

ADDITIONAL MATERIAL

**Regular Meeting
JANUARY 28, 2020**

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Board of County Commissioners

FROM: Jeffrey S. Siniawsky, Senior Assistant County Attorney

DATE: January 24, 2020

RE: **Item 28 on the January 28, 2020, County Commission Agenda Regarding Butterfly World Agreement**

In response to the Auditor's memorandum concerning two aspects of the proposed agreement with Butterfly World, our Office reopened discussions with Butterfly World's attorneys. The discussions led to a mutual understanding and Butterfly World's agreement to new language that addressed the Auditor's concerns. Specifically, Section 3.7 has been modified to provide for reasonable notice not to exceed forty-eight (48) hours, and Article 15 was modified to further clarify the County's audit rights. The Auditor has accepted the changed provisions. The changes are substantially shown in redline on the pages attached hereto.

The Monday Night Memo will reference that the Board's consideration of this item will be based on the revised agreement that will be distributed as additional material, replacing the original proposed agreement attached to the item as Exhibit 2.

Please contact the County Attorney, Mike Kerr (ext. 7566), or me (ext. 7610) with any questions or concerns regarding this matter.

JSS/tb
Attachments

c: Bertha Henry, County Administrator
Bob Melton, County Auditor
Dan West, Director, Parks and Recreation Division
Andrew J. Meyers, County Attorney
Michael J. Kerr, Deputy County Attorney

connected fiber-optic infrastructure will be sufficient to carry expected data transfers and communications needs for both parties.

3.5 The Licensed Premises are being made available to Licensee in an "as is" condition. County makes no representations or warranties as to the safety or suitability of the Licensed Premises for the purposes set forth herein. County shall not be responsible for any costs or obligations to Licensee relating to this Agreement, except for any County responsibilities specifically described in this Agreement. Licensee shall notify the Contract Administrator of any issues or safety concerns that it observes on the Licensed Premises during the term of this Agreement, and shall take all actions necessary to remedy or resolve any such issues or safety concerns in a timely manner, at no cost to County.

3.6 Licensee shall inform the Contract Administrator by telephone of any and all injuries or damage to any persons or to real or personal property caused by Licensee, its officers, members, partners, employees, agents, invitees, or patrons, that occurs within the Licensed Premises during the term of this Agreement. Licensee shall provide this information within twenty-four (24) hours after the occurrence and promptly follow such communication with written notice to the Contract Administrator, and Licensee shall be responsible for all such injuries or damage within the Licensed Premises as provided in Article 19.

3.7 County and its authorized agents shall have the right to enter the Licensed Premises, upon reasonable prior notice, not to exceed forty-eight (48) hours or such shorter period as required for County to effectuate the purpose of the entry, to Licensee, for inspection to determine whether Licensee is in compliance with the terms of this Agreement and Applicable Law. County shall not unreasonably interfere with the Concession during the course of any inspection hereunder. Notwithstanding the foregoing, in the case of an Emergency, County or its authorized agents may immediately enter the Licensed Premises after providing reasonable oral notice to Licensee. The term "Emergency" shall mean any situation in which there is an immediate threat to the Licensed Premises or any other portion of the Park, or to the health and safety of any person within the Licensed Premises or any other portion of the Park.

Deleted: forty-eight (48) hours'

3.8 Licensee may use, occupy, and enjoy the Licensed Premises, subject to and in accordance with the terms of this Agreement, and without unreasonable interference from County.

3.9 At all times during the term of this Agreement, Licensee shall comply with, and shall ensure that Licensee's Subcontractors comply with, any and all Applicable Law, including, but not limited to, those pertaining to the containment of exotic insects, animals, and plant species, and Licensee shall provide County with copies of all permits, notices of violations, and inspection reports issued to Licensee pursuant to Applicable Law.

3.10 The Scope of Services, set forth on Exhibit A, is a description of Licensee's obligations and responsibilities and includes preliminary considerations and prerequisites, and all labor,

including, but not limited to, construction cost audits, Capital Expenditures, and related supporting information. Licensee shall require its Subcontractors to have provisions in their agreements with Licensee concerning the requirements of this ~~paragraph~~ Article. All such books, records, and accounts subject to audit shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Licensee or its Subcontractor shall make same available in written form at no cost to County. The form, format, and program of all such records, cash registers, tapes, books, ledgers, journals, sales slips, and invoices, installed or used for recording the operations of Licensee under this Agreement shall be subject to the approval of the Contract Administrator prior to commencement of and during operations of the Concession Services. County and the Contract Administrator reserve the right to reasonably modify the reports and records requirements under this Agreement. ~~The record keeping period and requirements under this Agreement will comply with the then-current Internal Revenue Service guidelines.~~

15.1.2. County shall have the right to audit the other records of Licensee and its Subcontractors that are related to (i) the number of persons paying for admission to the Licensed Premises and (ii) Licensee's performance of its other obligations under this Agreement including, for purposes of example but not limited to, Licensee's sale of plants, conduct of required background checks, admission prices, hours of operation, and equal opportunity compliance. Licensee and its Subcontractors shall keep such records as may be necessary, including, but not limited to hard copy and electronic records, written policies and procedures, correspondence, invoices, checks and related payment documentation, time sheets, payroll records and registers, cancelled payroll checks, insurance rebates and dividends, and any other records in order to record complete and correct entries to document activities and performance pursuant to this Agreement ~~paragraph~~, including, but not limited to, detailed attendance records showing the number of attendees categorized by group, use of Park shelters, and related supporting information. Licensee shall require its Subcontractors to have provisions in their agreements with Licensee concerning the requirements of this ~~paragraph~~ Article. All such records subject to audit shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Licensee or its Subcontractor shall make same available in written form at no cost to County. The form, format, and program of all such records, installed or used for recording the operations of Licensee under this paragraph shall be subject to the approval of the Contract Administrator prior to commencement of and during operations of the Concession Services. County and the Contract Administrator reserve the right to reasonably modify the reports and records requirements under this paragraph.

15.1.3 The record keeping period and requirements under this Agreement will comply with the then-current Internal Revenue Service guidelines. Licensee and its Subcontractors shall preserve and make available, at reasonable times, which shall include Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m., and with reasonable prior notice, within Broward County, Florida, the records that are