

Agenda Item # 06A

VILLAGE OF ROYAL PALM BEACH

Agenda Item Summary

AGENDA ITEM: APPROVAL OF BID AWARD AND AUTHORIZATION FOR THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH PROFESSIONAL CONCESSIONS, INC., THE SOLE RESPONSIVE, RESPONSIBLE PROPOSER, TO PROVIDE ALCOHOLIC BEVERAGE SALES IN COMMONS PARK

ISSUE: The Village issued a Request for Proposals for Alcoholic Beverage Sales on October 30, 2020 requesting proposals for the provision of alcoholic beverage sales for special events in Commons Park. A single proposal was received from Professional Concessions, Inc. Based on the proposal received, this vendor has extensive experience in providing quality service for events with attendance ranging from 100 – 100,000. The proposed Agreement is for an initial term of two (2) years, commencing January 1, 2021 and ending September 30, 2023. Additionally, this Agreement may be renewed and extended for two (2) additional, two (2) year terms upon the written agreement of both parties.

RECOMMENDED ACTION: Staff recommends approval.

Initiator:	Village Manager	Agenda	Village Council
Director of Parks and Recreation	Approval:	Date:	Action:
		12-17-20	

AGREEMENT	
Village of Royal Palm Beach	Vendor: Professional Concessions, Inc.
Project: Alcoholic Beverage Sales	RFP

This Agreement, entered into this ____ day of December, 2020, effective January 1, 2021, by and between **Professional Concessions, Inc.** located at **9067 Southern Boulevard, West Palm Beach, Florida 33411**, a Corporation registered in Florida, hereinafter referred to as the "VENDOR", and the Village of Royal Palm Beach, Florida, a Municipal Corporation, hereinafter referred to as the "VILLAGE."

WITNESSETH:

VILLAGE and VENDOR, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and value of which is hereby acknowledged by both parties, hereby agree as follows:

1. **Terms:** VILLAGE and VENDOR, both hereby agree to enter into an agreement for the provision of **Alcoholic Beverage Sales** within the corporate limits of the Village in accordance with the VILLAGE'S Request For Proposal ("RFP") Specifications attached hereto as "Composite Exhibit A". This Agreement will commence on the 1st day of January 2021 and will end on the 30th day of September, 2023. Additionally, this Agreement may be renewed and extended for two (2) additional, two (2) year terms for the same terms and conditions as stated below in paragraph 4, upon written agreement of both parties. If the Agreement is extended into Renewal Terms, then the VENDOR shall replenish the advanced rent deposits to the VILLAGE as required by "Composite Exhibit A" prior to commencement of the applicable Renewal Term.

2. **Scope of Services:** Other Conditions: The VENDOR is a business engaged in providing Alcoholic Beverage Sales and agrees to perform the following Services. See "Composite Exhibit "A". All terms and conditions of the Agreement shall be the terms and conditions as specifically set forth in the Village Proposal Specifications for these services and the proposal attached hereto as "Composite Exhibit A". Both parties hereby agree and acknowledge that this nine (9) page Agreement, along with "Composite Exhibit A" and any other documents required by the VILLAGE'S Request for Proposal Specifications shall constitute the entire Agreement.

3. **Notice:** Notice as required in the Agreement documents shall be sufficient when sent by certified mail or hand delivered to the parties at the following addresses:

VILLAGE:

Village of Royal Palm Beach
1050 Royal Palm Beach Boulevard
Royal Palm Beach, FL 33411

Attn: Raymond C. Liggins, P.E.
Village Manager

VENDOR:

Professional Concessions, Inc.
9067 Southern Boulevard
West Palm Beach, Florida 33411

Attn: Bruce Beck, President

4. **Payments:** The VENDOR agrees to pay VILLAGE 25% of all sales for each of (4) major events as listed in the RFP commencing on January 1, 2021 through September 30, 2023, as provided in Agreement A Price Proposal in "Composite Exhibit A". Payment along with sales record shall be submitted to the VILLAGE in a sealed envelope, with the event name clearly marked on the outside, within ten (10) days of the event.

5. **Books, Reports and Audits:**

a. **Recordkeeping:** VENDOR shall maintain, for a period of no less than five (5) years from the Effective Date of this Agreement, all sales reports, receipt books, inventory reports and other such records customarily used by VENDOR to document Services provided to the VILLAGE. The VILLAGE shall have the authority to audit all sales records for the purpose of verifying the accuracy of any payments to the VILLAGE.

b. **Audits:** The VILLAGE shall not be responsible for any costs incurred by VENDOR as a result of a VILLAGE audit. In the event that such audit results in an assessment by and an additional payment due to the VILLAGE, such additional payment shall be subject to interest at the rate of one (1) percent per month retroactive to the date such payment originally should have been paid.

6. **Compliance with Regulations:** VENDOR shall be responsible for ensuring that all operations conducted pursuant to this Agreement comply with all applicable state, federal and local regulations including, but not limited to, food safety, health regulations, sanitary conditions and fire prevention. The Services provided under this Agreement shall be operated in such a manner as to not generate offensive noise levels, as determined in the sole discretion of the Parks and Recreation Director, or designee, or VILLAGE Staff, and the leased areas are to be kept clean and neat in areas open/not open to the public at all times. VENDOR further agrees that it will not use the leased areas for any illegal, unsafe or immoral purposes.

7. **Indemnifications and Hold Harmless:** VENDOR agrees to protect, defend, reimburse, indemnify and hold the VILLAGE, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, suits, costs, fines and damages (including attorney fees) and causes of action of every kind and character against or from the VILLAGE by reason of

any damage to property or the environment, or bodily injury (including death) incurred or sustained by any person, arising out of or incident to or in connection with the VENDOR's performance under this Agreement. Performance shall include, but is not limited to, VENDOR's acts, omissions or operations hereunder, or the performance, nonperformance or purported performance of the VENDOR or any breach of the items of this Agreement.

8. **Permits/Licenses**: VENDOR shall obtain, at its own cost and expense, all permits, licenses, and business tax receipts, which may be required by any governmental agency and shall adhere to all applicable federal, state and local laws at all times. VENDOR shall provide copies of all permits and licenses to the VILLAGE prior to commencement of work under this Agreement demonstrating that VENDOR is fully licensed and in compliance with all applicable Village (Royal Palm Beach), County (Palm Beach), State (Florida) and U.S. Government code requirements and regulations. VENDOR must keep said permits and licenses current and in good standing throughout the term of this Agreement, and provide VILLAGE with proof of such upon demand.

9. **Inspection**: If food is prepared off-site by VENDOR, then the Village shall have the right to inspect any or all of VENDOR'S off-site operations including plants and/or warehouses, and when accompanied by VENDOR'S representative, other sources preparing or supplying food, or beverage items etc., to ensure full compliance with health and sanitation standards.

10. **Management Duties**: VENDOR shall have all management duties normally arising from the provision of the Services, which shall include, but not be limited to, keeping the leased areas free of food-related trash and debris; keeping chairs and tables located in all dining areas clean and in reasonable order, normal wear and tear excepted; immediately cleaning any spills; reporting any accidents or hazardous conditions to the Parks and Recreation Director, or designee, or Village Staff as soon as possible; making sure all of its employees, subcontractors, vendors and agents are properly attired, courteous and professional in dealings with patrons and operate in a manner consistent with good health and hygiene; and ensuring all equipment, food and beverages meet all applicable health codes.

a. **Staffing Levels**: VENDOR shall staff the leased areas at all times to handle patron demand efficiently. The Parks and Recreation Director, or designee, shall review, from time to time, VENDOR'S staffing levels to determine if patron demand is being met efficiently and, if not, shall notify VENDOR.

b. **Courtesy to the Public**: VENDOR shall, at all times, exercise, and shall require its employees, subcontractors, vendors and agents to exercise courtesy, consideration and good public relations in their interactions and communications with the

general public. The Parks and Recreation Director, or designee, or Village Staff, shall have the right to direct VENDOR to remove any employee, subcontractor, vendor or agent of VENDOR from Village facilities if, in the Director, or designee, or Staff's sole opinion, VENDOR'S employee, subcontractor, vendor or agent has not exercised courtesy and consideration in their relations with the public. VENDOR shall be fully responsible for the conduct of its employees, subcontractors, vendors and agents.

11. **Assignments and Subcontracting**: VENDOR shall not assign this Agreement and its rights hereunder, in whole or in part, nor subcontract with any other person or entity to provide any of the Services contained in this Agreement, except with the prior written consent of the Village Parks and Recreation Director, or designee. Before any assignment shall become effective, the assignee shall, by written instrument, assume and agree to be bound by the terms and conditions of this Agreement during the remainder of the term hereof.

12. **Default, Remedies and Termination**:

a. **Default by VENDOR; Termination by Default**: If any of the following events occur, the Village shall have the right to immediately terminate this Agreement without further notice to or opportunity to cure by VENDOR:

1. **Insolvency**: If VENDOR makes an assignment of this Agreement, or profits therefrom, for any reason for the benefit of creditors; files a petition of bankruptcy; is adjudged bankrupt or insolvent; has its interest under this Agreement levied upon or sold upon execution or by operation of law becomes vested in another person, firm or entity because of the insolvency of VENDOR; or in the event a receiver or trustee is appointed for the VENDOR or for the VENDOR's interest under this Agreement;

2. **Abandonment**: In the event VENDOR ceases to operate the Services at the leased areas as described herein. Examples of abandonment shall include, but not be limited to, failure to return phone calls of potential clients, failure to return phone calls of Village Staff and failure to staff the leased areas on a regular basis;

3. **Violation of Other Agreement Requirements**: In the event VENDOR fails to perform any of the other terms, covenants, requirements or conditions of this Agreement, and VENDOR fails to cure or correct such failure within fifteen (15) calendar days after a written notice of default is sent by the Village to VENDOR.

b. **Remedies**: The Village may, if it so elects, pursue any remedies available to it under law or equity for breach of this Agreement or any of its terms, covenants, requirements or conditions. No right or remedy conferred upon or reserved to the Village hereunder is intended to be exclusive of any other right or remedy available and existing at law or in equity.

c. Waiver of Default: The acceptancy of any fee by the Village, whether in a single instance or repeatedly in part or in whole, after it falls due, or after knowledge of any breach hereof by VENDOR shall not be construed as a waiver of the Village's right to act, or as an election not to proceed under the provisions of the Agreement. Additionally, waiver by the Village of any provision of this Agreement or any time limited provided for in this Agreement shall not constitute a waiver of any other provision.

13. **Termination for Convenience**: Either Party may terminate this Agreement for any reason by providing the other Party with ninety (90) calendar days' advance written notice.

14. **Miscellaneous Provisions**:

a. Non-Exclusive Agreement: This Agreement shall be non-exclusive between the Parties. The Village shall have the right to contract with additional VENDORS for events at Commons Park at any time as more particularly stated in "Composite Exhibit A".

b. Non-Discrimination: VENDOR agrees not to discriminate in hiring or in the provision of Services under this Agreement on the basis of race, color, national origin, genetics, sex, age, qualifying disability or medical conditions, religion, income or familial status, marital status, veteran's status, sexual orientation, gender identity, or gender expression. Violation of this provision, at the option of Village, may be treated as a default under this Agreement.

c. Closing of Village Sporting Center and Commons Park: The Village shall have the right to close the Village Sporting Center or Commons Park, or any portion thereof, either permanently or temporarily. The Village shall provide VENDOR with advance notice of such closures unless such advance notice is prohibited by an Act of God.

d. Independent Contractor; No Joint Venture: VENDOR and the Village agree that VENDOR is an independent contractor with respect to the Services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties hereto. Neither VENDOR nor any employee, subcontractor, vendor or agent of VENDOR shall be entitled to any benefits accorded Village employees by virtue of the Services provided under this Agreement. The Village shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to VENDOR, or any employee, subcontractor, vendor or agent of VENDOR. Additionally, VENDOR and the Village agree that nothing contained in this Agreement is intended, or shall be construed, in any way as creating or establishing the relationship of co-partners or joint ventures

between the Parties hereto, or as constituting the VENDOR as the agent or representative of the Village for any purpose or in any manner whatsoever.

e. Advertising: All advertising of VENDOR'S Services at Commons Park shall be approved by the Village Parks and Recreation Director, or designee, prior to use.

f. Availability of Funds: The obligations of the Village under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Council of the Village of Royal Palm Beach.

g. Governing Law and Venue: This Agreement shall be governed by Florida law and the sole venue for any action under this Agreement shall be Palm Beach County, Florida.

h. Severability: The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

i. Inspector General: Pursuant to Article XII of the Palm Beach County Charter, the Office of the Inspector General has jurisdiction to investigate municipal matters, review and audit municipal contracts and other transactions, and make reports and recommendations to municipal governing bodies based on such audits, reviews or investigations. All parties doing business with the Village shall fully cooperate with the inspector general in the exercise of the inspector general's functions, authority and power. The inspector general has the power to take sworn statements, require the production of records and to audit, monitor, investigate and inspect the activities of the Village as well as contractors and lobbyists of the Village in order to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct and abuses.

j. Public Records: In accordance with Sec. 119.0701, *Florida Statutes*, VENDOR must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work described in the Proposal or Bid. Upon request from the Village's custodian of public records, VENDOR must provide the Village with copies of requested records, or allow such records to be inspected or copied, within a reasonable time in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. A VENDOR who fails to provide the public records to the Village, or fails to make them available for inspection or copying, within a reasonable time may be subject to attorney's fees and costs pursuant to Sec. 119.0701, *Florida Statutes*, and other penalties pursuant to Sec. 119.10, *Florida Statutes*. Further,

VENDOR shall ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work described in the Proposal or Bid are not disclosed except as authorized by law for the duration of the Agreement term, and following completion of the Agreement if the VENDOR does not transfer the records to the Village. Finally, upon completion of the Agreement, VENDOR shall transfer, at no cost to the Village, all public records in possession of the VENDOR, or keep and maintain public records required by the Village. If the VENDOR transfers all public records to the Village upon completion of the Agreement, the VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the VENDOR keeps and maintains public records upon completion of the Agreement, the VENDOR shall meet all applicable requirements for retaining public records. Records that are stored electronically must be provided to the Village, upon request from the Village's custodian of public records, in a format that is compatible with the Village's information technology systems.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE VILLAGE CLERK, RECORDS CUSTODIAN FOR THE VILLAGE, AT (561) 790-5100, OR AT Ddisanto@RoyalPalmBeach.com, OR AT 1050 ROYAL PALM BEACH BLVD., ROYAL PALM BEACH, FLORIDA 33411.

15. Entirety of Agreement and Modification: The Village and VENDOR agree that this Agreement, together with the attached agreements including but not limited to, the Village's Request for Proposals and VENDOR'S Proposal, sets forth the entire agreement between the Parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the Village and VENDOR pertaining to the Services described herein, whether written or oral. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the Parties hereto.

Witnesses to Vendor:

Vendor:

Bruce Beck, President

Witnesses to Village:

Village of Royal Palm Beach:

Raymond C. Liggins, P.E. Village
Manager

Attest:

Diane DiSanto, Village Clerk

Proposal Posted: October 30, 2020

Proposal Opening: December 2, 2020

Approved by Council:

**SECTION 5
ATTACHMENTS TO AGREEMENT**

- A: Price Proposal Page(s)
- B: Business Information Pages
 - 1. Corporation Statement
 - 2. Partnership Statement
 - 3. Joint Venture Statement
- C: Reference of Similar Work
- D: Sworn Statement
- E: Truth in Negotiations
- F: Drug Free Workplace
- G: Notice of Award
- H: Notice to Proceed