

LICENSE AND CONCESSION AGREEMENT BETWEEN BROWARD COUNTY AND BIKEBOX LLC FOR BICYCLE RENTAL AND CONCESSIONAIRE SERVICES AT MARKHAM PARK AND QUIET WATERS PARK (RFI #PNC2120525F1)

This License and Concession Agreement (“Agreement”) is made and entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and BIKEBOX LLC, a Florida limited liability company (“Vendor”) (collectively referred to as the “Parties”).

Recitals

- A. County, through its Parks and Recreation Division (“Division”), administers Markham Park and Quiet Waters Park for public recreation and enjoyment.
- B. County issued a Request for Information (RFI #PNC2120525F1) seeking proposals from qualified vendors for a bicycle rental concession at the Parks, and Vendor’s proposal was selected as the sole reasonable source.
- C. Negotiations pertaining to the subject matter of this Agreement were undertaken between the Parties, and this Agreement incorporates the results of such negotiations.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1. **Applicable Law** means any and all applicable laws, codes, advisory circulars, rules, regulations, ordinances, or resolutions of any governmental or quasi-governmental entity relating to this Agreement, the Concessions, Concession-related Improvements, the Licensed Premises, or any activities at the Licensed Premises, that have been, or may hereinafter be adopted, and as may be amended from time to time, including without limitation, all applicable federal, state, County, local, and any quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, and grant agreements, including but not limited to the Americans with Disabilities Act.
- 1.2. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.3. **Concessions** means the bicycle repair, maintenance, sale, and rental concessions, and temporary installation of operation facilities at the Parks, to be operated and maintained by Vendor on the Licensed Premises, the Concessions Services, and Concession-related Improvements, including but not limited to, any food and beverages, sundries, or merchandise sales, that are necessary for the operation of such concessions on the Licensed Premises.
- 1.4. **Concession-related Improvements** means the improvements and any installation projects at the Parks, to be completed by Vendor under this Agreement to provide the Concessions Services, including but not limited any necessary modifications to the existing

mechanical, plumbing, and electric systems within the Licensed Premises, permanent fixtures, and any equipment necessary for the operation of the Concessions.

15. **Concessions Services** means the goods and services offered for sale or rent by Vendor within the Licensed Premises, including but not limited to, the bicycle rental services and related equipment, food and beverages, merchandise, sundries, souvenirs, and special activities coordination (e.g., birthday parties and special events).

16. **Contract Administrator** means the Director of the Broward County Parks and Recreation Division, or such other person designated by same in writing.

17. **County Administrator** means the administrative head of County appointed by the Board.

18. **County Attorney** means the chief legal counsel for County appointed by the Board.

19. **Designated Representative** means the individual designated in writing by Vendor to represent Vendor in all matters concerning administration and performance of this Agreement.

1.10. **Division** means the Broward County Parks and Recreation Division.

1.11. **Event** means any activity or event at one of the Parks with an anticipated attendance of greater than three hundred fifty (350) persons.

1.12. **Licensed Premises** means the specific areas designated by County within the Parks, as depicted on Exhibit B, Locator Map, attached hereto, for Vendor to operate the Concessions and provide the Concessions Services in accordance with this Agreement.

1.13. **Park** means Markham Park, located at 16001 W State Rd 84, Sunrise, Florida, 33323 or Quiet Waters Park, located at 401 Powerline Road, Deerfield Beach, Florida, 33442 (or collectively, **Parks**).

1.14. **Park Purpose** means a use of an area of land in the pursuit of outdoor leisure, athletic, or recreational activities, as more particularly defined in Section 8.13 of the Charter of Broward County, Florida.

1.15. **Services** means the services and activities to be provided by Vendor as described in Exhibit A.

1.16. **Subcontractor** means an entity or individual providing services to County through Vendor for all or any portion of the work under this Agreement. The term "Subcontractor" shall include all subconsultants.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A	Scope of Services
Exhibit B	Locator Map
Exhibit C	Affidavit (Criminal Background Screening)
Exhibit D	Minimum Insurance Coverages
Exhibit E	Pricing of Items for Sale or Rent

ARTICLE 3. USE OF THE LICENSED PREMISES AND SCOPE OF SERVICES

3.1. Subject to the terms of this Agreement, Vendor shall have exclusive operating rights to perform the Services within the Licensed Premises pursuant to this Agreement. Vendor's exclusive operating rights apply only to the Services as defined in Exhibit A of this Agreement, and County shall have the right to use the Licensed Premises for other activities. If County intends to use the Licensed Premises for other activities, County will provide reasonable notice to the Vendor based on the circumstances, as determined by the Contract Administrator.

3.2. County hereby grants to Vendor the right, license, and privilege to utilize the Licensed Premises to operate and provide the Concessions Services in accordance with the terms of this Agreement and as outlined in Exhibit A, Scope of Services. Vendor and its Subcontractors shall not utilize any other portions of the Parks not expressly in the Licensed Premises without the prior written consent of County. Additional Concessions Services or Concession-related Improvements on the Licensed Premises are subject to approval by the Contract Administrator, and the Parties executing an amendment to this Agreement in accordance with Section 30.18, "Amendments." The Services, including any use of office space by Vendor on the Licensed Premises, must, at all times, serve a Park Purpose.

3.3. County hereby grants to Vendor, and its employees, and patrons and guests, the non-exclusive privilege of ingress and egress to exercise the rights and license granted pursuant to Section 3.2.

3.4. The Licensed Premises are being made available to Vendor 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 Vendor relating to this Agreement. Vendor acknowledges it has inspected the Licensed Premises and determined that the locations are safe and suitable for the Concessions. Vendor 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 Vendor shall take all actions necessary to remedy or resolve any such issues or safety concerns within a timely manner at its sole cost and expense except as expressly stated in this Agreement.

35. Vendor shall inform the Contract Administrator of any and all injuries or damage to any real or Personal Property (as defined in Article 25) caused by Vendor, its officers, employees, agents, Subcontractors, invitees, or patrons that occurs within the Licensed Premises or the Parks during the term of this Agreement, and Vendor shall be responsible for all such injuries or damage as provided in Article 21.

36. County and its authorized agents shall have the right to enter upon the Licensed Premises at all times and for any reason, including to inspect such premises, as further described in Article 23, to determine if Vendor is in compliance with the terms of this Agreement and Applicable Law.

37. The Scope of Services, set forth on Exhibit A, is a description of Vendor's obligations and responsibilities under this Agreement and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Vendor impractical, illogical, or unconscionable.

38. Vendor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly set forth in this Agreement or, to the extent applicable, the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code).

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. The term of this Agreement shall commence on the date this Agreement is fully executed by the Parties ("Effective Date"), and shall continue for a term of five (5) years from the Effective Date ("Initial Term"), unless terminated earlier or extended as provided herein.

4.2. This Agreement may be extended by the Parties for one (1) additional three (3) year term, and one (1) additional, subsequent two (2) year term (each a "Renewal Term"), provided that Vendor furnishes County with written notice no less than one hundred and eighty (180) days prior to the expiration of the Initial Term ("Renewal Notice"), and provided that the Vendor provides County with a Concession-related Improvement proposal approved by the Contract Administrator in his/her sole discretion, and described in a formal amendment as outlined in Article 29 of this Agreement. In the Renewal Notice, Vendor must certify (i) that there are no uncured Events of Default (as defined in Section 12.1) under the Agreement, and (ii) that Vendor is in compliance with the terms of the Agreement. The Initial Term and the Renewal Term, if exercised under this Agreement, shall collectively be referred to as the "Agreement Term." Each year of the Agreement Term is a "Contract Year."

4.3. Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of Vendor required under this Agreement shall be completed by Vendor in a reasonable and timely manner and in accordance with the terms of this Agreement. Time shall be deemed to be of the essence in Vendor's performance of all duties, obligations, and responsibilities required of it by this Agreement.

ARTICLE 5. MINIMUM ANNUAL GUARANTEE; FEES

5.1. Vendor shall pay to County an annual guaranteed sum ("Annual Guarantee") as follows:

<u>Contract Year</u>	<u>Annual Guarantee</u>
Contract Year 1	\$2,500
Contract Year 2	\$3,500
Contract Year 3 and each subsequent Contract Year during the Agreement Term	\$5,000

The Annual Guarantee is payable in twelve (12) monthly installments ("Annual Guarantee Installment"), each equal to one-twelfth (1/12) of the Annual Guarantee applicable for that Contract Year. Each Annual Guarantee Installment payment shall be due and payable by Vendor, in advance without setoff or deduction except as may be expressly permitted in this Agreement, commencing on the Effective Date, and thereafter no later than the first day of each month, without billing by County, at the address listed in the "Notices" section.

If any Annual Guarantee Installment payment is not received by County by the fifth (5th) day of the month in which it is due, beginning on the sixth (6th) day, a late fee in the amount of One Hundred Dollars (\$100.00) per day shall accrue until the Annual Guarantee Installment payment is received by County, up to a maximum late fee amount equal to five percent (5%) of the late Annual Guaranty Installment shall accrue until the Annual Guarantee Installment Payment is received by County. The payment of a late fee shall not prohibit County from exercising its right to terminate as set forth in Article 12 of this Agreement or any other rights County has hereunder. If the Effective Date falls on a day other than the first day of the month, the first Annual Guarantee Installment payment shall be prorated accordingly, and all later payments shall be due and owing on the first day of the applicable calendar month. Should the first day of any month fall on a weekend day or holiday, the applicable Annual Guarantee Installment payment shall be due and payable on the last County business day of the previous calendar month.

5.2. Additional Fees. Any fees incidental to the use of the Licensed Premises, including but not limited to, fees for use and lighting of the Parks and any applicable gate admission fees, shall be payable by Vendor to County on or before the fifteenth (15th) day of each month after any additional fee is accrued.

5.3. Percentage Fees. Vendor shall pay County a percentage fee of gross receipts or a percentage fee of gross revenues derived from operation of concession services:

- 5.3.1. A percentage fee of six percent (6%) of Gross Receipts (as herein defined) from operation of bicycle rental, merchandise, sundries, souvenirs, food, and non-alcoholic beverage concessions at the Parks; and
- 5.3.2. A percentage fee of twenty-five percent (25%) of Gross Revenues (as herein defined) from the sale of alcoholic beverages.

Vendor shall Pay County, on a monthly basis, respective percentage of Gross Receipts, less the Annual Guarantee. This shall be accomplished by Vendor as follows: a) remitting each month the respective monthly Annual Guarantee Installment to County in accordance with Section 5.1; b) calculating its Gross Receipts following the end of that same month; and c) if the combined percentage fee revenues listed above are greater than an Annual Guarantee Installment (i.e., one-twelfth (1/12) of the Annual Guarantee), remitting a check to County for the difference to accompany the monthly report provided in accordance with Section 5.5.

54. County agrees that as consideration for the percentage fees set forth in Section 5.3, County shall waive County-imposed permit fees applicable to Vendor's operation of food and beverages or merchandise concessions in the Parks during the operation of the Concessions. Notwithstanding the above, Vendor must, prior to the commencement of Concessions Services and operation of the Concessions, furnish to County any federal, state, or city permits, licenses, approvals, or business tax receipts required under Applicable Law.

55. On or before the fifteenth (15th) day after the end of each calendar month under the Agreement Term, Vendor shall furnish to the Contract Administrator a separate report of Gross Receipts and Gross Revenues (each as herein defined) for the preceding calendar month. The reports shall be on a form approved in advance by the Contract Administrator. Each report shall certify the accuracy of such Gross Receipts and Gross Revenues and shall be signed by an authorized representative of Vendor.

56. Sales and use tax shall not be part of the payment of the Annual Guarantee Installment payment, or any fees payable pursuant to Sections 5.2 and 5.3 and shall be remitted by Vendor to County in addition to the Annual Guarantee and other payments owed to County. County will remit the sales and use tax payments from Vendor to the appropriate taxing agency, as further described in Section 6.2.

57. If any payment is not received by County when due, interest at the rate provided in Section 55.03, Florida Statutes, in effect at such time, shall begin to accrue.

58. All payments must be made payable to Broward County, and must be paid to the Parks and Recreation Division, Attn.: Accounting Office, 950 NW 38th Street, Oakland Park, Florida 33309.

59. The term "Gross Receipts" as used in this Agreement means all monies paid or payable to, or considerations of determinable value received by, Vendor and any of its Subcontractors for sales and other transactions or for services rendered, from all source, for the sale of food, beverages, and merchandise, regardless of when or where the order therefore is received or the goods delivered or services rendered, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value. Gross Receipts do not include any Gross Revenues (described in Section 5.10). Sales refunds, returned merchandise, credit card charge backs, and any taxes imposed by law paid by a customer and directly payable by Vendor to a taxing authority are not included as Gross Receipts. Insurance proceeds shall not be included in "Gross Receipts."

5.10. The term "Gross Revenues" as used in this Agreement means all monies paid or payable to, or considerations of determinable value received by Vendor and any of its Subcontractors for sales or other transactions or for services rendered, from all sources, for the sale of alcoholic beverages under this Agreement, regardless of when or where the order therefore is received or the goods delivered or services rendered, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value, Sales and rentals refunds and any taxes imposed by law that are paid by the customer and directly payable by Vendor to a taxing authority are not included as Gross Revenues. Insurance proceeds shall not be included in "Gross Revenues."

ARTICLE 6. PAYMENT OF OBLIGATIONS AND TAXES

6.1. Vendor shall pay all taxes and other costs lawfully assessed against its business and legal interest in the operation of the Concessions Services under this Agreement when due. Vendor shall not be deemed in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity or amount of such taxes or other costs.

6.2. Vendor shall be solely liable for the State of Florida sales tax, and any sales and use tax imposed by Section 212.031, Florida Statutes, on amounts payable to County under this Agreement, subject to any exemptions from payment of sales and use tax provided by law. Vendor shall be liable for any and all other taxes due to taxing authorities arising out of its operations under this Agreement. The sales and use tax payments shall be remitted to County by Vendor in addition to, and not incorporated into, the Annual Guarantee or any other payments made to County. Vendor shall remit the sale and use tax payments to County contemporaneously with the payment of the Monthly Annual Guarantee Payment, additional fees, or percentage fee payments, as applicable. Sales and use tax shall be payable to County which in turn will be remitted to the appropriate taxing agencies. If a taxing agency determines and assesses the amount of any additional sales and use tax, penalty, or interest due for any sales and use tax payments during the term this Agreement, Vendor shall be required to make such payment to County and County will remit same to the taxing agency. If Vendor fails to remit to County any sales and use tax, penalty, or interest when due in accordance with this section, County has the right, but not the obligation, to timely pay the amounts due to the appropriate tax agencies, and Vendor must reimburse County such amounts in full, together with interest accruing thereon at the maximum interest rate allowed by Florida law. Vendor shall be liable for, and shall pay in a timely manner, all other taxes due taxing authorities arising out of its operations under this Agreement.

6.3. Vendor shall procure and obtain, at its sole cost, all permits, licenses, and approvals required of Vendor for its operations and performance under this Agreement.

6.4. Vendor shall be responsible for paying its Subcontractors and suppliers for work performed or for supplies, equipment, or materials furnished to Vendor, at its request, any undisputed amount within thirty (30) calendar days following receipt of complete invoices for

such work performed, or such supplies, equipment, or materials provided upon completion or receipt of same. Vendor shall take such action necessary to resolve any amounts in dispute.

ARTICLE 7. REVENUE HANDLING AND REPORTING

Vendor shall be responsible for handling the revenue received from operation of the Concessions Services under this Agreement and accounting for such revenue in accordance with procedures prescribed by the Contract Administrator. The Contract Administrator shall provide Vendor a revenue reporting form and format or program to utilize to ensure accountability of the funds, and provide policies and procedures including, but not limited to, forms or instructions relating to accounting, recordation, and receipts. The revenue generated by Vendor from the provision of the Concessions Services shall be included in Gross Receipts or Gross Revenues as set forth in Article 5. The requirements of this Article are in addition to the records retention requirements set forth in Article 15, "Reports and Records."

ARTICLE 8. PAYMENT FOR ELECTRONIC CONNECTIONS AND USAGE; TRASH REMOVAL SERVICES; MAINTENANCE AND REPAIR

8.1. Electronic Connections and Usage. Vendor shall be responsible for obtaining and payment of its telephone, computer, high speed wireless internet access, and other electronic connections and usage.

8.2. Trash removal. Vendor shall, in a timely manner, provide for the adequate sanitary handling and removal of all trash, garbage, or other refuse caused by Vendor's operations. Vendor shall be responsible for transferring all trash generated by the Concession Services within the Licensed Premises into the respective trash dumpsters designated by the respective Park Manager. If the amount of trash generated by Vendor from any special events results in excessive trash, as determined by the Contract Administrator, and increased trash removal fees for County, Vendor shall, at the direction of the Contract Administrator, either (a) arrange for trash removal directly with a company, approved by the Contract Administrator, to provide such services at the Licensed Premises, or (b) reimburse County for any additional trash removal fees incurred by County, without the necessity of entering into an amendment to this Agreement. Vendor shall make any required reimbursement to County for the additional trash removal fees within thirty (30) days from receipt of an invoice from County.

8.3. Vendor shall ensure that all food-related garbage is handled and stored in accordance with all applicable health and safety laws. Piling of boxes, cartons, barrels, or similar items shall not be permitted in any area open to the public.

8.4. Vendor shall maintain the Concessions, and any improvements, fixtures, and equipment utilized in its operation of the Concessions, in good working order and repair, including any improvements, fixtures, and equipment that existed on the Licensed Premises upon the commencement of operations by Vendor, reasonable wear and tear, and any on-going Concession-related Improvements projects excepted.

85. Vendor shall be responsible for the maintenance of all of Vendor's equipment, Personal Property (as hereinafter defined), supplies, and storage areas, and any of County's equipment utilized by Vendor under the Agreement.

86. County shall determine, in its sole, reasonable discretion, the quality of such maintenance performed by Vendor under the Agreement.

87. If Vendor refuses or neglects to undertake any of its maintenance and repair responsibilities under the Agreement for the Concessions operated by Vendor on the Licensed Premises, or if County is required to make any repairs necessary for the Concessions operated by Vendor on the Licensed Premises, as determined by County in accordance with this Agreement, or that are necessitated on the Licensed Premises or the Parks due to any negligent acts or omissions of Vendor or Vendor's Subcontractors, County shall have the right to perform such maintenance or make such repairs on behalf of and for Vendor. In such event, Vendor shall pay County for such work within thirty (30) days after delivery of an invoice from County for such work.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

91. Representation of Authority. Vendor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Vendor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Vendor has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Vendor. Vendor further represents and warrants that execution of this Agreement is within Vendor's legal powers, and each individual executing this Agreement on behalf of Vendor is duly authorized by all necessary and appropriate action to do so on behalf of Vendor and does so with full legal authority.

92. Solicitation Representations. Vendor represents and warrants that all statements and representations made in Vendor's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the Effective Date of this Agreement, unless otherwise expressly disclosed by Vendor.

93. Contingency Fee. Vendor represents and warrants that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

94. Public Entity Crime Act. Vendor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents and warrants that its entry into this Agreement will not violate that Act. Vendor further represents and warrants that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged

with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether Vendor has been placed on the convicted vendor list.

95. Discriminatory Vendor and Scrutinized Companies Lists. Vendor represents and warrants that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Vendor further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

96. Warranty of Performance. Vendor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Concessions Services under this Agreement, and that each person and entity that will provide Concessions Services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Concessions Services. Vendor represents and warrants that the Concessions Services under this Agreement shall be provided in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

97. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Vendor certifies and represents and warrants that it will comply with the provisions of Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

98. Condition of Licensed Premises. Vendor represents and warrants that it has inspected the Licensed Premises and determined the locations are safe and suitable for Vendor’s intended use.

99. Capital Improvements. Vendor represents and warrants to County that any capital improvements or other improvements or installations made by Vendor under the Agreement shall be at all times free and clear of all liens, claims, and encumbrances. If any lien or notice of lien shall be filed against any of the improvements or installations, Vendor shall, within thirty (30) calendar days after notice of the filing of any lien, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. The provisions hereof shall not apply to any purchase money security interest in any movable trade fixtures installed at or within the Licensed Premises.

9.10. Breach of Representations. In entering into this Agreement, Vendor acknowledges that County is materially relying on the representations and warranties of Vendor stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Vendor, to deduct from the compensation due Vendor under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Vendor

under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

ARTICLE 10. INDEMNIFICATION

Vendor shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Vendor, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Vendor shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Vendor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 11. INSURANCE

11.1 For the duration of the Agreement, Vendor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit D in accordance with the terms and conditions of this article. Vendor shall maintain insurance coverage against claims relating to any act or omission by Vendor, its agents, representatives, employees, or Subcontractor in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

11.2 Vendor shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit D on all policies required under this article.

11.3 On or before the Effective Date, Vendor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Vendor shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

11.4 Vendor shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Vendor has been completed, as determined by Contract Administrator. Vendor or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days

prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Vendor shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

11.5. Vendor shall ensure that all required insurance policies are issued by insurers:

(1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

11.6. If Vendor maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit D, County shall be entitled to any such broader coverage and higher limits maintained by Vendor. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Vendor.

11.7. Vendor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit D and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Vendor shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Vendor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Vendor agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so, elected by County, and Vendor agrees to obtain same in endorsements to the required policies.

11.8. Unless prohibited by the applicable policy, Vendor waives any right to subrogation that any of Vendor's insurer may acquire against County and agrees to obtain same in an endorsement of Vendor's insurance policies.

11.9. Vendor shall require that each Vendor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Vendor under this article. Vendor shall ensure that all such Subcontractor comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractor's applicable insurance policies.

11.10. In the event Vendor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Vendor. Vendor shall not permit any Subcontractor to provide services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Vendor shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this section.

11.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit D, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Vendor must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit D.

ARTICLE 12. TERMINATION

12.1. For purposes of this Agreement, any of the following events shall constitute an “Event of Default”:

- a. Vendor’s failure to pay the Annual Guarantee, any monthly Annual Guarantee Installment payment, any fees payable under Sections 5.2 or 5.3, sales and use tax, any accrued late fee or interest thereon, or any other sums payable to County hereunder, within ten (10) days after any such payment is due and payable ;
- b. Vendor’s failure to comply with any term of this Agreement, which failure is not cured within thirty (30) days after receipt of written notice from County, or in the case of any breach which cannot be cured within thirty (30) days, if Vendor fails to proceed promptly and with good faith to begin to cure the default within thirty (30) days after receipt of written notice from County;
- c. Vendor’s failure to provide the monthly Affidavit, in the form attached as Exhibit C, to County as required under Section 16.4, which failure is not cured within five (5) days after receipt of written notice from County of the breach;
- d. Vendor voluntarily abandons, deserts, or vacates the Licensed Premises or ceases to operate and manage the Concession as provided herein for a period of thirty (30) consecutive days;
- e. Vendor’s failure to comply with any of the Concession-related Improvements within the required time periods;
- f. If any representation or warranty made by Vendor in Article 9 of this Agreement is inaccurate;
- g. Any lien, claim, or other encumbrance, which is filed against the Licensed Premises that is not permitted by this Agreement;
- h. Vendor’s failure to obtain and maintain Payment and Performance Bonds or such other form of security approved by County for any of the Concession-related Improvements;
- i. Vendor’s repeated (whether negligent or intentional) submission of false or incorrect reports, failure to observe or suitably perform any of the other material provisions of this Agreement;

- j. Vendor's failure to operate the Concessions in a manner that serves a Park Purpose;
- k. Vendor's failure to continuously perform in a manner calculated to meet or accomplish the objectives as set forth in this Agreement;
- l. If Vendor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes;
- m. If Vendor provides a false certification submitted pursuant to Section 287.135, Florida Statutes;
- n. Upon the occurrence of any of the grounds set forth in Section 287.135, Florida Statutes;
- o. Vendor becomes a debtor in, or the subject of, a voluntary or involuntary bankruptcy or receivership; or
- p. Any of Vendor's officers or executives is indicted for a felony, charged with acts of moral turpitude, or engages in dishonesty, fraud, misconduct, or disreputable conduct that adversely and materially impairs or impacts public access to the Parks or the reputation, goodwill, or position of County or the Parks.

12.2. Upon the occurrence of an Event of Default, or at any time thereafter during the continuance of an Event of Default, County may, at its sole option, exercise one or more of the following rights:

- a. terminate the rights of Vendor under this Agreement, in which the Agreement and all rights of Vendor under the Agreement shall expire and terminate, and County shall be released and relieved of all liability under this Agreement;
- b. sue Vendor for all damages, costs, and expenses arising from, or which are a proximate cause of, Vendor's Event of Default, and to recover all such damages, costs, and expenses, including reasonable attorneys' fees at both trial and appellate levels;
- c. restrain, by injunction, the commission or attempted commission of an Event of Default and to obtain a decree specifically compelling performance of any such term or provision of this Agreement. Vendor acknowledges that County would not have an adequate remedy at law for an Event of Default and that injunctive relief or specific performance is required to protect the public from irreparable harm; and/or
- d. exercise any other remedies available to County under this Agreement or at law or in equity.

In the event of any termination by County, County may accelerate and declare immediately due and payable all unpaid amounts due and other sums required to be paid under this Agreement. In addition, Vendor shall be liable for all damages incurred by County in connection with Vendor's Event of Default or the termination of this Agreement upon such an Event of Default, including without limitation, all direct damages, such as collection costs and reasonable attorney's fees, as

well as indirect, consequential, and all other damages whatsoever. The exercise by County of any right of termination shall be without prejudice to any other rights and remedies County may have at law or in equity. No remedy herein confirmed upon or reserved to County is intended to be exclusive of any other remedy herein provided or otherwise available, and each remedy shall be cumulative.

12.3. This Agreement may be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

12.4. Either Vendor or the Contract Administrator, on behalf of County, can terminate this Agreement for convenience by giving no less than nine (9) months written notice to the other Party. This time period may be extended up to an additional thirty (30) days, at the terminating Party's reasonable discretion, if the non-terminating Party requests an extension in writing within sixty (60) days prior to the end of the nine (9) month period. A written request for an extension shall include sufficient explanation and documentation to allow the terminating Party to grant such extension, which shall not be unreasonable withheld or delayed. If County is the terminating Party, the County Administrator may, in the County Administrator's discretion, extend the date of termination for up to thirty (30) days. In the event County terminates this Agreement for convenience, within ninety (90) days after the date of termination set forth in the termination notice, County shall pay Vendor the amount expended by Vendor, and approved by County, for all Concession-related Improvements by Vendor during the Agreement Term, minus an annual depreciation percentage for each approved improvement based on a ten (10) year depreciation schedule (i.e., 10% per year).

12.5. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause was provided and Vendor shall be eligible for the compensation provided in this Section 12.5 as its sole remedy.

If this Agreement is terminated for convenience by Board or the County Administrator, Vendor shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Vendor acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience in the form of County's obligation to provide advance notice to Vendor of such termination in accordance with Sections 12.4 and 12.5 of this Agreement.

ARTICLE 13. NOTICES

13.1. Notice of termination shall be provided in accordance with Section 30.8, "Notices," of this Agreement except that notice of termination by the County Administrator that the County Administrator deems necessary to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

ARTICLE 14. PRICES CHARGED BY VENDOR

14.1. Prices charged to the public by Vendor for the Concessions Services shall be competitive with prices for similar park-related concession operations in the southeastern United States, whether they are operated by County or through a private vendor. The initial prices and items for sale or rent for the Concessions Services are included in Exhibit E, Pricing of Items for Sale or Rent. Vendor shall not change the prices and items included in Exhibit E without the prior written approval of the Contract Administrator, which approval shall not be unreasonably withheld. The Contract Administrator shall review any proposed changes to the prices or items list and approve or disapprove such proposed changes in writing within ten (10) business days after the receipt of such request. In the event such written notice of disapproval is not mailed or otherwise transmitted to Vendor by the Contract Administrator within such ten (10) business day period, the proposed changes to the prices or items will be considered approved.

14.2. The Contract Administrator will notify Vendor of any changes to County's schedule of fees charged to all Park patrons within fifteen (15) calendar days from the effective date of the changes.

ARTICLE 15. REPORTS AND RECORDS

15.1. Vendor shall maintain during the Agreement Term all books of account, reports, and records customarily used in this type of operation and such records as are necessary to document its activities pursuant to this Agreement and all monies collected under the terms of this Agreement including, but not limited to, Gross Receipts and Gross Revenues. 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 Vendor under this Agreement shall be subject to the approval of the Contract Administrator prior to commencement of and during operations of the Concessions Services. County and the Contract Administrator reserve the right to reasonably modify the reports and records requirements under this Agreement. The recordkeeping period and requirements under this Agreement will comply with the then current Internal Revenue Service guidelines.

15.2. Vendor shall, at its own expense, provide County with an annual special report on all revenues from operation of the Concessions Services under this Agreement. The special report shall be prepared by an independent Certified Public Accountant (CPA) licensed by the State of Florida in accordance with the provisions of the Codification of Statements on Auditing Standards. The special report shall be filed with County within ninety (90) days after the end of

each year under the Agreement Term, or ninety (90) days after earlier termination of this Agreement, and shall include the CPA's opinion on the following:

- a. Schedule of all revenues by category by month;
- b. Schedule of revenues by category upon which the monthly payments to County are computed and a list of the payments to County for the period; and
- c. A calculation to determine that the total percentage fees have been paid in accordance with this Agreement.

The requirement to file a final special report with County shall survive expiration or earlier termination of this Agreement.

153. Vendor shall allow the Contract Administrator or the Office of the County Auditor to inspect all or any part of the compilation procedures for the required monthly reports. Any inspections as provided under this section shall be reasonable and are at the sole discretion of the Contract Administrator. Records shall at all times be available Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m. at a location within Broward County.

154. Vendor shall furnish all reports required under the terms of this Agreement to the Contract Administrator at the address provided in Section 30.8, "Notices," of this Agreement.

ARTICLE 16. VENDOR'S OPERATIONS MANAGER

Vendor shall assign a full-time, qualified, and experienced operations and business Manager ("Operations Manager") at the Parks for operation of the Concession Services. Vendor shall designate an individual as Vendor's authorized agent who shall be responsible for the day-to-day operations of the Concessions Services at the Parks in the absence of the Operations Manager ("Deputy Operations Manager"). The Operations Manager and the Deputy Operations Manager must each be at least eighteen (18) years of age and at least one of which shall be physically available during Vendor's approved hours of operation. The qualifications of the Operations Manager and the Deputy Operations Manager shall be submitted to the Contract Administrator upon request. The Contract Administrator shall be advised in writing of the name, address, and birth date of the Operations Manager and the Deputy Operations Manager. Vendor shall hire persons of good moral character and shall perform criminal background checks as provided in Article 16.

ARTICLE 17. CRIMINAL BACKGROUND SCREENING

17.1. Vendor shall perform criminal background screening on its officers, employees, agents, Subcontractors, and volunteers who will be working on the Licensed Premises. Notwithstanding the above, Vendor shall not be required to comply with the provisions for criminal background screening under this article for those independent vendors coming into the Parks to make deliveries of goods or services for, or relating to, the Concessions Services.

17.2. Vendor shall not employ nor permit any person who is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement, Sexual Offenders and Predators Website or the United States Department of Justice, National Sex Offender Public Website, to provide any services for Vendor in the Parks.

17.3. Vendor shall maintain copies of the results of the criminal background screening required by this article for the Agreement Term and promptly forward copies of same to County, upon its request.

17.4. Vendor shall be required to furnish to the Contract Administrator, on a monthly basis and simultaneously with the required monthly Percentage Fee payments and submission of the monthly report on Gross Receipts and Gross Revenues, an affidavit, in the form attached as Exhibit C, affirming the persons listed in the affidavit have been background screened as required in Section 17.1 relating to sexual predator and sexual offender checks and have been deemed eligible by Vendor to work on the Licensed Premises. Vendor's first monthly affidavit shall include all screened individuals and the screening results. Thereafter, the monthly affidavit shall only identify new persons who are providing any Concessions Services under this Agreement and who have been screened as required in Section 17.1 and deemed eligible to work on the Licensed Premises during that one-month period, and persons no longer providing services under this Agreement on the Licensed Premises. The Contract Administrator may, in his or her discretion, permit Vendor to furnish the monthly affidavit in an electronic format. Vendor's officers, employees, agents, Subcontractors, and volunteers subject to the criminal background screening under this Agreement shall be rescreened annually based on the date of initial screening.

17.5. In the event Vendor obtains, or is provided, supplemental criminal background information, including police reports and arrest information, that potentially disqualifies a person previously deemed eligible by Vendor to provide services under this Agreement, Vendor shall take immediate action to review the matter; however, during such review time and until a determination of eligibility is made by Vendor based on the requirements of this article, Vendor shall immediately cease allowing the person to work on the Licensed Premises. Additionally, Vendor shall require any person background screened pursuant to this article to notify Vendor within twenty-four (24) hours of any arrest related to sexual misconduct that has occurred after the person was deemed eligible to work on the Licensed Premises.

17.6. Vendor shall, by written contract, require its Subcontractors who work on the Licensed Premises to be subject to the requirements and obligations of this article.

17.7. County may terminate this Agreement immediately for cause, and without an opportunity to cure, by written notice provided to Vendor, for any violation related to Vendor's failure to perform the required background screening on its officers, employees, agents, Subcontractors, and volunteers who will be performing any Concessions Services under this Agreement on the Licensed Premises prior to such persons performing any work or services. Vendor will not be subject to immediate termination in the event County determines, in its sole discretion, that a violation of this article was outside the reasonable control of Vendor, and Vendor has demonstrated to County compliance with the requirements of this article.

ARTICLE 18. QUALITY OF SERVICES

18.1. Vendor shall ensure that its employees, agents, representatives, Subcontractors, volunteers, or others involved in the maintenance or operation of the Concessions Services perform their respective duties in an efficient and courteous manner. Upon notice from County, Vendor shall promptly remove from the performance of services under this Agreement, or take other curative action acceptable to the Contract Administrator, any person or Subcontractor who fails to perform Vendor's obligations under this Agreement in an efficient or courteous manner and Vendor's failure to do so shall be grounds for termination of this Agreement for cause by County pursuant to Section 12.2 without further opportunity to cure by Vendor. County's notice pursuant to this section shall constitute effective notice required by Section 12.1(c) even though County's notice pursuant to this section may require Vendor's curative action in less than thirty (30) days.

18.2. Vendor shall provide enough staffing necessary for operation of the Concessions Services during its hours of operations at the Parks. Vendor's operations on the Licensed Premises shall not unreasonably interfere with the public's use of other areas or amenities in the Parks or infringe upon the normal operations of any parties authorized as of the Effective Date of this Agreement to conduct business near the Licensed Premises.

18.3. Vendor shall furnish good, prompt, and efficient service adequate to meet all reasonable demands for such service. The Contract Administrator may periodically evaluate Vendor's performance under this Agreement and reasonably recommend that Vendor modify its operations in order to furnish good, prompt, and efficient service. The implementation by Vendor of any recommendations of the Contract Administrator shall not be unreasonably withheld or delayed.

18.4. Vendor's employees shall be distinctively uniformed and appropriately attired in a neat and professional manner that distinguishes Vendor's employees from the Parks' employees.

18.5. Vendor shall ensure that all sounds or noise, including, but not limited to, music generated within the Licensed Premises, or caused by Vendor's operations, or emanating from within the Licensed Premises, shall be kept to reasonable levels as determined by the Contract Administrator, in the Contract Administrator's sole discretion, so as not to present a nuisance to the residents in adjacent properties or to any Park patrons, and such sounds or noise must be eliminated or levels reduced at the request of the Contract Administrator. Vendor shall cause the immediate cessation of any noise, music, or other sounds emanating from within the Licensed Premises that is deemed offensive, distracting, or disturbing by the Contract Administrator, in the Contract Administrator's sole determination.

18.6. The Contract Administrator has the discretion to require changes in Vendor's scheduling of any trash hauling, construction-related activities for the Concession-related Improvements, contractor repair work, deliveries, and parking, if deemed necessary, to enable other concessionaires at the Parks to also have quiet enjoyment of their respective concession premises.

ARTICLE 19. HOURS OF OPERATION

19.1. Vendor shall operate the Concessions Services during the hours of operation set forth in Schedule A to Exhibit A, Scope of Services, weather permitting, or such other hours of operation that are requested in writing by Vendor and approved in writing in advance by the Contract Administrator. The Contract Administrator shall review any changes proposed by Vendor to the schedule no later than ten (10) business days after receipt of such proposed changes. The reasons for any non-approval shall be set forth in writing no later than ten (10) business days after submittal of any such request. In the event any written notice of non-approval is not mailed or otherwise transmitted to Vendor by the Contract Administrator within the ten (10) day period, County shall be deemed to have approved the proposed changes to the schedule.

19.2. The Contract Administrator may, upon written notice to Vendor, require a mandatory closure, or change in the daily hours or the number of days per week, of operation of any of the Concessions, for any public safety reasons described in Section 19.3 below, or in response to any neighborhood residential concerns. Any notice provided by the Contract Administrator under this section shall be reasonable under the circumstances, as determined by the Contract Administrator, in the Contract Administrator's sole discretion. [In the event of any reduction of hours or closure of operations of any of the Concessions for reasons described in this section, the Annual Guarantee for the Contract Year then in effect shall be prorated on a day-by-day basis to reflect the reduced hours of operation for the Concessions Services at the Parks.]

19.3. If County determines, in its sole discretion, that it is necessary, to protect the health, safety, or welfare of the public, or County is required by any governing authority to undertake a mandatory closure of the Parks, or any portion thereof, or to cancel activities based upon the occurrence of acts of nature or other circumstances that may pose a public safety hazard, County may close the Parks, or any portion(s) thereof, change the hours of operation, or cancel any activities within the Parks that may impact the approved hours of operation for the Concessions Services, the Contract Administrator shall provide the Designated Representative with verbal notice of the changes, which shall be promptly confirmed by e-mail to the individual listed for Vendor under Section 30.8, "Notices," of this Agreement.

ARTICLE 20. FACILITIES AND SERVICES PROVIDED BY COUNTY

County shall provide non-exclusive general parking for Vendor, its officers, employees, agents, Subcontractors, patrons, invitees, suppliers of services, and furnishers of materials, with the Contract Administrator and Vendor closely interacting and cooperating regarding any special parking needs during the Agreement Term.

ARTICLE 21. DAMAGES; LIABILITY FOR DAMAGE OR INJURY

21.1. Vendor shall repair any and all damage to the Licensed Premises, the Parks, Concession-related Improvements, and Vendor's Personal Property caused by Vendor, its employees, agents, Subcontractors, patrons and invitees in a prompt and timely manner; however, County, in its sole option, may elect to repair any such damage (other than to Vendor's Personal Property) and,

thereafter, invoice Vendor for all of County's costs incurred in repairing such damage. In such an event, Vendor shall pay County within thirty (30) calendar days of receipt of such invoice. County shall be responsible to repair all damages to the Licensed Premises, Concession-related Improvements, and Vendor's Personal Property, caused solely by County, its officers, employees, contractors, or agents.

21.2. County shall not be liable for any damage or injury that may be sustained by any person(s) resulting from Vendor's operations or the Concessions Services under this Agreement. Vendor shall not be liable for any damage or injury that may be sustained by any person(s) resulting solely from County's operations or services at the Parks.

ARTICLE 22. EMERGENCY PREPAREDNESS PLAN

The Contract Administrator and the Designated Representative shall cooperate to develop an Emergency Preparedness Plan ("Plan") consistent with the Division's emergency preparedness and operations plans for the Parks, which includes County's and Vendor's planning and response roles. The Plan shall include detailed procedures of actions that Vendor must take to protect or remove Vendor's Personal Property (as defined in Article 25) if a weather-related event warning is issued or another unanticipated emergency occurs that may impact the Licensed Premises, and such Plan must be provided to the Contract Administrator by May 1st of each year under this Agreement. In addition, Vendor shall provide to the Contract Administrator an emergency plan and procedures for handling any injuries received by patrons while on the Licensed Premises. The Contract Administrator and the Designated Representative shall review and update the Plan annually.

ARTICLE 23. INSPECTION BY COUNTY

County may enter the Licensed Premises at all times and for any reason. County may make periodic reasonable inspections of the Licensed Premises, and Vendor's equipment, and operations to determine if the Licensed Premises, equipment, and operations are being maintained in a neat and orderly condition, and to determine whether Vendor is operating in compliance with the terms of this Agreement. All inspections shall be conducted in a manner so as not to interfere with the normal operations of the Concessions Services. The Contract Administrator or the Contract Administrator's designee may inform the Designated Representative of any action(s) necessary to correct improper operations. Vendor shall reasonably comply with any recommendations of the Contract Administrator or the Contract Administrator's designee with respect to improper operations issues.

ARTICLE 24. EMERGENCY REPAIRS

County has the absolute right to make emergency repairs to any of the Parks' facilities and the Licensed Premises under this Agreement, in accordance with the provisions under Section 8.7, free from any and all liability to Vendor for loss of business or damages of any nature whatsoever during the making of such emergency repairs, except for damage caused by the sole negligence or intentional misconduct of County and where not otherwise indemnified by Vendor. The

Contract Administrator or the Contract Administrator's designee shall provide Vendor with reasonable advance notice, as determined in the sole discretion of County, of any emergency repairs by County, depending on the circumstances at the time of the emergency.

ARTICLE 25. REMOVAL OF PROPERTY FOLLOWING EXPIRATION OR EARLIER TERMINATION OF AGREEMENT

On or before the expiration of the Agreement Term or earlier termination date of this Agreement, Vendor shall remove all of its equipment, inventories, materials, supplies, personal property, which shall not include any County-owned equipment ("Personal Property"), and trade fixtures from the Licensed Premises. In the event Vendor does not remove its Personal Property and trade fixtures, within fourteen (14) calendar days after said expiration or earlier termination, at County's option: (a) title to same shall vest in County, at no cost to County; or (b) County may remove such property to a public warehouse for deposit, at Vendor's sole cost and expense; or (c) County may retain same in its own possession and sell same at public auction, the proceeds of that shall be applied first to the expenses of removal, storage, and sale; second to any sums owed by Vendor to County; or (d) County may dispose of such property in any manner permitted by law. If the expenses of such removal, storage, and sale exceed the proceeds of sale, Vendor shall pay such excess to County upon demand. Vendor shall further release County from all liability for removal and disposal of any Personal Property and trade fixtures. The insurance requirements under Article 11 shall remain in effect during the period when Vendor removes its Personal Property and non-capital improvements as provided in this section.

ARTICLE 26. APPROVALS

26.1. The Contract Administrator reserves the right to approve all matters specifically referenced in this Agreement related to the day-to-day operations of Vendor and all matters reasonably deemed pertinent to the administration of this Agreement. Except as otherwise provided for in this Agreement, any approvals required by either party shall not be unreasonably withheld.

26.2. Vendor, its employees, agents, Subcontractors, patrons, and invitees shall not conduct any activity on the Licensed Premises or in the Parks that is not specifically authorized under this Agreement, unless approved in writing in advance by the Contract Administrator or such other authority for County, as appropriate.

ARTICLE 27. OWNERSHIP OF VENDOR

27.1. The ownership of Vendor is very important to County. Any transfer of a majority interest in ownership of Vendor must be approved by the Board. The Board shall have the right to reject any proposed new owner on any reasonable grounds. If Vendor notifies the Contract Administrator in writing of its intent to seek Board approval of a transfer of a majority interest in ownership of Vendor, the Contract Administrator shall provide written notification to Vendor setting forth the information and documentation required to be provided to County as part of any request for approval. County reserves the right to terminate this Agreement immediately,

with written notice to Vendor, any time there is a change in the majority interest in ownership of Vendor that has not been specifically approved by the Board. Vendor shall provide to the Contract Administrator, within three (3) workdays after receipt of written notice from the Contract Administrator requesting same, an accurate list of all owners of Vendor, showing the percentage of ownership of each owner.

27.2. If Vendor: (a) sells or transfers substantially all of its assets which relate to performance under this Agreement, (b) sells or transfers a controlling interest in Vendor (whether by sale of stock, membership interest, partnership interest, or any other method); or (c) transfers existing management of the operations of Vendor to an individual or an entity not otherwise involved in the management of Vendor's operations as of the date of this Agreement, Vendor shall pay to County an exit fee of five percent (5%) of the gross consideration received by Vendor or the selling party. Vendor shall provide a copy of the agreement with the third party relating to such transaction showing the consideration being paid, along with a copy of any corporate documents evidencing the transaction, and the fee described in this section at the time of the closing of the transaction.

ARTICLE 28. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

28.1. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Vendor shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

28.2. Vendor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing the Concession Services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Vendor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

28.3. Although no CBE goal has been established for this Agreement under County's CBE Program as established by Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances, County encourages Vendor to give full consideration to the use of CBE firms to perform work under this Agreement.

ARTICLE 29. CONCESSION-RELATED IMPROVEMENTS; TEMPORARY INSTALLATIONS

29.1. Should Vendor wish to construct any Concession-Related Improvements on the Licensed Premises, it may do so upon execution of an amendment to this Agreement in accordance with Section 30.18, "Amendments," setting forth the specific improvements and the obligations of each party in relation thereto.

29.2. Construction of any improvement or installation, whether permanent or temporary, by Vendor shall be performed in such a manner to ensure that such improvement or installation:

- 292.1. Is structurally sound and safe for human occupancy, and free from any hazards;
- 292.2. Provides sufficient clearance for any deliveries, use of equipment, or otherwise, so as to not interfere with the Park's operations and arriving and departing vehicles;
- 292.3. Is completed in an environmentally conscientious manner to the extent possible and commercially practicable; and
- 292.4. Complies with the terms of the Agreement.

29.3. Vendor shall not commence any construction or installation of any improvement or installation at the Licensed Premises until the applicable Plans and Specifications or Vendor's Plans (as hereinafter defined) have been reviewed and approved by the Contract Administrator, which approval shall not be unreasonably withheld, and all applicable permits have been obtained. The final Plans and Specifications or Vendor's Plans approved by the Contract Administrator for Concession-related Improvements or temporary installation are collectively referred to hereinafter as the "Approved Plans."

- 293.1. For work that requires permits from any governmental entity, Vendor shall submit a site plan and complete signed and sealed architectural and engineering plans and specifications for installation of each Concession-related Improvement or temporary installation to the Contract Administrator for review and written approval. The plans and specification must be certified and signed and sealed by an architect or an engineer licensed to practice in Florida and must consist of the following: (a) working drawings; (b) technical specifications; (c) construction and installation schedule pre-coordinated with County; (d) a list of equipment and fixtures; and (e) such other information as may be reasonably required by the Contract Administrator (collectively "Plans and Specifications"). The Contract Administrator shall have thirty (30) business days from receipt of the Plans and Specifications to approve or object to them in writing. In the event the Contract Administrator has objections, Vendor shall revise the Plans and Specifications to address the objections and resubmit the Plans and Specifications to the Contract Administrator and Contract Administrator shall have fifteen (15) business days from the date of re-submission to approve or object to the revised Plans and Specifications. If Contract Administrator has objections to the revised Plans and Specifications, Vendor shall further revise the Plans and Specifications to address the objections and resubmit the revised Plans and Specifications to Contract Administrator for approval, and Vendor shall continue to revise and submit revised Plans and Specifications until such time as Contract Administrator approves the Plans and Specifications. Contract Administrator will have fifteen (15) days to review and approve or object to all resubmissions of revised Plans and Specifications. Any failure by the Contract Administrator to approve the

submitted Plans and Specifications (whether initial or as revised) within the applicable period will not be deemed approval of the Plans and Specifications by County.

2932. For work that does not require permits from any governmental entity, the Contract Administrator may, in the Contract Administrator's sole discretion, accept plans and sketches, consisting of (a) working drawings; (b) technical specifications; (c) construction and installation schedule pre-coordinated with County; (d) a list of equipment and fixtures; and (e) such other information as may be reasonably required by the Contract Administrator which are not signed and sealed by an architect or an engineer (collectively Vendor's Plans")

29.4. Vendor shall install all furnishings and improvements that are necessary for operation of the Concessions Services under the Agreement, at Vendor's sole cost and expense.

29.5. All construction or installation work under the Agreement shall be in accordance with the Approved Plans. No material changes shall be made to any Approved Plans without the prior written approval of the Contract Administrator, which approval shall not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change. If any construction or installation work is performed that includes a material change to the Approved Plans without the Contract Administrator's approval, Vendor shall, at its sole cost and within a reasonable time period to be determined by the Contract Administrator, and at the direction of the Contract Administrator, remove any work that is started or completed without Approved Plans and restore the Licensed Premises to the condition in which it existed prior to such construction or installation.

29.6. Any Concession-related Improvements performed by Vendor that require construction plans and specifications, and "as-built" plans, shall not identify any conduit ducts for cable, telecommunications, electric service, and the like by any specific company name, and such plans shall identify the purpose of such conduits by generic reference only, including without limitation, "phone conduit," "telecommunications conduit," or "power conduit."

29.7. All improvements, installation, equipment, and interior design and decor for such improvements constructed or installed by Vendor, including the plans and specifications relating to same, shall conform to all Applicable Laws and regulations. The approval by County of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance with the requirements of this section shall at all times remain that of Vendor.

29.8. In addition to the Contract Administrator's approval, Vendor shall obtain all necessary governmental approvals for the Approved Plans. Any work impacting any portions of the Park, other than the Licensed Premises, shall be performed within schedules approved by the Contract Administrator to minimize any interruptions to Park's operations or maintenance. Vendor and the Contract Administrator shall cooperate in planning and scheduling construction-related activities in the Park. Vendor shall ensure that ADA compliant portable restrooms are provided

during any temporary closure of the restrooms on the Licensed Premises due to construction activities.

29.9. Vendor and any of its Subcontractors providing any of the Concession-related Improvements or temporary installments at the Park, shall meet with the Contract Administrator in periodically scheduled meetings to assess the current status of completion of the applicable improvements and installments.

29.10. All structures, permanently-affixed fixtures, and other improvements existing on the Licensed Premises as of the Effective Date of the Agreement, as well as any Concession-related Improvements (except trade fixtures and equipment not permanently affixed, and any other Personal Property of Vendor and its agents) following construction or installation and approval by County, respectively, shall be County's property. Additionally, any items including, but not limited to, fixtures or other improvements that are nailed, bolted, stapled, or otherwise affixed to the Licensed Premises and that are not readily removable shall be considered capital improvements or permanent fixtures and shall remain on the Licensed Premises following the date of expiration or earlier termination of the Agreement. If any of Vendor's Personal Property, furnishings, trade fixtures, or equipment are removed by Vendor or its agents, Vendor shall restore any damage to the Licensed Premises within a reasonable time period determined by the Contract Administrator. All utilities conduits and meters from the stub (if existing) shall be installed by Vendor or its agents, at its expense including, without limitation, cable, water, electric, and telecommunications. Such conduits and meters shall be deemed improvements and shall, upon the date of expiration or earlier termination of the Agreement, become County property.

29.11. Following final completion of the Concession-related Improvements or temporary installations by Vendor and approval thereof by County, no major modification to any portion of the Licensed Premises or Concession-related Improvements shall be permitted without prior written approval of the Contract Administrator. "Major" is defined as any alteration, improvement, or removal of any equipment requiring issuance of a building permit.

29.12. The temporary installations described in Exhibit A shall be completed within the time periods described in Schedule A, Project Phases and Deliverables. The completion periods for the installations described therein may be extended by the Contract Administrator, within the Contract Administrator's sole discretion, for good cause demonstrated by Vendor, upon written request by Vendor made at least seven (7) days prior to the end of the applicable completion period. Any extension granted by the Contract Administrator shall be set forth in writing.

29.13. If Vendor contracts with a Subcontractor to perform any of the Concession-related Improvements under the Agreement, any contract with such Subcontractor shall include the following provisions, in substantially the form provided below:

Indemnification: (name of Subcontractor) shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent

caused by the negligence, recklessness, or intentional wrongful misconduct of (name of Subcontractor) and persons employed or utilized by Subcontractor in the performance of this agreement. These indemnifications shall survive the term of this agreement.

ARTICLE 30. MISCELLANEOUS

301. Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by Vendor in connection with performing the Concessions Services under this Agreement shall be owned by County and shall be deemed works for hire by Vendor and its agents; in the event the Concessions Services are determined not to be a work for hire, Vendor hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Vendor, whether finished or unfinished, shall become the property of County and shall be delivered by Vendor to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Vendor may be withheld until all documents are received as provided in this Agreement. Vendor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

302. Public Records. To the extent Vendor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Vendor shall:

- 302.1. Keep and maintain public records required by County to perform the services under this Agreement;
- 302.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 302.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- 302.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Vendor or keep and maintain public records required by County to perform the services. If Vendor transfers the records to County, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt. If Vendor keeps and maintains the public records, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Vendor will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Vendor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Vendor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Vendor as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Vendor. Vendor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-8100, DANWEST@BROWARD.ORG, 950 NW 38th STREET, OAKLAND PARK, FLORIDA 33309.

303. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Vendor and its Subcontractors that are related to this Agreement. Vendor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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, Vendor or its Subcontractor shall make same available in written form at no cost to County.

Vendor and its Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Vendor hereby grants County the right to conduct such audit or review at Vendor's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for

County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Vendor's in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Vendor in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Vendor.

Vendor shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

304. Independent Contractor. Vendor is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Concessions Services under this Agreement, neither Vendor nor its agents shall act as officers, employees, or agents of County. Vendor shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

305. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement. In the event County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

306. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

307. Third-Party Beneficiaries. Neither Vendor nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

308. Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

For County:

Broward County Parks and Recreation Division
Attention: Director
950 NW 38th Street
Oakland Park, Florida 33309
Email address: danwest@broward.org

For Vendor:

BIKEBOX, LLC
Attn: Tito Vazquez
10230 Deercliff Drive
Tampa, Florida 33647
Email: admin@bikeboxrents.com

309. Assignment. Except for subcontracting approved in writing by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, pledged or encumbered by Vendor, including by consolidation, dissolution, or operation of law, without the prior written consent of County, which consent shall be in County's sole discretion. Any purported assignment, transfer, change in control, or encumbrance in violation of this section will be void. If Vendor violates this provision, County shall have the right to immediately terminate this Agreement, in addition to any remedies at law or in equity.

In order to determine whether to grant the consent required in this section, County shall have the right to evaluate, examine, and audit the financial records, litigation history, performance history, and references of any individual or entity to whom Vendor intends to transfer or assign any right or interest in this Agreement ("Diligence Materials"). Vendor shall provide (or cause the proposed transferee/assignee to provide) the Diligence Materials within seven (7) days after written request by County. County will review the Diligence Material and provide a response to the request within ten (10) business days after receipt thereof. County's failure to timely respond shall not operate as consent.

If Vendor requests County's consent to an assignment or transfer in accordance with this section, Vendor shall make such request in writing and pay County a fee equal to the greater of (A) Five Thousand Dollars (\$5,000.00), or (B) one percent (1%) of the gross consideration to be paid to Vendor in such transaction to compensate County for its administrative and legal costs associated with review of Vendor's request for assignment or transfer. Vendor shall provide to County a copy of the transfer/assignment or other agreement and a copy of the closing statement, and shall make payment of the fee provided in this section at the time of making its request for County's consent to the proposed assignment.

30.10. Conflicts. Neither Vendor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Vendor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Vendor's

officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Vendor is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Vendor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event Vendor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Vendor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Vendor.

30.11. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the waiving Party.

30.12. Compliance with Laws. Vendor and the Concessions Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

30.13. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

30.14. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

30.15. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated. Any notices, requests, approvals, or consents to be given or made under this Agreement must be in writing

signed by an authorized signatory of the party giving the notice, approval, or consent, or making the request.

30.16. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 29 of this Agreement, the provisions contained in Articles 1 through 29 shall prevail and be given effect.

30.17. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, VENDOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

30.18. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Vendor.

30.19. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

30.20. Payable Interest.

30.20.1. Payment of Interest. County shall not be liable to pay any interest to Vendor for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Vendor waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

30202. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).
3021. Incorporation by Reference. All Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.
3022. Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Vendor as a result of this Agreement, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. Vendor shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibit A.
3023. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
3024. Use of County Logo. Vendor shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.
3025. Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Vendor certifies that it has a drug-free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.
3026. Living Wage Requirement. If Vendor is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Vendor agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and Vendor shall fully comply with the requirements of such ordinance. Vendor shall ensure all of its Subcontractors that qualify as "covered employers" fully comply with the requirements of such ordinance.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, through the Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same, and BIKEBOX LLC, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

Broward County, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
_____ day of _____, 2020

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

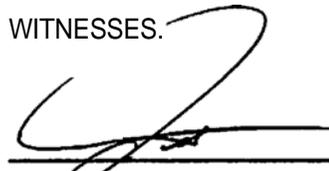
By: _____ Amanda
Tolbert (Date)
Assistant County Attorney

By: _____ Danielle
French (Date)
Deputy County Attorney

LICENSE AND CONCESSION AGREEMENT BETWEEN BROWARD COUNTY AND BIKEBOX LLC FOR BICYCLE RENTAL AND CONCESSIONAIRE SERVICES AT MARKHAM PARK AND QUIET WATERS PARK (RFI #PNC212052SF1)

Vendor

WITNESSES.



Signature

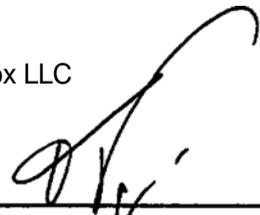
Jason van Merveldt
Print Name of Witness above



Signature

Evan Kaminski
Print Name of Witness above

BikeBox LLC

By: 

Authorized Signor

TITO VAZQUEZ
Print Name and Title

16 day of September 2020

ATTEST:

e

authorized to attest

(Corporate Seal or Notary)

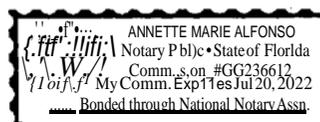


Exhibit A
Scope of Services

The Vendor will be responsible for the finance, design, construction, operation, maintenance, and management of the Concession at Markham Park and Quiet Waters Park. Vendor shall provide a safe, high quality, and customer-oriented recreational experience to park patrons, with well-maintained equipment and experienced staff.

Construction and Installation

Vendor will operate the Concession Services out of movable storage containers to be constructed and installed by Vendor at Vendor's sole cost and expense. The construction and installation phase will consist of the construction of the container off site and the placement of the containers on site in the locations described herein. Construction and installation phase, Group 1, outlines the deadline for completion of the construction, installation, placement, and operations commencement of the container located at Markham Park. Construction and installation phase, Group 2, outlines the deadline for completion of the construction, installation, placement, and operations commencement of the container located at Quiet Waters Park.

Locations

The storage container(s) at Markham Park will be located at the entrance to the existing Markham Park Mountain Bike Trails (Exhibit B-1). The Markham Park construction must be finished, and operations must commence within four (4) months following the Effective Date of the Agreement. The storage container(s) at Quiet Waters Park will be located at the entrance to the existing blank Quiet Waters Park Mountain Bike Trails (Exhibit B-2) The Quiet Waters Park construction must be finished, and operations must commence within six (6) months following the Effective Date of the Agreement.

Group 1

Markham Park
16001 W State Rd 84
Sunrise, Florida 33323

Group 2

Quiet Waters Park
401 Powerline Rd
Deerfield Beach, Florida 33442

Phases

The Concessions Services under the Agreement for each Park shall be completed in the following phases:

- A. Financing commitment
- B. Design plans completion and review
- C. Construction and installation permitting and approvals
- D. Construction and installation

- E. Operations commencement
- F. Operations review

A table of the various phases associated deliverables (including completion timeframes) is attached to the Exhibit as Schedule A, Project Phases and Deliverables.

General

Vendor shall utilize the Licensed Premises to operate the Concessions Services under the Agreement and as further described herein, by supplying services that will enhance the guest experience. The items will include:

- Bicycle and equipment rentals;
- Bicycle lessons provided by Bicycle Instructor Certification Program (BICP) certified instructors;
- Bicycle repair and general maintenance provided by Shimano TEC certified bicycle repair technicians;
- Guided rides and eco-tours,
- Group and community events;
- Rewards program;
- Retail shop – bicycles, drinks, snacks, merchandise, beer.

Programs and activities will include a high degree of flexibility for user groups' size, age, individual challenge, groups challenge, and time required. The programs and activities are expected to appeal to participants with a variety of experience, including participants with a variety of physical abilities and challenges. Vendor will be required to provide a list of fees for rentals and lessons, days and hours of operation, and retail services and items for sale.

At any given time, Vendor should have at least 50% of its rental bicycles and equipment operational to ensure continuity of service.

This Agreement is a revenue-generating contract and will be funded by Vendor. Vendor should list the source(s) of financing, how and when the funding will be available, and distinguish between available and borrowed sources in their responses. Vendor should include the dollar amounts for the cost of construction, and the installation costs for all improvements, and provide an estimated gross operating revenue projection. There are no County funds available for this project. Vendor is responsible for all costs related to construction, electrical, plumbing, and setup of the proposed facility. Vendor will be responsible for all utility usage fees, including electrical and water usage.

Liability Waivers

Vendor shall be solely responsible for requiring that, prior to any Concessions Services being rendered under this Agreement, all users (or their parent/guardian, in the case of minors) shall have executed a "Release, Indemnity, and Waiver of Liability" form on behalf of Broward County, in a form approved by the County Attorney.

Marketing

All advertising, marketing, and publicity materials for any Event under the Agreement shall be in accordance with County's Advantage Marketing Program set forth in Section 13.62, Broward County Administrative Code. The Contract Administrator reserves the right to review and approve in advance all advertisements, marketing, and publicity materials including, but not limited to, social media (e.g., Facebook, Twitter, Blogs) to be used by Vendor under the Agreement that includes the Park, Division, or County's name, logo, or otherwise refers to this Agreement, and reserves the right to require Vendor to identify the name of the Park in any advertising, marketing, or publicity materials. Vendor shall not own or otherwise have the legal right to the trademark to any name that includes the Park, Division, or County's name or logo. Any names, logos, trademarks, or copyrights developed during or pursuant to the Agreement which may in any way associate with, identify, or implicate an affiliation with County, or any agency thereunder, shall be subject to the prior written approval of the Contract Administrator, and upon termination of this Agreement, may become the exclusive ownership of County, in its discretion. Any banner or signage placed within the Parks, or adjacent to the Parks, must be professionally made and approved by the Contract Administrator prior to installation. The Designated Representative and the Contract Administrator shall cooperate on marketing efforts, including cross-marketing.

Vendor and the Division's Public Communications Manager shall cooperate on all marketing efforts. If the Contract Administrator elects to review documentation relating to advertising, signage or promotional material, such review shall be within ten (10) working days of the documentation submitted by Vendor. The reasons for any non-approval shall be set forth in writing within the ten (10) day period. In the event such written notice of non-approval is not transmitted to Vendor within such ten (10) day period, County shall be deemed to have given its approval. However, in all events, Vendor may replace any advertising or signage previously approved by the Contract Administrator without the prior approval of the Contract Administrator. Further, it is understood by Vendor that should any of the above items be disapproved, Vendor may offer alternative solutions and County's review of same shall follow the above process.

Nothing herein is intended to authorize Vendor to place any advertising or advertising displays within or upon the Park, or upon any Park facilities.

Lightning Prediction System

County has installed lightning prediction systems in the Parks. Vendor shall cease any outside operations when the system sounds until the “all clear” signal sounds. County, through the firm that provides the lightning prediction equipment, will provide annual maintenance of same for proper operation. In the event the lightning prediction equipment is not working, and/or when weather conditions indicate a threat of lightning in the area, Vendor shall follow park management direction when so given regarding temporary ceasing of outside operations, and in any event Vendor shall use its best judgement and common sense in ceasing operations when threatening weather approaches.

Building Codes

Vendor is required to comply with all permitting and licensing requirement for all agencies having jurisdiction over the type and location of improvements outlined in this Agreement.

Except where earlier editions are specifically indicated, latest editions with current revisions and amendments of the following codes and standards are considered minimum requirements for materials, quality of work and safety where not covered elsewhere in these specifications.

Codes and Standards:

1. The design and construction shall meet the following codes. Vendor should provide copies of or access to the following regulations (unless otherwise indicated) at the project site, available for reference by parties who have a reasonable need for such reference:
 - a. Florida Building Code (FBC) latest edition and revisions including Broward County amendments and high velocity wind zone requirements
 - b. Florida Fire Prevention Code (FFPC), latest edition and revisions including Broward County amendments
 - c. Chapter 68A-27 of the Florida Administrative Code (FAC) regarding Endangered or Threatened Species, as amended (for locations where this may apply)
 - d. Florida Endangered Species Act, Chapter 379.2291, as amended
 - e. National Electric Code (NEC), latest edition
 - f. National Fire Protection Association (NFPA), latest standards
 - g. Americans with Disabilities Act (ADA), latest edition
 - h. 29 CFR / OSHA Standard 1910 and 1926 safety standards
 - i. Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction, January 2019 edition, excluding Division 1 (hereby referred to as FDOT Standards); County has revised some of the units of measure
 - j. Florida Department of Transportation (FDOT) Design Standards for Design,

Construction, Maintenance, and Utility Operations on the State Highway System, 2017-2018 edition (hereby referred to as FDOT Design Standards); County has revised some of the units of measure.
<https://www.fdot.gov/design/standardplans/DS.shtm>

2. All work performed within the County jurisdiction right-of-way shall conform to the latest edition of the Broward County Minimum Standards applicable to public rights-of-way; http://library.municode.com/HTML/13528/level3/CH25OPPOPUWO_EXHIBIT_25.AMISTAPPURI-WUNBRCOJU_TIIN.html#TOPTITLE
3. All water, sewer and lift station work shall conform to the latest Broward County Water and Wastewater (WWS) Minimum Design & Construction Standards; <http://www.broward.org/WaterServices/Engineering/Pages/MinimumDesignandConstructionStandards.aspx>
4. All work for this project shall conform to the above codes and to the requirements of any regulatory authority having jurisdiction such as the local municipality, water district, health department, etc.

Hours of Operation

The Concessions Services shall be operated from Friday through Sunday, including holidays, from 8:00 a.m. to 5:00 p.m. These operating hours may be modified with written approval from the Contract Administrator.

Change of Operations Hours Due to Public Health Risk

In the event that County, in the interest of public safety and welfare, is required by any governing authority to undertake a mandatory closure of one or both of the Parks or cancel activities, in whole or in part, or when, in its discretion, County determines it is necessary to close one or both of the Parks or cancel activities, in whole or in part, based upon occurrence of acts of nature or other circumstances which may pose a public safety hazard, County may adjust the Parks and/or the Vendor's hours of operation, in whole or in part, accordingly. In either event, Vendor shall be entitled to an abatement or reduction in the fees due to County for the services provided in the Agreement, to be prorated and credited on an hour-by-hour basis to reflect the reduced amount of hours of operation by the concession services.

County shall not be held responsible for any lost revenues or business activities by or for the services provided in the Agreement resulting from the adjusted hours of operations at the Parks or Vendor's hours of operation. If County, in its discretion, as opposed to a mandatory closure required by any governing authority, elects to close either of both of the Parks or requires Vendor to reduce its hours of operation in the interest of public safety and welfare, the next fee payment as set forth in the Agreement, Minimum Annual Guarantee Fee, shall be prorated and credited on an hour-by-hour basis to reflect the reduced amount of hours of operation by the concession services.

Schedule A to Exhibit A
Project Phases and Deliverables

Vendor shall comply with the phases and deliverables set forth in this Exhibit for concession-related construction and services at each Park unless information is specifically for either Park.

Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Phase 1			
Financing Commitment	Letter of Commitment from Vendor; Letter(s) of intent from financier(s), if needed	Due to Contract Administrator within 30 calendar days of Effective Date of the Agreement	Subject to review and approval by the Contract Administrator
Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Phase 2			
Design plans completion and review	Preliminary plans (may be informal)	Due to Contract Administrator within 60 calendar days following the Effective date of the Agreement	Subject to review and approval by the Contract Administrator
Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Phase 3			
Construction and installation permitting and approvals	All requisite government approvals	Due to Contract Administrator within 90 calendar days following the Effective Date of the Agreement	Formal approvals as needed in writing from respective government agencies
Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Phase 4 – Final Acceptance			
Construction or installation completion – Group 1	Work completed, except for any minor punch lists	Markham Park: To be completed within four (4) months following the Effective Date of the Agreement	Certificate of Occupancy or Certificate of Substantial Completion or Contract Administrator Notice to Proceed, and opening Concession operations for business

Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Construction and installation completion – Group 2	Work completed, except for any minor punch lists	Quiet Waters Park: To be completed within six (6) months following the Effective Date of the Agreement	Certificate of Occupancy or Certificate of Substantial Completion or Contract Administrator Notice to Proceed, and opening Concession operations for business
Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Phase 5			
Operations Commencement – Group 1	Concessions open for business to the public	Markham Park: Operation to commence within four (4) months following the Effective Date of the Agreement	Business license, performance deposit, and insurance in place; Concessions opened and operational
Operations Commencement – Group 2	Concessions open for business to the public	Quiet Waters Park: Operation to commence within six (6) months following the Effective Date of the Agreement	Business license, performance deposit, and insurance in place; Concessions opened and operational
Deliverable	Format/Stage	Duration/Deadline	Acceptance Criteria
Phase 6			
Operations Review	Ongoing Concessions management and operations by Vendor, ongoing Agreement administration by Contract Administrator	Duration of the Agreement	Agreement performance and meeting benchmarks

EXHIBIT B-1
LOCATOR MAP (MARKHAM PARK)

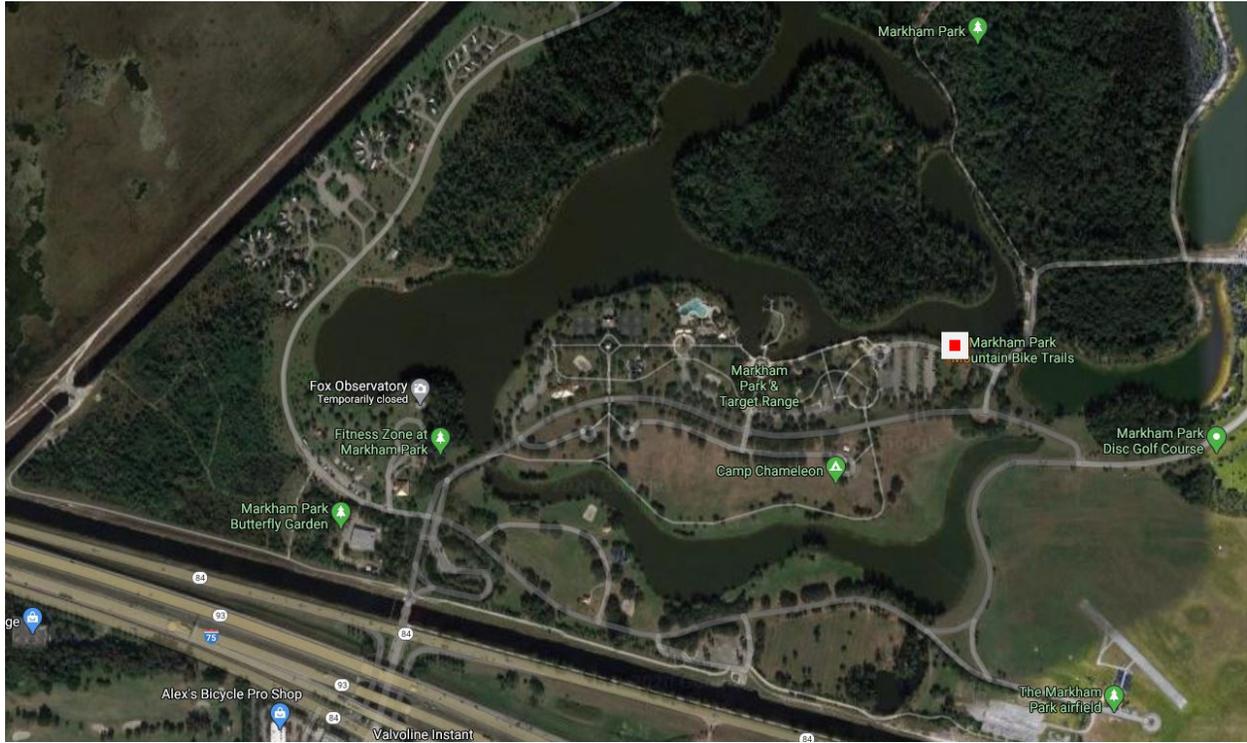


EXHIBIT B-2
LOCATOR MAP (QUIET WATERS PARK)

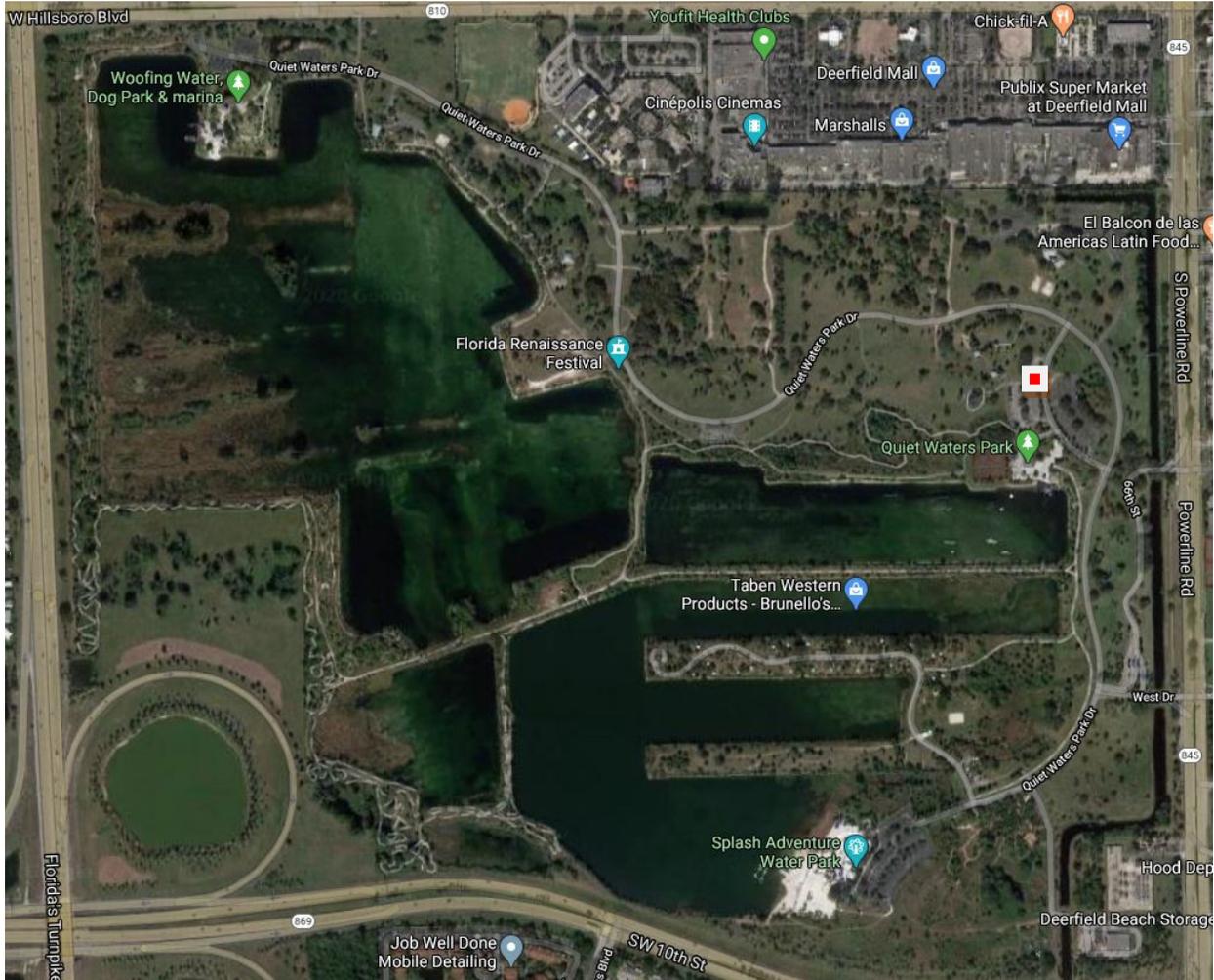


EXHIBIT C
AFFIDAVIT (CRIMINAL BACKGROUND SCREENING)

AGREEMENT TITLE: _____

CONTRACTOR'S NAME: _____

DATE: _____

By signing this form, I am swearing or affirming that all individuals providing Concessions Services to County under the Agreement on the Licensed Premises at the Park have been background screened in accordance with the background screening requirements set forth in the Agreement and been deemed eligible by Vendor to provide such services as described in the Agreement. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to the Contract Administrator per the requirements of the Agreement.

All individuals providing Concessions Services to County under the Agreement on the Licensed Premises at the Park are listed below under categories 1 and 2 below. Each individual shall be identified by name, birth date, and date deemed eligible, and shall fall into one (1) of the following categories:

1. Initially screened and deemed eligible [Insert list of individuals and include the Park(s) where such individuals will be providing Concessions Services] *[Applicable only to first monthly Affidavit. Thereafter, only categories 2 and 3 must be completed.]*

2. New individuals screened and deemed eligible.

[Insert list of individuals and include the Park(s) where such individuals will be providing Concessions Services]

3. Individuals no longer providing Concessions Services for Vendor under the Agreement on the Licensed Premises at the Park.

[Insert list of individuals]

Signature of Affiant

Sworn to and subscribed before me this ____ day of _____, 20_.

My commission expires:

Notary Public, State of Florida

My signature, as Notary Public, verifies the Affiant's identification has been validated by

_____.

EXHIBIT D

Minimum Insurance Coverages

Project: Bike Rental and Concessionaire Services
Agency: Parks and Recreation Division

TYPE OF INSURANCE	ADDL INSD	SUBR WYD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$500,000	
<input type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Longshoremens & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$500,000	
<input checked="" type="checkbox"/> LIQUOR LIABILITY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Each Accident	\$1,000,000	
<input type="checkbox"/> Pollution/ Environmental Caro Liability	N/A	<input checked="" type="checkbox"/>	If claims-made form:		
			Extended Reporting Period of:		
			*Maximum Deductible:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):		Completed Value
			*Maximum Deductible:		
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) higher than the amount permitted in this Agreement must be declared to and approved by County and may require proof of financial ability to meet losses. Contractor is responsible for all coverage deductibles unless otherwise specified in the agreement.					

CERTIFICATE HOLDER:

Broward County
115 South Andrews Avenue
Fort Lauderdale, Florida 33301


 cpounall@broward.org
 cn=counall@broward.org
 2020.01.03 15:09:49 -05'00'
 Risk Management Division

EXHIBIT E
Pricing of Items for Sale or Rent

The following pricing for items for sale or rent by Vendor under the Agreement are approved by County. The categories, individual items, and prices are subject to change pursuant to a written request by Vendor and written approval of the Contract Administrator.

Pricing of Items for Sale or Rent	
Bicycle rentals	
1 hour	\$25
2 hours	\$40
Full Day	\$70
Lesson rates (1 hour)	
Private	\$55
Semi-private (2 person)	\$65
Group (per/person)	\$25
Guided Rides/Tours	
Bicycle pkg (per/person)	\$30
Without bike	\$10
Bicycle Maintenance	
Bicycle Adjustments & Lube	\$15
Bicycle wash & lube	\$15