



MEMORANDUM

Parks, Recreation & Cultural Arts

Memorandum 15-A053

DATE: May 11, 2015
TO: Dennis W. Beach, City Manager
FROM: Mark A. Beaudreau, Recreation Programs Administrator
SUBJECT: Agenda Item – Lease Agreement DJP Concessions Inc.

Please place the attached resolution on the May 26, City Commission Agenda. The agreement is for DJP Concessions Inc. to operate two concessions at Community Park (baseball & softball complexes). The agreement is for a three year term, with a two one-year renewal option provided both parties agree. The City will receive 7% of gross food sales and 10% of gross alcoholic sales, or a minimum of \$200 per month, whichever is greater.

The Parks and Recreation Advisory Board reviewed the agreement at their May 6, Board Meeting and made the motion to move the agreement forward for approval by the City Commission.

If you have any questions or require additional information, please call me at 954-786-4191.

MB/afh

cc: Jonathan Nasser, Interim Recreation Manager

**Parks and Recreation Advisory Board
Memorandum 15-09**

DATE: May 6, 2015
TO: City Commission
FROM: Parks and Recreation Advisory Board
SUBJECT: DJP Concessions, Inc. Agreement

At the meeting of the Parks and Recreation Advisory Board held on May 6, 2015, the Board reviewed the agreement between the city and DJP Concessions, Inc.

The Board made the following motion:

MOTION:

Mr. Arnold made the motion to move the contract forward to the City commission.
Mr. Katz seconded the motion, with all Board members voting in favor.

Rafael Katz (afh)

Rafael Katz, Chairman
Parks and Recreation Advisory Board

afh

cc: Dennis Beach, City Manager
Mark A. Beaudreau, Recreation Programs Administrator



City Attorney's Communication #2015-578
February 27, 2015

TO: Jonathan Nasser, Interim Recreation Manager
FROM: Fawn Powers, Assistant City Attorney
RE: Resolution/Agreement with DJP Concessions Inc.

As requested, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Resolution captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DJP CONCESSIONS INC. TO OPERATE TWO CONCESSIONS AT COMMUNITY PARK; PROVIDING AN EFFECTIVE DATE.

FAWN POWERS

L:cor/recr/2015-578f
Attachment

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DJP CONCESSIONS INC. TO OPERATE TWO CONCESSIONS AT COMMUNITY PARK; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a License Agreement between the City of Pompano Beach and DJP Concessions Inc., to operate two concessions at Community Park, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and DJP Concessions Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

FP/ds

2/27/15

l:reso/2015-222f

City of Pompano Beach

LICENSE AGREEMENT

with

DJP Concessions Inc.

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Exhibit

- A Request for Proposals T-59-13
- B Licensee's Response to Request for Proposal T-59-13
- C Fee Schedule
- D Procedures and Policies for Sale of Alcoholic Beverages
- E Accounting Methods and Procedures
- F Release for Background Checks
- G Insurance Requirements

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”), entered into this _____ day of _____, 2015, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter “CITY”),

and

DJP CONCESSIONS INC., a Florida profit corporation dba as Grand Slams Sports Concessions, Inc. (hereinafter “LICENSEE”).

WHEREAS, the CITY issued Request for Proposals T-59-13 (Exhibit A) for LICENSEE Services for Community Park Softball and Baseball Complexes located at 1300 NE 10th Street and 1701 NE 8th Street in Pompano Beach, Florida (“Community Park”); and

WHEREAS, in response to RFP T-59-13, the CITY received LICENSEE’s Proposal, a copy of which is attached hereto and made a part hereof as Exhibit B; and

WHEREAS, in accordance with the terms and conditions set forth herein, LICENSEE is able and prepared to provide the merchandise, services and insurance described in this Agreement; and

WHEREAS, the CITY and LICENSEE desire to enter into this Agreement setting forth the parties’ mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and LICENSEE agree as follows.

ARTICLE 1 REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to LICENSEE which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

B. **Representations of DJP Concessions Inc.** LICENSEE makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. DJP Concessions Inc. is a Florida for profit corporation duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause DJP Concessions Inc. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of DJP Concessions Inc. is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting DJP Concessions Inc. or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all professional services furnished by LICENSEE and its employees, subcontractors or other agents under this Agreement will be the skill and care used by other professional concessionaires currently practicing under similar circumstances in the same locality.

7. CITY shall be entitled to rely upon the professional and technical skills of LICENSEE or by others authorized by LICENSEE under this Agreement.

8. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 2
NON-ASSIGNABILITY AND SUBCONTRACTING

This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

ARTICLE 3
TERM AND RENEWAL

The City hereby engages LICENSEE to serve as its LICENSEE at Community Park for a term of three (3) years, commencing _____, 2015, and ending _____, 2018. The CITY reserves the right to extend this Agreement with two (2) one-year renewal options provided both parties agree in writing to said extension. Renegotiation should commence at least 180 days prior to normal termination.

ARTICLE 4
RESPONSIBILITIES OF LICENSEE

LICENSEE shall operate the two concessions at Community Park in accordance with this Agreement. Specifically, LICENSEE shall, at all times, perform its obligations hereunder in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated. LICENSEE shall exercise its reasonable judgment in discharging its duties hereunder.

LICENSEE shall perform the duties set forth below at Community Park, including such other duties as the CITY may, from time to time, require.

1. LICENSEE shall plan, coordinate and direct the overall operations of the two concessions at Community Park, including supervising all LICENSEE's employees.

2. LICENSEE shall be responsible for the general cleanliness of the concessions, which includes coordinating daily collection of debris from the aforesaid areas prior to opening them to the public and from time to time throughout the day as conditions require to maintain a state of cleanliness.

3. At LICENSEE's sole risk and expense, LICENSEE shall manage and maintain an inventory of merchandise for public sale at the concessions located at Community Park.

4. LICENSEE shall be responsible to pay any and all sales taxes and other charges of any nature or kind which may be assessed against LICENSEE's provision of services or merchandise sales under this Agreement.

5. LICENSEE shall utilize the concessions exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the concessions to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

7. LICENSEE is responsible for hiring and managing its own staff to operate the concessions at Community Park during regular hours of operation. LICENSEE's staff shall be a minimum of eighteen years old, under LICENSEE's exclusive direction and control and not deemed employees or agents of the CITY.

8. LICENSEE shall be solely responsible for compensating its employees and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

9. LICENSEE shall promptly respond to complaints about its employees from the CITY and patrons of Community Park and timely take appropriate disciplinary action as warranted by the circumstances.

10. LICENSEE shall immediately inform the CITY's Recreation Program Administrator of any repairs or maintenance necessary to keep all concession areas in good and safe condition.

11. LICENSEE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's provision of goods under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

12. LICENSEE, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.

13. LICENSEE shall record all sales under this Agreement as stated in Exhibit E.

14. LICENSEE shall give CITY prompt written notice of any accidents occurring at the concession areas of Community Park in which damage to property or injury to a person occurs.

15. LICENSEE shall ensure the concessions are open and properly staffed and stocked during all scheduled activities. LICENSEE shall not be required to operate the concessions unless CITY has provided LICENSEE a minimum of 24 hours advance notice of any change in the monthly schedule on activities.

16. LICENSEE shall not operate concessions from any trailer or truck and shall only staff, stock and operate from the two concession stands at Community Park.

17. LICENSEE shall accept in "as is" condition the concession areas and City-owned equipment at Community Park that includes two refrigerators, two freezers and two ice machines. Any additional equipment desired by the LICENSEE shall be acquired and installed at LICENSEE's sole expense. In addition, if any public agency having jurisdiction over such matters require safety or other improvements to any of the equipment or concession areas, such as electrical upgrades or installation of drains, LICENSEE shall be required to make these improvements at its sole expense.

18. During the contract term, unless it is financially infeasible as determined by CITY, LICENSEE shall be financially responsible for any repairs to the CITY-owned equipment. At end of the contract term, LICENSEE is responsible to return said equipment in full, functioning and presentable condition.

19. LICENSEE shall not make any improvements, additions or repairs to the concession areas without prior written approval from the CITY's Recreation Programs Administrator. If modification or revisions are made, LICENSEE agrees to return the area to the original working condition at its own expense at the end of contract if CITY so requests.

20. LICENSEE may advertise and install signage to promote the sale of its merchandise provided all signs and advertisements comply with all applicable laws, ordinances and regulations. Any permit fees required shall be at LICENSEE's expense.

21. LICENSEE and its employees shall provide courteous and professional customer service during the term of this Agreement.

22. LICENSEE shall dispose of all garbage and waste in designated on-site dumpsters upon closing each evening. No garbage may be stored during business hours within sight of the public.

23. LICENSEE shall meet all Health Department regulations and other applicable laws and regulations.

24. LICENSEE shall secure and insure the concession stands against vandalism. CITY shall not be held responsible for repairs due to vandalism.

25. LICENSEE is only authorized to sell the merchandise listed in Exhibit C (e.g. foods, beverages, miscellaneous "snack bar" and "healthy choice" items, beer and wine and miscellaneous sports equipment) and at the price(s) listed thereon. LICENSEE must obtain written permission from the CITY's Recreation Programs Administrator prior to instituting any changes in merchandise or price and the new Exhibit C must be signed by both parties and maintained in accordance with the recordkeeping procedures set forth in Article 7 herein. In addition, LICENSEE's sale of alcoholic beverages shall be in accordance with the Procedures and Policies for Sale of Alcoholic Beverages attached hereto and made a part hereof as Exhibit D.

26. All merchandise sold at the concessions shall be top quality, wholesome, pure, in conformance with all federal, state, and municipal laws, ordinances, and regulations, and subject to approval or rejection by the City's Recreation Program Administrator.

27. LICENSEE's merchandise menu and prices shall, at all times, be posted at the concessions in plain view of patrons waiting for service.

28. Only non-glass items shall be used for beverages and food. No styrofoam materials only paper or plastic items shall be used.

29. LICENSEE shall provide ice from the ice machines at the concession areas to CITY staff upon request.

30. LICENSEE shall not sell tobacco products or shelled peanuts at Community Park.

ARTICLE 5 RESPONSIBILITIES OF CITY

A. CITY is responsible to maintain the building systems of the concession areas (Eg. plumbing, electrical, painting, ceilings, walls, floors, roof, etc.) and also provide regular extermination services.

B. CITY, at its cost, shall provide such amenities as electricity, water, and extermination services at the concession areas.

C. CITY shall provide LICENSEE a monthly schedule of activities for Community Park on or before the first day of each month to ensure the concessions are open and properly staffed with qualified personnel during all scheduled activities. CITY shall also promptly update the monthly schedule as necessary and afford LICENSEE a minimum of 24 hours advance notice of any subsequent changes.

D. CITY shall be responsible to promptly conduct the background checks of LICENSEE's employees or other agents providing services under this Agreement.

**ARTICLE 6
COMPENSATION AND METHOD OF PAYMENT**

A. All revenues generated under this Agreement shall be distributed as summarized below and further detailed in the accounting methods and procedures set forth in Exhibit E attached hereto and made a part hereof.

B. LICENSEE shall provide CITY a percentage of gross sales generated from the concessions LICENSEE operates at Community Park, or a minimum amount per month, whichever is greater, in accordance with the following formulas.

Percentage of gross food/non-alcoholic sales payable to CITY: 7%

OR

Minimum dollar amount per month payable to CITY: \$100

and

Percentage of gross alcoholic sales payable to CITY: 10%

OR

Minimum dollar amount per month payable to CITY: \$100

**ARTICLE 7
ACCOUNTING AND RECORD KEEPING PROCEDURES**

A. LICENSEE shall use accounting methods and procedures in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in this Article and in Exhibit E attached hereto and made a part hereof.

B. LICENSEE and its employees providing merchandise hereunder shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of five (5) years after its termination or, if an audit has been initiated and audit findings have not been resolved at the end of this five (5) year period, the records shall be retained until resolution of the audit findings.

C. LICENSEE shall make available at reasonable time for CITY's examination all such financial records, supporting documents, statistical records and any other documents, including federal tax returns and state sales tax returns. If such examination or audit discloses a liability of fees, LICENSEE shall promptly pay the amount due. If such liability exceeds three percent (3%) of the fees, LICENSEE shall pay CITY the amount due and also pay for the cost of the CITY's audit within 10 calendar days.

D. Incomplete and incorrect entries in LICENSEE's records will be grounds for the CITY's allowance of any fees based upon such entries as well as termination of this Agreement.

E. LICENSEE and the CITY's Recreation Manager shall keep a record of all transactions, monies received and expenses paid under this Agreement in accordance with the procedures set forth in Exhibit E. The detailed and summary reports shall be produced and maintained for a minimum of five (5) years or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes.

F. All sources of revenue shall be recorded through the mutually agreed upon accounting procedures set forth in Exhibit E. In order to provide for full accountability over sales, the full amount of the sale shall be recorded.

G. At least one week prior to any employee or agent of LICENSEE providing services under this Agreement, LICENSEE shall provide the CITY's Contract Administrator a completed and fully-executed Release (Exhibit F) on all such persons so that CITY, at its sole cost, can conduct the background checks required hereunder. No employee or agent of LICENSEE is authorized to provide services under this Agreement until the CITY has provided its written approval of such person(s).

ARTICLE 8 CITY'S RIGHT TO AUTHORIZE USE OF THE CONCESSIONS

The CITY, through its Recreation Programs Administrator, reserves the right to authorize use of the concessions for special group functions upon 45 days written notice to LICENSEE.

ARTICLE 9 LICENSEE'S INDEMNIFICATION OF CITY

A. LICENSEE shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Tennis Center.

B. LICENSEE shall be solely responsible for insuring all merchandise at the concessions against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the concessions and

that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence and occupancy at the concessions.

ARTICLE 10 INSURANCE

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit G.

ARTICLE 11 INDEPENDENT CONTRACTOR

Both CITY and LICENSEE agree that LICENSEE is an independent contractor and not a CITY employee.

ARTICLE 12 DEFAULT AND DISPUTE RESOLUTION

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 17 herein.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar day of receipt or the alleged default has not been remedied within ten (10) calendar days after written notice of same and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 17 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 14 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by LICENSEE.

ARTICLE 13
ANNUAL PERFORMANCE GOALS AND EVALUATION

The CITY's Recreation Programs Administrator shall annually review and evaluate LICENSEE's performance under this Agreement. The review and evaluation shall be based on performance criteria based upon the scope of services described in Article 4 herein. The CITY shall provide LICENSEE with a written summary of said evaluation and provide an adequate opportunity for LICENSEE to discuss its evaluation with the CITY's Recreation Programs Administrator.

ARTICLE 14
TERMINATION

CITY may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advance written notice to LICENSEE in accordance with Article 17 herein. LICENSEE may terminate this Agreement, in whole or in part, for cause, default or negligence upon forty-five (45) day advance written notice to CITY in accordance with Article 17 herein.

In the event of termination, CITY shall compensate LICENSEE for all merchandise sold through the termination date under the payment terms set forth herein. If any service hereunder is in progress but not completed as of the date of termination, then upon the CITY's written approval, this Agreement may be extended until said services are completed and accepted by CITY.

ARTICLE 15
EQUAL OPPORTUNITY EMPLOYMENT

LICENSEE agrees not to discriminate against any of LICENSEE's or the CITY's employees under this Agreement because of race, color, religion, sex, age, national origin or disability.

ARTICLE 16
PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 17
NOTICES AND DEMANDS

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with

the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

City Manager
City of Pompano Beach
P.O. Drawer 1300
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
(954) 786-4601 office
(954) 786-4504 fax

With a copy to:

Recreation Program Administrator
City of Pompano Beach
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
(954) 786-4191 office
(954) 86-4113 fax

For LICENSEE:

Donna Pushinsky – President
DJP Concessions Inc. dba Grand Slam Sports Concessions Inc.
1100 NE 4th Street
Pompano Beach, FL 33060
Donbri316@aol.com
(954) 590-8342 phone

**ARTICLE 18
GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 19
CONTRACT ADMINISTRATOR**

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Unless otherwise provided for in writing by Donna Pushinski shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 20
NO CONTINGENT FEE**

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, 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.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at the CITY's sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 21
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 22
FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 23
WAIVER AND MODIFICATION**

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

**ARTICLE 24
RELATIONSHIP BETWEEN THE PARTIES**

LICENSEE, particularly Donna Pushinsky, is being contracted by CITY for the purposes and to the extent set forth in this Agreement. Donna Pushinsky shall be free to dispose of such other portion of her time, energy and skill as does not interfere with her obligations hereunder.

**ARTICLE 25
MISCELLANEOUS TERMS AND CONDITIONS**

A. LICENSEE may not make changes to any permanent fixtures at the two Community Park Concession stands without prior written approval from the CITY's Recreation Program Administrator. Upon written approval of the CITY and receipt of all necessary and proper permits, LICENSEE may install permanent fixtures in the concessions at its sole expense.

B. In case there is conflict between the terms of RFP T-59-13, LICENSEE's Response to RFP T-59-13, and this Agreement, the terms of this Agreement shall prevail.

**ARTICLE 26
SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

**ARTICLE 27
APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 28
ABSENCE OF CONFLICTS OF INTEREST

LICENSEE represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. LICENSEE further represents no person having any interest shall be employed or engaged by it for said performance.

LICENSEE shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence LICENSEE's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that LICENSEE intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by LICENSEE.

ARTICLE 29
BINDING EFFECT

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

ARTICLE 30
NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

ARTICLE 31
LICENSE NOT LEASE

Both parties acknowledge and agree this license shall not be deemed a lease of the concessions at Community Park but rather a license granted to LICENSEE by CITY.

ARTICLE 32
ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had

equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

[Signature]
SCOTT R MOORE

[Signature]
Jonathan Wasser

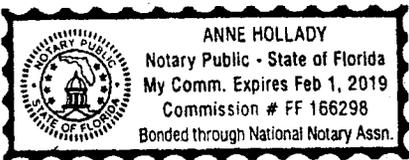
DJP CONCESSIONS, INC., a Florida corporation

By: [Signature]
Donna Pushinsky, President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 24 day of March 2015, by Donna Pushinsky, President of DJP Concessions Inc., a Florida corporation. She is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Anne Hollady
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady
(Name of Acknowledger Typed, Printed or Stamped)

FF 166298
Commission Number

3/12/15
l:agr/recr/2015-194f

**Exhibit A
Request for Proposals
T-59-13**



Florida's Warmest Welcome

**CITY OF POMPANO BEACH
REQUEST FOR PROPOSALS
T-59-13**

**CONCESSIONAIRE SERVICES FOR COMMUNITY PARK
SOFTBALL AND BASEBALL COMPLEXES**

**RFP OPENING: OCTOBER 28, 2013, 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060**

Introduction

The City of Pompano Beach, Florida seeks to obtain the services of a qualified company to provide valued and affordable concession services to the visitors and residents of the City of Pompano Beach. Services will be required at Community Park, Softball and Baseball complexes. This is a non-exclusive contract for City sponsored sports and cultural arts functions in which the company will receive a monthly schedule informing them of said events and/or activities. Services for special events or activities may include other vendors.

The Parks Recreation and Cultural Arts Department is seeking proposals from Concessionaires to provide a percentage against gross sales or minimum amount per month, whichever is greater payable to the City of Pompano Beach, on a monthly basis to manage and operate concessions at the outdoor parks as needed for vending, food, and beverages to the public. One (1) concessionaire will be awarded the contract.

1. Scope of Services

Concession Operations:

- a) Concessionaire shall use concession stands only provided by the City; Trailers/Trucks will not be permitted in any of the City Parks.
- b) Concessionaire will accept the concession areas and City owned equipment, as is, the City will not make any improvements or additions.
- c) Concessionaire shall not make any improvements, additions or repairs without prior written approval from the City.
- d) If modification or revisions are made, the concessionaire agrees to return the area to original working condition at own expense at end of contract if City requests, or agrees to forfeit deposit.
- e) Concessionaire shall accept the City owned refrigerators and ice machines as is. During the contract term, Concessionaire will be financially responsible for any repairs to the said equipment.
- f) At end of contract term, Concessionaire is financially responsible to return said equipment in full, functioning, and presentable condition or risk forfeiture of deposit.
- g) Any additional equipment or replacement equipment desired by the Concessionaire will be acquired and installed at the Concessionaire's expense. If any public agency having jurisdiction over such matters require safety or other improvements to any of the equipment used by the concessionaire in their operations, for example electrical upgrades or drains installed, Concessionaire shall be required to make these improvements at their sole expense.
- h) The Concessionaire will provide signage to be approved by the City prior to installation. Any permit fees required will be at the Concessionaire's expense.

- i) Concessionaire shall ensure that concession stand is staffed at all times with sufficient qualified personnel in order to handle patron demand.
- j) Concessionaire shall provide consistent hours of operation.
- k) Concessionaire is to provide courteous and professional customer service.
- l) Concessionaire is to provide regular extermination services, no less than monthly, and as needed; and keep records of service readily available to the City.
- m) Concessionaire is to dispose of all garbage and waste in designated on-site dumpsters upon closing each evening. No garbage may be stored during business hours within sight of the public.
- n) Concessionaire shall meet all Health Department regulations and other applicable laws and regulations.
- o) Concessionaire to provide Property and Liability insurance (certificates of required insurance will be requested prior to commencement of operation of the concession stands).
- p) Concessionaire is to secure and insure the concession stands against vandalism. The City shall not be held responsible for repairs due to vandalism.
- q) Concessionaire is only authorized for the term of this contract to sell foods, beverages, and miscellaneous "snack bar" type items. All foods, beverages, and confectionary refreshments shall be of first quality. The items must be wholesome, pure, must conform to all Federal, State, and Municipal Laws, Ordinances, and Regulations, and must be kept subject to the approval or rejection of the Recreation Administrator or his Designee.
- r) Concessionaire must also sell healthy choices for the health conscious patron. Vendor must provide a list of products that will potentially be sold in the concession stands.
- s) Menu items and prices must be approved by City prior to sale. Agreed upon menu and prices must remain posted at all concessions in plain view of patrons standing and waiting for service. Approved pricing and food quality brand names shall remain constant unless a request is made in writing providing reasons for a product change.
- t) Only non-glass items must be used for beverages and food. No Styrofoam materials only paper or plastic items shall be used.
- u) Concessionaire must provide bags and ice as needed for program participant injuries.

- v) Alcoholic Beverages may be sold with approval from the Recreation Administrator or his designee at the Four Fields Softball Complex and Baseball Complex. The Concessionaire agrees to obtain and pay for all permits, licenses, and business taxes, including Alcoholic Beverage Licenses and Broward County Health Department certifications as necessary to conduct the business and agrees to comply with all laws governing the responsibility of the employer with respect to persons employed by the Concessionaire. Appropriate licenses or proof that preliminary paperwork to secure license must be submitted with this proposal. The Concessionaire must comply with all City, County, State and Federal rules, regulations and laws, as related to alcohol sales and distribution, as may be amended from time to time. Alcoholic sales will be limited to products covered under 2COP license type. The final decision as to whether or not Alcoholic Beverages may be sold at an event, or in any area of the facility, shall be at the sole discretion of the City. The decision to serve or refuse service of Alcoholic beverages to any individual shall be the sole responsibility of the Concessionaire.
- w) Tobacco products will not be allowed for sale.
- x) Un-shelled peanuts will not be allowed for sale.
- y) Chewing gum will not be allowed for sale.

Locations:

- a) Four Fields Softball Complex:1300 NE 10th Street, Pompano Bch, FL 33060
 - Minimum hours of operation are Monday through Friday 5:00pm to 10:00pm year round; and weekends as designated by rentals, tournaments and recreational activities.
 - Estimated 200 patrons per night.
- b) Baseball Complex:1701 NE 8th Street, Pompano Bch, FL 33060
 - Minimum hours of operation are Monday through Friday 5:00pm to 10:00pm year round; and weekends as designated by rentals, tournaments and recreational activities.
 - Estimated 100 patrons per night

2. Revenue Proposal

Concessionaire is to provide a percentage against gross sales, or minimum amount per month, whichever is greater payable to the City of Pompano Beach on a monthly basis, for the following:

Softball Complex

Percentage of gross food/non-alcoholic sales payable to the City: _____%

OR

Minimum dollar amount per month payable to the City: \$_____

Percentage of gross alcoholic sales payable to the City: _____%

OR

Minimum dollar amount per month payable to the City: \$_____

Baseball Complex

Percentage of gross food/non-alcoholic sales payable to the City: _____%

OR

Minimum dollar amount per month payable to the City: \$_____

Percentage of gross alcoholic sales payable to the City: _____%

OR

Minimum dollar amount per month payable to the City: \$_____

3. Tasks/Deliverables

Eligibility

Proposals will be considered only from firms that have been engaged in providing concession services similar to the services specified herein and who are presently engaged in providing these services for a minimum of three (3) years. Proposers will be required to demonstrate proof of experience in the management and administration of an organization for the performance of this contract.

The City of Pompano Beach will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory. The City reserves the right to reject proposals when evidence submitted, on investigation and evaluation, is determined by the City to indicate inability of the bidder to perform.

The City of Pompano Beach reserves the right, before recommending any award, to inspect the organization or to take any other action necessary to determine ability to perform in accordance with the contract documents, including the financial ability, organizational ability, experience record and equipment.

Mandatory Site Visit

It shall be the full responsibility of the Proposer to visit and inspect the locations prior to the submission of a proposal. Submission of the proposal will be considered confirmation that the proposer has familiarized themselves with the nature and extent of the work, any local conditions that may, in any manner, affect the scope of the work to be done, and the equipment, materials and labor required. Failure to inspect the facility locations may cause your proposal response to be considered non-responsive. Contact Supervisor, Jon Nasser at (954) 786-4119, to schedule a site visit.

Compliance

State Health Department regulations must be strictly complied with and failure to maintain an above average rating may be reason for terminating any agreement.

Assignment and/or Sub-Contracting

Any resulting agreement may not be assigned without the express permission of the City Commission. A listing of all sub-contractors, if any, and the portion of the contract they will perform must be submitted with the proposal. If sub-contractors are stated, this does not relieve the Vendor from the prime responsibility for full and complete satisfactory and acceptable performance under any awarded contract.

Manner of Performance

The Concessionaire must perform all its obligations and functions under this Contract in accordance with the requirements and standards contained herein and in a professional and businesslike manner. The Concessionaire shall use its best efforts to coordinate and adjust to the needs and requirements of the various users of the City.

Release of Liability

The Concessionaire will release and discharge the City of Pompano from any and all liability for loss of merchandise, health claim resulting from food preparation/quality, etc., goods, equipment or other property of the successful Concessionaire or his agents if lost, damaged or destroyed by fire, theft, rain, water, storm, riot, civil disobedience, vandalism or other causes.

Personnel

The Concessionaire shall be responsible for hiring personnel to adequately operate any resulting agreement. This hiring shall conform to all requirements of the Federal, State and local laws relating to minimum wages, Social Security, Civil Right Act of 1964, unemployment compensation, worker's compensation and Health Department.

Employees shall observe all applicable rules and regulations. Concessionaire, at their expense, will provide proof of criminal background screening on all staff and agree that no staff will be assigned to said locations if found guilty of any sexually based offense.

Background Checks

All persons and firms are subject to a local, state, federal and financial background check using appropriate law enforcement procedures. Vendor must notify the City of all change in personnel within forty-eight (48) hours. All persons must be approved prior to their assignment to any City facility.

Accounting Records

The accounting system used should be able to identify all costs, expenses and revenues attributed to this agreement. To that end, the Vendor must keep accurate accounting and records of all operations through use of automatic cash register machine with print out capabilities. All operations covered in this document must have the ability to establish and maintain a system of bookkeeping and accounting, including inventory controls, satisfactory to the Recreation Administrator and City Code. The successful Concessionaire must agree to submit a certified monthly accounting report of gross receipts clearly indicating the revenue derived from each concession stand including location and specific product usage, in a manner acceptable to and approved by the City's Director of Financial Services or his or her designee, and shall provide an annual profit and loss statement covering all operations covered by this agreement. A copy of the inventory sold receipt printout for each location must be included with the certified monthly accounting report. Audits will be made as often as deemed necessary by the City. Concessionaire shall make available, at reasonable time for City's examination, all financial and statistical records, state sales tax returns, and any other documents pertinent to concessionaire's provision of goods and services under this Agreement.

The successful Concessionaire will be required to establish and use a separate depository account for all sales generated under the agreement resulting from this solicitation. The failure of Concessionaire to produce any of the records described herein following a request by City agents shall be deemed a material breach and the City may terminate the agreement. The Concessionaire shall provide the following accounting report to the Recreation Administrator and Treasury Manager or their designees. **(Concessionaire shall submit examples of report formats to be used with their RFP).**

<u>REPORT</u>	<u>INFORMATION REQUESTED</u>	<u>TIME FRAME</u>
Accounting Report	<ul style="list-style-type: none"> • Concession stand product description (soda, snack, etc.) • Location • Total units sold monthly 	Monthly
Gross sales		Monthly
Amount due to the City		Monthly

Payment

Payment and statement for previous month's gross receipts must be received by the Treasury Department, 100 West Atlantic Blvd, Pompano Beach, FL 33060 by the fifteenth (15th) of the following month with a copy to Recreation Supervisor, Jon Nasser. In the event that the Concessionaire fails to make this payment within five (5) days of the due date, there shall be an additional charge of \$50.00 payable to the City for such late payment. If the payment and accumulated penalties are not received within thirty (30) days after the normal monthly payment due date, the City may take the necessary steps to cancel the contract. The Concessionaire shall be responsible for collecting and remitting all sales tax to the State of Florida.

Reference To Other Data

Only information that is received in response to the RFP will be evaluated. References to any information submitted previously will not suffice.

Qualification of Respondents

A. Respondents must include a description of current and previous contracts providing the same or similar services called for in this Request for Proposal. List governmental agencies and/or private sector. Provide company name and Government entities, addresses, contact person, phone number, and dollar value of the contract.

B. Concessionaire shall keep current all licenses and permits, whether municipal, county, state or federal required for the performance of its obligations and functions hereunder and shall pay promptly when due all such fees.

3. Term of Contract

Contract term will be two (2) years, renewable for three (3) additional one (1) year periods.

4. **Small Business Enterprise Program**

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

5. **Local Business Program**

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: <http://pompanobeachfl.gov/directory/btr/FAQ%20sheet%20BTR.pdf>

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

6. **Required Proposal Submittal**

Submission/Format Requirements

Submit one (1) original unbound and five (5) bound copies of the proposal. All copies will be on 8 ½" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the Proposer. In addition, Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

Information to be included in the proposal: In order to maintain comparability and expedite the review process, it is required that proposals be organized in the manner specified below, with tabs or dividers between the sections:

Title page:

Show the project name and number, the name of the Proposer's firm, address, telephone number, name of contact person and the date.

Table of Contents:

Include a clear identification of the material by section and by page.

Letter of Transmittal:

Briefly state the Proposer's understanding of the project and express a positive commitment to provide the services described herein. State the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), office and E-mail addresses and telephone numbers. Please limit this section to two pages.

Fees & Costs:

Include a concise narrative with sufficient detail indicating the proposed approach to providing the required services, including a description of the types and qualities of service that would be provided. Provide a cost for each of the major services provided along with the estimated number of expected work hours for each qualified staff.

Proposer shall itemize all costs to complete all and necessary tasks as described under Scope of Services. Costs associated with travel as well as miscellaneous expenses should be adequately described.

Schedule:

Proposer shall provide a timeline that highlights proposed tasks that will meet all applicable deadlines.

References:

Submit a client reference list, including name of contact, firm and/or governmental entity, address, telephone number and type of service provided to each reference.

Litigation:

Disclose any litigation within the past five (5) years arising out your firm's performance.

City Forms:

The RFP Proposal Signature Page must be completed, signed and returned. Proposer should return all RFP pages, initialed where indicated.

7. Insurance

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

b. Liability Insurance

1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.

2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
GENERAL LIABILITY: MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE		
* Policy to be written on a claims incurred basis		
XX comprehensive form		
XX premises - operations	bodily injury	
— explosion & collapse hazard		property damage
— underground hazard		
— products/completed operations hazard		
XX contractual insurance	bodily injury and property damage	
XX broad form property damage	combined	
XX independent contractors		
XX personal injury	personal injury	

AUTOMOBILE LIABILITY: MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE

		bodily injury (each person)		
XX	comprehensive form	bodily injury (each accident)	_____	_____
XX	owned	property damage	_____	_____
XX	hired	bodily injury and property damage		
XX	non-owned	combined		

REAL & PERSONAL PROPERTY

comprehensive form Consultant must show proof they have this coverage.

EXCESS LIABILITY

<input type="checkbox"/>	umbrella form	bodily injury and property damage		
<input type="checkbox"/>	other than umbrella	combined	\$2,000,000.	\$2,000,000.

XX **PROFESSIONAL LIABILITY** \$1,000,000. \$1,000,000.
 * Policy to be written on a claims made basis

The certification or proof of insurance must contain a provision for notification to the City, and the City's contracted law enforcement provider if applicable, thirty (30) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

8. Selection/Evaluation Process

A Selection/Evaluation Committee will be appointed to select the most qualified firm(s). The Selection/Evaluation Committee will present their findings to the City Commission and, upon Commission approval, will negotiate a contract with the most qualified firm(s).

Proposals will be evaluated using the following criteria.

<u>Criteria</u>	<u>Point Range</u>
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20

2. References	History and performance of firm/project team on similar projects. References and recommendations from previous clients.	0-10
3. Resources and Methodology	Adequacy of amount of quality resources assigned to the project. Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources.	0-30
4. Cost	Including the overall project task budget, itemized cost breakdowns, variety of products, and percentages back to the City.	0-40
	Total	0-100

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

9. Hold Harmless and Indemnification

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

10. Retention of Records and Right to Access

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. Recommendation for changes, additions, or deletions by the City's Internal Auditor must be complied with by the selected firm. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

11. Communications

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

12. No Discrimination

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

13. Independent Contractor

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

14. Staff Assignment

The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

15. Contract Terms

The contract resulting from this RFP shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFP document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

16. **Waiver**

It is agreed that no waiver or modification of the contract resulting from this RFP, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

17. **Survivorship Rights**

This contract resulting from this RFP shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

18. **Termination**

The contract resulting from this RFP may be terminated by the City of Pompano Beach without cause upon providing contractor with a least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFP for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

19. **Manner of Performance**

Proposer agrees to perform its duties and obligations under the contract resulting from this RFP in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by

applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

20. Acceptance Period

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

21. RFP Conditions and Provisions

The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All Proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Any alteration, erasure, or interlineations by the Proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

22. Standard Provisions

a. Governing Law

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

b. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any City employee is also an owner, corporate officer, or an employee of the firm. If any City employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to § 112.313, Florida Statutes.

c. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

d. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

e. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

f. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

g. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

h. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

i. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

j. Variances

While the City allows Proposers to take variances to the RFP terms, conditions, and specifications, the material nature, number, and extent of variances taken will be considered in determining proposal responsiveness and in allocating proposal evaluation points.

k. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

23. Questions and Communication

All questions regarding the RFP are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

24. Addenda

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their proposal.

PROPOSAL SIGNATURE PAGE
RFP T-59-13, CONCESSIONAIRE SERVICES FOR COMMUNITY PARK SOFTBALL AND
BASEBALL COMPLEXES

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone No. _____ Fax No. _____

Signature _____ Date _____

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. _____ Date Issued _____

SERVICE CONTRACT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by the CITY OF POMPANO BEACH, hereinafter referred to as "City" and _____, hereinafter referred to as "Contractor."

WHEREAS, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit "A" – Scope of Work; Exhibit "B" insurance requirements, if needed; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

2. Purpose. City hereby contracts with Contractor to provide _____ services upon the terms and conditions herein set forth

3. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit "A" (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.

4. Term of Contract. This Contract shall be for a one (1) year period. The start of this Agreement shall be _____, 20____. Contractor shall commence _____ services for the City and continue operation through _____, 20____; **OR** until completion of Scope of Work.

5. Renewal. In the event City determines the Contractor to be in full compliance with this contract and Contractor's performance to be satisfactory, then City shall have the option to renew this contract for an additional period one (1) year, provided that City will provide notification within sixty (60) days of termination date of its intention; **OR** this Contract is not subject to renewal.

6. Maximum Obligation. City agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to insure that unless otherwise

directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.

7. Price Formula. Concessionaire agrees to pay the City as specified in the RFP.

8. Invoices. Contractor shall submit the invoices to City, if requested by City, as follows:

Invoices shall be submitted on a monthly basis or on _____.

9. Payment. All payments by the City shall be made after the service has been provided. All invoices shall be submitted to the City for approval and payment will be issued within forty-five (45) days of submittal.

10. Disputes.

A. Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

11. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

If to Contractor:

If to City:

City of Pompano Beach
City Manager
P. O. Box 1300
Pompano Beach, Florida 33060

12. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

13. Termination. This Agreement may be terminated without cause by either party upon thirty (60) days written notice to the other party.

14. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

15. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

16. Indemnity. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

17. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

18. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

19. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

20. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

21. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors,

subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

22. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

23. Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the city in order to perform the service;

2. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in Chapter 199, Fla. Stat., or as otherwise provided by law;

3. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

4. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the city in a format that is compatible with the information technology systems of the City.

B. The failure of Contractor to comply with the provisions set forth in this section shall constitute a Default and Breach of this Agreement and the city shall enforce the Default in accordance with the provisions set forth in this Agreement or as provided by law.

24. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

25. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

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

27. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

28. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

CITY OF POMPANO BEACH

By: _____

LAMAR FISHER, MAYOR

By: _____

DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS, CITY CLERK

(SEAL)

APPROVED AS TO DEPARTMENT HEAD:

By: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“CONTRACTOR”

Witnesses:

(Print name of company)

By: _____

Print Name: _____

Title: _____

Business License No. _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of _____, A Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

l:agr/genl srvs/service contract

Exhibit B
Licensee's Response to
Request for Proposal
T-59-13



Florida's Warmest Welcome

CITY OF POMPANO BEACH
REQUEST FOR PROPOSALS
T-59-13

CONCESSIONAIRE SERVICES FOR COMMUNITY PARK
SOFTBALL AND BASEBALL COMPLEXES

RFP OPENING: OCTOBER 28, 2013, 2:00 P.M.
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPANO BEACH, FLORIDA 33060

Spanx Concessions

Concessionaire Services For Community Park Softball and Baseball Complexes

Spanx of Pompano Beach
1130 N.E. 4th Street
Pompano Beach, FL 33060
954.658.1700

Craig "Spanky" Caffro

October 27, 2013

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Letter of Transmittal

The Proposer's understands that the concession stands at Four Fields and the Baseball Complex need to be open regularly during the fields' use. The consistency and professional manner in which the facilities operate will bring the City's positive image to the facilities. The concessions need to provide food and beverages for the players and spectators during games and events.

Spanky Caffro and Donna Pushinsky have both been in the restaurant business for at least twenty-five (25) years each. Spanky Caffro and Donna Pushinsky have owned Spanx Pittsburgh Bar and Grille (Pompano Beach), Spanx Cheesesteak Factory (Oakland Park and Margate), and Spanx The Hog BBQ (Pompano Beach). Spanky Caffro is a partner in a meat wholesale company and also a sauce bottling company. Spanx has been involved in charity events including but not limited to Jim Kelly's Charity Golf Outing, Alonzo Mourning's Charity Golf Outing, Gino Toretta's Charity Golf Outing, City of Pompano Beach's Jazz on the Boulevard, City of Pompano Beach's End of Soccer Celebration, Firefighter Bill Elliot's Celebration, and Maya Macey's Fundraiser. Spanx understands the quality and commitment it takes to be successful in business. Spanx has operated concessions at St. Lucie Speedway.

Authorized Representative

Spanky Caffro
President, Vice President
1130 N.E. 4th Street
Pompano Beach, FL 33060
Spankycaffro@aol.com
954.658.1700

Donna Pushinsky
Treasurer, Secretary
1130 N.E. 4th Street
Pompano Beach, FL 33060
Donbri316@aol.com
954.590.8342

Fees & Costs

The Proposer shall staff each facility with at least one (1) employee to provide counter service during hours of business.

Monthly costs shall include, but not be limited to:

Travel expense for purchases	\$50
Food Cost	\$800
Beverage Cost	\$300
Alcohol Cost	\$250
Electricity	\$1,000
Equipment Repairs	\$200
Cash Register Rentals	\$200
Payroll	\$3,600
Paper Supplies	\$250
Office Supplies	\$50
Signage	\$100

Schedule

The proposed opening would be about 3 to 4 months after signing of the contract.

- a) Health Department approval
- b) Agriculture approval
- c) City Code Compliance approval
- d) City License and Permit approval
- e) Insurance
- f) State, County, and City Occupational License
- g) All electrical and plumbing inspections
- h) Insurance inspections.

Initial inspections and Up-front Fees

- a) Insurance
- b) Pest Control
- c) Alarm Company
- d) FPL Deposit
- e) Water Deposit
- f) Gas Deposit (If Needed)
- g) Exhaust System (If Needed)

References

CRA, Pompano Beach "	Shana " 954-612-1035	Green Market – 2012, 2013 Uncorked – 2013
Broward Sheriff's Office	Mike Johnson 954-786-4201	National Night Out Against Crime – 2012, 2013
Maya Macey Foundation	Ron Goldman 954-415-1508	Scholarship Fundraiser, 2002-Present
City of Pompano Beach " "	Kate Gladfelter " " 954-786-4600	4 th of July Event – 2013 Beach Re-Opening - 2013 Trunk or Treat – 2013
N. Lauderdale Commissioner	Frank Messana 754-235-0601	Real Estate Catering

Litigation

Spanx of Pompano Beach was served from ADA Disability Act even after City of Pompano Beach Building Department's final approval. Case was dropped after corrections were finished on restaurant and a settlement fee was paid for \$3,400.

Concessionaire Services For Community Park Softball and Baseball Complexes

Spanx of Pompano Beach Proposed Changes

Page 1

1. Scope of Services

- b) Concessionaire will accept the concession areas and City owned equipment, if in working condition.

- e) Concessionaire shall accept the City owned refrigerators and ice machines as is. During the contract term, Concessionaire will be financially responsible for any repairs to the said equipment. Concessionaire shall have discretion to bring in their own equipment.

- x) Un-shelled peanuts will not be allowed for sale. Bags of shelled peanuts shall be sold.

Page 6

The basic type of register that keeps all records of sales per product category and separates alcohol from food purchases.

Page 7

3. Term of Contract

Contract term will be for one (1) year, renewable for four (4) additional one (1) year periods.

Page 14

18. Concessionaire, with sixty (60) day prior written notice, will have the right to forfeit this lease without litigation or penalty.

Introduction

The City of Pompano Beach, Florida seeks to obtain the services of a qualified company to provide valued and affordable concession services to the visitors and residents of the City of Pompano Beach. Services will be required at Community Park, Softball and Baseball complexes. This is a non-exclusive contract for City sponsored sports and cultural arts functions in which the company will receive a monthly schedule informing them of said events and/or activities. Services for special events or activities may include other vendors.

The Parks Recreation and Cultural Arts Department is seeking proposals from Concessionaires to provide a percentage against gross sales or minimum amount per month, whichever is greater payable to the City of Pompano Beach, on a monthly basis to manage and operate concessions at the outdoor parks as needed for vending, food, and beverages to the public. One (1) concessionaire will be awarded the contract.

1. Scope of Services

Concession Operations:

- a) Concessionaire shall use concession stands only provided by the City; Trailers/Trucks will not be permitted in any of the City Parks.
- b) Concessionaire will accept the concession areas and City owned equipment, as is, the City will not make any improvements or additions.
- c) Concessionaire shall not make any improvements, additions or repairs without prior written approval from the City.
- d) If modification or revisions are made, the concessionaire agrees to return the area to original working condition at own expense at end of contract if City requests, or agrees to forfeit deposit.
- e) Concessionaire shall accept the City owned refrigerators and ice machines as is. During the contract term, Concessionaire will be financially responsible for any repairs to the said equipment.
- f) At end of contract term, Concessionaire is financially responsible to return said equipment in full, functioning, and presentable condition or risk forfeiture of deposit.
- g) Any additional equipment or replacement equipment desired by the Concessionaire will be acquired and installed at the Concessionaire's expense. If any public agency having jurisdiction over such matters require safety or other improvements to any of the equipment used by the concessionaire in their operations, for example electrical upgrades or drains installed, Concessionaire shall be required to make these improvements at their sole expense.
- h) The Concessionaire will provide signage to be approved by the City prior to installation. Any permit fees required will be at the Concessionaire's expense.

- i) Concessionaire shall ensure that concession stand is staffed at all times with sufficient qualified personnel in order to handle patron demand.
- j) Concessionaire shall provide consistent hours of operation.
- k) Concessionaire is to provide courteous and professional customer service.
- l) Concessionaire is to provide regular extermination services, no less than monthly, and as needed; and keep records of service readily available to the City.
- m) Concessionaire is to dispose of all garbage and waste in designated on-site dumpsters upon closing each evening. No garbage may be stored during business hours within sight of the public.
- n) Concessionaire shall meet all Health Department regulations and other applicable laws and regulations.
- o) Concessionaire to provide Property and Liability insurance (certificates of required insurance will be requested prior to commencement of operation of the concession stands).
- p) Concessionaire is to secure and insure the concession stands against vandalism. The City shall not be held responsible for repairs due to vandalism.
- q) Concessionaire is only authorized for the term of this contract to sell foods, beverages, and miscellaneous "snack bar" type items. All foods, beverages, and confectionary refreshments shall be of first quality. The items must be wholesome, pure, must conform to all Federal, State, and Municipal Laws, Ordinances, and Regulations, and must be kept subject to the approval or rejection of the Recreation Administrator or his Designee.
- r) Concessionaire must also sell healthy choices for the health conscious patron. Vendor must provide a list of products that will potentially be sold in the concession stands.
- s) Menu items and prices must be approved by City prior to sale. Agreed upon menu and prices must remain posted at all concessions in plain view of patrons standing and waiting for service. Approved pricing and food quality brand names shall remain constant unless a request is made in writing providing reasons for a product change.
- t) Only non-glass items must be used for beverages and food. No Styrofoam materials only paper or plastic items shall be used.
- u) Concessionaire must provide bags and ice as needed for program participant injuries.

- v) Alcoholic Beverages may be sold with approval from the Recreation Administrator or his designee at the Four Fields Softball Complex and Baseball Complex. The Concessionaire agrees to obtain and pay for all permits, licenses, and business taxes, including Alcoholic Beverage Licenses and Broward County Health Department certifications as necessary to conduct the business and agrees to comply with all laws governing the responsibility of the employer with respect to persons employed by the Concessionaire. Appropriate licenses or proof that preliminary paperwork to secure license must be submitted with this proposal. The Concessionaire must comply with all City, County, State and Federal rules, regulations and laws, as related to alcohol sales and distribution, as may be amended from time to time. Alcoholic sales will be limited to products covered under 2COP license type. The final decision as to whether or not Alcoholic Beverages may be sold at an event, or in any area of the facility, shall be at the sole discretion of the City. The decision to serve or refuse service of Alcoholic beverages to any individual shall be the sole responsibility of the Concessionaire.
- w) Tobacco products will not be allowed for sale.
- x) Un-shelled peanuts will not be allowed for sale.
- y) Chewing gum will not be allowed for sale.

Locations:

- a) Four Fields Softball Complex: 1300 NE 10th Street, Pompano Bch, FL 33060
- Minimum hours of operation are Monday through Friday 5:00pm to 10:00pm year round; and weekends as designated by rentals, tournaments and recreational activities.
 - Estimated 200 patrons per night.
- b) Baseball Complex: 1701 NE 8th Street, Pompano Bch, FL 33060
- Minimum hours of operation are Monday through Friday 5:00pm to 10:00pm year round; and weekends as designated by rentals, tournaments and recreational activities.
 - Estimated 100 patrons per night

2. Revenue Proposal

Concessionaire is to provide a percentage against gross sales, or minimum amount per month, whichever is greater payable to the City of Pompano Beach on a monthly basis, for the following:

Softball Complex

Percentage of gross food/non-alcoholic sales payable to the City:

7 %

OR

Minimum dollar amount per month payable to the City:

\$ 100⁰⁰

Percentage of gross alcoholic sales payable to the City:

10 %

OR

Minimum dollar amount per month payable to the City:

\$ 100⁰⁰

Baseball Complex

Percentage of gross food/non-alcoholic sales payable to the City:

7 %

OR

Minimum dollar amount per month payable to the City:

\$ 100⁰⁰

Percentage of gross alcoholic sales payable to the City:

10 %

OR

Minimum dollar amount per month payable to the City:

\$ 100⁰⁰

3. Tasks/Deliverables

Eligibility

Proposals will be considered only from firms that have been engaged in providing concession services similar to the services specified herein and who are presently engaged in providing these services for a minimum of three (3) years. Proposers will be required to demonstrate proof of experience in the management and administration of an organization for the performance of this contract.

The City of Pompano Beach will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory. The City reserves the right to reject proposals when evidence submitted, on investigation and evaluation, is determined by the City to indicate inability of the bidder to perform.

The City of Pompano Beach reserves the right, before recommending any award, to inspect the organization or to take any other action necessary to determine ability to perform in accordance with the contract documents, including the financial ability, organizational ability, experience record and equipment.

Mandatory Site Visit

It shall be the full responsibility of the Proposer to visit and inspect the locations prior to the submission of a proposal. Submission of the proposal will be considered confirmation that the proposer has familiarized themselves with the nature and extent of the work, any local conditions that may, in any manner, affect the scope of the work to be done, and the equipment, materials and labor required. Failure to inspect the facility locations may cause your proposal response to be considered non-responsive. Contact Supervisor, Jon Nasser at (954) 786-4119; to schedule a site visit.

Compliance

State Health Department regulations must be strictly complied with and failure to maintain an above average rating may be reason for terminating any agreement.

Assignment and/or Sub-Contracting

Any resulting agreement may not be assigned without the express permission of the City Commission. A listing of all sub-contractors, if any, and the portion of the contract they will perform must be submitted with the proposal. If sub- contractors are stated, this does not relieve the Vendor from the prime responsibility for full and complete satisfactory and acceptable performance under any awarded contract.

Manner of Performance

The Concessionaire must perform all its obligations and functions under this Contract in accordance with the requirements and standards contained herein and in a professional and businesslike manner. The Concessionaire shall use its best efforts to coordinate and adjust to the needs and requirements of the various users of the City.

Release of Liability

The Concessionaire will release and discharge the City of Pompano from any and all liability for loss of merchandise, health claim resulting from food preparation/quality, etc., goods, equipment or other property of the successful Concessionaire or his agents if lost, damaged or destroyed by fire, theft, rain, water, storm, riot, civil disobedience, vandalism or other causes.

Personnel

The Concessionaire shall be responsible for hiring personnel to adequately operate any resulting agreement. This hiring shall conform to all requirements of the Federal, State and local laws relating to minimum wages, Social Security, Civil Right Act of 1964, unemployment compensation, worker's compensation and Health Department.

Employees shall observe all applicable rules and regulations. Concessionaire, at their expense, will provide proof of criminal background screening on all staff and agree that no staff will be assigned to said locations if found guilty of any sexually based offense.

Background Checks

All persons and firms are subject to a local, state, federal and financial background check using appropriate law enforcement procedures. Vendor must notify the City of all change in personnel within forty-eight (48) hours. All persons must be approved prior to their assignment to any City facility.

Accounting Records

The accounting system used should be able to identify all costs, expenses and revenues attributed to this agreement. To that end, the Vendor must keep accurate accounting and records of all operations through use of automatic cash register machine with print out capabilities. All operations covered in this document must have the ability to establish and maintain a system of bookkeeping and accounting, including inventory controls, satisfactory to the Recreation Administrator and City Code. The successful Concessionaire must agree to submit a certified monthly accounting report of gross receipts clearly indicating the revenue derived from each concession stand including location and specific product usage, in a manner acceptable to and approved by the City's Director of Financial Services or his or her designee, and shall provide an annual profit and loss statement covering all operations covered by this agreement. A copy of the inventory sold receipt printout for each location must be included with the certified monthly accounting report. Audits will be made as often as deemed necessary by the City. Concessionaire shall make available, at reasonable time for City's examination, all financial and statistical records, state sales tax returns, and any other documents pertinent to concessionaire's provision of goods and services under this Agreement.

The successful Concessionaire will be required to establish and use a separate depository account for all sales generated under the agreement resulting from this solicitation. The failure of Concessionaire to produce any of the records described herein following a request by City agents shall be deemed a material breach and the City may terminate the agreement. The Concessionaire shall provide the following accounting report to the Recreation Administrator and Treasury Manager or their designees. **(Concessionaire shall submit examples of report formats to be used with their RFP).**

<u>REPORT</u>	<u>INFORMATION REQUESTED</u>	<u>TIME FRAME</u>
Accounting Report	<ul style="list-style-type: none"> • Concession stand product description (soda, snack, etc.) • Location • Total units sold monthly 	Monthly
Gross sales		Monthly
Amount due to the City		Monthly

Payment

Payment and statement for previous month's gross receipts must be received by the Treasury Department, 100 West Atlantic Blvd, Pompano Beach, FL 33060 by the fifteenth (15th) of the following month with a copy to Recreation Supervisor, Jon Nasser. In the event that the Concessionaire fails to make this payment within five (5) days of the due date, there shall be an additional charge of \$50.00 payable to the City for such late payment. If the payment and accumulated penalties are not received within thirty (30) days after the normal monthly payment due date, the City may take the necessary steps to cancel the contract. The Concessionaire shall be responsible for collecting and remitting all sales tax to the State of Florida.

Reference To Other Data

Only information that is received in response to the RFP will be evaluated. References to any information submitted previously will not suffice.

Qualification of Respondents

A. Respondents must include a description of current and previous contracts providing the same or similar services called for in this Request for Proposal. List governmental agencies and/or private sector. Provide company name and Government entities, addresses, contact person, phone number, and dollar value of the contract.

B. Concessionaire shall keep current all licenses and permits, whether municipal, county, state or federal required for the performance of its obligations and functions hereunder and shall pay promptly when due all such fees.

3. Term of Contract

Contract term will be two (2) years, renewable for three (3) additional one (1) year periods.

4. Small Business Enterprise Program

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

5. Local Business Program

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: <http://pompanobeachfl.gov/directory/btr/FAQ%20sheet%20BTR.pdf>

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

6. Required Proposal Submittal

Submission/Format Requirements

Submit one (1) original unbound and five (5) bound copies of the proposal. All copies will be on 8 1/2" x 11" plain white paper, typed, and signed by an authorized representative who is able to contractually bind the Proposer. In addition, Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

Information to be included in the proposal: In order to maintain comparability and expedite the review process, it is required that proposals be organized in the manner specified below, with tabs or dividers between the sections:

Title page:

Show the project name and number, the name of the Proposer's firm, address, telephone number, name of contact person and the date.

Table of Contents:

Include a clear identification of the material by section and by page.

Letter of Transmittal:

Briefly state the Proposer's understanding of the project and express a positive commitment to provide the services described herein. State the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), office and E-mail addresses and telephone numbers. Please limit this section to two pages.

Fees & Costs:

Include a concise narrative with sufficient detail indicating the proposed approach to providing the required services, including a description of the types and qualities of service that would be provided. Provide a cost for each of the major services provided along with the estimated number of expected work hours for each qualified staff.

Proposer shall itemize all costs to complete all and necessary tasks as described under Scope of Services. Costs associated with travel as well as miscellaneous expenses should be adequately described.

Schedule:

Proposer shall provide a timeline that highlights proposed tasks that will meet all applicable deadlines.

References:

Submit a client reference list, including name of contact, firm and/or governmental entity, address, telephone number and type of service provided to each reference.

Litigation:

Disclose any litigation within the past five (5) years arising out your firm's performance.

City Forms:

The RFP Proposal Signature Page must be completed, signed and returned. Proposer should return all RFP pages, initialed where indicated.

7. **Insurance**

The insurance described herein reflects the insurance requirements deemed necessary for this contract by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

b. Liability Insurance

1) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.

2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
GENERAL LIABILITY: MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE		
* Policy to be written on a claims incurred basis		
XX comprehensive form		
XX premises - operations	bodily injury	
— explosion & collapse		
— hazard	property damage	
— underground hazard		
— products/completed		
— operations hazard	bodily injury and	
XX contractual insurance	property damage	
XX broad form property	combined	
— damage		
XX independent contractors		
XX personal injury	personal injury	

AUTOMOBILE LIABILITY: MINIMUM \$200,000 per OCCURRENCE/\$300,000 AGGREGATE

		bodily injury (each person)		
XX	comprehensive form	bodily injury (each accident)	_____	_____
XX	owned	property damage	_____	_____
XX	hired	bodily injury and property damage		
XX	non-owned	combined		

REAL & PERSONAL PROPERTY

comprehensive form Consultant must show proof they have this coverage.

EXCESS LIABILITY

<input type="checkbox"/>	umbrella form	bodily injury and property damage		
<input type="checkbox"/>	other than umbrella	combined	\$2,000,000.	\$2,000,000.

XX **PROFESSIONAL LIABILITY** \$1,000,000. \$1,000,000.
 * Policy to be written on a claims made basis

The certification or proof of insurance must contain a provision for notification to the City, and the City's contracted law enforcement provider if applicable, thirty (30) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

8. Selection/Evaluation Process

A Selection/Evaluation Committee will be appointed to select the most qualified firm(s). The Selection/Evaluation Committee will present their findings to the City Commission and, upon Commission approval, will negotiate a contract with the most qualified firm(s).

Proposals will be evaluated using the following criteria.

<u>Criteria</u>	<u>Point Range</u>
1. Experience and Expertise Previous related work experience and qualifications in the subject area of personnel assigned. Demonstrates a clear understanding of scope of work and other technical or legal issues related to the project.	0-20

- | | | |
|-------------------------------------|---|--------------|
| 2. References | History and performance of firm/project team on similar projects.
References and recommendations from previous clients. | 0-10 |
| 3. Resources and Methodology | Adequacy of amount of quality resources assigned to the project.
Overall approach to project. Consideration of services provided and approach to meeting goals and deadlines. Financial resources. | 0-30 |
| 4. Cost | Including the overall project task budget, itemized cost breakdowns, variety of products, and percentages back to the City. | 0-40 |
| | Total | 0-100 |

The Committee has the option to use the above criteria for the initial ranking to short-list Proposers and to use an ordinal ranking system to score short-listed Proposers following presentations (if deemed necessary) with a score of "1" assigned to the short-listed Proposer deemed most qualified by the Committee.

Each firm should submit documentation that evidences the firm's capability to provide the services required for the Committee's review for short listing purposes. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss the proposal and meet firm representatives, particularly key personnel who would be assigned to the project. Should interviews be deemed necessary, it is understood that the City shall incur no costs as a result of this interview, nor bear any obligation in further consideration of the submittal.

When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

9. Hold Harmless and Indemnification

Proposer covenants and agrees that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the Proposer, whether direct or indirect, or whether to any person or property to which the City or said parties may be subject, except that neither the Proposer nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the City or any of its officers, agents or employees.

10. Retention of Records and Right to Access

The selected firm shall maintain during the term of the contract all books of account, receipt invoices, reports and records in accordance with generally accepted accounting practices and standards. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. Recommendation for changes, additions, or deletions by the City's Internal Auditor must be complied with by the selected firm. The City's Internal Auditor must be permitted during normal business hours to audit and examine the books of account, reports, and records relating to this contract. The selected firm shall maintain and make available such records and files for the duration of the contract and retain them until the expiration of three years after final payment under the contract.

11. Communications

No negotiations, decisions, or actions shall be initiated or executed by the firm as a result of any discussions with any City employee. Only those communications, which are in writing from the City, may be considered as a duly authorized expression on behalf of the City. In addition, only communications from firms that are signed and in writing will be recognized by the City as duly authorized expressions on behalf of firms.

12. No Discrimination

There shall be no discrimination as to race, sex, color, age, religion, or national origin in the operations conducted under any contract with the City.

13. Independent Contractor

The selected firm will conduct business as an independent contractor under the terms of this contract. Personnel services provided by the firm shall be by employees of the firm and subject to supervision by the firm, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this agreement shall be those of the firm.

14. Staff Assignment

The City of Pompano Beach reserves the right to approve or reject, for any reasons, Proposer's staff assigned to this project at any time. Background checks may be required.

15. Contract Terms

The contract resulting from this RFP shall include, but not be limited to the following terms:

The contract shall include as a minimum, the entirety of this RFP document, together with the successful Proposer's proposal. Contract shall be prepared by the City of Pompano Beach City Attorney.

If the City of Pompano Beach defends any claim, demand, cause of action, or lawsuit arising out of any act, action, negligent acts or negligent omissions, or willful misconduct of the contractor, its employees, agents or servants during the performance of the contract, whether directly or indirectly, contractor agrees to reimburse the City of Pompano Beach for all expenses, attorney's fees, and court costs incurred in defending such claim, cause of action or lawsuit.

16. Waiver

It is agreed that no waiver or modification of the contract resulting from this RFP, or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that the provisions of this paragraph may not be waived except by a duly executed writing.

17. Survivorship Rights

This contract resulting from this RFP shall be binding on and inure to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assigns.

18. Termination

The contract resulting from this RFP may be terminated by the City of Pompano Beach without cause upon providing contractor with a least sixty (60) days prior written notice.

Should either party fail to perform any of its obligations under the contract resulting from this RFP for a period of thirty (30) days after receipt of written notice of such failure, the non-defaulting part will have the right to terminate the contract immediately upon delivery of written notice to the defaulting part of its election to do so. The foregoing rights of termination are in addition to any other rights and remedies that such party may have.

19. Manner of Performance

Proposer agrees to perform its duties and obligations under the contract resulting from this RFP in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees that the services provided under the contract resulting from this RFP shall be provided by employees that are educated, trained and experienced, certified and licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City of Pompano Beach with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by

applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

20. Acceptance Period

Proposals submitted in response to this RFP must be valid for a period no less than ninety (90) days from the closing date of this solicitation.

21. RFP Conditions and Provisions

The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All Proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All proposals and supporting materials submitted will become the property of the City.

Any alteration, erasure, or interlineations by the Proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All Proposers are required to provide all information requested in this RFP. Failure to do so may result in disqualification of the proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its sole discretion it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposals, or to award contract for the items herein, in part or whole, if it is determined to be in the best interests of the City to do so.

The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therein.

22. Standard Provisions

a. Governing Law

Any agreement resulting from this RFP shall be governed by the laws of the State of Florida, and the venue for any legal action relating to such agreement will be in Broward County, Florida.

b. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any City employee is also an owner, corporate officer, or an employee of the firm. If any City employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to § 112.313, Florida Statutes.

c. Drug Free Workplace

The selected firm(s) will be required to verify they will operate a "Drug Free Workplace" as set forth in Florida Statute, 287.087.

d. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

e. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during or after completion of the work.

f. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, etc., required by federal, state, county, and municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform to the requirements of said legislation.

g. Familiarity With Laws

It is assumed the selected firm(s) will be familiar with all federal, state and local laws, ordinances, rules and regulations that may affect its services pursuant to this RFP. Ignorance on the part of the firm will in no way relieve the firm from responsibility.

h. Withdrawal Of Proposals

A firm may withdraw its proposal without prejudice no later than the advertised deadline for submission of proposals by written communication to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

i. Composition Of Project Team

Firms are required to commit that the principals and personnel named in the proposal will perform the services throughout the contractual term unless otherwise provided for by way of a negotiated contract or written amendment to same executed by both parties. No diversion or substitution of principals or personnel will be allowed unless a written request that sets forth the qualifications and experience of the proposed replacement(s) is submitted to and approved by the City in writing.

j. Variances

While the City allows Proposers to take variances to the RFP terms, conditions, and specifications, the material nature, number, and extent of variances taken will be considered in determining proposal responsiveness and in allocating proposal evaluation points.

k. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

23. Questions and Communication

All questions regarding the RFP are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

24. Addenda

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786-4098 to determine if addenda were issued and to make such addenda a part of their proposal.

PROPOSAL SIGNATURE PAGE
RFP T-59-13, CONCESSIONAIRE SERVICES FOR COMMUNITY PARK SOFTBALL AND
BASEBALL COMPLEXES

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms, conditions, specifications, addenda, legal advertisement, and conditions contained in the RFP. I have read the RFP and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) CRAIG SPANKY CAFFRO Title President

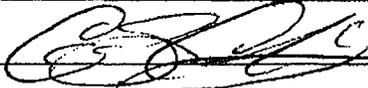
Company (Legal Registered) SPANX OF POMPAÑO BEACH INC.

Federal Tax Identification Number 455 370 984

Address 1130 NE 4th ST

City/State/Zip Pompano Beach FL 33060

Telephone No. 954-658-1700 Fax No. 954-590-8341

Signature  Date 28 Oct 2013

Addendum Acknowledgment - Proposer acknowledges that the following addenda have been received and are included in his/her proposal:

Addendum No. #1, 2, 3 Date Issued 28 Oct 2013

SERVICE CONTRACT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by the CITY OF POMPANO BEACH, hereinafter referred to as "City" and _____, hereinafter referred to as "Contractor."

WHEREAS, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. **Contract Documents.** The Contract Documents consist of this Agreement; Exhibit "A" – Scope of Work; Exhibit "B" insurance requirements, if needed; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

2. **Purpose.** City hereby contracts with Contractor to provide _____ services upon the terms and conditions herein set forth

3. **Scope of Work.** Contractor will provide the services to be rendered as set forth in Exhibit "A" (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.

4. **Term of Contract.** This Contract shall be for a one (1) year period. The start of this Agreement shall be _____, 20____. Contractor shall commence _____ services for the City and continue operation through _____, 20____; **OR** until completion of Scope of Work.

5. **Renewal.** In the event City determines the Contractor to be in full compliance with this contract and Contractor's performance to be satisfactory, then City shall have the option to renew this contract for an additional period one (1) year, provided that City will provide notification within sixty (60) days of termination date of its intention; **OR** this Contract is not subject to renewal.

6. **Maximum Obligation.** City agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to insure that unless otherwise

No Initial ~~Initial~~ Initial

directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.

7. Price Formula. Concessionaire agrees to pay the City as specified in the RFP.

8. Invoices. Contractor shall submit the invoices to City, if requested by City, as follows:

Invoices shall be submitted on a monthly basis or on _____.

9. Payment. All payments by the City shall be made after the service has been provided. All invoices shall be submitted to the City for approval and payment will be issued within forty-five (45) days of submittal.

10. Disputes.

A. Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

11. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

If to Contractor: _____

If to City: City of Pompano Beach
City Manager
P. O. Box 1300
Pompano Beach, Florida 33060

12. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

13. Termination. This Agreement may be terminated without cause by either party upon thirty (60) days written notice to the other party.

14. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

15. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

16. Indemnity. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

17. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

18. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

19. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

20. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

21. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors,

subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

22. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

23. Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the city in order to perform the service;

2. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in Chapter 199, Fla. Stat., or as otherwise provided by law;

3. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

4. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the city in a format that is compatible with the information technology systems of the City.

B. The failure of Contractor to comply with the provisions set forth in this section shall constitute a Default and Breach of this Agreement and the city shall enforce the Default in accordance with the provisions set forth in this Agreement or as provided by law.

24. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

25. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

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

27. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

28. Severability. Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____

DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS, CITY CLERK

(SEAL)

APPROVED AS TO DEPARTMENT HEAD:

By: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by LAMAR FISHER as Mayor, DENNIS W. BEACH as City Manager, and MARY L. CHAMBERS as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONTRACTOR"

Witnesses:

(Print name of company)

By: _____

Print Name: _____

Title: _____

Business License No. _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ as _____ of _____, A Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

l:agr/genl srvs/service contract

Exhibit C
 Fee Schedule
 Merchandise and Fee Schedule fo DJP Concessions Inc
 dba Grand Slam Sports Concession Inc.

Concession Menu

Aquafina 20 oz	\$ 2.00
Pepsi 20 oz	\$ 2.00
Diet Pepsi 20 oz	\$ 2.00
Mountain Dew 20 oz	\$ 2.00
Gatorade Lemon/Lime	\$ 2.00
Gatorade Cool Blue	\$ 2.00
Gatorade Orange	\$ 2.00
Gatorade G2 Glacier	\$ 2.00
Gatorade Fruit Punch	\$ 2.00
Brisk Iced Tea	\$ 2.00
Brisk Lemonade	\$ 2.00
Mountain Dew AMP	\$ 3.00
Rockstar Sugar Free	\$ 3.00
Giant Vanilla Sand	\$ 1.50
Strawberry Shortcake	\$ 2.00
Cookie Sandwich	\$ 2.00
Drumsticks	\$ 2.00
Oreo Cookie Crunch	\$ 2.00
Chocolate Éclairs	\$ 2.00
Strawberry Fruit Bar	\$ 2.00
Banana Fruit Bar	\$ 2.00
Pretzels	\$ 1.00
Doritos	\$ 1.00
Potato Chips	\$ 1.00
BBQ Potato Chips	\$ 1.00
Cool Ranch Doritos	\$ 1.00
Cheetos	\$ 1.00
Sun Chips	\$ 1.00
Fritos	\$ 1.00
M&M's - Plain	\$ 1.00
M&M's - Peanut	\$ 1.00
Snickers	\$ 1.00
Milky Way	\$ 1.00
Twix	\$ 1.00
Skittles	\$ 1.00
Starburst	\$ 1.00
Twizzles	\$ 1.00
Airheads	\$ 1.00
Ring Pops	\$ 1.00
Bubble Gum - Mint	\$ 1.00
Hot Dog	\$ 2.50
Hot n Ready Burger	\$ 3.00

Exhibit D

Procedures and Policies for Sale of Alcoholic Beverages

- A. The sale of beer and/or wine at any Pompano Beach park shall be subject to prior approval of the Recreation Programs Administrator or designee(s). The Recreation Programs Administrator or designee(s) may approve the sale of beer and/or wine at programmed events, which term includes adult athletic league activities, rentals or other adult-oriented events or activities, and designated concession areas.
- B. The sale of beer and/or wine shall be prohibited during any programmed event intended for children (under age 21), as determined by the Recreation Programs Administrator. Only beer and wine allowed or consumed on premises must be purchased from approved vendors. No outside beer and/or wine will be allowed.
- C. For programmed events where the sale and/or consumption of beer and/or wine is permitted pursuant to A and B above, an entity authorized to sell beer and/or wine during the programmed event shall be required to indemnify and hold harmless the City of Pompano Beach, its officers, agents, employees, and volunteers, from any and all claims for liability arising directly or indirectly out of the sale or consumption of beer and/or wine during that programmed event. Insurance acceptable to City's Risk Manager shall be required to cover the indemnification obligation.
- D. An entity authorized to sell beer and/or wine at a programmed event shall provide the City of Pompano Beach with a Certificate of Liability Insurance, including additional coverage for serving any alcoholic beverages at the event. The insurance policy requirements will be determined by City's Risk Manager on a case-by-case basis. Proof of such insurance coverage shall be furnished to the Recreation Programs Administrator and approved by the City's Risk Manager prior to a Programmed Event taking place.
- E. Police or security officers shall be authorized to prohibit the sale of beer and/or wine to any person that appears intoxicated. Such person may also be ordered by police/sheriff or security officers to immediately leave the premises.
- F. Persons serving beer and/or wine to the public shall be properly trained in such service and be at least 21 years of age. In addition to proper training requirements staff serving beer and/or wine shall not consume alcoholic beverages immediately before, during, or following the programmed event. Any server violating this policy shall be immediately dismissed by the Licensee and immediately ordered to leave the premises.
- G. Servers shall be responsible, at the time beer and/or wine is requested, for verifying that the person making the request is of legal drinking age as required by law. If, for any reason,

picture identification evidencing proof of legal drinking age cannot be provided upon request, beer and/or wine service shall be denied. Servers shall refuse to serve an alcoholic beverage to any person who appears intoxicated.

- H. Signs shall be posted at the concession areas notifying the public that all persons must be of legal drinking age to purchase and/or consume beer and/or wine at the programmed event. Signs shall be posted notifying the public that purchases of these beverages are limited to two (2) drinks per person per transaction, and that servers reserve the right to refuse service to any person who appears intoxicated.
- I. The sale of beer and/or wine shall cease at least one (1) hour before the official end of the programmed event as specified in the schedule given to Licensee by City staff.

Exhibit E
**Accounting Methods and Procedures for
DJP Concessions, Inc. License Agreement**

A. RECORDKEEPING, RECORDS RETENTION AND AUDIT ACCESS

1. LICENSEE shall keep full and complete daily records of concession gross sales and expenses resulting from all related services authorized in this agreement.

2. LICENSEE shall install and maintain a system for keeping such records of (including but not limited to) concession sales and related services as may be reasonably required by the City in accordance with generally accepted accounting principles.

LICENSEE shall purchase and maintain at its cost an integrated inventory system of merchandise and point of sale revenue system with integrated updating capabilities. Integrated capabilities for inventory and point of sale revenue systems shall be defined as:

1) Each unit of merchandise sold in the point of sales revenue system shall be on a real time update basis or on a batch update basis correspondingly updating the inventory system and available units for sale in inventory and point of sale revenue systems.

2) Each unit of merchandise ordered in the inventory system shall be on a real time update basis or on a batch update basis correspondingly updating the available units for sale in inventory and point of sale revenue systems.

3) Detailed and summary reports for the inventory and point of sale revenue system will be run separately for each concession location in this agreement on a monthly basis. Monthly inventory and point of sale revenue reports shall be run for each concession location separately, and shall not be combined or data intermixed.

The batch update process shall be done on a daily basis at the close of business day for each concession location for units of inventory received during the business day before running the end of business day inventory and point of sale revenue reports. The daily detailed point of sale revenue reports for each business day shall record the number of units of merchandise sold for each merchandise inventory item, sales price per unit, extended sales amounts, and sales tax collected, with a total summary number for units of merchandise inventory items sold and total dollar amount of daily sales for daily bank deposits. The daily sales revenue amounts should roll up into the monthly revenue report.

LICENSEE shall timely pay the amount due City, on the fifteenth (15th) of the following month, and provide to the City's Recreation Program Administrator or her/his designee, with summary reports for integrated merchandise inventory and point of sale revenue systems, supporting the amount paid. End of the month merchandise inventory balance shall be reconciled with the sales amount; for example, the month end inventory balance should equal the beginning month inventory, plus inventory received, less inventory sold. Any differences should be accounted for

and explained.

The City's Recreation Program administrator or his designee will timely review the summary monthly reports of integrated inventory and point of sale revenue system. The review shall include agreeing the amount of the inventory sold for the month, with the sales revenue reported, and used to calculate the City's monthly compensation under this agreement.

City's monthly compensation is based on gross sales. Gross sales shall not include sales tax collected and remitted to the appropriate jurisdictions.

3. The City and any party or parties designated by it or either of them shall at reasonable times during normal business hours have the right to inspect and examine all books, papers, and accounting records (including, but not limited to), cash register tapes, ledgers, journals, bank statements, state sales tax and federal tax returns, timesheets, work schedules, etc. of LICENSEE relating to (including but not limited to) concession sales and related services. The failure of LICENSEE to produce any of the records described herein following a request by City agents shall be deemed a material breach and City may terminate this agreement pursuant to the terms specified in the agreement. LICENSEE agrees to keep all such books, papers, and records at the concession stand or at some mutually agreed upon place. In addition, the City and its designee shall have the right to review LICENSEE'S system of internal controls relating to (including, but not limited to) concession services and to suggest needed changes.

4. The City reserves the right to request a copy of the federal tax returns and state sales tax returns, which shall be timely, submitted, if requested.

5. Each dealer defined in Chapter 212, Florida Statutes, each licensed wholesaler, and any other person subject to the tax imposed by Chapter 212, Florida Statute, shall keep and preserve, for a period of five years a complete record of all transactions, together with invoices, bills of lading, gross receipts from sales, resale certificates, consumer exemption certificates and other pertinent records and papers as may be required by the Department of Revenue for the reasonable administration of Chapter 212, Florida Statute, and such books of account as may be necessary to determine the amount of tax due thereunder. All such books, invoices, and other records shall be open for inspection by the Department of Revenue or City representatives at all reasonable hours at the dealer's store, sales office, warehouse or place of business located in this state. Any dealer who maintains such books and records at a point outside this state shall make such books and records available for inspection by the Department of Revenue or City representatives at City Hall. Thus the City requires LICENSEE to retain for a period of five years at a minimum: sales journals, general ledgers, disbursement journals, invoices, bank statements, sales and use tax returns, federal income tax returns, payroll ledgers, daily detail transaction register tape and daily final summary "Z" tapes of cash register activity.

6. LICENSEE shall promptly disburse all taxes required by Federal, State, and local authorities and shall pay any applicable taxes relating to concession operations. Sales tax computed and collected must ensure compliance with all state sales tax provisions currently in force or as may be amended from time to time. Noncompliance with state sales tax regulations, will subject LICENSEE to potential penalties.

7. LICENSEE shall be responsible for retaining invoices for the purchased merchandise. Invoices for merchandise shall be specific for Pompano locations with adequate detailed item dates, quantity and description to document detailed inventory activity for merchandise sales and inventory modules including the percentage mark-up for inventory. Reasonable City access to supporting vendor invoices for merchandise shall be reserved by the City as required by RFP T-59-13, herein incorporated by reference.

8. Detailed and separate delivery tickets or transfer inventory tickets are required for each Pompano location for menu items on Exhibit C to document beginning inventory, additions to and subtractions from inventory due to sales, subtractions due to transfers from one Pompano location to another Pompano location, or subtractions due to documented physical counts for each Pompano concession location. If there is a ratio for purchased product to item inventory for unit sales, the ratio must be recorded to document reasonableness of sales, and inventory activity reports. Monthly reports to City will provide detailed and summary reports of gross sales and inventory for menu items in Exhibit C.

9. A separate bank account will be maintained by vendor for the contract. Daily bank deposits will be made intact for daily sales and the daily sales revenue will not be reduced (netted) for payments for vendor supplies, or inventory merchandise for C.O.D. deliveries.

10. End of year inventory will be documented and scheduled annually on September 30th of each year. The City reserves the right to have a City employee present at the inventory count. LICENSEE will provide an annual revenue report, for the end of the Fiscal Year (September 31). The revenue report will be due on the fifteenth (15th) of the following month, and it shall contain similar information as presented in the monthly revenue reports.

B. DAILY OPERATIONS

1. A numerical accountability shall be established over the final summary "Z" totals recorded on the cash register(s) tapes. All cash register(s) tapes including training tapes, etc. shall be maintained to account for the continuity of the "Z" tape numbers. A final summary of "Z" tape total(s) of total sales activity shall be taken on a daily basis for each cash register.

2. All sources of revenue from the concessions including sales tax collected shall be recorded through the cash register(s) with a dual tape by separate product keys. In addition, the cash register(s) should provide the control capability to separately account for the use of separate operator or product code keys. Customers must receive a sales receipt at the point of sale.

3. In order to provide for full accountability over sales, the full amount of the sale shall be recorded, and any gift certificates shall be applied as a credit to the sale. These gift certificates should then be retained with the appropriate day's documentation to support the credit.

**Exhibit F
Release for
Background Checks**



Background Consent/Release Form

Organization _____

Applicant's Legal Name (printed)

Social Security Number _____ Date of Birth _____

Applicant's Address

City _____ State _____ Zip _____

I, _____, authorize and give consent for the above named organization to obtain information regarding myself. This includes the following:

- Criminal background records/information
- Sex Offender Registry Checks
- Addresses
- Social Security Verification

I the undersigned, authorize this information to be obtained either in writing or via telephone in connection with my application. Any person, firm or organization providing information or records in accordance with this authorization is released from any and all claims of liability for compliance. Such information will be held in confidence in accordance with the organization's guidelines.

Print Name: _____

Date: _____

Signature:

EXHIBIT G

INSURANCE REQUIREMENTS

LICENSE AGREEMENT WITH DJP CONCESSIONS INC.

CONTRACTOR/LICENSEE shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager who can be reached by phone (954 786-5555) or email (eddie.beecher@copbfl.com) should you have any questions regarding the terms and conditions set forth in this Article. Proof of the insurance coverage required hereunder shall be mailed to Risk Management, PO Box 1300, Pompano Beach, FL 33061.

CONTRACTOR/LICENSEE is responsible to deliver to the CITY's Risk Manager for his timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR/LICENSEE, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR/LICENSEE under this Agreement.

Throughout the term of this Agreement, CONTRACTOR/LICENSEE and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor/Licensee is obligated to pay compensation to employees engaged in the performance of the work. Contractor/Licensee further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's/Licensee's negligent acts or omissions in connection with Contractor's/Licensee's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance	Limits of Liability		
GENERAL LIABILITY:			
Minimum \$1,000,000 Per Occurrence and \$1,000,000 Per Aggregate			
* Policy to be written on a claims incurred basis			
xx comprehensive form	bodily injury and property damage		
xx premises - operations	bodily injury and property damage		
xx explosion & collapse hazard			
xx underground hazard			
xx products/completed operations hazard	bodily injury and property damage combined		
xx contractual insurance	bodily injury and property damage combined		
xx broad form property damage	bodily injury and property damage combined		
xx independent contractors	personal injury		
xx personal injury			
xx alcohol sales	Minimum \$1,000,000 Per Occurrence and \$1,000,000 Per Aggregate		
AUTOMOBILE LIABILITY:			
Minimum \$1,000,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.			
xx comprehensive form			
xx owned			
xx hired			
xx non-owned			
REAL & PERSONAL PROPERTY			
xx comprehensive form	Agent must show proof they have this coverage.		
EXCESS LIABILITY			
		Per Occurrence	Aggregate
xx other than umbrella	bodily injury and property damage combined	\$1,000,000	\$1,000,000
PROFESSIONAL LIABILITY			
		Per Occurrence	Aggregate
* Policy to be written on a claims made basis		\$1,000,000	\$1,000,000

C. Employer's Liability. CONTRACTOR/LICENSEE and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR/LICENSEE, the CONTRACTOR/LICENSEE shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR/LICENSEE hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR/LICENSEE shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR/LICENSEE enter into such an agreement on a pre-loss basis.