

4B-2

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 4, 2019 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution authorizing a Second Amendment to Concessionaire Service Agreement dated June 19, 2012 (R2012-0892), as amended, with Kayak-King Watersports, Inc. (KKW), for the continued operation of a water sports and recreational rental concession at Okeeheelee Park on a month to month basis commencing July 1, 2019, until terminated at an annual rate of \$7,320.06 (\$610.01/monthly); and

B) approve a Second Amendment to Concessionaire Service Agreement (R2012-0892) with Kayak-King Watersports, Inc.(KKW).

C) delegate authority to terminate the Concessionaire Service Agreement to the County Administrator or designee.

Summary: Kayak-King Watersports, Inc. (KKW) has operated its concession at Okeeheelee Park under this existing Concessionaire Service Agreement (R2012-0892) since July 2012. On May 2, 2017, the Board approved the First Amendment (R2017-0550) exercising the second and final two (2) year option, which expires on June 30, 2019. Pending implementation of the County's new Equal Business Opportunity (EBO) Ordinance, the issuance of a new Request for Proposals (RFP) has been delayed. Rather than close the concession building until a new concessionaire agreement is awarded, KKW has agreed to continue to provide concession services until such time the RFP process is completed and a new agreement is awarded. Staff believes it to be in the County's best interest to extend the Agreement with KKW. This Second Amendment extends the term of the Agreement on a month-to-month basis commencing July 1, 2019 until terminated. The annual rent will remain at \$7,320.06 (\$610.01/monthly). This Second Amendment also updates the non-discrimination and insurance provisions. The County may terminate the Agreement at any time upon 15 days notice to KKW. All other terms and conditions of the Agreement shall remain in full force and effect. Parks will continue to have administrative responsibility for this Agreement. (PREM) District 2 (HJF)

Background and Policy Issues: On June 19, 2012, the Board approved the Agreement with KKW for a three (3) year period, with two (2) two (2) year extension options. KKW exercised its first option on June 23, 2015 (R2015-0781) extending the term of the Agreement through June 30, 2017. The First Amendment (R2017-0550) dated May 2, 2017, exercised the second and final extension option, extending the term of the Agreement for two (2) years through June 30, 2019, and updated and added various County's provisions.

Continued on page 3

Attachments:

- 1. Location Map
- 2. Resolution
- 3. Second Amendment to Concessionaire Service Agreement
- 4. Budget Availability Statement
- 5. Disclosure of Beneficial Interests

Recommended By: [Signature] Army Wolf 5/17/19
Department Director Date
Approved By: [Signature] 5/22/19
County Administrator Date

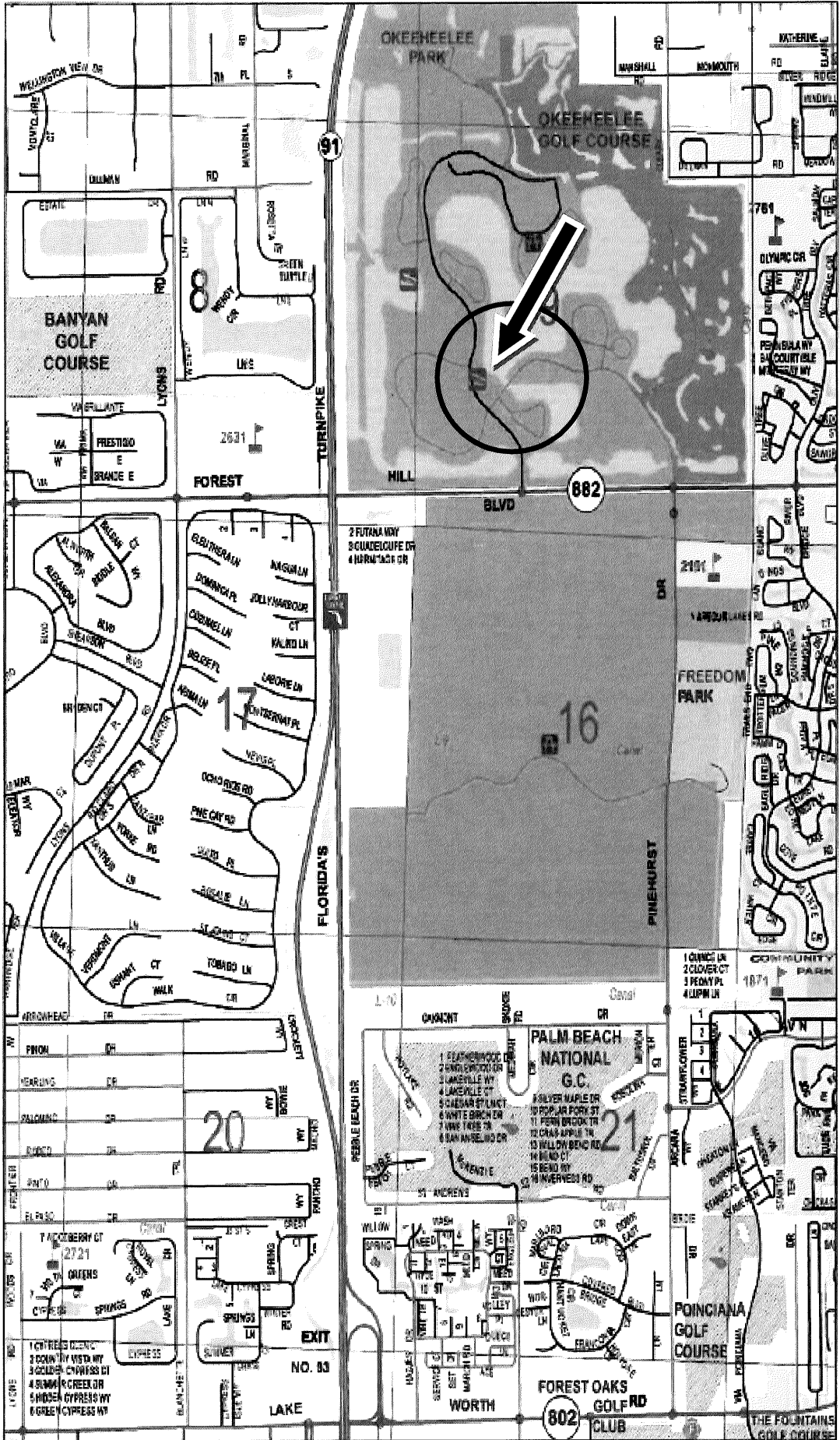
Background and Policy Issues continued: Pending implementation of the County's new Equal Business Opportunity (EBO) Ordinance, the issuance of a Request for Proposals (RFP) has been delayed. Rather than close the concession building until a new concessionaire agreement is awarded, Parks has requested that KKW be allowed to continue to provide water sports and recreational rental services until an award is made. This Second Amendment extends the term on a month-to-month basis commencing on July 1, 2019 until terminated; and updates the non-discrimination and insurance provisions. The County may terminate the Agreement at any time upon 15 day notice to Concessionaire. The Parks and Recreation Department manages this Agreement and is satisfied with KKW's performance.

KKW provided the Disclosure of Beneficial Interests attached hereto as Attachment #5 and identifies no changes in ownership has occurred with Annette Arriaga and Roger Roque each owning a 50% interest.

TWP 44

TWP 44

TWP 44



22

23

24

RNG 42

See pg 88

RNG 42

LOCATION MAP

Attachment #1



Attachment #2
Resolution (7 pages)

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING AN AMENDMENT TO THE CONCESSIONAIRE SERVICE AGREEMENT WITH KAYAK-KING WATERSPORTS, INC., A FLORIDA CORPORATION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Kayak-King Watersports, Inc., (Concessionaire), pursuant to a Concessionaire Service Agreement dated June 19, 2012 (R2012-0892), as amended and extended, manages and operates a water sports and recreational rental concession at Okeehetee Park (Park); and

WHEREAS, the current Concessionaire Service Agreement expires on June 30, 2019, with no options to extend, which requires a new Request for Proposals for a concession at the Park; and

WHEREAS, the issuance of a Request for Proposals for the operation of a water sports and recreational rental concession has been delayed due to the County's implementation of the new Equal Business Opportunity Ordinance. A Request for Proposals will be issued at the earliest possible date; and

WHEREAS, the Concessionaire provides a service for the benefit of the public and the County wishes to retain the Concessionaire's operations at the Park until such time as a new Request for Proposals is issued and a new concessionaire service agreement can be negotiated; and

WHEREAS, the Concessionaire will continue to pay Guaranteed Annual Rent in the amount of \$7,320.06/annually for the extended term; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that the amendment to the Concessionaire Service Agreement is in the best interest of the County, as an amendment to the Concessionaire Service Agreement with Kayak-King Watersports, Inc. will ensure continued concession operations at the Park.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Extend the Term of the Lease

The Board of County Commissioners of Palm Beach County shall extend the Term on a month-to-month basis unless sooner terminated pursuant to the Second Amendment to Concessionaire Service Agreement, attached hereto and incorporated herein by reference, for the management and operation of a water sports and recreational rental concession at Okeehchee Park at a Guaranteed Annual Rent of \$7,320.06/annually (\$610.01 per month) as established by the Second Amendment to Concessionaire Service Agreement.

Section 3. Conflict with Federal or State Law or County Charter.

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date.

The provisions of this Resolution shall be effective immediately upon adoption hereof. The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Commissioner Mack Bernard , Mayor
- Commissioner Dave Kerner, Vice Mayor
- Commissioner Hal R. Valeche
- Commissioner Gregg K. Weiss
- Commissioner Robert S. Weinroth
- Commissioner Mary Lou Berger
- Commissioner Melissa McKinlay

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2019.

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

BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By 
Assistant County Attorney

By 
Department Director

EXHIBIT "A"
SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

THIS SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (R2012-0892), (the “Second Amendment”) 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, (“County”) and **KAYAK-KING WATERSPORTS, INC.**, a Florida corporation, (“Concessionaire”).

WITNESSETH:

WHEREAS, County and Concessionaire entered into that certain Concessionaire Service Agreement dated June 19, 2012 (R2012-0892) (the “Agreement”) for the use of the Licensed Area as defined in the Agreement; and

WHEREAS, the Term of the Agreement, as extended by Tenant’s exercise of its first option to extend approved by the Board on June 23, 2015 (R2015-0781), expired on June 30, 2017; and

WHEREAS, the First Amendment to the Agreement dated May 2, 2017 (R-2017-0550), updated various, and added, standard County provisions, and extended the Term of the Agreement for two (2) years exercised by Tenant’s second and final option; and

WHEREAS, the Term of the Agreement currently expires on June 30, 2019; and

WHEREAS, the issuance of a Request for Proposals for the operation of a water sports and recreational rental concession has been delayed due to the County’s new Equal Business Opportunity Ordinance; and

WHEREAS, the parties wish to amend the Agreement to provide for continued occupancy on a month-to-month basis in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement, as amended.

2. The Term of the Agreement is hereby extended on a month to month basis until terminated commencing on July 1, 2019, and shall thereafter continue. Annual Rent shall remain at \$7,320.06 (\$610.01/monthly).

3. Section 4.05 Non-Discrimination is hereby deleted in its entirety and replaced with the following:

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 Lease, 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.

4. Section 8.07 Insurance Terms and Conditions is hereby deleted and replaced with the following:

Section 8.07 Insurance Terms and Conditions

Concessionaire will deliver to JDi Data Corporation, County's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Concessionaire under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:
Palm Beach County
c/o JDi Data Corporation
100 W Cypress Blvd, Suite 1052
Ft Lauderdale, FL 33309

Subsequently, Concessionaire shall, during the term of the Agreement, and prior to each renewal thereof, provide such evidence to JDi Data Corporation, which is Palm Beach County's insurance management system. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or not renewed during the life of this Agreement, Concessionaire shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance

evidencing replacement coverage. Should Concessionaire fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Concessionaire shall promptly pay as Additional Rent, upon demand from County, all premiums and expenses incurred by County.

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

6. Except as set forth herein, the Agreement, as amended by the First Amendment, remains unrevised and in full force and effect, and the parties hereby ratify, confirm, and adopt the Agreement, as amended, hereby.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the date set forth above.

Signed in the presence of:

CONCESSIONAIRE:

KAYAK-KING WATERSPORTS, INC.,
a Florida corporation

Signature of Witness

By: _____
Annette Arriaga, President

Print Name of Witness

Signature of Witness

(SEAL)

Print Name of Witness

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTRROLLER

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

By: _____
Deputy Clerk

By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Chief Assistant County Attorney

By: _____
Department Director

Attachment #3

Second Amendment to Concessionaire Service Agreement (2 @ 4 pages each)

SECOND AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

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WITNESSETH:

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WHEREAS, the Term of the Agreement, as extended by Tenant's exercise of its first option to extend approved by the Board on June 23, 2015 (R2015-0781), expired on June 30, 2017; and

WHEREAS, the First Amendment to the Agreement dated May 2, 2017 (R-2017-0550), updated various, and added, standard County provisions, and extended the Term of the Agreement for two (2) years exercised by Tenant's second and final option; and

WHEREAS, the Term of the Agreement currently expires on June 30, 2019; and

WHEREAS, the issuance of a Request for Proposals for the operation of a water sports and recreational rental concession has been delayed due to the County's new Equal Business Opportunity Ordinance; and

WHEREAS, the parties wish to amend the Agreement to provide for continued occupancy on a month-to-month basis in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement, as amended.

2. The Term of the Agreement is hereby extended on a month to month basis, commencing on July 1, 2019, and shall thereafter continue until terminated by County, at its sole discretion, upon 15 days prior notice to Concessionaire. Annual Rent shall remain at \$7,320.06 (\$610.01/monthly).

3. Section 4.05 Non-Discrimination is hereby deleted in its entirety and replaced with the following:

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 Lease, 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.

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Ft Lauderdale, FL 33309

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no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Concessionaire fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Concessionaire shall promptly pay as Additional Rent, upon demand from County, all premiums and expenses incurred by County.

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REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the date set forth above.

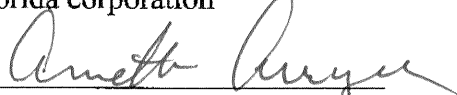
Signed in the presence of:

CONCESSIONAIRE:

KAYAK-KING WATERSPORTS, INC.,
a Florida corporation



Signature of Witness

By: 

Annette Arriaga, President

Juan Diaz

Print Name of Witness



Signature of Witness

Belinda Troise

Print Name of Witness

(SEAL)

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTRROLLER

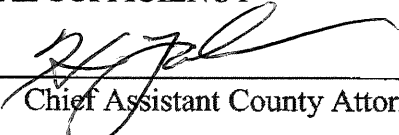
PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

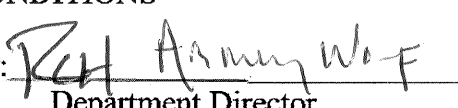
By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: 

Chief Assistant County Attorney

By: 

Department Director

Attachment #4
Budget Availability (1 page)

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 02/14/19

REQUESTED BY: Della M. Lowery
Property Specialist, PREM

PHONE: 233-0239
FAX: 233-0210

PROJECT TITLE: Okecheelee Park – Kayak-King Second Amendment

PROJECT NO.: 2019-5.001

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$1,830.00)	(\$1,830.00)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$1,830.00)</u>	<u>(\$1,830.00)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# 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: 0001 DEPT: 580 UNIT: 5111 Revenue Source: 4729 SUB Revenue Source: 18

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
- _____ _____ _____

SUBJECT TO IG FEE? YES NO

Department: Parks & Recreation Department

BAS APPROVED BY: mg /M Adh DATE: 2/20/19

ENCUMBRANCE NUMBER: _____

The information below justifies the figures listed on the attached BAS for Kayak King Watersports' Concessionaire Services Agreement in Okeeheelee Park. Due to the County's new Equal Business Opportunity Ordinance no RFP are being issued until further notice, therefore, this Second Amendment will extend the term of the Agreement on a month-to-month basis commencing 07/01/19 until terminated; the figures below are for Jul-1-2019 thru Dec-31-2019.

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$1,830.00)</u>	<u>(\$1,830.00)</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$1,830.00)</u>	<u>(\$1,830.00)</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

FY19:

- The Second Amendment extends the term of the Agreement on a month-to-month basis commencing July 1, 2019 until terminated.
-
- On July 1, 2018, the Annual Rent increased to \$7,320.06 (\$610.01/mo. rounded); the rent will remain the same.
-
- 7/1/19 – 9/30/19 = 3 months.
- \$610.01 x 3 months = \$1,830.03.

FY17 TOTAL = \$1,830.03

FY20:

- 10/01/19 – 12/31/19 = 3 months.
- \$610.01 x 3 months = \$1,830.03

FY20 TOTAL = \$1,830.03

FY21:

FY21 TOTAL = \$-0-

FY22:

- N/A

FY22 TOTAL = \$-0-

FY23:

- N/A

FY23 TOTAL = \$-0-

Attachment #5
Disclosure of Beneficial Interests (3 pages)

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 ANNETTE ARDIACA, 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 KAYAK HUG WATERSPORTS INC (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 "Licensed Area").

2. Affiant's address is: 338 VICTORIA DR
W. PALM BEACH FL 33400

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.

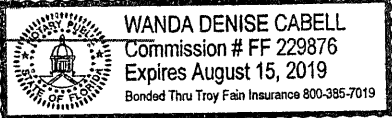
4. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

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 Service Agreement for the Licensed Area.

FURTHER AFFIANT SAYETH NAUGHT.

* Annette Ardiaca, Affiant
Print Affiant Name: ANNETTE ARDIACA

The foregoing instrument was sworn to, subscribed and acknowledged before me this 27 day of February, 2019, by _____
[X] who is personally known to me or [] who has produced _____ as identification and who did take an oath.

Wanda Denise Cabell
Notary Public


(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: August 15, 2019

EXHIBIT "A"
TO CONCESSIONAIRE DISCLOSURE OF BENEFICIAL INTERESTS

LICENSED AREA

