

**AGREEMENT BETWEEN BROWARD COUNTY AND HZIP LLC FOR HOLLYWOOD NORTH BEACH  
PARK SNACK BAR OPERATOR (RFP # PNC2124371P1)**

This agreement (“Agreement”) is between Broward County, a political subdivision of the State of Florida (“County”), and HZIP LLC, a Florida limited liability company (“Concessionaire”) (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

A. County operates Hollywood North Beach Park for public recreation and enjoyment.

B. County issued a Request for Proposal (RFP #PNC212437P1) seeking proposals from qualified vendors for a snack bar concession at Hollywood North Beach Park, and Concessionaire’s proposal was selected by the evaluation committee.

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. **Alcohol Revenues** means all monies paid or payable to, or considerations of determinable value received by, Concessionaire and any of its Subcontractors from any source from Concessionaire’s sale of alcoholic beverages at the Park, 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 refunds, credit card charge backs, and any taxes imposed by law paid by a customer and directly payable by Concessionaire to a taxing authority or to County are not included as Alcohol Revenues. Insurance proceeds shall not be included in Alcohol Revenues.

1.2. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.3. **Board** means the Board of County Commissioners of Broward County, Florida.

1.4. **Code** means the Broward County Code of Ordinances.

1.5. **Concession-Related Improvements** means the improvements or installation projects to be completed by Concessionaire, as specified in Exhibit F (Concession-Related Improvements Plan).

- 1.6. **Concession Services** means the provision of the goods and services defined in Exhibit A, for sale or rent, by Concessionaire to the public at the Licensed Premises.
- 1.7. **Contract Administrator** means the Director of Broward County Parks and Recreation, the Assistant Director of Broward County Parks and Recreation, or such other person designated by the Director of Broward County Parks and Recreation in writing.
- 1.8. **Contract Year** means the annual period commencing immediately following the Startup Period (defined herein) and ending twelve (12) months later (Contract Year 1), and each succeeding twelve (12) month period thereafter during the Term (Contract Year 2, Contract Year 3, etc.).
- 1.9. **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.
- 1.10. **Division** means the Broward County Parks and Recreation Division.
- 1.11. **Gross Receipts** means all monies or other consideration paid or payable to, or received by, Concessionaire and any of its Subcontractors from any source from Concession Services, including the sale of food, beverages, and merchandise, regardless of when or where the order therefor 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. Alcoholic beverage sales are excluded from the definition of Gross Receipts. Sales refunds, returned merchandise, credit card charge backs, and any taxes imposed by law paid by a customer and directly payable by Concessionaire to a taxing authority or to County are not included as Gross Receipts. Insurance proceeds shall not be included in Gross Receipts.
- 1.12. **Licensed Premises** means the specific areas designated by County within the Park, as depicted on Exhibit B (Locator Map), where Concessionaire will operate the Concession Services.
- 1.13. **Park** means the property located at 3601 North Ocean Drive, Hollywood, Florida 33019, commonly referred to as Hollywood North Beach Park.
- 1.14. **Park Manager** means the lead manager at the Park, whose position is titled Park Manager, but does not mean the Park's superintendent or any other administrative personnel with authority over the Park.
- 1.15. **Park Purpose** means a use of the Licensed Premises and the Park in the pursuit of outdoor leisure, athletic, or recreational activities and facilities ancillary thereto, as more fully defined in Section 8.13 of the Broward County Charter.
- 1.16. **Percentage Fees** means the portion of the Gross Receipts and Alcohol Revenues from the Concession Services as further defined in Section 5.2.

1.17. **Personal Property** means Concessionaire’s equipment, inventories, materials, supplies, and other personal property located within the Licensed Premises that are not Concession-Related Improvements.

1.18. **Purchasing Director** means County’s Director of Purchasing.

1.19. **Services** means all work required of Concessionaire under this Agreement, including without limitation the performance of the Concession Services, the Concession-Related Improvements, and all deliverables, consulting, training, project management, and other activities specified in Exhibit A (Scope of Services).

1.20. **Small Business Enterprise** or **SBE** means an entity certified as meeting the applicable requirements of Section 1-81 of the Code.

1.21. **Startup Period** means the period beginning on the Effective Date and ending on the earlier of: (i) the first day the Concession Services (or any portion thereof) are open to the public; or (ii) 90 calendar days after the Effective Date.

1.22. **Subcontractor** means an entity or individual providing Services to County through Concessionaire. The term “Subcontractor” includes all subconsultants.

## ARTICLE 2. EXHIBITS

<b>Exhibit A</b>	<b>Scope of Services</b>
<b>Exhibit B</b>	<b>Locator Map</b>
<b>Exhibit C</b>	<b>Minimum Insurance Coverages</b>
<b>Exhibit D</b>	<b>Declaration of Criminal Background Screening</b>
<b>Exhibit E</b>	<b>Pricing of Concession Services</b>
<b>Exhibit F</b>	<b>Concession-Related Improvements Plan</b>

## ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1. **Term.** This Agreement begins on the date it is fully executed by the Parties (“Effective Date”) and continues through the last day of Contract Year 5 (“Initial Term”), unless otherwise terminated or extended as provided in this Agreement. The Initial Term, Extension Term(s), and any Additional Extension, as those terms are defined in this article are collectively referred to as the “Term.”

3.2. **Extensions.** County may extend this Agreement for up to five (5) additional one (1) year terms (each an “Extension Term”) on the same rates, terms, and conditions stated in this Agreement by sending written notice to Concessionaire at least thirty (30) days prior to the expiration of the then-current term (“Extension Notice”). If County and Concessionaire have agreed to Concession-Related Improvements to be made during an Extension Term prior to the Extension Notice being made, the Extension Notice shall include a Concession-Related Improvements schedule for the Extension Term. The Purchasing Director is authorized to exercise

any Extension Term(s), and notice of same to Concessionaire by electronic mail alone shall be effective and sufficient.

3.3. Additional Extension. If the Purchasing Director determines, in their sole discretion, that unusual or exceptional circumstances render the exercise of an Extension Term not practicable, or that no Extension Term remains available and expiration of this Agreement would result in a gap in necessary Services, then the Purchasing Director may extend this Agreement for one or more additional periods not to exceed one (1) year in the aggregate on the same rates, terms, and conditions as existed at the end of the then-current term (each such extension is an "Additional Extension"). The Purchasing Director may exercise the Additional Extension by written notice to Concessionaire at least thirty (30) days prior to the end of the then-current term, stating the duration of the Additional Extension. The Additional Extension must be within the authority of the Purchasing Director or otherwise authorized by the Board.

3.4. Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

3.5. Time of the Essence. Time is of the essence for Concessionaire's performance of all Services and all other duties, obligations, and responsibilities required of Concessionaire by this Agreement.

#### **ARTICLE 4. USE OF THE LICENSED PREMISES; SCOPE OF SERVICES**

4.1. Use of Licensed Premises. Subject to the terms of this Agreement, Concessionaire shall be the exclusive vendor authorized to provide the Concession Services within the Licensed Premises. Concessionaire's exclusive authorization applies only to the provision of the Concession Services, and County retains the right to use the Licensed Premises for other activities.

4.1.1. Concessionaire and its Subcontractors are prohibited from using any other portions of the Park that are not part of the Licensed Premises without the prior written consent of the Contract Administrator. Any modifications to the Concession Services or Concession-Related Improvements require execution of an amendment to this Agreement in accordance with Section 22.19, unless otherwise provided herein.

4.1.2. County hereby grants Concessionaire, and its employees, volunteers, Subcontractors, patrons, and invitees, the nonexclusive privilege of ingress and egress to the Licensed Premises to exercise the rights and license granted in this Agreement or to access the Concession Services.

4.1.3. The Services, including Concessionaire's use of office space on the Licensed Premises, must at all times serve a Park Purpose.

4.1.4. The Licensed Premises are being made available to Concessionaire in an “as is” condition. County makes no representations or warranties regarding the safety or suitability of the Licensed Premises for the performance of Services as provided in this Agreement. Concessionaire acknowledges it has inspected the Licensed Premises and determined that the locations are safe and suitable for Concessionaire’s performance of the Services. Concessionaire shall notify the Contract Administrator in writing of any issues or safety concerns that it observes on the Licensed Premises and shall take all action necessary to remedy or resolve any such issues or safety concerns within a timely manner.

4.1.5. Concessionaire shall inform the Contract Administrator in writing within twenty-four (24) hours of any and all injuries to any individual(s) or damage to any real or Personal Property caused by Concessionaire or its officers, employees, agents, Subcontractors, vendors, guests, invitees, or patrons that occurs within the Licensed Premises or the Park, and Concessionaire shall be fully responsible for all such injuries or damages, subject to the provisions stated in Article 15.

4.1.6. Concessionaire, its employees, volunteers, agents, and Subcontractors shall not conduct any activity on the Licensed Premises or in the Park that is not expressly authorized under this Agreement, unless approved in writing in advance by the Contract Administrator or such other authority for County, as appropriate. Concessionaire shall take reasonable steps to prevent patrons and invitees within the Licensed Premises from engaging in any conduct prohibited under this Agreement.

4.2. Scope of Services. Concessionaire shall perform all Services required under this Agreement including, without limitation, the work specified in Exhibit A (the “Scope of Services”). The Scope of Services is a description of Concessionaire’s obligations and responsibilities 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 Concessionaire impractical, illogical, or unconscionable.

4.3. Prices Charged by Concessionaire. All items and services approved by County to be offered for sale or rent to the public by Concessionaire as part of the Concession Services, as well as the initial prices for same, are included in Exhibit E (Pricing of Concession Services). Concessionaire shall not change the prices or items listed in Exhibit E without the prior written approval from the Contract Administrator, which shall not be unreasonably withheld. All changes to Exhibit E so approved by County will be deemed to automatically update Exhibit E and will not require a formal amendment to this Agreement.

## **ARTICLE 5. ANNUAL MINIMUM GUARANTEE; FEES**

5.1. Annual Minimum Guarantee. Concessionaire shall pay to County an annual guaranteed sum (“Annual Guarantee”) in accordance with this section. The Annual Guarantee shall be paid in twelve (12) monthly installments (each an “Annual Guarantee Installment”), each equal to one-

twelfth (1/12) of the Annual Guarantee applicable for the Contract Year then in effect, in accordance with Section 5.3.

<b>Contract Year</b>	<b>Annual Guarantee</b>
Contract Year 1	\$24,000.00
Contract Year 2	\$26,000.00
Contract Year 3	\$26,000.00
Contract Year 4	\$28,000.00
Contract Year 5	\$30,000.00
<b>TOTAL:</b>	<b>\$134,000.00</b>

5.2. Percentage Fees. A percentage fee of Gross Receipts and a percentage fee of Alcohol Revenues (together, the “Percentage Fees”) shall be calculated as follows:

5.2.1. Ten percent (10%) of Gross Receipts; plus

5.2.2. Twenty-five percent (25%) of Alcohol Revenues.

5.3. Monthly Payments.

5.3.1. Annual Guarantee Installment. Concessionaire shall pay to County the Annual Guarantee Installment payment no later than the first calendar day of each month during each Contract Year. If the beginning of Contract Year 1 falls on a day other than the first day of the month, the first Annual Guarantee Installment payment shall be prorated accordingly and paid to County on the first calendar day of the following month along with the second Annual Guarantee Installment.

5.3.2. Percentage Fees Differential. In addition to the Annual Guarantee Installment, for every calendar month in which the Percentage Fees exceed that month’s Annual Guarantee Installment, Concessionaire shall also pay County the difference between the Annual Guarantee Installment and the Percentage Fees no later than the fifteenth (15<sup>th</sup>) calendar day of the following calendar month.

5.3.3. Additional Fees. Any additional fees due to County as provided in this Agreement (inclusive of the Scope of Services) must be paid to County no later than the fifteenth (15<sup>th</sup>) calendar day of the calendar month after the period for which the fee is applicable, unless otherwise stated herein.

5.3.4. Method of Payment. Each payment shall be due and payable by Concessionaire, without billing, and without setoff or deduction, except as may be expressly permitted in this Agreement, commencing on the Effective Date. All payments shall be made to County at the address listed in Section 22.9, with attention to the “Accounting Department,” unless otherwise directed by the Contract Administrator in writing.

5.4. Late Fees; Payment Dates Falling on a Weekend. If any Annual Guarantee Installment or Percentage Fees payment is not received by County within five (5) days after the date such payment was due, then beginning on the sixth (6<sup>th</sup>) day, a late fee in the amount of One Hundred Dollars (\$100.00) per day, up to a maximum amount equal to five percent (5%) of the late payment amount, shall accrue until the applicable payment is received by County. Concessionaire's payment of any late fees that may be due does not cure Concessionaire's breach of the Agreement for failure to timely make payment and does not prohibit County from exercising its right to terminate as set forth in Article 13 or seek any other remedies at law or in equity. Should a payment due date fall on a weekend day or national, state, or County holiday, the applicable payment is due and payable on the immediately preceding County business day.

5.5. Monthly Reports. On or before the fifteenth (15<sup>th</sup>) day of each calendar month of each Contract Year, Concessionaire shall furnish to the Contract Administrator a report of Gross Receipts and Alcohol Revenues for the preceding calendar month. The reports shall be on a form approved in writing in advance by the Contract Administrator. Each report shall include Concessionaire's certification of the accuracy of the reported Gross Receipts and Alcohol Revenues, signed by an authorized representative of Concessionaire. The requirement to furnish a final monthly report to County for the last calendar month of the last Contract Year shall survive expiration or earlier termination of this Agreement.

5.6. CPI-U Increase. For each Contract Year during the Initial Term, the Annual Guarantee will be paid at the rates set forth in Section 5.1. For each Contract Year after the Initial Term, the Annual Guarantee will increase at the same rate as the last annual percentage increase in the Consumer Price Index for All Urban Consumers ("CPI-U") for Miami-Fort Lauderdale-West Palm Beach, subject to the provisions of this section. This CPI-U increase will start with Contract Year 6, based on the Contract Year 5 rate in Section 5.1 and the applicable CPI-U, and shall continue for each remaining Contract Year during the Term. The CPI-U increase is calculated as follows: the difference of the CPI-U current period less the CPI-U previous period, divided by the CPI-U previous period, times 100. The CPI-U current period means the most recently published monthly index prior to the start of the applicable new Contract Year. The CPI-U previous period means the same month of the prior year. The CPI-U Annual Guarantee increase for any Contract Year will not exceed a maximum increase of three percent (3%). If for any Contract Year the CPI-U decreases from the prior year, the Annual Guarantee will remain the same as the prior Contract Year. Any adjustment to the Annual Guarantee shall be effective on the first day of the new Contract Year, without prior notice required to Concessionaire.

5.7. Permits and Additional Fees. Concessionaire is required to procure and obtain, at its sole cost, all permits, licenses, and approvals required by Applicable Law for the Services. Concessionaire must, prior to the sale of food, beverages, or merchandise within the Licensed Premises, furnish to County any federal, state, or city permits, licenses, approvals, or business tax receipts required under Applicable Law. Concessionaire is not required to obtain a park permit from County for the Services, inclusive of any special events described in the Scope of Services. Should Concessionaire wish to hold an event at the Park not included in the Scope of Services, it may do so only upon issuance by County of a park permit for that event; County may issue the



park permit in its sole discretion. Concessionaire is solely responsible for any permit application or additional fees incidental to the use of the Park and/or Licensed Premises for any such event, including, but not limited to, fees for use and lighting of the Park and any applicable gate admission fees, which fees shall be payable by Concessionaire to County per the then-applicable standard County requirements including as may be provided in the park permit.

5.8. Subcontractors. Concessionaire shall be solely responsible for payment of all Subcontractor fees and payments, and County shall have no liability in connection therewith.

## **ARTICLE 6. PAYMENT OF OBLIGATIONS AND TAXES**

6.1. Concessionaire shall timely pay when due all taxes and other costs lawfully assessed against its business and legal interest in the operation of the Services. Concessionaire 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. Concessionaire 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. The sales and use tax payments shall be remitted to County by Concessionaire in addition to, and not incorporated into, the Annual Guarantee or any other payments made to County. Concessionaire shall remit the sales and use tax payments to County contemporaneously with the monthly payments as required in Section 5.3. Sales and use tax shall be payable to County, and County will then remit 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, Concessionaire shall promptly make such payment to County and County will remit same to the taxing agency. If Concessionaire fails to remit to County any sales and use tax, penalty, or interest when due, County has the right, but not the obligation, to timely pay the amounts due to the appropriate tax agencies, in which event Concessionaire must reimburse County such amounts in full, together with interest accruing thereon at the maximum interest rate allowed by Applicable Law.

6.3. Performance and Payment Bonds. Not less than fifteen (15) calendar days before commencement of each of the Concession-Related Improvements, Concessionaire, or its licensed Subcontractor hired to perform the applicable Concession-Related Improvements, shall furnish performance and payment bonds as financial security, in the form approved by the Contract Administrator, and Broward County shall be named as a dual obligee on the performance and payment bonds. Acceptable forms may include, but are not limited to, AIA forms or other industry standard forms.

6.3.1. Each bond shall be in the amount of one hundred percent (100%) of the cost of the Concession-Related Improvements being performed, guaranteeing the completion and performance of such improvements, as well as full payment of all suppliers, laborers, or Subcontractors performing the Concession-Related Improvements.



6.3.2. Each bond required by Section 6.3.1 shall continue in effect for one (1) year after a certificate of occupancy is obtained or completion of the applicable Concession-Related Improvements; if the bond expires upon completion of the Concession-Related Improvements, an additional bond shall be provided guaranteeing that Concessionaire, or its licensed Subcontractor hired to perform such Concession-Related Improvements, as applicable, will correct any defective or faulty work or materials that appear within one (1) year after final completion and County's acceptance of the applicable Concession-Related Improvements.

6.3.3. The payment and performance bonds must be from a surety company that: (i) has at least twice the minimum surplus and capital required by the Florida Insurance Code at the time of construction of the Concession-Related Improvements; (ii) is otherwise in compliance with the provisions of the Florida Insurance Code; and (iii) holds a currently valid certificate of authority issued by the United States Department of the Treasury under Sections 9304 through 9308 of Title 31 of the United States Code. Concessionaire shall provide an affidavit certifying compliance with these requirements in a form approved by the Contract Administrator.

6.4. Alternate Form of Security. In lieu of providing performance and payment bonds, Concessionaire may furnish County with an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or unconditional letter of credit in the amount equal to one hundred percent (100%) of the cost of the applicable Concession-Related Improvements. Such alternate form of security shall be subject to the approval of the Contract Administrator and the applicable conditions set forth in Section 6.3, and shall be held by County for up to one (1) year after final completion and County's acceptance of the applicable Concession-Related Improvements.

## **ARTICLE 7. REVENUE HANDLING AND REPORTING; RECORDS**

7.1. Revenue Handling and Reporting. Concessionaire shall be responsible for handling the revenue received from the Services and accounting for such revenue in accordance with the policies and procedures prescribed by the Contract Administrator. The Contract Administrator shall provide Concessionaire with access to a revenue reporting form or program to utilize to ensure accountability of the funds. The Contract Administrator may also provide forms or instructions relating to accounting, recordation, and receipts.

7.2. Records. Throughout the Term, Concessionaire shall maintain all books of account, reports, and records customarily used in Concessionaire's type of operation, and all such records that are necessary to document Concessionaire's activities pursuant to this Agreement, including all monies collected as part of the Concession Services including, but not limited to, Gross Receipts and Alcohol 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 Concessionaire under this Agreement shall be subject to the approval of the Contract Administrator prior to commencement of and during operations of the Services. The Contract Administrator may reasonably modify the reports and records requirements under this

Agreement in their sole discretion. The recordkeeping period and requirements under this Agreement will comply with the then-current Internal Revenue Service guidelines.

7.3. Concessionaire shall, at its own expense, provide County with an annual examination report of Concession Services revenues and Percentage Fees. This report shall be prepared accompanied by an accountant's report containing an opinion of an independent Certified Public Accountant ("CPA"), licensed by the State of Florida, in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA). The report shall be submitted to the Contract Administrator within ninety (90) days after the end of each Contract Year, and shall include the following:

7.3.1. Schedule of all revenues by category by month;

7.3.2. Schedule of all revenues by category upon which the monthly payments to County are computed and a list of the payments to County for the period; and

7.3.3. A calculation to determine that the Percentage Fees have been paid in accordance with this Agreement.

A final report shall be provided by Concessionaire to County within ninety (90) days after the termination or expiration of this Agreement, and shall include the same information as required for the annual reports for the time period between the period covered by the last annual report and the date of termination or expiration of this Agreement. The requirement to file a final report with County shall survive expiration or earlier termination of this Agreement.

7.4. Concessionaire shall allow the Contract Administrator or the Office of the County Auditor to inspect all or any part of the processes and procedures utilized by Concessionaire to prepare the monthly reports required under Section 5.5. Any inspections as provided under this section shall be reasonable and are at the sole discretion of the Contract Administrator. Records shall always be available Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. at a location within Broward County.

7.5. Concessionaire shall furnish all reports required under the terms of this Agreement to the Contract Administrator at the address provided in the "Notices" section of this Agreement.

## **ARTICLE 8. CRIMINAL BACKGROUND SCREENING**

8.1. Concessionaire shall perform criminal background screening on its officers, employees, agents, Subcontractors, and volunteers who will be performing Concession Services on the Licensed Premises. Notwithstanding the above, Concessionaire shall not be required to comply with the provisions for criminal background screening under this article for independent contractors or Subcontractors whose activities are limited to coming into the Park to make deliveries of goods or services for, or relating to, the Concession Services.

8.2. Concessionaire shall not employ nor permit any person to provide any Concession Services in the Park who: (i) is listed as a sexual predator or sexual offender on the Florida Department of Law Enforcement Sexual Offenders and Predators Search Website or the United States Department of Justice Dru Sjodin National Sex Offender Public Website; or (ii) who has been convicted of or is pending adjudication of any of the following charges: sexual misconduct; adult abuse, neglect, or exploitation of aged persons or disabled adults or failure to report such abuse; criminal offenses that constitute domestic violence, whether committed in Florida or another jurisdiction; murder; manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child; vehicular homicide; killing an unborn child by injury to the mother; assault, battery, and culpable negligence, if the offense was a felony; assault of a minor; battery of a minor; kidnapping; false imprisonment; luring or enticing a child; taking, enticing, or removing a child beyond state limits with criminal intent pending a custody proceeding; carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to a designated person; exhibiting firearms or weapons within 1,000 feet of a school; possessing an electric weapon or device, destructive device, or other weapon on school property; sexual battery; prohibited acts of persons in familial or custodial authority; unlawful sexual activity with a minor; prostitution; lewd and lascivious behavior; lewdness or indecent exposure; arson; burglary; felony voyeurism; felony theft or robbery; felony fraudulent sale of controlled substances; abuse, aggravated abuse, or neglect of an elderly person or disabled adult; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult; felony exploitation of disabled adults or elderly persons; incest; child abuse, aggravated child abuse, or neglect of a child; contributing to the delinquency or dependency of a child; negligent treatment of children; sexual performance by a child; resisting arrest with violence; depriving a law enforcement, correctional, or correctional probation officer's means of protection or communication; aiding in an escape; aiding in the escape of juvenile inmates in a correctional institution; any offense related to obscene literature; encouraging or recruiting another to join a criminal gang; felony sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver, of a controlled substance to a minor; inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm; harboring, concealing, or aiding an escaped prisoner; introduction of contraband into a correctional facility; sexual misconduct in juvenile justice programs; contraband introduced into detention facilities; a crime under Section 944.35, Florida Statutes; or any attempt, solicitation, or conspiracy to commit any of the crimes included in this section. Each of the foregoing crimes are referred to as a "disqualifying offense."

8.3. Concessionaire shall maintain copies of the results of all criminal background screenings required by this article throughout the Term and promptly forward copies of same to County upon request from the Contract Administrator.

8.4. Concessionaire shall be required to furnish to the Contract Administrator, on a monthly basis and simultaneously with the monthly reports on Gross Receipts and Alcohol Revenues described in Section 5.5, a Declaration of Criminal Background Screening, in the form attached as Exhibit D, listing the required information. Concessionaire's first monthly declaration shall include all individuals performing Concession Services and the screening results. Thereafter,

except for the annual rescreening referenced below, the monthly declaration need only identify persons newly providing Concession Services or no longer providing Concession Services since the previous monthly declaration. The Contract Administrator may, in their discretion, permit Concessionaire to furnish the monthly declaration in an electronic format. Concessionaire's officers, employees, agents, Subcontractors, and volunteers subject to the criminal background screening under this article shall be rescreened annually based on the date of each person's initial screening and the results of same included in the applicable monthly declaration.

8.5. If Concessionaire obtains, or is provided, supplemental criminal background information, including police reports and arrest information, showing that a person previously deemed eligible by Concessionaire to provide Concession Services has been arrested on or convicted of a disqualifying offense, Concessionaire shall take immediate action to review the matter; however, during such review time and until a determination of eligibility is made by Concessionaire based on the requirements of this article, Concessionaire shall immediately cease allowing the person to perform Concession Services. Additionally, Concessionaire shall require any person background screened pursuant to this article to notify Concessionaire within twenty-four (24) hours after any arrest related to a disqualifying offense that has occurred after the person was deemed eligible to work on the Licensed Premises.

8.6. Concessionaire shall, by written contract, require its Subcontractors who perform Concession Services to be subject to the requirements and obligations of this article.

8.7. The County Administrator may terminate this Agreement immediately for cause, and without an opportunity to cure, by written notice provided to Concessionaire, for any violation related to Concessionaire's failure to comply with this article. Concessionaire will not be subject to immediate termination if the County Administrator determines, in their sole discretion, that a violation of this article was outside the reasonable control of Concessionaire, and Concessionaire has demonstrated to the County Administrator subsequent compliance with the requirements of this article.

#### **ARTICLE 9. HOURS OF OPERATION**

9.1. Standard Hours of Operation. Concessionaire shall operate the Concession Services during the hours of operation set forth in the Scope of Services, weather permitting, or such other hours of operation that are requested in writing by Concessionaire and approved in writing in advance by the Contract Administrator.

9.2. Change of Hours of Operations Due to Public Health, Safety, or Welfare Risk. If the Contract Administrator determines, in their sole discretion, that it is necessary to protect the health, safety, or welfare of the public, or if County is required by any governing authority, to undertake a mandatory closure of the Park, or any portion thereof, or to cancel activities based upon the occurrence of acts of nature or other circumstances in the interest of public safety and welfare, including without limitation any public health emergency, pandemic, or epidemic, the Contract Administrator may adjust the Concession Services' hours of operation, in whole or in part, accordingly. If the Park or the Concession Services are closed by County for more than five

(5) consecutive calendar days, Concessionaire shall be entitled to a reduction in the Annual Guarantee Installment(s) due to County for the closure period, starting on the sixth (6<sup>th</sup>) consecutive day after the Park is closed, and prorated and credited on a day-by-day basis for each additional consecutive day of closure against the next-due payment following the closure period. The Contract Administrator shall provide Concessionaire with verbal notice of the closure, which shall be promptly confirmed by e-mail to the individual listed for Concessionaire under the "Notices" section of this Agreement. Concessionaire agrees to waive any and all claims against County for any lost revenues or business activities resulting from the adjusted hours of operations at the Park.

## **ARTICLE 10. REPRESENTATIONS AND WARRANTIES**

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

10.2. Solicitation Representations. Concessionaire represents and warrants that all statements and representations made in Concessionaire'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 date Concessionaire executes this Agreement, unless otherwise expressly disclosed in writing by Concessionaire.

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

10.4. Public Entity Crime Act. Concessionaire represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that statute. Concessionaire further represents 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 Concessionaire has been placed on the convicted vendor list.

10.5. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Concessionaire represents that it has not been placed on the "discriminatory vendor list" as

provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. Concessionaire represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Concessionaire represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

10.6. Claims Against Concessionaire. Concessionaire represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Concessionaire, threatened against or affecting Concessionaire, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Concessionaire to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Concessionaire or on the ability of Concessionaire to conduct its business as presently conducted or as proposed or contemplated to be conducted.

10.7. Verification of Employment Eligibility. Concessionaire represents that Concessionaire and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Concessionaire violates this section, County may immediately terminate this Agreement for cause and Concessionaire shall be liable for all costs incurred by County due to the termination.

10.8. Warranty of Performance. Concessionaire represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that each person and entity that will provide Services 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 Services. Concessionaire represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such Services.

10.9. Prohibited Telecommunications. Concessionaire represents and certifies that Concessionaire and all Subcontractors do not use, and for the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

10.10. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Concessionaire represents and certifies that Concessionaire will comply with Section 26-125(d) of the Code for the duration of the Term.

10.11. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the “Broward County Domestic Partnership Act,” Section 16½-157 of the Code (“Act”),



Concessionaire certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

10.12. Breach of Representations. Concessionaire acknowledges that County is materially relying on the representations, warranties, and certifications of Concessionaire stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Concessionaire; and (c) debarment of Concessionaire.

#### **ARTICLE 11. INDEMNIFICATION**

Concessionaire shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, 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 breach of this Agreement by Concessionaire, or any intentional, reckless, or negligent act or omission of Concessionaire, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Concessionaire shall, upon written notice from County, defend each Indemnified Party with 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.

#### **ARTICLE 12. INSURANCE**

12.1. Throughout the Term, Concessionaire shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Concessionaire shall maintain insurance coverage against claims relating to any act or omission by Concessionaire, its agents, representatives, employees, or Subcontractors 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.

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

12.3. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, as may be requested by County, Concessionaire 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, Concessionaire shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.



12.4. Concessionaire shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required of Concessionaire has been completed, as determined by Contract Administrator. Concessionaire 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).

12.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

12.6. If Concessionaire maintains broader coverage or higher limits than the insurance requirements stated in Exhibit C, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Concessionaire.

12.7. Concessionaire shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Concessionaire 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 Concessionaire 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. Any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Concessionaire shall obtain same in endorsements to the required policies.

12.8. Unless prohibited by the applicable policy, Concessionaire waives any right to subrogation that any of Concessionaire's insurers may acquire against County, and shall obtain same in an endorsement of Concessionaire's insurance policies.

12.9. Concessionaire shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Concessionaire under this article. Concessionaire shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. Concessionaire shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

12.10. If Concessionaire 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 Concessionaire. If requested by

County, Concessionaire shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this article.

12.11. 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 C; 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, Concessionaire must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

### **ARTICLE 13. TERMINATION**

13.1. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in any other instance, termination for cause may be by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 13.5 effective thirty (30) days after such notice was provided.

13.2. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following "Events of Default":

13.2.1. Concessionaire's failure to comply with any term or condition in this Agreement;

13.2.2. Concessionaire's failure to pay the Annual Guarantee, any Annual Guarantee Installment, any Percentage Fees due, sales and use tax, any accrued late fees, or any other sum due to County under this Agreement;

13.2.3. Concessionaire's failure to provide the monthly declaration, in the form attached as Exhibit D, to County as required under Article 8;

13.2.4. Concessionaire voluntarily abandons, deserts, or vacates the Licensed Premises or ceases to operate and manages the Concession Services as provided herein for a period of thirty (30) consecutive days;

13.2.5. Concessionaire's failure to complete any of the Concession-related Improvements within the required time periods;

13.2.6. If any lien, claim, or other encumbrance is filed against the Licensed Premises that is not permitted by this Agreement;

13.2.7. Concessionaire'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;

13.2.8. Concessionaire's repeated (whether negligent or intentional) submission of false or incorrect reports;

13.2.9. Concessionaire's failure to operate the Services in a manner that serves a Park Purpose;

13.2.10. Concessionaire's suspension or debarment by a state or federal governmental entity or by a local governmental entity with a population in excess of one million people;

13.2.11. Concessionaire's becoming of a debtor in, or the subject of, a voluntary or involuntary bankruptcy, receivership, or assignment for the benefit of creditors; or

13.2.12. Any of Concessionaire's officers or executives being indicted for a felony, charged with acts of moral turpitude, or engaging in dishonesty, fraud, misconduct, or disreputable conduct that adversely and materially impairs or impacts public access to the Park or the reputation, goodwill, or position of County or the Park.

13.3. 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:

13.3.1. Terminate this Agreement in accordance with Section 13.1, upon which termination Concessionaire shall have no further rights under this Agreement and County shall be released and relieved of all liability under this Agreement;

13.3.2. Sue Concessionaire for all damages, costs, and expenses arising from, or which are a proximate cause of, Concessionaire's Event of Default, and to recover all such damages, costs, and expenses, at both trial and appellate levels;

13.3.3. 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. Concessionaire 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

13.3.4. Exercise any and all other remedies available to County under this Agreement or at law or in equity.

13.4. If this Agreement is terminated by County, County may, at its option, and in addition to all other remedies available to it at law or in equity, accelerate and declare immediately due and payable all unpaid amounts due and other sums required to be paid under this Agreement.

13.5. Termination for Convenience; Other Termination. This Agreement may be terminated for convenience by the Board with at least thirty (30) days advance written notice to Concessionaire. Concessionaire acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance notice to Concessionaire of such termination in accordance with this section. 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.

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

#### **ARTICLE 14. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

14.1. Concessionaire and Subcontractors shall not 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. Concessionaire shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

14.2. Although no CBE goal has been set for this Agreement under County's CBE Program as established by Broward County Business Opportunity Act of 2012, County encourages Concessionaire to give full consideration to the use of CBE firms to perform the Services, including the construction of Concession-Related Improvements.

#### **ARTICLE 15. DAMAGES; LIABILITY FOR DAMAGE OR INJURY**

15.1. Concessionaire shall repair in a prompt and timely manner any and all damage to the Licensed Premises, the Park, the Concession-Related Improvements, and Concessionaire's Personal Property caused by Concessionaire, its employees, agents, Subcontractors, patrons, or invitees. However, the Contract Administrator, in their sole discretion, may elect to repair any such damage to the Licensed Premises or the Park and invoice Concessionaire for all of County's costs incurred in repairing such damage. If County elects to make repairs pursuant to this section, Concessionaire shall pay County within thirty (30) calendar days after delivery of such invoice. County shall be responsible for the repair of the Licensed Premises, Concession-Related Improvements, and Concessionaire's Personal Property, caused solely by County, its officers, employees, contractors, or agents, other than Concessionaire, during the Term.

15.2. County shall not be liable for any damage or injury that may be sustained by any person(s) resulting from the Services. Concessionaire shall not be liable for any damage or injury that may be sustained by any person(s) outside of the Licensed Premises but within the Park that results solely from County's operations at the Park.

## **ARTICLE 16. EMERGENCY PREPAREDNESS PLAN**

Concessionaire, in consultation with the Contract Administrator, shall develop an Emergency Preparedness Plan ("Plan") consistent with the Division's emergency preparedness and operations plans for the Park, which shall include County's and Concessionaire's planning and response roles. The Plan shall include detailed procedures of actions that Concessionaire must take to protect or remove Concessionaire's Personal Property if a weather-related event warning is issued that may impact the Licensed Premises or the Park, and such Plan must be provided to the Contract Administrator by May 1 of each calendar year during the Term. In addition, the Plan must include emergency plans and procedures for handling any injuries received by patrons or invitees while on the Licensed Premises. The Contract Administrator and Concessionaire shall review and update the Plan annually. In the event of any emergency identified in the Plan, Concessionaire will take all actions required of Concessionaire by the Plan.

## **ARTICLE 17. INSPECTION BY COUNTY**

County has the authority to enter the Licensed Premises at any time and for any reason, with or without notice. County may make periodic reasonable inspections of the Licensed Premises and Concessionaire'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 Concessionaire is operating in compliance with the terms of this Agreement. All inspections will be conducted in a manner so as to cause minimal interference with the normal operations of the Concession Services, as determined by the Contract Administrator.

## **ARTICLE 18. EMERGENCY REPAIRS**

If County determines, in its sole and unfettered discretion, that there is an imminent risk of personal injury or harm to Park patrons, County property, or personal property of third parties because of a condition within the Licensed Premises or the Park ("Emergency Condition"), County has the right to make repairs or modifications to any of the Park's or Concessionaire's facilities or the Licensed Premises to address the Emergency Condition, free from any and all liability to Concessionaire for loss of business or damages of any nature whatsoever during the making of such repairs, except for damage caused by the sole negligence or intentional misconduct of County and where not otherwise indemnified by Concessionaire. The Contract Administrator or the Contract Administrator's designee will make reasonable efforts to provide Concessionaire with advance notice of any repairs or modifications by County to address an Emergency Condition. If County is required to make repairs or modifications to the Licensed Premises or Concessionaire's facilities in accordance with this article, Concessionaire shall pay County for all such work within thirty (30) days after delivery of an invoice from County for same.

## **ARTICLE 19. REMOVAL OF PROPERTY FOLLOWING EXPIRATION OR EARLIER TERMINATION OF AGREEMENT**

On or prior to the expiration or earlier termination of this Agreement, Concessionaire shall remove all of its Personal Property from the Licensed Premises. If Concessionaire does not

remove its Personal Property within fourteen (14) calendar days after said expiration or earlier termination, such Personal Property shall be deemed abandoned by Concessionaire and County may exercise all or some of the following: (a) County may elect to take title to the abandoned property, and ownership of same shall vest in County, at no cost to County; (b) County may remove such Personal Property to a public warehouse for deposit, with the costs of transportation and storage to be at Concessionaire's sole cost and expense; (c) County may retain the abandoned Personal Property and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale of the Personal Property, and second to any sums owed by Concessionaire to County; or (d) County may dispose of such abandoned property in any manner permitted by law. If the expenses of such removal, storage, and sale exceed the proceeds of sale, Concessionaire shall pay such excess costs to County within ten (10) calendar days after demand. Concessionaire hereby releases County from any and all liability for removal and disposal of the abandoned Personal Property described in this article. Concessionaire must maintain the insurance required under Article 12 during such period of time necessary for Concessionaire to remove its Personal Property as provided in this section. Additionally, Concessionaire's indemnification requirements under this Agreement shall survive expiration or earlier termination of this Agreement in connection with all matters described in this article.

## **ARTICLE 20. CONCESSION-RELATED IMPROVEMENTS**

20.1. Concessionaire will complete all Concession-related Improvements described in Exhibit F (Concession-related Improvements Plan), in accordance with the schedule set forth therein.

20.2. Construction of all Concession-related Improvements by Concessionaire shall be performed in such a manner to ensure that each such improvement is structurally sound, safe for human occupancy, and free from any hazards; provides sufficient clearance for any deliveries and use of equipment, or otherwise so as to not interfere with the Park's operations and arriving and departing vehicles; is of high quality, safe, fire resistant, and subject to approval by County under Section 20.4 below; is completed in an environmentally conscientious manner to the extent possible and commercially practicable; and complies with the terms of this Agreement.

20.3. Concessionaire represents and warrants that all Concession-Related Improvements shall at all times be free and clear of all liens, claims, and encumbrances. If any lien or notice of lien is filed against any of the Concession-Related Improvements, Concessionaire 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.

20.4. Concessionaire shall not commence any construction or installation at the Park for the Concession-Related Improvements until the applicable architectural design plans and specifications ("Plans and Specifications") have been reviewed and approved in writing by the Contract Administrator and all applicable permits have been obtained. The Contract Administrator shall review and comment on the Plans and Specifications submitted by



Concessionaire within thirty (30) business days after submittal. If the Contract Administrator does not approve the Plans and Specifications and responds with comments or a rejection, Concessionaire shall respond to the Contract Administrator's comments within thirty (30) business days after receipt and resubmit the Plans and Specifications to the Contract Administrator. The Contract Administrator shall review and comment on any resubmitted Plans and Specifications within fifteen (15) business days after receipt. If the Contract Administrator does not approve in writing the resubmitted Plans and Specifications, the process set forth above, whereby Concessionaire will respond to the Contract Administrator's comments within thirty (30) business days and the Contract Administrator will review the resubmitted Plans and Specifications within fifteen (15) business days, shall continue until the Plans and Specifications are approved. The final Plans and Specifications approved by the Contract Administrator for the applicable Concession-related Improvements are collectively referred to hereinafter as the "Approved Plans." This approval process will not modify the completion deadline for any Concession-related Improvement. However, the Contract Administrator may approve changes to the completion deadlines in Exhibit F in writing without formal amendment.

20.5. If required by any governmental entity, Concessionaire shall have the applicable Plans and Specifications certified by an architect or engineer licensed to practice in the State of Florida at its sole cost and expense. For work that does not require permits from any governmental entity, the Contract Administrator may, in the Contract Administrator's sole discretion, accept sketches instead of Plans and Specifications.

20.6. Concessionaire shall obtain and deliver to County performance and payment bonds or such other alternate form of security for the applicable Concession-Related Improvements in accordance with Article 6 of this Agreement.

20.7. All construction or installation work under this 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. 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, Concessionaire shall, at its sole cost, and at the direction of the Contract Administrator, remove any work that is started or completed contrary to the Approved Plans and restore the Licensed Premises to the prior condition, within a reasonable time period as determined by the Contract Administrator.

20.8. All improvements, installation, equipment, and interior design and decor for the Concession-Related Improvements, including the Plans and Specifications relating to same, shall conform to Applicable Law. The approval by County of any Plans and Specifications or designs shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance shall at all times remain that of Concessionaire. The Plans and Specifications for all Concession-related Improvements shall consist of: (a) working drawings; (b) technical specifications; (c) bid documents, if applicable; (d) schedule for accomplishing improvements;



(e) schedule of finishes and graphics; (f) list of furnishings, fixtures, and equipment; and (g) certified estimate of the design, development, and construction costs.

20.9. In addition to the Contract Administrator's approval, Concessionaire 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 interruptions to the Park's operations or maintenance. Concessionaire and the Contract Administrator shall cooperate in planning and scheduling construction-related activities in the Park. Concessionaire shall ensure that during any temporary closure of the restrooms on the Licensed Premises due to construction activities, ADA-compliant portable restrooms will be provided.

20.10. Concessionaire and all of its Subcontractors providing any of the Concession-Related Improvements at the Park shall meet with the Contract Administrator in periodically scheduled meetings to assess the current status of completion of the applicable improvements.

20.11. All structures, permanently affixed fixtures, and other improvements existing on the Effective Date, as well as any Concession-Related Improvements 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 permanent fixtures and the property of County, and shall remain on the Licensed Premises after the date of expiration or earlier termination of the Agreement. If any Personal Property of Concessionaire including, without limitation, furnishings, trade fixtures, or equipment is removed by Concessionaire or its agents, Concessionaire shall restore any damage to the Licensed Premises within a reasonable time period, as determined by the Contract Administrator in their sole discretion. If required, all utilities conduits and meters from the stub (if existing) shall be installed by Concessionaire or its agents at Concessionaire's 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.

20.12. Substantial Completion of Concession-related Improvements. "Substantial Completion" of a Concession-Related Improvement means the date, as certified in writing by Concessionaire and as finally determined by the Contract Administrator in their sole discretion, that the Concession-Related Improvement, or any applicable portion thereof, is at a level of completion in substantial compliance with the "Approved Plans" under the Agreement; all conditions of the permits and regulatory agencies have been satisfied; the Concession-Related Improvement can be used or operated in all respects for its intended purpose; and proof of same has been provided to the Contract Administrator. A Certificate of Occupancy ("CO"), Temporary Certificate of Occupancy ("TCO"), or such other alternate municipal/county authorization for limited or conditional occupancy acceptable to the Contract Administrator must be issued for Substantial Completion to be achieved; however, the issuance of a CO or the date thereof is not determinative of the achievement or date of Substantial Completion.

If a CO or other permitting approval is not required for a Concession-Related Improvement, Substantial Completion shall mean the date, as certified in writing by Concessionaire and as finally determined by the Contract Administrator in the Contract Administrator's sole discretion, that the applicable Concession-Related Improvement, or any portion thereof, is at a level of completion in substantial compliance with the Approved Plans, such that the improvement can be used or operated in all respects for their intended purpose, and proof of same has been provided to the Contract Administrator.

20.13. Final Completion of Concession-related Improvements. "Final Completion" of a Concession-Related Improvement means the date certified by Concessionaire for the applicable Concession-Related Improvement that all conditions and requirements of any permits and regulatory agencies have been satisfied, if required; punch list items have been completed; any documents required by the Approved Plans or the Agreement have been received by County; and, to the best of Concessionaire's knowledge, information, and belief, the improvements have been fully completed in accordance with the Approved Plans. The certified statements shall confirm Concessionaire's expenditures for the applicable Concession-Related Improvements, and any in-kind materials and labor.

20.14. Construction Claims. County property is not subject to mechanics or construction liens; however, if a lien is filed against any portion of the Licensed Premises that relates to the construction of any of the Concession-Related Improvements, Concessionaire shall cause same to be discharged of record prior to execution on the Licensed Premises or immediately upon entry of any judgment against County, either by payment, deposit, or filing a bond in accordance with Applicable Law. County shall promptly provide to Concessionaire copies of all such liens received by County. Concessionaire shall pay, when due, or shall promptly resolve all claims for labor or materials furnished with respect to any Concession-related Improvements. If the Concessionaire shall, in good faith, contest the validity of any such lien, claim, or demand, then, to the extent permitted by law, Concessionaire shall, at its expense, defend itself and County against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against County.

20.15. Upon Final Completion and approval by the Contract Administrator of any Concession-Related Improvement, no major modification to any portion of the Concession-Related Improvement 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.

## **ARTICLE 21. REQUIREMENTS FOR SUBCONTRACTORS**

21.1. Indemnification. If Concessionaire contracts with a Subcontractor to perform any of the Concession-related Improvements under this Agreement, any contract with such Subcontractor shall include the following provision, in substantially the form provided below:

Indemnification: (name of Subcontractor) shall at all times hereafter indemnify and hold harmless Broward County and all of Broward County's current, past, and future officers, and

employees (collectively, “Indemnified Party”) from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys’ fees (collectively a “Claim”), to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of (name of Subcontractor), or persons employed or utilized by (name of Subcontractor) in the performance of this agreement, including but not limited to, (name of Subcontractor)’s subcontractors, sub-subcontractors, materialmen, or agents of any tier, or any of their respective employees. The obligations of this section shall survive the expiration or earlier termination of this agreement.

21.2. Insurance Requirements. Concessionaire shall require each Subcontractor to maintain insurance coverage that adequately covers the work provided by that Subcontractor on substantially the same insurance terms and conditions required of Concessionaire under this Agreement. Concessionaire shall ensure that all such Subcontractors comply with these requirements and that “Broward County” is named as an additional insured under the Subcontractors’ applicable insurance policies. Concessionaire shall not permit any Subcontractor to provide Services under this Agreement unless and until the requirements of this section are satisfied. If requested by County, Concessionaire shall provide, within one (1) business day, evidence of each Subcontractor’s compliance with this section.

## **ARTICLE 22. MISCELLANEOUS**

22.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Concessionaire to manage and supervise the performance of this Agreement. Concessionaire acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing modifications to Exhibits A, B, E, and F that do not decrease the cost or value due to County without formal amendment.

22.2. Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, data, or other work created by Concessionaire in connection with performing Services, whether finished or unfinished (“Documents and Work”), shall be owned by County, and Concessionaire hereby transfers to County all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and shall be delivered by Concessionaire to the Contract Administrator within seven (7) days after expiration or termination. Any compensation due to Concessionaire may be withheld until all Documents and Work are received as provided in this Agreement. Concessionaire shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

22.3. Public Records. Notwithstanding any other provision in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of

Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Concessionaire is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Concessionaire shall:

22.3.1. Keep and maintain public records required by County to perform the Services;

22.3.2. 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 Applicable Law;

22.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

22.3.4. Upon expiration or termination of this Agreement, transfer to County, at no cost, all public records in possession of Concessionaire or keep and maintain public records required by County to perform the Services. If Concessionaire transfers the records to County, Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt. If Concessionaire keeps and maintains the public records, Concessionaire shall meet all requirements of Applicable Law 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.

If Concessionaire receives a request for public records regarding this Agreement or the Services, Concessionaire must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Concessionaire must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Concessionaire contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Concessionaire asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Concessionaire must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Concessionaire must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Concessionaire as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Concessionaire, or the claimed exemption is waived. Any failure by Concessionaire to strictly comply with the requirements of this section shall constitute Concessionaire’s waiver of County’s

obligation to treat the records as Restricted Material. Concessionaire must 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 nondisclosure of Restricted Material in response to a third-party request.

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

22.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Concessionaire and all Subcontractors, including, but not limited to, balance sheets, income statements, and other similar documents that are related to this Agreement. Concessionaire and all Subcontractors shall keep such books, records, and accounts as may be necessary 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, Concessionaire and all Subcontractors shall make same available in written form at no cost to County. Concessionaire shall provide County with reasonable access to Concessionaire's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Concessionaire and all 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. This article shall survive any dispute or litigation between the Parties, and Concessionaire expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Concessionaire hereby grants County the right to conduct such audit or review at Concessionaire's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Concessionaire shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's recovery of any owed amounts upon such entry. If an audit or inspection reveals underreporting or underpayment to County of any nature by Concessionaire in excess of five percent (5%) of the total contract reporting reviewed by County, Concessionaire shall make adjustments for the underpayment and pay the reasonable cost of County's audit. 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 Concessionaire.

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

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

22.6. 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 and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law 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.

22.7. Sovereign Immunity. Except to the extent sovereign immunity may be deemed 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.

22.8. Third-Party Beneficiaries. Neither Concessionaire nor County intends to primarily or directly 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.

22.9. Notices. Unless otherwise stated herein, for 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 email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County Parks and Recreation Division

Attention: Director

950 NW 38<sup>th</sup> Street, Oakland Park, Florida 33309

Email address: [parksdirector@broward.org](mailto:parksdirector@broward.org) with a copy to [parkscontracts@broward.org](mailto:parkscontracts@broward.org)



FOR CONCESSIONAIRE:

Ili Umansky  
222 SE 2<sup>nd</sup> Terrace, Dania Beach, Florida 33004  
Email address: [iu@hzip.org](mailto:iu@hzip.org)

*With a copy to:*

Lina Bright, CEO  
30 Birchshire Lane, Palm Coast, Florida 32137  
Email address: [hzip2023@gmail.com](mailto:hzip2023@gmail.com)

22.10. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by the Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Concessionaire without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

22.11. Conflicts. Neither Concessionaire nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Concessionaire's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Concessionaire's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Concessionaire is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's 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 legal process. The limitations of this section shall not preclude Concessionaire 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. If Concessionaire is permitted pursuant to this Agreement to utilize Subcontractors, Concessionaire shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Concessionaire.

22.12. 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. 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 shall not be deemed a waiver of any subsequent breach and



shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

22.13. Compliance with Laws. Concessionaire and the Services must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

22.14. Severability. If 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.

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

22.16. 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 any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” 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 subsections thereof, 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 reference to approval by County shall require approval in writing, unless otherwise expressly stated.

22.17. 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 within an article or section of this Agreement, the article or section shall prevail and be given effect.

22.18. 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

22.19. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Concessionaire.

22.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

22.21. Payable Interest

22.21.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Concessionaire for any reason, whether as prejudgment interest or for any other purpose, and Concessionaire waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

22.21.2. 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).

22.22. Incorporation by Reference. Any and 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.

22.23. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

22.24. Use of County Name or Logo. Concessionaire shall not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

22.25. Drug-Free Workplace. If required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Concessionaire certifies that it has and will maintain a drug-free workplace program throughout the Term.

22.26. Polystyrene Food Service Articles. Concessionaire shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

22.27. Prevailing Wage Requirement. If construction work in excess of \$250,000.00 is required of, or undertaken by, Concessionaire as a result of this Agreement, then Section 26-5 of the Code shall apply to such construction work, the provisions of Section 26-5(a) of the Code shall be deemed incorporated as if expressly set forth herein, and Concessionaire must submit, with each

Annual Guarantee Installment, a completed Statement of Compliance in the form available at <https://www.broward.org/Purchasing/Pages/StandardTerms.aspx>.

22.28. Anti-Human Trafficking. By execution of this Agreement by the undersigned authorized representative of Concessionaire, Concessionaire hereby attests under penalty of perjury that Concessionaire does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes; under penalties of perjury, the undersigned authorized representative of Concessionaire declares that they have read the foregoing statement and that the facts stated in it are true.

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

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2024; and Concessionaire, signing by and through its duly authorized representative.

COUNTY


ATTEST:


Broward County, by and through  
its Board of County Commissioners

By: \_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By: \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2024

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

By  Digitally signed by AMANDA M. TOLBERT  
Reason: approved as to form  
Date: 2024.10.04 12:40:07 -04'00'  
\_\_\_\_\_  
Amanda Tolbert (Date)  
Assistant County Attorney

By  Digitally signed by René D. Harrod  
Reason: Approved as to form  
Location: Broward County Attorney's Office  
Date: 2024.10.04 16:50:53 -04'00'  
\_\_\_\_\_  
René D. Harrod (Date)  
Chief Deputy County Attorney

AMT  
Hollywood North Beach Snack Bar Agreement  
10/1/2024  
#1064963v6

AGREEMENT BETWEEN BROWARD COUNTY AND HZIP LLC FOR HOLLYWOOD NORTH BEACH  
PARK SNACK BAR OPERATOR (RFP # PNC214371P1)

CONCESSIONAIRE

HZIP LLC

By:   
Authorized Signer

Ili Umansky, Operational Director  
Print Name and Title

4 day of October, 2024

## **EXHIBIT A**

### **Scope of Services**

Concessionaire shall provide the following Services:

#### **Section 1. Services Description**

Concessionaire shall utilize the Licensed Premises to operate the Concession Services, as further described herein, by providing food and beverage offerings to the public at the snack bar building in the Park. These Services will include:

- Offering a menu that caters to the general public and/or demographics for the region.
- Supplying the Licensed Premises with food industry equipment for operations.
- Providing food service supplies.
- Utilizing a Point-of-Sale system with the ability to accept multiple payment methods.
- Appropriate pest control.

Concessionaire will be responsible for the finance, design, construction (if otherwise required by this Agreement), operation, maintenance, and management of the Concession Services. Concessionaire shall provide a safe, high quality, and customer-oriented recreational experience to Park patrons, with well-maintained equipment and experienced staff. Concessionaire will not unreasonably interfere with the public's use of other areas of the Park or infringe upon the normal method of operations of County to conduct business in or near the Licensed Premises. Concessionaire will be solely responsible to collect money from patrons for its Concession Services.

#### **Section 2. Operations Manager**

Concessionaire shall assign a full-time, qualified, and experienced operations and business manager ("Operations Manager") at the Park for operation of the Concession Services. Concessionaire shall designate an individual as Concessionaire's authorized agent who shall be responsible for the day-to-day operations of the Concession Services at the Park 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 Concessionaire'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. Concessionaire shall hire persons of good moral character and shall perform criminal background checks as provided in Article 8.

### **Section 3. Quality of Services**

A. Concessionaire shall ensure that its employees, agents, representatives, Subcontractors, volunteers, or others involved in the maintenance or operation of the Concession Services perform their respective duties in an efficient and courteous manner. Upon notice from County, Concessionaire shall promptly remove from the performance of Services, or take other curative action acceptable to the Contract Administrator, any person or Subcontractor who fails to perform Concessionaire's obligations under this Agreement in an efficient or courteous manner, and Concessionaire's failure to do so shall be grounds for termination of this Agreement for cause by County pursuant to Article 13.

B. Concessionaire shall provide sufficient staffing necessary for operation of the Concession Services during its hours of operations.

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

D. Concessionaire's employees shall be appropriately attired in a neat and professional manner that distinguishes Concessionaire's employees from the Park's employees.

E. Concessionaire shall ensure that all sounds, noise, or music emanating from Concessionaire's operations or the Licensed Premises, 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. Such sounds or noise must be eliminated, or levels reduced, at the request of the Contract Administrator. Concessionaire shall cause the immediate cessation of any noise, music, or other sounds emanating from within the Licensed Premises that are deemed offensive, distracting, or disturbing by the Contract Administrator, in the Contract Administrator's sole determination.

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

### **Section 4. Hours of Operation**

The Concession Services shall be operated from 9:30 a.m. until Park closure, each day. These operating hours may be modified with written approval from the Contract Administrator.



**Section 5. Payment for Utilities Usage**

The Concessionaire shall pay to County, for each month of each Contract Year, a monthly fee of \$500 for utilities usage, which shall include electric, sewer, and water, as well as standard trash removal for the Licensed Premises. This utilities fee may be adjusted by the Contract Administrator by written notice to Concessionaire, for any Extension Term. Payment for utilities shall be made along with the Annual Guarantee Installment payment, on a separate check.

**Section 6. Trash Removal Services**

A. Concessionaire shall be responsible for transferring all trash generated by the Services within the Licensed Premises into the trash dumpsters designated by the Park's manager. If the amount of trash generated by Concessionaire from any special event results in excessive trash, as determined by the Contract Administrator, and increased trash removal fees for County, Concessionaire shall, with written approval from the Contract Administrator, either (a) arrange for trash removal directly with a company approved by the Contract Administrator, or (b) reimburse County for any additional trash removal fees incurred by County. Concessionaire shall make any required reimbursement to County for the additional trash removal fees within thirty (30) days after receipt of an invoice from County.

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

**Section 7. Maintenance and Repairs**

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

B. Concessionaire shall be responsible for the maintenance of all of Concessionaire's equipment, Personal Property, supplies, and storage areas, and any of County's equipment utilized by Concessionaire. The Contract Administrator shall determine, in their sole discretion, the quality standards for such maintenance required to be performed by Concessionaire.

C. If Concessionaire refuses or neglects to undertake any of its maintenance or repair responsibilities under the Agreement or that are otherwise necessitated due to any negligent acts or omissions of Contactor or any Subcontractor, County shall have the right to perform such maintenance or to make such repairs on behalf of and for Concessionaire in accordance with Article 15. If County is required to perform maintenance for Concessionaire in accordance with this section, Concessionaire shall pay County for all such maintenance work within thirty (30) days after delivery of an invoice from County for same.

### **Section 8. Liability Waivers for Concession Services**

If any of the Concession Services involve activities that may result in an injury to a Park patron participating in the activity (e.g., boat rides, cycling, horseback rides, sports activities, etc.), as determined by the Contract Administrator in their sole discretion, Concessionaire must obtain from the participant (or the participant's parent or guardian, if the participant is a minor) a form that releases and holds the County harmless from liability for any such injury to the participant, and including indemnification for the County for claims relating to any injuries or damage to third parties caused by the participant's involvement in the activity. Concessionaire shall provide a proposed form document to the Contract Administrator for approval by the County, or County may provide Concessionaire a form for its use. Concessionaire may only use a County-approved or provided release form in connection with the Concession Services described in this section.

### **Section 9. Marketing**

Concessionaire must obtain, in advance, written approval from the Contract Administrator or their written designee, for all advertisements, marketing, and publicity materials including, but not limited to, social media (e.g., Facebook, Twitter, Blogs, Instagram) of Concessionaire, that include the Park, Division, or County's name or logo, or otherwise refers to this Agreement. The Contract Administrator may also require Concessionaire to identify or tag the name of the Park or the Division in certain advertising, marketing, publicity, or social media materials in the Contract Administrator's sole discretion. Concessionaire shall not own or otherwise have the legal right to the trademark of any name that includes the name of the Park, Division, County, or any of their names or logos. All names, logos, trademarks, or copyrights developed during or pursuant to this Agreement that 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, shall be exclusively owned by County if County elects to take ownership. Any banner or signage placed within the Park or adjacent to the Park must be professionally made and approved by the Contract Administrator prior to installation. Concessionaire, the Contract Administrator, and the Division's Public Communications and Outreach Group Manager, or their written designees, shall cooperate on all marketing efforts.

### **Section 10. Quality and Performance Standards**

Concessionaire must submit a quality control plan and performance standards (together, the "Operations Plan"), within thirty (30) days after the Effective Date. The Operations Plan shall specify how the Concessionaire will ensure quality and timeliness of Services. The Operations Plan shall provide for County to evaluate the quality and timeliness of Concessionaire's performance.

The Operations Plan must include performance standards, to be approved by the Contract Administrator. Concessionaire's performance standards shall address issues such as food quality,

menu planning, portion sizes, personnel qualifications and continued training requirements, inspections and oversight, cleaning and sanitation, and equipment maintenance.

**Section 11.**        Special Event and Pocket Park Usage

Concessionaire may not conduct special events, activities, or promotional events (each a “Special Events”) at the Park or the Licensed Premises without prior written approval of the Contract Administrator. If the Concessionaire wishes to host a Special Event at the Park, Concessionaire shall apply for a Special Event permit from the Division. The Contract Administrator shall have the authority to discount or waive the fees otherwise required by a Special Event permit, as determined in their sole discretion.

**Section 12.**        Lighting and Weather-related Incidents

When weather conditions indicate a threat of lightning in the area, Concessionaire shall follow direction from the Park’s management regarding temporary ceasing of outside operations, and in any event, Concessionaire shall use reasonable judgment and common sense in ceasing operations when threatening weather approaches. Concessionaire shall submit a weather-related incident plan to the Contract Administrator within thirty (30) days after the Effective Date establishing Concessionaire’s policies for responding to weather events. Concessionaire will incorporate the changes recommended by the Contract Administrator, if any, into its weather-related incident plan.

**Section 13.**        Maintenance and Repair Plan

Concessionaire shall prepare a plan for the maintenance and repair of the Concession Services and related facilities and equipment. Concessionaire will provide, within thirty (30) days after the Effective Date, a draft plan to the Park Manager for review and comment. Concessionaire will review the Park Manager’s comments and incorporate those comments into its final plan submitted to the Contract Administrator for approval. Within thirty (30) days after Concessionaire receives comments from the Park Manager, Concessionaire will submit its final plan to the Contract Administrator for approval. The plan as approved by the Contract Administrator is referred to herein as the “Maintenance and Repair Plan.” The Maintenance and Repair Plan may be periodically revised by Concessionaire, with prior written approval from the Contract Administrator or their written designee, to ensure all facilities are maintained for a quality visitor experience. The Maintenance and Repair Plan must include guidelines for all aspects of Concessionaire’s maintenance and repair responsibilities, including:

- A.        A schedule and standards for maintenance and cleaning of facilities, grounds, and systems.
- B.        Concessionaire staff and positions with assigned maintenance and cleaning responsibilities.

C. Locations for posting contact information and instructions for visitors to report concerns with maintenance and cleaning.

D. Landscaping plans and maintenance schedule. Concessionaire understands that the Contract Administrator may reject landscaping plans that include planted material that is not native to the Park.

**Section 14. County-owned Inventory**

A. Concessionaire will be responsible for the maintenance and repair of the County-owned equipment used for the Concession Services. Concessionaire shall report any damage or excessive wear of any equipment to the Contract Administrator with fourteen (14) days. If such equipment is damaged or worn beyond reasonable maintenance or repair, and such damage is not the result of Concessionaire’s failure to maintain the equipment or other negligence, County may replace such equipment at its sole cost and expense, in the discretion of the Contract Administrator.

B. Concessionaire may submit a request to the Contract Administrator to remove any equipment at the Licensed Premises that Concessionaire does not wish to use. This excess equipment may be removed by County, in the Contract Administrator’s sole discretion. The County-owned equipment currently at the Licensed Premises that may be used by Concessionaire is as follows:

Measurements	Quantity	Item Description
64" x 54" x 27"	1	Suppression Hood
24" x 24" x 35"	1	Prep Table
17.5" x 30" x 33"	1	Countertop
8" x 18" x 5.5"	1	Wire Shelves, 4 Levels
8" x 30" x 35'	1	Countertop, 2 Levels
24" x 30" x 61"	1	Wire Shelves, 4 Levels
N/A	1	Sink, Small
N/A	1	Three Sink Compartment w/ Dishwashing Hose
79" x 30" x 28"	1	Beverage Cooler

**Section 15. Facilities and Services Provided by County**

Notwithstanding any other provision in this Agreement, County shall provide the facilities and services described in this Section 15. The facilities and services described in this section will meet or exceed the standards of same as existing on the Effective Date, as determined by the Contract Administrator. The maintenance services elected to be undertaken by County shall supersede any requirement for Concessionaire to perform those maintenance services. The facilities and services to be provided by County are:

- A. Electrical connection power centers, unless otherwise specifically provided for in this Agreement.
- B. Water connections.
- C. Sewage collection facilities.
- D. Non-exclusive parking.
- E. Park restrooms, including maintenance of the Park's restrooms.
- F. Landscape maintenance, unless otherwise approved by the Contract Administrator in the Maintenance and Repair Plan.
- G. Grease trap facilities.
- H. Maintenance of the deck adjacent to the snack bar building, as shown in the yellow outline in Exhibit B.

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



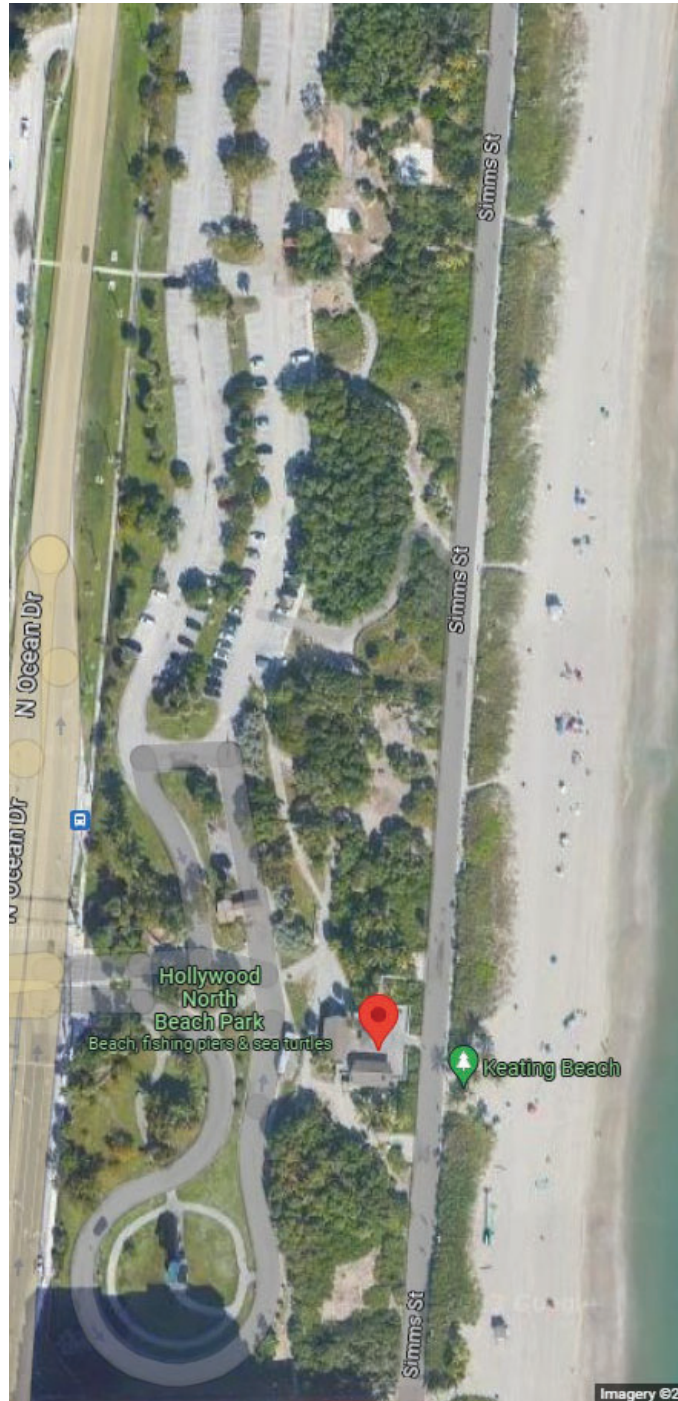
### EXHIBIT B Locator Map

The Licensed Premises is the snack bar building, shown within the red outline in the map below and the deck adjacent to the snack bar building as shown within the yellow outline in the map below.






The Licensed Premises is shown within the Park by the red indicator on the following map:



## EXHIBIT C Minimum Insurance Coverages

Project: Snack Bar Operator at Hollywood North Beach Park  
Agency: Parks and Recreation Division

TYPE OF INSURANCE	ADDITIONAL INSURED	SURRENDER VALUE	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <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  <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <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				
<b>AUTO LIABILITY</b> <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>			Bodily Injury (each person)		
	Bodily Injury (each accident)				
	Property Damage				
	Combined Bodily Injury and Property Damage	\$500,000			
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <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"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; 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"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$500,000	
<input checked="" type="checkbox"/> <b>LIQUOR LIABILITY</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Per Occurrence	\$1,000,000	
<input type="checkbox"/> <b>Pollution/ Environmental Care Liability</b>	N/A		Each Claim:		
			*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:		
<b>Description of Operations:</b> "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. For Claims-Made policies insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.					
<b>CERTIFICATE HOLDER:</b>  Broward County 115 South Andrews Avenue Fort Lauderdale, Florida 33301			 Digitally signed by COLLEEN A. POUNALL Date: 2021.12.03 08:51:02 -05'00' _____ Risk Management Division		

**EXHIBIT D**  
**Declaration of Criminal Background Screening**

AGREEMENT TITLE: \_\_\_\_\_

CONCESSIONAIRE'S NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

By signing this form, I am swearing or affirming that all individuals providing Concession 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 Concessionaire to provide such services as described in the Agreement. The information contained in this declaration is up to date as of the date this declaration is furnished to the Contract Administrator per the requirements of the Agreement.

All individuals providing Concession 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 Concession Services] *[Applicable only to first monthly declaration. 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 Concession Services]

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

[Insert list of individuals]

In accordance with Section 92.525, Florida Statutes, under penalties of perjury, I declare that I have read the foregoing Declaration of Criminal Background Screening and that the facts stated in it are true.

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Date

## **EXHIBIT E**

### **Pricing of Concession Services**

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

#### Breakfast Options: \$8 – \$12

- Acai Bowl
- Avocado Toast
- Belgian Waffles
- Breakfast Burrito
- Classic Breakfast Sandwich
- Continental Breakfast
- Eggs Benedict
- French Toast
- Healthy Start Bowl
- Nautical Omelet
- Nova Sandwich on Sesame Bagel
- Traditional Breakfast Plate

#### Lunch Options: \$9 - \$15

- California Cobb Salad
- Caprese Panini
- Fish and Chips
- Fish Tacos
- Fish Sandwich
- Mediterranean Veggie Wrap
- Vegetarian Quinoa Bowl
- Fried Calamari
- Mozzarella Sticks
- Nachos
- Spinach Artichoke Dip

#### Dinner Options: \$12 - \$22

- Falafel
- Grilled Salmon

**EXHIBIT F**  
**Concession-Related Improvements Plan**

If Concessionaire wishes to make any Concession-Related Improvements to the Licensed Premises or any part thereof during the Term, the Concessionaire shall request written approval from the Contract Administrator and identify said Capital Improvements using the table below. If the proposed Concession-Related Improvements plan is approved by the Contract Administrator, it shall be incorporated into this Agreement without formal amendment.

<b>Contract Year(s)</b>	<b>Concession-Related Improvement</b>	<b>Deadline</b>	<b>Acceptance Criteria</b>
1-5	None	-	-
6-10	None	-	-