5A-1

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	**December 18, 2018**	**[ ] Consent**	**[X] Regular**
		[ ] Ordinance	**[ ] Public Hearing**

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Concessionaire Lease Agreement with US Soccer 5, LLC (US Soccer), a limited liability company, for the operation of a mini soccer complex concession at John Prince Park (Park) for $48,000/year ($4,000/month) for a period of ten (10) years commencing no later than 30 days after the issuance of a certificate of occupancy.

Summary: In July 2018, a Request For Proposals (RFP) was issued for the operation of a mini soccer complex concession at the Park for park visitors. Proposals were received from Soccer Town Pembroke Pines, LLC (Soccer Town) and US Soccer. A Selection Committee reviewed the proposals and ranked US Soccer the highest. The guaranteed annual rent is $48,000/year ($4,000/month), with annual 2% increases. US Soccer will pay a commission fee equal to the amount by which 10% of US Soccer's annual gross revenues exceeds the guaranteed annual rent. US Soccer has proposed making $990,486 in capital improvements which includes four (4) 7v7 fields (35-45 yards wide x 55-70 yards long), two (2) 5v5 fields (25 yards wide x 40 yards long), installation of a trailer/container for check-in, and an outdoor cafe/service/patio area. The term of the Concessionaire Service Agreement is for ten (10) years, with two (2) 10 year options to extend. US Soccer has posted a $5,000 security deposit. The Parks Department will manage and administer the Concessionaire Lease Agreement. **(PREM) District 3 (HJF)**

Background and Policy Issues: This RFP for a mini soccer complex includes the re-purposing of two (2) unused softball fields into a number of smaller soccer fields at John Prince Park and will not impact the existing Senior Softball or Special Olympics programming. Soccer is popular in this area of the County and Parks has identified a number of locations within the park for open play soccer which is enjoyed by children and adults, particularly on weekends. This arrangement with a sports contractor will develop organized soccer, which doesn't currently exist at the park, and will further enhance opportunities for the community by providing organized leagues for children and adults as well as drop in play. The RFP was advertised on PREM's website, Channel 20's Community Bulletin Board, the Palm Beach Post on July 15, 2018, and July 22, 2018, and was available through Purchasing's Vender Self Service system. The RFP required respondents to submit: i) an operation and business plan providing details on the development and improvements to be constructed to accommodate the complex, and a plan for operations, fee schedules, staffing levels, a marketing plan, type of artificial turf surface, and a capital improvement plan; ii) evidence of the respondent's experience and qualifications in development and operation of a mini soccer complex; and iii) the respondent's proposed rental payments.

Continued on Page 3

Attachments:

1. Location Map
2. Selection Committee Meeting Minutes
3. Concessionaire Lease Agreement (2)
4. Budget Availability Statement
5. Disclosure of Beneficial Interests
6. Soccer 5 Foundation Information

Recommended By: _____ 11/29/18
Department Director **Date**

Approved By: _____ 12/5/18
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	____	____	____	____	____
Operating Costs	____	____	____	____	____
External Revenues	($0)	($24,000)	($48,480)	($49,450)	($50,439)
Program Income (County)	____	____	____	____	____
In-Kind Match (County	____	____	____	____	____
NET FISCAL IMPACT	($0)	($24,000)*	($48,480)*	($49,450)*	($50,439) *
# ADDITIONAL FTE POSITIONS (Cumulative)	____	____	____	____	____

Is Item Included in Current Budget: Yes X No ____

Does this item include the use of federal funds? Yes ___ No X___

Budget Account No: Fund 0001 Dept 580 Unit 5111 Rev 4719-18

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

The term of the Agreement is for 10 years with two (2) 10 year options to extend. The above presumes a commencement date of April 1, 2020. The guaranteed annual rent is $48,000/year ($4,000/month), with annual 2% increases, plus a 10% monthly commission fee.
*Revenue does not include the 10% monthly commission fee.

Fixed Assets Number n/a

C. Departmental Fiscal Review: 11/29/18

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

11/21/18
OFMB

11/20
11/30/18
Contract Development and Control

B. Legal Sufficiency:

12/3/18
Assistant County Attorney

C. Other Department Review:

Department Director

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

Background and Policy Issues (cont'd.): The County set a minimum guaranteed annual rental of $18,000, plus a commission fee equal to the amount by which 8.0% of monthly gross revenues exceeds the guaranteed annual rent. The evaluation criteria set forth in the RFP were: Development & Operational Plan (28 pts); Experience/Qualifications (20 pts); Revenue (20 pts); Financial Ability (17 pts); SBE (10 pts); and Local Business (5 pts). Two (2) proposals were received in response to the RFP: US Soccer and Soccer Town. Details of the proposals are as follows:

Operational/Business Plan

Soccer Town proposed two (2) phases – Phase I $403,686 - $503,686 for (6) 6v6 fields and (2) 8v8 fields and additional improvements at a later date. The proposal did not identify the additional improvements nor estimated costs. An April 2019 completion date for Phase I was provided, but the Selection Committee had some reservations regarding the completion date and believed it was unachievable. Soccer Town offers hourly field rentals, tournament play, camps, birthday parties and other events. The fee schedule for field rentals, leagues, tournaments and concession items are acceptable, but did not include a comprehensive fee for academies or discounts for youth sports.

US Soccer proposed, over the course of 30 years, a capital investment of $2,088,746. Fields will be built in two phases – Phase I $990,486 for (4) 7v7 fields and (2) 5v5 fields. They will install a trailer/container for check-in and an outdoor cafe/service/patio area and will use the 2nd floor of the existing building. Phase I will be completed in 15 months. Phase II will include constructing 6 fields on the baseball field to the south or 5 fields to the north; remodeling the existing building for ground floor concession/outdoor patio, beer/wine garden; upgrading the restrooms and relocating the existing storage maintenance building at an estimated cost of $1,098,260.

US Soccer offers youth soccer clubs, academies for red and white teams, birthday parties, adult leagues, and memberships. Proposed fees are reasonable and include ranges from hourly to weekly to monthly. US Soccer also included information about their community outreach and parks and recreation department support programs. US Soccer offers free play to charities such as the Boys and Girls Club and the YMCA. They sponsor events at their facilities, contribute game time to charities as raffle prizes, and provide special needs programs. Additionally, US Soccer 5 gives back up to 10% of their profits through County Parks Foundation partnerships and collaborates with the Soccer 5 Foundation, a non profit organization. One of US Soccer's principals is the president of the Soccer 5 Foundation.

Both proposals have acceptable marketing plans and each proposal includes a website, use of social media, branding, traditional advertising, and community events to promote the concession. Both respondents propose to use FieldTurf for the artificial turf surface. Soccer Town did not provide a renewal period for the turf. US Soccer proposed to renew the fields every 5 years, which is consistent with the general practice of artificial turf surface. Both respondents offer to operate 8 to 12 hours per day, 7 days per week, which exceed the minimum operating requirements of 4 days/week, 4 hours/day.

Soccer Town proposed two (2) staff members on site to provide daily operation, handling of money, scheduling, supervision of site for cleanliness and maintenance, league and tournament, and supervision of staff. US Soccer proposed each center will have a general manager, assistant manager and part time staff. Academies will have a head coach and additional coaches daily and two (2) staff members will be present during hours of operation.

Experience and Qualification

Soccer Town is a small firm with limited experience in developing and operating a mini soccer complex. They currently operate one (1) field in Broward County through a subcontractor. The proposal indicates head coaches hold prestigious certifications for coaching youth.

US Soccer 5 has approximately 10 years experience in the development and operation of a soccer complex. Currently operates multiple sites in Miami Dade parks. Key personnel has over 35 years experience in the parks and recreation field.

Revenue

Respondents were required to provide an amount of proposed revenue. Proposed revenue and points assigned are as follows: Soccer Town proposed $24,000/yr and a 10% commission fee (17 pts) and US

Soccer proposed $48,000/yr and a 10% commission fee (20 pts).

Financials

Both respondents provided sufficient evidence that they are financially capable of funding the capital improvements proposed in their capital improvement plans and both appear to be financially sound. Soccer Town submitted a subcontractor schedule and received 5.5 SBE points for the subcontractor's participation. US Soccer did not submit SBE schedules. Neither respondent was eligible to receive local preference points.

On October 9, 2018, the Selection Committee discussed each proposal at length and commented that although the proposals as presented are fairly competitive, contain diverse programs, and will provide adequate fields for soccer, the committee thought the capital investment proposed by Soccer Town was underestimated for the types of improvements proposed in its proposal, which would result in less improvements actually being installed or the quality of the improvements to be compromised. The committee also believed the proposed timeline for constructing the improvements was somewhat aggressive. The Selection Committee is recommending the award of the concession to US Soccer because the proposed capital improvements, programs and maintenance of the fields are significantly better than Soccer Town's and believes US Soccer will be able to accomplish the improvements and goals as presented in its proposal.

The initial term for this concession is ten (10) years with two (2) successive renewal periods of 10 years each, at an annual 2% adjustment to the annual rent. US Soccer will pay a 10% monthly commission fee. Field construction is expected to be completed by April 2020. US Soccer 5, LLC provided a Disclosure of Beneficial Interests which identifies Scott Georgeson and Sharon Georgeson as each having a 50% ownership interest.

LOCATION MAP

Attachment 1
1 of 1

Meeting Minutes
Selection Committee

Development and Operation of a Mini Soccer Complex Concession at John Prince Park

RFP NO. 2018-103-RCH

October 9, 2018

2633 Vista Parkway
West Palm Beach, FL

I. Call To Order

Margaret Jackson called the meeting to order at 2:00 p.m.

II. Attendance

Selection Committee Members present:

Paul Connell, Parks & Recreation
Indira Persaud, Parks & Recreation
Cliff Battles, Parks & Recreation
Allen Gray, OSBA
Margaret Jackson, PREM/FDO

Others Present:

Scott Georgeson, Soccer 5
Luis Acosta, Soccer Town

III. Conflict of Interest

None.

IV. Florida Statutes, Section 286.0114

Ms. Jackson advised the Committee and attendees that the public is given a reasonable opportunity to be heard during a selection committee meeting, comments are not to be considered presentations by a proposer, and individuals are afforded 2 minutes to speak. Ms. Jackson called for public comment.

Mr. Georgeson thanked the committee for its time. No other comments received.

Attachment 2
1 of 3

V. Establish Chair of Selection Committee

A Motion was made and seconded to approve the nomination of Indira Persaud as Chair of the Selection Committee.

Motion carried.

VI. Discussion of Proposals

Proposals were received from:

US Soccer 5, LLC
Soccer Town Pembroke Pines, LLC

Mr. Gray discussed how SBE points were assigned to Soccer Town for this project. Soccer Town submitted a schedule for subcontractor to provide concession services, and received points based on the subcontractor's participation.

Soccer Town proposed two phases – Phase I $403,686 - $503,686 for (6) 6v6 fields and (2) 8v8 fields and additional improvements at a later date. They did not provide what the improvements would be nor the estimated costs and the proposal only commits to $400,000. An April 2019 completion date for Phase I was provided but seems to be unachievable. Hours of operation are acceptable and exceed the minimum requirements. They offer hourly field rentals, tournament play, camps, birthday parties and other events. The fee schedule for field rentals, leagues, tournaments and concession items are acceptable, but did not include a comprehensive fee for academies or discounts for youth sports.

US Soccer 5 proposed over the course of 30 years, a capital investment of $2,088,746. Fields will be built in two phases – Phase I $990,486 for (4) 7v7 fields and (2) 5v5 fields. They will install a trailer/container for check-in and an outdoor cafe/service/patio area and will use the 2nd floor of the existing building. Phase I will be completed in 15 months. Phase II will include 6 fields on the baseball field to the south or 5 fields to the north; remodel the existing building for ground floor concession/outdoor patio, beer/wine garden; upgrade the restrooms and relocate the existing storage maintenance building. Hours of operation are acceptable and exceed the minimum requirements. They offer youth soccer clubs, academies for red and white teams, birthday parties, adult leagues, and memberships. Fees are reasonable and include ranges from hourly to weekly to monthly.

Soccer Town indicated they would have two staff members on site to provide daily operation, handling of money, scheduling, supervision of site for cleanliness and maintenance, league and tournament, and supervision of staff.

Attachment 2
2 of 3

US Soccer 5 proposed each center will have a general manager, assistant manager and part time staff. Academies will have a head coach and additional coaches daily. Two staff members will be present during hours of operation.

Both proposals have acceptable marketing plans which include a website, the use of social media, branding, traditional advertising, and community events to promote the concession.

Both proposers proposed to use FieldTurf for the artificial turf surface. Soccer Town did not provide a renewal period for the turf. US Soccer 5 proposed to renew the fields every 5 years, which is consistent with the general practice of artificial turf surface.

Experience was reviewed and discussed. Soccer Town is a small firm with limited experience in developing and operating a mini soccer complex. They currently operate 1 field using a subcontractor. The proposal indicated head coaches hold prestigious certifications for coaching youth, but did not provide any documentation.

US Soccer 5 has approximately 10 years experience in the development and operation of a soccer complex. Currently operates multiple sites in Miami Dade parks. Key personnel has over 35 years experience in the parks and recreation field. Experience provided for coaching is acceptable.

Soccer Town received 5.5 points for SBE participation. US Soccer 5 did not submit SBE schedules. Neither proposer was eligible to receive local preference points.

The committee discussed each proposal at length and commented that although the proposals as presented are fairly competitive, contain diverse programs, and will provide adequate fields for soccer, the committee felt the capital investment proposed by Soccer Town appears to be low, the capital improvement plan as presented is unclear as to field locations and other improvements, and the timeline for improvements was somewhat aggressive. The committee felt the capital improvements proposed by US Soccer 5 are significantly better and the proposal demonstrates US Soccer 5 will be able to accomplish these proposed improvements.

The committee scored the proposals; the overall total points and ranking for the proposals are as follows:

1 – US Soccer 5, LLC – 339.9 points
2 – Soccer Town Pembroke Pines, LLC – 286.3 points

Based upon the above scoring, a motion was made and seconded to award the mini soccer complex concession contract to US Soccer 5, LLC.

Motion carried 5-0. Meeting adjourned at 4:30 p.m.

Margaret Jackson, Recorder

Attachment 2
3 of 3

Attachment 3
Concessionaire Lease Agreement - 2
(379 pgs each)

PALM BEACH COUNTY

CONCESSIONAIRE LEASE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

BY AND THROUGH ITS

BOARD OF COUNTY COMMISSIONERS

(County)

and

US SOCCER 5 LLC

(Concessionaire)

CONCESSIONAIRE LEASE AGREEMENT

THIS CONCESSIONAIRE LEASE AGREEMENT, hereinafter referred to as "Agreement" is made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and US SOCCER 5 LLC, a LLC, (type of entity) (EIN: # 27 - 2298895), hereinafter referred to as "Concessionaire".

W I T N E S S E T H:

WHEREAS, County is the owner of certain real property, including the improvements located thereon, as more specifically described hereinafter and as shown in the aerial photograph attached hereto as Exhibit "A", (the "Park") a portion of which Concessionaire desires to use for operation of a concession; and

WHEREAS, Concessionaire has demonstrated experience as a mini soccer complex concessionaire; and

WHEREAS, Concessionaire was selected through the competitive proposal process to use such property and improvements for a mini soccer complex through a Request for Proposal the terms and conditions of which are hereby by reference incorporated into this Agreement; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, develop, operate, and manage said activities in accordance with the terms of this Agreement; and

WHEREAS, County is willing to allow such property and improvements to be used by Concessionaire for the uses set forth herein.

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
BASIC AGREEMENT PROVISIONS

Section 1.01 Premises

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Concessionaire to be observed and performed, the County provides to the Concessionaire, and Concessionaire accepts from County, the concession area for the mini soccer complex designated on Exhibit "B" attached hereto and made a part hereof (the "Premises") for the provision of a mini soccer concession (the "Concession"). The Premises consists of approximately four (4) acres and the 2nd floor of the press box, which is approximately 400 square feet, located at the softball complex as depicted on Exhibit "B". The Premises is located within John Prince Park, 2520 Lake Worth Road, Lake Worth, Florida, and is shown in the Park aerial photograph attached as Exhibit "A".

Concessionaire shall operate its concession within the boundaries of the Premises as set forth herein. County reserves the right to make such amendments, changes and revisions to the configuration of the Premises as County, in its sole discretion, may deem proper. Construction may at times impact the operation of this concession. The County, at its option, reserves the right to relocate Concessionaire's facilities within the Premises into another area of similar size. In the event that Concessionaire does not agree to the relocation as provided herein, this Agreement shall be automatically terminated and the

parties hereto shall be relieved of all further obligations hereunder; County shall not be liable to Concessionaire for any damages of any kind whatsoever.

Section 1.01A Expanded Premises

Additional baseball fields or other County property within the Park surrounding the Premises may become available from time to time as the needs of the community change. In the future, the County may elect, at its option, after obtaining written consent from Concessionaire, to expand the Premises to include such property by an amendment to this Agreement approved by the Board of County Commissioners at its sole discretion. In the event the Premises is expanded, the Guaranteed Annual Rent shall be increased proportionate to the increase in land area within the Premises which such Guaranteed Annual Rent increase shall be mutually agreed upon by the parties.

Section 1.02 Parking

Vehicle parking at the Park is designated exclusively for visitors participating in recreational activities at the Park, as well as Park and concession staff, on a first-come, first-served basis.

Section 1.03 Special Activities

Concessionaire shall submit a request to the County's Director of Special Facilities, Parks & Recreation Department (the "Department"), in writing, at the address set forth in Section 19.03(a) of this Agreement, at least ten (10) business days in advance in the event Concessionaire desires to hold special activities are planned; however, permission to allow special activities will be granted or denied at Department's sole and absolute discretion.

Section 1.04 Length of Term and Commencement Date

The Agreement shall commence upon the Effective Date, as defined herein, and shall extend for a period of ten (10) years thereafter from the Commencement Date , as defined herein, (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement. Concessionaire shall open its concession for business on the Premises within 30 days after the Concessionaire is issued a certificate of occupancy/completion. The Commencement Date is intended to be the first day Concessionaire opens its concession for business on the Premises. The exact Commencement Date shall be established by written notice from Concessionaire to the Department at least three (3) business days in advance of the anticipated Commencement Date.

Notwithstanding the above, if Concessionaire is unable to open the concession for business 30 days after the Concessionaire is issued a certificate of occupancy/completion, County shall have the option, at its sole discretion, to (i) establish the Commencement Date by written notice to Concessionaire; ii) extend the deadline for Concessionaire's opening of the concession for business; or iii) declare Concessionaire's failure to open the concession for business within the prescribed time to be an Event of Default by Concessionaire under Section 13.01 herein, in which event County shall have all remedies available to it under this Agreement. Notwithstanding the foregoing, in the event County elects to establish a Commencement Date and rent is received from Concessionaire prior to the opening of the concession for business, County shall not be precluded from later declaring Concessionaire's failure to open its concession for business an Event of Default if the concession does not open for business by the new deadline established by County.

Section 1.05 Option to Extend

County hereby grants to Concessionaire, provided Concessionaire is not then in default of this Agreement, two (2) successive options to extend the Term of this Agreement, each for a period of ten (10) years under the same terms and conditions as this Agreement and commencing upon the expiration of the initial Term of this Agreement or any extension thereof. Concessionaire shall exercise its option to extend, if at all, by written notice to the County received by the County no sooner than one hundred 180 days

but no later than 120 days prior to the expiration of the initial Term of this Agreement or any extension thereof. Failure of Concessionaire to duly and timely exercise its option to extend the Term of this Agreement shall be deemed a waiver of Concessionaire's right to said extension option and all further extension options.

Section 1.06 Excuse of County's Performance

Anything in this Agreement to the contrary notwithstanding, the County shall not be deemed in default with respect to failure to perform any of the terms, covenants and conditions of this Agreement if such failure to perform shall be due to any strike, lockout, civil commotion, war-like operation, natural disaster, invasion, rebellion, military power, sabotage, government regulations or controls over which County has no amendatory powers, inability to obtain any material, utilities, service or financing, through Acts of God or other cause beyond the reasonable control of the County.

Section 1.07 Customer Service

Concessionaire shall place a sign provided by the Department in a location on the Premises designated by County, stating:

> This business occupies space owned by Palm Beach County. If any customer cannot resolve any customer complaint with the business owner, they may forward the details of their complaint, in writing, to: Palm Beach County Parks & Recreation Department, Attention: Director, Special Facilities, John Prince Park, 2700 Sixth Avenue South, Lake Worth, FL 33461.

Concessionaire shall work diligently to resolve customer complaints regarding service or other issues.

Section 1.08 Amount of Deposit

Concessionaire, simultaneously with its execution of this Agreement, has deposited with the County the sum of Five Thousand Dollars and No/100 ($5,000.00) as security for the full, faithful and timely performance of each and every term, covenant and condition to be performed by Concessionaire under this Agreement (the "Security Deposit"). The Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or payment of any interest thereon. In the event of the failure of Concessionaire to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Concessionaire, then the County, at its option, may appropriate and apply said Security Deposit, or so much thereof as County may deem necessary, to compensate the County for all loss or damage sustained or suffered by County due to such default or failure on the part of Concessionaire. In no event shall the amount of said Security Deposit be deemed to limit Concessionaire's liability under this Agreement. Should any portion of the Security Deposit be so appropriated and applied by County, then Concessionaire shall, upon the demand of County, forthwith remit to County a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Concessionaire's failure to do so within five (5) days after receipt of such demand shall constitute a default of this Agreement. Should Concessionaire comply with all of the terms, covenants and conditions of this Agreement and promptly pay all of the Guaranteed Annual Rent and Additional Rent herein provided for as it becomes due, and all other sums payable by Concessionaire to County hereunder, the said Security Deposit shall be returned in full to Concessionaire within thirty (30) days of the expiration of this Agreement, or upon the earlier termination hereof.

ARTICLE II
RENT

Section 2.01 Annual Rent

Annual Rent shall consist of both Guaranteed Annual Rent and Commission Feet as set forth herein.

A. Guaranteed Annual Rent. Concessionaire shall pay to the County Guaranteed Annual Rent during the term of this Agreement in equal monthly installments, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefor or any deduction, holdback or setoff whatsoever. The initial amount of Guaranteed Annual Rent is $ 48,000 . The initial monthly installment of Guaranteed Annual Rent shall be due within fifteen (15) days after the Commencement Date. Any Guaranteed Annual Rent payment hereunder for any fractional month shall be calculated and paid on a per diem basis using a 30-day month.

B. Commission Fee. Concessionaire shall pay to the County a Commission Fee during the term of this Agreement in monthly installments, together with all applicable sales taxes thereon, on the 20th day of each month, without any prior demand therefor or any deduction, holdback or setoff whatsoever. Concessionaire shall pay County the amount by which 10 % of the monthly gross sales derived from the operation of the concession on the Premises exceeds the monthly installment of Guaranteed Annual Rent ("Commission Fee") for the preceding month, if applicable. The initial monthly Commission Fee shall be due within thirty (30) days after the Commencement Date. Any Commission Fee payment hereunder for any fractional month shall be calculated and paid on a per diem basis using a 30 day month.

"Gross sales," for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, and services generated as a result of the Concessionaire's operations at or associated with the Park. This includes all sales made or advertised within the Park, advertised on the Concessionaire's website associated with the Park, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its Park operations, and sales generated by subcontractors or related entities whose sales are associated with the Concessionaire's authorized operations at the Park. Gross sales shall not include:

1. tax collections,
2. gratuities,
3. funds collected on food consumed by the Concessionaire's employees, or
4. funds that were collected but have been refunded to the customer.

Sales of goods and services and collections of sales tax shall be accounted for separately at the point of sale. If the Concessionaire is unable to do this, it shall calculate sales tax from gross receipts using a method approved by the Florida Department of Revenue.

No later than the 20th day of each month, Concessionaire shall provide County a completed Monthly Report of Concessionaire's Gross Sales utilizing the form attached hereto and incorporated herein as Exhibit "C" certifying the gross sales for the preceding month.

The Commission Fee, together with the Monthly Report of Concessionaire's Gross Sales, shall be delivered in full to the County at the address set forth in Section 2.04 by the deadline established above. The Guaranteed Annual Rent is the minimum rent due. Concessionaire acknowledges that it shall not be entitled to reduced monthly rent should the monthly Commission Fee be less than the monthly installment of Guaranteed Annual Rent.

No later than the 30th day following each anniversary of the Commencement Date, Concessionaire shall provide County a report prepared by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles (GAAP) certifying the annual gross sales for the preceding 12 months. This Section shall survive termination or expiration of this Agreement.

Section 2.02 Adjustment to Guaranteed Annual Rent

On each anniversary date of the Commencement Date of this Agreement or any extension thereof, the Guaranteed Annual Rent shall be adjusted by multiplying the then current Guaranteed Annual Rent by one hundred and two percent (102%).

Section 2.03 Additional Rent

Any and all sums of money or charges required to be paid by Concessionaire under this Agreement other than the Guaranteed Annual Rent, shall be considered "Additional Rent", whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Concessionaire of all Additional Rent as are available to County with regard to Annual Rent.

Section 2.04 Rent Payments

Annual Rent and Additional Rent, as herein defined, shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Board of County Commissioners / Finance Department, P.O. Box 3977, West Palm Beach, FL 33402.

Section 2.05 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Non Ad Valorem Real and Personal Property Taxes

Concessionaire shall pay all sales, use or rent taxes assessed by any governmental authority against the Guaranteed Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Concessionaire shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Concessionaire's interest in the Premises, Concessionaire's Alterations or personal property located on the Premises.

Section 2.06 Unpaid Fees, Holdover

In the event Concessionaire fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate of one and one half percent (1.5 %) per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Payments received after interest has started to accrue shall be applied to the accrued interest first and then towards the delinquent rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law. In the event Concessionaire shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Agreement, Concessionaire shall be strictly liable to pay to County during the entire period of such holdover, double Guaranteed Annual Rent, as provided for in Chapter 83.06, Florida Statutes. In addition to the Guaranteed Annual Rent, Concessionaire shall pay all other charges or costs imposed upon Concessionaire by this Agreement, all cost of insurance for which Concessionaire would have been responsible if this Agreement had been renewed on the same terms contained herein, and all sales taxes assessed against such increased Guaranteed Annual Rent. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Agreement.

Section 2.07 Accord and Satisfaction

In the event Concessionaire pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

ARTICLE III
CONDITION OF PREMISES, ALTERATIONS

Section 3.01 Acceptance of Premises by Concessionaire

Concessionaire certifies that Concessionaire has inspected the Premises and accepts same "As Is", in its existing condition, together with all defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Concessionaire further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements or equipment located thereon, or the suitability of the Premises or any improvements for Concessionaire's intended use of the Premises. Concessionaire agrees to provide such other equipment and perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Concessionaire as specified in Section 4.01 of this Agreement, unless the work is the responsibility of the County as specifically provided for in Section 6.02 of this Agreement.

Section 3.02 Concessionaire's Alterations/Construction Responsibilities

A. Alterations

1. Concessionaire shall be solely responsible for any and all improvements, repairs, alterations or other work necessary to render the Premises suitable for Concessionaire's intended use including Premises build-out. Concessionaire shall not install any permanent improvements within the Premises without County's written consent. Prior to commencing any work within the Premises, and in accordance with the Development Rider, attached hereto as Exhibit "D" and made a part hereof, Concessionaire shall furnish to the Department for written and discretionary approval, plans, permits, and specifications showing infrastructure, buildings, equipment or utilities to be installed by Concessionaire within the Premises ("Alterations"). All work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Concessionaire, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Agreement. Department's approval of the plans and specifications submitted by Concessionaire in conjunction with Concessionaire's Alterations may, at Department's sole option, be contingent upon the receipt by the Department of a surety company payment and performance bond obtained by Concessionaire at its sole cost and expense. Said bond shall be issued by a surety company satisfactory to County, insuring completion of Concessionaire's Alterations free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale and other title retention or security agreements or other charges, all in accordance with the plans and specifications approved by the County. Concessionaire shall design and construct such Alterations at Concessionaire's sole cost and expense, in accordance with the requirements of this Agreement and in full compliance with applicable governmental laws, rules, orders, building codes and zoning regulations. All of Concessionaire's construction and Alterations shall be initiated within 90 days after all permits and approvals have been obtained and made and performed in a good and workmanlike manner and shall be diligently performed to completion within 270 days of the receipt of such permits and approvals, strictly in accordance with the approved plans and specifications therefore.

2. The County shall have the right in its sole and absolute discretion, as may be determined by County, to extend the time for initiation of construction and/or completion

of same. However, the County is under no obligation to approve such extension. In the event the parties are unable to resolve any objections the Department may have as it relates to the plans and specifications submitted by Concessionaire within 60 days after Concessionaire has received Department's objections, the County shall have the right to terminate this Agreement upon notice to the Concessionaire and the parties being thereafter relieved of any further obligation hereunder; provided, however, any obligations arising prior to such termination shall survive said termination and remain binding on the party so obligated.

3. If Concessionaire is unable to obtain all permits and approvals within 180 days from the date Concessionaire receives County's approval of the Final Plans, the County shall have the right to terminate the Agreement upon notice to the Concessionaire and the parties being thereafter relieved of any liability hereunder and under the Agreement provided; however, any obligations arising prior to such termination shall survive and remain binding on the party so obligated.

4. The County shall have the right, in its sole and absolute discretion, to extend the time within which Concessionaire must obtain such permits. However, the County shall be under no obligation to grant such extensions of time.

B. Construction

1. Concessionaire shall ensure that all improvements and Alterations are constructed to completion in accordance with this Agreement, the Development Rider and the approved plans, including the County approved Conceptual Plans and the estimated cost of the Alterations thereof and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

2. Concessionaire shall prepare detailed design and construction plans and specifications for the Alterations in accordance with the County approved Conceptual Plans and shall submit same to the Department for review and written approval. The Department shall have 30 days to review and respond to the detailed design and construction plans, and such approval shall not be unreasonably withheld. In the event the Department has comments which are required to be addressed before approval can be granted, such comments shall be provided in writing and provided to the Concessionaire within the 30 day time frame. The Department shall review and approve any required revisions within 21 days of submittal by Concessionaire. Concessionaire's construction plans shall ensure that Concessionaire's construction will not in any way interfere with or impact the use of the Park by the public. No work whatsoever shall be performed by Concessionaire on the Premises until the following conditions have been met:

(i) This Agreement is executed by all parties;
(ii) The Department has approved the plans and specifications for the Concession;
(iii) Concessionaire demonstrates that Concessionaire has sufficient funds to complete the Concession;
(iv) The County receives the payment and performance bonds, and certificates of insurance as required hereunder; and
(v) All applicable building permits for the Concession have been secured by Concessionaire.

3. Concessionaire shall select a contractor in accordance with Florida Statutes and perform all construction and improvements in compliance with all applicable building codes (including Florida Building Code Chapter 11 ADA), the Development Rider and the Conceptual Plan, and obtain all necessary permits and approvals. County's approval of

the design and plans must be obtained prior to submission to the applicable building and/or zoning department.

4. Concessionaire shall pay all costs associated with improvements, Alterations and installations of the Mini Soccer Complex.

5. The Concessionaire shall commence construction of the Complex within 90 days after all permits and approvals have been obtained and shall diligently perform construction to completion within 270 days of the receipt of such permits and approvals. The concessionaire shall begin operations within 30 days of the completion of construction. Completion shall be evidenced by the issuance of a certificate of occupancy or certificate of completion.

6. Concessionaire shall install and maintain landscaping, as required and/or approved by the County, within the Premises that enhances the aesthetic beauty and coexists with the natural flora of the Park.

7. Concessionaire shall take all reasonable precautionary measures to protect County's adjoining property and improvements against damage during the construction of Concessionaire's work. In the event that during the course of construction of Concessionaire's work, the adjoining property and/or improvements owned by County suffers any damage which is reasonably attributable to Concessionaire's construction activities, Concessionaire shall repair all said damage at Concessionaire's sole cost and expense promptly after notification by County of the need for such repair, using materials of like kind and quality.

8. All improvements made by Concessionaire, including drainage and landscaping, shall be of attractive construction, match existing Park structure materials/finishes, comply with any and all applicable governmental laws, regulations, rules, codes, and orders, and shall follow standard construction methods.

C. Minimum Capital Investment

Concessionaire shall expend not less than NINE HUNDRED THOUSAND Dollars ($ 900,000) on the design, construction and installation of the improvements (the "Minimum Capital Investment"). Capital expenditure costs that may be counted toward the Minimum Capital Investment shall include all costs paid for work performed, services rendered and materials furnished for the construction of the improvements, subject to the following terms, conditions and limitations:

1. The cost of design (subject to the limitations set forth herein), construction and acquisition of the improvements, bonds, construction insurance, and building, impact and concurrency fees shall be included in the Minimum Capital Investment.

2. No more than twelve percent (12%) of the Minimum Capital Investment for payments made by Concessionaire to independent consultants for engineering and architectural design work may be included in the Minimum Capital Investment.

3. Only true third party costs and payments made by Concessionaire shall be included in the Minimum Capital Investment. Costs incurred by any sub lessee, licensee or other occupant of the Premises, or any portion thereof, other than Concessionaire shall not be included in the Minimum Capital Investment.

4. Costs for consultants (other than engineering and design consultants, as provided above), legal fees and accountant fees shall not be included in the Minimum Capital Investment.

5. Finance and interest expenses shall not be included in the Minimum Capital Investment.

6. Administrative, supervisory and overhead or internal costs of Concessionaire shall not be included in the Minimum Capital Investment.

7. Costs associated with acquisition or installation of personalty, such as furnishings, trade fixtures and equipment not permanently affixed to the Premises, or any other personalty whatsoever, shall not be included in the Minimum Capital Investment.

8. Any costs associated with any additional improvements shall not be included in the Minimum Capital Investment unless Concessionaire has obtained written approval from the Department prior to incurring such costs.

Section 3.03 Responsibility for Alterations

All Alterations made by Concessionaire shall be maintained by Concessionaire in good working order and in a condition acceptable to County, at the sole expense of Concessionaire, during the Term of this Agreement or any extension or renewal hereof.

Section 3.04 Construction

Concessionaire shall ensure that all improvements and Alterations are constructed to completion in accordance with the approved plans thereof and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Prior to the commencement of construction of any improvement to the Premises, the estimated cost of which exceeds Two Hundred Thousand Dollars ($200,000), Concessionaire, at Concessionaire's sole cost and expense, shall cause to be made, executed and delivered to County a bond that is in a form and substance reasonably satisfactory to County, issued by a surety acceptable to County, which guarantees Concessionaire's compliance with its obligations arising under this Agreement. Concessionaire may not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. County shall be named as the obligee on the bonds. In lieu of the bond required by this Section, Concessionaire may file with County an alternative form of security in the form of cash, money order, cashier's check, clean irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes; provided, however, the form of the security and company issuing such security, if applicable, shall be subject to the prior written approval of County and shall be in accordance with County's standard policies and procedures. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this Section. Any such alternative form of security may be reduced by Concessionaire subject to approval of County during the construction of the improvements, but not more than once per month, based upon the percentage of completion of the improvements plus retainage. The Department, on behalf of the County, may execute such certificates, notices or other documents as may be necessary to effectuate such reduction. Concessionaire shall provide County evidence reasonably satisfactory to County evidencing the percentage of completion of the improvements, including, but not limited to, an executed Application and Certification for Payment (A1A Document G702) indicating the balance to finish the work, including retainage.

Section 3.05 Contractor Requirements

Concessionaire shall require its contractors to furnish for the benefit of County a payment and performance bond satisfying the requirements of Section 255.05, Florida Statutes, in a form approved by County. Concessionaire shall require its contractors to

name County as a dual obligee on said bond(s). Concessionaire shall require its contractors and subcontractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, as set for in Article VIII herein. The Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as the Risk Management Department reasonably determines to be necessary.

Concessionaire shall ensure that the Complex and all Alterations are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Further, if applicable, prior to commencing any work, Concessionaire shall ensure contractors, subcontractors, sub-subcontractors, shall provide to the Department a Trench Safety Affidavit, in the form attached hereto as Exhibit "E" and made a part herein.

Section 3.06 No Liens

Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by County, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Premises or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security, within ten (10) days from the date of filing. In the event that Concessionaire fails to satisfy or transfer such claim within said ten (10) day period, County may do so and thereafter charge Concessionaire and Concessionaire shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV
CONDUCT OF BUSINESS AND USE OF PREMISES BY CONCESSIONAIRE

Section 4.01 Use

Concessionaire shall use and occupy the Premises solely and exclusively for concessionaire services to operate the mini soccer complex for the benefit of the public by providing a mini soccer complex, programming and concession services as identified in Section 4.02(q) of this Agreement. Concessionaire shall not use, permit, or suffer the use of the Premises for any other use, business, or purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion. Concessionaire shall comply with the Rules and Regulations set forth in Exhibit "F" as well as Palm Beach County Parks and Recreation Ordinance (Ordinance No. 2004-022), as same may be amended from time to time.

Concessionaire shall not prohibit or hinder County personnel or any law enforcement officers from performing their official duties. Concessionaire shall ensure that all persons acting on behalf of it obey instructions from County personnel. Concessionaire shall not commit or permit any reckless or dangerous conduct on the Premises at any time. This includes, but is not limited to, violent, abusive, indecent,

profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

Section 4.02 Operation of Business

a) Concessionaire shall operate its business upon the entire Premises during the Term of this Agreement with due diligence and efficiency and in a manner prudent and in accord with generally accepted business practices within the locale for Concessionaire's business.

b) Concessionaire shall operate the concession services, weather conditions permitting, at a minimum four (4) days a week, four (4) hours per day. Holiday hours may be altered upon approval of the Department. Concessionaire has submitted an operations schedule as part of its response to the RFP as referenced in Section 4.02(q) below and shall operate pursuant to such schedule. Concessionaire shall submit any requests for changes to the concession operations schedule to the Department, in writing, at least two (2) business days in advance, for approval prior to implementation. Concessionaire shall not implement any changes unless written approval has been received from the Department.

c) All rates for goods and services must be visibly posted in the Premises at all times during operation in accordance with Article V. Rates shall be maintained in line with average rates charged by similar operations in the State of Florida or better. Prices for goods sold in the concession shall be based upon prevailing market prices for similar goods in the Palm Beach County area.

d) Concessionaire shall maintain customer service as a top priority. Concessionaire shall employ a sufficient number of qualified staff to properly operate the concession. Concessionaire shall provide employees who are professional, friendly, well-dressed, and courteous to the customers and general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, have excellent telephone manners, speak positively about the County facility and its operations, and conduct themselves in a high standard that is acceptable to the County. Concessionaire and staff shall wear appropriate attire which, in the sole determination of the County, clearly distinguishes Concession staff from County and Park staff. Use of profanity, alcohol, or illegal substances by Concessionaire, staff, subcontractors and agents is strictly prohibited.

e) Concessionaire shall be responsible for training all concession staff, subcontractors and agents concerning the customer service philosophies of Palm Beach County. The County's Mission Statement can be found at:

http://discover.pbcgov.org/administration/Pages/Mission.aspx and
http://discover.pbcgov.org/parks/General/Abount-Us.aspx

f) Concessionaire shall, at its own expense, provide telephone and/or cellular phone service at the Premises during all hours of operation for emergency calls and to ensure accessibility by the public for general questions, schedules, etc.

g) Concessionaire shall, at its own expense, obtain, maintain, and comply with all licenses and permits necessary to operate the Concession including a liquor license that permits Concessionaire to sell beer and wine only within the Premises. Proof of same shall be required prior to the Commencement Date and be provided to the Department's Director of Special Facilities. Concessionaire shall conduct operations in such a manner as to meet all applicable health standards and codes.

h) Concessionaire shall, at its own expense, provide all equipment for the safe and efficient operation of the concession service and, within thirty (30) days of the

Commencement Date, shall provide the Department with an inventory of all equipment provided. All equipment, installation and maintenance shall be the responsibility of the Concessionaire including the procurement and maintenance of fire prevention and fire extinguishing devices. All equipment shall be maintained in a clean and sanitary condition and maintenance practices shall meet all applicable Governmental Regulations as defined in Section 4.04 below. The County has the right but not the obligation to perform safety inspections through its Department or other departments without prior notice. Concessionaire shall immediately notify County of any possible health, safety and/or security hazards that may exist within the Premises or related to any equipment so corrective actions can be determined and implemented.

i) Concessionaire shall conduct its operations and activities in a safe manner and comply with all safety and health regulations and standards imposed by Governmental Regulations, and shall ensure that all do the same. Concessionaire agrees that neither they, nor employees or any person working for or on behalf of Concessionaire shall require any personnel engaged in the performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, unsafe, hazardous or dangerous to his or her health or safety as determined by Governmental Regulations.

j) For payment of any customer charges, Concessionaire shall accept a minimum of two (2) of the following credit cards: Visa, MasterCard or American Express.

k) Concessionaire shall provide services to patrons in a manner consistent with the provisions of the Americans with Disabilities Act (ADA).

l) Concessionaire shall coordinate and cooperate with the County regarding special events and activities conducted in the Park and shall, upon request from the County, suspend operation of the concession when such events warrant the suspension of the operation of the concession as determined by Department.

m) Concessionaire shall not conduct special events or promotions of any kind within the Premises that may impact other park users or facilities unless prior written approval by the Department has been provided.

n) Concessionaire shall perform a background check in accordance with applicable State or County law and Department policy on each employee prior to the employee beginning work at the concession. Concessionaire shall forward a copy of each background check to the Department for review prior to the employee commencing work at the concession. County reserves the right to disallow employment of any candidate or employee whose background check reveals one or more disqualifying offenses. A list of potential disqualifying offenses is available from the Department upon request. Concessionaire shall notify Department of any disqualifying offense it has knowledge of as to any of its employees during the term of this Agreement and Concessionaire shall immediately terminate employment of any and all employees whom Concessionaire discovers have committed a disqualifying offense.

o) Concessionaire may, with the approval of the County representative identified in Article I, Section 1.07, suspend operation of the concession whenever the Park is closed due to severe storms or maintenance/construction. Reasonable effort shall be made to reopen the Park in a timely manner following the inclement weather, maintenance, or construction. If the closure is for an extended period of time (greater than seven (7) consecutive days), County shall prorate the monthly payment of Guaranteed Annual Rent.

p) Concessionaire shall keep, throughout the entire term of the Agreement or any extension thereof, all books of account and records customarily used in this type of operation, and as from time to time may be required by the County, in accordance with GAAP. Such books of accounts and records shall be retained and available for such

period of time as provided herein unless otherwise approved by the County. The County, at all times, throughout the term of the Agreement or any extension thereof and for up to three (3) years following expiration, shall have the right to audit and examine during normal working hours, all such records and books of accounts relating to Concessionaire's operation, provided that Concessionaire shall not be required to retain such books of accounts and records for more than three (3) years after the end of the final year of this Agreement including any extensions thereto. Concessionaire shall arrange for the books of account and records to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections. Failure of the Concessionaire to keep record of and provide the information to County as set forth herein shall be considered a default under the terms of this Agreement. The requirements set forth in this paragraph shall survive the termination or expiration of this Agreement.

q) The County entered into this Agreement with Concessionaire pursuant to County's Request for Proposals (RFP) RFP No. 2018-103-RCH to provide concession services at the Park. As such, the Concessionaire agrees to maintain generally the sale/rental of Concession services and items, as submitted with the Concessionaire's response to the RFP as reflected in Exhibit "G" attached hereto and made a part hereof. Concessionaire shall not alter its services without first obtaining written approval from the Department's Special Facilities Division at the address set forth in Section 19.03(a) of this Agreement. Only minor changes will be considered by the Department, and any approval shall be granted in the Department's sole and absolute discretion. Proposed changes that would alter the services so they are no longer substantially the same as those submitted with the Concessionaire's response to the RFP shall not be permitted.

Section 4.03 Waste or Nuisance

Concessionaire shall not commit or suffer to be committed any waste upon the Premises, or commit or permit the maintenance or commission of any nuisance or other act or thing which may disturb the quiet enjoyment of visitors of the Park, or which may result in damage or depreciation of value of the Park or which may affect County's fee interest in the Premises or which results in an unsightly condition. Concessionaire, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

Section 4.04 Governmental Regulations

Concessionaire shall, at Concessionaire's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force (individually and collectively, the "Governmental Regulations"), pertaining to Concessionaire or Concessionaire's use of the Premises, the equipment located on the Premises, or the Premises generally. Concessionaire shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Concessionaire's failure to perform its obligations in this Section. This Section shall survive termination of this Agreement.

Section 4.05 Non-Discrimination

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Concessionaire warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises, or conducted pursuant to this Agreement. Failure to meet this requirement shall be considered default of this Agreement. Concessionaire warrants that its service at the Premises shall be open to and benefit all visitors to the Park.

Section 4.06 Title to Improvements and Surrender of Premises

During the Term of this Agreement, Concessionaire shall be deemed to be the owner of all improvements constructed by Concessionaire upon the Premises. Upon termination or expiration of this Agreement, Concessionaire, at its sole cost and expense, shall remove Concessionaire's personal property, removable fixtures, equipment, and if so directed by County, all Alterations and improvements from the Premises, and shall restore the Premises to the condition it was in as of the Effective Date of this Agreement, reasonable wear and tear excepted. In no event shall Alterations or improvements be removed from the Premises without prior consent in writing from County. If the Concessionaire fails to remove Concessionaire's personal property, removable fixtures, equipment, Alterations or improvements (as identified by County), and fails to restore the Premises upon the expiration of the Term of this Agreement or any extension thereof, to its condition on the Effective Date of this Agreement, such property, removable fixtures, equipment, Alterations and improvements shall become the property of County and the County may, at its sole discretion, elect to remove Concessionaires personal property, removable fixtures, equipment, Alterations, and improvements. The cost of such removal shall be borne by the Concessionaire and shall immediately be paid by Concessionaire upon receipt of invoice from County. Upon surrender of the Premises, title to any and all remaining improvements, Alterations, or property within the Premises shall vest in County.

Section 4.07 Hazardous Substance

Concessionaire shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Concessionaire's operations, in the Premises, or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Concessionaire shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Concessionaire or any third party, shall be reported to County immediately upon Concessionaire becoming aware of such Disposal. Concessionaire shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises, or emanating therefrom onto adjacent lands, as a result of the use and occupancy of the Premises by Concessionaire, or Concessionaire's agents, licensees, invitees, subcontractors, or employees.

Concessionaire hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials in violation of this provision. Concessionaire's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Concessionaire, it shall not be deemed to alter or diminish any statutory or common law liability of Concessionaire.

Concessionaire acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Agreement.

Section 4.08 Security of Premises

Concessionaire acknowledges and accepts full responsibility for the security and protection of the Premises and any inventory, equipment, or facilities now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to the Premises. Concessionaire expressly acknowledges that any security measures deemed necessary or desirable for protection of the Premises shall be the sole responsibility of Concessionaire at no cost to County. In the event that Concessionaire chooses to install additional security systems and hardware, Concessionaire shall be required to provide County with continuous and unescorted access to the Premises as required by Article XIV. County may implement key, card or code control measures reasonably acceptable to Concessionaire to safeguard the keys, cards or code provided pursuant to this requirement.

Notwithstanding the above, Concessionaire shall notify County of any incident resulting in loss of or damage to Premises or breach of security whether or not such incident is reported to the Palm Beach County Sheriff's Office. Notification of County shall be made via telephone call to Special Facilities at the Department at the phone number set forth in Section 19.03(a) of this Agreement no later than 24 hours after any such incident.

Furthermore, although a fingerprint background check is not required under the terms of the background check set forth in Section 4.02(n), County reserves the right to subject Concessionaire and its employees to fingerprint-based background checks to the extent permitted by law and to deny access rights to any Concessionaire employee in accordance with adopted laws, policies and procedures. Concessionaire shall have no recourse or claim against County for denied access rights.

Section 4.09 Permits and Licenses Generally

Concessionaire expressly covenants, warrants, and agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the entire term of this Agreement or any extension thereof by any federal, state, county or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any activities of Concessionaire conducted on the Premises and for any and all operations conducted by Concessionaire including ensuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from Concessionaire's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request by County, Concessionaire shall provide to County certified copies of any and all permits and licenses issued for Concessionaire's operations and/or activities.

Section 4.10 Easements

a) In order to provide for the orderly development of the Premises, it may be necessary, desirable, or required that utility easements be granted over or within portions of the Premises. All easements including, but not limited to, utility easements shall require the prior written approval of County. Any easements not approved in writing by County shall be void and without legal effect. County shall, upon request of the Concessionaire, join with Concessionaire in executing and delivering such documents throughout the Term of the Agreement, as may be appropriate, necessary or required by governmental agencies or public utilities, for this purpose. Provided such easements are necessary for the Concession and the locations and the form of such easements are acceptable to County, County shall not unreasonably withhold its written approval for any such easement. Concessionaire shall be responsible for the utilities being terminated, and, if requested by County, removed upon surrender of the Premises. Concessionaire hereby expressly agrees to include a provision in all easements stating that in the event that the Concessionaire ceases to use such easement such easement shall, at the option of County become null and void, and all the right, title and interest in and to the easement Premises

shall revert to the County. Concessionaire's construction plans submitted to County, pursuant to Section 3.02 of this Agreement, shall incorporate and identify all easements that currently exist and that are requested by the Concessionaire.

In addition, County grants Concessionaire access over and through Park roadways and driveways to access the Premises and grants Concessionaire pedestrian access to the Premises from and over the existing and any future public pedestrian access within the Park.

b) Nothing in this Agreement shall impair any existing easements, nor impair the right of access to any existing utility lines.

c) Temporary construction easements will not be granted over any portion of the Park. All construction activities, including but not limited to access, staging, contractor parking, must occur within the Premises.

Section 4.11 Concessions

Concessionaire shall operate the Concession on the Premises. The Concession shall be subject to the insurance requirements contained in Article VIII as the same may be amended from time to time by County in its reasonable discretion.

Section 4.12 Park Rules and Special Events

Concessionaire shall comply with the Palm Beach County Code Parks & Recreation Ordinance 2004-022, as the same may be amended with respect to any and all rules, hours of operation, and/or any special event activity or use occurring on or about the Premises. Concessionaire shall coordinate with, and obtain prior approval from, the Department's Special Events Staff for a special event activity occurring on the Premises. For the purposes of this Section, a special event shall be considered any Concessionaire activity or event for which Concessionaire is requesting the use of any Park facilities such as parking outside the Premises or which may impact any entrances to the Park. Requests for approval shall follow the Department's policies and procedures and be submitted no later than 90 days prior to the anticipated start of the event. The Special Events Staff shall have 15 business days to review the request and approve or deny same. County will work in a cooperative manner to approve the request and approval shall not be unreasonably denied. In the event that a request for use of the Park facilities in conjunction with a special event is denied, Concessionaire shall use good faith efforts to modify the operation, timing, logistics, etc. of the special event so that the Park is not impacted.

ARTICLE V
SIGNAGE

Except as set forth in Section 4.02, Concessionaire shall not place or permit to be placed or maintained on any exterior door, wall, window, fence, railing, dock, or tree of the Premises and/or Park any sign, awning or canopy, without first obtaining County's written approval and consent through the Department, which consent may be withheld at County's sole discretion. Any such signs not approved shall be immediately removed at the sole cost and expense of Concessionaire, upon written notification thereof by County. Concessionaire further agrees that such signs, awning, canopy, decoration, lettering, or other items, as may be approved, shall be maintained in good condition and repair at all times and shall conform to the criteria established from time to time by County for the section of the Park within which the Premises is located. No advertising or any promotional items associated with the concession will be permitted within the Park or any other County facility or property without prior Department and/or County approval. Palm Beach County Ordinance, No. 2004-022, Section 21, prohibits any person from distributing, displaying or affixing any printed materials or advertisements to or within any park property.

ARTICLE VI
REPAIRS AND MAINTENANCE OF PREMISES

Section 6.01 Responsibility of Concessionaire
Concessionaire agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, any facility roof, roof drains, interior and exterior walls, foundations and structural portions of the Alterations within the Premises, including, but not limited to, the utility lines, air conditioning, heating, plumbing systems, and fire suppression system serving the Alterations within the Premises, if applicable. Concessionaire shall further protect the County's capital investment and Concessionaire's Alterations in the Premises through exercise of a high standard of maintenance. Proper maintenance for the Premises and all improvements including structures and systems, shall include, but not be limited to, providing adequate custodial services, interior and exterior maintenance and repair, garbage and trash disposal, pest control, keeping any patio area clear of debris and stains, repair, maintenance, or replacement of fixtures provided by Concessionaire; repair of damage caused by Concessionaire, its employees, agents, contractors, customers, licensees or invitees to the Premises; maintenance, repair and replacement of any plumbing (including grease trap, if applicable), electrical, air conditioning and heating system, structures or equipment within the Premises which, whether connected directly to the building's system or not, were installed by Concessionaire specifically to serve the Premises; interior and exterior repainting and redecoration, whether or not caused by, or growing out of any breakage, leakage or defective condition of electric wiring, air conditioning or heating pipes and equipment, closets, plumbing, appliances, sprinklers, other equipment, or other facilities serving the Premises; and glass cleaning.

Concessionaire shall, at a minimum, perform the following maintenance in the Premises on a regular and ongoing basis: a) clean interior and exterior walls, windows, doors, and surfaces; b) clean ceiling, floors, furnishings, lights, light bulbs, tubes, and concession equipment as is customary for a similar quality concession found in a public recreation facility in Palm Beach County; c) keep patio furniture clean and free of stains. Concessionaire shall maintain the Premises and all areas within 75 feet of the Premises in a safe, clean, sanitary condition free of litter, refuse, and debris. Concessionaire shall provide adequate refuse containers in the Premises. The Concessionaire shall regularly service all trash cans, including Park trash cans located within the Premises. The Concessionaire shall further be responsible for off-site disposal of all trash generated by its concession operation. The Concessionaire shall not use the trash cans located outside of their designated areas to handle refuse generated by their operations.

Concessionaire shall repair all damages to Premises caused by, resulting from, or in any way arising out of Concessionaire's operations or use of Premises, whether such damage is caused by Concessionaire, its agents, or its invitees. Concessionaire shall maintain and repair all equipment thereon. Concessionaire shall repaint, refurnish the facilities and replace furnishings, artificial turf surfaces and equipment as may be deemed necessary at the reasonable discretion of the Department. The Department reserves the right to, periodically throughout the term of the Agreement, inspect or cause to be inspected the Premises, identify any maintenance or repair items and report, in writing, the nature of these items and recommend corrective action. Concessionaire shall promptly repair, replace, or repaint any damaged or defaced surfaces within 72 hours of discovery or notification by the Department. Concessionaire is to provide a proposed schedule of cleaning, maintenance and repair of facilities.

Concessionaire shall immediately notify County of any possible health, safety and/or security hazards that may exist within any area, including use by unauthorized parties, so corrective actions can be determined and implemented. Neither County nor County's agents or servants shall be liable for any damages caused by, or growing out of any defect in the Premises. In no event shall County be liable for damages or injuries arising from the failure to make repairs, nor shall County be liable for damages arising

from defective workmanship or materials in making such repairs. Concessionaire waives the provision of any law, or any right Concessionaire may have under common law, permitting Concessionaire to make repairs at County's expense.

In the event of a threat of tropical disturbance, Concessionaire shall secure and/or remove its equipment at the direction of the Department. Concessionaire shall be responsible for any damage to its equipment or personal property. Concessionaire shall be liable to County for any damage caused to Park or any Park improvements due to failure of Concessionaire to secure or remove any equipment belonging to Concessionaire.

Section 6.02 Responsibility of County

County shall maintain the park area surrounding the Premises except for any damage caused by, resulting from, or in any way arising out of Concessionaire's construction, operations or use of the Premises, whether such damage is caused by Concessionaire, its agents, or its invitees, which damage shall be repaired by Concessionaire.

Except as provided in this Section, County shall not be obligated or required to make or conduct any other maintenance or repairs, and all other portions of the Premises shall be kept in good repair and condition by Concessionaire, and at the end of the Term of this Agreement, Concessionaire shall deliver the Premises to County in good repair and condition, reasonable wear and tear arising from Concessionaire's permitted use of the Premises as specified herein excepted.

ARTICLE VII
UTILITIES

Concessionaire shall provide water, sewer, electricity, gas, alarm and telephone utility service to the License Area, at Concessionaires sole cost and expense. If required to obtain service, County shall grant utility providers a utility easement. The location of any utility easement must be approved by both parties, which approval shall not be unreasonably withheld, conditioned, or delayed.

Concessionaire shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided including, without limitation, water, sewer, gas, electricity, trash collection and removal, alarm services, including false alarm charges, or any other utility used or consumed on the Premises. Additionally, Concessionaire shall be responsible to pay an equitable portion of the utility charges for the utilities serving the press boxes. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

ARTICLE VIII
INSURANCE

Section 8.01 Insurance Requirements

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. Concessionaire shall provide the County with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Concessionaire are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under the Agreement. Concessionaire shall cause any contractor or subcontractor performing work within the Premises on behalf of Concessionaire to, at all times during the performance of such work, maintain in full force and effect insurance of the same type and amount as Concessionaire required below.

Section 8.02 Comprehensive General Liability Insurance

Concessionaire shall, during the entire Term hereof, keep in full force and effect Comprehensive General Liability Insurance with a minimum limit of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) General Aggregate for bodily injury, personal injury and property damage liability; fire legal liability with a minimum limit of $100,000, and medical payments with a minimum limit of $5,000. The Comprehensive General Liability policy shall include, but not be limited to, providing coverage for Premises/Operations, Product/Completed Operations, Contractual Liability, Personal Injury/Advertising Injury, Independent Contractors, Cross Liability and Broad Form Property Damage Liability coverages. Coverage shall be provided on a primary basis.

Section 8.03 Business Automobile Liability Insurance

Concessionaire shall, during the entire Term hereof, keep in full force and effect, Business Automobile Liability at a limit of liability not less than $500,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Concessionaire does not own automobiles, Concessionaire agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Section 8.04 Workers' Compensation & Employers Liability

Concessionaire shall, during the entire Term hereof, keep in full force and effect, to maintain Florida Workers' Compensation Insurance & Employers Liability. Coverage shall be provided on a primary basis.

Section 8.05 Waiver by Concessionaire and Concessionaire's Insurers of Subrogation

In the event of loss or damage to the Premises, the Concessionaire shall look solely to any insurance in its favor before making any claim against the County, and the Concessionaire shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Concessionaire, for itself and its insurers, waives all such insured claims against the County.

Section 8.06 Insurance Terms and Conditions

The Comprehensive General Liability policy shall name the County as an Additional Insured with a *"CG 2026 - Additional Insured - Managers or Lessors of Premises"*, or similar endorsement. Such insurance shall be issued by an insurance company licensed to do business by Florida's Department of Insurance with Florida Certificate of Authority in full force and effect. The issuing insurance company shall maintain a minimum A.M. Best financial rating of "A and A-Excellent" and shall be subject to the review and approval of the Risk Management Department of the County. A Certificate of Insurance evidencing such insurance coverage shall be provided prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation, to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801
Email: pbc@instracking.com or Facsimile: (562) 435-2999

The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Subsequently, Concessionaire shall, during the term of the Agreement, and prior to each renewal thereof, provide such evidence to ITS at pbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system.

In no event shall the limits of said insurance policies be considered as limiting the liability of Concessionaire under this Agreement. In the event that Concessionaire fails to obtain or maintain in full force and effect any insurance coverage required to be obtained by Concessionaire under this Agreement, County may procure same from such insurance carriers as County may deem proper, and Concessionaire shall pay as Additional Rent, upon demand of County, any and all premiums, costs, charges and expenses incurred or expended by County in obtaining such insurance. Notwithstanding the foregoing, Concessionaire shall nevertheless hold County harmless from any loss or damage incurred or suffered by County from Concessionaire's failure to maintain such insurance.

Section 8.07 Fire and Allied Lines Insurance

Concessionaire shall at all times during the Term hereof, and at its sole cost and expense, maintain in full force and effect policies of insurance covering all Alterations to the Premises made by or on behalf of Concessionaire as well as Concessionaire's fixtures, inventory and equipment located on the Premises and within the Park, in an amount not less than one hundred percent (100%) of its full replacement cost, providing protection with "All-Perils" coverage as provided by the "Special-Cause of Loss Form" together with, but not limited to, insurance against wind and hail, sprinkler leakage damage, vandalism, theft and malicious mischief. The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the Premises, Alterations, fixtures, inventory and equipment so insured. All property, including without limitation, stock, inventory, fixtures and equipment belonging to Concessionaire or any occupant of the Premises shall be there at the risk of Concessionaire or such other person only, and County shall not be liable for damage thereto or theft or misappropriation thereof. Additionally, the Concessionaire shall maintain Business Interruption with Extra Expense insurance providing coverage for loss of net income and all continuing expenses at a minimum limit appropriate to cover the maximum period of restoration or interruption of the Concessionaire. Concessionaire shall deliver certificates of such fire insurance policies which shall contain a clause requiring the insurer to give the County 30 days prior notice of cancellation of such policies to: Palm Beach County, c/o Insurance Tracking Services, Inc. (ITS), P.O. Box 20270, Long Beach, CA 90801.

Section 8.08 Increase in Fire and Allied Lines Insurance Premium

Concessionaire shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any condition, provision, limitation, or Special - Cause of Loss Form of the Fire and Allied Lines insurance policy. Concessionaire shall pay any increase in premiums for Fire and Allied Lines coverage insurance that may be charged during the Term of this Agreement on the amount of such insurance which may be carried by County on the Premises or the Premises resulting from the type of merchandise sold or rented by Concessionaire in the Premises or resulting from Concessionaire's use of the Premises, whether or not County has consented to the same. Concessionaire shall promptly make, at Concessionaire's cost and expense, all repairs, alterations, changes and/or improvements to Concessionaire's fixtures and equipment in the Premises required by the company issuing County's fire and allied lines insurance so as to avoid the cancellation of, or the increase in premiums on said insurance.

Section 8.09 Continuous Coverage

The required insurance coverage(s) shall be a continuous condition precedent to the continued use of the Premises by the Concessionaire. Failure by the Concessionaire to forward a current or updated certificate of insurance to the designated County representative prior to or upon the expiration date of the certificate on file with the County may result in termination of this Agreement.

Section 8.10 Property Insurance

Concessionaire shall maintain property insurance in an amount not less than 100% of the total replacement cost of any buildings, additions, betterments and improvements to the Premises, including those made by or on behalf of Concessionaire, as well as Concessionaire's personal property and contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than 25% of the property insurance limit. Concessionaire shall ensure such coverage is provided on a primary basis.

Section 8.11 Loss Payee Endorsement

Concessionaire shall cause the Property Insurance policies to be endorsed to add the County as a Loss Payee. Concessionaire shall ensure the Loss Payee endorsement provides coverage on a primary basis. The Loss Payee endorsement shall read "Palm Beach County Board of County Commissioners", c/o Parks & Recreation Department, 2700 6th Avenue South, Lake Worth, FL 33461.

Section 8.12 Premiums and Proceeds

Concessionaire shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any condition, provision or limitation of the insurance policies. Concessionaire shall be responsible for all premiums, including increases, for all insurance policies required by this Agreement. All insurance proceeds as a result of a loss shall be made available for use to promptly replace, repair or rebuild the buildings, betterments and improvements, including those made by or on behalf of Concessionaire, in order to ensure a replacement cost settlement and avoid policy cancellation.

Section 8.13 Deductibles, Coinsurance, & Self-Insured Retention

Concessionaire shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy terms.

Section 8.14 No Representation of Coverage Adequacy

The limits, coverages or endorsements identified herein primarily transfer risk and minimize liability for the County, and Concessionaire agrees not to rely upon such requirements when assessing risk or determining appropriate types or limits of coverage to protect Concessionaire against any loss exposures, whether as a result of this Agreement or otherwise.

Section 8.15 Insurance for Special Events and Outside Persons/Groups

Excluding County or its affiliates, when Concessionaire permits or schedules the use of the Premises for a special event or outside persons/groups, Concessionaire shall require the special event or outside person/group to maintain Comprehensive General Liability Insurance with a minimum limit of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) General Aggregate for bodily injury, personal injury and property damage liability; fire legal liability with a minimum limit of $100,000, and medical payments with a minimum limit of $5,000. The Comprehensive General Liability policy shall include, but not be limited to, providing coverage for Premises/Operations, Product/Completed Operations, Contractual Liability, Personal Injury/Advertising Injury, Independent Contractors, Cross Liability and Broad Form Property Damage Liability coverages. Coverage shall be provided on a primary basis. Concessionaire shall ensure that County and Concessionaire are named as Additional Insured under such policy, as described in Section 8.06. Concessionaire shall obtain and, when requested by the County, furnish copies of certificates of insurance evidencing such coverage for the special event or outside person/group.

Section 8.16 Liquor Liability

Concessionaire shall maintain Liquor Liability coverage with limits of $1,000,000 each occurrence. Coverage shall apply on a primary basis. Coverage may be provided

by way of the Commercial General Liability policy utilizing Liquor Liability endorsement CG 2408.

ARTICLE IX
INDEMNIFICATION AND DISCLAIMER OF LIABILITY

Section 9.01 Indemnification

Concessionaire shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises by reason, during, or as a result of the use and occupancy of the Premises by the Concessionaire, its agents, employees, licensees, and invitees, and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Concessionaire or by Concessionaire against any third party, then Concessionaire shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Concessionaire recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this Agreement without Concessionaire's agreement to indemnify County and further acknowledges the receipt of good and valuable separate consideration provided by County in support hereof in accordance with the laws of the State of Florida. This provision shall survive expiration or termination of this Agreement.

Section 9.02 DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF THE CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUES OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO CONCESSIONAIRE'S USE OF THE PREMISES PURSUANT TO THIS AGREEMENT.

ARTICLE X
DESTRUCTION OF PREMISES

Section 10.01 Total or Partial Destruction

In the event the Park or the Premises shall be damaged or injured by fire, the elements, unavoidable accident or other casualty, without the fault of Concessionaire, during the Term of this Agreement or any extension thereof, but the Premises is not thereby rendered inaccessible or untenable in whole or in part, then the County shall, at its own expense, cause such damage to be repaired, and the Guaranteed Annual Rent and other charges payable by Concessionaire hereunder shall not be abated. If by reason of such

occurrence, the Premises shall be rendered untenable only in part, County shall, at its own expense, cause the damage to be repaired, and the Guaranteed Annual Rent meanwhile shall be abated proportionately as to the portion of the Premises rendered untenable. If the Premises shall be rendered wholly untenable by reason of such occurrence, the County may, at its option, cause such damage to be repaired at County's expense, and the Guaranteed Annual Rent meanwhile shall be abated in whole until completion of such repairs. County shall notify Concessionaire in writing whether County intends to repair the Premises. If County elects not to perform such repairs, County and Concessionaire shall then each have the right to terminate this Agreement, with each party's right to be exercised, if at all, by notice in writing delivered to the other party within forty-five (45) days after County's election not to repair the Premises. In the event either party exercises its aforesaid termination right, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence and the parties hereto shall be relieved of all further obligations hereunder. In no event shall County be responsible for repair of Concessionaire's equipment, trade fixtures and/or Concessionaire's Alterations.

Section 10.02 Damage Near End of Term

If the Premises is destroyed or damaged during the last ten (10) months of the Term of this Agreement or any renewal thereof and the estimated cost of repair exceeds ten percent (10%) of the Guaranteed Annual Rent then remaining to be paid by Concessionaire for the balance of the Term, County may, at its option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Concessionaire of its election to do so within thirty (30) days after the date of occurrence of such damage and the parties hereto shall be relieved of all further obligations hereunder.

Section 10.03 Reconstruction of Alterations

Concessionaire, at its sole cost and expense, shall be responsible for the repair and restoration of Concessionaire's Alterations and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Concessionaire shall commence the installation of fixtures, equipment, and merchandise promptly upon delivery to it of possession of the Premises and shall diligently prosecute such installation to completion.

Section 10.04 Insurance Proceeds to County

County's obligation to restore the Premises as required under this Article X is expressly contingent upon County's receipt of, and limited to the extent of, any insurance proceeds received by County relating to the Premises.

ARTICLE XI
ASSIGNMENT AND SUBLETTING

Section 11.01 Consent Required

Concessionaire may not assign, mortgage, pledge or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Premises, nor enter into any management licensing or similar agreement without the prior written consent of County in each instance, which may be granted or withheld at County's sole and absolute discretion. The consent by County to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Agreement is assigned, or if the Premises or any part thereof is sublet or occupied by any party other than Concessionaire and Concessionaire is in default under its obligations under this Agreement, County may collect rent from the assignee, sub-contractor or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, sub-contractor, or occupancy as Concessionaire, or a release from the further performance by Concessionaire of the covenants on the part of Concessionaire herein contained. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary

or involuntary. Notwithstanding any assignment or sublease, Concessionaire shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions hereof or any rents or other sums to be paid hereunder. Concessionaire acknowledges and agrees that any and all right and interest of the County in and to the Premises, and all right and interest of the County in this Agreement, may be conveyed, assigned or encumbered at the sole discretion of the County at any time.

Section 11.02 Significant Change of Ownership

If Concessionaire is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange), partnership, limited liability company, or other business entity, Concessionaire represents that the ownership and power to control such entity belongs to and is vested in the person or persons executing this Agreement and/or as disclosed to County prior to executing this Agreement. If there shall occur any changes of ownership of and/or control of Concessionaire, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of the County, then County shall have the option to terminate this Agreement upon thirty (30) days notice to Concessionaire.

Section 11.03 Subcontracting of Concession Services

Concessionaire may enter into agreements with other individuals or entities (a "Subcontractor") to provide some or all of the concession services Concessionaire is required or allowed to provide pursuant to the terms of this Agreement. Any agreement with a Subcontractor ("Subcontractor Agreement") is subject to approval by the Department at its sole and absolute discretion and shall not become effective until the Director of the Department has provided written approval of the Subcontractor Agreement. Concessionaire shall provide Department with a copy of any proposed Subcontractor Agreement for review at least thirty (30) calendar days prior to the proposed effective date of the Subcontractor Agreement. Concessionaire shall be responsible for binding each Subcontractor to the terms of this Agreement, and ensuring each Subcontractor's compliance with the terms of this Agreement, regardless of whether or not a particular term in this Agreement specifically references compliance by Subcontractors. Concessionaire's delegation to Subcontractor of any of Concessionaire's obligations or responsibilities under this Agreement shall not relieve Concessionaire of its obligations or responsibilities under this Agreement. Concessionaire shall be responsible for ensuring that all Subcontractors are adequately trained and credentialed for the services they are to provide. Concessionaire shall make County a third party beneficiary to all agreements with Subcontractors and shall include in its agreements with Subcontractors a requirement that each Subcontractor indemnify and release County as set forth in this Agreement.

Concessionaire shall promptly replace any Subcontractor that fails to perform or provide a service as required by this Agreement, said replacement being subject to the approval of the Department at its sole and absolute discretion. The Department's objective in approving a replacement for a Subcontractor will be to ensure that the concession is operated in a manner consistent with Concessionaire's original proposal and in the best interests of the County.

ARTICLE XII
RULES AND REGULATIONS

The Rules and Regulations appended to this Agreement as Exhibit "F" are hereby made a part of this Agreement, and Concessionaire agrees to comply with and abide by same. Concessionaire's failure to keep and observe said rules and regulations shall constitute a default under the terms and conditions of this Agreement. County reserves the right from time to time to amend and supplement the rules and regulations, and to impose additional rules and regulations. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Concessionaire. Concessionaire agrees to comply with all additional and supplemental rules and regulations

upon notice of same from County.

ARTICLE XIII
DEFAULT

Section 13.01 Default by Concessionaire

The occurrence of any one or more of the events set forth below in (a) to (k), inclusive (any of which is referred to hereinafter as an "Event of Default"), shall constitute an Event of Default by Concessionaire under this Agreement:

a) Concessionaire's failure to begin construction within 90 days of receipt of all permits and approvals, and/or fails to open its concession for business on the Premises within 30 days after the Concessionaire receives its certificate of occupancy/completion.

b) Concessionaire fails to pay any one or more of said monthly installments of Guaranteed Annual Rent, or any other sums due hereunder as Additional Rent, as and when the same become due, without any prior demand.

c) Concessionaire ceases to fully conduct its business as specified herein for a period of five (5) consecutive business days as determined by the County.

d) A petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) is filed by or against the Concessionaire and such petition is not dismissed within 30 days from the filing thereof, or in the event Concessionaire is adjudged bankrupt.

e) An assignment for the benefit of creditors is made by Concessionaire.

f) An appointment, by any court, of a receiver or other court officer of Concessionaire's property and such receivership is not dismissed within 30 days from such appointment.

g) Concessionaire's estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding.

h) Concessionaire removes, attempts to remove, or permits to be removed from the Premises, except as required herein or upon County's approved assignment or subletting or in the usual course of trade, the goods, furniture, effects or other property of the Concessionaire brought thereon.

i) Concessionaire vacates the Premises or abandons the possession thereof before the expiration of the Term of this Agreement and without the written consent of the County, or uses the same for purposes other than the purposes for which the same are hereby licensed, or ceases to use the Premises for the purposes herein contained.

j) An execution or other legal process is levied upon the goods, furniture, effects or other property of Concessionaire brought on the Premises, or upon the interest of Concessionaire in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy.

k) Concessionaire violates any other term, condition or covenant herein on the part of Concessionaire to be performed or complied with, and Concessionaire fails to commence and proceed with diligence and dispatch to remedy the same within ten (10) days after written notice thereof, is given by County to Concessionaire.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to

County under the law, including, without limitation, the right to give Concessionaire notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by Concessionaire, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the three (3) day period and the County is so notified, this Agreement will continue. Concessionaire shall not be allowed more than two (2) notices and cure periods in any given year of the Term, and no more than five (5) notices and cure periods during the entire Term of this Agreement, for Events of Default related to payment of Annual Rent and/or Additional Rent.

Section 13.02 Default by County

County shall not be in default unless County fails to perform its obligations hereunder within the time specified and if none, within a reasonable time, but in no event later than thirty (30) days after written notice by Concessionaire to County, specifying how County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance, then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

ARTICLE XIV
ACCESS BY COUNTY

County or County's agents shall have the right to enter the Premises, at reasonable times, to examine the same and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable. Concessionaire must provide the County with access to the Premises within two (2) business days after the County's request for access. The Guaranteed Annual Rent and/or Additional Rent and other charges herein reserved and imposed shall not be abated while said repairs, alterations, improvements, or additions are being made. During the six (6) months prior to the expiration of the initial Term of this Agreement or any renewal thereof, County may exhibit the Premises to prospective Concessionaires, and place upon the Premises the usual notice "To Let" or similar notice, in a location that does not obscure Concessionaire's sign, which notices Concessionaire shall permit to remain thereon without molestation. If Concessionaire shall not be personally present to open and permit entry into the Premises, at any time, when for any reason entry therein shall be necessary, County or County's agents may enter the same without in any manner affecting the obligations and covenants of this Agreement. County shall have immediate access in the event of an emergency. Any such entry shall be calculated to minimize interference with or disruption of Concessionaire's operations within the Premises. Nothing herein contained, however, shall be deemed or construed to impose upon the County any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or any part thereof, except as otherwise herein specifically provided.

ARTICLE XV
ANNUAL BUDGETARY FUNDING/CANCELLATION

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Agreement to the contrary, upon expiration of the initial Term of the Agreement, County shall have the right to cancel this Agreement for any reason upon ninety (90) days prior written notice to Concessionaire, whereupon the parties shall be relieved of all further obligation hereunder.

ARTICLE XVI
QUIET ENJOYMENT

Upon payment by the Concessionaire of the Guaranteed Annual Rent, Additional Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and obligations on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Agreement.

ARTICLE XVII
GUARANTY

The payment of all rents and charges, and the performance of all covenants, terms and obligations of Concessionaire, required by this Agreement are guaranteed pursuant to that Guaranty Agreement, a copy of which is attached hereto as Exhibit "H" and made a part hereof. This requirement may be waived by County at its sole and absolute discretion.

ARTICLE XVIII
CONDEMNATION

If the Premises or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, the award relating to both Concessionaire's leasehold interest and County's reversionary interest in the Premises, without deduction, claim, or setoff, for any present or future estate of Concessionaire. Concessionaire hereby assigns and relinquishes to County all of its rights, title and interest in such award, and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Concessionaire shall be entitled to pursue in such condemnation proceeding such award as may be allowed for Concessionaire's improvements to the Premises and moving expenses.

In the event of a total taking of the Premises, this Agreement shall terminate on the date title vest in the condemning authority. In the event of a partial taking or a temporary taking, neither the Annual Rent or Additional Rent, nor Concessionaires other obligations hereunder shall be abated as to the remaining Premises. County shall have no obligation to restore the Premises, or improvements, or otherwise perform any work upon same due to such taking.

ARTICLE XIX
MISCELLANEOUS

Section 19.01 Entire Agreement

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between County and Concessionaire concerning the Premises and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Concessionaire unless reduced to writing and signed by them. In the event there is any inconsistency between any term of this Agreement and its exhibits, the following order of precedence shall apply: 1) Agreement, 2) Rules and Regulations, 3) RFP response except where explicitly provided otherwise. The document with the higher priority shall prevail.

Section 19.02 Amendments

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 19.03 Notices Required by Agreement

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service (provided in each case a receipt is obtained), or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5:00 P.M. on a business day and on the next business day if transmitted after 5:00 P.M. or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

a) If to the County at:

Parks & Recreation Department
Attn: Director, Special Facilities Division
John Prince Park
2700 Sixth Avenue South
Lake Worth, FL 33461
Telephone: (561) 966-6626
Fax: (561) 966-7070

with a copy to:

Palm Beach County
Property and Real Estate Management Division
Attn: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone: (561) 233-0217
Fax: (561) 233-0210

and a copy to:

Palm Beach County Attorney's Office
Attn: Real Estate Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone: (561) 355-2225
Fax: (561) 355-4398

b) If to Concessionaire at:

SOCCER 5
9100 S DADELAND BLVD SUITE 1507
MIAMI 33156
Telephone 305 965 9855
Fax _____

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

Section 19.04 Disclosure of Beneficial Interests

Concessionaire represents that simultaneously with Concessionaire's execution of this Agreement, Concessionaire has executed and delivered to County the Disclosure of Beneficial Interests attached hereto as Exhibit "I" (the "Disclosure"), disclosing the name and address of every person or entity having a five percent (5%) or greater beneficial interest in the ownership of the Concessionaire. Concessionaire warrants that in the event there are any changes to the names and addresses of the persons or entities having a five percent (5%) or greater beneficial interest in the ownership of the Concessionaire after the date of execution of the Disclosure and prior to the Effective Date of the Agreement, Concessionaire shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 19.03 of this Agreement.

Section 19.05 Severability

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 19.06 Broker's Commission

Concessionaire represents and warrants that Concessionaire has not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Concessionaire. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 19.07 Recording

Concessionaire shall not record this Agreement, or any memorandum or short form thereof, in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this Agreement.

Section 19.08 Waiver of Jury Trial

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS AGREEMENT OR CONCESSIONAIRE'S USE AND OCCUPANCY OF THE PREMISES.

Section 19.09 Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

Section 19.10 Radon

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 19.11 Time of Essence

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

Section 19.12 Waiver, Accord and Satisfaction

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by Concessionaire requiring County's consent to or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Concessionaire. No re-entry by County subsequent to an act of default by Concessionaire shall bar the recovery of rents or damages for the default of any of the terms, conditions or covenants on the part of Concessionaire herein contained. The receipt of rent after default or condition broken, or delay on the part of County to enforce any right hereunder, shall not be deemed a waiver of any default by Concessionaire of any term, covenant or condition of this Agreement, or a waiver of the right of the County to terminate this Agreement or re-enter the Premises or to re-let same, unless the payment received is for the full amount of rent, penalties, interest, and other amounts past due and non-payment of the same was the sole act of default.

Section 19.13 Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 19.14 Incorporation by Reference

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 19.15 Survival

Except as otherwise permitted herein, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

Section 19.16 Effective Date of Agreement

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

Section 19.17 Successors

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and permitted assigns of the said parties; and if there shall be more than one Concessionaire, they shall be bound jointly and severally by the terms, covenants and agreements herein. In the event County sells its interest in the Premises and the purchaser

assumes County's obligations and covenants, County shall thereupon be relieved of all further obligations hereunder.

Section 19.18 Public Entity Crimes

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of 36 months from the date of being placed on the convicted vendor list. By entering into this Agreement or performing any work in furtherance hereof, Concessionaire 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 effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes. Concessionaire also certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been suspended from doing business with Palm Beach County.

Section 19.19 Headings

The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

Section 19.20 Independent Contractor Relationship

The Concessionaire is, and shall be, in the performance of all work, services, and activities under this Agreement, 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 Agreement shall at all times, and in all places, be subject to the Concessionaire's sole direction, supervision, and control. The Concessionaire shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Concessionaire'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 Concessionaire does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

Section 19.21 Palm Beach County Office of the Inspector General Audit Requirements

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 19.22 No Third Party Beneficiary

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of Palm Beach County or employees of County or Concessionaire.

Section 19.23 Notification of Accident or Incident

In the event of accidents or incidents involving patrons that warrant emergency services, Concessionaire shall immediately call 911. Thereafter, Concessionaire shall report the accident or incident to the Department's Director of Special Facilities. and follow up with a written report of each accident or incident within 24 hours after occurrence of same. The Director's address is set forth in Section 19.03 of this Agreement. The on-call Park Ranger Supervisor may be reached at (561) 252-1714 between 7:00 A.M. and 11:00 P.M.

Section 19.24 Public Records

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Concessionaire: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Concessionaire shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Concessionaire is specifically required to:

A. Keep and maintain public records required by the County to perform services as provided under this Agreement.

B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Concessionaire further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the Concessionaire does not transfer the records to the public agency.

D. Upon completion of the Agreement the Concessionaire shall transfer, at no cost to the County, all public records in possession of the Concessionaire unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Concessionaire transfers all public records to the County upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically by the Concessionaire must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Concessionaire to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Concessionaire acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL

33401, BY E-MAIL AT RECORDSREQUEST(@pbcgov.org OR BY TELEPHONE AT 561-355-6680.

Section 19.25 Conflict of Interest

The Concessionaire 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 of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The Concessionaire further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Concessionaire shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the Concessionaire's judgement 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 Concessionaire 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 Concessionaire. The County agrees to notify the Concessionaire of its opinion by certified mail within thirty (30) days of receipt of notification by the Concessionaire. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Concessionaire, the County shall so state in the notification and the Concessionaire 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 Concessionaire under the terms of this Contract.

Section 19.26 Scrutinized Companies

A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

B. For Projects Greater Than $1,000.000: As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of $2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

WITNESSES:

Witness signature

Barbara Armington
Print witness name

Witness signature

Icaro De Oliveira
Print witness name

WITNESSES:

Witness signature

Print witness name

Witness signature

Print witness name

CONCESSIONAIRE:

US SOCCER 5 LLC
Entity Name (if applicable)

By:

SCOTT OECHSLIN
Print Name

PRESIDENT
Title

(SEAL)

By:

Print Name

Title

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By:_____
Deputy Clerk

COUNTY:

PALM BEACH COUNTY, a political subdivision of the State of Florida

By:_____
, Mayor

WITNESSES:

_____
Witness signature

_____
Print witness name

_____
Witness signature

_____
Print witness name

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By:_____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By:_____
Department Director

G:\PREM\RFP\2018\Mini Soccer Complex\RFP. hf app 7-3-2018.docx

EXHIBIT "A" TO THE RFP

Park Aerial

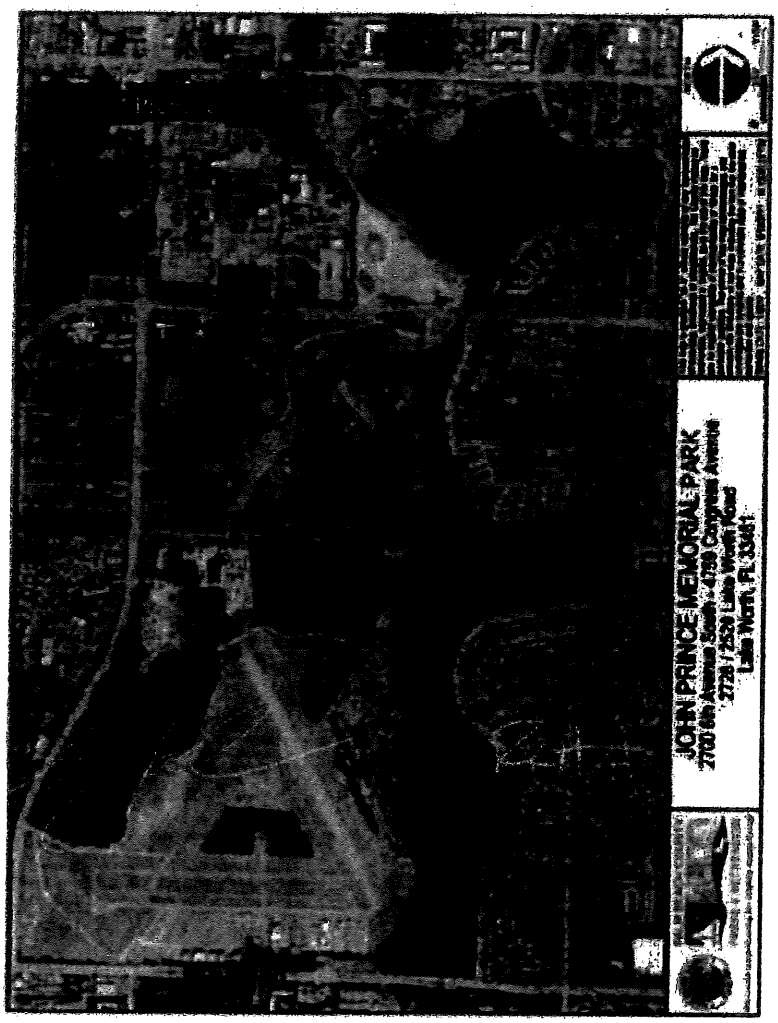
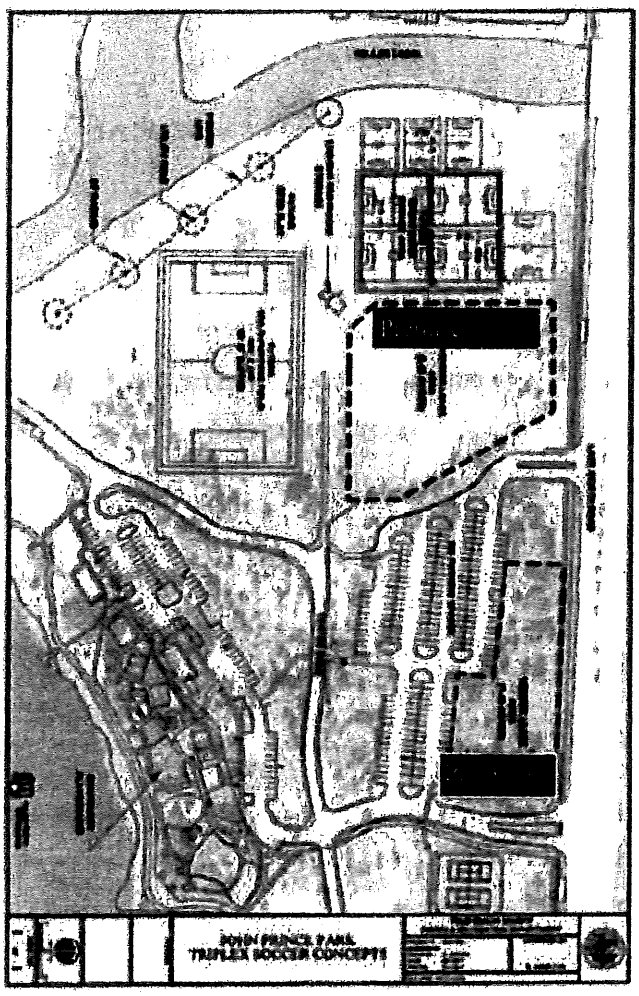


EXHIBIT "B" TO THE RFP

Premises



John Prince Park
2520 Lake Worth Road
Lake Worth, FL
PCN: 00434428000013020

EXHIBIT "C"
TO THE CONCESSIONAIRE LEASE AGREEMENT

Monthly Report of Concessionaire's Gross Sales (Due by the 20th of each month)

Park_____ Date: _____

Concessionaire Name:_____

Period Covered: From _____ To _____

A. Itemization of Gross Sales (excluding subcontractor gross sales)

_____ $_____

_____ $_____

_____ $_____

_____ $_____

B. Subcontractor Gross Sales

Subcontractor is defined in paragraph 11.03 of this Agreement. If there are multiple subcontractors, please include the total for all subcontractors on this line and list the name of each subcontractor on this form, or on an attached second sheet. If additional space is required, attach second sheet.

_____ $_____

_____ $_____

_____ $_____

C. Total Gross Sales (A+B) $_____

D. Total Payable

Monthly Guaranteed Rent $_____

LESS Commission Fee _____ % x Total Gross Sales (C) $_____

Sub-Total Commission Fee Payable $_____

If Commission Fee is less than the Guaranteed Annual Rent, no Commission is due.

PLUS Tax _____% $_____

Total Commission Fee Payable $_____

CERTIFICATION: I certify that this monthly gross sales statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

_____ _____

Signature of Concessionaire Date

EXHIBIT "D"

TO THE CONCESSIONAIRE LEASE AGREEMENT

DEVELOPMENT RIDER

Facility Site: John Prince Park

Project: Development and Operation of Mini Soccer Complex

This Development Rider is attached to and hereby made a part of the Concessionaire lease agreement and shall govern the development of a Mini Soccer Complex at John Prince Park (the "Facility") within the site set forth in Exhibit "A" attached hereto and made a part hereof (the "Site Area Map"). Words and phrases used in this Development Rider shall have the same meaning as in the Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Development Rider and the provisions of the terms and conditions of the Agreement, the terms and conditions of the Development Rider shall prevail.

A Project Manager ("PM") shall be assigned by the Palm Beach County Parks and Recreation Department (the "Department") to represent Palm Beach County ("County"). The PM shall monitor compliance with the terms and conditions of the Development Rider, coordinate reviews, comments and approvals; attend design and construction meetings; and provide periodic inspections to monitor compliance with the Conceptual Plan and schedule during design, construction, and close-out of the Facility.

I. CONCESSIONAIRE'S OBLIGATIONS TO DEVELOP THE FACILITY SITE

The improvements the Concessionaire develops at the Facility site shall be designed and constructed in accordance with the provisions of the Agreement. Concessionaire shall complete all improvements pursuant to the design and construction defined in Concessionaire's proposal to RFP No. 2018-103-RCH ("RFP") and as approved by the County.

Concessionaire understands and agrees that all costs associated with the design, development, permitting, construction and close-out of the Facility, and any off-site improvements, shall be the sole responsibility of the Concessionaire. Prior to commencing construction, the Concessionaire shall provide evidence, in a manner sufficient to satisfy the County, that the Concessionaire obtained the necessary funds to complete the approved Facility.

The Concessionaire shall maintain all files, records, accounts of expenditures for the Facility and improvements, including improvements performed by Concessionaire's subcontractors, in a local office within Palm Beach County. The County shall have access to such records as provided in the Agreement.

The Facility shall operate within the Premises at John Prince Park as set forth in the Site Area Map.

The Concessionaire shall, within 30 days after execution of the Agreement, submit a Critical Path Method (CPM) schedule for the entire scope of the Facility and for approval from the County. Such approval from the County shall not be unreasonably withheld or delayed. The CPM schedule shall be updated and submitted to the County with the Conceptual, Preliminary, and Final Plans and as requested by the County. The terms and conditions of this Development Rider, in its entirety, shall apply to all construction.

Concessionaire's requests for modifications to the Final Plans and/or schedule during the development process must be submitted in writing to the PM with sufficient documentation to justify said request. The Department will consider the information provided and any mitigating circumstances prior to approving or rejecting said requests.

A. Site Conditions.

a. The Concessionaire accepts complete responsibility for all conditions encountered at the Facility site, including, without limitation, unforeseen site conditions, subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the construction plans, unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the project, and any dewatering activities necessary to construct the facility. The Concessionaire, at its sole cost and expense, shall be responsible for the removal or relocation of man-made obstructions, abandoned foundations, utilities, and natural obstructions required for the completion of the Facility. The Concessionaire, at its sole cost and expense, shall be responsible for any and all site conditions, including environmental conditions, caused, disturbed, or exacerbated by the construction and shall be responsible for, at its sole cost and expense, all environmental remediation work that is required to be performed resulting from the construction of the Facility. The Concessionaire further agrees not to initiate any claims or suits against the County relating to any site condition, including environmental conditions, and agrees to indemnify, defend and hold harmless the County from and against any claims arising from an environmental condition caused or exacerbated by the Concessionaire in the construction of the Facility.

B. Time of the Essence.

a. The timely completion of all activities set forth below, and the milestones set forth in the CPM Schedule is of the essence. Failure to meet those deadlines, as the same may be extended by written agreement of the parties, may, at County's option, constitute a breach of the Agreement.

C. Conceptual Plans.

a. Within 45 calendar days from the Agreement Effective Date, the PM and Concessionaire shall review the Conceptual Plans and CPM schedule for the aesthetics, design, and construction of the Facility for substantial compliance with the RFP and the provisions of the Agreement. The County will provide comments and/or proposed modifications in writing to the Concessionaire. Concessionaire shall incorporate said comments into a set of revised Conceptual Plans to be reviewed and approved by the County.

b. Prior to commencing the development of the Preliminary Plans, the Concessionaire shall schedule and coordinate a kick-off meeting with the PM to review the contractor's development schedule, which shall include a start and completion date as well as major milestones and the total development cost estimate.

c. Concessionaire shall develop a final comprehensive timeline for the development of the supporting infrastructure, including the construction schedule and cost estimates for the supporting infrastructure and the

required furnishings, fixtures and applicable equipment. *The final timeline and cost estimates are due within 30 days after approval of the design and concept by the County.*

D. Preliminary Plans and Specifications.

a. Within 60 calendar days after approval of the Conceptual Plans, unless a written request for extension has been received and approved by the PM, Concessionaire, at its sole cost and expense, shall prepare and deliver to the Department an updated CPM schedule and two (2) sets of preliminary plans and a computer-aided design and drafting (CADD) file for the construction of the Facility prepared by an architect and/or engineer Licensed to practice as such in the State of Florida (hereinafter referred to as "Preliminary Plans"). The Preliminary Plans shall include a total development cost estimate and an updated Development Schedule and show, without limitation; site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Facility, curbs, gutters and parkways; lighting; locations for outdoor signs; and storage areas; all sufficient to enable reasonably accurate cost estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect the Facility shall have on the Park. Such Preliminary Plans shall be based on Conceptual Plans and any modifications thereto as approved by the Department. The Facility shall be constructed within the area described in Exhibit "A". The Concessionaire, at its sole cost and expense, shall be responsible for all off-site improvements required to accomplish the construction and occupancy of the Facility. The Facility shall be aesthetically and functionally compatible with the setting of the Park. Within 30 days after the Department receives Preliminary Plans, the Department shall either approve or deliver to Concessionaire specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Concessionaire shall resolve all comments and requests for modifications to the Preliminary Plans by the Department and resubmit the plans and obtain written approval from the Department prior to proceeding with the development of the Final Plans.

b. In the event the parties are unable to resolve any objections by the Department to the Preliminary Plans within 60 days after Concessionaire has received the Department's objections, the Department shall have the right to terminate the Agreement upon notice to the Concessionaire and the parties being thereafter relieved of any further obligation hereunder and under the Agreement arising thereafter.

E. Final Plans.

a. Within 90 days after the Preliminary Plans and specifications are approved by the Department, the Concessionaire, at its sole cost and expense, shall prepare and deliver to the Department an updated CPM schedule and two (2) sets of Final Plans, one (1) CADD file, and specifications comprising the Final Plans for the Facility, which Final Plans must be consistent with the approved Preliminary Plans. The Final Plans and all associated addenda and attachments shall be incorporated into the Agreement by reference.

b. The Final Plans shall be considered 100% construction documents and include an updated total development cost estimate and updated CPM

schedule and show, without limitation; site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Facility, curbs, gutters and parkways; lighting; locations for outdoor signs; storage areas; and off-site improvements. Completed technical specifications shall be included under the Final Plans.

c. Within 45 days after the Department receives the Final Plans, the Department will either approve the plans or deliver to Concessionaire specific corrective comments. The Department shall not be unreasonable in exercising its approval rights hereunder. Concessionaire shall resolve all comments and requests for modifications by the Department to the Final Plans and obtain written approval from the Department prior to proceeding with the permitting.

F. Permits.

a. Not later than the ten (10) days after the date Concessionaire receives the Department's written approval of the Final Plans, Concessionaire shall commence seeking from all governmental agencies having jurisdiction over the Park and the Facility all such required permits, and Concessionaire shall exercise due diligence in attempting to obtain such permits.

b. In the event permitting requirements modify the Final Plans or aesthetics of the Facility or its location within the Park, the Concessionaire shall keep the PM informed of the progress during the permitting phase and coordinate with the Department to ensure that permitting requirements are acceptable to the Department. The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required.

c. Subject to the timing requirements contained in paragraph G. below, the obtaining of any such permits shall not be considered as complete until any review and/or appeal is final by the highest body authorized to determine same or until the time for such appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any permit, the obtaining of the permits shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal there from shall have expired, or if any appeal has been taken, until the appeal has final determinations.

d. If Concessionaire is unable to obtain such permits within 180 days from the date Concessionaire receives County's approval of the Final Plans, the County shall have the right to terminate the Agreement upon notice to the Concessionaire and the parties being thereafter relieved of any liability hereunder and under the Agreement. The County shall have the right, in its sole discretion, to extend the time within which Concessionaire must obtain such permits. However, the County shall be under no obligation to grant such extensions of time.

G. Commencement and Completion of Construction of the Project.

a. The Concessionaire shall submit all required insurances and bonds to the Department prior to commencing construction. Within 30 days from the

date the Concessionaire obtains all permits required to begin construction of the Facility, the Concessionaire shall submit copies of all permits, an updated total development cost estimate, proof that funding is available for construction a Schedule of Values (SOV) for construction, an updated CPM schedule indicating construction start and completion dates, as well as major milestones for the Facility. Within 15 days after the Department receives copies of all permits, the updated total development cost estimate, proof that funding is available, the SOV, and the CPM schedule, the Department shall either approve or deliver to Concessionaire specific corrective comments. The Department will not be unreasonable in exercising its approval rights hereunder. Concessionaire shall resolve all comments and requests for modifications by the Department. Once all comments have been satisfactorily addressed by the Concessionaire, the Department shall issue a Notice-to-Proceed (NTP) to the Concessionaire.

b. The Concessionaire shall schedule a pre-construction meeting with the PM prior to mobilization. The pre-construction meeting shall serve to review all completed work to date, discuss the upcoming construction activities and its impact to Park operations. Concessionaire shall, without delay, pursue commencement of construction and diligently pursue completion thereof. The construction of the Facility shall be in accordance with the Final Plans.

c. The Final Plans shall not be changed and/or modified without the Department's approval, which approval shall not be unreasonably withheld or delayed. The Department's approval shall not be deemed as a substitute for approval from any agency which issues permits and whose approval of modifications may be required. All requests for changes shall be coordinated through the PM. The PM will be provided sufficient notice and information (impact to design, budget, schedule, materials; performance, etc.) to provide timely responses to any request of changes. All work in connection with the construction of the Facility shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws. Concessionaire will allow unobstructed inspections by the Department's staff to determine compliance with the approved plans and specifications throughout construction. The Concessionaire shall be responsible to provide any temporary facilities needed in support of its construction of the Facility.

d. Construction of the Facility shall be completed within 270 days of the receipt of all permits and approvals.

e. Upon completion of the construction of the Facility, Concessionaire shall, at its sole cost and expense, obtain a survey of the Facility and surrounding impacted areas and deliver said survey to the Department, along with one copy of the "as built" drawings and a CADD file, accurately reflecting the constructed Facility, its supporting infrastructure, and off-site improvements at the Park. The County will provide the Concessionaire the as-built information showing the exact location of the Facility at the Park and the same shall be incorporated into the Agreement.

f. Prior to the commencement of any work, Concessionaire shall demonstrate to the Department's satisfaction that all construction financing is in place.

g. Concessionaire shall work closely with the Department in scheduling and engaging in Concessionaire's construction activity so as not to disrupt Park events, including but not limited to Special Events. Where a conflict may occur, the Department shall solely make the determination as to

Concessionaire's right to continue work and the desirability of temporarily halting or continuing activity by Concessionaire.

h. Concessionaire shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by Concessionaire's failure to cease work after written notice from the Department.

H. Provisions Applicable during the Construction of the Facility.

a. The following provisions shall be applicable during the construction of the Facility:

1. All construction shall be performed by licensed contractors. Concessionaire shall furnish the Department with a true copy of Concessionaire's contract with the general contractor showing a breakdown of costs.

2. Throughout the construction of the Facility, the PM will attend bi-monthly construction meetings and periodically inspect and review the progress of construction to ensure adequate performance and conformity with the approved plans.

3. In addition to bi-monthly construction meetings, the Concessionaire shall schedule and coordinate a pre-construction meeting, 50% progress meeting, 75% progress meeting and 100% substantial completion walk-thru meetings with the PM.

4. The PM or appropriate designee will provide input to the construction punch-list items and shall issue a final acceptance of the Facility once all work has been completed and all permits have been approved and closed by all agencies having jurisdiction. Upon issuance of final acceptance, the facility may be occupied and opened for its desired intent.

5. Any changes requested by the Concessionaire modifying the approved Final Plans must be in writing and approved by the Department prior to implementation. All requests for changes shall be coordinated through the PM. The PM will be provided sufficient notice and information (impact to scope, budget, schedule, materials, performance, etc.) to provide timely decisions.

6. Within 30 days before the specified one (1) year warranty period ends, the Concessionaire shall schedule a walk-thru of the Facility with the PM and its contractor, to inspect all construction systems and ensure it's intended functionality and expected workmanship. The "warranty period" warrants the work under the construction improvements, as defined in the Agreement, to be free from faulty materials and workmanship for a period of not less than one (1) year from the date of final acceptance. This one-year period shall be covered by the Surety Performance Bond as required by this Development Rider. After the warranty inspection is completed with satisfactory results as determined by the PM, the close-out period is concluded, except as provided for under Florida Statue 95.11 (3) (c).

I. Bonds and Insurance.

a. The Concessionaire shall furnish bonds covering the faithful performance of the Agreement and the payment of all obligations arising thereunder in such form and amount as the County may prescribe. Bonds may be secured through the Concessionaire's usual sources provided the Surety is authorized to do business in the State of Florida.

b. Prior to beginning construction of the Facility, Concessionaire shall furnish the following to the Department, on the forms provided in the Agreement:

1. Public Construction Bond in the Amount of 100% of the contract price.

2. Such Public Construction Bond shall incorporate by reference all of the terms and conditions of the Agreement, including but not limited to the Concessionaire and Surety's obligation for liquidated damages as well as Surety's acknowledgment regarding any and all provisions addressing or regarding "no damages for delay."

c. The Surety Company, in addition to the above requirements, shall be currently listed with the United States Department of Treasury for an amount greater than the contract amount. The Concessionaire shall provide, a copy of the Surety Company's current valid Certificate of Authority issued by the United States Department of the Treasury under SS 31, U.S.C. 9304-9308.

d. The Concessionaire shall require the attorney-in-fact who executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of his Power of Attorney.

e. The Concessionaire may, in lieu of a surety bond, submit an irrevocable clean letter of credit, acceptable to County, conditioned upon the faithful performance of the work in strict accordance with the Agreement and with the Plans and Specifications and the completion of the same free from all liens and within the time limit herein specified.

f. The bonds shall provide the following, without limitation:

1. That a payment bond in an amount not less than 100% of the cost of construction of the Facility is provided to secure the completion of the Facility free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen in a County approved bond form to be provided by Concessionaire;

2. That a performance bond in an amount not less than 100% of the cost of construction of the Facility is provided that insures that the construction work shall be effected by the general contractor or, on their default, the surety in a County approved bond form to be provided by Concessionaire; and

3. That the surety will defend and indemnify Palm Beach County and Concessionaire against all loss, cost, damage, expense and liability arising out of or connected with the construction of the Facility, up to the maximum bond requirement amount.

4. The bond or letter of credit shall be so worded as to make the Agreement a part thereof and shall contain a clause providing the right of suit or action for whose benefit said bond shall be executed as disclosed by the text of said

bond and Agreement to the same extent as if he or they were the obligee or obligee therein specifically mentioned, and all such persons shall be held or deemed to be obligee thereof.

g. In the event that, for any reason, either or both of the Concessionaire's Performance and Payment bonds lapse or are held to be no longer valid or enforceable before the satisfaction of any and all claims by materialmen, laborers, subcontractors, or any suppliers of any kind, the Concessionaire shall pay all such claims, and indemnify, defend, and hold the County harmless against such claims.

h. If no specific periods of warranty are stated in the Agreement or elsewhere in this Development Rider, for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to seek damages directly from the Concessionaire or its contractor for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11 (3) (c), Florida Statues.

II. THE COUNTY'S CONSTRUCTION OBLIGATIONS

A. Conditions of Facility Site.

a. The County shall deliver physical possession of the Facility site to Concessionaire in an "as is" condition so that Concessionaire may commence construction.

b. The areas within the Park to be occupied by the Concessionaire during the execution of the construction of the Facility shall be delineated in the construction documents plans as agreed to between the County and Concessionaire. The limits of the work shall be sufficient to properly undertake the necessary construction of the Facility and off-site improvements within the Park site so long as normal operations are not impeded.

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EXHIBIT "A'
TO DEVELOPMENT RIDER

SITE AREA MAP

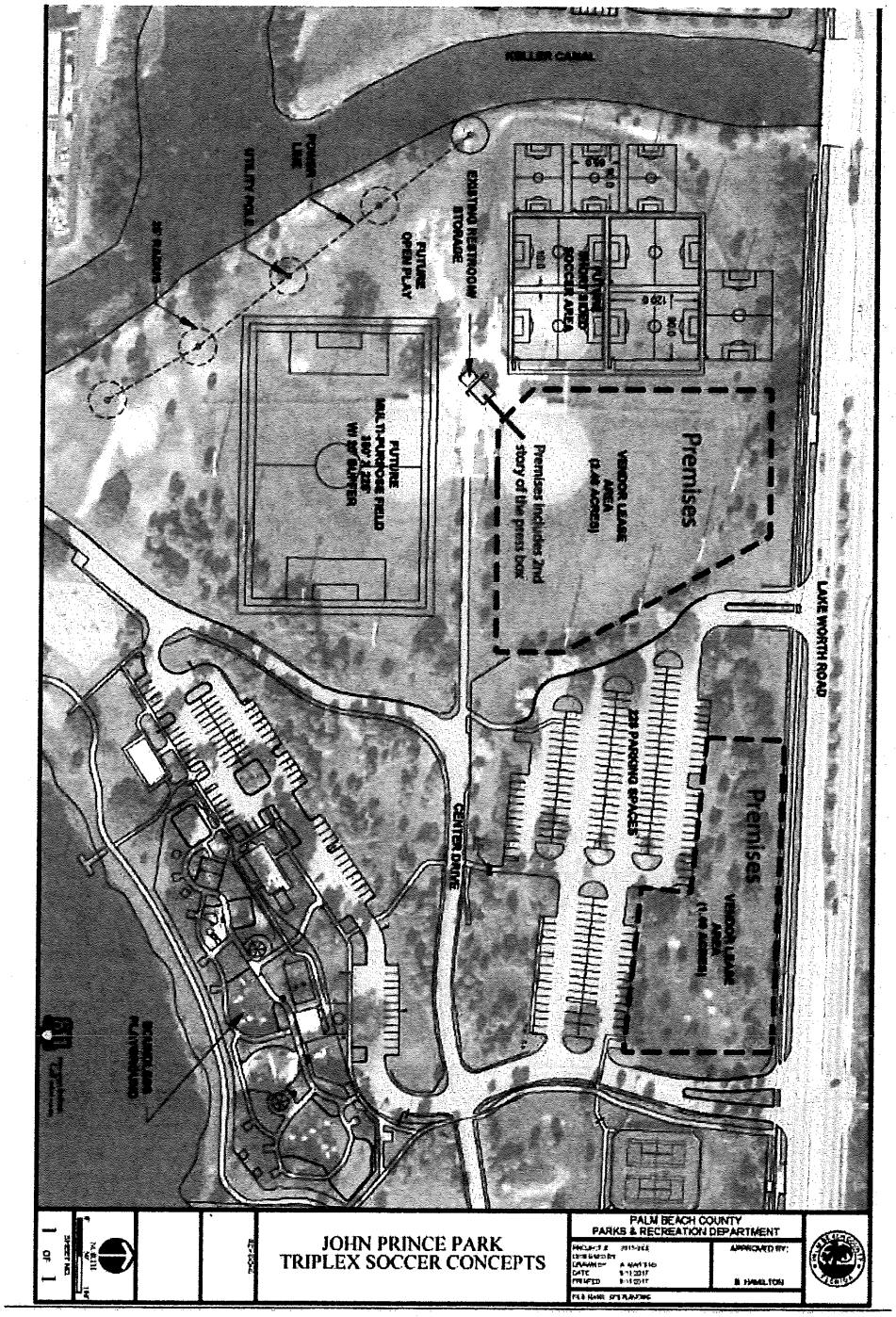


EXHIBIT "E"
TO THE CONCESSIONAIRE LEASE AGREEMENT

TRENCH SAFETY AFFIDAVIT

PROJECT NUMBER: N/A
PROJECT NAME: N/A

TRENCH SAFETY AFFIDAVIT

_____(NAME OF CONTRACTOR) hereby provides written assurance that the Trench Safety Standards identified in the Occupational Safety & Health Administration's Excavation Safety Standards, (OSHA) 29 C.F.R. 1926.650 Subpart P will be adhered to during trench excavation in accordance with Florida Statute 553.60 through 553.64 inclusive (1990), "Trench Safety Act".

The undersigned acknowledges that costs for complying with the Florida "Trench Safety Act" are summarized below: (Attach additional sheets as necessary)

Schedule Item	Trench Safety Measure (Slope, Trench Shield, etc.)	Cost (Per Linear ft of trench, or per sq. ft. of shoring)
	Total	

_____
(Signature) (Date)

Title:_____

State of _____
County of _____

Subscribed and Sworn to (or affirmed) before me on this __ day of _____, 20___ by _____ who is personally known to me or has presented _____(type of identification) as identification.

_____
Notary Public Signature and Seal

_____
Print Notary Name and Commission Number

EXHIBIT "F"
TO THE CONCESSIONAIRE LEASE AGREEMENT

RULES AND REGULATIONS

1. The sidewalks, entrances and passages surrounding the Premises shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the Premises demised to Concessionaire or occupant.

2. No awnings or other projections shall be attached to the outside walls or windows of the Premises without Parks & Recreation Department's written approval.

3. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Premises without Parks & Recreation Department's written approval.

4. Any water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, acids, or other substances shall be thrown therein. Concessionaire shall not bring or keep, or permit to be brought or kept, any inflammable, combustible or explosive fluid, material, chemical or substance in or about the Premises.

5. No animals (except for guide dogs for the blind or service dogs for the physically impaired) of any kind shall be brought into or kept in or about the Premises.

6. No space in the Premises shall be used for manufacturing, or for the storage or sale of merchandise, goods or property of any kind, at auction, without the prior consent of the County.

7. Concessionaire shall not make, or permit to be made, any unseemly or disturbing noises, or disturb or interfere with visitors of the Park, whether by the use of any musical instrument, radio, television set, or other audio device, musical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors or windows.

8. Concessionaire must, upon the termination of its tenancy, restore or return to the County all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by Concessionaire.

9. The County shall have the right to prohibit any advertising in or around the Park by the Concessionaire or any other party which, in the County's opinion, tends to impair the reputation or desirability of the Park, and upon notice from the County, the Concessionaire or the other party shall refrain from or discontinue such advertising.

10. Concessionaire, before closing and leaving the Premises, shall ensure that all doors are locked and all windows are closed.

11. The Premises shall not be used, or permitted to be used, for lodging or sleeping, or for any immoral or illegal purpose.

12. There shall not be used in the Premises, either by Concessionaire or occupants or by their agents or contractors, in the delivery, shipping or receipts of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as the County may require.

13. Concessionaire shall use only recyclable, compostable, or biodegradable packaging, cups and plates to distribute food and beverages.

14. Concessionaire shall not cause or permit any unusual or objectionable odors to emanate from the Premises.

15. Concessionaire shall maintain a business mailing address that does not include the address of the Park. Any promotional materials distributed by Concessionaire or any occupant must include Concessionaire's business mailing address. The U.S. Postal Service does not provide service to the Park.

16. The use of drugs or alcoholic beverages in the Premises is prohibited at all times. No person who is intoxicated or under the influence of drugs or alcohol is permitted to be in or around the Premises.

Programming / Operations:

17. Concessionaire shall offer to teach soccer in private and group sessions to the general public.

18. Concessionaire may operate tournaments and competitions with Department's consent.

19. All revenue collected at the facility which is generated by Concessionaire's operations shall be the property of the Concessionaire.

20. On an annual basis, Concessionaire shall submit to the County for approval a schedule of fees to be charged at the facility for review in advance of implementation. The schedule should include use fees, equipment rental fees, lesson fees, service charges, non-resident charges, and any other applicable fee to be charged to the public. Concessionaire shall clearly post the approved fees in a conspicuous place and professional business manner using appropriate display boards and or signage.

21. Concessionaire shall establish and enforce a Code of Conduct and Disciplinary Guidelines for all coaches, participants (youth and adult), and parents that shall meet or exceed Parks & Recreation industry standards.

Evaluation of Operation:

22. Concessionaire shall review and submit recommended changes to overall facility operations and services, such as schedule changes, addition or deletion of programs, or institution of new fees and charges, to the County's representative on a quarterly basis.

23. Concessionaire shall submit to the County's representative on a monthly, semi-annual and annual basis information such as: usage; number of people served; number and type of tournaments and competitions, clinics, and lessons; highlights of accomplishments; and financial information such as total monthly revenue broken down by revenue source.

Concessionaire's Representative:

24. Concessionaire shall designate a facility manager who shall be responsible for Concessionaire's overall performance hereunder and who will, at the request of the County, report any noteworthy highlighted activities/problems/solutions to the Board of County Commissioners.

25. The facility manager or a responsible supervisor appointed by the facility manager will be onsite during all operating hours of the facility.

County's Representative:

26. The Department will designate, in writing, an individual to serve as its representative to monitor the Concessionaire's method of operation. This representative will be the direct liaison between the County and the Concessionaire.

Personnel:

27. Concessionaire shall employ personnel with a minimum of one year experience in the performance of various aspects of a soccer complex management such as: revenue collection, instruction and marketing / public relations.

28. Concessionaire shall thoroughly train all employees in the schedules, philosophies, and public relations concerns of the County. Concessionaire's personnel shall conduct all work operations and deal with the public in a courteous manner.

29. Concessionaire and staff shall wear attire which, in the sole determination of County, is appropriate, professional, and clearly distinguishes Concession staff from County and Park staff and Concession patrons. Concession staff shall wear name tags and/or ID badges while working. Concession staff shall conduct themselves in a professional manner at all times. Use of profanity, alcohol, and illegal substances by Concessionaire, staff, subcontractors and agents is strictly prohibited.

Native Wildlife:

30. Concessionaire shall notify the County Representative if native wildlife intrude into the Premises. Concessionaire shall suspend activities if native wildlife poses a threat to participants. The County representative shall arrange for the removal of native wildlife that poses a threat to participants. Upon removal of the threat the Concessionaire may restart activities.

EXHIBIT "G"
TO THE CONCESSIONAIRE LEASE AGREEMENT

RESPONSE TO RFP

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 10/31/2018 REQUESTED BY: Margaret Jackson PHONE: 233-0212
FAX: 233-0210

PROJECT TITLE: Mini Soccer Complex Concession at John Prince Park PROJECT NO.:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
External Revenues	($0)	($24,000)	($48,480)	($49,450)	($50,439)
Program Income (County)					
In-Kind Match (County					
NET FISCAL IMPACT	($0)	($24,000)	($48,480)	($49,450)	($50,439)
# ADDITIONAL FTE POSITIONS (Cumulative)					

** *By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.*

BUDGET ACCOUNT NUMBER

FUND: DEPT: UNIT: REV:

SUB OBJ:

IS ITEM INCLUDED IN CURRENT BUDGET: YES _____ NO _____

IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check *all* that apply)

Ad Valorem (source/type: _____)
Non-Ad Valorem (source/type: _____)
Grant (source/type: _____)
Park Improvement Fund (source/type: _____)

General Fund _____ Operating Budget _____ Federal/Davis Bacon _____

Department: _____

BAS APPROVED BY: BSC _____ DATE: 11-5-18

ENCUMBRANCE NUMBER:

C:\Users\ipersaud\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\U8SQP6G7\BAS. 10-31-2018 (003).docx

Attachment 4
1 p9

EXHIBIT "I"
TO THE CONCESSIONAIRE LEASE AGREEMENT
CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared 7/19/18 SCOTT GEORGESON, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the PRESIDENT (position - i.e. president, partner, trustee) of US SOCCER 5 LLC (name and type of entity - i.e. ABC Corporation, XYZ Limited Partnership), (the "Concessionaire") which entity is providing concession services on the real property legally described on or depicted in the attached Exhibit "A" (the "Premises").

2. Affiant's address is: 8360 SW 157TH STREET PALMETTO BAY FL 33157

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the concessionaire and the percentage interest of each such person or entity.

4. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

5. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete, and will be relied upon by Palm Beach County relating to its entering into a Concessionaire Lease Agreement for the Premises.

FURTHER AFFIANT SAYETH NAUGHT.

_____, Affiant
Print Affiant Name: SCOTT GEORGESON

The foregoing instrument was sworn to, subscribed and acknowledged before me this 19th day of September, 2018, by Scott Georgeson [ ] who is personally known to me or [X] who has produced FL Driver's License as identification and who did take an oath.

Notary Public

ADRIAN AVILES
MY COMMISSION #GG252120
EXPIRES: AUG 23, 2022
Bonded through 1st State Insurance

Adrian Aviles
(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

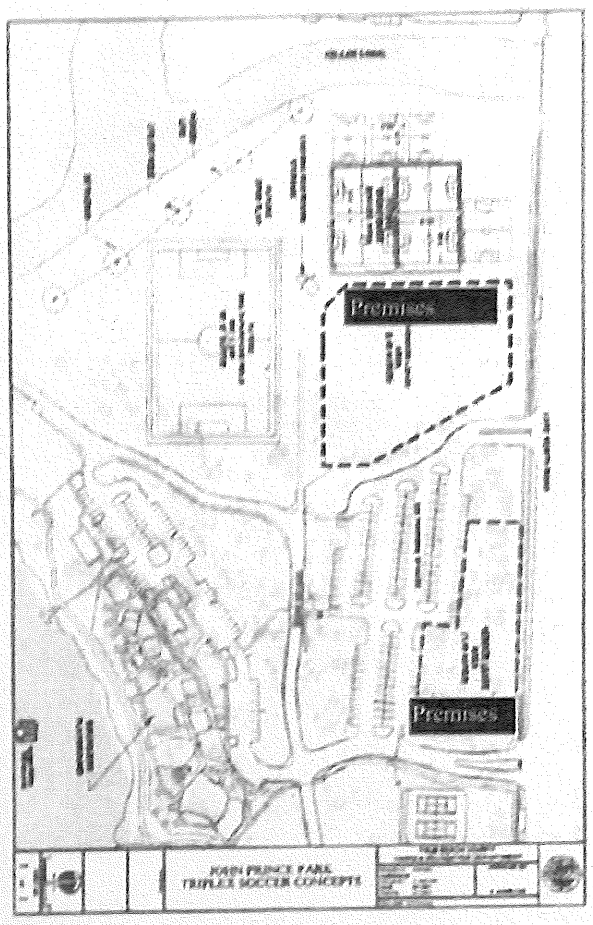
ADRIAN AVILES
MY COMMISSION #GG252120
EXPIRES: AUG 23, 2022
Bonded through 1st State Insurance

My Commission Expires: Aug 23, 2022

Attachment 5
1 of 3

EXHIBIT "A"

PREMISES



John Prince Park
2520 Lake Worth Road
Lake Worth, FL
PCN: 00434428000013020

Attachment 5
2 of 3

EXHIBIT "B"

SCHEDULE TO BENEFICIAL INTERESTS

Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual interest holders. If, by way of example, Concessionaire is wholly or partially owned by another entity, such as a corporation, Concessionaire must identify such other entity, its address and percentage interest, as well as such information for the individual interest holders of such other entity.

NAME	ADDRESS	PERCENTAGE OF INTEREST
SCOTT GEORGESON	8360 SW 157TH STREET PALMETTO BAY FL 33157	50%
SHARON GEORGESON	905 BRICKELL BAY DR #1830 MIAMI FL 33131	50%

Attachment 5
3 of 3

SOCCER 5 FOUNDATION

November 15th 2018

To whom it may concern,

The Soccer 5 Foundation exists to assist children who wish to develop in soccer, play soccer, whilst supporting the community, and the development of a Special Needs Program and enjoying soccer played at Soccer 5 facilities.

Soccer 5 is a proud national soccer partner of NRPA and also a local contributor to parks foundations such as The Parks Foundation of Miami Dade and dedicates time, facilities, people and funds to develop soccer within Parks and introduce children to soccer programs.

Soccer 5 is also proud organizer of Soccer Festivals (see www.soccerfestivals.org) which results in local community tournaments such as The Mayor's Youth Sports Championship Series 'Miami Soccer Festival' www.miamisoccerfestival.org

The Soccer 5 Foundation is a non-profit organization with a simple mission of encouraging more kids to play soccer and more spaces to play soccer. Grant assistance may be available for children and parents who meet the needs of the criteria for support in Soccer. Soccer 5 divests a % of annual profits to the Soccer 5 Foundation with the sole purpose of supporting more soccer, which in turn works in Partnership with national parks within the NRPA and various local parks foundations for example The Parks Foundation of Miami Dade.

PALM BEACH COUNTY FLORIDA

SOCCER 5 USA
9100 S DADELAND BLVD, #1507
MIAMI
33156
WWW.SOCCER5USA.COM

SOCCER5 USA Get in The Game

ATTACHMENT NO. 6

SOCCER 5 FOUNDATION

Our Soccer 5 Academy operates locally and nationally via owned operated centers and franchisee operated centers. We work closely with US Club Soccer and Parks and many other contributors and foundations to deliver an accredited program for kids and youth ages 3 – 16 who wish to get in to soccer or develop confidence via soccer. All owner operated Academies will become 501c3 and we encourage new Soccer 5 Centers around the country to follow the same philosophy as they grow. www.soccer5academy.com

Children Ages 4-16 who wish to develop in soccer but whose parents do not have the financial means to support their soccer development, may be eligible for grant support from Soccer 5 Foundation to pay fees in return for giving back within the Soccer 5 community in terms of volunteering, coaching assistance and community programs.

Special Needs Children are invited to play within Soccer 5 facilities, at pre-determined times and with coaching support and family support played within the framework of the US Soccer Tops Program.

We look forward to working with Palm Beach County on similar initiatives and working closely with the community to enhance their experience.

Yours Sincerely,

Scott Georgeson, President
www.soccer5usa.com

305 965 9855