

RESOLUTION No. 2007-181-687

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH CALDER RACE COURSE, INC. FOR SLOT MACHINES AND PARI-MUTUEL FACILITIES, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, at the November 2, 2004, General Election, the electors of the State of Florida voted to adopt an Amendment to the Florida Constitution authorizing the electors of Miami-Dade and Broward Counties to hold countywide elections on whether to authorize slot machines in existing, licensed, Pari-mutuel facilities that have conducted live racing or games in those Counties during each of the last two calendar years before the effective date of the Amendment, and

WHEREAS, pursuant to a Resolution passed on July 10, 2007, the Miami-Dade Board of County Commissioners called a Countywide Special Election to be held by the County on Tuesday, January 29, 2008, (the "Special Election") for the purpose of submitting to the qualified electors of the County, the question of whether to authorize slot machines in certain existing, licensed, Pari-mutuel facilities as provided in Article X, Section 23 of the Florida Constitution, and

WHEREAS, the City and Calder Race Course, Inc. ("Calder") recognize that each of Calder's operations impacts the health and general welfare of the residents of the City of Miami Gardens, and

WHEREAS, the City and Calder recognize that the residents of the City of Miami Gardens have legitimate concerns over increased development, traffic, congestion, and the quality of life in the City, and

WHEREAS, in consideration of the City incurring additional costs of administration and services, the City experiencing loss of revenues, and other good and valuable consideration, Calder and the City have agreed to enter into an Agreement whereby, if the January 29, 2008, referendum is approved, to offset the additional traffic at or near Calder's facilities, and to accommodate the increased traffic, and other impacts of the facility to the residents of the City of Miami Gardens, the City of Miami Gardens shall be compensated at a rate of 1.5% of all gross slot revenues generated at Calder, and

WHEREAS, the parties would like to formalize that Agreement a facsimile of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement with Calder Race Course, Inc. for supplemental compensation for extended municipal services regarding slot machines and Pari-mutuel facilities, a copy of which is attached hereto as **Exhibit "A"**.

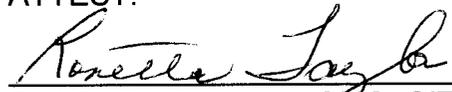
Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Calder Race Course, Inc., and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON DECEMBER 12, 2007.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA K. DICKENS, City Attorney

SPONSORED BY: DANNY O. CREW, CITY MANAGER

MOVED BY: Vice Mayor Watson

SECONDED BY: Councilman Bratton

VOTE: 6-0

Mayor Shirley Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Melvin L. Bratton	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Aaron Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman André Williams	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Oscar Braynon, II	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No) Not present

City of Miami Gardens

1515-200 NW 167th Street
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Oscar Braynon II
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson
Councilman André Williams

Agenda Cover Page

Date: December 12, 2007

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source: Building bond

Contract/P.O. Requirement: Yes No

Sponsor Name/Department:

Danny Crew, City Manager

Public hearing

Ordinance

1st Reading

Advertising requirement:

Quasi-Judicial

Resolution

2nd Reading

Yes No

Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH CALDER RACE COURSE, INC., FOR SLOT MACHINES AND PARI-MUTUEL FACILITIES, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary

Background

As City Council is aware, voters in the State of Florida approved a constitutional amendment allowing the voters of Miami-Dade and Broward Counties to consider approval of slot machines at various pari-mutuel facilities within those counties. One of these facilities is Calder Race Course in Miami Gardens. This vote did not pass in 2005, but is up for reconsideration in January, 2008.

Over the past several months, I have been meeting with members of the pari-mutual industry to negotiate a "host" agreement in the event that the January 29th referendum passes. While the City of Miami Gardens has taken no official position on this referendum, its outcome is of importance to the City. If the referendum passes and Calder installs slot machines, Miami Gardens will feel the impact of such action. In order to protect the City and to ensure that the City will receive appropriate compensation for the impact of such installation, the City and Calder have prepared a contingent agreement which you have before you for consideration.

L-2) REGULAR AGENDA

Agreement with Calder Race Course

This agreement formalizes the promises made by the pari-mutuel industry and defines the roles of the Calder and the City. The agreement provides for the City to receive an "impact" revenue from the operation of the machines equal to 1.5% of Calder's gross revenues (total revenue less payouts). At the point that total revenue exceeds \$250,000,000, the City's percentage increases to 2.5% of gross revenue. As part of the "impact", the City acknowledges that Calder is planning an expansion of their facilities, and that development fees associated with this expansion are part of the impact. As such, the agreement provides for an off-set for these fees. This is consistent with the County's contract.

As indicated above, the contract is contingent of the outcome of the January 29th countywide referendum. If the referendum does not pass, the agreement is null and void. If it does pass, I believe the City's interests are protected by the agreement.

RECOMMENDATION: That City Council approve the proposed agreement between Calder Race Course and the City of Miami Gardens.

AGREEMENT BETWEEN CALDER RACE COURSE, INC. AND CITY OF MIAMI
GARDENS FOR SUPPLEMENTAL COMPENSATION FOR EXTENDED
MUNICIPAL SERVICES REGARDING SLOT MACHINES IN PARI-MUTUEL
FACILITIES

THIS AGREEMENT is entered this 12th day of December 2007, by and between CALDER RACE COURSE, INC., a Florida corporation (hereinafter referred to as "CALDER"), and CITY OF MIAMI GARDENS, FLORIDA, (hereinafter referred to as the "CITY").

WITNESSETH:

WHEREAS, at the November 2, 2004, general election, the electors of the State of Florida voted to adopt an amendment to the Florida Constitution authorizing the electors of Miami-Dade and Broward Counties to hold county-wide elections on whether to authorize slot machines in existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the amendment. Article X, Section 19 of the Florida Constitution; and

WHEREAS, pursuant to a resolution passed on July 10, 2007, the Miami-Dade Board of County Commissioners called a countywide special election to be held by the County on Tuesday, January 29, 2008, (the "Special Election") for the purpose of submitting to the qualified electors of the County the question of whether to authorize slot machines in certain existing, licensed pari-mutuel facilities as provided in Article X, section 19; and

WHEREAS, if the Referendum is adopted by a majority of the qualified electorate voting in the Special Election, slot machines shall be authorized to operate at the Calder Race Course pari-mutuel facility located in City of Miami Gardens, Florida; and

WHEREAS, the CITY and CALDER recognize that CALDER's operations impact the health and general welfare of the residents of City of Miami Gardens; and

WHEREAS, the CITY and CALDER recognize that the residents of City of Miami Gardens have legitimate concerns over increased development, traffic, congestion, and the quality of life in City of Miami Gardens; and

WHEREAS, CALDER desires to assist the CITY in mitigating, minimizing, offsetting and defraying governmental impacts, including the costs of regional law enforcement, human services, mass transit operation, and to mitigate lost revenues such as sales tax surcharges that the CITY may incur as a result of CALDER's slot machine operations in City of Miami Gardens; and

WHEREAS, CALDER acknowledges that if the January 29, 2008, Referendum is

approved, the CITY may incur additional costs of administration and services, losses of revenues, upfront and start-up expenses including, but not limited to, expenses related to planning and developing roads, traffic signals and sign improvements to handle additional traffic at and near CALDER's facilities, forecasting and planning necessary enhancements to the rail and bus transit system on routes to and from CALDER's facilities, planning and development of additional infrastructure needs to accommodate increased tourist traffic resulting from the presence of slot machines in the CITY, planning and development of a coordinated marketing and promotional campaign related to having slot machines in the CITY, and/or studying new economic development opportunities, such as hotel and resort complexes, retail centers and restaurants, presented by having slot machines in the CITY,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. RULES OF LEGAL CONSTRUCTION.

For all purposes of the Agreement, unless otherwise expressly provided:

- a) A defined term has the meaning assigned to it;
 - b) Words in the singular include the plural, and words in plural include the singular;
 - c) A pronoun in one gender includes and applies to other genders as well;
- and
- d) The terms "hereunder", "herein", "hereof", "hereto" and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles
 - e) This Agreement shall not be more strictly construed against either the CITY or CALDER.
 - f) The WHEREAS clauses set forth above shall be deemed incorporated herein.
 - g) All exhibits and appendices attached hereto shall be deemed incorporated

herein.

Section 2. Definitions As used herein:

“Agreement” means this Agreement between the CITY and CALDER.

"Applicable Laws" means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, policies and procedures and orders which govern or relate to the respective Parties' obligations and performances under this Agreement, all as they may be amended from time to time.

“CITY” means City of Miami Gardens, and all departments, agencies and instrumentalities thereof.

"Effective Date" shall have the meaning set forth in Section 3 hereof.

“Fiscal Year” means the CITY’s fiscal year, which begins October 1 and ends September 30.

“Gross Slot Revenues” means all currency and other consideration placed into any slot machine at the CALDER FACILITY, less payouts to and credits redeemed by players at the CALDER FACILITY.

“Pari-Mutuel Facility” means the premises at which CALDER operates as described in the Thoroughbred Racing Permit issued to Calder Race Course, Inc. by Division of Pari-Mutuel Wagering pursuant to Chapter 550, F.S. (See Exhibit “A”).

“CALDER Fiscal Year” means CALDER’s fiscal year, which ends on December 31 of each calendar year.

“Slot Machine” means any machine as defined by Section 849.16 Florida Statutes or any other Applicable Laws.

Section 3. Term and Effective Date

(a) This Agreement shall only be effective if the qualified electors of Miami-Dade County vote to approve the question of whether to authorize slot machines in certain existing, licensed pari-mutuel facilities as provided in Amendment 4, and upon certification of the election results by the Supervisor of Elections.

(b) This Agreement shall remain in effect for a term of thirty (30) years and shall be automatically renewed for successive thirty (30) year terms, unless the CITY sends to CALDER written notice of its intent not to renew at least thirty (30) days prior to the expiration of any such term or renewal term. This Agreement may not be terminated during its term, except as expressly provided herein.

(c) This Agreement shall terminate immediately at the earliest of such time that (1) the voters do not approve by majority vote the issue of whether to permit slot machines in Miami-Dade County or (2) any vote approving such issue is overturned or held invalid (following the expiration of all appeals), which shall each or collectively be referred to as an (“Event of Early Termination”).

Section 4. Compensation

Beginning on the date that any slot machines are operating, and continuing through the term of the Agreement, CALDER agrees to pay the CITY a monthly amount, in arrears, equal to one and five tenths percent (1.50 %) of Gross Slot Revenues generated at CALDER (the “Monthly Percentage Payment”). The Monthly Percentage Payment shall become due and payable in the amount calculated pursuant to the

immediately-preceding sentences on the 15th day of the calendar month following its accrual. The Monthly Percentage Payment shall be made as an advance on the total annual amount of any percentage payments on Gross Slot Revenues paid by CALDER to the CITY. CALDER shall, on an annual basis, within sixty (60) days following the conclusion of CALDER's fiscal year, pay to the CITY a supplemental annual percentage of Gross Slot Revenues in accordance with the sliding scale set forth below for the additional amounts, if any, of the percentage of Gross Slot Revenues that are due to the CITY from the operation of Slot Machines at CALDER for the preceding CALDER fiscal year (the "Annual Sliding Scale" Percentage Payment) after giving credit to CALDER for the Monthly Percentage Payments already made to the CITY for such fiscal year. Such Annual Sliding Scale shall be calculated at:

Two and one-half percent (2.50%) of the Gross Slot Revenues in excess of \$250 million.

CALDER shall submit payment of the percentage by corporate check made payable to the CITY by delivery to the following address:

City Manager
City of Miami Gardens
1515 NW 167th Street
Building 5; Suite 200
Miami Gardens, Florida 33169

Together with each payment, CALDER shall submit to the CITY an accounting of the operation of the slot machines and the computation of the fee.

Example Number 1.

During CALDER's fiscal year, the Gross Slot Machine Revenues are \$170 million. The amount due to the CITY will be \$2,890,000.00 (\$170 million x .017)

Example Number 2.

During CALDER's fiscal year, the Gross Slot Machine Revenues are \$255 million. The amount due to the CITY will be:

- (1) \$4,250,000.00 (\$250 million x .017); plus
- (2) \$125,000.00 (\$5 million x .025)

For a total of \$4,375,000.00, of which \$125,000.00 will be paid within sixty (60) days of the end of CALDER's fiscal year.

Section 5. Regulatory Cost Reimbursement.

If the Florida Legislature passes any law establishing an affirmative obligation on the part of the CITY to regulate slot machine operations, CALDER agrees to reimburse the CITY for one-third of any costs to the CITY attributable to such a law.

Section 6. Auditing.

The CITY shall have the right to audit the books, records, and accounts of CALDER directly relating to the calculation of Gross Slot Revenues, upon reasonable notice, in order to ascertain the correctness of the Gross Slot Revenues Payment required to be made to the CITY pursuant to this Agreement, including the accurate reporting of Gross Slot Revenues and the determination of Gross Slot Revenues Payment under this Agreement. CALDER shall keep such books, records, and accounts, consistent with generally accepted accounting standards and principles, as may be necessary in order to record complete and correct entries related to the calculation of Gross Slot Revenues. All books, records, and accounts of CALDER relating to Gross Slot Revenues shall be kept

in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, CALDER shall make same available at no cost to CITY. Certified Audited financial statements of CALDER which details the amount of annual Gross Slot Revenues shall be provided to the CITY within four (4) months of the end of each fiscal year of CALDER.

CALDER shall preserve and make available, at reasonable times for examination and audit by the CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to the calculation of Gross Slot Revenues and the Gross Slot Revenues Payment pursuant to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the creation of the record. If any audit has been initiated and audit findings have not been resolved at the end of the retention period, or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined to be applicable to CALDER's records relating to Gross Slot Revenues, CALDER shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the CITY or CALDER. Any failure to make payments in excess of Two Hundred Thousand and 00/100 (\$200,000.00) of cumulative, annual payments that should have been made to the CITY in each CALDER fiscal year shall permit the CITY to charge an administrative fee of ten percent (10%) of any amount owed to the CITY, plus interest in an amount of one percent (1%) per month until the amount owed has been paid. Any underpayment shall be paid by CALDER to the CITY

within ten (10) days of notice of the audit finding, including interest and the administrative fee, if applicable. In addition, in the event of an underpayment CALDER shall immediately reimburse the CITY for all direct and indirect costs of the CITY's audit.

Section 7. Fees. CALDER shall pay all building, zoning, permit, and impact fees as may be required pursuant to the Code of City of Miami Gardens and other Applicable Laws, as such fees become due and payable. After any such payment, CALDER shall be entitled to deduct from the Monthly Percentage Payment in the subsequent months, an amount equal to the amount in fees that CALDER has paid to the CITY for square footage used for the operation or support of slot machines including but not limited, to building renovations or expansions, construction of parking garages or other modifications to the Pari-Mutuel Facility. Said credit shall not exceed 50% of the Monthly Percentage Payment for any given month. CALDER shall also be entitled to a credit against fees assessed by the CITY as set forth in the Code of City of Miami Gardens for the administrative processing and review of applications for development permits for square footage used for the operation or support of slot machines submitted to City of Miami Gardens for review and approval.

Notwithstanding anything herein to the contrary, this section shall not apply to the construction or renovation of any square footage of buildings on the CALDER FACILITY not used for or in support of slot machines, including but not limited to hotels, restaurant, retail uses, or commercial uses.

The final determination of whether or not square footage is used for or in support of slot machines shall be left to the CITY, after consultation with CALDER. The CITY

shall have the right to reject any claim for a credit(s) made by CALDER pursuant to this provision, which rejection shall not be unreasonably exercised.

CALDER acknowledges if it is required to obtain CITY business receipt(s) fees related to slot machines or slot machine operations from the City of Miami Gardens during the term of this Agreement, CALDER shall pay such fees, but shall be entitled to credit for such fees as provided in this Section 7.

CALDER agrees that if it is in an area designated as a Miami-Dade County Enterprise Zone and, is eligible for waivers or abatements in real property and personal property taxes, it will not file for, nor seek, such waivers or abatements. In the event that any waiver, abatement or rebate is granted, from any source whatsoever, CALDER shall pay the CITY with supplemental compensation equal to revenue the CITY would have received but for such waiver, abatement or rebate.

Section 8. Bond and assignment of revenues.

Within thirty (30) days following the commencement of slot machine operations at CALDER, CALDER shall provide a bond or irrevocable letter of credit in the amount of \$100,000.00 to the CITY to secure the obligations of CALDER under this Agreement. CALDER shall keep the bond or irrevocable letter of credit in effect until the earlier of such time as (a) slot machine operations cease at the Pari-Mutuel Facility; (b) this Agreement terminates or (c) the City Council agrees to waive or modify the requirements of this section based upon satisfactory payment history by CALDER.

Section 9. Notices

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by

personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the CITY:

With a copy to:

City of Miami Gardens
Attn: City Manager
1515 NW 167th Street
Building 5; Suite 200
Miami Gardens, Florida 33169

Sonja K. Dickens, Esquire
Arnstein & Lehr
200 East Las Olas Blvd., Suite 1700
Fort Lauderdale, Florida 33301

To CALDER:

Calder Race Course, Inc.
Attn: C. Kenneth Dunn, President
21001 NW 27th Avenue
Miami, Florida 33056

With copies to:

Rebecca Reed, Esquire
Churchill Downs, Inc.
700 Central Avenue
Louisville, Kentucky 40208

- and -

Wilbur E. Brewton, Esquire
Roetzel & Andress, LPA
225 South Adams Street
Suite 250
Tallahassee, Florida 32301
Counsel to Calder Race Course, Inc.

Section 10. Agreement Not a Lease

It is agreed that this Agreement is not a lease, and that no interest or estate in, or lien on, real property or improvements is created by this Agreement.

Section 11. Indemnification

CALDER agrees to indemnify, protect and hold harmless the CITY, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which the CITY, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the negligent or intentional misconduct of CALDER or its agents, employees, officers or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the CITY or its employees, agents or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the CITY, its agents or employees may become liable. Upon request of the CITY, CALDER shall undertake to defend, at its sole cost and expense, any and all suits brought against the CITY in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence by CALDER or its agents, employees, officers or contractors. CALDER shall have the right to cooperate in the defense, including the selection of private counsel, if any, at its sole cost and expense, against any suit, action, claim, demand, damage, loss, penalty or fine made by any party to this Agreement or any third party that could reasonably and foreseeably result in a material adverse impact on the amount of Gross Slot Revenues generated or capable of being generated at CALDER, provided however that nothing contained herein shall limit

the CITY's right to direct the defense.

Section 12. Exclusive Venue, Choice of Law, Specific Performance

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami-Dade County, Florida.

Section 13. No Oral Change or Termination

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 14. Compliance with Applicable Laws

Throughout the Term of this Agreement, CALDER shall comply with all Applicable Laws.

Section 15. Representations

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding

obligation of such party, enforceable in accordance with its terms.

Section 16. No Exclusive Remedies

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 17. Failure to Exercise Rights not a Waiver

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

Section 18. Events of Default

- (a) CALDER shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:
 - (i) CALDER fails to comply timely with any payment obligation which is not cured within fifteen (15) days from CALDER's failure to meet such payment obligation.
 - (ii) CALDER fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the CITY specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then CALDER shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to

completion.

(iii) If CALDER shall be adjudicated bankrupt, or if CALDER shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of CALDER are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of CALDER which is not dismissed within 60 days of such appointment.

(b) The CITY shall be in default under this Agreement if the CITY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from CALDER specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the CITY shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

Section 20. Remedies Upon Default

Upon the occurrence of a default by CALDER under this Agreement which is not cured within the applicable grace period, CALDER and the CITY agree that the CITY, in addition to any other rights provided by law, shall have the right to be reimbursed from the bond set forth in Section 8 of this Agreement.

Section 21. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 22. Assignment and Transfer

This Agreement shall be binding on CALDER and their heirs, successors and assigns. CALDER shall not assign this Agreement without the prior written consent of the CITY, which shall not be unreasonably withheld.

Section 23. Obligations Surviving Termination Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 24. Lack of Agency Relationship

Nothing contained herein shall be construed as establishing an agency relationship between the CITY and CALDER and neither CALDER nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the CITY for any purpose hereunder, and

the CITY, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of CALDER or its subsidiaries, divisions or affiliates.

Section 25. Non-Exclusivity

Nothing in this Agreement is intended to create any exclusive rights in CALDER to conduct slot machine operations within City of Miami Gardens. In the event that by operation of law other persons are authorized to conduct slot operations within the CITY, then the CITY may permit, authorize and regulate such business and may enter into contracts to the same or similar effect as contemplated by this Agreement without incurring any liability, contractual or otherwise, to CALDER.

Section 26. Government Approvals

Notwithstanding any rights under this Agreement this Agreement shall not bind the Miami Gardens City Council, the Zoning Appeals Board, the Building Department, the Planning and Zoning Department, or any other department or board of the CITY, to agree to or grant any zoning changes, permits or any other approvals.

Section 27.

If the CITY takes affirmative action by way of ordinance, resolution or otherwise that would have the reasonable or foreseeable result of negatively impacting the generation or capacity of generation of Gross Slot Revenues at CALDER, then the CITY and CALDER agree to negotiate in good faith to revise the terms and conditions of this Agreement. By exception, the CITY shall have no good faith obligation in the event the CITY's affirmative action is mandated by State law. If and until such time as an amendment or revised agreement is executed, all terms and conditions of this Agreement shall remain in place.

Section 28. Covenant Not to Sue

CALDER hereby covenants that it shall not commence or maintain any lawsuit, administrative proceeding, or other action, whether at law or in equity, which challenges the validity or enforceability of this Agreement, any provision of this Agreement or any payment obligation under this Agreement. This covenant shall be binding upon, and inure to, the benefit of the parties, their successors, assigns, heirs, legal representatives, and personal representatives.

Section 29. Cooperation and Time is of the Essence

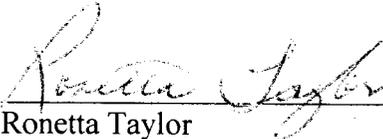
The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement. The Parties agree to work together, to the extent practicable and allowed by Law, towards the goal of maximizing the Gross Slot Revenues generated at CALDER's Pari-Mutuel Facility at the earliest possible time.

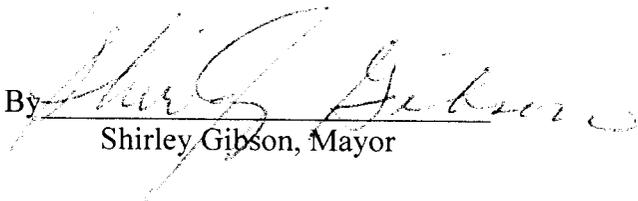
IN WITNESS WHEREOF, the CITY and CALDER have caused this Agreement to be duly executed.

CITY OF MIAMI GARDENS

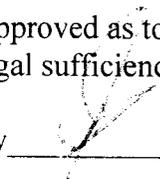
ATTEST:

CITY CLERK


Ronetta Taylor

By 
Shirley Gibson, Mayor

Approved as to form and
legal sufficiency:

By  _____

James C. Brady, Assistant City Attorney

Witnesses:

[Signature]
JAN REED
(Print Name)

CALDER RACE COURSE, INC.

By

[Signature]
C. Kenneth Dunn, President
21001 NW 27th Avenue
Miami, Florida 33056

[Signature]
Michael Abes
(Print Name)

ATTEST:

[Signature]
Rebecca Reed, Secretary

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 19th day of December ~~August~~ 2007, by C. KENNETH DUNN, as President for Calder Race Course, Inc.

NOTARY PUBLIC-STATE OF FLORIDA
 Kathleen D. Standridge
Commission # DD436427
Expires: JULY 19, 2009
Bonded Thru Atlantic Bonding Co., Inc.

[Signature]
Signature of Notary Public
Kathleen D. Standridge
Print, Type or Stamp Commissioned
Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____



Ronetta Taylor, CMC
City Clerk

January 7, 2008

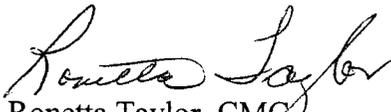
C. Kenneth Dunn, President
Calder Race Course
P.O. Box 1808
Miami, FL 33056

Dear President Dunn:

Please find enclosed a fully executed agreement between Calder Race Course, Inc, and the City of Miami Gardens for supplemental compensation for extended municipal services regarding slot machines in pari-mutuel facilities.

If I can be of further assistance do not hesitate to contact my office directly at (306) 622-8003.

Sincerely,


Ronetta Taylor, CMC
City Clerk

Enclosure (1)