

ITEM #28

ADDITIONAL MATERIAL

**Regular Meeting
JANUARY 28, 2020**

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY AUDITOR



OFFICE OF THE COUNTY AUDITOR

115 S. Andrews Avenue, Room 520 • Fort Lauderdale, Florida 33301 • 954-357-7590 • FAX 954-357-7592

January 22, 2020

Advisory No. 134

To: Mayor and Board of County Commissioners
From: Robert Melton, County Auditor 
Subject: Agenda Item #28, January 28, 2020, License and Concession Agreement between Broward County and Butterfly World, Ltd.

The purpose of this Advisory Memorandum is to communicate our concerns and recommendations to you regarding Agenda Item #28, January 28, 2020, License and Concession Agreement between Broward County and Butterfly World, Ltd. We have reviewed the terms of the Agreement, with specific attention to Article 15, Audit. Our recommendations, along with a detailed background and discussion are presented below.

Recommendations

We recommend:

1. Article 15, Audit, should be amended to re-include standard contract language allowing the County to have the right to audit the books, records and accounts that are related “to this Agreement,” removing any language which limits audit rights.
2. Article 3.7 be amended to allow County and its authorized agents access to County property licensed to the Licensee without restriction, removing the language which requires “forty-eight hours prior notice to the Licensee” for inspection to determine whether Licensee is in compliance with the terms of the agreement and applicable laws.

Background and Discussion

As currently drafted, Section 15.1, Audit Rights and Retention of Records, limits the County’s rights to audit records of the Licensee and its Subcontractors to items that are related to Capital Expenditures claimed by Licensee relating to obligations for concession Improvements, the numbers of persons paying for admission to the licensed premises, and progress and final payments made or owed to those who may be able to assert a construction payment claim.

It is important to note that our recommendation to amend the audit right language is not intended to extend this right to areas that are not part of the agreement, such as a review of profit.

The proposed language is contrary to the standard language which allows the County rights to audit all records “related to this Agreement.” As such, the ability of the County to ‘audit’ the vendor’s compliance with many important areas of the agreement are essentially precluded. This is of concern as there are numerous areas of compliance within the agreement that are essential to the safe and appropriate operations of the facility, and should remain subject to audit, including:

- Appropriate use of licensed premises and quality of services (Articles 3 and 16)
- Payment for use of other Park areas or amenities (Sections 5.4, 6.4)
- Provision of performance and payment bonds, or alternative forms of security (Section 6.6)
- Appropriate disposal of forage materials (Section 7.2.a) to prevent release of invasive species into the environment
- Appropriate handling of food related garbage (Section 7.2.b)
- Insurance requirements (Article 10)
- Criminal Background screenings, inclusive of initial and monthly reports (Article 14)
- Competitive admission and concession pricing (Section 16.7)
- Development of Emergency Preparedness Plans (Article 20)
- Equal Employment Opportunity and Drug Free Workplace requirements (Article 27 and Section 28.23)
- Elements of Capital Improvements not specific to payment only- such as quality or nature of improvements and consistency with plans
- Overall compliance of operations consistent with the Scope of Services:
 - Hours of operation
 - Types of items for sale
 - Ensuring no internet sales or sales of invasive plants
 - Compliance with landscaping and forage requirements designed to prevent spread of invasive species
 - Current federal, state or other environmental permits
 - Marketing and use of County logo
 - Prohibited sale or serving of alcoholic beverages

Typically, right to audit provisions in vendor agreements are not limited to selected provisions of an agreement, as there are many significant requirements within contracts that are designed to protect the County against liability as well as provide for the health and safety of patrons and employees, and the maintenance or use of County-owned properties. Accordingly, all areas of a contract and a vendor’s performance under a contract must remain subject to audit, and we recommend against any limitations of these rights in an agreement. The audit right would not extend to aspects of Butterfly World operations that are not related to the terms of the agreement or necessary to confirm operational compliance.

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We also noted that Section 3.7 limits the County's right to enter the licensed premises for inspection purposes, to after forty-eight (48) hours' prior notice to Licensee. Although this section allows for exceptions for emergencies (immediate threat to premises or persons), we recommend that County retain its rights to access the premises at any time, particularly during normal operating hours. For example, under the current language, if County staff have concerns about the proper maintenance and upkeep of the grounds, misuse of facilities, or any aspect of operations, the County would first need to provide notice to the Licensee, and then wait two days to enter the premises. During this delay, the Licensee may 'fix' or temporarily remove any area of non-compliance, thus avoiding detection. It is critical that the County retain its rights to inspect County-owned property, with or without notice, to ensure that the Licensee is compliant with applicable laws and the terms of the agreement.

This is not an audit conducted in compliance with Generally Accepted Government Auditing Standards.

I hope you find this information useful, if you have any questions, I can be reached at 954-357-7590.

CC: Bertha Henry, County Administrator
Monica Cepero, Deputy County Administrator
Andrew Meyers, County Attorney
Dan West, Director of Parks and Recreation Division