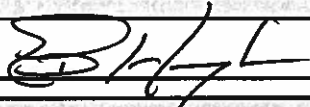


# MANATEE COUNTY GOVERNMENT

## AGENDA MEMORANDUM

<b>SUBJECT</b>	Manatee Beach Concession	<b>TYPE AGENDA ITEM</b>	Regular
<b>DATE REQUESTED</b>	May 11, 2010	<b>DATE SUBMITTED/REVISED</b>	May 4, 2010
<b>BRIEFINGS? Who?</b>	Briefings have been provided	<b>CONSEQUENCES IF DEFERRED</b>	Current agreement expires July
<b>DEPARTMENT/DIVISION</b>	Financial Management, Purchasing Division	<b>AUTHORIZED BY TITLE</b>	Jim Seuffert, Financial Management Director
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	Melissa Assha (3014), Robert Eschenfelder (3750)	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	Various staff will assist in presenting
<b>ADMINISTRATIVE APPROVAL</b>			

<b>ACTION DESIRED</b> INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED
Motion to adopt Concession License Agreement with United Park Services, Inc. and authorize County Administrator or designee to execute same

<b>ENABLING/REGULATING AUTHORITY</b> Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy
Manatee County Code § 2-24-11 (authority to grant concessions in parks)

### BACKGROUND/DISCUSSION

#### HISTORICAL OVERVIEW OF CURRENT MANATEE BEACH CONCESSION

The Manatee Beach concession facility is a 10,686 sq. ft. facility owned by Manatee County. In 2004, the County spent \$1,100,738 to significantly renovate the facility. Pursuant to the County's Parks Code, the County Commission may grant concession agreements to private companies to operate concessions in parklands such as Manatee Beach.

On June 2, 1992, the County Commission approved a concession agreement with P.S. Beach & Assoc., Inc. (PSB), to operate a concession at Manatee Beach. In addition to the payment of a monthly fee, PSB agreed to undertake certain capital improvements for the facility, and maintain a \$50,000 performance CD to guarantee the work would be done. From the first year of the operation of the concession, payment problems and compliance issues arose:

- June 23, 1992 letter from County regarding unauthorized electrical work done without permit from Holmes Beach
- February 2, 1993 PSB requests rent reduction
- April 20, 1993 PSB requests County reimburse it for electrical work performed without authorization
- February 2, 1994 PSB sends letter to Commission asking the County to make various capital improvements. A majority of the items on the list are items PSB was supposed to perform per PSB's capital improvements duties under the agreement. Records confirm PSB never did make all agreed capital improvements, which either the County ultimately paid for, or declined to require be done.
- February 23, 1994 at request of PSB, County installs 40 palm trees around concession
- June 1, 1994 County sends letter reminding PSB of capital improvements it was obligated to make which had not been made. PSB responded on June 8, asking the County to excuse or modify pending capital improvement commitments, and also asking the County to return the \$50,000 performance bond. In spite of the uncompleted capital improvement obligations, the County agreed to return \$25,000 of the performance bond.
- September 28, 1994 the County agrees to reimburse PSB for capital improvements done, though some of the work was originally required to be paid for by PSB per the agreement. Staff only requests PSB provide cancelled checks showing contractors had been paid for the work.
- October 3, 1994 PSB responds that it cannot provide the requested documents, and then asks the County to pay for additional unauthorized work which the County had not pre-authorized.
- March 6, 1995 PSB requests the County to waive two months past due rent and penalties, and again asks for payment of unauthorized work.
- During this same time frame, PSB had requested a three year extension to its concession. Administration rejected the request due to compliance and late payment and past due issues.
- August 9, 1995 PSB sends "progress report" to the County Commission reviewing how much it had paid to the County and requesting that the County make capital improvements, many of which had been dropped from their promised capital improvement commitment list the year before. The letter also asks the County to support its application to Holmes Beach for a beer & wine permit.

- August 31, 1995 PSB asks to reduce operating hours for patrons due to "lack of business". The County agreed to recommend the request, if PSB would consider a simpler menu not requiring full kitchen staff during afternoon hours. On September 12, PSB rejects this request.
- September 18, 1995 PSB requests the County "forgive" its rent payment for the month.
- October 10, 1995 PSB sent letter to the County Commission again requesting County pay for and install various capital improvements. The County Attorney's Office advised via memo that the items were the contractual duty of PSB to install.
- January 1, 1996 PSB sends County post-dated check for December fee, and requests "forgiveness" for January payment. The County responded it could not legally "forgive" funds due, but offered a payment schedule.
- March 3, 1996 PSB letter indicating it is unable to pay March payment and requesting forgiveness of two months' rent. The administration responded by providing historical revenue data indicating PSB revenues were: \$1,278,290 (93/94), \$1,535,142 (94/95), and \$1,223,734 (95/96).
- May 29, 1996 staff provides Administrator with memo reviewing PSB's forgiveness requests and assertions of operating losses. However, PSB was unable to provide the County with validated expense records to confirm alleged operating losses. On July 19, 1996, the County sent PSB a letter offering an extended payment plan to allow it to catch up on fees past due, or allow the County to audit its books.
- October 1, 1996 County Attorney's Office was required to issue a warning letter to PSB concerning allowing a time share operator to distribute flyers on visitors' cars on a daily basis. The next day County staff issued a warning letter to PSB that it was not permitted to sub-contract rental business without County approval.
- October 31, 1996 County informed PSB the County Commission had forgiven two months' rent and related late fees. A follow up letter two weeks later advised PSB that the Commission requested assurances that PSB would have all past due payments up to date by the end of the contract term, and that it would not be able to forgive the then overdue amount of \$24,288.
- June 3, 1997 letter from staff informing PSB of overdue late payments.
- August 18, 1997 staff advises PSB that it again is consistently late in making required payments.
- September 9, 1997 PSB requests a 9 year contract extension. In this same letter, PSB asks the Commission to "defer" payments due for August, September and October with no interest or penalties, with PSB instead paying an extra \$300 per months until it catches up.
- December 30, 1997 PSB sends letter saying it cannot make its December payment.
- February 5, 1998 County Attorney's Office issues memo confirming PSB is in breach and substantial default.
- In the summer of 1998, the County Commission renews the PSB concession for an additional 3 year term, with an added \$300 per months payment to allow it to bring current past due amounts.
- July 1998, PSB failed to pay July payment, but did pay \$300.
- October 20, 1998 the County Commission approved a decrease in the monthly fee by over \$6,000 per month, a payment plan for past due fees in the amount of \$68,531. The action waived other fees totaling \$78,372.
- October 29, 1998 PSB paid a settlement fine to settle State Health Department fines for numerous uncorrected violation notices resulting from initial and follow up inspections from February 10, 1997 through October 19, 1998.
- In June of 1999, the County issued an RFP for the Manatee Beach concession. On October 26, 1999, the Board executed a new agreement with PSB.
- March 30, 2002 the Florida Department of Revenue placed a \$20,656 lien against PSB. It was not satisfied until May 13, 2002.
- November 4, 2003 the Commission approved R 03-282 allowing PSB to subcontract the food concession to an entity called Café on the Beach, LLC (COB). While the County did not request a copy of the sublease at the time, it subsequently determined that PSB would receive payments totaling \$650,000, none of which the County would be entitled to. The County also determined from accounting records that while PSB had characterized the transaction as a sub-lease to COB, it was represented in accounting records as "sale of business." Of note, while PSB had consistently claimed it lost money with its Manatee Beach food concession, since selling its interest in the concession to COB, healthy profits have been consistently shown in financial reports.
- On June 22, 2004, the County "renewed" a concession agreement with PSB for 5 years for a total yearly fee of \$193,000. The agreement required the County to pay for substantial capital improvements to the facility. Of note, to the extent PSB had at this point already "sold" its business to COB, it likely did not have the operational capacity to perform the terms of this concession. However, it appears no party questioned the exact relationships between the parties.
- August 3, 2004 the Commission approves a construction contract for \$1,100,738 for the capital improvements, which were completed in March of 2005.
- On March 1, 2005, at the request of PSB and no objection from the then County Administrator, the Commission approved a waiver of the required certified financial statements and CPA review for years 2004 and 2005.
- June 21, 2005 the Commission approves a delay in the required fee increase until November, and waived \$31,150 in fees due.
- On March 28, 2008, PSB requested early renewal of the agreement in light of pending bridge work. Staff responded that per its agreement, renewal could not be requested earlier than May 31, 2009.
- The most recent agreement was extended by the County with a final expiration date of July 19, 2010.

**THE COUNTY SEEKS NEW PROPOSALS**

Given the often difficult history the County has had in obtaining contract compliance, the history of financial inability of PSB to comply with payment obligations and the desire to examine whether other vendors might be able to bring greater corporate strength and fresh energy for the future, the County Commission authorized issuing an RFP on June 23, 2009 for the Manatee Beach concession.

The RFP issued sought the following minimum qualifications for proposers:

- Three (3) years of proven experience in operating a “public food service establishment” as defined in Florida Statute §509.013
- Disclosure of any acquisitions or mergers proposed to meet minimum experience requirement.
- No history of loss of license
- No history of closures or suspensions due to health reasons
- No history of failure to pay all taxes due

In addition, the RFP required the following information to be submitted:

- Disclosure of any Sub-Leasing a portion of the facility to a third party
- The office location of the business entity
- A narrative explaining the direct economic benefit to Manatee County to be realized
- A detailed phased explanation of the steps proposed to accomplish the tasks from the start of the work
- References, of business entity’s concession services experience
- Contracts proposer has obtained within the past five (5) years, indicating the type of services provided and the locations.
- Authorize a Manatee County auditor to access financial records at the primary location of the business entity.
- A detailed Quality Assurance statement to demonstrate the level of quality that is proposed will meet or exceed current quality standards in terms of food and beverage, customer service, cleanliness, safety and atmosphere.
- Manning level statement for this site and proposed service

To address local community concerns, the RFP also asked proposers to explain how they would address existing services or special events popular with local residents such as all you can eat promotions, musical performances and the like would be provided. It also asked providers to explain how the “proposal will maintain the facility’s “feel” as traditional, non-chain franchise, and beach-oriented in character” and to provide “a statement of customer service commitment with demonstration of your business entities experience in successfully implementing an effective customer service program.” It also asked proposers to explain how they would generate community involvement by “creating added-value and benefits to the surrounding community and to park visitors.” To address the environment, the RFP required environmental sustainability be addressed, asking proposers to detail “what services, products, methods or actions that you propose to use in the operation of the concession that will maximize the ecology friendly or “green” impact of your business entity when operating the concessions.” And of course, as it is a goal to have patrons patronize the facility, proposers were asked to elaborate on marketing and advertising plans.

The RFP also asked for core business information including proposed operational aspects such as:

- An Hours of Operation Plan describing the standard hours of operation plus expected seasonal variances.
- A list of equipment to be provided by your firm.
- The time required from the date of execution of the agreement to the commencement of service at the facility. Specifically describe the amount of time required to prepare the facility after the current licensee has removed all of their property from the premises. Include potential less than full service options which may be used to facilitate a transfer of Licensees.
- Assumptions regarding the budgetary projections on the volume of sales to be generated.
  - 1) Food and beverage (excluding alcoholic beverages)
  - 2) Vending machines
  - 3) Sundry items and auxiliary services including any rental items which must be detailed in the operational plan such as: Beach chairs, umbrellas, beach bikes, portable food, beverage or sundry vending carts and kayaks.
  - 4) Souvenirs (include price ranges and general descriptions)
  - 5) Alcoholic beverages (specify beer, wine, etc.)
- A Five Year Projected Budget with projected sales, revenue to Manatee County, expenses, and net income.
- Capital improvements or renovations to the facilities.
- A price schedule for a representative sample of the products and services proposed.
- Provide a statement of your pricing policy to provide visitors to the park with quality products at reasonable prices considering the competition of comparable markets for similar products and services.
- Projected sales by product type (sundries, food non-alcoholic beverages, alcoholic beverages, rentals, etc) and assumptions used in the formulation of the budget. This information should represent the application of sound business principles which provide for continuity of operations, unanticipated expenses, steady cash flow and financial responsibility.
- State the amount due monthly as the base payment to Manatee County.
- State the percentage of total gross sales of alcoholic beverages to be paid to Manatee County in addition to the monthly payment
- State the percentage of total gross sales up to \$1,000,000 per annum that is to be paid to Manatee County in addition to the monthly payment.
- State the percentage of total sales over \$1,000,000 per year that is to be paid to Manatee County in addition to the monthly payment.

Proposers were informed that the concession would be for the operation of a food and gift shop concession at Manatee Beach, located at 4000 Gulf Drive, Holmes Beach, Florida, and that proposers’ operations would be subject to and governed by “a combination of legislative enactments and departments, to include: Laws of Florida, Florida Department of Business and Professional Regulation Division of Hotels and Restaurants, Florida Department of Environmental Protection, Manatee County Code Chapter 2-24, plus any applicable laws of the City of Holmes Beach.”

Proposers were informed that if successful they would be required to:

- Operate the concession to the benefit of the general public beginning on or around July 20, 2010.
- Provide continuation of traditional food items or services as identified by the County (pancakes & sausage).
- Perform all work with a minimum use of sub-contractors.
- Operate the concession a minimum of seven (7) days per week, 365 days per year with the exception of weather events or other emergency conditions as defined by the County.
- Be licensed to operate a food concession.
- Prepare all food on site or provide detailed planning to maintain service if the subcontractor cannot timely provide the food.
- Obtain prior written approval from County's Contract Manager to provide amplified or non-amplified music in accordance with any and all applicable City or County ordinances.
- Conduct a daily cleanup of concession, including all adjacent dining areas; dispose of trash, cardboard and recyclables; disposing of trash, cardboard and recyclables from concession operations into the County supplied dumpsters and bins.
- Select and train personnel, who shall at all times, conduct themselves in a professional and courteous manner.
- Maintain the concession in good repair and in accordance with all applicable local, state and federal requirements.
- Confirm the willingness and ability to obtain and maintain any insurance required by the ultimate agreement.
- Conduct operations so that the impacts to the environment are mitigated as much as possible while also being in compliance with all regulations and ordinances in relation to sea turtles and nesting shore birds.

Per applicable purchasing procedures, the RFP was advertised in the local papers, notices sent via the Chamber of Commerce, and the document was posted on our Manatee County website for download at no cost and on the national website DemandStar.com. The RFP was issued on December 17, 2009. Purchasing staff directly provided copies of the proposal to 18 Manatee County companies likely to have the ability and desire to submit:

PS Beach Associates, Inc., Bradenton, FL  
 Café on the Beach, LLC, Holmes Beach, FL  
 Chiles Restaurant Group, Anna Maria, FL  
 Banana Cabana, Anna Maria, FL  
 Blue Parrot Catering, Bradenton, FL  
 DA Giorgio Ristorante, Holmes Beach, FL  
 Lakewood Ranch Golf & Country Club, Bradenton, FL  
 Ma's Catering, Bradenton, FL  
 Midtown Café, Palmetto, FL  
 Noreen's Deli, Bradenton, FL  
 Orange Blossom Catering, Bradenton, FL  
 Premiere Catering, Bradenton, FL  
 River Club Restaurant, Bradenton, FL  
 Riverhouse @ Regatta Pointe, Palmetto, FL  
 Smitty's Catering, Bradenton, FL  
 The Riverhouse Reef & Grill, Palmetto, FL  
 Volume Services, Bradenton, FL  
 Wild Monkey Gourmet, Inc., Bradenton, FL

In addition to these firms, eleven firms defined as local under the County Purchasing Code were also directly provided copies:

Alexandra of Clearwater Beach, Clearwater, FL  
 Bo Jos Concessions, Gibsonton, FL  
 Cabana Man, Indian Rocks Beach, FL  
 Catering by Lundy's, St Petersburg, FL  
 Sunset/Sunrise Concessions, Nokomis, FL  
 Dogs & Suds, Largo, FL  
 I Scream Ice Cream, St. Petersburg, FL  
 Personal Touch, St. Petersburg, FL  
 Sharon's Fast Food Restaurant, St Petersburg, FL  
 SKC Foods, Sarasota, FL  
 United Park Services, Tampa, FL

Proposals were received from following four (4) firms:

Blue Wave – a division of Sunset/Sunrise Concessions, Nokomis, Florida  
 Café on the Beach, LLC, Holmes Beach, Florida  
 Dogology, Inc. (Loggerheads LLC), Bradenton, Florida  
 United Park Services, Inc., Tampa, Florida

It should be noted that **P.S. Beach Associates**, Inc. (Lorna Dee Shaefer, President), **did not submit a proposal**.

Proposals were opened on January 29, 2010. Again, per standard County procedure for the RFP process, an evaluation panel was created to examine the proposals and provide recommended rankings and negotiation recommendations to the Administrator. The committee, which in this evaluation stage was a "sunshine" committee which allowed for the press or other interested persons to attend, was comprised of:

**Cindy Turner**, Director of Parks and Recreation: Over twenty five (25) years experience in the Parks and Recreation profession. Twenty three years with Manatee County Parks and Recreation with the last nine serving as the Department Director responsible for 43 parks, 2.6 miles of beaches, 2 golf courses, and all recreation programs. Developed and implemented "Preserve our Beautiful Beaches Task Force" comprised of Island elected

officials, law enforcement, the Scenic Highway Committee and County staff. Responsible for the beautification and crime reduction at Coquina Beach. Received two awards for these efforts. Served on the prior RFP Selection Committee in 1998. Bachelors Degree with honors.

**Elliott Falcione.** Executive Manager, Manatee County Convention and Visitors Bureau, Mr. Falcione has extensive experience in facilities operations, food service/vending, and tourism-related fields and has worked with the County's CVB and at the County's Civic Center for years.

**Melissa Assha.** Contract and Buyer Manager, Purchasing Division, Financial Management Department. Melissa has over twenty-two years of negotiating and contracting experience and over twenty-two years of procurement experience with more than ten of those focused in the area of public/government procurement.

The committee's meeting schedule and activities were as follows:

March 2, 2010: Overview of all proposals received. Committee consensus is to have all four proposers present their offer to gain clarification of their offers. The committee decided to jointly prepare a list of questions for the proposers in order to gain additional details on items contained within the proposal. All proposers were asked the same questions and were required to respond in writing by March 18, 2010.

March 23, 2010: Presentations and follow up discussions were conducted with each of the proposers. Thirty minutes was allotted for the presentation and an additional thirty minutes was set aside for questions and discussion.

April 7, 2010: The selection Committee determined the ranking as summarized in the findings of the selection committee as stated in the email to the County Administrator and on the Source Selection posting. Those findings were that in consideration of the presentations by all proposers and investigation of the proposals, the Committee unanimously concluded that it is in the best interest of the County to enter into negotiations with the top ranked firm, United Park Services, Inc. (UPS) of Tampa, Florida. The committee's final summary notes on the top proposers were:

**United Park Services, Inc.:** The top ranked firm, proposed the highest compensation plan to the County including profit sharing in tiers and thoughtful ideas for capital investment. Their capital investment offer includes aspects such as significant revisions to the exterior and interior to provide a fresh, pleasing upgrade in appearance of the building, development of an ice cream and coffee café and renovations in the existing retail area. United's beach front concession experience includes Fort DeSoto Park in St Petersburg, Florida. United provided exceptional responses in all areas: food and beverage quality, operational vision, beach oriented essence, customer service programs, community involvement and participation, environmental consideration, and marketing/advertising strategies. United affirmed their strong commitment to the success of a Manatee Beach concession through a commitment to relocating the residence of their key operator's to Manatee County. Lastly, United demonstrated tested and sound measures will be initiated to assure proper accounting and provide a system of checks of balances.

**Café on the Beach, LLC:** Ranked second. The roles of the incumbent operator, PS Beach & Associates led by Dee Percifield and Gene Schaefer, shifted to only the operation of the gift shop as proposed subcontractors. The current subcontractors, Tommy Vayias and John Menihtas of Café on the Beach submitted as the principal operators of the concession. The proposed compensation offer was less than the top ranked firm and had no profit sharing during the term of the agreement. Overall, this proposal lacked creativity and vision; particularly it contains limited Capital Investment, relying on minor cosmetic changes. The Selection Committee recognized the past efforts of these partners to run the Manatee Beach concessions and that it maintains a stable local customer base. This proposal did not demonstrate efforts to stimulate our local economy by encouraging new patrons to visit our beaches who in turn could consume other services offered by local businesses, shop at our stores, book stays at our local hotels and more.

**Dogology, Inc. (Loggerhead's, LLC):** Third ranked. Firm shows enthusiasm and vision; however, the Selection Committee perceived that this firm lacked the experience that the Committee felt was important and necessary to achieve these proposed goals and provision of services concurrently with sustaining their business. This was evidenced in that some elements of their proposal were unclear in terms of how they planned to carry out activities that directly impacted proposed revenues. Loggerhead's did present a well thought out marketing plan and offered a competitive compensation package, but overall did not represent themselves as having the business experience to achieve what was proposed.

**Blue Wave, (a division of Sunset/Sunrise):** This fourth ranked firm represented themselves as a very capable concessionaire that is dependable, reliable and able to handle a busy beach concession. The proposal was not as detailed as some of the proposers on the Capital Investment side and lagged behind on the compensation plan in comparison to other proposals.

Again, as per standard County procurement policy and procedure, the Committee's recommendations were submitted to the County Administrator. On April 9, 2010, the Administrator concurred with the committee's evaluation and recommendation, and instructed the Purchasing Division to open negotiations toward a contract with the top ranked firm, UPS. Contract negotiations were conducted by the Purchasing Division, with operational input from Facilities Management and Parks Departments, under the overall authority of the Administrator, throughout April. During this process, the County staff and UPS heard input and concerns from island residents and officials concerning the desire not to create drastic change to a much-loved venue. In particular, many concerns were raised regarding rentals which the County's RFP had asked proposers to address, including kayaks and bicycles. The negotiations took these concerns into consideration when arriving at a final contract. In sum, these rental items were removed from consideration.

The final agreement negotiated with UPS includes the following terms and conditions of note:

- Guaranteed base annual payment to County: **\$342,000** (current operators COB proposed \$326,400 with no added profit-sharing) (PSB currently pays flat annual amount of \$216,000). The guaranteed amount alone allows the County to **offset the ad valorem burden to taxpayers by \$126,000** per year.
- In addition to the base rate, UPS has agreed to pay **4% of gross sales** over \$2.5 million each year.
- Capital improvement investment totaling **\$308,000**, with \$108,000 to be made within the first year (COB offered \$250,000 for a 20-year contract). All such improvements are subject to County's review for proper construction, and proper "look and feel" for community.
- UPS will maintain "all you can eat" pancake specials that the local community has grown to love.
- UPS agrees to provide local preference in purchasing goods and hiring employees first to the City of Holmes Beach then to Manatee County businesses and residents. In this regard, the management team selected to operate the concession for UPS will become County residents upon award of the agreement.
- UPS agrees to maintain the 25 feet around the facility.

- UPS agrees to abide by all state and local laws, including all municipal and County ordinances.
- Payments will be made electronically, reducing staff work to process payments.
- UPS will be subject to more strict cash handling, record keeping and audit provisions than the current provider is.
- Unlike current operations, UPS will be required to submit monthly accounting reports signed by a corporate officer certifying accuracy.
- At its own expense UPS must submit annual audits performed by a licensed CPA.
- The County's auditors are granted broad authority to audit concession books at any time, and relevant records must be maintained in Manatee County.
- UPS shall be subjected to an annual performance review by the Administration.
- Will perform area and fixture maintenance, trash removal, and repairs to systems other than main building structure.
- Dedicated recycle receptacles
- Will work with County and School District to develop educational programs for children on beach environment and ecology.
- Current provider uses Styrofoam products. UPS agrees not to do so, and to only sell products which are environmentally friendly, using biodegradable materials where available. UPS will not sell beverages with straws or plastic lids, so as to reduce litter and harmful environmental impacts.
- On site management team will be required to have no other duties at other facilities, and must engage in local community interaction and outreach, including establishing relationships with the island chamber, police department, local elected officials, neighboring businesses and community and civic groups.
- Any musical entertainment shall be family friendly, and will be subject to all applicable Holmes Beach codes.
- Service of beer/wine is subject to all State and local laws, and UPS will ensure all staff engaged in serving are fully trained to State standards including awareness of excessive consumption and how to properly respond.
- UPS will not be permitted to rent out the facility to any person or group in a "closed to the public" manner absent express prior approval of the County.
- UPS is strictly prohibited from selling, assigning, or otherwise transferring the agreement or its rights thereunder without express County approval after full disclosure of any relevant facts the County requires.
- The agreement is for an initial 5 year term, with the option of renewals.

The Administration believes the agreement it has negotiated with UPS is demonstrably more beneficial to the County, and its taxpaying residents, and that UPS clearly has the strongest capacity, resources, and experience to successfully perform under the proposed concession agreement.

#### **RESPONSES TO COMMUNITY AND PRESS CONCERNS**

The nature of the RFP process, where proposers are asked by the County to address operational issues which may not even make it into the final contract, appears to have resulted in unfortunate public concern and at times not accurate news reports concerning what the agreement would provide. For instance, in several April articles or editorial comments, news outlets reported that the facility was going to be converted to look like Key West, that motor scooters would be rented, and that a Tiki Bar would be built outside. These assertions probably stemmed from the press attending the committee review meetings, where ideas of what might be done were still being discussed. Recall that the County asked the proposers to address such matters in the RFP, which by intent was broadly worded to allow different ideas and proposals to be suggested. To that end, COB had also proposed a Tiki Bar in its proposal. In any event, the final agreement does not provide for such items in deference to the local character and desires of residents and city officials.

As to the style of design related to the capital improvements, some residents expressed a fear that a change in concession operations would create "Disneyland West" and ruin property values. Hopefully, a review of the actual proposed agreement will allay such fears. The use of the phrase Key West in the RFP documents was not intended as a literal imposition of that style. The idea is that any revisions to appearance be consistent with the small island community look and feel. To this end, as noted earlier, no work will be done until the County approves of the proposed look, and UPS has indicated its intent to create a group of local stakeholders to help judge a mural it will commission to be done by a local artist.

A significant amount of commentary centered on the potential of rentals of scooters, kayaks and the like, and that use of such items would be a violation of city codes. While, as noted, the final agreement has removed those items from availability, staff wishes to make clear that the agreement requires UPS to abide by all municipal codes as to all of its activities. However, it should be noted that Holmes Beach's Superintendent of Public Works confirmed to the County in writing on April 29 that the Holmes Beach city code didn't address rentals. Rather, he clarified that the City's resistance to wheeled devices being rented was the Police Chief's concern for safety. While staff recalls that several Commissioners have advocated for more permission to use such devices on County park trails, and thus would likely be in favor of them here, staff and UPS removed them from consideration once the Police Chief stated his concerns.

Many media comments focused on the erroneous contention that the County was not getting the best financial deal (not correct as reviewed above), and that "it ain't broke" and so doesn't need to be "fixed." Of course, there will always be a lack of uniform position when any long-standing system, tradition or facility is examined for possible change. Change can cause much concern, and of course if not done well, may indeed not work. However, in this case, there are two key points to make. First, as hopefully made clear in this report, the County's staff has gone to great lengths to carefully evaluate and select the most qualified provider. It has identified various areas, both in terms of operations and the facility itself that in all honesty really do need improvement. But more fundamentally, this concession already has undergone a change in concessionaire in 2004 when COB acquired the concession from Dee Schaefer and PSB. This transition in operators was virtually unnoticed by local residents and patrons. The County staff is dedicated to ensuring the transition to operation by UPS is just as seamless and sensitive to the community.

#### **CONCLUSION**

The Administration believes that it has complied with the Commission's instruction to identify the best proposal for the operation of the Manatee Beach concession, and that it has negotiated an agreement which is in the best interests of all of Manatee County. The agreement has been fully reviewed by the County Attorney's Office per RLS 10-119, and the Administration recommends adoption of the motion.

COUNTY ATTORNEY REVIEW	
Check appropriate box	
<input checked="" type="checkbox"/>	<b>REVIEWED</b> Written Comments: <input checked="" type="checkbox"/> Attached/Included <input type="checkbox"/> Available from Attorney (Attorney's initials:)
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input type="checkbox"/>	<b>OTHER:</b>

ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
CAO memo re RLS 10-119, concession agreement,		Executed PDF of agreement to Cindy Turner, Charlie Bishop and Dan Wolfson	
<b>COST:</b>	n/a	<b>SOURCE (ACCT # &amp; NAME):</b>	n/a
<b>COMMENTS:</b>	n/a	<b>AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)</b>	n/a



Office of  
**MANATEE COUNTY  
ATTORNEY**

Tedd N. Williams, Jr., County Attorney

James A. Minix, Chief Deputy County Attorney  
Maureen S. Sikora, Deputy County Attorney\*  
Robert M. Eschenfelder, Deputy County Attorney  
Rodney C. Wade, Deputy County Attorney\*  
William E. Clague, Deputy County Attorney  
James R. Cooney, Deputy County Attorney  
Sarah A. Schenk, Deputy County Attorney\*

**MEMORANDUM**

**TO:** Rob Cuthbert—Purchasing Official

**FROM:** Robert Michael Eschenfelder—Deputy County Attorney *RM*

**THROUGH:** Tedd N. Williams—County Attorney *TNW*

**DATE:** 30 April 2010 *4/30/10*

**RE:** Manatee Beach Concession Agreement (RLS 10-119) (CAO File: 1026-263)

In RLS 10-119, you requested the County Attorney's Office work with your staff and Parks staff to develop a concession agreement for the concession at Manatee Beach.

Pursuant to this request, I have worked extensively over the past few weeks with relevant staff to develop the attached agreement, which incorporated all of the business terms negotiated between the administration and the provider. As usual, we offer no opinion on business terms not raising legal issues. Otherwise, the agreement addresses all relevant legal issues and concerns for an agreement of this type, and it is otherwise in sufficient form to be presented to the County Commission for consideration.

I trust this response addresses your request for service. If I may be of further assistance, please feel free to contact me.

**c:** Ed Hunzeker—County Administrator  
Deputy County Administrators  
Cindy Turner—Parks & Recreation Director  
Charlie Bishop—Property Management Director

\* Board Certified City, County & Local Government Law



**FRANCHISE LICENSE AGREEMENT**

**between**

**MANATEE COUNTY**

**and**

**UNITED PARK SERVICES, INC.**

**for**

**CONCESSIONS AT COUNTY FACILITIES AT MANATEE BEACH**

This is a Franchise License Agreement by and between MANATEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and UNITED PARK SERVICES, INC., whose address is 1320 8<sup>th</sup> Avenue, Suite 5, Tampa, Florida 33605, hereinafter referred to as "LICENSEE."

**WHEREAS**, the COUNTY has concession facilities at Manatee Beach, 4000 Gulf Drive, Holmes Beach, Florida as shown in the attached Exhibit "A" (Site Plan); and

**WHEREAS**, the COUNTY solicited competitive proposals for operation of concession services pursuant to Manatee County Request for Proposal No. 10-3347MA (hereinafter RFP), and has successfully negotiated this Agreement with LICENSEE, the successful proposer; and

**WHEREAS**, the LICENSEE possesses the financial, legal, technical and experiential resources to enable it to fully perform the obligations contained herein; and

**WHEREAS**, Manatee County Code § 2-24-11 authorizes the County Commission to grant this concession license agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, provisions, terms, promises, and conditions contained herein, the parties agree as follows:

**ARTICLE I**

**PURPOSE/GRANT OF LICENSE**

To enhance and promote Manatee County as a unique community, and provide for the comfort in and enjoyment of the use of Manatee Beach Park by its patrons, the COUNTY hereby grants unto the LICENSEE the right and privilege to provide the County with Exclusive Concession Services in accordance with the terms, conditions and limitations of this Agreement.

It is intended that LICENSEE create an inviting impression at the Manatee Beach Concession facility through the implementation of cosmetic façade improvements on and in the existing building and adjacent areas that will provide visual upgrades and promote a tropical, coastal community feel.

This Agreement and the rights and privileges granted to LICENSEE hereunder for the sale of food and beverages and retail items and rental of specified equipment are exclusive except as follows:

- 1) The COUNTY'S periodic authorization, via Special Event Permit, of the use of the Park use or allowing the use of the Park by others, for the purpose of holding and conducting special events including the vending of food and beverages which may be in direct or indirect competition with the LICENSEE'S right to vend food and beverages as provided under this Agreement.
- 2) The right of COUNTY, upon a determination that it is in the public interest, to establish additional locations for the sale of food and/or beverage or other retail items by obtaining additional vendors or use of its own employees.
- 3) Except as specifically provided for herein with respect to the LICENSEE'S use and operation of the Facilities in the Park under this Agreement, the COUNTY shall at all times continue to retain and have the unqualified right to make any and all determinations concerning or relating to the Park, including but not limited to, establishing operating procedures, safety standards and/or fees or fines.

## ARTICLE 2

### COMPENSATION

As compensation to the COUNTY, the LICENSEE shall pay COUNTY three hundred forty-two thousand dollars (\$342,000.00) in annual monthly base payments of twenty-eight thousand five hundred dollars (\$28,500.00) inclusive of sales tax and any license fees due on alcohol, as of the fifteenth (15<sup>th</sup>) business day of the following month (the Due Date), with the interest accruing after 10 calendar days. The first month of the initial term of the contract and the last month will be prorated accordingly.

The LICENSEE shall make a monthly percentage payment to the COUNTY of four percent (4%) of the total gross of all sales less sales tax over two million five hundred thousand dollars and no cents (\$2,500,000.00) per annum. Payment shall be paid by the fifteenth (15<sup>th</sup>) business day the following month (due date), with interest accruing after ten (10) calendar days.