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RESOLUTION NO. 2012-22

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PARKS & RECREATION; ACCEPTING THE RECOMMENDATION OF THE VILLAGE MANAGER IN APPROVING THE CONTRACT WITH SILVA MANAGEMENT OF MIAMI, INC., DBA JUNIOR'S CATERING OF MIAMI, TO PROVIDE CONCESSION SERVICES AT VILLAGE PARKS PURSUANT TO BID NO. 2011-PR-005; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE GOVERNING AGREEMENT PURSUANT TO RECOMMENDED AWARD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay parks are teaming with activities and ever-increasing attendance, and are in need of concession services to accommodate the many park patrons; and,

WHEREAS, pursuant to RFP 2011-PR-005, the Village expressed it's intent and purpose to secure a qualified firm(s) to manage, maintain and operate concession facilities at Village parks; and,

WHEREAS, Silva Management of Miami, Inc.; DBA Junior's Catering of Miami, was determined to be the most responsive and qualified firm; and,

WHEREAS, Junior Silva, on behalf of Silva Management of Miami, Inc., entered into an open discussion with Village staff for the purpose of negotiating a governing contract, as directed by the Village Council pursuant to Resolution 2012-18; and,

WHEREAS, the proposed contract for services is for an initial three (3) year period, and contains options for up to two (2) additional one year extensions; and

WHEREAS, said contract is now being presented before the Mayor and Village Council for final approval; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

1
2 **Section 1.** The Village Council hereby approves the selection of Silva Management of
3 Miami, Inc.; DBA Junior's Catering of Miami, to manage, maintain and operate concession services
4 at three designated Village park facilities pursuant to Bid No. 201-PR-005 and as negotiated by the
5 Village staff.
6

7 **Section 2.** The contract between the Village of Palmetto Bay and Silva Management of
8 Miami, Inc., providing for an initial three (3) year term and options for two (2) additional one-year
9 extensions and attached hereto as Exhibit A, is hereby approved.
10

11 **Section 3.** This resolution shall take effect immediately upon adoption.
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14 PASSED and ADOPTED this 12th day of March, 2012.

15
16
17 Attest: 
18 Meighan J. Alexander
19 Village Clerk
20
21


22 Shelley Stanczyk
23 Mayor
24

25 APPROVED AS TO FORM:
26

27 
28 Eve A. Boutsis,
29 FIGUEREDO & BOUTSIS, P.A., as Office
30 of the Village Attorney
31
32

33 FINAL VOTE AT ADOPTION:
34

35 Council Member Patrick Fiore Yes

36 Council Member Howard Tendrich Yes

37 Council Member Joan Lindsay Yes

38 Vice-Mayor Brian W. Pariser Yes

39 Mayor Shelley Stanczyk Yes
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AGREEMENT BETWEEN
THE VILLAGE OF PALMETTO BAY
AND SILVA MANAGEMENT OF MIAMI, INC.
FOR THE OPERATION OF CONCESSION FACILITIES AT VILLAGE PARKS

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the Village of Palmetto Bay, a Florida municipal corporation (the "Village"), and Silva Management of Miami, Inc. DBA Junior's Catering ("Contractor").

RECITALS

1. The Village has under its control permanent concession facilities (the "Concessions") in Village Parks.
2. The Village desires to utilize the Contractor to operate and manage the Concessions to sell food and nonalcoholic beverages at times specified herein, and the Village agrees to permit the Contractor to use the Concession for such purposes pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of \$10.00, the mutual covenants and conditions contained herein, the receipt of which is acknowledged, the parties agree as follows:

1. **PURPOSE/AUTHORIZATION.** The purpose of this Agreement is to provide for the Village's retention of Contractor to manage and operate the permanent concession facilities at Coral Reef Park (ParkView Café) and Palmetto Bay Park (Homeplate Grill); and a vending unit at Ludovici Park, for the Village as described in Section 2 below.

2. **USE AND OBLIGATION**

(a) The Village grants to the Contractor the non-exclusive right to use the Concession as contemplated herein.

(b) The Contractor agrees to establish the following minimum operating hours.: 1) Coral Reef Park/Park View Café – Monday through Friday: 7-9am; with use of mobile units, and 3pm to sundown; Saturdays 9am-3pm (including mobile units); Sundays: Closed 2) Palmetto Bay Park/Homeplate Grill: Monday through Friday 4-10pm; Saturday's: 9am to 3pm; Sunday's: closed. Holidays and/or selected days school to be determined. Sunday hours shall be revisited within 60-90 days from start-up date. Ludovici Park- shall be serviced via vending machines with the offering of beverages and healthy products for consumption. The Contractor shall provide a list, or menu of proposed health products for consumption, which should include products without transfats, and low in processed sugar and low in fat content and my include fruit and nut bars, baked snakes, pretzels, light popcorn, granola bars, cereal bars, sugar free cookies, nuts, dried fruit, cheese and crackers, etc. . Without regards to the use of vending machines, units offering beverages and healthy foods shall be allowable at the Village Manager's discretion and in areas designated by the Village. The list or menu shall identify the sale items and prices for each item, which shall be reviewed and approved by the Village Manager. The Contractor shall at all times stock and display a reasonable supply of food and beverages sufficient to satisfy demand, at competitive prices comparable with the prices charged for food and beverages at other public parks in the area. All vending machines are to be maintained in good, working condition, and repaired within 48 hours of receiving notice of a malfunction. In order not to impose an undo economic hardship upon the Contractor, should specific days/times not be economically feasible for operating hours, the aforementioned hours of operation may be modified upon the mutual consent of both Village and Contractor. Likewise, should the specified hours of operation prove to be insufficient as determined by the Village, the current hours of operations may be modified upon the mutual consent of both Village and Contractor.

(c) The Contractor shall be permitted to enter the Concession up to two (2) hours before the designated start of operation on the days specified herein, and the Contractor shall vacant the Concession no later than the advertised park closing hour.

(d) The cooking and/or reheating of food shall be limited to existing and/or identified on-site equipment unless otherwise approved in advance by the Village. Proposers may identify such equipment and shall be required to submit a list of equipment for approval prior to installation and/or implementation. The use of gas and/or barbecue grills or similar equipment is prohibited, with the exception of 1) Palmetto Bay Park, in which the Contract shall be permitted to use a mobile flat grill cooking unit outside the Concession, and 2) during special events and/or activities at Coral Reef Park and Ludovici Park as approved by the Village Manager and/or designee. The location of said unit must be approved by the Village Manager or designee, and shall be safely set up with protective barriers to prevent public access, and presentable in keeping with the existing/aesthetic park setting. Additionally, the Contractor is proposing periodic use of a mobile unit to service the park patrons. The mobile unit will be properly maintained and repaired within 48 hours of notice of any deficiency, damage, or malfunction. Use and operations of said mobile unit must be covered under Contractor's insurances and operators must possess a Florida Drivers License with a safe driving record. This mobile unit must be transported on and off the park premises with no permanent on-site storage; however, if available, the Village may opt at its sole discretion, to provide temporary daily or weekend storage during special activities and/or special events. All such mobile units shall be identified as the Coral Reef Park's ParkView Café; Palmetto Bay Park's Homeplate Grill, or Ludovici Park's Stageside Café. Contractor shall not sell or distribute any glass bottles or containers at any time. Other than the uses stated above, the concession may not be used by Contractor for any other purpose.

At the Palmetto Bay Park, located at 17535 SW 95th Avenue, Palmetto Bay, the Contractor may only serve Coca-Cola Brand products (including Coca Cola fruit drinks, sports drinks, soft drinks, energy drinks and water products), other than unbranded coffee, and fresh-brewed tea products, water drawn from public water supply or unbranded juice squeezed fresh. Contractor must also use "Approved Cups", meaning disposable cups approved by Coca Cola, from time to time, as its standard trademark cups and/or vessels and/or other (disposable and non-disposable) containers approved by Coca Cola. Contractor shall only advertise the "exclusive" soft drink for Palmetto Bay Park, Coca Cola. Coca Cola products may SOLELY be installed in the Coca-Cola marked refrigerators in the Palmetto Bay Park Concession Stands. Failure to comply with this condition shall result in immediate termination of this Agreement, for cause. Coca Cola products shall be prominently listed on any menu boards located at the Palmetto Bay Park Concession Facility. Contractor must purchase all Coca Cola Beverages for this specific facility, including all products, approved cups, lids, and carbon dioxide directly from the Village's Coca Cola Contractor, Coca-Cola Enterprises, Inc., d/b/a Florida Coca-Cola Bottling Company, a Delaware Corporation, 16569 SW 177th Avenue, Miami Florida 33177. Marketing of any competitor to Coca Cola Products at the Palmetto Bay Park shall be considered a material breach of this Agreement and shall result in termination of this Agreement, for cause. Contractor shall comply with the terms and conditions of the Village's Beverage Agreement, which Agreement is attached hereto as exhibit 1. Failure to do so shall result in a material breach of this Agreement, and shall be considered a "for cause" termination.

(e) Prior to the execution of this Agreement by the Village, Contractor agrees to provide to the Village a menu with a list of sale items and prices for each Concession to be approval by the Village Manager, or his designee. The Contractor shall at all times hereunder stock and display a reasonable supply of food and beverages sufficient to satisfy demand at competitive prices comparable with the prices charged for food and beverages at other public parks in the area.

(f) Pursuant to the annual payment as enumerated in the submittal RFP 2011-PR-005, as negotiated, the Contractor shall remit to the Village the following monetary compensation in accordance with established governmental accounting practices:

- 1) Coral Reef Park Park View Café - \$2,400 annually, paid in monthly installments of \$200 per month.
- 2) Palmetto Bay Park - \$3,000 annually, paid in monthly installments of \$250 per month.
- 3) Ludovici Park - \$0 annually, paid in monthly installments of \$0 payable one month.

In addition, the Contractor agrees to remit seven (7) percent of gross revenues once said gross sales reach \$100,000 annually for Coral Reef Park, Palmetto Bay Park and Ludovici Park, collectively. At the end of the first year of operations, the Contractor and Village shall revisit the Contractor's compensation to the Village;

and upon mutual consent of both parties (Contractor and Village Manager on behalf of the Village), shall adjust compensation accordingly.

The Contractor shall remit payments within fifteen (15) days following the preceding/billable month, to the Village and delivered to the address as described in Paragraph 15 of this Agreement. The Contractor, Subcontractors, suppliers and/or laborers are prohibited from placing a lien on Village's property, and the Contractor agrees to ensure this through contractual/procurement methods as legally allowable within the State of Florida.

(g) Prior to the execution of this Agreement by the Village Manager, the Contractor shall remit a security bond equivalent to three (3) months base payments identified above at subsection (f) to Village. The Contractor may opt to remit a cashier's check, or irrevocable letter of credit in an equivalent amount in lieu of a security bond. The Village shall retain said bond/cash for the term of the Agreement. The Bond will be used to cover any deficiencies as it relates to the payment provisions, including late fees, utilities and payments required herein. If any portion of the security bond or cashier's check is utilized by the Village to cure a deficiency, the successful Contractor shall, within 30 days, either replenish said funding or issue a new bond. Failure to do so may result in a "for cause termination" by the Village. This bond, letter of credit or cashier's check will be conditioned on the full and faithful performance of all covenants of this Agreement. The Village shall have the right of approval of the bond surety, which approval shall not be unreasonably withheld, in accordance with the then applicable Village criteria prior to the execution and delivery of the bond by Contractor. In the event that, for any reason, the Contractor's payment bond lapses or is held to be no longer valid or enforceable before the satisfaction of any and all claims, the Contractor shall pay all such claims, and indemnify, defend, and hold the Village harmless against such claims. In the event that the Contractor abandons performance or fails to perform as required, the Village will execute on the Bond, draw upon the irrevocable letter of credit or retain the cashier's check deposit, whichever is the case, and Contractor will be responsible for the balance of the debt, if any, that is owed. Additionally, if the Village must draw upon any portion of the form of security provided, Contractor hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the Village that the security was drawn upon.

(h) Late Payment Charge. Contractor agrees to promptly pay all amounts provided herein at Section 2, including but not limited to utility charges, and monthly payments under subsection 2(f), that accrue under this Agreement. Contractor acknowledges that Agreement to timely pay as provided herein is a material inducement for the Village to enter into this Agreement. If any monies remain unpaid for five (5) days after the same becomes due and payable, the Village will invoice and Contractor shall pay a late charge of 18% per annum of the payment overdue, computed on a per diem basis from the original due date until received by the Village. The right of the Village to require payment of such late payment charge and the obligation of the Contractor to pay same shall be in addition to and not in lieu of the rights of the Village to enforce other provisions herein, including termination of the Agreement, or to pursue other remedies provided by law.

(i) Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the payments identified at Subsection 2(f), and any associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.

(j) Worthless Check or Draft. In the event that the Contractor delivers a dishonored check or draft to the Village in payment of any obligation arising under this Agreement, the Contractor shall incur and pay a service charge of \$25.00 or five (5) percent of the face amount of the check, whichever is greater. For each such dishonored check, such payment to be made within not more than five (5) days from written notice of such default. Further, in such event, the Village may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Village. A second such occurrence of dishonored check(s) during the lease term will be a breach of contract, and at the Village's option, will constitute a default allowing termination.

(k) For the purpose of verifying the the payments required herein, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of the term of this Agreement, adequate books and records, including but not limited to those relating to inventories, purchases and receipts of merchandise, and all sales and other pertinent transactions by Contractor. Contractor shall record at the time of sale each receipt

from sales or other transactions, whether for cash or on credit, in one or more sealed cash register(s) showing cumulative total. Contractor shall keep, for at least three (3) years following each year end under the term of this Agreement, all pertinent original sales records, which records shall include (1) cash register tapes; (2) serially numbered sales slips; (3) settlement report sheets of transactions with any subtenants, concessionaires and licensees, if applicable; (4) income and sales tax returns; and (5) any other such records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Contractor's gross sales.

(l) No payment by Contractor or receipt by the Village of a lesser amount than any payment required under Section (2) herein stipulated shall be deemed to be other than on account of the earliest required payment, or additional payments then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. The Village may accept such check or payment without prejudice to the Village's rights to recover the balance of such payments or pursue any other remedy provided in this Agreement, at law or in equity.

(m) If Contractor remains in possession of the premises after the expiration of the term of this Agreement, or any option period, without a new agreement reduced to writing and duly executed and delivered (even if the Contractor shall have paid and Village shall have accepted, payment in respect to such holdover), Contractor shall be deemed to be occupying the premises only as a Contractor from month-to-month, subject to all covenants, conditions and agreements of this Agreement. If the Contractor fails to surrender the premises upon termination of this Agreement, then Contractor shall, in addition to any liabilities to the Village accruing therefore, indemnify and hold harmless the Village and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Contractor on such failure.

(n) With regards to use of vending machines, units offering beverages and healthy foods shall be allowable at Coral Reef Park within the concession building's enclosed breezeway area, as well as Ludovici Park within areas as designated by the Village. For Palmetto Bay Park, use of vending machines shall be at the Village Manager's discretion.

(o) Contractor agrees to provide the Village with copies of the total gross sales receipts, in addition to any and all such documents or statements ("records") identifying total concession stand revenues for the time periods of operation as specified herein. Said records shall be provided to the Village Manager, or his designee, on a monthly basis. A complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the Village is required on an annual basis at the Contractor's sole expense. Contractor shall make all such records available for said examination at the leased premises or at some other mutually agreeable location. If the result of such audit shall show that the Contractor's statement of gross sales for any period has been understated, Contractor shall pay the Village the amount due. Contractor shall be responsible to pay deficiency payments within ten (10) days of determination.

(p) The Contractor shall not permit any intoxicated person or persons to remain at the Concession or allow profane or indecent language, or improper, boisterous or loud conduct to take place in or about the Concessions.

(q) The Contractor shall at all times maintain a clean and safe environment and provide high quality service and while operating the Concessions. Any unsafe or potentially unsafe conditions should be immediately reported to the Village through the Village Manager, or his designee.

(r) The Contractor shall be responsible for inspecting the condition of the facilities and equipment in the Concessions every day prior to its use. Weekly inspection reports shall be made in writing and presented to the Village Manager or designee if requested.

(s) The Contractor shall, on each day of operation of the Concessions properly dispose of all litter and trash generated through its use of the Concessions upon the close of the operation day in the dumpster located at designated areas at each park facility. The Village will not have any responsibility for the disposal or removal of any litter or trash generated as a result of the Contractor operation of the Concessions. At all times (on-going throughout the day), the concessions, eating areas and common areas primarily used to service the

concession shall be kept clean and aesthetically pleasing by the Contractor. Said cleaning shall include periodic pressure cleaning and/or other methods deemed appropriate. If necessary, determination of acceptable levels of cleanliness shall be the sole discretion of the Village. Additionally, in the event the Village installs television units at the 'ParkView Café' or other concession sites under contract, with convenient daily removal and replacement methods, the Contractor shall assume responsibility to safely set up the televisions at the beginning of each day as a part of opening procedures, and the storing of same as a part of closing procedures. Regarding mobile units, Contractor must use protective material to prevent grease/damage to flooring surface.

The Contractor is responsible for utilities consumed and/or considered a part and/or beneficial or essential to concession operations. Where separate meters exist, i.e. the Coral Reef ParkView Café. Contractor shall assume responsibility. In that separate meters do not exist at Palmetto Bay and Ludovici Parks, the following pre-determine monthly assessment shall apply: Palmetto Bay Park - \$150. Other non-metered utility services shall be the direct responsibility of the Contractor for leased premises and/or operations under this Agreement.

(t) The Contractor agrees that he/she will be responsible for the installation, maintenance, repair and all costs associated therewith for any equipment that the Contractor desires to place into the Concessions, as may be permitted under this Agreement. The Village will have no responsibility for the cost of installation, maintenance, repair or any other costs related to any equipment placed into the Concession by the Contractor. The Village will have no responsibility to obtain any permits that may be required in connection with the installation, maintenance or repair of any equipment placed in the Concession. However, the Village reserves the right to disapprove any such installation deemed to negatively affect the overall structural integrity, facility warranties and/or aesthetics of the facility; and shall have sole discretion with regards to decisions made. The Village shall also determine and/or designate whether or not specific equipment/fixtures in question shall be deemed a 'fixed asset', and therefore not removable upon termination of this Agreement. With regards to Village-owned equipment, fixtures and amenities available for use by the Contractor, the Contractor agrees to exercise care and conduct maintenance programs normally accepted by the industry to effectuate a high-level of maintenance to safeguard usability, appearance, cleanliness and longevity of said equipment. Said maintenance program shall be submitted for approval of the Village Manager or designee. With regards to the vending unit to be utilized at Ludovici and Coral Reef Parks, as well as the mobile units at Coral Reef and/or Palmetto Bay Parks, the Contractor shall submit a photo and description of said unit for review and approval of the Village Manager. The Village assumes no responsibility for the security and safeguarding of said mobile unit, whether during operational periods or should it be stored overnight at the concession site. The Contractor and the Village shall mutually agree on the location of said mobile unit, and the Contractor further agrees to relocate the unit, as directed by the Village and as may be necessary to accommodate special events and/or activities held at the Edward and Arlene Feller Amphitheater

(u) The Contractor agrees that it will provide the necessary personnel to meet the needs of the residents and visitors who are utilizing the Concessions. The Contractor agrees that it will perform the FDLE background checks to screen employees, properly train and supervise all of its employees and ensure compliance with the Village's Drug Free Workplace policy. Upon the successful proposer being recommended by the Village Manager, authorized by the Village Council to negotiate a contract with the Village Manager and completion of negotiations agreed upon by Village Manager and Proposer; said successful proposer/Contractor shall obtain the required FDLE background check and medical screening prior to the Village Manager presentation to the Village Council for approval. The Contractor's employees shall be courteous and shall be neat and sanitary and not pose a health threat or risk to the public. Contractor employees will wear uniforms identifying themselves as Contractor employees and an ID badge while performing services under this Agreement; and shall have the ability to understand and communicate in spoken English.

(v) The Contractor shall not display or affix any signs on or about the Concession without first obtaining the advance written approval of the Village Manager or designee. With regards to the displaying of a menu, the Contractor shall be provided a portion of existing bulletin boards for this purpose. Modifications and accuracy of menu information shall be the responsibility of the contractor. Regarding overall maintenance responsibilities, and for clarification, the Village shall be responsible to maintain the roof, integrity of the block walls, power supply up to the electrical panel (unless greater capacity is required by the Contractor or damages occur as a result of Contractor's actions, then Contractor shall be responsible), integrity of concrete (sub) flooring, restrooms and restroom plumbing, and grounds maintenance beyond leased premises.

(w) The Contractor shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable to the Village, the Contractor, or the Concession. The Contractor, at the Contractor expense, shall be responsible for obtaining all required food licenses and permits relevant to the operation of the Concession. The Village agrees to effectuate reasonable building modifications as may be required for obtaining required licenses as may be necessary for operations of concessions in their current form and/or conditions. Any subsequent modifications as a result of future concession improvements shall be the responsibility of the Contractor.

(x) The Village may promulgate and enforce reasonable rules and regulations governing the use of the Concession by the Contractor, and the Contractor shall provide adequate supervision of the Concession at all times the Contractor is in control of the Concessions. Contractor shall adhere to all applicable Village policy, rules and regulations, codes and/or laws.

(y) The Village shall be responsible for the maintenance of certain structural components of the facility, including roofing, walls (other than concession interior drywall), major (in-wall) plumbing and electric, etc. Plumbing such as sinks, faucets, spigots, or electrical outlets, breakers, fuses and/or alteration or modification of plumbing or electric use as a part of the concession activities shall be the responsibility of the Contractor. Provided a result of normal use, the Village shall be responsible for repair of any on site televisions. Any existing warranties shall apply prior to Contractor assuming designated repairs and/or responsibilities.

(z) The Contractor shall be responsible for utilities (electric and gas) via separate meter at Coral Reef Park and a \$150 monthly amount at Palmetto Bay Park. No charges shall be assessed for use of the Villages on-site dumpster, where available. The Palmetto Bay Park utility cost shall be the subject of an annual COLA increase, and if ever separately metered, the utility for that concession area shall be modified to reflect the actual costs associated with the separately metered area. The Contractor shall assume responsibility of monthly alarm monitoring and repair/upkeep costs for each Concession. Where no alarm system exist, the Village shall be responsible for its installation and costs of same, and the Contractor will then assume monthly monitoring costs. Any annual certification of concession equipment (cooking, air-conditioning, etc) or safety equipment (i.e. hood systems, fire extinguishers, etc) shall be borne by the Contractor. Upkeep and maintenance of existing air-conditioning systems servicing concessions shall be the responsibility of the Contractor. Pest Control shall be required at the sole cost of the Contractor.

3. **Additional Services.** Contractor shall provide additional services to the Village as determined by the Village Manager or his designee and that are mutually agreeable by both parties.

4. **Term/Renewal.**

(a) **Term.** This Agreement shall become effective upon execution by both parties and shall continue through April ____, 2015, for a period of three (3) years, unless earlier terminated the provisions of this Agreement.

(b) The Village shall have the option to renew this Agreement upon the same terms and conditions for up to two (2) additional one (1) year extensions (the "Options"). The Options may be exercised at the sole discretion of the Village Manager. Such extension shall be effective upon written notice from the Village Manager to the Contractor no later than 30 days prior to the date of termination of the Term or any renewal term.

5. **Termination.**

(a) The Village Manager may terminate this Agreement at any time, with or without cause or reasons deemed to be in the best interest of the Village, at any one or all concession locations by giving the Contractor 30 calendar days' prior written notice. If the Village Manager discovers a problem with the Contractor's services, the Village Manager shall immediately provide notice to the Contractor and list all deficiencies in the

notice. The Contractor shall be provided seven (7) calendar days to correct the deficiencies or problems listed in the notice. If the Contractor does not correct the problem to the satisfaction of the Village Manager within the seven (7) calendar days, the Village Manager may elect to immediately terminate the Agreement. The Village Manager shall make the final decision on behalf of the Village as to the Contractor's compliance with the terms of the contract, quality of services, and termination. The Village and/or Village Manager shall have no liability to the Contractor for future profits or losses in the event of termination. The rights and remedies of the Village Manager provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(b) Should the Agreement be terminated for "no fault," or for the convenience of the Village the Village shall solely be responsible to pay the Contractor for a prorated monetary amount of investments for items and/or equipment deemed to be "fixed" without the opportunity for the Contractor to remove or offer for sale to others. For said items meeting this criteria the following formula shall apply given the short term initial leasehold of three years: and paying the Contractor for all time and expenses incurred up until that point where deemed the Contractor has not had the opportunity to recapture a prorated portion of the investment.

- i. If terminated during the first year, the Village shall pay the Contractor the total purchase value of all "fixed" items less 33%; e.g., the total purchase value of "fixed" items determined at \$12,000 – less 33%, or \$4,000; total payment due the Contractor from the Village = \$8,000.
- ii. If terminated during the second through third year of the contract, the Village shall pay the Contractor the total purchase value of "fixed" items less an amount equal to 3% per month; e.g., should termination occur after 20 months, and the total purchase value of "fixed" items is determined to be \$12,000; then 60%, or \$7,200 shall be deducted; with the total payment due the Contractor from the Village to be \$4,800.
- iii. The same percentage deductions, i.e., 33% for the first year and 3% per month for months 13-35, shall apply for terminations deemed to be the best interest of the Village. Such terminations shall include the applicable percentage payment to Contractor from the Village for purchase value of fixed items and other investment outlays by Contractor such as inventory, uniforms, training, maintenance contracts, etc as may be approved by the Village Managers.
- iv. The maximum payment to Contractor from the Village in the event of a termination shall be \$12,000 for Palmetto Bay Park, \$12,000 for the Park View Café at Coral Reef Park, and \$2,500 for Ludovici Park.

(c) Upon termination or expiration of this Agreement, Contractor may remove any of its property from the Concession except that which has become fixtures. The Village's property shall be left in a clean and as near to original condition as possible. If the Contractor property is not removed within 15 days of termination, the personal property shall be deemed abandoned and the Village may dispose of the items without any notice or liability to the Village.

(d) Upon termination or expiration of this Agreement, Contractor agrees to repaint the Concession in the same color and ensure that the condition of the premises has not materially deteriorated, above ordinary wear and tear.

6. **Designated Representative.** The Contractor shall appoint, in writing, at the time of the execution of this Agreement, a representative that shall be the sole and exclusive contact with the Village Manager, or his designee. The Village shall be responsible for securing the Concession.

7. **Insurance.**

(a) The Contractor shall furnish to the Village certificates of insurance evidencing the insurance coverages specified by this Section at the request of the Village Manager and required under the RFQ. The required certificates of insurance shall name the type of policy provided and shall list the Village as an additional insured, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

(b) The Contractor shall name the Village, and its respective officers, agents, servants and employees, as an additional insured on the Comprehensive General Liability Policy. This insurance policy shall state, after the above-referenced additional named insured that "this coverage is primary to all of the coverage the additional insured may have." Proof of insurance shall be provided at the time of the signing of this Agreement and incorporated herein as exists there forth in full.

(c) Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the Village's Risk Manager prior to the commencement of this Agreement. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide Village with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

(d) Any insurance required of Contractor pursuant to this Agreement must also be required by any sub-contractor of Contractor in the same limits and with all requirements as provided herein, including naming the Village as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Contractor and provided proof of such coverage is provided to Village. The Contractor/Proposer and any sub-contractor of Contractor shall maintain such policies during the term of this Agreement.

(d) Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Contractor shall furnish, at least thirty (30) 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 contract and extension there under is in effect.

(f) Contractor shall name the Village as an additional insured on each of the policies required herein, with the exception of the Contractor's Worker's Compensation policy.

(g) Throughout the term of this Agreement, the Contractor agrees to maintain in force at Contractor's own expense, insurance coverage as delineated below:

Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, products\completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability

A.	Bodily Injury/Property Damage	
1.	Each Occurrence	\$1,000,000
2.	Annual Aggregate	\$1,000,000
B.	Personal Injury	
1.	Annual Aggregate	\$1,000,000

Worker's Compensation Insurance shall be maintained during the life of this contract to comply with Florida statutory limits for all employees. The following limits must be maintained:

A.	Worker's Compensation	Statutory
B.	Employer's Liability	\$100,000 each accident \$500,000 Disease-policy limit \$100,000 Disease-employee

If Contractor claims to be exempt from this requirement, Contractor shall provide Village proof of such exemption along with a written request for Village to exempt Contractor, written on Contractor letterhead.

Comprehensive Auto Liability – coverage shall include owned, hired and non-owned vehicles.

A.	Bodily Injury and Property Damage combined single limit	
1.	Each Occurrence	\$1,000,000
2.	Annual Aggregate	\$1,000,000

8. **Damage/Restoration/Conditions.**

(a) In the event of any damage to the Concession by the Contractor or its agents, employees, volunteers or participants, (other than after hour vandalism to building exterior, patio, patio tables, railings and canopy) the Contractor shall be responsible for replacing the Concession or restoring the Concession to its condition prior to the use of the Concession by Contractor, as determined by the Village Manager.

(b) Village does not expressly or impliedly warrant the condition of any food service equipment. The Contractor waives the right to a claim for any damages Contractor, its agents, employees, volunteers, guests or invitees from any use of the Concession.

(c) Village shall not be liable for any loss, damage or injury of any kind or character, including vandalism and theft, to any person or property within the leased premises (i) caused by any defect in the Concession; (ii) caused by or arising from any act or omission of Contractor, or of any of its agents, employees, volunteers, guests or invitees; (iii) arising from any accident which may occur while Contractor is in control of the Concession; or (iv) arising from any other cause.

(d) The Contractor shall deliver the Concession to the Village in the same condition as it is received. No food shall be left in the Concession. All equipment shall be cleaned by the Contractor.

9. **Liability.** The Contractor hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the use of the Concession. Nothing in this Agreement will be construed to affect in any way the Village's rights, privileges, and immunities, including the monetary limitations of liability set forth in Section 768.28 of the Florida Statutes. The provisions of this Section will survive the termination or expiration of this Agreement.

10. **Indemnification.** The Contractor does hereby agree to defend, indemnify and hold the Village, its Council, Village Manager, agents, employees, attorneys, successors and assigns harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Contractor/Proposer, its agents, employees, volunteers, guests and invitees in connection with this Agreement. The provisions of this Section shall expressly survive any expiration or termination of this Agreement.

11. **Assignment.** The Contractor shall not assign, transfer, or otherwise dispose of this Agreement, or any portion thereof, or permit the Concession to be occupied by other organizations, entities or persons, or be subcontracted under this Agreement unless Contractor/Proposer obtains prior written consent from the Village. Approved Subcontractor shall be subject to each provision of this contract and Contractor shall be responsible and indemnify the Village for all Subcontractor' acts, errors or omissions. The Contractor shall not assign, transfer or pledge

any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village.

12. **Non-Discrimination.** In the operations of the Concession, Contractor, its employees, agents, volunteers, and any parties under the direction or control of Contractor may not discriminate against any person on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation by refusing to furnish to such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. In the performance of this Agreement, Contractor, its employees, agents, volunteers, and any parties under the control or direction of Contractor may not discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation.

13. **Records/Village's Right to Inspect.**

(a) Village has the right at all reasonable times to conduct whatever inspections of the Concession facilities the Village deems reasonably necessary to determine if Contractor is complying with the terms and conditions of this Agreement. Except for emergency situations, Village inspections will not hinder or interfere with the normal operation of the Concession.

(b) All records, books, documents, papers and financial information (the "Records") that result from Contractor operating and managing the Concession for the Village under this Agreement shall be the property of the Village. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

14. **Third Parties.** Neither the Contractor nor Village intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement.

15. **Notices.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

To Contractor/Proposers:

Mr. Junior Silva, President
Silva Management of Miami, Inc
7370 SW 48 Street
Miami, Florida 33155
786-413-6195
juniorcatering@aol.com

To Village:

Ron E. Williams, Village Manager
Village of Palmetto Bay
9705 E. Hibiscus Street
Palmetto Bay, Florida 33157

With a copy to:

Village Attorneys
Attention: Eve A. Boutsis, Esquire
18001 Old Cutler Road, Suite 533
Phone: (305) 235-9344
Facsimile: (305) 235-9372

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

16. **Supervision.** All Contractor activities relating to the Concession must be supervised/staffed by no less than one (1) adult at all times, excluding Ludovici Park, whereby one non-adult may solely operate the concession.

17. **Entire Agreement/Modification/Amendment.**

a. This Agreement sets forth the entire Agreement between Village and Contractor with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

b. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed with the same formality as this document.

18. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the Agreement between the parties.

19. **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. The parties agree that venue for and legal action instituted in connection with this Agreement shall be in Miami-Dade County Florida.

20. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Independent Contractor/Proposer.** Nothing herein contained shall be deemed in any way to constitute Village or Contractor a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, Contractor/Proposer shall be considered an independent Contractor and not an employee or agent of the Village. The Contractor is an independent contractor under this Agreement and any project agreements and nothing in this Agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the consultant shall be by employees of the consultant and subject to supervision by the consultant, and not as officers, employees, or agents of the village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this Agreement or any project agreements shall be those of the Contractor.

22. **Attorney's Fees.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred including reasonable attorney's fees, the fees and expenses of any paralegals, law clerks and legal assistants and costs for services rendered in connection with any enforcement of this Agreement, including appellate proceedings and post judgment proceedings. Neither party shall be responsible for pre-judgment interest.

23. **Miscellaneous.**

(a) It is further expressly understood and agreed that no real or personal property is leased to Contractor and that Contractor shall comply with each and all of the undertakings, provision, agreements, covenants, stipulations and conditions contained herein.

(b) This Agreement may be signed in two or more counterparts, each of which constitutes the Agreement of the parties and each of which will be treated as an original.

(c) All terms, conditions, covenants and obligations of Village and Contractor hereunder shall survive the termination or expiration of this Agreement as necessary and appropriate for such parties to fulfill their obligations that accrued during the Term of this Agreement.

(d) Contractor and its agents, employees or volunteers shall not be permitted to consume, sell or otherwise possess any alcoholic beverages, tobacco products or other such products as determined by the Village, when using the Concession.

(e) In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

24. **Force Majeure:** The performance of any act by the Village or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the Village shall have the right to provide substitute service from third parties or Village forces and in such event the Village shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of 14 days the Village may, at its option and discretion, cancel or renegotiate this Agreement.

25. **Waiver Of Jury Trial:** The Village and the Contractor knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

26. **Eligibility.** All agents, employees and subcontractor of the Contractor retained to perform services pursuant to this bid shall comply with all laws of the United States concerning work eligibility and comply with the Shannon Melendi Act, as adopted by the Village.

27. **Contingency Fee and Code of Ethics.** Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Contractor/Proposer has not, and will not; pay a fee the amount of which is contingent upon the Village awarding this contract to Contractor. Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances. A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Contractor/Proposer.

28. **Warranty of Authority.** The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this Agreement.

29. **Taxes.** During the period of this Agreement, Contractor shall pay any and all taxes of whatever nature lawfully levied upon or assessed that arise out of the operations of the Contractor in connection with this Agreement.

30. **RFP.** Contractor/Proposer agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Contractor during the RFP process.

31. **Compliance with Law.** Contractor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

32. **Shannon Melendi Act.** The Contractor shall comply with the "Shannon Melendi Act of Miami-Dade County", which is incorporated by reference for the purpose of conducting background investigations for all principals, members, employees, and/or volunteers or participants ("Volunteers") associated with the operational activities for the Contractor. Required background investigations shall be completed in accordance with the Program Policy.

33. **Sovereign Immunity and Attorney's Fees.** The Village Manager does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

34. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

35. **Non-Waiver.** Any waiver or any breach of covenants herein contained to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Village from declaring a forfeiture for any succeeding breach, either of the same condition or covenants or otherwise.

36. **Public Entities Crime Statement.** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S. for category two for a period of 36 months from the date of being placed on the convicted vendor list. Contractor affirms compliance with this requirement for the duration of the underlying Agreement. If at any time during the contract period, Contractor is convicted of a public entity crime, the Contractor's contract shall immediately terminate.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this ____ day of _____, 2012.

Village:

ATTEST:

Village Palmetto Bay, a Florida municipal corporation

By: _____
Meighan J. Alexander, Village Clerk

By: _____
Ron E. Williams, Village Manager

Approved as to form and legality for the use
and benefit of the Village of Palmetto Bay
only

Contractor/Proposer:

Village Attorney

By: _____
Junior Silva, President
Silva Management of Miami, Inc

Print Name: _____

[END OF DOCUMENT]

Attachment 'A'

DESCRIPTION OF LEASED PREMISES FOR CONCESSION FACILITIES

- A-1: Coral Reef Park 'Park View Café'**
- A-2: Palmetto Bay Park**
- A-3: Ludovici Park**

Attachment 'B'

CONCESSION EQUIPMENT LIST(S)

B-1: Coral Reef Park 'Park View Café'

B-2: Palmetto Bay Park

B-3: Ludovici Park

Attachment 'C'

**VILLAGE ORDINANCE 08-10
SHANNON MELENDI ACT**

Attachment 'D'
PALMETTO BAY PARK COCA COLA BEVERAGE AGREEMENT