

MEMORANDUM

Department of Budget and Finance

To: Bob Rawls, Interim Town Administrator
From: Herb Hyman, CPPB, Procurement Manager
Through: Carol Menke, Deputy Budget and Finance Director
Date: April 6, 1999
Subject: Concessionaire Services-Davie Arena

The attached resolution is to provide concessionaire services at the Davie Arena. The concessionaire pays the Town \$6,000.00/mo. for 10 months out of the year and 25% of revenues for the other 2 months.

The original contract was for a three year period with an option to extend for three additional one year periods by mutual consent of the parties. This resolution concerns the second one year extension as the Town and the vendor wish to exercise the contractual option and not go out to rebid this contract based on:

- 1) Our working relationship with Boston Concession, Inc has been very cooperative
- 2) Boston Concession, Inc food quality has met contractual expectations
- 3) Food cost remains consistent and affordable.
- 4) Extension of the contract with Boston Concession, Inc, would avoid learning curves placed on new vendors. It would also avoid delays in concession service due to replacement of concession equipment.
- 5) Would save on the cost of rebidding contract

Please contact me if you have any questions.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, EXTENDING THE BID FOR CONCESSIONAIRE SERVICES AT THE DAVIE ARENA.

WHEREAS, the Town has previously awarded a bid for concessionaire services at the Davie Arena by Resolution R-98-168; and

WHEREAS, the Town and the contractor wish to exercise the option to renew the bid for an additional year; and

WHEREAS, after review, the Town Council wishes to extend the bid with Boston Concessions Group, Inc. through July 1, 2000.

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

SECTION 1. An extension through July 1, 2000 of the bid with Boston Concessions Group, Inc. for concessionaire services at the Davie Arena is hereby accepted by the Town Council.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 1999

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 1999

MEMORANDUM

ADMINISTRATION DEPARTMENT

TO: Herb Hyman, Purchasing Department
FROM: Bonnie Stafiej, Special Project Coordinator
DATE: April 3, 1999
SUBJECT: Arena Food Concession Contract /Boston Concession, Inc

Please find attached a letter of request from Boston Concession, Inc to extend their food service contract at the Bergeron Arena for a period of one year. I do agree with this request based on the following reasons:

- 1) Our working relationship with Boston Concession, Inc has been cooperative and professional
- 2) Boston Concession, Inc quality of food has met contractual expectations
- 3) Food cost remains consistent and affordable.
- 4) Extension of the contract with Boston Concession, Inc, would avoid learning curves placed on new vendors. It could also avoid delays in concession service due to replacement of concession equipment and workers.

I recommend that the Town Council approve this request. If you have any concerns, please contact Bonnie Stafiej, Special Projects Coordinator at 797-1163.



**BOSTON
CONCESSIONS
GROUP, INC.**

111 SIXTH STREET
CAMBRIDGE, MASSACHUSETTS 02141

Telephone: (617) 499-2700
Fax: (617) 661-3023

March 29, 1999

Ms. Bonnie Stafiej
Special Program Supervisor
Community Services Department
Town of Davie
6591 S.W. 45th Street
Davie, FL 33314-3399

Dear Bonnie:

In accordance with paragraph 1(b) of the contract between the Town of Davie and Boston Concessions Group, Inc. for concession services at the Davie Arena please accept our request for a one year renewal.

Sincerely,


Joseph H. Armstrong
Executive Vice President

JHA/mbs

ATTACHMENT "A"

THIS AGREEMENT made and entered into as of this ___ day of _____, 1995, by and between the Town of Davie, having an usual place of business at Davie Florida in Broward County (hereinafter referred to as "Licensor"), and Boston Concessions group, Inc., a Corporation duly organized and existing according to the laws of the State of Wisconsin and having an usual place of business at 111 Sixth Street, Cambridge, Massachusetts 02141 (herein after referred to as "Licensee").

WITNESSETH;

WHEREAS, the Licensee is engaged in the business of selling refreshments and other merchandise for consumption by or use of patrons of places of public amusement; and

WHEREAS, the Licensor represents that it is the owner of certain premises located at the Davie Arena at which there has been, and will continue to be, operated a rodeo and other local events.

WHEREAS, said 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 other merchandise to it patrons; and

WHEREAS, the Licensee desires to acquire the right to sell refreshments and food, including food and drink vending machines sales at said 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 Arena and for storage, and as the Licensor is willing and has the authority to grant such rights to the Licensee and to permit the use of such portions of said concession buildings by the Licensee, as hereinafter set forth.

NOW THEREFORE, in consideration of the premises and of the covenants and conditions hereinafter set forth, the Licensor and the Licensee agree as follows:

1. LICENSE AND TERM.

(a) Upon the terms and conditions hereinafter set forth, the Licensor does hereby license and grant unto the Licensee, and the Licensee hereby accepts and agrees to exercise the sole and exclusive rights and privileges at and at those parts or portions of the concession buildings of the aforesaid 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 Arena premises, together with storage area adjacent or relating thereto, for a term of three (3) years commencing July 1, 1995. Said premises to be used by the Licensee for the preparation, display, promotion and sale at retail to patrons or prospective patrons of said 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 and 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) This agreement shall automatically renew upon the expiration of the original three (3) year period said renewal to be year to year after the three year period upon the same terms and conditions, unless either party in writing shall notify the other 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.

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 Licensees shall pay to the Licensor the following:

A monthly payment of Six Thousand (\$6,000) Dollars payable to the Town of Davie in arrears on the first day of the following month for ten months each year designated by the Town of Davie. During the remaining two months in which the Chamber Rodeo and Orange Blossom Festival events will be scheduled at the arena, the licensee will pay the licensor Twenty-Five (25%) Percent on all gross receipts of any nature derived from the sale of all food beverage (alcoholic and non-alcoholic) refreshments and other concession products received by Licensee.

Payment due the Licensor shall be based upon a ten (10) month schedule and two (2) month schedule. The ten (10) month schedule hereinafter referred to as "Normal Schedule" requires the Licensee to pay the Licensor the sum of Six Thousand (\$6,000.00) Dollars a month, which such sum shall be paid in arrears on the first day of the following month in which the normal monthly schedule occurs. The remaining two (2) months which shall hereinafter be referred to as "Chamber/Festival Months", will require the Licensee to pay the Licensor the sum of Twenty-Five (25%) Percent received on all gross receipts of any nature derived from the sale of all Concession Products. The payments due under the Chamber/Festival Months shall be paid within twenty (20) days of the month after the Chamber/Festival Months Schedule, together with a report of gross receipts for said time period.

The rent payment is based upon the assumption that professional rodeos will continue to be conducted at the Davie Arena on a similar schedule.

3. GROSS RECEIPTS DEFINED.

In computing gross receipts serving as a base for computation of the above percentage rental, the following shall not be included.

(a) Gratuities, free meals and meals sold at a discount to employees of the Licensor or Licensee.

(b) Sales outside of the geographic confines of the Arena of foods, beverages or other merchandise, not in the normal course of Licensee's business.

(c) Any sales tax imposed by the State of Florida directly upon the aforesaid food and beverage sales irrespective of whether imposed or levied upon the Licensee as a vendor or upon the customer as vendee, and whether or not collected from the customer which shall be the responsibility of Licensee. This paragraph is not to be construed to include State or Federal liquor taxes imposed prior to or upon sale to vendor.

4. EXISTING EQUIPMENT.

Licensee shall have the use, without payment of additional compensation, of any counters, concession stands, bars, rails and equipment that are owned by the Licensor and may be located at the licensed premises. The Licensee shall not be responsible to the Licensor for any of such items as may be worn out thorough normal wear and tear nor shall the Licensee be responsible to the Licensor for the replacement of such items during the term of this Agreement. However, the Licensee shall be responsible for damage resulting through the negligence or willful acts of neglect or default of the Licensee, 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 licensee shall be delivered to the Town and shall be reinstalled by licensee upon the termination of the lease.

5. LICENSEE'S EQUIPMENT.

The Licensee shall, at its own cost and expense, construct such additional counters, concession stands, bars, and 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 demised 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 Licensee 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 Licensee may remove its above-described property within a reasonable time. If not so removed, said items shall become the property of the Licensor. All equipment installed under the terms of this contract by the Licensee shall be owned by the said Licensee and shall not be subject to any lien or encumbrance and the Licensee shall furnish to the Licensor upon request, a certificate under oath to any lien or encumbrance.

6. MAINTENANCE, REPAIRS AND INSURANCE.

The maintenance, during the term hereof, of all equipment or fixtures owned or used by the Licensee shall be at the sole cost and expense of the Licensee. The Licensee shall service all machines and equipment, replace defective parts or broken glass and in the event of loss or damage, shall promptly repair or if necessary, replace the same with similar equipment. In addition, Licensee 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. Licensee 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 Licensee shall be responsible for maintenance of utility lines within the wall of the leased premises. The Licensee 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 Licensee's inventory is that of and shall be borne by the Licensee and the Licensor shall not be liable for any loss or damage to such property, except such as may result from the negligence or willful neglect or default of the Licensor, its agents, servants and/or employees and not be covered by insurance. The Licensee shall have not 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 Licensee shall carry, at its own expense, public liability insurance as hereinafter set forth in paragraph 15.

7. REMOVAL OF EQUIPMENT.

With respect to any machine, equipment or fixture installed or provided by either of the parties hereto, the Licensee 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.

8. SUB-CONTRACTING.

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

9. SURRENDER.

Except as otherwise herein provided, the Licensee 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 at the commencement of the term or may be put in by the Licensor or Licensee during the continuance thereof, reasonable use and wear thereof, and damage by fire, or other unavoidable casualty as hereinafter defined excepted.

10. OPERATIONS.

The Licensee shall obtain the approval of the Licensor's Community Services Director for all items to be sold at the 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.

Licensee and Licensor, when applicable, cooperate with each other in the use of corporate sponsorship and the products, to the extent it does not conflict with Licensee's current vendor arrangements and does not require payment of more for goods and services than otherwise required.

Licensee adopts the conditions for operation set forth in paragraph 6 (six) of the Request for Proposal B-95-34 which itemizes various conditions in subparagraphs (A) through (O).

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.

11. USE.

The Licensee 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 Licensee's business at the said Arena and for its operation hereunder, including all service areas, entrances, exits and related areas. Licensee 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 Licensee will occupy certain portions of the Arena and use in common with others all access roads and common areas, including the parking lots.

12. INSPECTION.

The Licensor 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 operation of its business at the Arena.

13. EMPLOYEES.

The Licensee agrees to employ a sufficient number of competent persons for the conduct of its business hereunder, and all such persons shall, at all times, be deemed employees of the Licensee and not of the Licensor and shall be employed and paid in accordance with all applicable laws. Licensee shall, in addition, provide workmen's compensation insurance for all of its employees. Licensee'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 Community Services Department. In the event an employee is not satisfactory, as herein defined, the Director may direct the Licensee to correct the cause of such dissatisfaction or may direct the Licensee to remove him/her from the premises within a reasonable time after written notice is received by the Licensee.

14. INSURANCE.

The Licensee agrees to maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Licensee's operations under this Agreement:

- (a) Claims under Workers' Compensation and other similar laws.
- (b) Claims for damages because of bodily injury, occupational sickness or disease, or death of employees under any applicable employers liability law.
- (c) Claims for damages because of bodily injury or death of any person other than employees of Licensee.
- (d) Claims for damages insured by usual personal injury liability coverage.
- (e) Claims for damages of injury to or destruction of tangible property, including loss of use therefrom.
- (f) Claims for damages because of bodily injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle by Licensee.
- (g) Claims for damages because of bodily injury or death of any person arising out of or alleged to be caused by improper or negligent service of alcoholic beverages.

The types of insurance policies and limits to be maintained are as follows:

WORKERS' COMPENSATION & EMPLOYERS LIABILITY

Coverage A: Workers' Compensation - Statutory.

Coverage B: Employers Liability

\$1,500,000 Each Accident

\$1,500,000 Disease - Policy Limit

\$1,500,000 Disease - Each Employee

COMMERCIAL GENERAL LIABILITY:

Including Premises/Operations, Products/Completed Operations, Personal & Advertising Injury, and Contractual Liability.

\$1,500,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Comp. Operations Aggregate

AUTOMOBILE LIABILITY

Including coverage for all owned, non-owned, and hired vehicles. Coverage applies for a Combined Single Limit for Bodily Injury and/or Property Damage.

LIQUOR LIABILITY

\$1,500,000 Each Common Cause
\$1,500,000 Aggregate

The limits shown will be provided by either primary liability policies, or primary policies in conjunction with Umbrella or Excess Liability policies. The limits shown are the total limits based on any such combination of policies.

Furthermore, Licensee will cause Licensor to be named as an Additional Insured for Commercial General Liability, Auto Liability, and Liquor Liability.

15. RUBBISH REMOVAL.

The Licensor 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 Licensee or its employees. The Licensee shall maintain the Licensed Premises and immediately adjacent areas in a clean and satisfactory condition.

16. ELECTRICITY AND UTILITIES.

Licensor agrees to provide the Licensee adequate plumbing for providing hot and cold water to all concession and/or refreshment stands and locations as required by the Licensee. In addition, Licensor shall be responsible for providing heating to the property occupied by Licensee, and shall furnish at its own cost to the Licensee electrical service for operation of the refreshment and concession stands and outlets. The Licensor does not represent nor warrant the quality or quantity of the electrical current supplied by the utility company to the concession stands. Licensor shall, at its own cost, furnish Licensee with hot and cold running water, gas 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.

17. POWER TO EXECUTE.

The Licensor 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 Licensee and has the legal power to execute this Agreement, and Licensee and has the legal power to execute this Agreement.

18. SURVIVAL.

The Licensor 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 Licensor shall not in any manner transfer its interest in said Arena, unless such transfer is made subject to all its obligations under this Agreement.

19. VEHICLE ACCESS.

Licensor warrants that the Licensee shall have access to the Leased Premises by vehicle or vehicles sufficient to service locations and provide supplies thereto.

20. ASSIGNMENT.

The Licensee shall have the right to sell or assign any portion of this contract with the written consent of the Licensor, which consent shall not be unreasonably withheld.

21. MUNICIPAL REGULATIONS.

Licensee 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.

22. 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 Licensee and remedial action is taken by Licensee 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 reasonably 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 Licensor, the filing of any Bankruptcy Petition, whether voluntary or involuntary, against Licensor, any petition for insolvency being filed against Licensor, and/or any creditors' rights claim against Licensor being filed, same shall be construed as a default of this Agreement.

23. FORCE MAJEURE.

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.

24. LIQUOR, BEVERAGE AND SALE OF REFRESHMENTS LICENSE.

The parties hereto shall cooperate in the preparation and submission of all applications, and other requisite forms and/or information in order to obtain all necessary beer and wine licenses, beverage sale licenses, and refreshment licenses as same may be required by state, local or municipal or federal authorities.

25. SALE.

In the event Licensor shall lease or sell the 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 Licensor's assignee, transferee, and/or purchaser, excepting if the Licensee elects to terminate this Agreement as a result of said sale and/or lease. Said election shall be in the sole discretion of the Licensee and nothing contained herein shall be construed as an acceptance and/or a waiver of the rights and obligations of the Licensor upon sale and/or transfer of the Arena.

26. INDEMNIFICATION.

The Licensee agrees that during the term hereof or any extension hereunder, to indemnify and hold harmless the Licensor from and against all claims and demands whether for injuries to persons, or damage to property, arising out of or occurring as a result of the operation of the license hereunder as the same may be under the sole control and cause of the Licensee.

26. 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 Licensor and/or the Licensee (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 shall 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 inure 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.

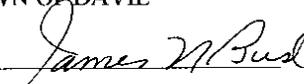
(g) The jurisdiction and venue for any litigation concerning the agreement will be the State of Florida, County of Broward.

(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.

LICENSOR:

TOWN OF DAVIE

By: 

LICENSEE:

BOSTON CONCESSIONS GROUP, INC.

By: 