

**CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM**

Meeting Date: June 3, 2026

Presenter's Name and Title: Enrique Bradfield, Chief Amphitheater Officer, Parks and Recreation and Alicia Ayum, Director of Procurement

Prepared By: Jacqueline Lovell-Santos, Department Administrator, Parks & Recreation

Temp. Reso. Number: 8695

Item Description: Temp. Reso. #R8695 APPROVING THE RENEWAL FOR THE AMENDED AND RESTATED AGREEMENT FOR A ONE-YEAR TERM FROM AUGUST 22, 2026 THROUGH AUGUST 21, 2027, FOR GENERAL CONCESSION SERVICES AT THE MIRAMAR AMPHITHEATER, BETWEEN HOLSEN, INC. AND THE CITY OF MIRAMAR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE RENEWAL AGREEMENT (*Parks and Recreation Chief Amphitheater Officer Enrique Bradfield and Procurement Director Alicia Ayum*)

Consent Resolution Ordinance Quasi-Judicial Public Hearing

Instructions for the Office of the City Clerk: Agreement to be signed on dais.

Public Notice – As required by the Sec. ____ of the City Code and/or Sec. ____, Florida Statutes, public notice for this item was provided as follows: on _____ in a _____ ad in the _____; by posting the property on _____ and/or by sending a mailed notice to property owners within ____ feet of the property on _____
(fill in all that apply)

Special Voting Requirement – As required by Sec. _____, of the City Code and/or Sec. _____, Florida Statutes, approval of this item requires a _____ (unanimous, 4/5ths etc.) vote by the City Commission.

Fiscal Impact: Yes No

REMARKS: The City anticipates receiving approximately \$20,000.00 in concession revenue from Holsen, Inc. under the new contract which will be deposited into General Concession GL Account No. 001-60-610-572-202-347309


Content:

- **Agenda Item Memo from the City Manager to City Commission**
- **Resolution TR8695**
 - **Exhibit A: Proposed Renewal Agreement with Holsen, Inc (Including Letter of Intent from Holsen)**
 - **Exhibit B: Current Agreement for General Concession Services between Holsen, Inc and the City of Miramar**



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

TO: Mayor, Vice Mayor, & City Commissioners

FROM: Dr. Roy L. Virgin, City Manager 

BY: Billy Neal, Director of Parks and Recreation

DATE: May 28, 2026

RE: Temp. Reso. No. 8695 approving the Renewal for General Concession Services at the Miramar Amphitheater between Holsen, Inc. and the City of Miramar

RECOMMENDATION: The City Manager recommends approval of Temporary Resolution No. 8695, authorizing the City Manager to execute a renewal of the agreement for general concession services at the Miramar Regional Amphitheater, between Holsen, Inc. and the City of Miramar.

ISSUE: The City Manager requests Commission approval to renew the Agreement for General Concession Services at the Amphitheater, between Holsen, Inc. and the City of Miramar. In accordance with Section 2-412(c) of the City Code, when a contract is entered into by the City pursuant to approval by the City Commission and provides for one or more renewals, only the City Commission is authorized to approve such renewals

BACKGROUND: On August 22, 2018, the City of Miramar entered into a professional services agreement with Holsen, Inc. to provide general concession services at the Miramar Regional Park Amphitheater.

In July 2023, the agreement was formally amended and restated, which included extending the term for three (3) years, currently set to expire on August 21, 2026. This amendment provided for one (1) additional one-year renewal option, which would extend the contractual relationship through August 21, 2027, subject to the mutual written consent of both parties.

DISCUSSION: Holsen Inc. has formally contacted the City expressing their intent to exercise the final one-year renewal option. Based on the vendor's performance and

adherence to contract standards, the City administration agreed to renew the contract to continue operations at the Miramar Regional Park Amphitheater.

Upon Commission approval, the renewal agreement will be executed and the contract will be renewed through August 21, 2027.

ANALYSIS: General concession services will be deposited into General Concessions GL Account No.001-60-610-572-202-347309.

Temp. Reso. No. 8695

4/14/26

5/28/26

**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE RENEWAL FOR THE AMENDED AND RESTATED AGREEMENT FOR A ONE-YEAR TERM FROM AUGUST 22, 2026 THROUGH AUGUST 21, 2027, FOR GENERAL CONCESSION SERVICES AT THE MIRAMAR AMPHITHEATER, BETWEEN HOLSEN, INC. AND THE CITY OF MIRAMAR; AUTHORIZING THE CITY MANAGER TO EXECUTE THE RENEWAL AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miramar and Holsen, Inc. entered into a Professional Services Agreement for General Concession Services at the Miramar Regional Park on August 22, 2018 (“Agreement”); and

WHEREAS, in July 2023, the Agreement was formally amended and restated, which included extending the term of the agreement for three (3) years through August 21, 2026 and provided for the option to renew for one additional one-year term; and

WHEREAS, the term of renewal requires that the City and Holsen, Inc. agree to renew the Agreement for the one additional one-year term; and

WHEREAS, Holsen, Inc. has formally contacted the City and provided a Letter of Intent to renew the Agreement for the additional one-year term; and

WHEREAS, the City administration also agrees to renew the Agreement for the additional one-year term to continue operations at the Amphitheater; and

Reso. No. _____

WHEREAS, in accordance with Section 2-412(c) of the City Code, when a contract is entered into by the City pursuant to City Commission approval and provides for one or more renewals, only the City Commission is authorized to approve such renewals; and

WHEREAS the City Manager recommends approval of the Amended and Restated Agreement for a term of one year from August 22, 2026, through August 21, 2027 for General Concession Services, at the Miramar Regional Amphitheater, between Holsen, Inc. and the City of Miramar; and

WHEREAS the City Commission deems it to be in best interest of the residents and citizens of City of Miramar to approve the Amended and Restated Agreement for a term of one year from August 22, 2026, through August 21, 2027 for General Concession Services, at the Miramar Regional Amphitheater, between Holsen, Inc. and the City of Miramar.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:

Section 1: That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2: That it approves the Amended and Restated Agreement for one year from August 22, 2026 through August 21, 2027 for General Concession Services attached hereto as Exhibit “B,” at the Miramar Regional Amphitheater, between Holsen, Inc. and the City of Miramar and authorizes the City Manager to execute the Renewal Agreement attached hereto as Exhibit “A,” together with such non-substantive changes as are

Temp. Reso. No. 8695

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deemed acceptable to the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That the appropriate City officials are authorized to do all things necessary and expedient in order to carry out the aims of this Resolution.

Section 4: That this Resolution shall take effect immediately upon adoption.

Temp. Reso. No. 8695

4/14/26

5/28/26

PASSED AND ADOPTED this _____ day of _____, _____.

Mayor, Wayne M. Messam

Vice Mayor, Carson "Eddy" Edwards

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved
this RESOLUTION as to form:

City Attorney,
Austin Pamies Norris Weeks Powell, PLLC

<u>Requested by Administration</u>	<u>Voted</u>
Commissioner Maxwell B. Chambers	_____
Commissioner Avril Cherasard	_____
Commissioner Yvette Colbourne	_____
Vice Mayor Carson "Eddy" Edwards	_____
Mayor Wayne M. Messam	_____

RENEWAL AGREEMENT
BETWEEN
CITY OF MIRAMAR
AND
HOLSEN INC.
FOR
GENERAL CONCESSION SERVICES

RENEWAL AGREEMENT

BETWEEN

CITY OF MIRAMAR

AND

HOLSEN INC.

FOR

GENERAL CONCESSION SERVICES

RENEWAL OF THE AMENDED AND RESTATED AGREEMENT FOR GENERAL CONCESSION SERVICES (the "RENEWAL") ENTERED INTO THIS ____ DAY of _____, 20 ____ BY AND BETWEEN THE CITY OF MIRAMAR, FLORIDA, A FLORIDA MUNICIPAL CORPORATION, HEREINAFTER REFERRED TO AS "CITY",

AND

HOLSEN, INC.

HEREINAFTER REFERRED TO AS "CONTRACTOR".

This Renewal ("Renewal") to the Amended and Restated Agreement between the City of Miramar and Holsen, Inc. for General Concession Services at the Miramar Regional Park Amphitheater is by and between the City of Miramar, a Florida municipal corporation (hereinafter referred to as ("City") and Holsen, Inc. ("Contractor"), effective as of _____ 2026.

WHEREAS, the City and Contractor (the "Parties") entered into that certain Amended and Restated Agreement Between the City of Miramar and Holsen, Inc. for General Concession Services at the Miramar Regional Park Amphitheater on August 22, 2018, through the Adoption of Resolution Number 18-138 (the "Agreement"); and

WHEREAS, the First Amendment to the Amended and Restated Agreement for General Concession Services at the Miramar Regional Park Amphitheater extended the term for an additional three (3) years through the Adoption of Resolution Number 23-126, which set an expiration date of August 21, 2026, and

WHEREAS, the term of renewal requires both parties to agree to renew the Agreement for one additional year with an expiration date of August 21, 2027, and

WHEREAS, the City desires to exercise the renewal option of the Agreement between the City and Holsen, Inc. for continued General Concession Services at the Miramar Regional Park Amphitheater for a one year term from August 22, 2026 through August 21, 2027, and

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments, hereinafter set forth, CITY and CONTRACTOR hereby agree as follows:

Section 1. Each and every WHEREAS clause set forth above is a true and correct recital and representation and incorporated herein as if set forth in full.

Section 2. Pursuant to Article 3 of the Agreement, the Agreement shall be renewed for an additional one-year term commencing on _____, 20__.

Section 3. All other provisions of the Agreement shall remain in full force and effect.

(THIS SPACE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have made and executed this Second and Last Renewal on the respective dates under each signature: CITY OF MIRAMAR through its City Manager, authorized to execute same by the City Commission of Miramar, and by Holsen, Inc. (CONTRACTOR), by and through its President, attested to and duly authorized to execute same.

CITY OF MIRAMAR

ATTEST:

Denise A. Gibbs, City Clerk

By: _____
Dr. Roy Virgin, City Manager

This ____ day of _____, 20__.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE OF AND RELIANCE BY THE CITY OF
MIRAMAR ONLY:

City Attorney
Austin Pamies Norris Weeks Powell, PLLC

CONTRACTOR: _____

Signature

This ____ day of _____, 20__

Print Name

Title

WITNESSES:

Signature

Print Name

Signature

Print Name



HOLSEN INC. MERCHANDISING

1 176 NW 163RD DRIVE | MIAMI, FL 33169 | PHONE 305.769.2459 | FAX 305.769.3077

WWW.HOLSENENT.COM | DARRYL@HOLSENINC.COM

January 7, 2026

City of Miramar
Adam Burden, ACM
Steven Johnson, ACM
2200 Civic Center Place
Miramar, FL 33029

Dear City of Miramar Assistant City Manager Burden & Johnson,

Holsen Inc. is requesting an extension of the City of Miramar Concession Services' contract. We have been a provider of concession services and the construction of the City of Miramar Amphitheatre and promenade facility. We have provided revenue generation and stellar service in support of the facility and for the City of Miramar hosted events since its inception. For the past year, Holsen Inc. and its staff have provided hundreds of volunteer hours assisting the Chief Amphitheatre Officer and construction management team in developing a long-term revenue generation platform, providing input on the VIP and concessions' container conversion project and guidance on issues centered around the proper use and execution of Department of Alcohol, Beverage, and Tobacco (DABT) standard operations and procedures.

We seek to continue to support the City of Miramar in overseeing and improving alcohol sales and service practices at events and activities held on city-owned properties that may be managed by the City of Miramar department staff or third-party vendors. One of our main objectives will be to assist the City of Miramar in ensuring full compliance with all guidelines established by the Florida Department of Business and Professional Regulation (DBPR), as well as internal City of Miramar policies and procedures.

Holsen Inc. and its staff will continue to work in collaboration with the City Manager, Parks and Recreation Director, and other designated City of Miramar personnel. Responsibilities include evaluating and enhancing the City's internal processes related to alcohol sales, revenue generating services, providing expert guidance to event planners, and ensuring consistent adherence to DBPR regulations.

Additional services will include, but is not limited to:

1. Review applications and permits for event rentals that include alcohol sales and service.
2. Assist City of Miramar staff in implementing all procedures and processes required by the DBPR and the City of Miramar.
3. Recommend improvements or modifications to existing policies and internal procedures.
4. Develop and conduct training sessions for City of Miramar staff on compliance requirements and best practices for alcohol service.

Deliverables:

- Participate in regular meetings with City of Miramar staff to address alcohol service-related matters at City of Miramar-owned facilities.
- Provide written reports and supporting documentation upon request, detailing observations, recommendations, and compliance findings related to this scope of work.
- Provide a revenue generation plan for use of the City of Miramar Amphitheatre Experience Project after construction is completed in the Amphitheater promenade.

Thank you for your support over the years in allowing Holsen Inc. to continue making positive impact in the evolution of the City of Miramar Amphitheatre and generating revenue for the City of Miramar. We look forward to continuing the aforementioned services, as well as providing the community with new cultural experiences and events for the City of Miramar's residents.

Respectfully,

Darryl Holsendolph
City of Miramar Concessionaire
19496 SW 24th Street
Miramar, FL 33029

**AMENDED AND RESTATED AGREEMENT FOR GENERAL CONCESSION SERVICES
BETWEEN HOLSEN, INC. AND THE CITY OF MIRAMAR, FLORIDA**

THIS ADDENDUM (hereinafter referred to as the "Addendum") is made and entered into this 22 day of August, 2018 by and between the **CITY OF MIRAMAR** (hereinafter referred to as the "City") and **HOLSEN, INC.** (hereinafter referred to as "**Holsen**").

WITNESSETH:

WHEREAS, reference is made to the Agreement for General Management Services at the Miramar Regional Park Amphitheater entered into by and between City, Klass-Ex, LLC, and Holsen, Inc., as of July 20, 2016 (hereinafter referred to as the "Original Agreement"); and

WHEREAS, the City desires to amend the Original Agreement to bifurcate the agreement and responsibilities; and

WHEREAS, City seeks the services of a Master Concessionaire to perform concession services independent of the General Manager at the Miramar Regional Park Amphitheater and

WHEREAS, Holsen, Inc. ("Concessionaire") is currently performing Concessionaire services for the City under the Original Agreement, awarded pursuant to Request for Proposal 16-12-09—General Management Services ("RFP"); and

WHEREAS, the Concessionaire shall have the exclusive right to operate/manage food and beverage activities; kitchen facilities; catering functions; and all other concessions, including managing concession space rentals; concession equipment and furnishings at the Miramar Amphitheatre, the Promenade, the Miramar Cultural Theater and the Concession Cepods or equivalent ("Concession Units") with the exception of a "buy-out"; and;

WHEREAS, the Concessionaire and the City desire to enter into this Amendment to detail and provide clarity of the parties' respective rights, duties, and obligations and is intended to memorialize the award of the Original Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

SECTION 1
RECITALS

The above recitals are incorporated into the body of this Agreement and are made a part hereof.

SECTION 2
DEFINITIONS

The term **Amphitheater General Manager** refers to the individual or entity performing services as the General Manager of the Miramar Amphitheater who is responsible for scheduling events, managing operations, promotion of the Amphitheater events, schedule acts or perform the other services required by the City to maximize the use or operations of the Miramar Amphitheater.

The term **Buy-Out** shall mean the events that are scheduled by the Amphitheater General Manager during the fiscal year whereby the Amphitheater General Manager negotiates with a promoter or other third party to perform the Concession Activities at the Miramar Amphitheater or the Promenade for the event.

The term **Capital Equipment** shall mean any equipment that exceeds a value of \$5,000.00, consistent with the City's definition. This includes such items as stoves, freezers, coolers, etc. This does not include small equipment with values under \$5,000 such as fryers, warmers, shelving, etc.

The term **Catering Activities** shall mean the providing of food and beverage services to the public or for a City or Non-City Event.

The term **City Events** shall mean the six (6) yearly events sponsored or co-sponsored by the City which are held at the Venues.

The term **Cash Receipts** shall mean all monies the Concessionaire generates from performing its Concessionaire services on behalf of the City.

The term **Concession or Concession Activities** shall mean the Concessionaire's exclusive right, with the exception of a "buy-out", to operate, manage, oversee, administer or otherwise facilitate Concession, catering activities and to create as well as market and promote events, with the City's prior approval, at the Concession Locations, including, but not limited to all alcohol, food and beverage and vendor booth sales and rental of vendor space of the Concession Units for guest consumption of food and beverages (non-alcohol and alcohol) along with non-consumables approved by the City such as souvenir items, T-shirts, posters, memorabilia and other items.

The term **Concession Locations** shall mean the areas designated and approved by the City from which Concessionaire does its business or performs its services under this Agreement, limited to the Miramar Regional Park Amphitheatre, the Promenade, the Miramar Cultural Center Theater, and the Concession Units. The use of the Miramar Regional Park Aquatic Center is limited to only the use of the Kitchen area of the purpose of storage and food preparation.

The term **Concession Management Services** shall mean all work performed by or service provided by the Concessionaire in overseeing or managing the **Concession Activities** at any and all of the Concession Locations.

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The term **Contract Administrator** shall mean the City employee, identified by the City Manager, who has the responsibility to provide direction to the Concessionaire related to the Concessionaire's activities under this Agreement and be a sole point of contact for the Concessionaire for all contact between the Concessionaire and the City.

The term **Cure Period** shall mean the Forty-Five (45) Calendar days following written notice to the Concessionaire from the City or from the Concessionaire to the City of a continuing or ongoing breach or default in any material term of this Agreement. Any party receiving such identified notice in writing by the City Manager, who has the responsibility for notice (Defaulting Party) shall have the Forty-Five (45) day period to cure any breach or default or otherwise notify or provide evidence of why they are not in breach or default of this Agreement.

The term **Effective Date** shall be the date of the Ratification of and approval of this Agreement by the City Commission of the City.

The term **Event Calendar** shall be the composite of the calendar of events proposed at the Amphitheater by its General Manager, the City Events, events sponsored by or through the Concessionaire and rentals or use of any of the Concession Locations by third parties. The Contract Administrator has full oversight over the scheduling of events including reasonable denial.

The term **Fiscal Year** shall mean the City's Fiscal Year, which commences on October 1 and ends on September 30 of the following year.

The term **Facility** shall be used interchangeably with the term Concession Location and shall mean one or more of the Concession Locations where the Concessionaire performs work or provides services under this Agreement.

The term **Gross Revenue** shall mean any and all revenue generated by, or through the Concessionaire's Concession Activities under this Agreement.

The term **Net Revenue** shall mean any and all revenue generated by, or through the Concessionaire's Concession Activities under this Agreement less Sales Tax.

The term **Taxes** shall mean any and all sales or other taxes due and payable to any governmental authority for sales or other revenues generated by the Concessionaire.

SECTION 3
SCOPE OF SERVICES

The Concessionaire shall have the exclusive right to operate and manage the beverage and food sales, dining, catering, renting of space and vending areas of the Concession Locations, as defined above with the exception of a "buy-out". This shall not include the sales of non-consumable items, such as souvenirs, T-Shirts and memorabilia. The Concessionaire shall provide these services at all events when required by the

City, including festivals, outdoor markets, non-City special events, and events promoted by, or managed by promoters or other third parties. All activities of the Concessionaire shall be subject to the operational hours and guidelines as established or allowed by the City.

In the event the Amphitheater General Manager or other third party requests to "buy-out" Concession Activities, a fee for the "buy-out" will be paid to the City of Miramar. The maximum number of "buy-out" events at the Miramar Regional Park Amphitheater or Promenade shall not exceed seven (7) per fiscal year. In consideration for the third party handling their own concession services at the Miramar Regional Park Amphitheatre, or the Promenade or the Miramar Cultural Theater, the Concessionaire will receive sixty percent (60%) of the agreed upon "buy-out" fee received by the City. Payment for the "buy-out" shall be collected after the event settlement and corresponding payment will be made to the Concessionaire by the City.

The Concessionaire warrants and represents that it possesses the qualifications, expertise, and licensing to perform the services required under this Agreement. The Concessionaire warrants that all personnel utilized by the Concessionaire in performing its duties hereunder shall be fully qualified and trained to perform the tasks assigned to each.

SECTION 4 **CONCESSIONAIRE RESPONSIBILITIES**

Concession Activities at the Concession Locations, including but not limited to, pricing, hours of operation, types of refreshments, beverages (alcoholic and non-alcoholic), candies, food, snacks, souvenirs sold, advertisements (whether in the form of T-Shirts, buttons, brochures, programs or otherwise) and all other merchandise; catering and concessions; restriction of any and all activities related to concession sales; and termination of sales will be subject to prior approval by the City through the Contract Administrator in consultation with the Concessionaire. The City and Concessionaire shall meet no later than seven (7) days in advance of an event to determine and establish the operating hours for an event.

Further, the City shall have final authority over all contracts entered into by the Concessionaire which obligate the City in any way or create any liability for the City related to food, beverages and alcohol in the Concession Locations. The Concessionaire shall be responsible for the promotion and marketing of the Concession Activities, with the exception of a "buy-out" of the Concessionaire's obligations for an event scheduled by the Amphitheatre's General Manager at the Miramar Regional Park Amphitheatre. In that event, the promotional and marketing activities shall be the sole obligation and province of the Amphitheatre's General Manager.

The Concessionaire shall use all reasonable efforts to secure, devise, promote, and maximize the use of the concession areas and promote activities in the Concession Locations as approved by the City. These events and activities shall be designed to increase the variety of and the number of events at the Concession Locations. The net revenues generated at the Concession Locations shall be calculated in accordance with the revenue sharing formula set forth in Section 6 of this Agreement.



Prior to the 1st of October of each year, the City shall provide the Concessionaire with a list of up to six (6) dates for the succeeding year that will be reserved for events. These events shall be designated as "City Events". The Concessionaire shall set aside these dates at applicable Concession Locations and such events shall take precedence over any event scheduled by the Concessionaire. The City reserves the right, at these City Events, to obtain the services provided by the Concessionaire from a third party vendor, should the City determine that it would be more cost effective.

The Concessionaire shall obtain, maintain, and keep current all business licenses, permits or other authorizations necessary for the Concessionaire to lawfully carry out its business operations and carry out its obligations under this Agreement. Proof of the existence of such licensing or permitting shall be provided to the City upon request. The cost of all permits or licenses shall be borne by the Concessionaire. The Concessionaire's obligation hereunder shall not include the cost of any City owned licenses needed to obtain or utilize the Concession Locations as defined in this document.

The Concessionaire will be allowed to use the two (2) City's Alcohol Licenses. One license that limits alcohol sales to the Miramar Regional Park Amphitheater and Promenade, the other limits alcohol sales to the Miramar Cultural Theater, Banquet Hall and the Arts Park. The Concessionaire shall have the sole responsibility for the sale of, and service of alcoholic beverages at the Concession Locations under this Agreement. The Concessionaire shall not have the obligation of purchasing any Alcohol for sale. The Concessionaire shall have the obligation to ensure minimum drinking age eligibility in all instances that the Concessionaire is dispensing alcohol under the City's licenses.

The Concessionaire shall be responsible for After-Event cleanup to ensure that the concession areas are clean and free from debris, garbage, and are at all times kept in a sanitary manner. If the event is an event subject to a "buy-out", the Concessionaire will not be responsible for the After-Event cleanup. The City will only be responsible for repairs or replacement of capital equipment. The Concessionaire will be responsible for any repairs or maintenance of other equipment that is used by the Concessionaire for the Concession Activities. In the event that the Concessionaire determines that a Concession Location is not equipped with the necessary Capital Equipment or the Capital Equipment is not working or in need of repair and cannot be utilized for an event, the Concessionaire must notify the City. The Contract Administrator and Concessionaire must mutually agree to the repair or purchase equipment to be able to perform the scope of services under this Agreement. If so agreed, the City shall reimburse the Concessionaire for the rental or purchase of any equipment agreed upon. The City shall only be obligated to reimburse the Concessionaire if the rental or purchase is approved by the City through the Contract Administrator upon notice to the City from the Concessionaire of the need to rent the equipment. The City must be given an opportunity to repair and replace the equipment. Any equipment purchased under this condition, will remain property of the City and shall be included in the inventory.

The Concessionaire shall be responsible for all advertising and marketing of the Concessionaire's activities and operations under the oversight of the City. This shall include, without limitation, internet based advertising, social media, flyers, television or radio advertising, newspaper, magazine, or other print media or printed material. The City shall have the right to limit any marketing done by the Concessionaire. Marketing tools and distribution resources available from the City can be used to distribute information and

promotional materials regarding events and Concession Activities taking place at the Concession Locations.

The Concessionaire shall utilize the City's Point of Sale System ("POS") for the processing of all sales made by the Concessionaire during its operations under this Agreement. The Concessionaire shall maintain separate accounting and bookkeeping records for the revenue generated from its operations under this Agreement. Within seven (7) calendar days following an event, the Concessionaire shall provide the City with payment due the City based on the revenue sharing formulas set forth in Section 6, with reconciliation report detailing the revenue generated by the Concessionaire, the Concessionaire's allowable expenses, and the manner in which the City's share of the revenue was calculated. After the City has conducted a review of the Concessionaire's report, the Concessionaire shall, upon reasonable notice from the City, meet with the City to answer any questions the City may have and to resolve any issues between the parties. Notwithstanding the above, the City shall conduct its own independent reconciliation of the alcohol sales and inventory.

The Concessionaire shall allow the Contract Administrator or his/her designee, upon at least ten (10) days' notice, to inspect and copy the Concessionaire's books and records, correspondence, journals, ledgers, journals, computer printouts, papers, reports, or other information which relate to, or are generated by the Concessionaire in the performance of the Concessionaire's duties under this Agreement. Unless the Concessionaire has formally and officially provided the City with a Report or Accounting, the information provided shall be deemed as the Concessionaire's work product and shall not be used by the City as definitive evidence of a final report of the Concessionaire. The City, may at its own expense audit any books, ledgers, or records provided by Concessionaire. The Concessionaire shall maintain its books and records set forth herein, for a period of one (1) year after the expiration of this Agreement and the City shall have the right to audit those books and records during that one (1) year period.

The City shall also have the right to perform physical inventories of the equipment, materials, and furnishings used by the Concessionaire to fulfill its obligations under this Agreement to determine their condition and that actual inventory is consistent with City records. The Concessionaire shall promptly notify the City of any capital equipment failures, need for repairs or replacement of any of the facilities or Concession Locations used by the Concessionaire under Agreement. The Concessionaire shall not, without written approval of the City, remove or relocate any City owned property or furnishings from the Concession Locations.

The Concessionaire shall not permanently install or remove any fixtures to any Concession Location or any other City property without the express written consent of the City. Further, the Concessionaire shall not cause any structure, equipment, inventory or furniture to be placed in such a manner as to impair, interfere with or hinder the access to any utility connections, including, but not limited to water, sewer electrical, telephones, ventilation, air conditioning or any other area for which the City requires access.

The Concessionaire shall be responsible for providing necessary staffing for the operations of the Concession Activities at the Concession Locations. Further, the Concessionaire shall ensure that any event on the Event Calendar is properly staffed with qualified personnel, including Bartenders, Wait Staff, Bar Backs, or other personnel. The Concessionaire does not have the obligation to staff any event for which there has been a "buy-out" of the Concessionaire's right to perform the Concessionaire Activities under the

Agreement.

The Concessionaire shall be required to comply with all Florida Laws related to Public Records Requests, as provided herein, and shall upon notice from the City provide all information in its possession that would ordinarily and necessarily be required by the City in order to provide the Public with access to such Public Records. Nothing in this paragraph shall require the Concessionaire to turn over any confidential information or trade secrets and to the extent any request by the City seeks information from the Concessionaire that the Concessionaire deems to be confidential or a trade secret, the Concessionaire shall promptly notify the City of the Concessionaire's determination that the item is confidential in nature and a trade secret and the reasons for failing to turn the information over to the City.

Concessionaire acknowledges the importance of utilizing registered local businesses whenever possible in furtherance of his performance under this Amended and Restated Agreement.

SECTION 5
CONCESSIONAIRE'S RIGHTS/CITY OBLIGATIONS

The Concessionaire shall have exclusive power and authority to provide the services under this Agreement, without interference, but subject to the limitations herein. The Concessionaire shall have the right to manage the Concessions and Concession Activities of the Concession Locations excluding non-consumable goods and any other items not approved by the City. Further, the Concessionaire shall have the authority to operate and control concession activity excluding non-consumable goods and any other item not approved by the City at the Concession Locations, which shall include, but is not limited to the right to sell and vend beverages (alcoholic and non-alcoholic), candies, food, snacks, catering in connection with the Concession Locations, in which the Concessionaire is performing as the Concessionaire for the event.

The Concessionaire shall consult with the City to avoid any potential conflicts between the City and Amphitheater General Manager obtained sponsorships for City Events or events scheduled by the Amphitheater General Manager at the Miramar Regional Park Amphitheater or the Promenade. With respect to the Concession Activities for each of the Concession Locations, in which the Concessionaire is performing as the Concessionaire for the event, the Concessionaire shall have the power and authority to negotiate rentals, concession agreements, catering agreements at all events or uses of the Concession Locations when approved by the City. The Concessionaire may utilize/rent the City's Banquet Hall for the Concessionaire's own functions at an agreed discounted rate and based on availability and no conflict with other events. Such rates will be based on the City's adopted fee schedule, as amended from time to time. If there is no rate set in the fee schedule, such rate will be determined and approved by the City Manager through the Contract Administrator. In the event the Concessionaire utilizes another City Venue for the Concessionaire's own function, the Concessionaire shall not be obligated to use one of the caterers in the City's pool of caterers.

The City shall have the obligation to fully equip each of the Concession Locations with sufficient and adequate equipment and infrastructure to enable the Concessionaire to perform the services under this



Agreement. This shall include, but not be limited to adequate food storage areas, secure equipment storage, kitchen facilities, refrigeration and freezer capacity, plumbing, water, Wi-Fi, lighting, garbage pickup, restrooms, and any other equipment or services needed by the Concessionaire to perform the functions and services under this Agreement. The sufficiency and adequacy of equipment and facilities shall be determined by the City.

The Concessionaire shall have the exclusive use and responsibility of the City's Concession Units. The Concessionaire shall have full responsibility for the management and rental of the Concession Units and the revenue generated by the use of the Concession Units shall be subject to the division of rental revenue as set forth in Section 6. The Concessionaire shall use these units for purpose of creating event transactions related to its Concessionaire Activities.

The City is the owner of two (2) 4COP liquor licenses. The Concessionaire shall have the right to utilize the licenses at and only at the specific licensed locations, for all purposes necessary and allowable by law under this Agreement. Nothing in this Agreement shall serve to transfer ownership of the licenses to the Concessionaire, but the City shall execute any and all necessary paperwork or provide the Concessionaire with written authorization allowing the Concessionaire to utilize the licenses for compliance purposes, and other uses necessary or required. The Concessionaire shall at all times operate and utilize the Liquor Licenses in compliance with Florida Law.

The City shall purchase and maintain an inventory of alcohol for use by the Concessionaire. Prior to an event or function at any of the Concession Locations, the Concessionaire shall notify the City of the quantity, specific types, brands or kinds of alcoholic beverages needed and the City will purchase sufficient inventory to meet the Concessionaire's needs. The Concessionaire shall have the sole responsibility for determining the type of alcohol needed, the type of packaging needed, and the quantities needed. The Concessionaire will notify the City within seven (7) business days prior to an event of the product that is required. The Concessionaire along with the City will inventory the post event alcohol supply. Concessionaire will be responsible in assuring that sales and post event inventory reconcile or provide reasonable and acceptable explanation for any discrepancies. The City's POS shall be the primary source for determining the total sales of alcoholic beverages. In the event the sales and post event inventory do not reconcile, City may in its sole discretion determine that the Concessionaire has materially breached this Amended and Restated Agreement.

The Concessionaire will be given access to all areas for which access is needed to perform its Concession Activities, including all kitchen areas, storage facilities, and the Concession Locations. If keys are issued to the Concessionaire, the Concessionaire shall be responsible for ensuring that the areas needed are locked and unlocked at such times as the Concessionaire needs to accommodate the Concessionaire's uses of the facility. The Concessionaire shall not change any locks without first notifying the City of the need or desire to change the locks and receiving the City's written consent to change the locks. The Concessionaire shall provide the Contract Administrator with duplicate keys immediately upon the changing of the locks. Under no circumstances shall the Concessionaire provide any third party with keys to any Concession Location or access to any Concession Location without the direct supervision of an authorized employee of the City. From time to time and in its unfettered discretion, the City may require



the Concessionaire to provide the City with the names of the employees who will have access to the keys to the Concession Locations. If the keys to any Concession Locations are lost, misplaced or mishandled in a way as to compromise the security of the location, by the Concessionaire or its employees, the Concessionaire shall be responsible for the cost of replacement of the key and all locks, if necessary.

The powers and authority granted to the Concessionaire under this Agreement are subject only to the oversight and management of the City as provided herein. The Concessionaire shall, in consultation with the City, determine the food, beverage, and non-consumable item needs for events held at the Amphitheater which are not City Events where the Concessionaire is being utilized. The Concessionaire shall consult with the City to determine if there are specific types of items to be placed for sale based on the Amphitheater General Manager's requests or suggestions at these events. Based on this Agreement, only the City shall be able to oversee the Concessionaire's right, in the Concessionaire's professional judgment, to determine mutually agreed pricing, quantity, type, style, product or quality of goods for the sale of food, beverage and concession items at these events.

SECTION 6 COMPENSATION

The Concessionaire shall be compensated for its services based upon the formula for the division of net revenue as set forth below. After accounting for the payment of all funds required to be paid under this Agreement, the Concessionaire shall be entitled to retain the remaining revenues from any Concession Activities.

The Concessionaire and the City have established a formula for the payment by the Concessionaire to the City of a percentage of the revenues from the Concession Activities of the Concessionaire. The Concessionaire shall have the responsibility for and the obligation to pay any and all taxes on any revenues generated by the Concession Activities.

The City of Miramar shall receive thirty percent (30%) of all Alcohol Net Sales
The City of Miramar shall receive twenty percent (20%) of all Import and Domestic Beer Net Sales
The City of Miramar shall receive fifteen percent (15%) of all Craft Beer Net Sales

The City of Miramar shall receive twenty-five percent (25%) of Concession; Food Net Sales
The City of Miramar shall receive fifteen percent (15%) of Backstage Catering Net Sales
The City of Miramar shall receive ten percent (10%) of all Non Event Catering Net Sales
The City of Miramar shall receive twenty percent (20%) of all Vendor Rental Revenue

The City's POS, which the Concessionaire shall use for all sales transactions related to its Concessionaire Activities, shall be the primary source for the determination of the amount of revenue generated from an event at any of the Concession Locations. In the absence of a fully functional and operating POS, the Concessionaire must notify the City and may only then with approval from the Contract Administrator or other City designee, implement an alternative backup system to complete sales transactions. This will only take place until all efforts have been made to make the City's POS operational.



The Backup System shall be a system that the parties to this Agreement have agreed upon as an alternative way to conduct sales transactions and provide accurate reporting in the absence of the operating POS system. The Concessionaire shall provide the City with an accounting of the sales transactions within seven (7) business days of the closing of any event which utilized the Backup System. The City shall have access to the sales and activity reports which are generated by the POS or the alternative backup system if used and may conduct an audit of the POS sales transactions at any time, without notice to the Concessionaire.

The Concessionaire shall have the responsibility for and the obligation to pay sales tax on any taxable revenues generated by the Concession Activities at an event. The amounts paid to the City as set forth Section 6, shall be based upon the Net Revenues generated from the Concessionaire's Activities at an event.

In the event of a third party "buy-out" of concession services at their event at one of the Concession Locations, except the Concession Units, a fee for the "buy-out" will be paid to the City of Miramar. In consideration for the third party handling their own concession services at Concession Locations with the exception of the Concession Units, the Concessionaire will receive sixty percent (60%) of the "buy-out" event fee. There shall be no more than seven (7) allowed annually, which is subject to change via the authorization of the City Manager. Payments for the "buy-out" event shall be collected after the event settlement and be paid to the Concessionaire by the City within thirty (30) calendar days from the final settlement of the event.

SECTION 7
TERM OF THE AGREEMENT

The term of this Agreement shall be for Five (5) years from the date of the execution of this Agreement, unless further extended. Upon the expiration of the Term or renewal term, the Concessionaire shall provide to the City a detailed inventory of all equipment owned by the City that was being utilized by the Concessionaire at the Concession Locations. The inventory shall detail each piece of equipment, its location, and general condition.

Prior to the expiration of this Agreement, if the Concessionaire is not in default under this Agreement and there is no pending Notice to Cure, the City and the Concessionaire shall have the option to renew this Agreement for up to two (2) additional two (2) year terms subject to the mutual agreement of the parties. Any revised, additional or modified terms, conditions, rights and responsibilities shall be negotiated not less than ninety (90) days prior to the end of the term then in effect.

The Chief Procurement Officer of the City may authorize, with the Concessionaire's Mutual Consent, the extension of this Agreement for an additional 90 days on the then existing terms and conditions between the parties.

SECTION 8
FINANCIAL CONTRIBUTIONS

The City hereby acknowledges and agrees that no Capital Contribution shall be due to the City by the Concessionaire. The City further acknowledges and agrees that the Concessionaire shall not be required to

make payment for a minimum annual guarantee as set forth in the Original Agreement for the term of this Amended and Restated Agreement.

SECTION 9
TERMINATION OF AGREEMENT

If the City or the Concessionaire commits a material breach which has not been cured in the time period provided under this Agreement or either party is unable, unwilling, fails, or refuses to fulfill their obligations, then the non-breaching party may terminate their obligations under this Agreement on not less than forty-five (45) days written notice. If a material breach is not cured in a timely manner the City Manager will submit information to the City Commission for Termination. The City may only terminate this agreement upon a four-fifths vote of the City Commission.

Without limiting the rights above, it is expressly understood that the Cure Period as defined above, shall not apply due to the Concessionaire's bona fide illness, disability, or act of God or nature over which the Concessionaire has no control. Additionally, the Cure Period shall be suspended if any breach or default is caused by any strikes, boycotts, war, emergencies, civil tumult, epidemics, fire, catastrophe, labor disputes, interruption or delay in transportation services, acts of government or any governmental agency or officer, any order of a court of competent jurisdiction, regulations, rulings or action of any labor union, riots, delays of commercial carriers or other happening or circumstance outside of the control of the Concessionaire. The Concessionaire shall use all reasonable means available to it to cure any default caused by any of the above circumstances.

Termination of this Agreement "for cause" shall mean,

- A. Failure to pay any sum, including gross revenues, payable herein within thirty- (30) Business Days after service of notice that such sum is past due and payable to City as the case may be;
- B. Failure to perform or comply with any other term, covenant or condition hereof and such failure shall continue for more than forty-five (45) days after written notice thereof is sent to the defaulting Party. In the event such a default (other than a default in the payment of money as described in 11.2.1 is not reasonably susceptible to being cured within the forty-five (45) day period, the defaulting Party shall not be considered in default if it shall, within forty-five (45) day period have commenced with due diligence to cure such default and thereafter completed with due diligence the curing of such default; provided, however, that in no event shall a cure period pursuant to this Section 8 exceed a maximum total of ninety (90) days after the initial notice of default therefore;
- C. The occurrence of any act or commission that deprives the non-breaching Party of the rights, powers, licenses, permits, and authorizations necessary for the lawful and proper conduct and operation of the services and activities authorized hereunder; or
- D. The filing by or against Concessionaire or City of any petitions in bankruptcy either voluntary or involuntary, or the making by which the actions shall automatically be



- basis for termination and bar the passing of any benefits to creditors, assignees, or transferees of Concessionaire or City; or
- E. The abandonment or discontinuance by the Concessionaire without written consent of City, or any or all of the operations and services permitted or required; or
 - F. Two (2) or more documented material breaches in any twelve (12) consecutive month period, of the provisions of this Agreement, notwithstanding whether any such breach was previous waived or cured. A documented breach shall consist of City's written notice of default to Concessionaire; or
 - G. The cessation of services for a period of not less than sixty (60) calendar days, that in the reasonable opinion of either Party, materially and adversely affects the operation of the Services required to be performed by Concessionaire, provided that it shall not be considered a breach of contract in the event Concessionaire shall be unable to render services through no fault of their own, including without limitation due to the occurrence of any Force Majeure.

In the event, the Defaulting Party cures the default or breach within the Cure Period, this Agreement shall remain in full force and affect and the term of the Agreement shall not be affected by the Cure Period. In no event, shall a Cure Period pursuant to this Section 8, exceed a period of 90 calendar days after the written notice of default. Nothing in this Section 8 shall serve to extend the Term of this Agreement except as provided herein.

In the event of termination for cause for any reason provided above, City may, in its discretion, assume the work and see that the same is completed by agreement with another party. The exercise by City or Concessionaire of remedies and rights provided herein shall in no way affect any other right or remedy available to City or Concessionaire

Upon termination or expiration, the City shall not be liable to Concessionaire for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement, except as provided in this Agreement.

SECTION 10 **INDEMNIFICATION**

The Concessionaire agrees to defend, indemnify, the City and its officials, directors, officers, employees, agents, successors and assigns against any and all liability claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions, including attorney's fees at both the trial and appellate level of any kind and nature arising from or in any way connected to the performance of its Scope of Services under this or the Original Agreement. This indemnification applies to the acts or omissions of the Concessionaire, its agents, servants, employees, or other party working on the Concessionaire's behalf and at the Concessionaire's direction. This indemnification does not apply for liabilities caused solely by the negligence, misfeasance or malfeasance of the City or its employees, officials, directors, officers, agents, successors or assigns.



The City agrees to hold the Concessionaire harmless and indemnify the Concessionaire for the following acts or omissions:

- any negligent act or omission, or intentional misconduct on the part of the City or any of its employees or agents in the performance of the City's obligations under this Agreement.
- Any environmental condition in any Venue hereunder or on or under any Venue not caused by the Concessionaire, its employees or agents.
- Any structural defect with respect to any Venue hereunder, in each case, subject to the limits and restrictions enumerated in Section 768.28, Florida Statutes, regardless of whether they would otherwise apply.

With respect to each matter brought by any third party against a party to this Agreement, the indemnified party may, at its option, participate in the defense of any litigation or actions brought against it and select the legal counsel of its choosing. Absent notice to the indemnifying party of its intention to actively participate in the litigation or other legal action, the indemnifying party shall be responsible, at its sole cost and expense to defend the action or litigation on behalf of all parties hereunder. However, no settlement or other compromise of any claim of any type whatsoever shall be entered into or agreed upon without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld.

Both the City and the Concessionaire agree that they shall fully cooperate in all proceedings brought against either of them. Said cooperation shall include but not be limited to providing the names of any persons who may have knowledge of the relevant facts related to the action or proceeding; producing documents and papers requested by the other party; making individuals available for meetings, depositions or hearings, as applicable, and doing all things necessary and reasonable to prepare for any defense of such actions or proceedings.

SECTION 11 INSURANCE

The Concessionaire agrees to obtain insurance covering the Concessionaire's Concession Activities in the manner and amounts for concession industry standards set forth on the attached Schedule A which is incorporated into this Agreement. The Concessionaire shall have no obligations to obtain any additional insurance covering any risk beyond what is set forth on the attached Schedule A.

The City shall cover the cost for all required liability insurance for registered local businesses that participate in the facility events. For all others, the Concessionaire shall provide the City with copies of the Certificates of Insurance evidencing for all insurance obtained. Each insurance policy shall include a requirement that the insurance company provide the Concessionaire and the City a minimum of a thirty (30) day notice of any intent to cancel or modify the insurance coverage. The City shall provide the Concessionaire with a list of registered local businesses covered by the City under this Agreement as needed.



All policies required hereunder, with the exception of Worker's Compensation Insurance shall name the City as an additional insured under the policy. The Worker's Compensation shall contain a waiver by the Concessionaire of all rights of subrogation against the City. If the insurance policy obtained by the Concessionaire does not insure against the risk of negligent acts or omissions on the part of the Concessionaire's subcontractors, then, in that event the Concessionaire shall require the subcontractor to obtain insurance covering the applicable hazards and risks of loss in the minimum amounts designated under this Agreement. The insurance obtained by the Subcontractor shall name the Concessionaire and the City as additional insureds.

SECTION 12 **MISCELLANEOUS**

The Concessionaire shall be responsible for the filing of, and payment of all sales taxes on revenues generated under this Agreement; further the Concessionaire shall be responsible for the payment of all income and other applicable taxes on revenues which are retained by the Concessionaire and not paid to the City as part of the Concessionaire's obligations under Section 6; obtaining all licenses required for its operations; complying with all federal, state, county and municipal laws, ordinances and regulations in connection with the performance of its duties and obligations hereunder. The Concessionaire shall at all times perform its obligations under this Agreement in compliance with all applicable federal, state, county and municipal laws and regulations.

The Concessionaire warrants that it has not hired or retained any person or company employed by the City to solicit or secure this Agreement. The Concessionaire further warrants that it has not offered to pay, paid, or agreed to pay any person a fee, commission, percentage, brokerage fee, or gift of any kind contingent upon, or in connections with the making of this Agreement. The Concessionaire is aware of and is fully informed of the laws and regulations pertaining to contracts between private entities and local governments. The Concessionaire agrees that it shall at all times operate in compliance with these laws and regulations.

Nothing in this Agreement shall create an employment relationship between the Concessionaire and the City. The Concessionaire shall at all times during the Term of this Agreement be deemed to be an independent contractor acting as an agent of the City. The Concessionaire, its employees, or agents shall not be entitled to any employee benefits or any kind whatsoever.

SECTION 13 **AGREEMENT, AMENDMENTS AND ASSIGNMENT**

The Concessionaire shall not assign any of its obligations under this Agreement, except that the Concessionaire shall be entitled to use subcontractors to perform duties and perform certain obligations hereunder. The obligations, liabilities and responsibilities of the Concessionaire shall not be affected by the use of any sub-contractors or independent contractors to perform any of the Concession activities under this Agreement.



Any Amendments to this Agreement shall only be effective if made in writing utilizing the same formality followed by the execution of this Agreement. This formality shall include the approval by the City Manager or the City Commission, if necessary. Neither party shall have the right to rely on any verbal representations as to matters not specifically contained in this Agreement.

SECTION 14
GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of Florida applicable to contracts made and performed entirely therein. Each Party hereto agrees and consents that jurisdiction and venue for all actions arising out of or relating to this Agreement shall be vested exclusively in the federal and state courts within Broward County, Florida. Any action or other proceeding which involves such a controversy will be brought in those courts and not elsewhere, and the Parties hereby waive any objection they may have to the appropriateness, jurisdiction and venue of such courts (including any objections based on the doctrine of *forum non conveniens*). Any process in any such action or proceeding may, among other methods, be served by delivering it or mailing it, by registered or certified mail, or by priority mail, directed to the address first above written or such other address as the addressee has designated from time to time. Any such delivery or mail service shall be deemed to have the same force and effect as personal service within the State of Florida.

SECTION 15
NOTICES

All notices, payments, accountings and statements must be given by written notice, sent by certified United States mail, return receipt requested, addressed to the Party for whom it is intended, at the place last specified in writing, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

To the City of Miramar:
Vernon E. Hargray
Interim City Manager
Miramar City Hall
2300 Civic Center Place
Miramar, FL 33025
(954) 602-3115

With a copy to:
Jamie Cole, Esq.
Weiss, Serota, Helfman, Cole & Bierman, P.L
200 E. Broward Blvd.
Suite 1900
Fort Lauderdale, FL 33301



To Holsen, Inc.
655 Biscayne River Drive
Miami, Florida 33169

With a copy to:

Marc Anthony Douthit, Esq.
Douthit Law, LLC
6625 Miami Lakes Drive
Miami Lakes, FL 33014
(786) 594-3977
(305) 503-9633 facsimile
e-mail juryaward124@gmail.com

SECTION 16
NON-DISCRIMINATION

The Concessionaire represents and warrants to the City that the Concessionaire does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Concessionaire's performance under this Agreement on account of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services. Concessionaire further covenants that no otherwise qualified individual shall, solely by reason of his/her race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services, be excluded from participation in, be denied Services, or be subject to discrimination under any provision of this Agreement.

SECTION 17
PUBLIC RECORDS

The Concessionaire shall comply with The Florida Public Records Act as follows:

- A. Keep and maintain public records in the Concessionaire's possession or control in connection with the Concessionaire's performance under this Agreement, that ordinarily and necessarily would be required by the City in order to perform the service.
- B. Upon request by the City's records custodian, provide the City with a copy of 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, Florida Statutes, or as otherwise provided by law.
- 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 this Agreement, and following completion of this Agreement until the records are transferred to the City.

- D. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of the Concessionaire shall be delivered by the Concessionaire to the City, at no cost to the City, within seven (7) business days. All records stored electronically by the Concessionaire shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, the Concessionaire shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.
- E. The Concessionaire's failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City.

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-602-3011, dagibbs@miramarfl.gov OR BY MAIL: City Of Miramar – City Clerk's Office, 2300 Civic Center Place, Miramar, FL 33025.

- D. Ownership of Documents: Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City. Any compensation due to the Concessionaire shall be withheld until all documents are received as provided herein.

SECTION 18
HEADINGS, CONFLICT OF PROVISIONS,
WAIVER OR BREACH OF PROVISIONS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms of this Agreement shall prevail. No waiver of any breach of any provision under the Agreement shall serve as a waiver of any right to enforce any subsequent breach of the same or any other provision, and no waiver shall be effective unless in writing.

SECTION 19
SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect and be enforced to the fullest extent permitted by law.



SECTION 20
ENTIRE AGREEMENT

This Agreement represents the entirety of the Agreement between the parties related to the subject matter contained herein and supersedes any other writings, agreements, contracts or oral or written representations except as specifically referenced herein.

SECTION 21
JOINT PREPARATION

Concessionaire and the City acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein, and that the preparation of this Agreement has been a joint effort of the Parties, the language has been agreed to by Parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

SECTION 22
COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the Original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

SECTION 23
SCRUTINIZED COMPANIES

- A. Concessionaire certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Concessionaire or its subcontractors are found to have submitted a false certification; or if the Concessionaire, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

- B. If this Agreement is for more than one million dollars, the Concessionaire certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Concessionaire, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Concessionaire, its affiliates, or its subcontractors are placed on the Scrutinized Companies with



Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- C. The Concessionaire agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

SECTION 24
INCORPORATION OF ADDENDUM

The terms, duties, rights, and obligations as provided in the Addendum are hereby incorporated and made a part of this Agreement. In the case of any conflict between the terms of the Original Agreement and this Amended and Restated Agreement, the terms of this shall prevail.

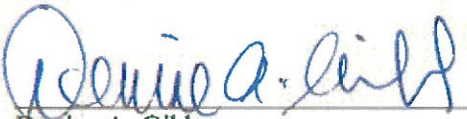
IN WITNESS WHEREOF, the parties intending to be bound have made and executed this Agreement.




Holsen, Inc

CITY OF MIRAMAR, FLORIDA

ATTEST:




Denise A. Gibbs
City Clerk

By: 

Vernon E. Hargray
Interim City Manager

Dated: August 28, 2018

Approved as to legal form and
Sufficiency for the use of and reliance
by the City of Miramar only:



City Attorney
Weiss Serota Helfman Cole
& Bierman, P.L.



ATTACHMENT A – SCHEDULE A

The Concessionaire shall be required to furnish insurance certificates, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

Policies shall be endorsed to provide the City thirty (30) days' notice of cancellation, material change or non-renewal of policies required under the contract. If the carrier will not agree to this notification, the Contractor and/or the Concessionaire or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification of cancellation or reduction in coverage.

Insurance shall be in force until all obligations required to be fulfilled under this terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance of the City. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the Concessionaire shall furnish, atleast fifteen (15) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The Concessionaire shall not commence or continue to provide any services pursuant to the Agreement unless all required insurance remains in full force and effect. Concessionaire shall be liable to the City for any lapses in service resulting from a gap in insurance coverage.

The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the Concessionaire has assumed in the indemnification/hold harmless section(s) of this Agreement.

REQUIRED INSURANCE

- A. **Commercial General Liability Insurance** including, but not limited to: coverage for premises & operations, personal and advertising injury, products and completed operations, Liability assumed under an Insured Contractor (including tort liability of another assumed in a business contract), and independent operators. Coverage must be written on an occurrence basis, with limits of liability no less than:
- i. Each Occurrence Limit - \$1,000,000
 - ii. Fire Damage Limit - \$1,000,000
 - iii. Personal Advertising Injury Limit - \$1,000,000
 - iv. General Aggregate Limit - \$2,000,000



The City of Miramar must be shown as an additional insured with respect to this coverage. City's Additional Insured stated shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

- B. Auto Liability Insurance** covering all owned, leased, hired, non-owned and employee non-owned vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:
- i. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$300,000.
 - ii. Hired Auto (Symbol 8)
Combined Single Limit (Each Accident) - \$300,000.
 - iii. Non-Owned Auto (Symbol 9)
Combined Single Limit (Each Accident) - \$300,000.

All other insurance requirements from the Original Agreement have been rescinded.

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page.

**FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT
FOR GENERAL CONCESSION SERVICES BETWEEN
HOLSEN, INC. AND THE CITY OF MIRAMAR, FLORIDA**

This First Amendment ("Amendment") to the Amended and Restated Agreement Between the City of Miramar and Holsen, Inc. for General Concession Services at the Miramar Regional Park is by and between the City of Miramar, a Florida municipal corporation (hereinafter referred to as ("City")) and Holsen, Inc. ("Contractor"), effective as of 7/18/2023 2023.

WHEREAS, the City and Contractor (the "Parties") entered into that certain Amended and Restated Agreement Between the City of Miramar and Holsen, Inc. for General Concession Services at the Miramar Regional Park on August 22, 2018 (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement to extend the term for an additional three (3) years, and to make other modifications as herein set forth.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, and covenants and obligations set forth herein, as well as other good and valuable consideration the sufficiency of which are hereby acknowledged, the City and Contractor and agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated by reference and made part of this Amendment.

2. Amendments.

(a) Definitions.

(i) The definition of the term "City Events" defined in Section 2 of the Agreement is deleted in its entirety and replaced by the following:

(A) City Events. The 6 (six) pre-scheduled (*each a "City Event"*) and 3 (three) floating events (*each a "Floating City Event"*) sponsored or co-sponsored by the City as described more specifically in Section 4.2(b).

(B) *The term "Floating City Event"* shall be inserted in the definition section and a Floating City Event shall be defined as an event whereby the City gives notice prior to October 1st of each year that the City wishes to hold said event on a particular date provided, (i) the City notifies the Contractor not less than 30 days prior to the event day and (ii) no other event is scheduled, reserved and/or proposed by a potential licensee for such date.

(b) Section 3, Paragraph 2 of the Agreement is deleted in its entirety and replaced by the following:

In the event the Amphitheater General Manager or other third-party requests to "buy-out" Concession Activities, a fee for the "buy-out" will be paid to the City of Miramar. The maximum number of "buy-out" events whether occurring at the Miramar Regional Park

Amphitheater or Promenade shall not exceed seven (7) per fiscal year, provided that the City Manager, may authorize an increase in the number of buy-outs on a case-by-case basis. Effective as of March 22, 2022, during a buy-out (when a third party will be handling the concession services at the Miramar Regional Park Amphitheater or the Promenade), the Concessionaire will be compensated for the buy-out at a net rate of \$8.00 per person in attendance at such event. Attendance will be based on the number reported by the General Manager from official approved ticketing system sales reports, to include the accompanying turn style data from the event. An added allowance of 100 persons will be included in all instances when calculating payment due to the Concessionaire.

Following a buy-out, the City of Miramar shall pay Concessionaire within 10 working days of the General Manager's settlement with the City.

(c) Section 4, Paragraph 4, of the Agreement is deleted in its entirety and replaced by the following:

Prior to October 1st of each year, the City shall provide Contractor with a list of up to six (6) dates for the succeeding year that the City wishes to reserve for events, designated as "City Events. The City shall also select an additional three (3) dates on a "floating" basis, i.e. the "Floating City Events." As to the six (6) City Events, the Concessionaire shall reserve these dates for the applicable Concession Locations and such events shall take precedence over any other event. The City reserves the right, for these "City Events" and "Floating City Events", to obtain or include Concession Services from a third-party vendor, should the City determine that it would be more effective.

(d) Section 6, Paragraph 8, of the Agreement is deleted in its entirety.

(e) The term of the Agreement shall expire on August 21, 2026, unless the parties exercise, in writing, an option to renew through August 21, 2027.

4. Miscellaneous.

(a) **Additional Payments.** The City acknowledges and agrees that, within thirty(30) days after the Effective Date, it shall pay Concessionaire (i) the amount of \$21,000 (Twenty-One Thousand Dollars) as compensation for the prior destruction of a 40 x 30 customized awning owned by Concessionaire; and (ii) \$164,920.80, representing the amount due to Concessionaire for buy-out events hosted at the Facility from March 22, 2022 through March 31, 2023.

(c) **Promoter Communications.** Any and all communications between the City's Concessionaire and third-party promoters engaged by the City or the General Manager shall be conducted via the City's representative.

5. Conflicting Terms. In the event the terms of this Amendment conflict with those of the Agreement, the terms of this Amendment shall govern. All other terms of the Agreement shall remain and continue in full force and effect.

6. Invalidity/Severability. If any term or provision of the Agreement or this Amendment are held to be invalid, illegal or unenforceable (including but not limited to a determination by the Division of Alcoholic Beverages and Tobacco in a declaratory statement that buy-outs are per se illegal), that provision shall be stricken from the Agreement or Amendment and all other provisions shall remain in full force and effect.

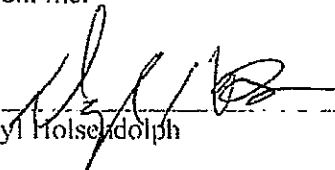
7. Captions. The captions of this Amendment are for the convenience only and are not to be construed as defining or limiting in any way the scope or intent of the provision of this Amendment.

8. Effective. This Amendment shall be effective as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment as follows:

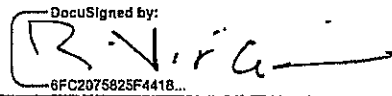
AGREED TO AND ACCEPTED BY:

Holsen, Inc.

By: 
Darryl Holsen

AGREED TO AND ACCEPTED BY:

The City of Miramar

DocuSigned by:

By: Dr. Roy Virgin
City Manager 7/18/2023

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF AND RELIANCE BY THE CITY OF MIRAMAR ONLY



City Attorney
Austin Parnes Norris Weeks Powell, PLLC

DocuSigned by:
Denise Gibbs

Attest: _____
Denise A. Gibbs, City Clerk 7/18/2023