

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 19, 2019

Consent    Regular  
 Ordinance    Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department


I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to receive and file: an original executed Professional Services Agreement with Chet's Inc., to provide professional water ski instruction at Burt Aaronson South County Regional Park for \$12,420/year (\$1,035/month) for a period of one year beginning October 1, 2019 through September 30, 2020, with four one year renewal options.

**Summary:** On August 30, 2019, Palm Beach County entered into a Professional Services Agreement with Chet's Inc., to provide a water ski instruction program at Burt Aaronson South County Regional Park. Chet's Inc. has been the only respondent since 1999 and was selected based on his years of experience and world-renowned water ski instruction. The term of this agreement is from October 1, 2019 through September 30, 2020, with four one year renewal options. In accordance with County PPM CW-O-051, all delegated agreements must be submitted by the initiating Department as a Receive and File Agenda Item. This Professional Services Agreement has been fully executed on behalf of the Board of County Commissioners (BCC) by the Director of Purchasing in accordance with section 2.53(e) of the Purchasing Code, and is now being submitted to the BCC to receive and file. District 5 (AH)

**Background and Justification:** Request for Submittals (RFS) were issued to competitively procure commercial water ski instruction for a ski lake located in the undeveloped portion of Burt Aaronson South County Regional Park in 1999, 2009, and 2014. On June 28, 2019, an RFS for water ski instruction was issued. Only one bid was received by Chet's Inc. and the Department entered into an agreement with this bidder. Based on the satisfactory level of service provided, staff recommends approving the agreement for one year, with four one year renewal options. The Agreement attached has been executed on behalf of the BCC by the Director of Purchasing in accordance with the authority delegated by the BCC, and is now being submitted to the BCC to receive and file.

**Attachment:** Professional Service Agreement with Chet's Inc.

Recommended by:   
Department Director

10/24/19  
Date

Approved by:   
Assistant County Administrator

10/31/2019  
Date

**II. FISCAL IMPACT ANALYSIS**

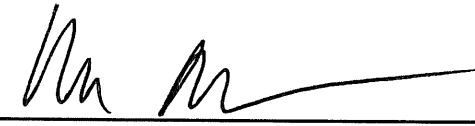
**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(12,420)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>(12,420)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____
<b>Is Item Included in Current Budget:</b>		Yes	<u>X</u>	No	_____
<b>Does this item include use of federal funds?</b>		Yes	_____	No	<u>X</u>

**Budget Account No.:** Fund 0001 Department 580 Unit 5111  
 Revenue Source 4729-18 Program N/A

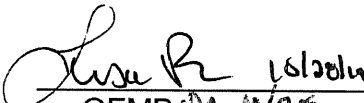
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

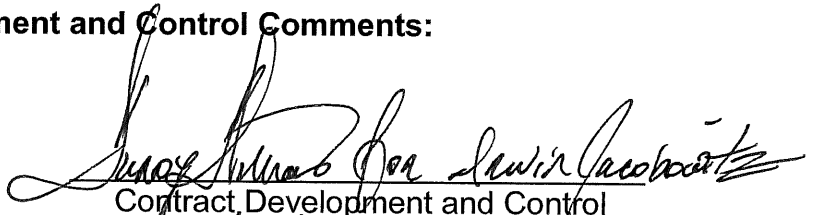
Source of Funds is 0001-580-5111-4729-18. The financial impact will be monthly revenue of \$1,035, for a total agreement amount of \$12,420 for the period October 1, 2019 to September 30, 2020.

**C. Departmental Fiscal Review:** 

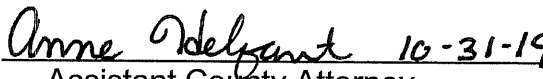
**III. REVIEW COMMENTS**

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

 10/29/19  
 OFMB 10/29/19 BR 10/25

  
 Contract Development and Control  
 10/29/19 Tu

**B. Legal Sufficiency:**

 10-31-19  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

REVISED 10/95  
 ADM FORM 01

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

G:\\_Agenda Item Summary\11-19-19\11-19-19 Chet's Inc Agreement.docx

## **CONTRACT FOR PROFESSIONAL SERVICES**

This Professional Services Contract, hereinafter referred to as the "Contract" is made and entered into on 30<sup>th</sup> day of August, 2019, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and CHET'S INC., a Corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. is 650681333.

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

### **ARTICLE 1 - SERVICES**

The CONTRACTOR'S responsibility under this Contract is to provide professional water ski instruction services, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY'S representative/liasion during the performance of this Contract shall be James R. Davis, telephone no. 561-966-6630.

The CONTRACTOR'S representative/liasion during the performance of this Contract shall be Chet Raley, telephone no. 561-909-7022.

### **ARTICLE 2 - SCHEDULE**

The CONTRACTOR shall commence services on October 1, 2019 and complete all services by September 30, 2020, with the option to renew four (4) additional one (1) year periods, upon prior written consent of both parties.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

### **ARTICLE 3 - PAYMENTS TO COUNTY**

The CONTRACTOR shall pay to the COUNTY payments of One Thousand Thirty-Five dollars (\$1,035.00) per month, for the term of the contract and any renewals, plus applicable State Sales Tax. Monthly payment plus applicable State Sales Tax shall be made in advance without billing on the first of each month during the term of this Contract. Payments not received by the tenth (10th) of each month shall be considered past due and subject to a five percent (5%) late fee per month until paid.

The COUNTY may authorize the closing of the ski lake for the safety of the users. In these instances, the lake shall remain closed until the COUNTY authorizes its reopening. CONTRACTOR'S sole compensation for said closing shall be in the proration of rent or payment to COUNTY for all days the lake is closed for 6 (six) hours at COUNTY'S direction and where the closure is not due to acts of omissions of the CONTRACTOR. Closures may be prorated in six (6) hour increments.

The COUNTY may close the ski lake for up to three (3) days every four (4) months in order to comply with Florida Statutes, Chapter 369.20, Florida Aquatic Weed Control Act. The closings shall be coordinated between COUNTY and the CONTRACTOR in order to minimize the disruption of the ski instruction programs. CONTRACTOR shall not be entitled to proration of rent for this closure

Should development work surrounding the ski lake require the shutdown of the water ski school activities on the lake, the COUNTY shall give thirty (3) days written notice to the CONTRACTOR. CONTRACTOR shall be relieved of the obligation to make payments to the COUNTY during the time the lake is closed.

Should the ski lake become unusable due to damage caused by fire, hurricane, storms, Acts of God or any other reason, this Contract may be terminated by the COUNTY upon thirty (30) days written notice to the CONTRACTOR. Should the COUNTY choose, in its sole discretion, to make any repairs or renovations to the ski lake because of the damage, it may close the ski lake during repairs/renovations. CONTRACTOR shall be relieved of the obligation to make payments to the COUNTY during that time the lake is closed.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

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

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONTRACTOR upon sixty (60) days' prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business days written notice to the CONTRACTOR or without cause upon ten (10) business days written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the

terminated work.

C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.

D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 - PERSONNEL**

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

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

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

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

#### **ARTICLE 7 - SUBCONTRACTING**

Subcontracting is not allowed under this Contract.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

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

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 - INSURANCE**

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

obligations assumed by CONTRACTOR under the Contract. CONTRACTOR agrees to notify the COUNTY at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where possible, coverage and endorsements shall apply on a primary basis and non-contributory basis.

- A. **Commercial General Liability**: CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 each occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
  
- B. **Workers' Compensation Insurance & Employer's Liability**: CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.
  
- C. **Additional Insured Clause**: The Commercial General Liability and the Business Automobile liability policies shall be endorsed to include, "Palm Beach County Board of County Commissioners" as an Additional Insured. A copy of the endorsement shall be provided to COUNTY upon request.
  
- D. **Waiver of Subrogation**: CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.
  
- E. **Certificate(s) of Insurance**: Prior to each subsequent renewal of this Contract, within forty-eight (48) hours of a request by COUNTY, and subsequently, prior to expiration of any of the required coverage throughout the term of this Agreement, the CONTRACTOR shall deliver to COUNTY, a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Contract have been obtained and are in full force and effect. The Certificate Holder shall read:

Palm Beach County Board of County Commissioners  
c/o Parks and Recreation Department  
Aquatics Division  
2700 Sixth Avenue South  
Lake Worth, Florida 33461

- F. **Umbrella or Excess Liability**: If necessary, CONTRACTOR may satisfy the

minimum liability limits required above for Commercial General Liability and Business Auto Liability under Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability policy; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. CONTRACTOR agrees to endorse COUNTY as an "Additional Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a pure/true "Follow-Form" basis.

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

#### **ARTICLE 10 - INDEMNIFICATION**

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

#### **ARTICLE 11 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

#### **ARTICLE 12 - REMEDIES**

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

No provision of this Contract 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 Contract, including

but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

**ARTICLE 13 - CONFLICT OF INTEREST**

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

The CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

**ARTICLE 14 - EXCUSABLE DELAYS**

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

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

**ARTICLE 15 - ARREARS**

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



## **ARTICLE 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

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

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

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

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

## **ARTICLE 17 - INDEPENDENT CONTRACTOR RELATIONSHIP**

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

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

## **ARTICLE 18 - CONTINGENT FEES**

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

of this Contract.

**ARTICLE 19 - ACCESS AND AUDITS**

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least four (4) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

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's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in 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.

**ARTICLE 20 - NONDISCRIMINATION**

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 CONTRACTOR warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment 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. Failure to meet this requirement shall be considered default of the Contract.

As a condition of entering into this Contract, the CONTRACTOR represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the CONTRACTOR retaliate against any person for reporting instances of such discrimination. The CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in County contracts, or other sanctions. This

clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR shall include this language in its subcontracts.

**ARTICLE 21 - AUTHORITY TO PRACTICE**

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

**ARTICLE 22 - SEVERABILITY**

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

**ARTICLE 23 - PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and CONTRACTORS 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 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

**ARTICLE 24 - MODIFICATIONS OF WORK**

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

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

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

**ARTICLE 25 - NOTICE**

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

Palm Beach County Parks and Recreation Department  
c/o Aquatics Division  
2700 Sixth Avenue South  
Lake Worth, FL 33461

With copy to:

Palm Beach County Attorney's Office  
301 North Olive Ave.  
West Palm Beach, Florida 33401

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

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

#### **ARTICLE 26 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

#### **ARTICLE 27 - CRIMINAL HISTORY RECORDS CHECK**

The CONTRACTOR, CONTRACTOR'S employees, subcontractors of CONTRACTOR and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2003-1274, as amended. The CONTRACTOR is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the CONTRACTOR acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either “critical facilities” or “criminal justice information facilities” pursuant to the Ordinance and Resolution R2003-1274, as amended. COUNTY staff representing the COUNTY department will contact the CONTRACTOR(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The CONTRACTOR shall make every effort to collect the badges of its employees and its subcontractors’ employees upon conclusion of the contract and return them to the COUNTY. If the CONTRACTOR or its subcontractor(s) terminates an employee who has been issued a badge, the CONTRACTOR must notify the COUNTY within two (2) hours. At the time of termination, the CONTRACTOR shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the CONTRACTOR if the CONTRACTOR 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated CONTRACTOR employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

#### **ARTICLE 28 - REGULATIONS; LICENSING REQUIREMENTS**

The CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

#### **ARTICLE 29 - SCRUTINIZED COMPANIES**

- A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and CONTRACTORS 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. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and CONTRACTORS 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 CONTRACTOR, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time

of Contract renewal, if applicable.

### **ARTICLE 30 - PUBLIC RECORDS**

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

- A. Keep and maintain public records required by the County to perform services as provided under this Contract.
- 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 CONTRACTOR 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 contract term and following completion of the Contract, if the CONTRACTOR does not transfer the records to the public agency.
- D. Upon completion of the Contract the CONTRACTOR shall transfer, at no cost to the County, all public records in possession of the CONTRACTOR 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 CONTRACTOR transfers all public records to the County upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically by the CONTRACTOR 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 CONTRACTOR to comply with the requirements of this article shall be a material breach of this Contract. 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. CONTRACTOR 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF**

**CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, 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.**

**THE REST OF THIS PAGE LEFT BLANK INTENTIONALLY**

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

**PALM BEACH COUNTY FOR ITS  
BOARD OF COUNTY COMMISSIONERS:  
BY KATHLEEN M. SCARLETT, DIRECTOR**

By:   
Kathleen M. Scarlett, Director

**WITNESS:**

**CONTRACTOR:**

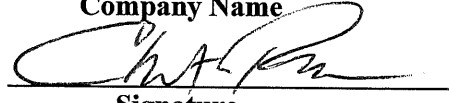
  
Signature

Laurie C. Schobek  
Name (type or print)

  
Signature

Gina Postoraco  
Name (type or print)

Chet's Inc.  
Company Name

  
Signature

Chet Raley  
Typed Name

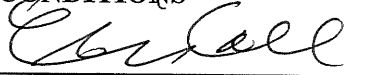
President  
Title

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

(corp. seal)

By   
County Attorney

**APPROVED AS TO TERMS  
AND CONDITIONS**

By   
Eric Call, Director  
Parks and Recreation Department



## SCOPE OF SERVICES

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

### 4.1 Personnel/Staffing

Provide professional staff to facilitate the needs of this Contract.

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

- Certified Level 3 Coach shall provide the following:
- Oversee all water ski instructors and other coaches;
- Qualified to teach advance traditional slalom, tricks and jumping techniques for athletes who desire to successfully compete in State, Regional and National Sanctioned Tournaments;
- Shall have capability to introduce techniques for shore-line slalom passes, trick runs between 5,000 and 7,000 points and jump distances between 120 and 180 feet; and
- Have Sports Science/Medicine knowledge that will help the athlete develop a comprehensive off-water training regiment, to enhance performance in sanctioned competition.

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

### 4.2 Safety Procedures

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

4.3 **Telephone**

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

4.4 **Training**

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

4.5 **Hours of Operation**

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

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

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

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

4.6 **Improvements/Alterations**

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

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

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

4.7 **Use of Premises**

4.7.1 Respondent shall operate the water ski program for the sole benefit of the public. The general public shall be instructed and towed on a non-discriminatory basis. The Department may authorize the closing of the ski lake for the safety of the users. In

these instances the lake will remain closed until the County authorizes its reopening.

- 4.7.2 The Department retains the right to close the ski lake for up to three (3) days every four (4) months, starting September to comply with 369.20 Florida Statutes, Florida Aquatic Weed Control Act.
- 4.7.3 Respondents' sole compensation for closings shall be proration of revenue for any days when the lake is closed for an entire day at the direction of the County and where the closure is not due to acts or omissions of the Contractor.
- 4.7.4 The Respondent shall control access to the ski lake via the ski site gate and shall be responsible for confining customers' access to only the lake and its immediate shoreline. The Respondent shall ensure that the gate is locked during times other than when admitting students and their guests for water skiing activities.

#### 4.8 **Revenue**

- 4.8.1 Respondent's identified monthly revenue to the County shall be payable from the date identified as start date of the Contract. Said monthly revenue shall be for the right to operate on the Premises.
- 4.8.2 Payments are due the first day of each month. Payments not received by the tenth (10<sup>th</sup>) day of the month are past due and subject to five percent (5%) monthly late fee per month until paid.

#### 4.9 **Advertisements**

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

#### 4.10 **Maintenance and Repairs**

- 4.10.1 Respondent shall properly maintain, repair and keep in good operating condition all equipment and structures owned by the County and located in and about the subject Premises. All cost(s) for repair, maintenance and replacement of such equipment and structure shall be done at the sole expense of the Respondent and shall be accomplished within seventy-two (72) hours after the need for repairs and/or maintenance becomes apparent.
- 4.10.2 All equipment owned by the Respondent and used in the course of water ski instruction, or to provide tows, must be maintained in safe condition according to the standards of the sport and per manufacturer's stipulations. All applicable requirements for safe boating as set by local, state and federal requirements must be adhered to. Any water skiing equipment, which condition would endanger skiers, boat passengers or spectators shall be removed immediately and shall not be utilized until it has been restored to a safe condition.

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

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

4.12 **Respondent Liability**

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

4.13 **Qualifying Water Ski Tournaments**

- 4.13.1 Respondent may hold small qualifying water ski tournaments, not to exceed four (4) per year and twenty five (25) participants per event.
- 4.13.2 Respondent must notify the Aquatics Supervisor, in writing, a minimum of four (4) weeks prior to the proposed qualifier date. The Aquatics Supervisor will respond in writing within five (5) business days of receiving notification.