

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-56**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE LICENSE AGREEMENT WITH THE EDUCATIONAL COALITION FOR MONROE COUNTY (THE “COALITION”) PURSUANT TO WHICH THE CITY OF MARATHON SHALL PERMIT THE COALITION TO LOCATE AND OPERATE A FOOD CONCESSION SHED ADJACENT TO THE SKATE PARK; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”), owns and operates a skate park facility as part of the Community Park; and

WHEREAS, the City generally permits sports clubs, like soccer leagues and little leagues, to use the facilities of the Community Park during the applicable season and sell certain foods and beverages at such time to raise money to support their leagues and clubs; and

WHEREAS, The Educational Coalition for Monroe County (the “Coalition”) is a 501c3 corporation that has played an important role in supporting the skate park and organizing events for children and young adult skaters; and

WHEREAS, in order to support the skating programs and other efforts on behalf of the skate park, the Coalition would also like to sell food and beverages to the people using the skate park on evenings and weekends on a year-round basis from a shed to be located next to the skate park; and

WHEREAS, the City Council wishes to authorize the Coalition to conduct such activity subject to certain terms and conditions to be set forth in a License Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and are incorporated herein

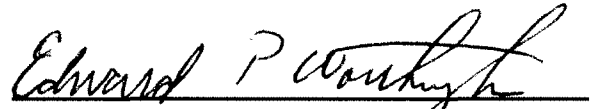
Section 2. The City Council hereby approves the License Agreement between the City of Marathon and The Educational Coalition of Monroe County, a copy of which is attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 3. The City Manager is authorized to sign the Agreement.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 8th day of April, 2008.


THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

AYES: Bull, Cinque, Tempest, Vasil, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

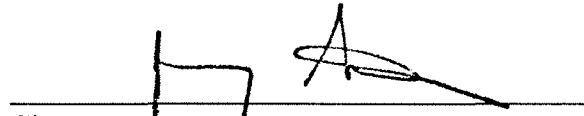
ATTEST:



Diane Clavier
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) entered into this 8th day of April, 2008, between the City of Marathon, Florida, a municipal corporation of the State of Florida (“Licensor”), and The Educational Coalition for Monroe County, a not-for-profit corporation organized under the laws of the State of Florida (“Licensee”).

WHEREAS, the Licensor owns and operates a skate park facility as part of the Marathon Community Park; and

WHEREAS, Licensor generally permits sports clubs, like soccer leagues and little leagues, to use the facilities of the Marathon Community Park during the applicable season and sell food and beverages at such time to raise money to support their leagues and clubs; and

WHEREAS, Licensee is a 501c3 tax exempt entity that has played an important role in supporting the skate park and organizing events for children and young adult skaters; and

WHEREAS, in order to support the skating programs and other efforts on behalf of the skate park, Licensee would also like to sell food and beverages to the people using the skate park on evenings and weekends on a year-round basis from a shed to be located next to the skate park; and

WHEREAS, Licensor wishes to authorize the Licensee to conduct such activity subject to all terms, covenants, conditions and provisions set forth below.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), receipt of which is hereby acknowledged and the mutual terms, covenants conditions and provisions set forth herein, Licensor and Licensee agree as follows:

1. **Term of Agreement.** The term of this Agreement is two (2) years, with an option to extend the Agreement on a yearly basis up to a maximum of five (5) years, subject to any additional terms and conditions that may be negotiated. Licensee may extend the term of this Agreement as set forth above, by notifying the Licensor in writing not less than sixty (60) days prior to the expiration of the initial term, and on a yearly basis thereafter.

2. **Installation, Operation, Service and Maintenance of the Shed.**

2.1 It is understood and agreed that the Licensee shall install, operate, service and maintain a Utility Shed, more specifically described on Exhibit A hereto (the “Shed”), in a space next to the skate park located at the Marathon Community Park, as set forth on the site plan attached hereto as Exhibit B. Installation, placement, and location of the Shed must be mutually agreed upon, and shall comply with all building and safety codes of the City of Marathon. The Shed must be kept in a reasonably clean condition, appearance and operable. Licensee also agrees to maintain the area around the Shed in clean condition and appearance. The City shall have no financial obligations with respect to the installation, operation or

maintenance of the Shed. The Shed shall only be used for the sale of food and beverage as described below.

2.2 Except as otherwise set forth in subsection 2.5 below, Licensor shall notify Licensee of any failure to perform any of the covenants contained herein. Licensee shall have seven (7) days upon receipt of said notification to cure any of the deficiencies described in the Licensor's notification.

2.3 The Licensee shall, if necessary, obtain all federal, state and local permits and approvals that are necessary for the operation of a food and beverage concession out of the Shed.

2.4 Except for electricity, no other utilities shall be installed at the Shed. The use of electricity shall be limited to interior lighting and refrigeration. There will be no cooking inside of the Shed. Licensee may engage in cooking activities outside of the Shed to the same extent and subject to the same rules and regulations as cooking is otherwise allowed in Marathon Community Park by Licensor.

2.5 Licensee agrees that in the event the City of Marathon becomes subject to a Hurricane Warning, Licensee shall immediately remove the Shed from the park and cause it to be stored safely off-premises. Licensee has represented to Licensor that Licensee has an agreement with Beacon Construction pursuant to which Beacon Construction (or any equivalent contractor in the future) will remove the Shed and store the Shed at their facilities within the City of Marathon during such times. In the event that Licensee fails to remove the Shed immediately upon the declaration of such storm event, Licensor is hereby authorized to remove the Shed without notice to or consent of Licensee and Licensor shall have no liability to Licensee for any damages caused to the Shed or its contents during such removal and disposal. Licensee further agrees that it shall reimburse Licensor the full amount of all costs and expenses incurred by Licensor in such removal, such reimbursement to be paid within thirty (30) days of written demand therefor by Licensor.

2.6 Upon the termination of this Agreement, the Licensee shall immediately remove the Shed and return the Licensor's property to the same condition as before the execution of this Agreement.

2.7 The Licensee may operate the food and beverage concession out of the Shed during regular skate park hours, as determined by the City of Marathon from time to time. The concession may be open and operated during special events which have been approved in advance in writing by Licensor.

2.8 Licensee agrees that the food and beverage concession will only be operated by adult volunteers. There will be no paid employees of Licensor or Licensee operating out of the Shed. Licensee is responsible for the security of the Shed and its contents. The shed shall be locked at all times when it is not in use. Licensor's staff in the park will not have keys to the Shed. No money or other valuables may be stored in the Shed during off hours.

3. **Assignment of Interests and Rights.** The Licensee may not assign its interest and rights under this Agreement without the prior written consent of Licensor.

4. **Construction.** Licensor and Licensee hereby acknowledge that they have fully reviewed this Agreement, and its attachments and have had the opportunity to consult with legal counsel of their choice, have participated in the negotiating and drafting of this Agreement, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

5. **Indemnification.**

5.1 Licensee shall defend, indemnify, and hold harmless Licensor, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Licensee's performance or non-performance of any provision of this Agreement or the food and beverage concession activities contemplated herein, including, but not limited to, liabilities arising from contracts between the Licensee and third parties made pursuant to this Agreement. Licensee shall reimburse Licensor for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Licensee's performance or non-performance of this Agreement or the food and beverage activities contemplated herein.

5.2 The provisions of this Section 5 shall survive termination of this Agreement.

6. **Insurance.** Licensee shall provide and maintain during the life of this Agreement the following insurance coverage:

6.1 Comprehensive and general liability Insurance with a limit of \$1,000,000.00.

6.2 All insurance shall be obtained from companies that are licensed and authorized to do business in the State of Florida.

6.3 Licensor shall be named as an additional insured on the above insurance policies, unless prohibited by law.

6.4 At the time of execution of this Agreement, the Contractor shall file with the City certificates of such insurance that are acceptable to the City. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the City.

7. **Independent Contractor.** Licensee shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained in the Agreement shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall in any way be construed to constitute Licensee's or any of its agents or employees as the representative, agents or employees of the Licensor.

8. **Modification of Agreement.** No modification of this Agreement shall be binding on Licensor or Licensee unless reduced to writing and signed by a duly authorized representative of Licensor and Licensee, with the same formalities as this Agreement.

9. **Severability.** In the event a court of competent jurisdiction determines any sentence, provision, paragraph or section of this Agreement to be null and void, the remaining parts of this Agreement shall continue in full force and effect as though such sentence, provision, paragraph or section had been omitted from the Agreement.

10. **Entire Agreement.** This Agreement incorporates and includes all negotiations, correspondence, conversation, agreements, or understanding applicable to the matters contained herein, and Licensor and Licensee agree that there are no commitments, warranties or understandings concerning the subject matter of this Agreement that is not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

11. **Prohibition Against Contingent Fees.** Licensee warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Licensee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm other than a bona fide employee working solely for Licensee, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

12. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court of the State of Florida or the United States District Court for the Southern District of Florida.

13. **Waiver.** No delay or failure on the part of any party to exercise any right or remedy accruing to such party upon the occurrence of any event of default or violation shall affect any such right or remedy or be held to be an abandonment thereof or preclude such party from the exercise thereof at any time during the continuation of any event of default or violation. No waiver of a single event of default or violation shall be deemed to be a waiver of any subsequent event of default or violation.

14. **Records/Audits.** Licensee shall maintain and require all its subcontractors to maintain complete and correct records, books, documents, papers and account pertaining to

services performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Licensor or any authorized representative of Licensor upon reasonable notice and shall be kept for a period of three (3) years after the termination of this Agreement.

15. **Title.** Title to the Shed shall be and remain in the Licensee.

16. **Risk of Loss.** The Licensee and its insurers, if any, shall relieve the Licensor of all risks of loss or damage to the Shed during the periods of transportation, installation and removal of the Shed.

17. **Termination.** This Agreement shall be terminated at the option of either party upon the occurrence of any one or more of the following events:

17.1 If the Licensee fails to cure any deficiency identified by the Licensor within seven (7) days in accordance with subsection 2.2 above.

17.2 If the Licensee fails to remove the Shed from the park as required by subsection 2.5 above.

17.3 Except as provided in subsections 17.1 and 17.2, if either party is in breach or default of any term, condition, covenant or provision of this Agreement, and such breach or default continues for a period of thirty (30) days after the giving of written notice thereof. In addition to all other rights and remedies of law or equity or otherwise, the non-breaching party shall be entitled to recover reasonable attorneys' fees and court costs.

17.4 Either party hereto may, by vote of the City Council in the case of Licensor or the Board of Directors in the case of Licensee, terminate this Agreement without cause upon thirty (30) days' prior written notice

18. **Compliance with Laws.** Licensee shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to this Agreement and the food and beverage concession activities contemplated herein. Licensee hereby represents and warrants that it is a 501c3 tax exempt organization and will remain so throughout the term of this Agreement.

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

20. **Waiver of Jury Trial.** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

21. **Attorney's Fees.** In the event either party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing party shall

be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings.

22. **Notices.** All notices, demands, requests, consents, approvals and other communications (collectively, "Notices"), required or permitted to be given hereunder, shall be in writing and sent by facsimile (or similar device) and by either: (I) registered or certified air mail, postage pre-paid, return receipt requested; or, (ii) special delivery service (e.g. Federal Express, DHL, UPS, etc.); addressed to the party to be so notified as follows:

If to Licensor:

City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Attn: City Manager

With a copy to:

Stearn Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 W. Flagler Street
Suite 2200
Miami, FL 33130

If to Licensee:

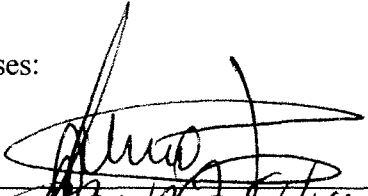
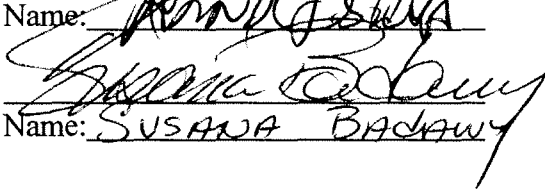
The Educational Coalition for Monroe County
P.O Box 544480
Marathon Shores, FL 33052
Attn: Tina Belotti

Each notice sent in accordance with the requirements of this section shall be deemed effectively given upon actual receipt. Each person designated herein to receive any notice or a copy thereof may change the address at which, or the person to whom, notice or a copy thereof is to be delivered, by notice given in accordance with the requirements of this section.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties respectively executed this license agreement as of the day and year first above written.

Witnesses:


Name: Tina Belotti

Name: SUSANA BADAWY

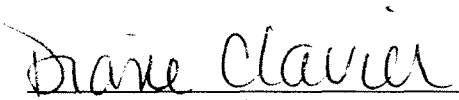
LICENSEE:

The Educational Coalition for Monroe County, a not-for-profit corporation of the State of Florida

By: Tina Belotti
Tina Belotti
Director

Attest:

City of Marathon, a municipal corporation of the State of Florida


Diane Clavier, City Clerk

By: Edward P. Worthington
Edward P. Worthington, Mayor

Approved as to form and legal sufficiency for the use and reliance of the City of Marathon only:

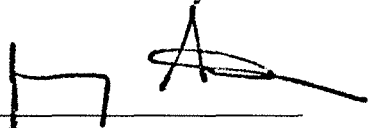
By: 
City Attorney

EXHIBIT "A"

Description of Shed

8" X 8" Ted Shed custom model

EXHIBIT "B"

Site Plan for the Shed