

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers  
**FROM/PHONE:** Herb Hyman-(954) 797-1016  
**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE PROFESSIONAL CONCESSIONS, INC. FOR CONCESSIONAIRE SERVICES AT THE BERGERON RODEO GROUNDS.

**REPORT IN BRIEF:**

The Town requested competitive proposals for concessionaire services at the Bergeron Rodeo Arena. The Town sent out twenty-six (26) specifications to prospective proposers. Additionally, the proposal was advertised state-wide in Florida Bid Reporting and nationally in BidNet and also posted on the Town's website. The Town received three (3) proposals. The concessionaire will pay The Town \$3,125/mo. for the exclusive rights to operate the concession stands at the Bergeron Rodeo Grounds.

**PREVIOUS ACTIONS:**

Town Council approved the selection of Professional Concessions, Inc. by Resolution R-2001-158.

**CONCURRENCES:**

The contract document has been reviewed by the Bid Specification Committee.

**FISCAL IMPACT:**

Has request been budgeted? n/a

If yes, expected cost-

Account Name:

Additional Comments: This agreement provides revenue to the Town

**RECOMMENDATION(S):**

Motion to approve the resolution.

**Attachment(s):**

Resolution

Two (2) copies of the contract

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH PROFESSIONAL CONCESSIONS, INC. FOR CONCESSIONAIRE SERVICES AT THE BERGERON RODEO GROUNDS.

WHEREAS, the Town Council has previously approved the selection of Professional Concessions, Inc. to provide concessionaire services at the Bergeron Rodeo Grounds by Resolution R-2001-158 ; and

WHEREAS, staff members negotiated a contract with Professional Concessions, Inc.; and

WHEREAS, the contract is presented for Town Council review and approval.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor to execute a contract with Professional Concessions, Inc. for concessionaire services at the Bergeron Rodeo Grounds which is attached hereto and identified as Attachment "A".

SECTION 3. The initial contract term is three (3) years with options to extend the contract for three(3) additional one (1) year terms by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

**BERGERON RODEO GROUNDS  
CONCESSIONAIRE AGREEMENT**

THIS **AGREEMENT** made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between the Town of Davie, having an usual place of business at Davie Florida, in Broward County (hereinafter referred to as "Town"), and

\_\_\_\_\_, a Corporation duly organized and existing according to the laws of the State of \_\_\_\_\_ and having an usual place of business at \_\_\_\_\_

(herein after referred to as "Concessionaire").

**WITNESSETH :**

**WHEREAS**, the Concessionaire is engaged in the business of selling refreshments and beverages for consumption by patrons in places of public amusement; and

**WHEREAS**, the Town represents that it is the owner of certain premises located at the Bergeron Rodeo Arena at which there has been, and will continue to be, operated a rodeo and other local events; and

**WHEREAS**, said Bergeron Rodeo Arena includes buildings and concessions stands, (hereinafter referred to as the "Concession Buildings"), intended to be used in part for the sale of refreshments and beverages to its patrons; and

**WHEREAS**, the Concessionaire desires to acquire the right to sell refreshments and food at said Bergeron Rodeo Arena (sometimes referred to as "Licensed Premises"), and to that end, to use and occupy those portions of the concession building which are to be used for the sale of food and refreshments to patrons of said Bergeron Rodeo Arena and for storage, and as the Town is willing and has the authority to grant such rights to the Concessionaire and to permit the use of such portions of said concession buildings by the Concessionaire, as hereinafter set forth.

**NOW THEREFORE**, in consideration of the premises and of the covenants and conditions hereinafter set forth, the Town and the Concessionaire agree as follows:

## **1. LICENSE AND TERM**

(a) Upon the terms and conditions hereinafter set forth, the Town does hereby license and grant unto the Concessionaire, and the Concessionaire hereby accepts and agrees to exercise the sole and exclusive rights and privileges at those parts or portions of the concession buildings of the aforesaid Bergeron Rodeo Arena premises which are designed and intended to be used for the sale of refreshments, including alcoholic and non-alcoholic beverages, and food sales made on the Bergeron Rodeo Arena premises, together with storage area adjacent or relating thereto, for a term of three (3) years commencing July 1, 2001. This agreement may be extended for three (3) additional one (1) year terms by mutual agreement of the parties under the same terms and conditions, unless either party notifies the other in writing of its intention not to renew or extend. Said writing to be received no later than sixty (60) days prior to the expiration of the original three (3) year term or any one (1) year extension. Said premises to be used by the Concessionaire for the preparation, display, promotion and sale at retail to patrons or prospective patrons of said Bergeron Rodeo Arena of chocolates, candies, confections, popcorn, ices, ice cream, milk, coffee, soft drinks and other beverages, alcoholic and non-alcoholic, all kinds of sandwiches, pizzas, refreshments of all kinds, whether or not similar to those above enumerated, and for the storage of said products and merchandise and ingredients thereof and of boxes, containers, utensils and materials or equipment relating to such preparation, display, promotion and sale for the rendition of such services in connection with said business as are customarily rendered by Concessionaires or Licensees at similar Arena and/or public amusements.

(b) The Town will provide the concessionaire with a monthly list of events. The Concessionaire will be expected to supply concession services during all scheduled monthly events unless mutually agreed upon by both the Town and the Concessionaire to remain closed. The Special Projects Director will set concession hours according to each individual event contract.

## **2. RENT**

As payment for the License hereby granted and for the right and privilege of selling food, beverages, refreshments and other concession type product, the Concessionaire shall pay to the Town the following:

(a) A monthly payment of Three Thousand One Hundred Twenty Five (\$3,125.00) Dollars payable to the Town of Davie in arrears on the first day of the following month.

(b) **Heritage Events** The Town has grandfathered into this contract Heritage Events that take place at the Bergeron Rodeo Arena. The concession contract will exclude SALES by the Concessionaire for the following Heritage Events:

- Orange Blossom Festival
- State Championship Rodeo
- 3 weekend dates yearly for Town sponsored Fundraiser

### **3. CAPITAL IMPROVEMENT**

The Concessionaire shall include the intended capital improvements which must be implemented within six (6) months of the awarded contracted time. All improvements will be installed at their expense, but subject to Town approval, and the Town shall not be requested to make any improvements or additions. Concessionaire rights will be subject to such legal obligations that the Town or third parties may have at the Bergeron Rodeo Arena. Capital improvements shall be those listed in PCI's proposal which becomes part of this Agreement by reference.

### **4. EXISTING EQUIPMENT**

Concessionaire shall have the use, without payment of additional compensation, of any counters, concession stands, bars, rails and equipment that are owned by the Town and may be located at the licensed premises. The Concessionaire shall not be responsible to the Town for any of such items as may be worn out through normal wear and tear nor shall the Concessionaire be responsible to the Town for the replacement of such items during the term of this Agreement. However, the Concessionaire shall be responsible for damage resulting through the negligence or willful acts of neglect or default of the Concessionaire, its agents, servants and/or employees. Title of Town owned equipment will remain with the Town of Davie. Any Town owned equipment removed by the Concessionaire shall be delivered to the Town and shall be reinstalled by Concessionaire upon the termination of the lease.

### **5. SIGNAGE**

It will be the responsibility of the Concessionaire to post all signage in facility relating to concession rules & sales. ALL signs must be submitted to the Special Projects Director prior to posting for language and size approval.

## **6. LICENSEE'S EQUIPMENT**

The Concessionaire shall, at its own cost and expense, construct such additional counters, concession stands, bars, rails, and install such equipment, improvements, furnishings, warmers, and such other like items as it, in its sole discretion, shall deem advisable in order to enable it to operate efficiently the business to be conducted hereunder, and shall maintain at the premises, during the term hereof, such items of a kind and number which it shall deem to be suitable for such efficient conduct of its business. All items provided for in this paragraph shall remain the property of the Concessionaire during the term of this Agreement and may be removed by it at any time during the term hereof without restriction. If this Agreement is terminated for any reason whatsoever including expiration of the term, the Concessionaire may remove its above-described property within a one week time period. If not so removed, said items shall become the property of the Town. All equipment installed under the terms of this contract by the Concessionaire shall be owned by the said Concessionaire and shall not be subject to any lien or encumbrance and the Concessionaire shall furnish to the Town upon request, a certificate under oath to any lien or encumbrance.

## **7. MAINTENANCE, REPAIRS AND INSURANCE**

The maintenance, during the term hereof, of all equipment or fixtures owned or used by the Concessionaire shall be at the sole cost and expense of the Concessionaire. The concessionaire shall service all machines and equipment, replace defective parts or broken glass and in the event of loss or damages, shall promptly repair or if necessary, replace the same with similar equipment. In addition, Concessionaire duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. Concessionaire shall also be responsible for replacing broken or damaged window glass and for electrical, mechanical and plumbing maintenance in the interior of the premises, such as light fixtures, fans, sinks and faucets. The Concessionaire shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements. The risk of loss by fire or other unavoidable casualty as hereinafter defined with respect to such equipment and the Concessionaire's inventory is that of and shall be borne by the Concessionaire and the Town shall not be liable for any loss or damage of such property, except such as may result from the negligence or willful neglect or default of the Town, its agents, servants and/or employees and not be covered by insurance. The concessionaire shall not have the responsibility to insure for fire or physical damage, any part of the structure of the concession buildings themselves, used or occupied by it or any personal property therein not owned by it. However, the Concessionaire shall carry, at its own expense, liability insurance as hereinafter set forth in paragraph 15, page number 7.

## **8. REMOVAL OF EQUIPMENT**

With respect to any machine, equipment or fixture installed or provided by either of the parties hereto, the Concessionaire shall remove such equipment or fixtures or make whatever changes can reasonably be made therein in the event such removal or change shall be required by any governmental officer or body or by a board of fire underwriters of similar duly authorized body serving carrier of fire risks.

## **9. SUB-CONTRACTING**

The Concessionaire shall notify the Town in writing about sub-contracting any portion of the concession operations. The Concessionaire shall be responsible for all sub-contractors and they shall abide by all conditions set forth in the Request for Proposal.

## **10. SURRENDER**

Except as otherwise herein provided, the Concessionaire shall, at the termination hereof, surrender, yield up and deliver the interior of any building in which any concession operation is located in the same condition as they are in at the commencement of the term or may be put in by the Town or Concessionaire during the continuance thereof, reasonable use and wear thereof, and damage by fire, or other unavoidable casualty as hereinafter defined excepted.

## **11. OPERATIONS**

The Concessionaire shall obtain the approval of the Town's Special Projects Director for all items to be sold at the Bergeron Rodeo Arena. A proposed list of items will be submitted to the Director for approval two months before the anniversary date of the contract each year.

The Concessionaire and the Town, when applicable, will cooperate with each other in the use of corporate sponsorship and the products.

The Towns intention is to contract soft drink sales exclusively with one named soft drink company. Vendor must use this company's product, menu boards, coolers, etc. exclusively.

Concessionaire adopts the conditions for operation set forth in paragraph 6 (six) of the Request for Proposal B-01-27 which itemizes various conditions in subparagraphs (A) through (P).

If any conflict arises between the terms of the agreement and the terms of the Request for Proposal then the provisions set forth in the Request for Proposal will prevail.

**12. USE**

The Concessionaire shall, at all times during the term hereof, have the free and uninterrupted use for itself, its agents, servants, employees, suppliers and business visitors of all rights and means of ingress which shall be reasonably necessary for the conduct of the Concessionaire's business at the said areas. Concessionaire shall not interfere with the public enjoyment and use of the premises or surrounding public property for the purposes for which they were intended. It is understood that generally the Concessionaire will occupy certain portions of the Bergeron Rodeo Arena and use in common with others all access roads and common areas, including the parking lots.

**13. INSPECTION**

The Town and its representatives shall be permitted to enter the said buildings in which concession operations are located at any reasonable time for the purposes of inspecting and maintaining the same or complying with any of its obligations hereunder, or for furthering the operations of its business at the Bergeron Rodeo Arena.

**14. EMPLOYEES**

The Concessionaire agrees to employ a sufficient number of competent certified persons for the conduct of its business hereunder, and all such persons shall, at all times, be deemed employees of the Concessionaire and not of the Town and shall be employed and paid in accordance with all applicable laws. Concessionaire shall, in addition, provide worker's compensation insurance for all of its employees. Concessionaire's employees will be required to render good service to the satisfaction of the Director as to their personal conduct, honesty, courtesy, health, personal appearance, and willingness to cooperate with employees of the Special Projects Department. In the event an employee is not satisfactory, as herein defined, the Director may direct the Concessionaire to correct the cause of such dissatisfaction or may direct the Concessionaire to remove him/her from the premises within a reasonable time after written notice is received by the Concessionaire.

**15. INSURANCE**

The Concessionaire shall furnish proof of Worker's Compensation, Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Liability Insurance. The Concessionaire shall carry in force at all times the insurance coverage and the Town will be included as "Additional Insured".

**A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE**

Limits:

• Worker's Compensation	Statutory
• Employer Liability	\$100,000 each accident
• Disease	\$500,000 policy limit
• Disease	\$100,000 each employee

**B. COMMERCIAL GENERAL LIABILITY INSURANCE**

Coverage shall provide minimum limits of Liability of \$1,000,000 per occurrence, combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for:

- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Independent Contractors

**C. BUSINESS AUTO LIABILITY**

Coverage shall provide minimum limits of liability of \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury and Property Damage.

This shall include coverage for: owned autos, hired autos, non-owned autos.

**D. PROFESSIONAL LIABILITY INSURANCE**

Coverage shall provide minimum limit of liability of \$500,00 per occurrence.

Each policy shall state that the Town will be given fifteen (15) days written notice of any cancellation or material change in any policy. Insurance must be furnished to the Town's Purchasing Division and notification received of its approval **PRIOR TO THE COMMENCEMENT** of any work. All insurance coverage shall remain in force during the full duration of the contract. Failure to do so will result in the recommendation to terminate the contract immediately.

The concessionaire shall have in force (if serving wine and beer), a liquor liability insurance policy naming the Town as additional insured. The limits of liability shall be one million dollars (\$1,000,000) combined single limit. Policy will be in force at all times that beer and wine are served during the contract period.

**16. LIQUOR LICENSE**

(a) Concessionaire must have in place a valid liquor license issued in their name in order to sell alcoholic beverages at the Bergeron Rodeo Arena. This license will be limited to the sale of beers and wines only. Liquor license must be updated yearly and a copy given to Special Projects Director.

(b) At times, contracts will be presented to the Town and the sale of liquor may be prohibited. These events will include, but not be limited to, children's festivals, church services and UKC Dog Shows. The Town of Davie Special Projects Director will inform the concessionaire prior to these events.

**17. RUBBISH REMOVAL**

The Town shall be responsible for daily removal of all garbage, rubbish, and debris from places within the Licensed Premises where the same may be accumulated and deposited by the concessionaire or its employees. The Concessionaire must bag and tie all trash for removal and place outside the concession stand. The Concessionaire shall maintain the Licensed Premises and immediately adjacent areas in a clean and satisfactory conditions.

**18. ELECTRICITY AND UTILITIES**

The Town agrees to provide the Concessionaire adequate plumbing for providing hot and cold water to all concession and/or refreshment stands and locations as required by the Concessionaire. In addition, The Town shall be responsible for providing heating to the property occupied by Concessionaire, and shall furnish at its own cost to the Concessionaire electrical service for operation of the refreshment and concession stands outlets. The Town does not represent nor warrant the quality or quantity of the electrical current supplied by the utility company to the concession stands. The Town shall, at its own cost, furnish Concessionaire with hot and cold running water, electric to heat and cook food and for heating premises, and all services incidental thereto, with sufficient and proper cables, pipes, service lines, and equipment to operate all the concession locations and equipment requiring same.

**19. POWER TO EXECUTE**

The Town warrants and covenants that it is the legal owner or tenant of Licensed Premises, and which are a part of the subject matter of this Agreement, and Concessionaire has the legal power to execute this Agreement.

**20. SURVIVAL**

The Town covenants and warrants that the term and obligation of this Agreement, including same under any renewal hereof, will survive the sale or lease of the Licensed Premises during this Agreement's term or any renewal hereof, and shall be binding upon and inure to the benefit of the transferees, purchasers, assignees, and their respective successors and assigns. It is agreed that the Town shall not in any manner transfer its interest in said Bergeron Rodeo Arena, unless such transfer is made subject to all its obligations under this Agreement.

**21. VEHICLE ACCESS**

The Town warrants that the Concessionaire shall have access to the Leased Premises by vehicle or vehicles sufficient to service locations and provide supplies thereof. Concessionaire must use Southwest gate only for employee's entering and leaving facility before or during a contracted event.

**22. ASSIGNMENT**

The Concessionaire shall have the right to sell or assign any portion of this contract with the written permission of the Town.

**23. MUNICIPAL REGULATIONS**

Concessionaire agrees that at all times it will comply with all state, county, municipal and federal rules, regulations, laws, ordinances and zoning requirements and obtain and maintain all necessary licenses and permits prior to operation commencing.

**24. TAXES**

The Concessionaire must obtain their own Tax Identification Number and will be responsible for collecting and remitting all sale taxes.

## **25. DEFAULT**

In no event shall either party be deemed to be in default hereunder, unless that party is given written notice of the particular alleged default, and such default continues for a period in excess of thirty (30) days after receipt of notice. In the event such default continues for a period in excess of thirty (30) days after receipt of notice, the party giving notice shall have the right to terminate this Agreement. Provided, however, that in the event of default by Concessionaire and remedial action is taken by Concessionaire within such thirty (30) days period after receipt of notice, but is unable to cure such default within such thirty (30) days period, then the period to cure such default shall be extended for so long as is reasonable necessary to remedy the same, provided such remedial action is continued with due diligence. The written notice required to be given hereunder shall specify in reasonable detail the time, date, nature and circumstances of the claimed default.

In addition to the foregoing, in the event that there is a breach of this Agreement by the Town, the filing of any Bankruptcy Petition, whether voluntary or involuntary, against the Town, any petition for insolvency being filed against the Town, and/or any creditor's rights claim against the Town being filed, same shall be construed as a default of this Agreement.

## **26. FORCE MEJEURE**

It is expressly understood that failure or delay on the part of either party hereto in the performance in whole or in part of the terms and conditions of this Agreement, if such failure or delay is attributable to Acts of God, fire, floods, inevitable accidents or riots, insurrections, public commotion, strikes or labor disturbances, embargoes, emergency or governmental orders, regulations priority or other limitations or restrictions, or unenforceable causes interfering with personnel, sales, sources of supplies, transportation or delivery of same shall not constitute a breach hereof, nor a default hereunder.

## **27. SALE**

In the event the Town shall lease or sell the Bergeron Rodeo Arena of which the Licensed Premises are a part, said sale or lease shall include all of the rights and obligations enumerated hereunder and shall be an obligation of the Town's assignee, transferee, and/or purchaser, except if the Concessionaire elects to terminate this Agreement as a result of said sale and/or lease. Said election shall be in the sole discretion of the Concessionaire and nothing contained herein shall be construed as an acceptance and/or a waiver of the rights and obligations of the Town upon sale and/or transfer of the Bergeron Rodeo Arena.

## **28. INDEMNIFICATION**

The Concessionaire agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the town may suffer as a result of claims, demands, costs, or judgments against it arising from the subject project. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

## **29. DEFINITION, INTERPRETATIONS AND GENERAL PROVISIONS**

(a) Nothing contained herein shall be construed so as to constitute between the parties herein any relationship of co-partners or of co-adventurers.

(b) Wherever used in this Agreement, the term "unavoidable casualty" shall, in addition to its usual meaning, be deemed to cover all acts or events beyond the power of the Town and/or the Concessionaire (as the context may require) to prevent.

(c) The various headings and the grouping of this Agreement into separate sections and paragraphs shall not be construed to limit or restrict either the meaning or the application of any provision hereof and are for the purpose of convenience only.

(d) Any and all notices and remittances hereby provided or permitted to be made or given shall be addressed to the party to whom the same be directed at the address of such party hereinabove stated, unless such party shall have advised the other in writing of another difference address to which such notices or remittances shall be sent.

(e) This Agreement and each and every one of the provisions hereof shall insure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns when permitted.

(f) All provisions of this Agreement shall be construed in accordance with the laws of the State of Florida.

(g) The jurisdiction and venue for any litigation concerning the agreement will be the State of Florida, County of Broward.

(h) In the event of any litigation the prevailing party will be awarded reasonable attorney's fees.

**IN WITNESS WHEREOF**, intending to be legally bound thereby, the parties hereto have hereunder set their hands and seals on the day and year first above written.

TOWN OF DAVIE, FLORIDA

By: \_\_\_\_\_  
Concessionaire

By: \_\_\_\_\_  
Town of Davie Mayor

