

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 19, 2021 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Concessionaire Service Agreement with Jupiter Outdoor Center, Inc. (JOC) for the continued operation of a water sports and recreational rental equipment concession at Riverbend/Loxahatchee River Battlefield Park (i) extending the deadline to complete the Minimum Capital Improvements; (ii) memorializing the increase in Licensed Area and Guaranteed Annual Rent; (iii) extending the term to November 16, 2026; and (iv) updating various standard County provisions.

Summary: On October 16, 2018, the Board of County Commissioners (Board) approved the Concessionaire Service Agreement (R2018-1686) (Agreement) with Jupiter Outdoor Center, Inc. for a term of three (3) years plus two (2) five (5) year extension options. The Annual Rent consists of a Guaranteed Annual Rent (GAR), which increases 4% annually, and a Commission Fee, which is 18% of the monthly gross sales. Pursuant to the Agreement, in the event that the County acquired title to the kayak launch area from South Florida Water Management District (SFWMD), the Concessionaire's Licensed Area would increase to include said area and the GAR would increase accordingly. The area was acquired by the County in April 2019 (R2019-0425) and the GAR was increased effective May 2019. In addition, JOC was to expend a minimum of \$300,000.00 in capital improvements to the Licensed Area prior to the upcoming initial expiration date of November 16, 2021. JOC was unable to complete the required Capital Improvements because the Town of Jupiter is requiring a master plan of improvements to be filed by the County. The Parks and Recreation Department (Parks) is currently working on finalizing the master plan for submission to the Town of Jupiter. Based on past experience, once the master plan is submitted to the Town of Jupiter for review, it is expected that the review and approval process will take approximately six (6) months. This First Amendment (i) extends the deadline to complete the Minimum Capital Improvements to Licensed Area within twenty four (24) months after approval of site plan by the Town of Jupiter; (ii) memorializes the increase in the Licensed Area to include the approximately ± 1.04 acres of the kayak launch area acquired from SFWMD and the adjustment of the GAR to account for the additional area; (iii) extends the term for five (5) years, from November 17, 2021 through November 16, 2026 pursuant to the first option to extend; (iv) updates Non-Discrimination and Insurance provisions and adds E-verify – Employment Eligibility and Counterparts provisions. All other terms of the Agreement will remain in full force and effect. Parks will continue to have administrative responsibility for this Agreement. (Property & Real Estate Management) District 1 (HJF)

Background and Justification: In 2018, PREM issued a Request For Proposals (RFP) for the operation of a water sports and recreational rental equipment concession at Riverbend/Loxahatchee River Battlefield Park.

Continued on page 3

Attachments:

- 1. Aerial Map
- 2. First Amendment to Concessionaire Service Agreement (2)
- 3. Disclosure of Beneficial Interests

Recommended By: [Signature] 9/20/2021
Department Director Date

Approved By: [Signature] 9/27/2021
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$29,434)</u>	<u>(\$34,923)</u>	<u>(\$36,320)</u>	<u>(\$37,773)</u>	<u>(\$39,284)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$29,434)</u>	<u>(\$34,923)</u>	<u>(\$36,320)</u>	<u>(\$37,773)</u>	<u>(\$39,284)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

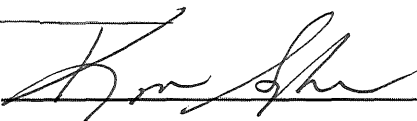
Does this item include the use of federal funds? Yes _____ No _____

Budget Account No: Fund 0001 Dept 580 Unit 5111-06 Object 4729-05
 Program _____

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

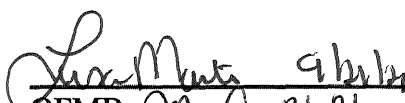
The term of the Agreement is for five (5) years. Effective 11/17/21, the guaranteed annual rent will be \$33,745.92 (\$2,812.16/monthly) with annual 4% increases, plus a commission fee equal to the amount by which 18% of the annual gross revenues exceeds the guaranteed annual rent. The commission fee is not included in the above referenced.

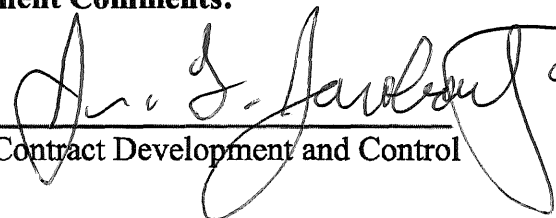
Fixed Asset Number N/A

C. Departmental Fiscal Review: 


III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 9/21/21
 OFMB Official 9.21.21 LM
 BR 9/21

 9/23/21
 Contract Development and Control

B. Legal Sufficiency:


 Assistant County Attorney
 For: Howard Falcon

C. Other Department Review:


 Department Director

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

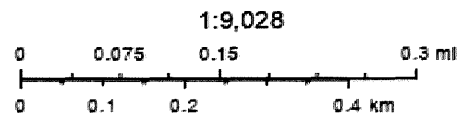
Background and Justification: Out of the six (6) bids received the Selection Committee ranked JOC's proposal the highest. The Board approved the initial Concessionaire Service Agreement with JOC for a period three (3) years with two (2) five (5) year extension options. At the time of approval, SFWMD owned the property upon which the kayak launch area was constructed and objected to the use of its property for this concession. Staff reconfigured the Licensed Area to avoid placing any improvements on the District's property and reduced the GAR from \$30,000/year to \$24,000/year. The Agreement provided that if the County acquired title to the kayak launch area, the Licensed Area and GAR would be adjusted accordingly. On April 2, 2019, the Board approved the acquisition of said area from SFWMD and the GAR was adjusted back to the original \$30,000/year. The GAR increases 4% annually as provided in the Agreement. The current GAR is \$32,448/year and will increase to \$33,745.92 upon commencement of the first extension option.

The Agreement requires JOC to complete \$300,000 of minimum Capital Improvements prior to expiration of the initial term, which is November 16, 2021. JOC was unable to meet this deadline as the Town of Jupiter is requiring that a Master Plan for the improvements be submitted by the County. Parks is in the process of finalizing the Master Plan. The amendment requires JOC to complete the minimum Capital Improvements within 24 months of site plan approval from the Town of Jupiter.

JOC stated no changes in ownership have occurred Richard Clegg continues to have 85% ownership interest and Sharon French 15% ownership interest. Parks manages this Agreement and is satisfied with JOC's performance.



July 16, 2021



30-42-41-06-00-000-1020

AERIAL MAP



Attachment #1

Attachment #2
First Amendment (2 @ 6 pages)

FIRST AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT

THIS FIRST AMENDMENT to Concessionaire Service Agreement R2018-1816, dated October 16, 2018, (the "Agreement") is made as of _____, by and between Palm Beach County, a political subdivision of the State of Florida, herein referred to as "County" and Jupiter Outdoor Center, Inc., a Florida corporation, (EIN: #65-0798765), hereinafter referred to as "Concessionaire".

WITNESSETH:

WHEREAS, County entered into an Agreement with Concessionaire for use of the Licensed Area for the operation of a water sports and recreational equipment concession at Riverbend/Loxahatchee River Battlefield Park with a commencement date of November 17, 2018, for a term of three (3) years and two extension options of five (5) years each; and

WHEREAS, in 2019 County purchased from the South Florida Water Management District the 1.04 acre property where the kayak launch area is constructed, and pursuant to sections 1.01 and 2.01 the Licensed Area and Annual Rent were increased; and

WHEREAS, Concessionaire was required to make a Minimum Capital Improvement of \$300,000 to the Licensed Area during the initial Term of the Agreement; and

WHEREAS, Concessionaire has provided the County with written notice that Concessionaire wishes to exercise the first of two available five (5) year renewal options; and

WHEREAS County and Concessionaire wish to amend the Agreement to extend the deadline to complete the Minimum Capital Improvement to the Licensed Area and to memorialize the revised License Area after purchase by the County of the kayak launch area property.

NOW THEREFORE, in consideration of the mutual promises contained here, the County and the Concessionaire agree as follows:

1. The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the same meaning as in the Agreement.
2. The term of the Agreement shall be extended to November 16, 2026, pursuant to the exercise of the first renewal option for five (5) years.
3. The last two sentences of the first paragraph of Section 1.01 are hereby deleted and replaced with the following:

The parties agree that with the approval on April 2, 2019 of the acquisition and conveyance to County, of the land from South Florida Water Management District (Agreement R2019-0425) where the kayak launch area is constructed, the Licensed Area has been increased to include said property; the Guaranteed Annual Rent was increased pursuant to Section 2.01. as of May 3, 2019 to Thirty Thousand (\$30,000.00) Dollars, and

it has been and will continue to be increased on each anniversary date of the Commencement Date, as set forth in Section 2.02 of the Agreement.

4. The first sentence of Section 3.06, Capital Improvements, is deleted in its entirety and replaced with the following:

Within twenty four (24) months of County obtaining site plan approval by the Town of Jupiter or Palm Beach County, depending on jurisdiction, unless otherwise approved by the Department in writing, which approval may be granted, withheld, or conditioned in the Department's sole and absolute discretion, Concessionaire shall expend not less than the Minimum Capital Investment on the construction and installation of approved capital improvements or betterments ("Capital Improvements") within the Licensed Area.

5. Section 4.06 of the Agreement, Non-Discrimination, is deleted in its entirety and replaced with the following:

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 services at the Premises shall be open to and benefit all visitors to the Park.

6. The address to submit evidence of insurance provided pursuant to Section 8.06 of the Agreement, Insurance Terms and Conditions, is hereby updated with the following:

Parks & Recreation Department
Palm Beach County
2700 6th Ave S
Lake Worth, FL 33461
Email: (561) 966-6654

7. The Agreement is hereby modified to add the following:

Section 19.27 E-Verify - Employment Eligibility

Concessionaire warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2)

has verified that all of the Concessionaire's subcontractors/subconsultants performing the duties and obligations of this Agreement are registered with and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Concessionaire shall obtain from each of its subcontractors/subconsultants an affidavit stating that the subcontractor/subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. Concessionaire shall maintain a copy of any such affidavit from a subcontractor/subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that Concessionaire has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If County has a good faith belief that Concessionaire's subcontractor/subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify Concessionaire to terminate its contract with the subcontractor/subconsultant and Concessionaire shall immediately terminate its contract with the subcontractor/subconsultant.

If County terminates this Agreement pursuant to the above, Concessionaire shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, Concessionaire shall also be liable for any additional costs incurred by County as a result of the termination.

Section 19.28 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The County may execute the Agreement through electronic or manual means. Concessionaire shall execute by manual means only, unless the County provides otherwise.

8. Exhibit "B" (Licensed Area) of the Agreement is hereby replaced with Exhibit "B" attached hereto, to incorporate the increase of 1.04 acres in Licensed Area as contemplated in Section 1.01 of the Agreement.
9. Exhibit "A" (Licensed Area) of the Disclosure of Beneficial Interest is hereby replaced with Exhibit "A" attached hereto, to incorporate the increase of 1.04 acres in Licensed Area as contemplated in Section 1.01 of the Agreement.

10. Except as modified by this First Amendment, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof, and the parties hereby ratify, confirm and adopt the Agreement, as amended.

The remainder of this page intentionally left blank

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed on the day and year first above written.

ATTEST:

**JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT
& COMPTROLLER**

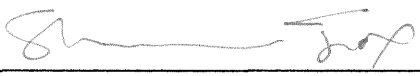
**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

By: _____
Deputy Clerk


By: _____
Dave Kerner, Mayor

**APPROVED AS TO LEGAL
SUFFICIENCY:**

**APPROVED AS TO TERMS AND
CONDITIONS:**

By: 

Chief Assistant County Attorney
for Howard Falcon

By: 

Isami Ayala-Collazo, Director
Facilities Development & Operations

G:\PREM\PM\In Lease\Parks - Riverbend Concession -
Jupiter Outdoor Center\2021 Amendment\Drafts\Riverbend
1 Amendment-HF approved 8.13.doc

WITNESS:

CONCESSIONAIRE:

JUPITER OUTDOOR CENTER, INC.

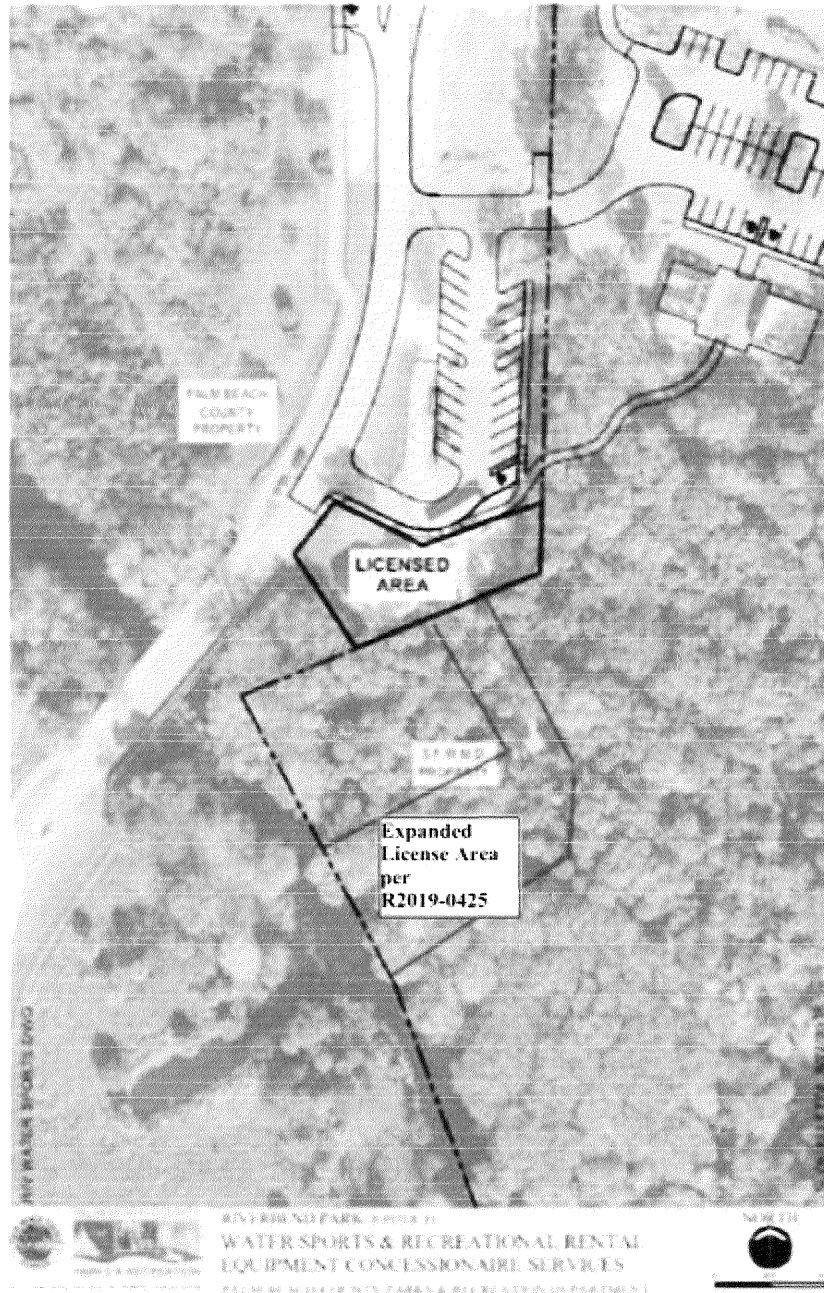
By: Cardace Buddemeier
Witness Signature

By: [Signature]
Signature

Cardace Buddemeier
Print Signature Name

Richard Clegg, Owner
Print Signature Name and Title

EXHIBIT "B"
TO THE CONCESSIONAIRE SERVICE AGREEMENT
Licensed Area



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 Richard Clegg, 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 Jupiter Outdoor Center (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: 103 Sandpiper, Jupiter, FL 33477

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.

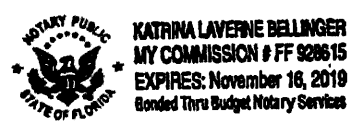
FURTHER AFFIANT SAYETH NAUGHT.

Print Affiant Name: Richard Clegg, Affiant

The foregoing instrument was sworn to, subscribed and acknowledged before me this 21st day of August, 2018, by RICHARD RAYMOND CLEGG [] who is personally known to me or [X] who has produced D.L. as identification and who did take an oath

KATRINA L. BELLINGER, Notary Public

KATRINA L. BELLINGER (Print Notary Name) NOTARY PUBLIC State of Florida at Large



My Commission Expires: 11/16/19

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.

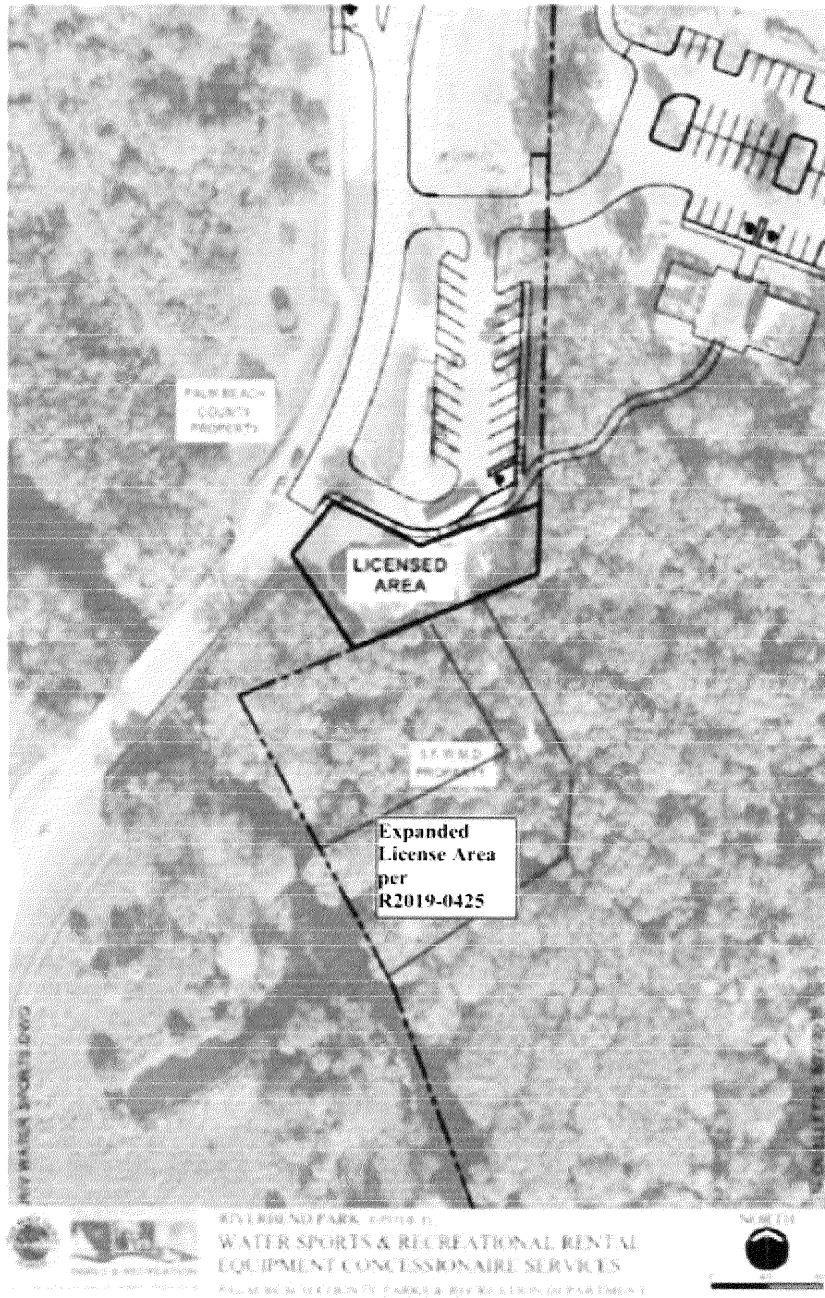
NAME	ADDRESS	PERCENTAGE OF INTEREST
-------------	----------------	-----------------------------------

Richard Clegg	103 Sandpiper Jupiter	85%
---------------	-----------------------	-----

Sharon French	A101353 US1 Jupiter	15%
---------------	---------------------	-----

M

EXHIBIT "A"
TO THE DISCLOSURE OF BENEFICIAL INTERESTS
Licensed Area



FOR CDC COMPLIANCE & FISCAL CALCDAT.

Della Lowery

From: Janet Steele
Sent: Thursday, July 8, 2021 3:14 PM
To: Della Lowery
Cc: Kirk Brooks
Subject: Insurance certification for Jupiter Outdoor Center
Attachments: Jupiter Outdoor Center ACORD Form 20201210-163750-11.pdf; auto policy dec page progressive.pdf; workers comp policy expires 7-27-21.pdf; Signed Certification Jupiter Outdoor Center July 2021.pdf

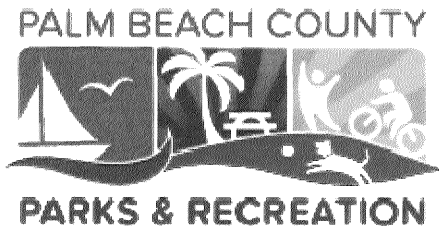
Hi Della,

I track and certify all the insurance documentation for Special Facilities, and have attached the latest certification letter and supporting COIs for Jupiter Outdoor Center. I can affirm that they are currently in compliance.

Thank you,
Jan

Jan Steele | Special Projects Coordinator, Special Facilities
Palm Beach County Parks and Recreation Department
We create opportunities for healthy, happy living!

2700 6th Avenue South | Lake Worth | Florida 33461
T: 561.966.6654 F: 561.242.6738 | JSteele@pbcgov.org
Connect with us: www.pbcparcs.com



The Rivierbend Park – Recreational Concession First Amendment (option 1 of 2), will extend for five (5) years. The information below justifies the figures listed on the attached BAS for Fiscal Years 2022 thru 2026:

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$29,434)</u>	<u>(\$34,923)</u>	<u>(\$36,320)</u>	<u>(\$37,773)</u>	<u>(\$39,284)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$29,434)</u>	<u>(\$34,923)</u>	<u>(\$36,320)</u>	<u>(\$37,773)</u>	<u>(\$39,284)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

FY2022:

- The Concessionaire Service Agreement is due to expire on *Nov 16, 2021*.
- The *First Amendment* (option 1 of 2) will extend the term from *Nov 17, 2021* thru *Nov 16, 2026*.
- Pursuant to *Section 2.01* of the Agreement, any *Guaranteed Annual Rent* (GAR) payment for any fractional month shall be calculated and paid on a per diem basis using a 30-day month.
- In accordance with, *Section 2.02* on each anniversary date of the Commencement Date *Nov 17, 2018*, the rent increases four percent (*104%*) annually.
-
- Current *GAR* is $\$32,448.00 \times 104\% = \$33,745.92$ annually $\div 12 = \$2,812.16$ per month $\div 30 = \$93.74$ per day.
-
- $11/17/21 - 11/30/21 = 14$ days $\times \$93.74 = \$1,312.36$
- $12/01/21 - 09/30/22 = 10$ months $\times \$2,812.16 = \$28,121.60$
-
- $\$1,312.36 + \$28,121.60 = \$29,433.96$

FY2022 TOTAL = \$29,433.96

FY2023

- $10/01/22 - 10/31/22 = 1$ month $\times \$2,812.16 = \$2,812.16$
- $11/01/22 - 11/16/22 = 16$ days $\times \$93.74 = \$1,499.36$
-
- $\$33,745.92 \times 104\% = \$35,095.76$ annually $\div 12 = \$2,924.65$ per month $\div 30 = \$97.49$ per day.
-
- $11/17/22 - 11/30/22 = 14$ days $\times \$97.49 = \$1,364.86$
- $12/01/22 - 09/30/23 = 10$ months $\times \$2,924.65 = \$29,246.50$
-
- $\$2,812.16 + \$1,499.36 + \$1,364.86 + \$29,246.50 = \$34,922.88$

FY2023 TOTAL = \$34,922.88

FY2024

- $10/01/23 - 10/31/23 = 1$ month $\times \$2,924.65 = \$2,924.65$
- $11/01/23 - 11/16/23 = 16$ days $\times \$97.49 = \$1,559.84$
-
- $\$35,095.76 \times 104\% = \$36,499.59$ annually $\div 12 = \$3,041.63$ per month $\div 30 = \$101.39$ per day.
-
- $11/17/23 - 11/30/23 = 14$ days $\times \$101.39 = \$1,419.46$
- $12/01/23 - 09/30/24 = 10$ months $\times \$3,041.63 = \$30,416.30$
-
- $\$2,924.65 + \$1,559.84 + \$1,419.46 + \$30,416.30 = \$36,320.25$

FY2024 TOTAL = \$36,320.25

FY2025

- $10/01/24 - 10/31/24 = 1$ month $\times \$3,041.63 = \$3,041.63$
- $11/01/24 - 11/16/24 = 16$ days $\times \$101.39 = \$1,622.24$
-
- $\$36,499.59 \times 104\% = \$37,959.57$ annually $\div 12 = \$3,163.30$ per month $\div 30 = \$105.44$ per day.
-
- $11/17/24 - 11/30/24 = 14$ days $\times \$105.44 = \$1,476.16$
- $12/01/24 - 09/30/25 = 10$ months $\times \$3,163.30 = \$31,633.00$
-
- $\$3,041.63 + \$1,622.24 + \$1,476.16 + \$31,633.00 = \$37,773.03$

FY2025 TOTAL = \$37,773.03

FY2026

- $10/01/25 - 10/31/25 = 1$ month $\times \$3,163.30 = \$3,163.30$
- $11/01/25 - 11/16/25 = 16$ days $\times \$105.44 = \$1,687.04$
-
- $\$37,959.57 \times 104\% = \$39,477.95$ annually $\div 12 = \$3,289.83$ per month $\div 30 = \$109.66$ per day.
-
- $11/17/25 - 11/30/25 = 14$ days $\times \$109.66 = \$1,535.24$
- $12/01/25 - 09/30/26 = 10$ months $\times \$3,289.83 = \$32,898.30$
-
- $\$3,163.30 + \$1,687.04 + \$1,535.24 + \$32,898.30 = \$39,283.88$

FY2026 TOTAL = \$39,283.88