

## REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT is entered into as of this 18<sup>th</sup> day of May, 2026, between the City of Clearwater, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 4748, Clearwater, Florida 33758-4748 ("Licensor") and All Around Amusements, LLC, a Texas Corporation, whose mailing address is 4001 Willow Hills Court, Plano, TX 75024 ("Licensee").

**WHEREAS**, Licensor is the owner of certain real property located in Pinellas County, Florida hereinafter referred to ("Premises"); and

**WHEREAS**, Licensor is willing to grant Licensee a license for occupancy and utilization of the Premises, subject to the terms and conditions stipulated herein (the "License"):

**NOW, THEREFORE**, it is mutually agreed as follows:

1. **Completeness of license:**

This License contains all of the terms, conditions and covenants binding the parties hereto. There are no other terms, conditions, covenants or understandings, either written or oral, binding upon the parties unless expressed herein in writing or subsequently addended hereto by mutual agreement of the parties.

2. **License Premises and Term:**

Licensor hereby grants to Licensee a revocable, non-exclusive License to occupy and use Licensor's property as more particularly described in Attachments A: North of Pier 60 Site and B: South of Pier 60 Site, attached hereto and made a part hereof, (the "License Premises"), subject to the terms and conditions herein set forth, commencing on June 4, 2026 and expiring on June 3, 2031 ("License Term"), unless sooner terminated as herein provided. The License Premises shall be used for the sole purpose of installing and operating at least two various inflatable amusement rides and fun activities, i.e. waterslide, jump house, fun center, etc. ("Concessions"). Licensee's Concessions shall be located within the License area in conjunction with other Licensees as determined by Licensor in its sole discretion. Licensor reserves the right to request immediate relocation of the License Premises, and as such, Concessions, at its discretion. The Concessions may be substituted upon written approval by the Director of Parks and Recreation. There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Licensee. The

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Licensee may use Site B, only during the period between March 1<sup>st</sup> and May 1<sup>st</sup> of each year.

3. **No Interest In Land:**

This License is not coupled with an interest in the land. It is expressly understood that this License Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee, or any other real property interest in the Property to the Licensee. This License Agreement is not exclusive, and City specifically reserves the right to grant other rights of entry to the Property if the same do not interfere with the rights granted to Licensee herein.

4. **Termination:**

Licensor may terminate this Agreement immediately, at will, at Licensor's sole discretion, with or without cause. This License Agreement may also be terminated at any time upon the mutual written agreement of Licensor and Licensee.

The City may terminate this Agreement on the good faith belief that Licensee or its Subcontractors knowingly violated Florida Statutes 448.09(1) or 448.095(2)(c). If this Agreement is terminated pursuant to Florida Statute 448.095(2)(c), Licensee may not be awarded a public contract for at least one year after the date of which this Agreement was terminated. Licensee is liable for any additional costs incurred by the City as a result of the termination of this Agreement.

5. **License Fee:**

That for and in consideration of the foregoing rights and privileges, Licensee shall pay a flat fee to the Licensor, as provided for in the payment schedule below, which amounts to a guaranteed minimum payment to Licensor of no less than \$105,575 in year one plus applicable sales tax on guaranteed minimum payment, during the Term ("License Fee"), subject to, and prorated, in the event of operation interruption due to a Force Majeure. In each subsequent year of the agreement the Licensee will pay an additional three percent as follows:

Year 1	\$105,575.00
Year 2	\$108,742.25
Year 3	\$112,004.52
Year 4	\$115,364.65
Year 5	\$118,825.59

Monthly payments will follow the table provided in Attachment C.

For these purposes, defined as any delays or failure to perform any obligation under this Agreement due to acts of God, strikes, or other disturbances, including, without limitation, terrorist acts, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. The License Fee shall be paid by the 18<sup>th</sup> day of each month, with the first payment due on June 18, 2026. Subject to any applicable usury law, a late payment fee of five percent will become due and payable if Licensee fails to pay the monthly License Fee within five business days of the due date (due date inclusive). Upon termination by the Licensor, Licensee shall vacate the Premises immediately, but in no event later than 48 hours from receipt of notification of termination.

6. **Cost of Operations:**

Licensee shall pay all costs of its License operations, including, but not limited to, utilities, and any costs resulting from facility/amenity upgrades, which must be authorized by the City in writing (i.e. High-Speed Internet Wi-Fi, Security Cameras).

7. **Independent Contractor:**

It is expressly understood that the relationship of Licensee to the City will be that of an independent contractor. Licensee and all persons employed by Licensee, either directly or indirectly, are Licensee's employees, not City employees. Accordingly, Licensee and Licensee's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Licensee employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Licensee employees or subcontractors assert a claim for wages or other employment benefits against the City, Licensee will defend, indemnify and hold harmless the City from all such claims.

8. **Subcontracting:**

Licensee may not subcontract work under this Agreement without the express written permission of the City. If Licensee has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Licensee and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.

9. **Assignment:**

This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Licensee from any of its obligations and liabilities under the Agreement.

10. **Successor and Assigns, Binding Effect:**

This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

11. **No Third Party Beneficiaries:**

This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create any benefits, rights, or responsibilities in any third parties.

12. **Non-Exclusivity:**

The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.

13. **City Responsibility:**

- a. The City will provide year-round space detailed in Attachments A and B, to the Vendor for the term of the contract. Such space shall be used solely to serve the public as outlined herein.
- b. The City will provide sand removal and grading of the areas as outlined in Attachments A and B twice per year or in emergency situations. The time for these can vary depending on situations but one would be in late January, or early February and the other late August or early September.
- c. The City will notify the Vendor at least five days in advance of an event or activity that may impact the Vendor's operation. The City may, at its discretion, waive monies owed to the City by the Vendor, at the daily rate, for maintenance or other activities necessary at the site(s).
- d. The City will provide one reserved parking space within proximity to the amusement space. Parking on the grass or sand is strictly prohibited unless approved in writing in advance from a City representative.
- e. The City will conduct site visits to ensure contract requirements are being

met.

14. **Licensee duties and responsibilities:**

- a. The Licensee shall provide various amusements, which may include, but are not limited to climbing walls, inflatable rides, inflatable waterslides, and similar attractions, all of which shall meet applicable industry safety standards.
- b. The Licensee shall be responsible for maintaining the designated areas (see Attachments A and B) and all amusements in a clean, well-maintained, and safe condition, exercising reasonable and prudent care to ensure the safety of all parties. All safety related incidents must be documented on a Safety/Incident Report Form and submitted to City staff at the earliest possible opportunity. A sample form will be required with submittal.
- c. The Licensee shall be responsible for the daily setup and takedown of amusements and activities. Any electrical cords are to be placed in conduit for the safety of staff and guests.
- d. The Licensee shall operate seven days per week, including holidays with the exception of instances of inclement weather such as high winds, rain, and/or cold temperatures. The daily hours shall be mutually agreed upon in writing between the Licensor and Licensee and may change from time to time as warranted but shall at all times be clearly posted. The hours of operation shall comply with all applicable regulations during sea turtle nesting season, as defined by the Florida Department of Environmental Protection. During Turtle Nesting Season ( May 1 through October 31) additional restrictions may be applied by Licensor on lighting and hours of operations in accordance with City policy or the law. The City reserves the right to shut down the operation of the concessions if, in its sole discretion, it is in the best interest of the City, or to protect the health, safety and welfare of the public.
- e. The Licensee shall comply with all applicable federal and state regulations, particularly related to sea turtles and sea turtle nesting season and supply the City with documentation of approval from applicable agencies
- f. The Licensee shall report any downtime for amusements or activities exceeding four hours to City staff.
- g. The Licensee shall use professional techniques in the posting of all signage.
- h. The Licensee shall set up the amusement sites, including securely anchoring equipment, fencing off the area, and establishing a designated area for ticket sales.
- i. The Licensee's employees shall operate all rides and attractions and collect

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attendance or other required data as directed by the City.

- j. The Licensee shall provide appropriate background screening for all employees throughout the term of the contract, as established by the City.
- k. The Licensee shall provide and maintain cardiopulmonary resuscitation (CPR) and first aid training and certifications for at least one employee on-site per shift.
- l. The Licensee shall comply with all applicable Center for Disease Control (CDC), local, state, and federal laws, regulations, mandates, and guidelines.
- m. The Licensee hereby covenants and agrees to pay all bills for electricity, gas, metered water, sewer, refuse collection and other services to the premises. The Licensee shall also pay for any Wi-Fi or internet services necessary to operate its business.
- n. The Licensee shall submit annual audited gross sales reports, prepared by a Certified Public Accountant, within 30 days following the end of each agreement year, along with relevant IRS depreciation and amortization schedules. These requirements shall be further detailed in the final lease agreement.
- o. For accounting and reporting purposes, the Licensee must be capable of providing daily sales reports to the City and operating the business on a predominantly cashless basis.
- p. The Licensee shall remove all attractions, inflatables and or rides including underground amenities twice a year so the city can regrade the beach area as depicted in Attachments A and B.
- q. Licensor will allow Licensee to utilize a second location near the Barefoot Beach House for operation during the months of March and April due to increased activity and impacts by Spring Break and the Pier 60 Sugar Sand Festival.
- r. Licensee will ensure that the concessions are a structure that can be broken down in 48 hours if needed.
- s. Licensee shall be prepared to follow all City-directed instructions regarding hurricane warnings/watches and be prepared to break down all items within 48 hours.
- t. A hurricane plan which details the securing and/or removal of the attraction if/as necessary shall be in place and submitted to and approved by City Staff within 30 days of the initial approval of this agreement and then subsequently on or before the renewal date each year thereafter.



- u. Licensee will ensure that the concessions are run and operated by properly trained employees and that Licensee has provided any necessary and appropriate technical, safety and operational training for its employees to carry out operations in a safe manner. It is highly encouraged that employees obtain CPR & First Aid Certifications or at a minimum that at least one employee on duty has this training. By entering into this License Agreement, Licensee represents that each employee has specific technical, safety, and operational training.
- v. All replacements or new amusements must be approved by the Parks and Recreation Director or his designee.
- w. Licensee is responsible for all background checks. Please see section 31 for full details and requirements.
- x. Licensee shall at its sole cost and expense:
  1. Secure any and all licenses or permits required by any governmental agency or authority with respect to Licensee's operation of the concessions, occupancy and use of the Premises, including any and all rights or licenses required under applicable copyright or trademark law;
  2. Secure and be responsible for the security of the concessions at close of business each day and during hours of operation; Not make or permit to be made any alterations, additions or improvements in the Premises without the prior written consent of Licensor;
  3. Not permit any mechanic's lien to be filed against the Premises by reason of any work, labor, service or materials performed at or furnished to the Premises; and
  4. Abide by all rules and regulations established by Licensor, from time to time, with respect to the use and occupancy of the Premises. All signs used at the Premises shall be subject to Licensor's prior approval and applicable law.

A handwritten mark consisting of a diagonal line with a small '4' or similar character below it.

15. **Insurance:**

The Licensee shall, at its own cost and expense, acquire and maintain (and cause contractors and subcontractors to acquire and maintain) insurance during the term with the City to be adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. Specifically, the Licensee must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum of three-year tail following the termination or expiration of this Agreement:

- a. **Commercial General Liability Insurance** including but not limited to, premises operations, products/completed operations, products liability, contractual liability, independent contractors, personal injury, and advertising injury and \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- b. **Commercial Automobile Liability Insurance** for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 combined single limit.
- c. **Workers' Compensation Insurance** Unless waived by the State of Florida and proof of waiver is provided to the City, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$1,000,000 each employee each accident, \$1,000,000 each employee by disease, and \$1,000,000\_\_disease policy limit. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. **Sexual Abuse and Molestation Liability Coverage.** On a form acceptable to the City and which shall cover Licensee and its employees for liability arising out of any occurrence of abuse or molestation in relation to the work provided by Licensee under the Agreement. If the Abuse and Molestation coverage is provided on a Claims Made Form, the retroactive date must be no later than the first date of this Agreement and such claims-made coverage must respond to all claims reported within three years following the period for which coverage is required. Limits should be per Claim \$1,000,000, Annual Aggregate \$1,000,000, with a Deductible or Self-Insured Retention of \$25,000
- e. **Waiver of Subrogation.** With regard to any policy of insurance that would pay third party losses, Licensee hereby grants City a waiver of any right to subrogation which any insurer of the Licensee may acquire against the City by

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virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect such waiver, but this provision shall apply to such policies regardless of whether or not the city has received a waiver of subrogation endorsement from each insurer.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

- f. If the Licensee is using its own property or the property of City in connection with the performance of its obligations under this Agreement, then Property Insurance on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is required.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies. The City does not represent that these types or amounts of insurance to be sufficient or adequate to protect the Licensee's interests or liabilities but are merely minimums.

- g. The City is to be specifically included as an "Additional Insured" on the Commercial Liability Insurance, and Commercial Auto Liability Insurance policies listed above and named as a "Loss Payee" on Licensee's Property Insurance policy.
- h. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s), the Licensee will furnish the City with a Certificate of Insurance evidencing the coverage's set forth above and naming the City as an "Additional Insured" on the Licensee's Commercial General Liability Insurance and Commercial Auto Liability Insurance policies listed above and as a "Loss Payee" on the Licensee's Property Insurance policy. In addition, when requested in writing from the City, Licensee will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Clearwater  
Attn: Procurement Division, 25-26  
P.O. Box 4748  
Clearwater, FL 33758-4748**

- i. Licensee shall provide a minimum 30-day written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.

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- j. Licensee's Insurance as outlined above shall be primary and non-contributory coverage for Licensee's negligence.
- k. Licensee shall defend, indemnify, save and hold the City harmless from any and all claims, suits, judgments and liability for death, personal injury, bodily injury, or property damage, arising directly or indirectly from the performance by the Licensee, its employees, contractors, subcontractors, or assigns, including legal fees, court costs, or other legal expenses.
- l. Vendor reserves the right to appoint legal counsel to provide for the Vendor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Vendor's design, equipment, or service. Vendor agrees that the City shall not be liable to reimburse Vendor for any legal fees or costs as a result of Vendor providing its defense as contemplated herein
- m. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Licensee's obligation to provide the insurance coverage specified.

16. **Liability/Indemnification:**

- a. To the fullest extent permitted by law, Licensee agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Licensee personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Licensee or Licensee personnel; and (iii) Licensee or Licensee personnel's failure to comply with or fulfill the obligations established by this Agreement. If applicable, this paragraph shall be construed in harmony with F. S. § 725.06.
- b. Licensee will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
- c. The City assumes no liability for actions of Licensee and will not indemnify or hold Licensee or any third party harmless for claims based on this Agreement or use of Licensee-provided supplies or services.
- d. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to be sued by third parties.

17. **Proprietary Rights Indemnification:**

Without limiting the foregoing, Licensee will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Licensee infringes a patent, copyright, trade secret, or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Licensee hereunder or any part thereof by reason of any alleged infringement, Licensee will, at its expense and without limitation, either:

- a. modify the item so that it becomes non-infringing;
- b. procure for the City the right to continue to use the item;
- c. substitute for the infringing item other item(s) having at least equivalent capability; or
- d. refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five years, plus any additional costs the City may incur to acquire substitute supplies or services. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to be sued by third parties.

18. **Safeguarding City Property:**

Licensee will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Licensee or its employees.

19. **Notices:**

All notices to either party must be sent by either U.S. Mail or e-mail to the addresses below:

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As Licensor  
City of Clearwater  
P.O. Box 4748  
Clearwater, FL 33758-4748  
[Kris.Koch@myclearwater.com](mailto:Kris.Koch@myclearwater.com)  
[Leila.Peterson@myclearwater.com](mailto:Leila.Peterson@myclearwater.com)

As to Licensee  
All Around Amusements, LLC  
4001 Willow Hills Court  
Plano, TX 75024  
[Terri@allaroundamusements.com](mailto:Terri@allaroundamusements.com)  
[Randall@allaroundamusements.com](mailto:Randall@allaroundamusements.com)

20. **Binding of provisions:**

The provisions of this License shall be binding upon and inure to the benefit of the heirs, personal representatives, and successors of the parties, as permitted herein. Any provision hereof which imposes upon Licensor or Licensee, any obligations after termination or expiration of this License Agreement, shall survive termination or expiration hereof and be binding upon Licensor or Licensee.

21. **This License is personal to Licensee:**

This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Licensee from any of its obligations and liabilities under the Agreement. In addition, Licensee shall not sell, mortgage, pledge or in any manner transfer this License Agreement or any interest therein, not sublet all of any part of the Premises or license considerations therein. Licensee shall notify Licensor of any name change made in accordance with applicable law.

22. **Relationship of Licensor and Licensee:**

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto it being understood that nothing contained herein, or any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

23. **Advertising:**

All advertising or related communications pertaining to Licensor (i.e. use of City logo, name including but not limited to "City of Clearwater" and/or "Clearwater Beach" and/or any images of City employees/volunteers) must be pre-approved in writing by the Licensor.

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24. **Right of entry:**

Licensor shall have the right to enter upon the Premises at all times. Licensor shall not unduly interfere with Licensee's business.

25. **Public records disclosure.**

In addition to all other contract requirements as provided by law, the Licensee executing this agreement agrees to comply with public records law specifically to:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service being provided by the Licensee hereunder.
- b. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c. Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Licensee does not transfer the records to the public agency.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Licensee upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- e. The Licensee hereby acknowledges and agrees that if the Licensee does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, [Rosemarie.Call@myclearwater.com](mailto:Rosemarie.Call@myclearwater.com), 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

- f. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Licensee of the request and the Licensee must provide

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the records to the public agency or allow the records to be inspected or copied within a reasonable time.

- g. The Licensee hereby acknowledges and agrees that if the Licensee does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- h. A Licensee who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
  - i. If a civil action is filed against a Licensee to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Licensee the reasonable costs of enforcement, including reasonable attorney fees, if:
    - 1. The court determines that the Licensee unlawfully refused to comply with the public records request within a reasonable time; and
    - 2. At least eight business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Licensee has not complied with the request, to the public agency and to the Licensee.
  - j. A notice complies with subparagraph (i)2. if it is sent to the public agency's custodian of public records and to the Licensee at the Licensee's address listed on its contract with the public agency or to the Licensee's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A Licensee who complies with a public records request within eight business days after the notice is sent is not liable for the reasonable costs of enforcement.
- k. Audits and Records Contractor must preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

26. **Compliance with Applicable/Governing Laws:**

- a. This Agreement shall be administered and interpreted under the laws of the State of Florida. The exclusive venue for any proceeding or suit in law or equity arising from or incident to this Agreement will be in Pinellas County, Florida.
- b. Licensee agrees to comply with all local, state, and federal statutes and ordinances, and is responsible for obtaining all necessary state and local permits prior to setting up and operating the concessions.
- c. **General.** Licensee must procure all permits and licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Licensee must stay fully informed of existing and future federal, state, and local laws, ordinances, executive orders, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Licensee bears full responsibility for training, safety, and providing necessary equipment for all Licensee personnel to achieve throughout the term of the Agreement. Upon request, Licensee will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
- d. **Drug-Free Workplace.** Licensee is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Licensee will require a drug-free workplace for all Licensee personnel working under this Agreement. Specifically, all Licensee personnel who are working under this Agreement must be notified in writing by Licensee that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Licensee agrees to prohibit the use of intoxicating substances by all Licensee personnel and will ensure that Licensee personnel do not use or possess illegal drugs while in the course of performing their duties.
- e. **Federal and State Immigration Laws.** Licensee agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Licensee will ensure and keep appropriate records to demonstrate that all Licensee personnel have a legal right to live and work in the United States.
  - i. As applicable to Licensee, under this provision, Licensee hereby warrants to the City that Licensee and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees (hereinafter "Contractor Immigration Warranty").

- ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Licensee to penalties up to and including termination of this Agreement at the sole discretion of the City.
- iii. The City retains the legal right to inspect the papers of all Licensee personnel who provide services under this Agreement to ensure that Licensee or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
- iv. The City may, at its sole discretion, conduct random verification of the employment records of Licensee and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Licensee agrees to assist the City in regard to any random verification performed.
- v. Neither Licensee nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Licensee or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act.
- f. **Nondiscrimination.** Licensee represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Licensee and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- g. **Governing Law, Venue.** This Agreement is governed by the laws of the State of Florida. The exclusive venue selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Pinellas County, Florida.
- h. **Provisions Required by Law.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

27. **Sales/Use Tax, Other Taxes:**

If this License, or its operation, shall create any ad valorem or other tax obligations, it shall be incumbent solely upon Licensee to timely discharge same. Licensee is responsible for the payment of all taxes including federal, state, and local taxes

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related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Licensee or Licensee employees an employee of the City or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Licensee will indemnify the City for any tax liability, interest, and penalties imposed upon the City. The City is exempt from paying state and local sales/use taxes and certain federal excise taxes and will furnish an exemption certificate upon request.

28. **Audits and Records:**

Licensee must preserve the records related to this Agreement for five years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Licensee in relation to the Agreement. Licensee will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

29. **Background Check:**

The City may conduct criminal, driver history, and all other requested background checks of Licensee personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

Licensee acknowledges that Licensee, including its employees, volunteers, and representatives are allowed by law to work with children, the elderly, or the disabled. Therefore, if not otherwise required to conduct background checks by law, Licensee voluntarily agrees to register with the Florida Department of Law Enforcement (FDLE-) to participate in the Volunteer & Employee Criminal History System (VECHS') for background checks, as authorized by the National Child Protection Act (NCPA'), as amended, and Florida Statute 943.0542 (1999), as may be amended from time to time. Licensee agrees to secure the highest level of background screening available under VECHS, and that this level of background screening is necessary to effectively screen out those not suitable for contact with children, the elderly or the disabled. Licensee voluntarily agrees to require such screenings in accordance with the processes and procedures set forth by the FDLE and the FBI to secure criminal history information on its employees.

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volunteers, and representatives. The Licensee acknowledges that the VECHS program is not available to entities currently mandated to obtain background checks by statute or other law. Licensee shall pay all costs associated with such background checks and will submit an Affidavit of Criminal Background Screening in substantially the form attached hereto, and incorporated herein, as Attachment D. Licensee shall secure releases from screened parties, use said criminal history information only as permitted by law and shall unilaterally make the determination of a screened parties' fitness and suitability for working with children, the elderly or the disabled. Licensor shall not be required to make such a determination under any circumstance. Licensee shall submit the Affidavit of Criminal Background Screening to Licensor prior to beginning its operations under this agreement. If for any reason, including denial of eligibility by the Florida Department of Law Enforcement, Licensee is unable to secure background checks in accordance with the VECHS program, Licensee shall secure the highest level of background screening allowed by law.

30. **Security Clearance and Removal of Licensee Personnel:**

The City will have final authority, based on security reasons:

- a. determine when security clearance of Licensee personnel is required;
- b. to determine the nature of the security clearance, up to and including fingerprinting Licensee personnel; and
- c. to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Licensee personnel for any reasonable cause not prohibited by law, then Licensee will, upon notice from the City, remove any such individual from performance of services under this Agreement.

31. **Default:**

- a. A party will be in default if that party:
  - i. is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
  - ii. is the subject of a petition for involuntary bankruptcy not removed within 60 calendar days;
  - iii. conducts business in an unethical manner or in an illegal manner; or
  - iv. fails to carry out any term, promise, or condition of the Agreement.

A handwritten signature or set of initials, possibly 'TY', written in black ink.

- b. Licensee will be in default of this Agreement if Licensee is debarred or suspended in accordance with the Clearwater Code of Ordinances Section 2.565 or if Licensee is debarred or suspended by another governmental entity.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have 30 days from receipt of the notice to cure the default; the 30-day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety 90 days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Licensee give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.

32. **Remedies:**

The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by:
  - i. requiring immediate reimbursement to the City;
  - ii. deduction from an unpaid balance due to Contractor;
  - iii. collection against the proposal and/or performance security, if any;
  - iv. collection against liquidated damages (if applicable); or
  - v. a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement,

including, but not limited to, administrative expenses, attorneys' fees, and costs.

- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
- d. The City will not be liable for incidental, special, or consequential damages.

33. **Breach of contract during emergency recovery periods for natural emergencies:**

Pursuant to F. S. § 252.505, any vendor who breaches a contract for commodities or services related to an emergency response for a natural emergency during an emergency recovery period shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages. As used in this section, the term "emergency recovery period" means a one-year period that begins on the date that the Governor initially declared a state of emergency for a natural emergency.

34. **Continuation During Disputes:**

Licensee agrees that during any dispute between the parties, Licensee will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

35. **E-Verify:**

Licensee and its Subcontractors shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Licensee will not enter into a contract with any Subcontractor unless each party to the contract registers with and uses the E-Verify system. Subcontractor must provide Licensee with an affidavit stating that Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Licensee shall maintain a copy of such affidavit.

36. **Non-Waiver of Rights:**

There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.

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37. **Warranty:**

Licensee warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Licensee warrants that all services will be performed in a good, workman-like, and professional manner. The City's acceptance of service or materials provided by Licensee will not relieve Licensee from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction. Unless otherwise agreed, Licensee warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one year unless otherwise specified, and will perform in accordance with manufacturer's published specifications. If applicable, this paragraph shall be construed in harmony with F. S. § 725.06.

38. **City's Right to Recover Against Third Parties:**

Licensee will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

39. **No Guarantee of Work:**

Licensee acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.

40. **Ownership:**

All deliverables, services, and information provided by Licensee or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Licensee or any other person except with prior written permission by the City.

41. **Use of Name:**  
Licensee will not use the name of the City of Clearwater in any advertising or publicity without obtaining the prior written consent of the City.
42. **FOB Destination Freight Prepaid and Allowed:**  
All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
43. **Risk of Loss:**  
Licensee agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Licensee from any obligation hereunder.
44. **Warranty of Rights:**  
Licensee warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble, or hindrance from Licensee or third parties.
45. **Contract Administration:**  
This Agreement will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding this Agreement will be referred to the administrator for resolution. Supplements may be written to this Agreement for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
46. **Force Majeure:**  
Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond 120 calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

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47. **Cooperative Use of Contract:**

This Agreement may be extended for use by other municipalities, counties, school districts, and government agencies with the approval of Licensee. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

48. **Notices:**

All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be:

- a. personally delivered;
- b. sent via certified or registered mail, postage prepaid;
- c. sent via electronic mail;
- d. sent via overnight courier; or
- e. sent via facsimile.

If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three calendar days after being deposited in the United States mail. If sent via electronic mail, overnight courier, or facsimile, receipt will be deemed effective two calendar days after the sending thereof.

49. **Integration Clause:**

This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.

50. **Severability:**

If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

51. **Surviving Provisions:**

Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof,

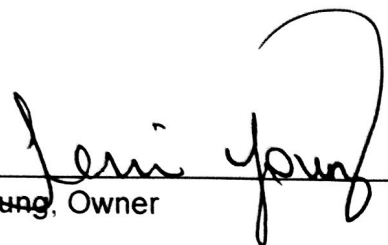
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set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date

**IN WITNESS WHEREOF**, the Parties herein have executed this Agreement as of the date first above written.

**Signed:**

By: \_\_\_\_\_  
Terri Young, Owner



**ALL AROUND AMUSEMENTS, LLC**

**Countersigned:**

By: \_\_\_\_\_  
Bruce Rector  
Mayor

**CITY OF CLEARWATER, FLORIDA**

By: \_\_\_\_\_  
Jennifer Poirrier  
City Manager

**Approved as to form:**

By: \_\_\_\_\_  
Melissa Isabel  
Assistant City Attorney

**Attest:**

By: \_\_\_\_\_  
Rosemarie Call  
City Clerk

Attachment A: North of Pier 60 Site

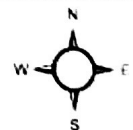
**AERIAL MAP**



115 AIRWATER  
MAKE THE BEST OF IT  
PROFESSIONAL

Prepared by:  
Engineering Department  
Geographic Technology Division  
100 S. Sigbee Ave., Clearwater, FL 33767  
Ph: 737966-4766, Fax: 737936-4766  
www.MyClearwater.com

**Attachment A:  
North of Pier 60 Sites  
1 Causeway Blvd. Clearwater, FL 33767  
Available year-round**



Map Gen By: KN

Reviewed By: VC

Aerial Flown 2019

Date: 2/9/2021

Page 2 of 2



Scale: N.T.S.

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Attachment B: South of Pier 60 Site

**AERIAL MAP**



 CLEARWATER WATER MANAGEMENT SOLUTIONS Prepared by: Engineering Department Geographic Technology Division 160 S. 11 <sup>th</sup> Ave., Clearwater, FL 33766 Ph: (727)662-4766, Fax: (727)666-4766 www.cityclearwater.com	<b>Attachment B:</b> <b>North of Barefoot Beach House Site</b> <b>332 S Gulfview Blvd. Clearwater, FL 33767</b> <b>Available Year Round</b>			 Scale N.T.S.
	Map Gen By: KN	Reviewed By: VC	Aerial Flown 2019	

Document Path: C:\Users\keller\_hytland\City of Clearwater\Engineering\Geographic Technology - Location Maps\Barefoot\_Aerial\Barefoot\_Aerial.mxd

Ty

**Attachment C: Monthly Payment Schedule**

	<b>Current</b>	<b>2026-2027</b>	<b>2027-2028</b>	<b>2028-2029</b>	<b>2029-2030</b>	<b>2030-2031</b>
<b>JUN</b>	\$ 8,000.00	\$ 8,240.00	\$ 8,487.20	\$ 8,741.82	\$ 9,004.07	\$ 9,274.19
<b>JUL</b>	\$ 10,500.00	\$ 10,815.00	\$ 11,139.45	\$ 11,473.63	\$ 11,817.84	\$ 12,172.38
<b>AUG</b>	\$ 10,500.00	\$ 10,815.00	\$ 11,139.45	\$ 11,473.63	\$ 11,817.84	\$ 12,172.38
<b>SEP</b>	\$ 5,500.00	\$ 5,665.00	\$ 5,834.95	\$ 6,010.00	\$ 6,190.30	\$ 6,376.01
<b>OCT</b>	\$ 4,000.00	\$ 4,120.00	\$ 4,243.60	\$ 4,370.91	\$ 4,502.04	\$ 4,637.10
<b>NOV</b>	\$ 4,000.00	\$ 4,120.00	\$ 4,243.60	\$ 4,370.91	\$ 4,502.04	\$ 4,637.10
<b>DEC</b>	\$ 4,000.00	\$ 4,120.00	\$ 4,243.60	\$ 4,370.91	\$ 4,502.04	\$ 4,637.10
<b>JAN</b>	\$ 5,500.00	\$ 5,665.00	\$ 5,834.95	\$ 6,010.00	\$ 6,190.30	\$ 6,376.01
<b>FEB</b>	\$ 5,500.00	\$ 5,665.00	\$ 5,834.95	\$ 6,010.00	\$ 6,190.30	\$ 6,376.01
<b>MAR</b>	\$ 20,000.00	\$ 20,600.00	\$ 21,218.00	\$ 21,854.54	\$ 22,510.18	\$ 23,185.48
<b>APR</b>	\$ 20,000.00	\$ 20,600.00	\$ 21,218.00	\$ 21,854.54	\$ 22,510.18	\$ 23,185.48
<b>MAY</b>	\$ 5,000.00	\$ 5,150.00	\$ 5,304.50	\$ 5,463.64	\$ 5,627.54	\$ 5,796.37
<b>Total</b>	<b>\$102,500.00</b>	<b>\$105,575.00</b>	<b>\$108,742.25</b>	<b>\$112,004.52</b>	<b>\$115,364.65</b>	<b>\$118,825.59</b>

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