) 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).
- d) 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.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 42. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or

otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 43. PROPRIETARY INFORMATION

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

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

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

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

ARTICLE 44. 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 of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 45. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST**a) Vendor Registration**

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

1. **Miami-Dade County Ownership Disclosure Affidavit**
(Section 2-8.1 of the County Code)
2. **Miami-Dade County Employment Disclosure Affidavit**
(Section 2-8-1(d)(2) of the County Code)
3. **Miami-Dade Employment Drug-free Workplace Certification**
(Section 2-8.1.2(b) of the County Code)
4. **Miami-Dade Disability and Nondiscrimination Affidavit**
(Section 2-8.1.5 of the County Code)
5. **Miami-Dade County Debarment Disclosure Affidavit**
(Section 10.38 of the County Code)
6. **Miami-Dade County Vendor Obligation to County Affidavit**
(Section 2-8.1 of the County Code)
7. **Miami-Dade County Code of Business Ethics Affidavit**
(Section 2-8.1(f) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. **Miami-Dade County Family Leave Affidavit**
(Article V of Chapter 11 of the County Code)
9. **Miami-Dade County Living Wage Affidavit**
(Section 2-8.9 of the County Code)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit**
(Article 8, Section 11A-60 11A-67 of the County Code)
11. **Subcontracting Practices**
(Ordinance 97-35)
12. **Subcontractor /Supplier Listing**
(Section 2-8.8 of the County Code)
13. **Environmentally Acceptable Packaging**
(Resolution R-738-92)
14. **W-9 and 8109 Forms**
(as required by the Internal Revenue Service)
15. **FEIN Number or Social Security Number**
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - Identification of individual account records
 - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
 - Tax reporting purposes
 - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. **Office of the Inspector General**
(Section 2-1076 of the County Code)
17. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. **Antitrust Laws**
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

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

ARTICLE 46. INSPECTOR GENERAL REVIEWS**Independent Private Sector Inspector General Reviews**

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

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

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

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

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful 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 47. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this 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 48. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any ~~employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin,~~ and will take affirmative action to ensure that they 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 49. 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 grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with

respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

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

ARTICLE 50. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 51. BANKRUPTCY

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

ARTICLE 52. GOVERNING LAW

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

ARTICLE 53. INSPECTION AND MONITORING BY COUNTY

The County shall have the right, without limitation, to make periodic reasonable inspections of all operations during the normal operating hours and to monitor and test the quality of services of the Contractor, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means. Such periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of this Agreement.

ARTICLE 54. PAYMENT OF BUILDING SERVICES

Contractor agrees to pay for all charges for utility service used or consumed in or upon the Concession including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such charges are separately measured by metering or otherwise, Contractor agrees ~~to pay the actual cost thereof, without addition or surcharge by the County. To the extent that~~ such charges are not separately metered, Contractor agrees to pay Contractor's pro-rata share thereof. Contractor's pro-rata share for such services shall be computed by multiplying Contractor's share by the total charge for the service attributable to the Concession. For services or utilities not used by or provided to the Concession, Contractor's pro-rata share shall be determined by dividing the charge among those using the utility or service on the basis of relative area of their charge among those using the utility or service on the basis of the relative area. In the event Contractor uses a disproportionate amount of any utility or service provided under this Article and not separately metered, the County shall have the right to engage a registered Professional Engineer to compute Contractor's utility usage, and determine an equitable utility charge to Contractor based upon such usage

ARTICLE 55. CURTAILMENT OR INTERRUPTION OF SERVICE

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

ARTICLE 56. DAMAGE OR DESTRUCTION OF PREMISES

In all events, Contractor shall repair all damages to the Park caused by the Contractor, its employees, agents, contractors or sub-consultants. If the Park is partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall with due diligence be repaired by the Contractor at its own cost and expense.

In the event said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, through no fault of the Contractor, its employee, agents, contractors or sub-consultants, the Contractor and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the Minimum Annual Guarantee payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the Concession, the Contractor may reconstruct the premises at its own cost.

ARTICLE 57. 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 58. INGRESS AND EGRESS:

Subject to rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Park, Contractor, its agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.

ARTICLE 59. 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-Agreement 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 sub-contractors, including percentage payments on gross receipts as defined in this Agreement. Contractor shall be liable for acts and omissions by any sub-contractor affecting this Agreement. The County reserves the right to directly terminate (and pursue any applicable remedy) any sub-contractor of the Contractor for any cause for which Contractor may be terminated.

Any sub-agreement 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 60. 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 61. COUNTY'S PROPERTY INSURANCE

Any insurance the County may maintain shall not cover Contractor's improvements and betterments, contents, or other property of Contractor. Contractor shall not violate, or permit the

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

ARTICLE 62. 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 63. FIRST SOURCE HIRING REFERRAL PROGRAM

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

ARTICLE 64. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

The Contractor shall comply with the state of FL Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Contractor does not comply with a public records request, the public agency shall

enforce contract provisions in accordance with the contract.

ARTICLE 65. SURVIVAL

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

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

Contractor

Miami-Dade County

By: _____

By: _____

Name: _____

Name: Carlos A. Gimenez

Title: _____

Title: Mayor

Date: _____

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney



PROPOSAL SUBMISSION PACKAGE
REQUEST FOR PROPOSALS (RFP) No. 00000
HOMESTEAD BAYFRONT PARK CONCESSION

In response to the Solicitation, Proposer shall RETURN THIS ENTIRE PROPOSAL SUBMISSION PACKAGE as follows:

1. Solicitation Submittal Form, Cover Page of Proposal

Complete and sign the solicitation submittal form (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

2. Proposer Information

Complete following the requirements therein.

Note: The Proposer Information document is available in Word and is included in the Solicitation attachments.

3. Affidavits/Acknowledgements

Complete and sign the following:

Lobbyist Registration for Oral Presentation
Fair Subcontracting Practices
Subcontractor/Supplier Listing

4. Form B-1, Price Proposal Schedule

Complete following the requirements therein.

Please refer to the front cover of this Solicitation for electronic submission instructions.

PROPOSER INFORMATION**Minimum Qualification Requirements**

1. Provide documentation that demonstrates Proposer's ability to satisfy all of the minimum qualification requirements. Proposers who do not meet the minimum qualification requirements or who fail to provide supporting documentation may be deemed non-responsive. If a prescribed format or required documentation for the response to minimum qualification requirements is listed below, Proposers must use said format and supply said documentation.

The minimum qualification requirements for this Solicitation are as follows:

- A. Proposer must have a Food Dispensing License issued by the State of Florida, Department of Business and Professional Regulations (DBPR) Division of Hotels and Restaurants (H&R).
- B. Proposer shall have a Mobile Food Dispensing Vehicle License issued by the State of Florida, DBPR Division of H&R.
- C. Proposer shall have a Food Service Management Certificate issued by the Florida Department of Health.
- D. A valid Series 13 CT License to sell, provide and serve alcoholic beverages issued by the Division of Alcoholic Beverages.

Proposer's Experience and Past Performance

2. State the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.
3. Describe Proposers experience in providing retail food and beverage concessions, preferably in a park/beach/arena setting (see Section 2.4). Include in response information to demonstrate at least five years' experience.
4. Provide a detailed description of comparable contracts (similar in scope of services described in Section 2.0 of the Solicitation) which the Proposer has either ongoing or completed within the past five years. The description should identify for each project:
 - (i) Client
 - (ii) Description of work
 - (iii) Total dollar value of the contract
 - (iv) Dates covering the term of the contract
 - (v) Client contact person and phone number
 - (vi) Statement of whether Proposer was the prime contractor or subcontractor
 - (vii) If the Proposer was the subcontractor name the prime
 - (viii) Detail Proposer's responsibilities and the results of the project
 - (ix) Describe event including number of attendees, duration of event, number of concessionaries, etc.

Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).

5. 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
- (vii) If the Proposer was the subcontractor name the prime
- (viii) Detail Proposer's responsibilities and the results of the project
- (ix) Describe event including number of attendees, duration of event, number of concessionaries, etc. (if applicable)

5. Describe any prior or pending litigation, either civil or criminal, related to catering services, in which the Proposer, any of its employees or Subconsultants or Subcontractors is/are or has/have been involved within the last three (3) years.

Key Personnel and Subcontractors Performing Services

6. Provide an organization chart showing all individuals, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or sub consultants.
7. Describe how the Proposer will 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" [see Section 2.4, C (1)].
8. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including the on-site manager, who will be assigned to this project.
9. Provide resumes, if available with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any key personnel of subcontractors.

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

Proposed Approach to Providing the Services

10. Describe Proposer's approach to project organization and management, including the responsibilities of Proposer's management and staff personnel that will perform work on this project.
11. Describe how Proposer will operate the Concession and methods employed by Proposer to ensure safety, prompt service, and customer satisfaction.
12. Provide a copy of the Proposer's employee manual or other instructions to employees addressing food preparation, customer service, serving protocol and techniques, training of staff, scheduling, health regulations. Describe in-house training, if provided.

13. List and describe Proposer's equipment including mobile concession unit (include specifications and photographs if necessary) to provide the services specified in Section 2.4, B (3) of the Solicitation.
14. Provide a price schedule and product list of all items to be sold at the Concession. Include a description of ~~products and services to be offered and if Proposer will be selling beer and wine.~~
15. Submit Proposer's draft operating and marketing plan as described in Section 2.4, A (5) of the Solicitation.
16. Provide an emergency plan of action that includes emergency contact(s) (accessible 24 hours), hurricane preparation.
17. 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).

Financial Capability

18. Provide documentation proving Proposer's financial strength and ability to provide services. Such documentation may include its most recent certified financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, 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. If certified financial statements are not available provide latest available financial statements (balance sheet and income statement) and letters of credit availability from accredited financial institutions, or other relevant documentation.
19. Provide a pro forma statement showing five (5) years of projected sales and expenses for the Concession (See sample pro forma Attachment C).

Note: Inflated statements or statements skewed outside normal operating ranges may be evaluated as less desirable than reasonable pro forma.

Form B-1

Fee Proposal Schedule

INSTRUCTIONS:

The Proposer's price shall be submitted on this Form B-1 "Price Proposal Schedule", and in the manner stated herein; there is no exception allowed to this requirement. Proposer is requested to fill in the applicable blanks on this form and to make no other marks.

The Proposer shall provide all of the services in the Scope of Services and shall pay to the County the following Revenue Rates.

1. Minimum Annual Guaranteed (see Section 2.7)

The Proposer shall pay the County

(\$ _____) _____ dollars per month.

Note:

1. The selected Proposer shall pay a Minimum Annual Guarantee to the County on the first day of each month as of the effective date of the contract. Partial months will be pro-rated.
2. The Minimum Annual Guarantee shall be adjusted upward at the end of each Agreement Year, based on the Consumer Price Index (CPI) as defined in Section 5.0, Article 10.

And

2. Percentage of Monthly Gross Receipts (see Section 2.7)

The Proposer shall also pay to the County

_____%
(Number) _____ (Indicate number in words) percent of total monthly gross receipts.

Walters, Vivian (ISD)

From: Bethel, Pearl (ISD)
Sent: Wednesday, February 19, 2014 5:57 PM
To: Walters, Vivian (ISD)
Cc: Johnson, Laurie (ISD)
Subject: Homestead Bayfront Park Concession
Attachments: Homestead Bayfront Park Concession.pdf; Input Doc-Project Measure Worksheet.doc

Hi Vivian

Please review the attached Draft Solicitation for a determination of the SBE measure to be applied. A copy of the input doc/project measures worksheet is also attached. The funding source is Revenue Generating and Parks, Recreation and Open Spaces is the using dept. My recommendation for the project would be no measures. Estimated Revenue is \$100,000/5 yrs.

Pearl P. Bethel, Procurement Contracting Officer 2
Miami-Dade County Internal Services Department
111 NW 1st Street, Suite 1300, Miami, Florida 33128
305-375-2102 Phone 305-372-6128 Fax
<http://www.miamidade.gov/dpm/>
"Delivering Excellence Every Day"

Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure