

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 FIRST EXTENSION AND AMENDMENT TO THE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND POMPANO COWBOYS BOOSTER CLUB, INC. TO OPERATE THE CONCESSION STAND AT MCNAIR PARK DURING THE FOOTBALL SEASON; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a First Extension And Amendment to the License Agreement between the City of Pompano Beach and Pompano Cowboys Booster Club, Inc., a copy of which 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 First Extension and Amendment between the City of Pompano Beach and Pompano Cowboys Booster Club, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

**FIRST EXTENSION AND
AMENDMENT**

THIS IS A FIRST EXTENSION AND AMENDMENT dated the _____ day of _____, 2016, between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

and

POMPANO COWBOYS BOOSTER CLUB, INC., a Florida non-profit corporation, whose address is 951 NW 27th Avenue, Pompano Beach, Florida 33069, hereinafter "LICENSEE."

WHEREAS, the parties entered into an Agreement to operate the concession stand at McNair Park during the football season on September 25, 2015, ("Original Agreement"), approved by City Resolution No. 2015-424; and

WHEREAS, the CITY and LICENSEE have agreed to extend the Original Agreement for one (1) additional one-year period, and to amend certain terms of the Original Agreement; and

W I T N E S S E T H :

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and BOARD agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.
2. The parties hereto agree to extend the Original Agreement for one (1) additional one-year period, ending September 24, 2017.
3. All references to "Center" in the Original Agreement shall be replaced with "Park."

4. Article 4 of the Original Agreement is hereby amended as follows:

**ARTICLE 4
RESPONSIBILITIES OF LICENSEE**

...

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

...

12. LICENSEE shall keep the licensed premises and its contents in a clean, sanitary and orderly condition at all times and shall conduct the concession in strict compliance with all applicable County and State Health Department rules. In addition, LICENSEE understands and agrees that it shall be responsible for all cleanup of the licensed premises and to remove all debris and trash immediately after each event.

13. If LICENSEE solicits contributions on behalf of the Program during the term of this Agreement, LICENSEE shall be responsible to register with the Florida Department of Agriculture and Community Services and thereafter annually renew and prepare any such required financial filings attendant to this requirement. LICENSEE shall provide CITY written proof of the aforesaid registration and renewal within fourteen (14) days of such filing(s).

5. Article 6 of the Original Agreement is hereby amended as follows:

**ARTICLE 6
ACCOUNTING, AND RECORD KEEPING AND PUBLIC
RECORDS PROCEDURES**

A. ~~LICENSEE shall be required to record and preserve complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings. LICENSEE and its agents shall be required to record, preserve and make available at all reasonable times~~

for CITY's local inspection, examination and audit, complete and accurate records for all activities, revenues and expenditures hereunder, including all financial records, books, statistical records, federal/state tax returns, and any other documents attendant to their provision of goods and services for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Agreement.

...

F. LICENSEE shall complete daily cash forms for every day the concession stand is in operation and submit same to CITY on a weekly basis.

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

1. Keep and maintain public records required by the CITY in order to perform the service.

2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the LICENSEE does not transfer the records to the CITY.

4. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the LICENSEE, or keep and maintain public records required by the CITY to perform the service. If the LICENSEE transfers all public records to the CITY upon completion of the Agreement, the LICENSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LICENSEE keeps and maintains public records upon completion of the Agreement, the LICENSEE shall meet all applicable requirements for retaining public records. All records

stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

H. Failure of the LICENSEE to provide the above described public records to the CITY within a reasonable time may subject LICENSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com

6. Article 8 of the Original Agreement is hereby amended as follows:

ARTICLE 8 LICENSEE'S INDEMNIFICATION OF CITY

A. LICENSEE shall indemnify, save, defend and save hold 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 Property. The parties agree that one percent (1%) of the total ~~compensation paid in-kind benefits provided~~ to LICENSEE by CITY ~~hereunder for the work of the contract~~ shall constitute specific consideration to LICENSEE for the indemnification to be provided under the ~~contract~~ Agreement. These provisions shall survive expiration or early termination of this Agreement.

...

7. Article 13 of the Original Agreement is hereby amended as follows:

ARTICLE 13
EQUAL OPPORTUNITY EMPLOYMENT
NO DISCRIMINATION, AMERICAN WITH DISABILITIES
ACT AND EQUAL OPPORTUNITY EMPLOYMENT

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

A. In performance of this Agreement, LICENSEE, its employees, volunteers and other agents, shall not discriminate against any vendor, concessionaire, employee, patron, visitor, attendee or customer because of race, age, color, religion, sex, gender identity or expression, national origin, disability, familial status, marital status, sexual orientation, political affiliation or any other factor which cannot lawfully or appropriately be used as basis for service delivery.

B. LICENSEE shall affirmatively comply with all applicable provisions of the ADA, including Titles I and II regarding nondiscrimination on the basis of disability and all applicable regulations, guidelines, and standards. LICENSEE shall also comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability.

8. Article 19 of the Original Agreement is hereby amended as follows:

ARTICLE 19
ATTORNEY'S FEES AND COSTS

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. In the event of any litigation involving the terms and conditions of this Agreement, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred therefrom by the prevailing party in such

litigation through all appellate levels. The provisions of this paragraph shall survive termination of this Agreement.

9. Article 23 of the Original Agreement is hereby amended as follows:

**ARTICLE 23
MISCELLANEOUS TERMS AND CONDITIONS**

...

~~B. For each of LICENSEE's employees, volunteers, staff or other representatives providing services under this Agreement, at LICENSEE's sole expense and prior to allowing any of its representatives to provide services at the Center, LICENSEE shall allow the CITY to conduct its own background check. LICENSEE's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement.~~

~~C. 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.~~

B. LICENSEE shall provide sufficient background information and releases to CITY should CITY, in its sole discretion and at its sole cost, desire to perform a background check on any employee or other agent of LICENSEE hereunder. CITY, in its sole discretion, reserves the right to refuse to permit any employee or agent of LICENSEE, or any of its employees, volunteers, or other agents to provide services under this Agreement. LICENSEE's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement.

DC. LICENSEE agrees to use all gross receipts raised for the primary benefit of the football program and other youth sports played at the Park. Gross receipts shall include the total amount of money or equivalent of money received at the concession site by LICENSEE in exchange for goods or service covered under Agreement except that sales or other such taxes, if any, levied directly upon the sale and remitted as such by LICENSEE shall not be included. CITY reserves the right to require the total amount of the gross receipts be recalculated at the end of each operating day by a member of the CITY's Parks and Recreation Department. Gross receipts shall be used for, but not limited to, banquets, trips, T-shirts, jackets and plaques for the primary benefit of the Pompano Cowboys Booster Club, Inc. and other youth sports.

~~ED.~~ Prices of all food, beverage and merchandise sold shall be posted in a conspicuous place at the concession area or other appropriate location and state whether state sales tax is included or additional to the posted price in order to promote compliance with state sales tax regulations. Any and all prices shall be subject to approval by the City's Recreation Program Manager or his designee. The approved price list is attached hereto and made a part hereof as Exhibit 3.

~~FE.~~ Other than listing the price of all food, beverage and merchandise to be sold at the concession site, no other advertising signs shall be permitted without the CITY's written consent.

~~GF.~~ LICENSEE shall not keep, handle, sell, use or give away any alcoholic beverages of any kind or tobacco products of any kind on the licensed premises.

~~HG.~~ LICENSEE shall be responsible to bear all costs associated with activities not required by the Pop Warner League.

~~IH.~~ LICENSEE shall be responsible to bear all referee fees associated with homecoming and play-off games.

~~JI.~~ LICENSEE, its agents and representatives, shall have knowledge of, and act in accordance with, all rules and regulations of the Pop Warner League. As such, LICENSEE (not CITY) shall be responsible to pay all fines levied against LICENSEE for infractions of said League rules and regulations.

~~KJ.~~ LICENSEE shall be responsible to bear all planning and operational costs associated with homecoming and coronation events.

K. LICENSEE and CITY acknowledge and agree that this Agreement and other contracts and agreements pertaining to LICENSEE'S performance hereunder shall not create any obligation on the part of LICENSEE or CITY to third parties. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder.

10. All terms, covenants and conditions contained in the Original Agreement, with the exception of the provision for the new term, hereinabove, shall remain unchanged, and the parties agree to keep, observe and perform all covenants and conditions contained herein.

11. This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the extension had been originally included in the Agreement.

IN WITNESS OF THE FOREGOING, the parties have 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:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, 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 is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

Rennie McDougle

Rennie McDougle
Print Name

Ennikkia McCloud
30 McCloud
Print Name

POMPANO COWBOYS BOOSTER CLUB, INC.,
a Florida Not For Profit Corporation

By: Kevin Adams

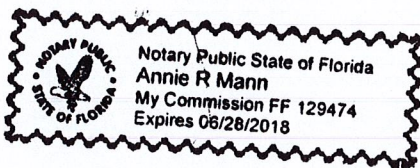
Print Name: KEVIN ADAMS

Title: President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 30th day of August, 2016, by KEVIN ADAMS, as President of POMPANO COWBOYS BOOSTER CLUB, INC., a Florida Not For Profit Corporation, on behalf of the corporation, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Annie R Mann
NOTARY PUBLIC, STATE OF FLORIDA

Annie R Mann
(Name of Acknowledger Typed, Printed or Stamped)

FF 129474
Commission Number

MEB/jrm
8/18/16
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