



AGENDA REPORT
February 12, 2019

**Staff Direction, re: Concessionaire's requests to allow Sale of Beer/Wine at
Spessard Holland North Beach Park and Howard E. Futch Park (Districts 3
and 5)**

SUBJECT:

Consideration for beer and wine sales at Howard E. Futch Park (District 5) and Spessard Holland North Beach Park (District 3) concession stands.

FISCAL IMPACT:

The current payment from Billie's is \$1565/month for summer months and \$1165/month for winter months

The current payment from Paradise Treats is \$1000 per month.

DEPT/OFFICE:

Parks and Recreation

REQUESTED ACTION:

It is requested that the Board provide staff direction re: consideration for beer and wine sales by Thomson Holdings Enterprises, LLC and Anthony and Mary Sargenti, at Billie's and Paradise Treats respectively, and pursuant to Board direction, if applicable, execute all Agreements upon review and approval by the County Attorney's Office and Risk Management.

SUMMARY EXPLANATION and BACKGROUND:

During Public Comment at the January 22, 2019, Board of County Commissioners meeting, Mr. Derek Thomson from Thomson Holdings Enterprises, LLC, which operates the food concession Billie's at Spessard Holland Park North and Mr. Anthony Sargenti, who operates Paradise Treats JMCA, LLC, the food concession located at Howard E. Futch Park, spoke and requested that they be allowed to sell beer and wine at their respective concessions.

Vendors have indicated a significant decrease in patronage and revenue since Hurricane Irma and more recently, the Red Tide event. The sale of beer and wine would be contingent upon the concessionaires obtaining the proper zoning approval, if applicable, licensure and insurance. The concessionaires believe beer and wine sales will increase the concession revenues and allow the concessionaires to continue to operate at the Parks.

Attached are the proposed diagrams establishing a "premises" so that patrons can consume beer and wine in an outdoor seating area without violating Brevard County Code 6-2 regarding open containers. No glass or bottles will be given to customers; the concession operator will open, pour, and serve in plastic cups for consumption on premises. Billie's is open Tuesday through Sunday from 8:00 am - 6:30 pm and would sell beer and wine from 11:00 am until closing. Paradise Treats is open seven (7) days per week from 11:00 am - 7:00 pm and would sell beer and wine from 11:00 am until closing.

Parks and Recreation staff has prepared the attached staff report that provides background on the requested action and provides suggested options for the Board to consider.

Staff requests that the Board provide direction in regards to the sale of beer and wine at Billie's and Paradise Treats.

ATTACHMENTS:

Description

- ▢ **Request Letter from Billie's**
- ▢ **Request Letter from Paradise Treats**
- ▢ **Agreement - Billie's**
- ▢ **Consent to Assignment - Billie's**
- ▢ **Agreement - Paradise Treats**
- ▢ **Diagram of Billie's Premises**
- ▢ **Diagram of Paradise Treats**
- ▢ **Staff Report**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
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Tammy.Rowe@brevardclerk.us

February 13, 2019

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item J.10., Staff Direction, Re: Concessionaire's Requests to Allow Sale of Beer/Wine at Spessard Holland North Beach Park and Howard E. Futch Park

The Board of County Commissioners, in regular session on February 12, 2019, approved beer/wine sales upon not exercising one-year renewal; authorized you to go out for a Request for Proposal (RFP) for the new contract; and authorized the County Manager to execute contracts upon County Attorney and Risk Management approval.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: Finance
Budget

Derek Thomson
4108 Anlow Road,
West Melbourne, Florida 32904

Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, FL 32940

Sir/Ma'am

December 20, 2018

I operate Billie's food concessionaire operation at Spessard Holland North Beach Park under an agreement with Brevard County Parks and Recreation. The agreement calls for me to pay the county \$1,165 (winter rate) and \$1,565 (summer rate) per month.

Due to significant decreases in patronage and revenue since Hurricane Irma and more recently, the Red Tide event, I'm struggling to make my monthly payments to the county. To increase business, I request an amendment to my agreement with the county that will allow me to serve beer and wine contingent upon obtaining the proper licensing and insurance.

The attached diagram shows where I will establish a "premises" to allow patrons to consume beer without violating Brevard County Code 6-2 on open containers. No glass or bottles will be given to customers; we will open and pour beer into plastic cups for consumption on premises.

We are open Tuesday through Sunday from 8am - 6:30pm and would sell beer from 11am until closing. We are a family run business, my wife worked full time in hotels in Scotland behind the bar before we moved to USA so she has lots of experience in severing beer and wine and dealing with public.

Please consider my request for a contract amendment to allow beer and wine sales.

Derek Thomson



- 3 Attachments
1. Diagram of Premises
 2. Aerial photo
 3. Street view photo

To the Board of County Commissioners

**This is for a contract amendment to allow beer sales
within my premise at Howard E. Futch Park**

From:

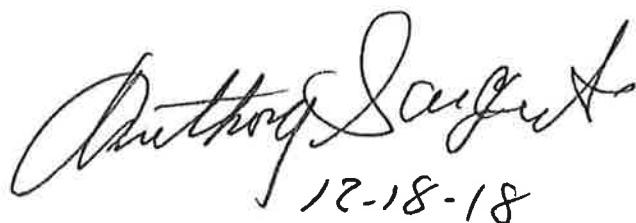
Anthony and Mary Sargenti

WE have rented space at the park for 6 years, for the last 2 years business has become more competitive, primarily because people want a beer with their sandwich at lunch. To stay competitive with restaurants as close as 100 yards away we feel the need to offer what the customers are asking for. A beer with lunch. Business has dropped over 20% in the last year and it is becoming harder and harder to pay rent and other overhead. WE feel it is necessary to add the beverage to continue many more years of doing business with you.

Beer and wine will be available

**We will NOT serve BOTTLES or CANS to our customers.
We will pour beverage into open cups to be consumed
within our yard, (only).**

**In the past I had a full liquor license, because I owned a
restaurant in Indian Harbour Beach which is now
Brano's Fresh Restaurant, my lawyer helped me acquire
that license and he will help me with this as well. I can
get the proper insurance from Atlantic Insurance
Company they now supply me with insurance for my
business. WE are open 7 days from 11 a.m. to 7 p.m.
that can remain the same my staff worked for me at my
restaurant, when I sold it I took them with me to
Paradise Park, they were both professional bartenders
for many years and have hands on experience.
90% of sales will be with food, 10% will be a beer
among friends at my tables.**


12-18-18



Copy of Billie's
8-1-17

AMENDMENT TO AGREEMENT

THIS AGREEMENT made and entered into this 22nd day of August, 2017 by and between **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as the "County," and **MB DOGS, INC. D/B/A BILLIES**, (hereinafter referred to as "Concessionaire").

W I T N E S S E T H:

WHEREAS, the parties hereto have previously entered into an Agreement on February 9, 2011, and;

WHEREAS, said Agreement was renewed on April 11, 2016, under Contract No. 1593 ("Agreement"); and

WHEREAS, the parties hereto agree to amend Agreement as provided for herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree, as follows:

1. The section titled, "Assignment," shall be amended to read as follows:

Concessionaire may not assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the Parks and Recreation Director. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

2. The section titled "Operation and Maintenance", specifically section a., shall be amended to read as follows:

Ensure that the Concessionaire's employees, contractors, subcontractors, agents, representatives and volunteers and other persons providing services at the Park are screened at a High Level (Level I). The Concessionaire shall be responsible for, and pay the cost of, having background screening checks performed on all of the Concessionaire's employees, contractors, subcontractors, agents, representatives and volunteers.

The Concessionaire shall not allow any employees, contractors, subcontractors, agents, representatives or volunteers to work unsupervised with at risk populations prior to such person successfully completing a High Level (Level I) background screening. The Concessionaire shall be responsible for

providing all needed personal identifying information necessary to perform the background screening(s) required to the Department for review/approval and further action by the Director or designee.

The Director may deny the Concessionaire the ability to utilize a staff member, volunteer or any other person providing a service at the Park based on the results of the background screening, at the Director's discretion. The Director shall abide by Brevard County's policy, attached hereto as **Exhibit "A"** to the Agreement on background screening in determining if a person shall be disqualified from working/volunteering at the Complex.

Upon completion of the initial background screening, a re-screening at the same Level will occur at a minimum of every five (5) years.

High Level (Level 1) Background screening includes the following:

- Clerk E-Facts – www.brevardclerk.us
- Fingerprinting (FDLE and National FBI Criminal check through VECHS)
- Department of Juvenile Justice check on individuals under the age of 18 when applicable and allowed in lieu of fingerprinting
- National Sex Offender Public Website – www.nsopw.gov
- Reference Checks
- Prior employment check
- Education/Licensing verification (case-by-case)
- Driver's license check (case-by-case)
- Drug Testing (case-by-case)

3. The section titled "Accounting Procedures and Reports", shall be amended to read as follows:

Right to Audit Records.

All sales shall be registered on a cash register. Daily cash register tapes shall be dated and kept as a permanent record. The cash register shall be the responsibility of the Concessionaire. The County shall inspect and approve the cash register for accountability purposes. Concessionaire shall cooperate with and provide the County, or its duly authorized representative, with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.

In the performance of this Agreement, the Concessionaire shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Concessionaire in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County. The Concessionaire shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and chapter 119, Florida Statutes. All records or documents created by or provided to the Concessionaire by the County in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County.

The County and its auditors shall be entitled to audit the books and records of the Concessionaire to the extent that such books and records relate to the performance of this Agreement. If accounting discrepancies are found, the cost of any such audit shall be borne by the Concessionaire.

The Concessionaire shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if the Instructor does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Agreement, the Concessionaire may transfer, at no cost to the County, all public records in possession of the Concessionaire. If the Concessionaire transfers all public records to the County upon termination of the Agreement, the Instructor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

4. The section titled "Audit", shall be amended to read as follows:

Florida Public Records Law. Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Concessionaire of the request and the Contractor must provide the records to the county or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so the County can comply with the requirements of Sections 119.07. The Concessionaire may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County

Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the County's public records custodian designated bellows.

If the Concessionaire fails to provide the requested public records to the County within a reasonable time, the Concessionaire may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Sections 119.0701, 119.110. The Concessionaire's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination.


Should the County face any legal action to enforce inspection or production of the records within the Concessionaire's possession and control, the Concessionaire agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Concessionaire shall hire and compensate attorney(s) to represent the Concessionaire and County in defending such action. The Instructor shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12.

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 – Melissa Renninger at (321) 633-2046 or at melissa.renninger@brevardfl.gov.

5. All terms and conditions of the Agreement which is incorporated herein and reflected in **Exhibit A**, not inconsistent with the provisions of the Amendment to the Agreement, shall remain in full force and effect.

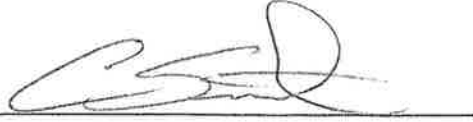
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first above written.

ATTEST:



Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 


Curt Smith, Chair

As approved by the Board on August 22, 2017.

WITNESS:

 (Bitcher)

MB DOGS, INC. D/B/A BILLIES

By:  Date: 8-30-2017

Bruce Black, President

Reviewed for Legal Form and Content



Assistant County Attorney

Exhibit A

AGREEMENT

THIS AGREEMENT made and entered into this 9th day of February, 2011, by and between MB DOGS, INC. d/b/a BILLIES, hereinafter referred to as "Concessionaire," and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision to the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the County operates a recreational complex known as Spessard Holland North Beach Park, hereinafter referred to as the "Park", for the purpose of providing beach access for the general public; and

WHEREAS, the County has negotiated with Concessionaire for the operation of a Food and Beverage concession located at Spessard Holland North Beach Park; and

WHEREAS, operation of said Concession will mutually benefit the parties and the residents of Brevard County, Florida; and

WHEREAS, the County may provide parks, preserves, recreation areas, and other recreational facilities pursuant to provisions of Section 125.01 (1) (f), Florida Statutes.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **TERM AND RENEWAL.** The Concessionaire is hereby authorized to operate a Food and Beverage Concession located at Spessard Holland North Beach Park, a public beach park, hereinafter referred to as "Concession", for the period of five (5) years, commencing upon the date the certificate of occupancy is issued for the Concession. The County shall have the option to renew this Agreement for two (2) additional terms of thirty-six (36) months each based on mutual agreement by the parties, upon request of the Concessionaire received ninety (90) days prior to termination of the current term. Additionally this Agreement may be renewed, under the terms described within, by the County Manager or designee if specifically delegated this authority by the Board of County Commissioners.

2. **PAYMENTS.** Concessionaire shall pay monthly payments to the Board of County Commissioners of Brevard County, Florida, on the first (1st) day of each month to the South Area Operations Manager as follows. Payment shall commence on day the certification of occupancy is issued, with the first month's rent prorated.

- a. There shall be two rental periods, adjusted seasonally. The months of April - October shall be defined as "Summer Season" and the months of November - March shall be defined as "Winter Season." The Concessionaire shall pay the County as follows:

Summer Season Rate: \$1,565/month Winter Season Rate: \$1,165/month

- b. The Concessionaire, in transmitting payments to the County hereunder, shall make all checks payable to Brevard County Board of County Commissioners, in care of South Area Parks Operations Manager, 1515 Sarno Road, Building B, 2nd Floor, Melbourne Florida 32935.

3. **ACCOUNTING PROCEDURES AND REPORTS.** All sales shall be registered on a cash register. Daily cash register tapes shall be dated and kept as a permanent record. The cash register shall be the responsibility of the Concessionaire. The County shall inspect and approve the cash register for accountability purposes. Concessionaire shall cooperate with and provide the County, or its duly authorized representative, with any additional information or reports

concerning its activities, income, revenues, expenses, and disbursements when so requested. The Concessionaire shall keep and maintain accurate books of account for this operation, in compliance with current general accounting standards.

4. **AUDIT.** Daily cash register receipts and books of account shall be available for inspection by the Parks and Recreation Director, or his designee, upon request with three (3) days notice. All transactions of the Concessionaire shall be subject to audit at any time. The County and its auditors shall be entitled to audit the books and records of the Concessionaire to the extent that such books and records relate to the performance of this Agreement. The Concessionaire shall maintain such records and accounts, including property, personnel, and financial records, as are deemed necessary by the County and its auditors to insure proper accounting for all funds. Said records shall be made available, upon request, for audit purposes to Brevard County and its auditors. Such books and records shall be maintained by the Concessionaire for a period of three (3) years from the date of final payment under this Agreement, unless a shorter period is otherwise authorized in writing. If accounting discrepancies are found, the cost of any such audit shall be borne by the Concessionaire. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provision of the Florida Public Records Act, Chapter 119, Florida Statutes. Sales tax reports made to the State of Florida will be provided to the County as prepared upon request.

All records or documents created by Concessionaire, or provided to Concessionaire by the County in connection with the activities or services provided by Concessionaire under the terms of this Agreement are public records and Concessionaire agrees to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

5. **COPYRIGHT.** No reports, data, programs or other material produced, in whole or in part for the benefit and use of the County, under this Agreement, shall be subject to copyright by Concessionaire in the United States or any other Country.

6. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

7. **OPERATION AND MAINTENANCE.** Concessionaire shall furnish the following merchandise and services at Spessard Holland North Beach Park for the needs and convenience of the public.

The Concessionaire shall:

- a. Hire personnel of high moral character who are personable and who meet the criteria of Department of Health for personal hygiene and practices as related to food handling. Concession staff shall maintain good public relations as relates to a family-oriented atmosphere for the public, Brevard County and the Concessionaire. The highest level of customer relations shall be in effect. The Concessionaire and all employees will be subject to a Level III Background Check, at the Concessionaire's expense, per Brevard County AO-26 "Background Investigation Checks", Attachment "A" attached hereto and made a part hereof by this reference, and Brevard County Parks and Recreation Procedure PRD-4, Attachment "B", attached hereto and made a part hereof by this reference. A copy of background investigation checks shall be provided to the South Area Parks Operations Manager.

- b. Keep buildings and immediate premises clean and orderly in accordance with the State of Florida Department of Business and Professional Regulation, the County Health Department and any applicable laws or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions maintained on the premises. Environmental Health inspections/reviews may be conducted.
- c. Provide all janitorial services and maintenance to the interior and exterior of the Concession, including rest rooms.
- d. Provide and adequately offer the public a satisfactory Concession operation consistent with good food and beverage business practices and management. The Concessionaire shall maintain a level of public relations and customer service that promotes a highly favorable atmosphere and respond to all customer complaints received by the Concessionaire, and/or the County.
- e. Keep the Concessionaire service and seating area, tables, chairs, counters, and floors, stain free and provide continuous removal of debris, rubbish or litter. All aspects of cleanliness in the Concessionaire's area of operations including food preparation, tables, chairs, walls, floors, and removal of all debris. There shall be full compliance with the State of Florida Department of Business and Professional Regulation, County Health Department and other applicable laws or ordinances. Final determination in this matter shall rest with the County.
- f. Keep all advertisements in the Concession area in good taste commensurate with acceptable family-oriented environments. Advertising, such as business cards and signs, of other businesses not related to the park Concession operation is prohibited.
- g. Explore various means of marketing with creative menu items, specials and promotions. The Concessionaire shall offer pre-prepared sandwiches and quick-prep food items that can be picked up by the public.
- h. Maintain a sufficient inventory of all menu items sufficient to satisfy the demands and needs of the public.
- i. Insure that the South Area Operations Manager is provided a current menu schedule documenting all fees and charges. All fees and charges shall be competitive in nature and will not exceed the average retail prices of the same or comparable items charged by commercial establishments within Brevard County, Florida, as determined in the sole discretion of the County.
- j. Secure and maintain all licenses and/or permits required and pay when due all taxes and assessments which may be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of this Agreement and to otherwise comply with all applicable laws, ordinances, rules, fire codes, regulations or policies established by the County or any local, state, or federal governmental unit or authority. Concessionaire shall provide written evidence to the South Area Operations Manager of current satisfactory health inspections at all times.
- k. Maintain a "Non-Smoking" policy within the service and seating areas.

- l. Cooperate fully with County officials in all matters relating to the Concession, the public, and the Park operations.
- m. The payment or repairs of all natural gas or equipment used in the operation of the services shall be provided by the Concessionaire, including the cost of natural or propane gas used for the operation of food service.
- n. Pay all utilities, including electrical, water and sewer services, for the Concession operation.
- o. Provide all electrical and plumbing associated with the Concession operation. Concessionaire will adhere to any and all electrical conservation policies established by the County. Telephone and internet are the Concessionaire's responsibility.
- p. Provide the security of the Concession area; all security and fire alarm monitoring; and Ansul inspections as required by the Fire Inspector.
- q. Provide appropriate trash containers for use in conjunction with the operation of the concession. The Concessionaire shall ensure that all trash and garbage is placed in the dumpster, and that the area around the dumpster does not become littered with the trash or garbage generated by the Concession's operations. Trash containers located in view of the public shall be kept clean and stain free.
- r. Install and maintain at its expense all required equipment, including refrigeration equipment, stoves, grills, deep fat fryers, microwave ovens, sinks (if applicable), garbage disposals, ice machines, and associated food and beverage preparation equipment as needed to operate this facility, including customer seating and tables. This is to include any required safety or fire prevention equipment necessary for proper operation. Where the facility is not ventilated to handle or accommodate deep fat fryers, it is the responsibility of the Concessionaire to provide for such ventilation.

Within thirty (30) days after execution of this Agreement, the South Area Operations Manager and Concessionaire shall agree upon an itemized list of fixtures, equipment, etc. to be located in the Concession area. The list will indicate which such items remain the property of the County and which such items may be removed by the Concessionaire at the end or termination of the agreement in accordance with the terms of paragraph 13. Prior to any items being added by the Concessionaire, the Concessionaire shall obtain the approval of the South Area Operations Manager, and the parties shall amend said itemized list. The South Area Operations Manager has the authority, in the interest of fairness, to allow the Concessionaire to remove items on the original or amended property list, which items are designated as the County's property. In the event the Concessionaire terminates or breaches the Agreement prior to its expiration date the Concessionaire shall be responsible for all costs incurred by the Concessionaire and the County as a result of that early termination or breach.

- s. Subject to the discretion of the South Area Operations Manager, the Concessionaire will operate pursuant to the following hours of operations: Winter Season – open 6:30 A.M., close 5:30 P.M. Summer Season – open 6:30 A.M., close 6:30 P.M. This schedule of hours of operation shall be in the best interests of meeting the needs of the public. The Concessionaire may request changes of this schedule, subject to the approval of the South Area Operations Manager. The Concessionaire shall post the schedule at all times in full view of the public.

- t. Visit the site in the presence of the South Area Parks Operations Manager prior to execution of this Agreement in order to become familiar with the facility.
- u. Accept major credit and debit cards (VISA, Master Card, etc). The Concessionaire shall pay all costs associated with these forms of payment.
- v. Provide a cash bond in the amount of ONE THOUSAND DOLLARS (\$1,000.00), to be conditioned upon the faithful performance of all the provisions herein set forth. The cash bond shall be posted with the County at time of execution of this Agreement.

8. **COUNTY OBLIGATIONS.** The County shall:

- a. Provide for water and sewer services connections, lines and the like for the Concession. The Concessionaire will be responsible for payment of all utilities in connection with the Concession operation.
- b. Take appropriate measures to minimize damage when severe weather or other dangerous conditions are expected. Provide maintenance of the exterior of the facility and normal building maintenance of the facility not associated with the Concession.
- c. Provide the Concessionaire with copies of "Compliments, Concerns, Evaluation Cards" submitted by customers.
- d. Change existing locks and provide two set of keys to the Concessionaire.

9. **IMPROVEMENTS.** The Concessionaire agrees that all requests for improvements will be submitted, in writing, for prior approval, to the South Area Operations Manager, the Brevard County Zoning Division and if necessary, the Brevard County Community Health Service Division, or any other governmental agency whose approval is needed. Concessionaire agrees that any and all improvements once approved, will be at the expense of Concessionaire.

It is hereby mutually agreed and understood that all fixtures permanently attached to the rental property hereto shall likewise become and remain the property of the County. At the time that the County approves the improvements, the County and the Concessionaire shall agree as to whether the improvements are fixtures, which shall remain the County's property at the end of this Agreement, or any extension of it.

The Concessionaire shall ensure that any contractor which the Concessionaire may hire to perform any construction, renovation, or repairs to the facility, shall not be entitled to file any liens, mechanic's or otherwise, against the facility involved or any County property to secure the contractor's interests or payments. Any contract which the Concessionaire signs or executes with a contractor shall include a provision which requires the contractor to waive the right to file any such liens against County property and a provision which requires the contractor to include the same waiver by any subcontractor which the contractor may hire in an agreement/contract the contractor executes with the subcontractor.

10. **INDEMNIFICATION AND INSURANCE.** The Concessionaire shall indemnify and hold harmless the County from any and all liability claims, damages, losses, expenses, (including attorney's fees), proceedings, and causes of action of every kind and nature, arising out of or in connection with the use, occupation, management, or control of the Concession, or any

improvements thereon, or the furniture, furnishings, equipment and fixtures used in connection with the Concession. The Concessionaire shall, at its own expense, defend any and all actions, suits, or proceedings, which may be brought against the County in connection with the Concession. The Concessionaire shall satisfy, pay and discharge any and all judgments that may be entered against the County in any such action or proceeding. The parties agree that specific consideration has been paid for this hold harmless/indemnification agreement.

The Concessionaire shall provide and maintain at all times during the term of this Agreement, without cost or expense to the County, general liability insurance insuring the County against any and all claims, demands, or causes of action for injuries received or damage to property relating to use, occupation, management or control of the Concession or improvement thereon in the amount of One Millions Dollars (\$1,000,000) per accident for bodily injury, One Million Dollars (\$1,000,000) product liability, One Million Dollars (\$1,000,000) property damage, and Two-Hundred Thousand Dollars (\$200,000) fire damage liability. Said insurance policies shall provide that the County shall be entitled to thirty (30) days prior written notice of any changes or cancellation in such policies.

The Concessionaire shall notify the County immediately, in writing, of any potentially hazardous condition existing on or about the Concession building.

A certificate of insurance indicating that the Concessionaire has coverage in accordance with the requirements of this Agreement shall be furnished by the Concessionaire to the South Area Operations Manager within ten (10) days from the date of the execution of this Agreement. The certificate shall name Brevard County as an additional insured.

All personal property housed or placed at the complex shall be at the risk of the Concessionaire, and the County shall not be liable for any loss or damage to the Concessionaire's personal property located therein for any cause whatsoever. Concessionaire agrees and understands that the County does not and shall not carry liability, theft, or fire insurance on the operation of this facility to cover the Concessionaire's interest.

The Concessionaire shall provide and maintain all required worker's compensation insurance pursuant to the provisions of Chapter 440, Florida Statutes.

These insurance requirements shall not relieve or limit the liability of the Concessionaire. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Concessionaire's interests or liabilities, but are merely minimums.

11. **ASSIGNMENT.** Concessionaire, its assigns, or representative, shall not enter into any agreements with third parties to delegate any or all of the responsibilities or rights herein set forth without prior written approval of the South Area Operations Manager. Continuation of this Agreement is contingent on the continued management of the Concession by the named party. The County may terminate this Agreement, in its sole discretion, if there is a change in principal(s) of the corporation.

12. **INDEPENDENT CONTRACTOR.** The Concessionaire shall perform the conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship of status. Nothing in this Agreement shall be, in any way, construed to constitute the Concessionaire, or any of its agents or employees, as the agent, employee or representative of the County.

13. **TERMINATION.** This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. When it is determined to be in the best interest of the County, the Parks and Recreation Department Director or his designee on behalf of the County, may terminate this Agreement upon written notice thereof being delivered by the Parks and Recreation Department Director, or his designee, to the Concessionaire. Upon termination of this Agreement, the Concessionaire shall have fifteen (15) days within which to remove his/her personal property from the Park. Any personal property not removed within said fifteen (15) day period shall become the property of the County.

14. **ATTORNEY'S FEES.** In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

15. **VENUE.** Venue for any legal action brought by any party to this Agreement to interpret, construe, or otherwise enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

16. **FORCE MAJEURE.** Neither party shall be responsible for damages or delays in performance caused by acts of God, strikes, lockouts or other events constituting force majeure beyond the reasonable control of the parties.

17. **GOVERNING LAW.** This Agreement shall be deemed to have been executed and entered into within the State of Florida, and this Agreement and any dispute arising hereunder, shall be governed, interpreted, and construed according to the laws of the State of Florida.

18. **NOTICE.** Notice under this Agreement shall be given to the County by certified mail or hand delivery to the:

South Area Operations Manager
Brevard County Parks and Recreation
1515 Sarno Road B-2
Melbourne, Florida 32935

and notice shall be given to Concessionaire by certified mail or hand delivery to:

Bruce Black
405 Avenue A
Melbourne Beach, Florida 32951

19. **UNAUTHORIZED ALIEN WORKERS.** Brevard County will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. § 1324a(e) [§ 274A(e) of the Immigration and Nationality Act "INA"]. The County shall consider the employment by the Concessionaire of unauthorized aliens a violation of § 274A (e) of the INA. Such violation by the Concessionaire of the employment provisions contained in § 274A (e) of the INA shall be grounds for unilateral cancellation of this Agreement by the County.

20. **PUBLIC ENTITY CRIMES.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor,


20. **PUBLIC ENTITY CRIMES.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

21. **MODIFICATION.** This Agreement embodies the entire agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with reference to the subject hereof that are not contained herein. No modification of this Agreement shall be binding unless reduced to writing and signed by both parties.

22. **PAYMENT ADJUSTMENTS.** The Parks and Recreation Director may, for a period not to exceed six (6) months, negotiate a reduction in the monthly payment amounts due to the County when in his or her opinion unforeseen circumstances including major equipment breakdowns, and acts of Nature, warrant said reduction.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:


Mitch Needelman, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Robin L. Fisher
Chairman

Brevard County Commission

As Approved by Brevard County Commission: 10/12/10

Reviewed for legal form and content:


Assistant County Attorney

WITNESS:



MB DOGS, INC. d/b/a BILLIES

By: 

Bruce Black, Owner

Date: JAN 28, 2011

ADMINISTRATIVE ORDER

TITLE: Background Investigation
Checks

NUMBER: AO - 26

CANCELS: August 4 2010

APPROVED: April 24, 2012

ORIGINATOR: Human Resources

REVIEW: April 24, 2015

I. PURPOSE AND SCOPE

To establish a consistent, county-wide procedure for conducting background investigation checks.

II. DEFINITIONS AND REFERENCES

- A. Applicant – An external applicant or volunteer being considered for a position or a current employee being considered for a position with a higher security level as the result of a promotion, transfer or demotion.
- B. At-Risk Population – Children, elderly, disabled, and those whom can not defend themselves. Example of settings in which individuals come into contact with at-risk populations include, but are not limited to:
 - Daycare: senior citizen centers and community day programs for children.
 - Group Home: placements for children under the care of the State as a result of abuse or neglect or as a consequence of delinquency.
 - Program activities involving children on school property.
 - Shelters: homeless, domestic violence or special needs emergency shelters.
 - Youth development programs.
 - Volunteer programs for the elderly or individuals with disabilities; such as, Meals on Wheels or other community/volunteer programs.
 - Library areas/programs designated for children.
 - Park areas/programs designated for children.
- C. Background Investigation Handbook – a handbook with detailed information about how to complete and interpret the background checks.
- D. Background Checklist – a form used to track the results of the background checks performed by the Department/Office.

AO-26: Background Investigation Checks

- E. Conviction – defined as a law violation where there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

NOTE: A "yes" answer to the question of law violation on the application will not automatically bar the applicant from employment. The nature, job-relatedness, severity and date of the offense in relation to the position for which they are applying will be considered.

- F. Recertification – Frequency which each Department/Office reinvestigates each employee's or volunteer's criminal history.

- G. **SECURITY LEVELS:**

High Level (Level I) – Applies to an employee or volunteer who has unsupervised access and/or contact with individuals identified as being in the at-risk population.

Moderate Level (Level II) – Applies to an employee or volunteer who has supervised access and/or contact with individuals identified as being in the at-risk population.

Low Level (Level III) – All other employees or volunteers who do not fit into the High or Moderate security levels.

- H. VECHS – an acronym for the Volunteer & Employee Criminal History System at the Florida Department of Law Enforcement (FDLE). The VECHS program agreement allows Brevard County to submit state and national checks for employees and volunteers, as needed.
- I. F.S. 112.011 – Felon; removal of disqualifications for employment, exceptions.
- J. F.S. 943.04351 – Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

III. RESPONSIBILITIES

- A. Each Department/Office Director shall establish a background investigation check procedure which ensures that the guidelines in this Administrative Order are met.
- B. Each Department/Office will utilize the guidelines in this Administrative Order or will adhere to statutory/contractual requirements, whichever is more stringent.

AO-26: Background Investigation Checks

- C. Each Department/Office shall be responsible for verifying that each applicant meets the requirements for the job, including educational and/or licensing verification, driver's license check.
- D. Each Department/Office shall be responsible for checking and documenting a total of three (3) of the applicant's employment and/or personal references. Document if the applicant has insufficient work history (i.e.; a student with no experience or someone returning to the workforce after a long absence) or is a volunteer. Due diligence must be used in obtaining these references, but if no response is received, documentation should be made of what efforts were made. Reference checks are not mandatory for those temporary employees hired on a seasonal basis.

The Background Investigation Handbook has detailed instructions and reference forms to be used in checking these references.

- E. Each Department/Office shall perform the required minimum criminal background investigation checks at the appropriate security level for applicants under final consideration and document the results on the Background Checklist, which shall be provided to the Office of Human Resources with the background documents.

1. High-Level Security Check (Level I):

- Fingerprints - submit fingerprints to FDLE under the VECHS agreement using digital fingerprint machine or using the fingerprint card provided for FDLE and National FBI criminal investigation check.
- Brevard County Clerk E-Facts – www.brevardclerk.us.

2. Moderate-Level Security Check (Level II):

- FDLE – <https://web.fdle.state.fl.us/search/app/default>
- Brevard County Clerk E-Facts – www.brevardclerk.us.
- National Sex Offender Public Website - www.nsopw.gov
- Out-of-State criminal checks based on past seven (7) years address history (on-line checks may be done, if available), or alternatively a national background check.

3. Low-Level Security Check (Level III):

- Brevard County Clerk E-Facts – www.brevardclerk.us.
- National Sex Offender Public Website - www.nsopw.gov
- Florida Department of Corrections – www.dc.state.fl.us.
- Out-of-Area criminal checks based on past two (2) years address history (on-line checks may be done, if available).

AO-26: Background Investigation Checks

- F. Applicants under final consideration for positions classified as high security level shall be subject to the following guidelines for criminal background checks.

Consistent with F.S. 112.011, a person shall not be disqualified from employment by the County solely because of a prior conviction for a crime. However, a person may be denied employment by the County by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

- 1. A prior conviction of any of the following criminal offenses, if a felony or first degree misdemeanor, is considered to be directly related to any high level security position, regardless of when it occurred, and will disqualify an applicant from further consideration:**

- Child Abuse, Neglect or Abandonment
- Extortion
- Extreme Violence (Aggravated Assault/Aggravated Battery, Murder, Attempted Murder, Vehicular Homicide)
- False Imprisonment
- Hate Crime
- Indecent Exposure if Sexual in Nature
- Kidnapping
- Manslaughter
- Child Pornography
- Illegal Possession of Guns or Weapons
- Robbery
- Sale of Controlled Substance
- Sexual Offense (Lewd and Lascivious – Sexual Battery)
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

- 2. A prior conviction of any of the following criminal offenses, if a felony or first degree misdemeanor, is considered to be directly related to a high security level position if it occurred within five (5) years of the date of the background check, and will disqualify an applicant from further consideration:**

- Battery/Assault
- Domestic Violence
- Misdemeanor Drug and/or Paraphernalia
- Resisting Arrest with Violence
- Sale of Alcohol or Tobacco to a Minor
- Contributing to the Delinquency of a Minor

AO-26: Background Investigation Checks

- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

A prior conviction of one of the above criminal offenses, if a felony or first degree misdemeanor, that occurred beyond five (5) years of the date of the background check, shall be carefully reviewed by the appointing authority on a case-by-case basis to determine if it is directly related to a high security level position and the applicant is disqualified from further consideration.

- 3. A prior conviction for any of the following criminal offenses, if a felony or a first degree misdemeanor, shall be carefully reviewed by the appointing authority on a case-by-case basis to determine if it is directly related to a high security level position and if the applicant is disqualified from further consideration:**

- Disorderly Conduct/Trespassing
- Driving While Under the Influence (DUI), one incident only (more than one must show proof of rehabilitation)
- Petty Theft
- Worthless Checks
- Other Crimes
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

- G. When determining whether a prior criminal conviction for any of the criminal offenses listed in Section F above are directly related to a high, moderate or low level security position, an appointing authority shall take the following factors into consideration:

- The classification of the crime as a felony or first degree misdemeanor.
- The relationship between the incident and the type of employment or service that the applicant will provide.
- The nature, severity, number, and consequences of the incidents disclosed.
- The amount of time elapsed since the incident(s) occurred.
- The applicant's efforts and success at rehabilitation.
- The age of the applicant at the time of the incident.

If there is any question about whether the criminal offense is directly related to the position, contact the County Attorney's Office.

- H. After the background investigation checks are satisfactorily completed, the Department/Office can initiate the request for the applicant to be hired to a paid position or coordinate a start date for a volunteer placement.

AO-26: Background Investigation Checks

IV. RESERVATION OF AUTHORITY

The authority to issue and/or revise this Administrative Order is reserved for the County Manager.


Howard Tipton
County Manager
Brevard County, Florida

4/24/12

CONSENT TO ASSIGNMENT

THIS AGREEMENT made and entered into this xx day of September, 2017 by and between **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as the "County," **MB DOGS, INC. D/B/A BILLIES**, (hereinafter referred to as "Assigner") and **THOMSON HOLDINGS ENTERPRISES, LLC** (hereinafter referred to as "Assignee").

WITNESSETH:

WHEREAS, Brevard County and Assigner hereto have previously entered into an Agreement on September 9, 2011, and;

WHEREAS, said Agreement was renewed on April 11, 2016, under Contract No. 1593 ("Agreement"); and

WHEREAS, said Agreement was Amended on August 22, 2017; and

WHEREAS, all parties hereto agree to Consent to Assignment as provided for herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree, as follows:

1. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.
2. Said Agreement and Amendment, which together are incorporated herein and reflected as Exhibit "A" shall be assigned to Thomson Holdings Enterprises, LLC.
3. Assignee agrees to be bound by and to assume and perform all duties and obligations required by the terms of the Agreement and any Amendments thereto.
4. All terms and conditions of said Agreement and Amendment shall remain in full force and effect.
5. **Venue**. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
6. **Attorney's Fees**. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

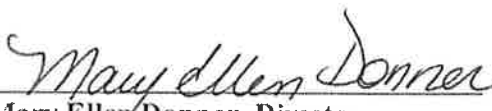
7. Governing Law. This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first above written.

THOMSON HOLDINGS
ENTERPRISES, LLC

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 
Derek Thomson, Manager

By: 
Mary Ellen Donner, Director
Parks and Recreation Department

Date: 10/13/17

Date: Oct. 23, 2017

WITNESS:

Rachel Merritt 10-13-17

MB DOGS, INC. D/B/A BILLIES

Reviewed for Legal Form and Content

By:  PRESIDENT
Bruce Black, President


Assistant County Attorney

Date: OCT. 13, 2017

WITNESS:

Rachel Merritt 10-13-17

AGREEMENT

THIS AGREEMENT, entered into this 1st day of February, 2017, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County," and ANTHONY and MARY SARGENTI, DBA PARADISE TREATS JMCA, LLC, hereinafter referred to as "Concessionaire".

WITNESSETH:

WHEREAS, the County is the owner, lessee or authorized administrator of certain real property located in Brevard County, Florida, commonly known as HOWARD E. FUTCH PARK, hereinafter referred to as "Park; and

WHEREAS, the Concessionaire desires to utilize certain facilities located at the Park for purposes hereinafter set forth; and

WHEREAS, the County may provide parks, preserves, playgrounds, recreation areas, and other recreation facilities and programs pursuant to Section 125.01(1)(f), Florida Statutes; and

WHEREAS, the County issued a request for proposals to provide concession services at the Park and the Concessionaire was the selected vendor; and

WHEREAS, operation of said concession will mutually benefit the parties hereto and the residents of Brevard County, Florida; and

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Terms: The Concessionaire is hereby authorized to operate a food concession to be located at HOWARD E. FUTCH PARK, herein referred to as "Concession", **from February 1, 2017 to February 1, 2018.**

2. Payments: Concessionaire shall pay to the County **\$1000 MONTHLY** for the term of this Agreement. Payments shall be due at the close of business by the 10th each applicable month. For the purposes of computing payments, cumulative gross receipts shall exclude local, state and federal sales tax. The payments will be made by business check and will be given directly to the South Area Operations Office located at 1515 Sarno Road, Building A, Melbourne, FL, 32935, on said day that the funds are due.

3. Accounting Procedure: Concessionaire shall maintain complete and accurate financial and performance records in accordance with good and accepted accounting procedures, which records shall be available for inspection upon request by the County or any duly authorized representative thereof. Concessionaire hereby agrees to maintain financial records and to adopt accounting procedures requested by the County. Concessionaire shall cooperate with and provide to the County or its duly authorized representative any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.

All transactions, activities and records of the Concessionaire shall be subject to audit at any time by the auditors of the County with the cost to be paid by the Concessionaire should such an audit reveal that the Concessionaire is in violation of such provisions. Such books and records shall be maintained by the Concessionaire for a period of three (3) years from the date of termination of this Agreement unless a shorter period is otherwise authorized in writing.

4. Use of Premises: Concessionaire shall operate the vendor concession, which concession shall be limited solely to the sale of menu items approved by the Brevard County Parks and

Recreation Director, or his designee. No other goods or services shall be offered or sold by the Concessionaire without the prior written approval of the Brevard County Parks and Recreation Director or his designee. It is specifically agreed and understood that the use herein set forth shall be the only use allowable under the Agreement and that any variance in such use shall require the written consent of the County.

5. Duties of Concessionaire: Concessionaire agrees as follows:

- a. To maintain an inventory sufficient to satisfy the demands and needs of the public.
- b. To secure and maintain all licenses required and to pay when due all taxes and assessments which shall be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of this Agreement and to otherwise comply with all applicable laws, ordinances, rules, regulations, or policies established by the County or local, state and federal governmental unit or authority.
- c. To provide service to the public in accordance with an approved operating schedule approved the Brevard County Parks and Recreation Director, or his designee, for the period of the year. Said schedule shall not be modified or altered without written approval of the Brevard County Parks and Recreation Director, or his designee. The cost of purchasing the food items shall be posted and in full view of the public.
- d. To maintain equipment in good working condition and appearance of equipment must meet standards that will not conflict with the overall decorum of the park.
- e. To establish rules regarding customer service if and when required, subject to approval of the Brevard County Parks and Recreation Director, or his designee.
- f. To maintain good public relations, to conduct said concession in a manner which is courteous and fair to the public and to be responsive to customer's requests and complaints.

g. To cooperate fully with County officials in all matters relating to the concession and the recreation complex of which they are a part.

6. Duties of the County: The County agrees as follows:

a. To furnish property for equipment as approved by the Brevard County Parks and Recreation Director, or his designee, for operation of concessions.

b. It shall be the duty of the Concessionaire to purchase and install any additional equipment required for operation of the concessions.

c. To provide adequate collection and disposal of garbage by a dumpster located on site.

d. To provide access to **HOWARD E. FUTCH PARK** facility during normal operating hours to the best of its ability, subject to the right of the County or any other governmental authority to temporarily restrict or deny access to said facility for the purpose of constructing, installing, operating or maintaining any public facility, including, but not limited to, public works and public utilities, or for the purpose of performing any other governmental function. The Brevard County Parks and Recreation Director, or his designee, shall administer the County's interest in said concessions.

7. Improvements: Concessionaire agrees that improvements made by him/her shall be at his/her expense and shall have the prior written approval of the Brevard County Parks and Recreation Director, or his designee, and all regulatory agencies where applicable.

8. Indemnification and Insurance: Brevard County shall be held harmless by Concessionaire against any and all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting there from, arising out of this Agreement, including, but not limited to, those claims arising in conjunction with use of the facility, improper, or defective maintenance, or installation unless such claims are a result of the County's sole negligence.

The Concessionaire agrees to indemnify the County and pay the cost of the County's legal defense, including fees of attorneys selected by the County and costs, for all claims described in hold harmless clause, herein. Such payment on behalf of the County shall be in addition to any all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.

It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this hold harmless provision.

The Concessionaire agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Concessionaire against any and all claims, demands, or clauses of action whatsoever for the injuries received and damage to property incurred in connection with the use, occupation and management or control of the property and any improvements thereon by Concessionaire. Such policies of insurance shall insure the Concessionaire in the amount not less than \$1,000,000.00 to cover any and all liability claims arising in connection with any particular accident or occurrence. Said Liability Policies shall provide that the County be an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. The Concessionaire shall notify the County immediately in writing of any potentially hazardous condition existing on or about the premises utilized conducting said program(s).

The Concessionaire shall provide the described insurance on policies and with insurers acceptable to the County and licensed and authorized under the laws of the State of Florida. These insurance requirements shall not relieve or limit the liability of the concessionaire. The

County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Concessionaire's interest or liabilities, but are merely minimums.

A certificate of insurance indicating that the Concessionaire has coverage in accordance with the requirements of the Agreement shall be furnished by the Concessionaire to the Brevard County Parks and Recreation, South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, Florida, 32935, prior to commencement of operations in the Park.

All personal property housed or placed at the County facilities shall be at the risk of Concessionaire, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Concessionaire agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Concessionaire's interest therein.

9. Covenants Against Assignment and Subletting: The Concessionaire, his/her successor or assigns, shall not assign any portion of the Agreement nor allow same to be assigned by operation of law without the express written approval of the County.

10. Independent Contractor: The Concessionaire shall perform the conditions of this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be in any way construed to constitute the Concessionaire or any of his agents or employees as the agent, employee, or representative of the County.

11. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. Upon termination of this Agreement, the Concessionaire shall have fifteen (15) days within which to remove any personal property. Any property not removed within said fifteen (15) day period shall become the property of the County.

12. Notice: Notice under this Agreement shall be given to the County by mailing written notice postage prepaid, to the South Area Parks Operations Manager, 1515 Sarno Road, Building A, Melbourne, Florida 32935, and notice shall be given to the Concessionaire by mailing written notice, postage prepaid, to Anthony and Mary Sargenti, DBA Paradise Treats, 735 N. Highway A1A, Unit 305, Indialantic, FL 32903, (609) 775-3836, asargenti@aol.com.
13. Attorney's Fees: In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
14. Unauthorized Alien Workers: Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions in 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act (INA)). The County shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be ground for unilateral cancellation of the Agreement by the County.
15. Governing Law: This Agreement shall be deemed to have been executed and entered into with the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
16. Venue: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
17. Public Entity Crimes: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime any not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity

for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) month from the date of being placed on the convicted vendor list.

18. Modification: No modification of this Agreement shall be binding on the County or the Concessionaire unless reduced to writing and signed by a duly authorized representative of the County and the Concessionaire.

19. Emergencies: In the case of a declared emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.


20. Renewal: It is hereby mutually agreed and understood that the Concessionaire may request **two (2) renewals of the Agreement for additional one (1) year terms upon written notice to the County received at least thirty (30) days prior to the date of termination of the current terms.** The Agreement may be renewed by the Brevard County Parks and Recreation Department Director, or his designee, at his discretion for two (2) additional one (1) year terms upon written notice thereof being delivered by the Director, or his designee, to the Concessionaire. After completion of each year of the Agreement, the monthly concessionaire lease fee may be subject to re-negotiation.

21. Right to Audit Records: In the performance of this Agreement, the Concessionaire shall keep books, records, and accounts of all activities, related to this Agreement, in compliance with

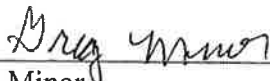
generally accepted accounting procedures. Books, records, and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by Concessionaire for a period of three (3) years after termination of the Agreement. All records, books, and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

Reviewed for legal form and content:

 1/11/17
Assistant County Attorney Date

BREVARD COUNTY PARKS AND
RECREATION DEPARTMENT

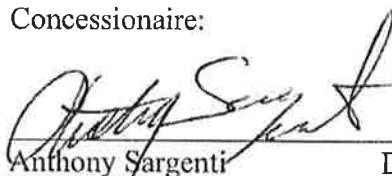

Greg Minor
South Area Operations Manager
Parks and Recreation
Date: 1/18/17

WITNESS:

Vanessa Bothausen 1-18-17

Rachel Manville 1-18-17

Concessionaire:

 1-18-17
Anthony Sargenti Date

 1-18-17
Mary Sargenti Date

BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board:

1. Contractor: Anthony & Mary Sargenti			
2. Fund/Account 1019/R30597		3. Division Name: Parks & Recreation Parks and Recreation South Area Operations	
4. Contractor Monitor: Rachel McNitt			6. Mail Stop #: 76
7. Dept/Office Director: Greg Minor, South Area Parks Operations Manager			8. Class Code: ZSEV
ACTION DATE: 10 days from entry		ACTION REQUIREMENT: Need signature approval.	

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<u>X</u>	<u> </u>	<u>GM</u>	3 Jan 2017
Risk Management	<u> </u>	<u> </u>	<u> </u>	<u> </u>
County Attorney	<u><i>AK</i></u>	<u> </u>	<u><i>MDS</i></u>	<u>1/14/17</u>

If any office denies approval, the package will be returned immediately to the User Agency.

WRITTEN NOTIFICATION OF CONTRACT RENEWAL

NOTICE is hereby given to Anthony and Mary Sargenti, dba Paradise Treats JMCA LLC, by the Board of County Commissioners of Brevard County, Florida, this 28 of January, 2016, that the Agreement previously entered into by and between Anthony and Mary Sargenti, dba Paradise Treats JMCA, LLC, and the Board of County Commissioners of Brevard County, Florida, under Contract No. 2390, Classification No. R-ZSEV, originally signed January 27, 2014, renewed on December 2, 2014, shall be renewed, pursuant to the notification provisions set forth therein, for an additional period of one year, until February 1, 2017, under the same terms and conditions otherwise expressed therein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

Reviewed for legal form and content:

[Signature] 1/25/16
Assistant County Attorney Date

EXECUTED ON BEHALF OF THE BOARD
OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

[Signature] 1/28/16
Greg Minor Date
South Area Operations Manager
for the Parks and Recreation Department

WITNESS:

Vanessa Bethausen 1/27/16

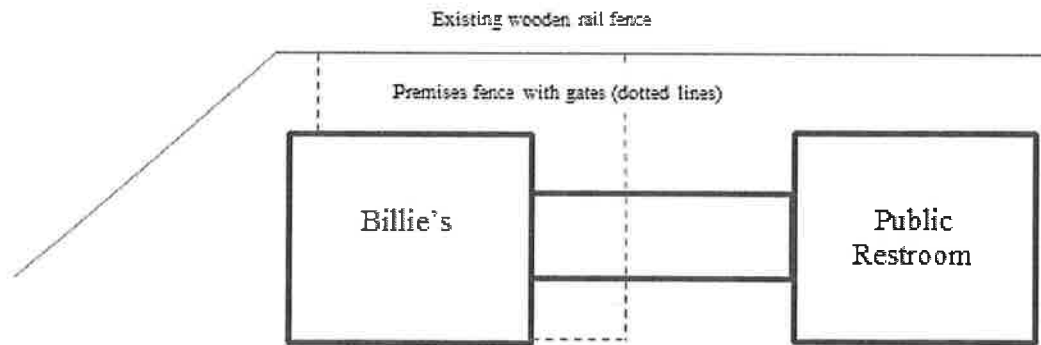
INSTRUCTOR:

Anthony Sargenti
Mary Sargenti
Anthony and Mary Sargenti, dba Paradise
Treats JMCA, LLC

Jan. 27, 2016
Date

Billie's at Spessard Holland North Beach Park

Diagram of Premises, Aerial photo and Street view photo







View of Trailer and (Fence)
to be installed.



BOARD OF COUNTY COMMISSIONERS

Parks and Recreation Administration

2725 Judge Fran Jamieson Way
Building B, Room 203
Viera, Florida 32940

STAFF REPORT

SUBJECT: Consideration for the sale of beer and wine at Billies and Paradise Treats

DATE: February 5, 2019

AUTHORS: Parks and Recreation Department

During Public Comment at the January 22, 2019, Board of County Commissioners meeting, Mr. Derek Thomson from Thompson Holdings Enterprises, LLC which operates the Billies food concession at Spessard Holland Park North and Mr. Anthony Sargenti, who operates Paradise Treats JMCA, LLC, the food concession located at Howard E. Futch Park, spoke and requested that they be allowed to sell beer and wine at their respective concessions.

Background:

BILLIES

On October 12, 2010, the Board of County Commissioners granted authorization to advertise and accept proposals from qualified concessionaires for the operation of a concession at Spessard Holland North Beach Park. On February 9, 2011, the County entered into a five (5) year agreement with MB DOGS, INC, doing business as BILLIES for the operation of the Spessard Holland North Beach Park concession stand. The Agreement allowed for two (2) additional terms of thirty-six (36) months. The Agreement was renewed on April 11, 2016, and is up for consideration of renewal for thirty-six (36) months in April, 2019.

On August 22, 2017, the Agreement was amended and included updated County requirements. On October 23, 2017, the County approved Consent to Assignment of MB Dogs, Inc. to Thompson Holdings Enterprises, LLC, as Bruce Black, president of MB Dogs, LLC retired and sold the business.

On December 20, 2018, a letter was received from Mr. Derek Thompson of Thompson Holdings Enterprises, LLC, requesting that his Agreement be amended to allow beer and wine to be sold at Billies. Mr. Thompson stated that there had been significant decreases in patronage and revenue since Hurricane Irma and more recently due to Red Tide. Mr. Thompson stated that he is struggling to make his monthly rent payments to the County and the sale of beer and wine will increase business.



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PARADISE TREATS

In January, 2014, the Parks and Recreation department solicited bids from potential operators for the Howard E. Futch Park concession location. This was an informal solicitation as the potential value of the agreement was less than \$15,000. The County entered into a one (1) year Agreement with Anthony and Mary Sargenti on January 27, 2014, and said Agreement provided for two (2) one-year renewals. The County subsequently entered into an Agreement with Anthony and Mary Sargenti on February 1, 2017. The contract had a provision for two (2) one-year renewals.

On December 18, 2018, a letter was received from Anthony Sargenti of Anthony and Mary Sargenti, DBA Paradise Treats JMCA, LLC, requesting a contract amendment to allow beer and wine to be sold at Paradise Treats. Mr. Sargenti stated that business has dropped over 20% in the last year and it is harder to pay rent and other overhead. Mr. Sargenti stated that in order to stay competitive and give the customers what they are asking for, he feels it necessary to add the beverage service.

Rent Adjustment:

Mid-October, 2018, Mr. Thompson, Billies, requested that, due to the negative impacts of Red Tide on his business, his rent be adjusted. Per section 22. Payment Adjustments of Mr. Thompson's Agreement:

"The Parks and Recreation Director may, for a period not to exceed six (6) months, negotiate a reduction in the monthly payment amounts due to the County when in his or her opinion unforeseen circumstances including major equipment breakdowns, and acts of Nature warrant said reduction".

A fifty percent (50%) rent reduction was granted for the month of October, 2018 due to Red Tide being in effect from October 17 – 31, 2018. A fifty percent (50%) rent reduction for November, 2018 was granted due to Red Tide being in effect November 1 – 15, 2018.

Mr. Sargenti, Paradise Treats, also requested a rent reduction be afforded his concession due to negative effects Red Tide effect on his business. A fifty percent (50%) rent reduction was granted to Mr. Sargenti for October and November, 2018.



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Options:

After reviewing the concessionaires' request and their Agreements, canvassing other local governmental entities to discern if they allow for the sale of beer and wine at their concessions, and consulting with other Brevard County departments such as the County Attorney, Risk Management and Planning and Development, the following options are presented to the Board of County Commissioners for your consideration:

1. Do not allow for the sale of beer and wine at the concessions
2. Allow for the sale of beer and wine with no increase to the concessions monthly rent payment and amend the agreements with current County clauses and authorize the County Manager or designee, upon review and approval by the County Attorney Office and Risk Management, to execute all agreements
3. Allow for the sale of beer and wine with a to be negotiated increase to the concessions monthly rent payment and amend the agreements with current County clauses and authorize the County Manager or designee, upon review and approval by the County Attorney Office and Risk Management, to execute all agreements
4. Re-bid the concessions to include the sale of beer and wine

Pros and Cons:

PROS

Increase in income to the concessionaires

Potential increase in income to the County

The convenience of having patrons being able to purchase a glass of wine or beer at the beach

Concessionaires have experience in selling beer and wine

Additional patron use of the facilities

Rentals of adjacent pavilions potentially could increase

Concessionaire agreements could be updated with current County terms including a "No Styrofoam Use" clause



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CONS

Not consistent with the family atmosphere of parks

Potential for an increased risk of alcohol-related incidents

Potential for citizen complaints regarding the County allowing the sale of alcohol

Direct competition with local businesses

Setting a precedence for the potential sale of alcohol at other park venues

Requirement of enforcement of the alcohol regulations

Additional congestion at Billies around the "premises area" between the concession/bathroom areas

Potential for additional garbage to be generated

Loss of potential revenue to the County if beer and wine sales are not allowed without a negotiated increase in the monthly rent



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Comparables:

Staff canvassed other local areas that have concessions on City / County property and whether or not they are permitted to serve beer and wine. The results are outlined in the table below.

<u>City</u>	<u>Concessions</u>	<u>Beer/Wine sold at Concessions</u>
Melbourne	Yes	No
West Melbourne	No	No
Palm Bay	No	No
Melbourne Beach	No	No
Cape Canaveral	No	No
Indian Harbour Beach	No	No
Satellite Beach	No	No
Indialantic	No	No
Titusville	Yes	Yes - City Marina
Rockledge	Yes	No
Cocoa Beach	Yes	No
Cocoa	No	No
<u>County</u>		
Brevard County	Yes	Yes - Pier 220
Orange County	Yes	No
Volusia County	Yes - concessions at coastal areas	No
Indian River County	No	No