

Agenda Item #3.M.8.

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 16, 2010

☒ Consent
☐ Ordinance

☐ Regular
☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: First Amendment to Contract (Contract No. 80009/LS) with Chet's, Inc., located in Boynton Beach, Florida, to provide professional water ski instruction at South County Regional Park for the period October 1, 2010, through September 30, 2011.

Summary: On September 25, 2009, Palm Beach County entered into a Standard Contract with Chet's, Inc. to provide a complete water skiing school program at South County Regional Park. The Contract provided an initial one (1) year term, which expired on September 30, 2010, with three (3) one (1) year renewal options. This First Amendment renews the Agreement for the first option period of October 1, 2010, through September 30, 2011. The total annual revenue for this renewal period is \$12,420. All other terms of the contract remain the same. District 5 (AH)

Background and Justification: A request for proposal was issued in November 1998 to provide commercial water ski lessons for a ski lake located in the undeveloped portion of South County Regional Park. Chet's, Inc. was selected as the vendor best able to provide the requested services. Chet Raley, the proposer is one of the finest instructors in the world and has provided excellent service. Accordingly, a Request for Submittal was issued by the Parks and Recreation Department to competitively procure these services again in 2009. Chet's, Inc. was the only proposer and was selected based on the excellent service provided since 1999. Based on the satisfactory level of service provided, staff recommends exercising the first extension of the contract to provide for one additional year of continued service. Two (2) additional renewal options remain on the contract.

Attachments:

1. First Amendment to Contract
2. Standard Contract

Recommended by: _____


Department Director

10-20-10
Date

Approved by: _____


Assistant County Administrator

10/25/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(12,420)</u>	<u>(12,420)</u>	<u>(12,420)</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>(12,420)</u>	<u>(12,420)</u>	<u>(12,420)</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u></u>	<u></u>

Is Item Included in Current Budget? Yes X No
Budget Account No.: Fund 0001 Department 580 Unit 5237
Revenue Source 4729 Program N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

FUND: General Fund
UNIT: Aquatics

Parks & Recreation Other Fees	0001-580-5237-4729-09	(\$12,420)
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C. Departmental Fiscal Review: chopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB

B. Legal Sufficiency:

143516
SP
5/2
10/25/10
10/1
10/1
10/1

B. Legal Sufficiency:

Anne Delzend 10/27/10
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 10/95
ADM FORM 01

This summary is not to be used as a basis for payment

**FIRST AMENDMENT
TO CONTRACT FOR A
SKI SCHOOL CONCESSION AT SOUTH COUNTY REGIONAL PARK
(Contract No. 80009/LS)**

THIS FIRST AMENDMENT, dated September 21, 2010, to Contract No. 80009/LS, dated September 25, 2009, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and CHET'S INC., located at 9075 Tresmore Court, Boynton Beach, Florida, a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR", WHOSE Federal I.D. number is 65-0681333.

WITNESSETH:

WHEREAS, the parties have entered into that certain Contract dated September 25, 2009, hereinafter referred to as the "CONTRACT", whereby the CONTRACTOR is to provide professional water ski instruction to all levels of people, and to provide all necessary equipment; and

WHEREAS, the parties desire to renew the CONTRACT for the period October 1, 2010 through September 30, 2011, with two (2) one (1) year options for renewal at the sole discretion of the COUNTY; and

WHEREAS, the County established the Office of Inspector General in Ordinance 2009-049, and both parties agree to include the provisions of Ordinance 2009-049 into the CONTRACT.

NOW THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the COUNTY and the CONTRACTOR agree as follows:

1. ARTICLE 3 – SCHEDULE is hereby amended as follows:

"The CONTRACTOR shall commence services on October 1, 2009, and complete all services by September 30, 2011, with two (2) one (1) year options for renewal at the sole discretion of the COUNTY.

Reports and other items shall be delivered and/or completed in accordance with exhibit A.

2. ARTICLE 35 – INSPECTOR GENERAL is added to read:

"Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered

to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor and inspect the activities of the SFWMD, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.”

3. Except as provided herein, each and every other term of the Agreement shall remain in full force and effect and the Agreement is reaffirmed as modified herein.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Director of Purchasing of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

PALM BEACH COUNTY, FLORIDA, FOR ITS
BOARD OF COUNTY COMMISSIONERS
BY KATHLEEN M. SCARLETT
DIRECTOR OF PURCHASING

By: Kathleen M. Scarlett
Kathleen M. Scarlett, Director

WITNESSES:

Bernice Lambert
Signature

Bernice Lambert

Name (type or print)

WITNESSES:

Andrea Walsh
Signature

Andrea Walsh

Name (type or print)

CONTRACTOR

Chet's Inc.
Company Name

By: Chet Raley
Signature

Chet Raley

Typed name

President
Title

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Anne Helgert
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: Dennis L. Eshleman
Dennis L. Eshleman, Director
Parks and Recreation Department

Standard Contract

2009 SEP 25 AM 11:51
This Contract No. 80009/LS is made as of this 25th day of September, 2009, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and Chet's, Inc., 9075 Tresmore Ct., Boynton Beach, FL 33472, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I. D. number is 65-0681333.

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide professional water ski instruction to the Parks and Recreation Department, in accordance with the Scope of Work/Services, attached hereto as Exhibit A.

The COUNTY'S representative/liaison during the performance of this Contract shall be Laurie Schobelock, Aquatic Supervisor, telephone number (561) 966-6629 or designee.

The CONTRACTOR'S representative/liaison during the performance of this Contract shall be Chet Raley, President, telephone number 561-509-8111.

ARTICLE 2 - ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Contract, including all exhibits; (2) the provisions of RFS No. 08-03/LS; (3) CONTRACTOR's proposal dated August 31, 2009; (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 3 - SCHEDULE

The CONTRACTOR shall commence services on October 1, 2009, and complete all services September 30, 2010, with three (3) one (1) year options for renewal at the sole discretion of the COUNTY.

Reports and other items shall be delivered and/or completed in accordance with Exhibit A.

ARTICLE 4 - PAYMENTS TO COUNTY

- A. The CONTRACTOR shall pay to the COUNTY payments of One Thousand Thirty-five dollars (\$ 1,035.00) per month, for one (1) year of contract period through September 30, 2010, plus applicable State Sales Tax. Monthly payment plus applicable State Sales Tax shall be made in advance without billing on the first of each month during the term of this Contract. Payments not received by the tenth (10th) of each month shall be considered past due and subject to a five percent (5%) late fee per month until paid.
- B. The COUNTY may authorize the closing of the ski lake for the safety of the users. In these instances, the lake shall remain closed until the COUNTY authorizes its reopening.

CONTRACTOR's sole compensation for said closing shall be the proration of rent or payment to COUNTY for all days the lake is closed for an entire day at COUNTY's direction and where the closure is not due to acts or omissions of the CONTRACTOR.

- C. The COUNTY may close the ski lake for up to three (3) days every four (4) months in order to comply with Florida Statutes, Chapter 369.20, Florida Aquatic Weed Control Act. The closings shall be coordinated between the COUNTY and the CONTRACTOR in order to minimize disruption of ski school programs. CONTRACTOR's sole compensation for said closing shall be the proration of rent or payment to COUNTY for all days the lake is closed for an entire day.
- D. Should development work surrounding the ski lake require the shutdown of the water ski school activities on the lake, the COUNTY shall give thirty (30) days written notice to the CONTRACTOR. CONTRACTOR shall be relieved of the obligation to make payments to the COUNTY during that time the lake is closed.
- E. Should the ski lake become unusable due to damage caused by fire, hurricane, storms, Acts of God or any other reason, the Contract shall be terminated by the COUNTY upon thirty (30) days written notice to the CONTRACTOR. Should the COUNTY choose, in its sole discretion, to make any repairs or renovations to the ski lake because of the damage, it may close the ski lake during the repairs/renovations. CONTRACTOR shall be relieved of the obligation to make payments to the COUNTY during that time the lake is closed.

ARTICLE 5 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also constitute the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract and no higher than those charged the CONTRACTOR's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representation(s) of fees paid to outside contractors. The COUNTY shall exercise its rights under this Article 5 within three (3) years following final payment.

ARTICLE 6 - TERMINATION

This Contract may be terminated by the CONTRACTOR upon sixty (60) days prior written notice to the COUNTY, in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY in writing, the CONTRACTOR shall:

1. Stop work on the date and to the extent specified.

2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
4. Continue and complete all parts of the work which have not been terminated.

ARTICLE 7 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required herein under shall be performed by the CONTRACTOR, or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR's key personnel, as may be listed in Exhibit B, attached hereto and incorporated herein, must be made known to the COUNTY's representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONTRACTOR's personnel (and all subcontractor's) will comply with all COUNTY requirements governing conduct, safety, and security while on COUNTY premises.

ARTICLE 8 - CRIMINAL HISTORY RECORDS CHECK

The CONTRACTOR shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if CONTRACTOR's employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274. The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

ARTICLE 9 - SUBCONTRACTING

The COUNTY reserves the right to accept the use of a subcontractor, or to reject the selection of a particular subcontractor, and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek additional small business enterprises (SBE) for participation in subcontracting opportunities. If the CONTRACTOR uses any subcontractors on this project, the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The CONTRACTOR agrees to abide by all provisions of the Palm Beach County Code and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR understands that each SBE utilized on this Contract must be certified by Palm Beach County in order to be counted as SBE participation.

The CONTRACTOR further agrees to provide the Office of Small Business Assistance with a copy of the CONTRACTOR's contract with any SBE subcontractor or any other related documentation upon request.

The CONTRACTOR will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBEs must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONTRACTOR understands that he/she is prohibited from making any agreements with the SBE in which the SBE promises not to provide subcontractors quotations to other respondents or potential respondents.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Section 2-71 through 2-80.13, and will allow the COUNTY to inspect such records.

ARTICLE 10 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY's Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 11 - INSURANCE

It shall be the responsibility of the CONTRACTOR to provide evidence of the following minimum amounts of insurance coverage to the Palm Beach County Parks and Recreation Department, 2700 Sixth Ave. South, Lake Worth, FL 33461, Attention: Laurie Schobelock, Aquatic Supervisor, Aquatics Division.

The CONTRACTOR shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverages and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of the Contract. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any

manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Contract.

- A. **Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
- B. **Business Auto Liability:** CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.
- C. **Watercraft Liability:** CONTRACTOR shall provide Protection and Indemnity Liability or similar Watercraft Liability form and shall have minimum limits of **\$1,000,000** per occurrence combined single limit for bodily injury and property damage liability and shall include an Additional Insured Endorsement in favor of Palm Beach County.
- D. **Workers' Compensation Insurance & Employer's Liability:** CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.
- E. **Additional Insured Clause:** Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by the Contract has been endorsed to include Palm Beach County as an Additional Insured.
- F. **Waiver of Subrogation:** CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.
- G. **Certificate(s) of Insurance:** Within forty-eight (48) hours of the COUNTY's request to do so, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.
- H. **Umbrella or Excess Liability:** If necessary, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest AEach

Occurrence@ limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- I. **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

ARTICLE 12 - INDEMNIFICATION

CONTRACTOR shall protect, defend, reimburse, indemnify, and hold COUNTY, its agents, employees and elected officials harmless from and against any and all claims, liability, loss, expense, cost, damages, or causes of action of every kind or character, including attorneys's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONTRACTOR.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey, or transfer its interest in this Contract, without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONTRACTOR.

ARTICLE 14 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 15 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The CONSULTANT further represents that no person having any conflict of interest shall be employed for said performance or services.

The CONTRACTOR shall promptly notify the COUNTY's representative, in writing, by

certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence, or appear to influence, the CONTRACTOR's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

ARTICLE 16 - EXCUSABLE DELAYS:

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR, or its subcontractor(s), and without their fault or negligence. Such causes include, but are not limited to: acts of God; force majeure; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR's request, the COUNTY shall consider the facts and extent of any failure to perform the work; and, if the CONTRACTOR's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 17 - ARREARS

The CONTRACTOR shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 18 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY, or at its expense, will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent, unless required by a lawful court order. All drawings, maps, sketches, programs, data bases, reports and other data developed or purchased under this Contract for the COUNTY, or at the COUNTY's expense, shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in

writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 19 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services, and activities under this Contract, an Independent Contractor and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR's relationship, and the relationship of its employees, to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement, or representation other than specifically provided for in this Contract.

ARTICLE 20 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 21 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records related to all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR's place of business.

ARTICLE 22 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 23 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has, and will continue to maintain, all licenses and approvals required to conduct its business; and, that it will, at all times, conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 24 - SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstances

shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 25 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 26 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein, or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY's notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the COUNTY of any estimated change in the completion date; and (3) advise the COUNTY if the contemplated change shall affect the CONTRACTOR's ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs, in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment, and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed on behalf of Palm Beach County.

ARTICLE 27- COUNTY PROVIDED MAINTENANCE

The COUNTY agrees to care for vegetation around the shoreline of the lake. The COUNTY shall provide the shell rock and grading of the boat ramp, to be determined on an as needed basis by the COUNTY. The COUNTY will maintain the access gates, roadway and parking lot for the lake.

The CONTRACTOR shall notify the COUNTY immediately when any maintenance is required on any/all items for which the COUNTY is responsible.

ARTICLE 28- CONTRACTOR PROVIDED MAINTENANCE

The CONTRACTOR shall properly maintain, repair and keep in good operating condition all equipment and structures owned by the COUNTY and located in and about the subject premises. All necessary repairs, replacement or maintenance shall be performed within seventy-two (72) hours of being discovered. All costs associated with the repair, replacement or maintenance shall be the responsibility of CONTRACTOR.

All equipment owned by CONTRACTOR and used in water ski instruction or to provide tows shall be maintained in safe condition and according to the standards of the sport and per manufacturer's instruction.

CONTRACTOR shall maintain all equipment, structures, boat(s), skis, wakeboards, jumps and slalom courses used to provide the full range of water ski lessons and coaching.

CONTRACTOR shall be responsible for providing trash receptacles and removing all litter generated by customers and their guests. All trash shall be deposited in dumpsters located within the designated areas of the park.

CONTRACTOR shall immediately notify the COUNTY when any maintenance is required on any items for which the COUNTY is responsible.

ARTICLE 29 – IMPROVEMENTS OR ALTERATIONS

No alterations, additions or improvements to the lake or surrounding area shall be made without the prior written consent of the Parks & Recreation Department. All additions, fixtures or improvements affixed to the premises shall remain as part of the premises at the expiration or termination of this contract and any renewals thereof.

ARTICLE 30 – DAMAGE DUE TO LAKE WATER LEVELS

The COUNTY shall not be liable for damages to any property of the CONTRACTOR or other parties located upon the leased premises resulting from an abnormally high or low lake water level.

ARTICLE 31 – CONTRACTOR LIABILITY

The CONTRACTOR assumes all risk in the operation of a water ski school at South County Regional Park. The CONTRACTOR agrees that they shall be solely responsible and answerable for damages for all accidents or injuries to persons or property occurring at the lake and agrees to indemnify and hold harmless the COUNTY and its officials and employees from any and all claims, suits, losses, damage or injury to personal property or life and limb of whatever kind and nature arising out of the operation of the water ski school.

ARTICLE 32 – RESTORATION OF PREMISES

Neither the COUNTY nor CONTRACTOR shall be responsible for the restoration of the lake and appurtenant structures as a result of damages by fire, hurricane, storms, Acts of God or any other reason. If the lake becomes unusable as a result of the damage, this Contract shall be terminable by the COUNTY upon thirty (30) days written notice to the CONTRACTOR. Otherwise, the Contract shall remain in full force and effect. If the COUNTY chooses, in its sole discretion, to undertake any repairs or renovations, it may close the lake during that time. The only right of the CONTRACTOR shall be to be relieved of the obligation to make payments to the COUNTY during the time the lake is closed.

ARTICLE 33 - NOTICE

All notices required in this Contract shall be sent by certified mail (return receipt requested), hand delivered, or sent by other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Laurie C. Schobelock
Aquatic Supervisor
Parks & Recreation Department
2700 Sixth Avenue South
Lake Worth, FL 33461

With a copy to:

Dave Lill, Director, Aquatics Division
Parks & Recreation Department
2700 Sixth Avenue South
Lake Worth, FL 33461

If sent to the CONTRACTOR, notices shall be addressed to:

Chet Raley
President
Chet's Inc.
9075 Tresmore Court
Boynton Beach, FL 33472

ARTICLE 34 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in the Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 26 - Modifications of Work.

THE REST OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Director of Purchasing of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

PALM BEACH COUNTY, FLORIDA FOR ITS
BOARD OF COUNTY COMMISSIONERS

for Mary Ann Mr K See
Kathy Scarlett, Purchasing Director

WITNESS:

[Signature]
Signature

Jimmy Bowser
Name (type or print)

CONTRACTOR:

Chet's Inc
Company Name

BY: *[Signature]*
Signature

WITNESS:

[Signature]
Signature

KENNETH E. HARLAN
Name (type or print)

Typed Name

President
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: *Anne Helgert*
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: *[Signature]*
Dennis L. Eshleman, Director
Parks and Recreation Department

South County Regional Park Ski School Concession Scope of Work/Services

Contractor shall provide a complete Ski School Service at the South County Regional Park maximizing the utilization of the complex and providing quality, customer oriented public water skiing opportunities. Contractor shall provide a complete water skiing school program based on the following (but not necessarily limited to) variables/requirements.

4.1 Personnel/Staffing

Provide professional staff to facilitate the needs of this Contract.

4.1.1 Staff shall include Coach, certified at Level 3 by USA Water Ski Association (or equivalent), with a minimum of four (4) years of coaching experience, and a minimum of five (5) years experience in turnkey aquatic risk management/safety services.

Certified Level 3 Coach shall provide the following:

- Oversee all water ski instructors and other coaches;-
- Qualified to teach advance traditional slalom, tricks and jumping techniques for athletes who desire to successfully compete in State, Regional and National Sanctioned Tournaments;-
- Shall have capability to introduce techniques for shore-line slalom passes, trick runs between 5,000 and 7,000 points and jump distances between 120 and 180 feet; and
- Have Sports Science/Medicine knowledge that will help the athlete develop a comprehensive off-water training regiment, to enhance performance in sanctioned competition.

4.1.2 Any/all other coaches utilized under this program should be qualified to provide instruction/coaching on par with Level 3 Coach in the disciplines of barefoot, kneeboard and wakeboard skiing.

4.2 Safety Procedures

Contractor shall ensure that all participants are instructed in safety procedures and requirements necessary to ensure that risk of injury or accidents are minimized. A staff member, certified in First Aid/CPR, shall be on site at all times, and provision for a First Aid Kit shall be available at all time. Coach shall have a minimum of five (5) years experience in turnkey aquatic risk management/safety services.

4.3 Telephone

Contractor shall provide telephone service (cellular phone), to ensure accessibility to the public, for provision of lesson reservations, questions, cancellations, etc.

4.4 Training

Contractor shall indoctrinate and train staff in the philosophies and public relations concerns of the County. Contractor's staff shall be trained during the hours and operation of South County Regional Park, and in the _____ accessibility of access to the lake.

4.5 Hours of Operation

4.5.1 Contractor shall provide lessons during daylight hours to ensure lessons will be conducted safely.

4.5.2 Contractor shall make lessons available at times convenient to students, i.e. weekends, holidays, and before and after work/school schedules.

4.5.3 Contractor shall be required to make judgments regarding safe weather and water conditions, and will be expected to cancel or postpone lessons when conditions are unsafe.

4.5.4 Contractor shall provide the County with scheduling of days and times that its services will be available to the public.

4.6 Improvements/Alterations

4.6.1 The Contractor shall make no alterations, additions or improvements to the lake/surrounding area without the written consent of the Department. All additions, fixtures or improvements affixed to South County Regional Park, (the "Premises") shall remain as part of the Premises at the expiration or cancellation of any contract. All such fixtures and improvements shall become the sole property of the County immediately upon installation or construction.

4.6.2 All equipment, signage, structure, etc. shall comply with all appropriate rules, regulations and standards of the County. No coin operated vending machines shall be installed on the Premises without written permission from the Department.

4.6.3 Contractor agrees that all equipment, structures and improvements shall meet all applicable construction, environmental, health and safety codes, and any/all required licenses/permits shall be obtained at Contractor's own expense.

4.7 Use of Premises

- 4.7.1 Contractor shall operate the ski school for the sole benefit of the public. The general public shall be instructed and towed on a non-discriminatory basis. The Department may authorize the closing of the ski lake for the safety of the users. In these instances the lake will remain closed until the County authorizes its reopening.
- 4.7.2 The Department retains the right to close the ski lake for up to three (3) days every four (4) months, starting September to comply with 369.20 Florida Statutes, Florida Aquatic Weed Control Act.
- 4.7.3 Contractor's sole compensation for closings shall be proration of revenue for any days when the lake is closed for an entire day at the direction of the County and where the closure is not due to acts or omissions of the Contractor.
- 4.7.4 The Contractor shall control access to the ski lake via the ski site gate and shall be responsible for confining customers' access to only the lake and its immediate shoreline. The Contractor shall ensure that the gate is locked during times other than when admitting students and their guests for water skiing activities.

4.8 Revenue

- 4.8.1 Contractor's identified monthly revenue to the County shall be payable from the date identified as start date of the Contract. Said monthly revenue shall be for the right to operate on the Premises.
- 4.8.2 Payments are due the first day of each month. Payments not received by the twentieth (20th) day of the month are past due and subject to five percent (5%) monthly late fee per month until paid.

4.9 Advertisements

Billboard/commercial endorsements, pamphlets, distribution, etc., are prohibited on County property, unless prior approval is received from the County.

4.10 Maintenance and Repairs

- 4.10.1 Contractor shall properly maintain, repair and keep in good operating condition all equipment and structures owned by the County and located in and about the subject Premises. All cost(s) for repair, maintenance and replacement of such equipment and structure shall be done at the sole expense of the Contractor and shall be accomplished within seventy-two (72) hours after the need for repairs and/or maintenance becomes apparent.
- 4.10.2 All equipment owned by the Contractor and used in the course of water ski

instruction, or to provide tows, must be maintained in safe condition according to the standards of the sport and per manufacturer's stipulations. All applicable requirements for safe boating as set by local, state and federal requirements must be adhered to. Any water skiing equipment, which condition would endanger skiers, boat passengers or spectators shall be removed immediately and shall not be utilized until it has been restored to a safe condition.

- 4.10.3 Contractor shall provide all equipment/structures, boat(s), skis, wakeboards, jumps, slalom courses, etc., and maintain same to accomplish the full range of water ski lessons and coaching for this program.
- 4.10.4 The Contractor shall be responsible for providing trash receptacle(s) and removing litter generated by customers and their guests. All trash shall be deposited in dumpsters within the designated area(s) of South County Regional Park.
- 4.10.5 The County agrees to care for vegetation around the shoreline of the lake. The County shall provide the shell rock and grading of the boat ramp, to be determined on an as needed basis. The County will maintain the access gates, roadway, and parking lot for the lake.
- 4.10.6 Neither the County nor Contractor shall be responsible for the restoration of the lake and appurtenant structures as a result of damages by fire, hurricanes, storms, Acts of God or any other reason. If the lake becomes unusable as a result of the damage, this Contract shall be terminable by the County upon thirty (30) days written notice to the Contractor. Otherwise, the Contract shall remain in full force. If the County chooses, in its sole discretion, to undertake any repairs or renovations, it may close the lake during that time. The only right of the Contractor shall be to be relieved of the obligation to make payments to the County during the time the lake is closed.
- 4.10.7 The County shall not be liable for damages to any property of the Contractor or other parties located upon the leased Premises resulting from an abnormally high or low lake water level.
- 4.10.8 The Contractor shall notify the County immediately when any maintenance is required on any items for which the County is responsible, i.e. gate(s) to lake and parking area.
- 4.10.9 Should development work surrounding the lake require the shutdown of the water ski school activities on the lake, the County shall give thirty (30) days written notice to cease ski school activities, and the Contractor shall be relieved of the obligation to make payments to the County during that time the lake is closed. The lake may be closed temporarily or permanently at any given time depending on adjacent development requirements. Should the lake be closed permanently, this Contract shall be terminable by the County upon thirty (30) days written notice. The County reserves the right to terminate the Contract with ninety (90) days written notice for any reason.

4.11 Right of Contractor to Change Fees for Lessons & Tows

- 4.11.1 The Contractor shall recommend a schedule of lesson fees for all services and levels of instruction to be provided, subject to County approval.
- 4.11.2 The Contractor shall be allowed to adjust fees according to the season.
- 4.11.3 The Contractor shall submit fee increase requests, in writing, to the County for approval, within thirty (30) days prior to implementation. County will respond within seven (7) days upon receipt of request.
- 4.11.4 Notwithstanding the above, the County shall have the right to assure that all fees and charges shall be in line with other water ski lessons of equal level and quality within the surrounding area.

4.12 Contractor Liability

The Contractor assumes all risk in the operation of a water ski school at South County Regional Park. The Contractor shall be solely responsible and answerable to damages for all accidents or injuries to persons or property occurring at the lake, and shall indemnify and hold harmless the County and its officials and employees from any and all claims, suits, losses, damage or injury to personal property or life and limb of whatever kind and nature arising out of the operation of the water ski school,

4.13 Center Lake Responsibilities

- 4.13.1 CONTRACTOR shall serve as advisor on the installation and maintenance of a recreational slalom course. Once course is installed the contractor shall monitor the condition of the buoys and advise the County if repairs are necessary.
- 4.13.2 CONTRACTOR shall monitor the general rule compliance on the lake to ensure that it is being used properly and notify the County of any use violations or issues.