

**RESOLUTION 19-28**

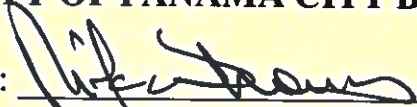
A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH MORRIS ENTERPRISES IN THE AMOUNT OF \$70,100 FOR FRANK BROWN PARK CONCESSION MANAGEMENT AND OPERATION SERVICES.

**BE IT RESOLVED** that the appropriate officers of the City are authorized but not required to accept and deliver on behalf of the City that certain Agreement between the City and Morris Enterprises relating to the provision of concession management and operation services at Frank Brown Park in the basic annual amount of Seventy Thousand, One Hundred Dollars (\$70,100), in substantially the form of the proposal attached as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 13<sup>th</sup> day of December, 2018.

**CITY OF PANAMA CITY BEACH**

By:   
Mike Thomas, Mayor

**ATTEST.**

  
Jo Smith, City Clerk

### BID PROPOSAL FORM

This Bid Proposal Form will be attached to the Required Introduction/Cover Letter Part 5A.

TO: City of Panama City Beach, Florida

SUBMITTED: 12-4, 2018.

#### 2019 Frank Brown Park Concessions Contract

The Undersigned, as Bidder, hereby declares that they have examined the bid specifications and informed themselves fully in regard to all conditions pertaining to the proposal submitted.

The Bidder proposes and agrees, if this proposal is accepted, to a contract with the City of Panama City Beach for the proposed amount, in full and complete accordance with the shown, noted, described and reasonably intended requirements of the specifications to the full and entire satisfaction of the City of Panama City Beach, Florida.

PROPOSED BID AMOUNT (minimum of \$60,000): 60,000

Additional monetary or tangible benefit to the City: 10,100  
Total 70,100

STATEMENT OF QUALIFICATIONS: This information may be written on a separate sheet.  
No more than (1) one page per statement.

- Operational and management experience and reputation:  
See attached
- Financial strength. A credit report may be requested:  
See attached
- Familiarity with local tourism industry and athletic sporting events:  
See attached
- Firm or individual's major claim and litigation history for past five (5) years:  
See attached
- The City's return on investment to be generated by the proposed bid:  
\$70,100.00  
Seventy thousand, one hundred dollars

Other information that proves Bidder is capable of the Management/Operations of the Concession Stands:  
Sales/Service management license, liability insurance holder  
Restaurant license

Licenses: \_\_\_\_\_

BY: Joyce Morris TITLE: owner

ADDRESS: 7809 Hwy 2301 CITY: Panama STATE: FL ZIP: 32404

EMAIL ADDRESS: joycemorris244@gmail.com CELL PHONE: 850-527-0479

SIGNATURE - (Confirming all information above is correct) Joyce Morris

Exhibit A

**CITY OF PANAMA CITY BEACH  
 BID TABULATION**

A

Bidder	Address	Information	Price
Morris Enterprises	7809 Hwy 2301 Panama City, FL 32404	Responsive Bid	<b>\$70,100.00</b>
Duren & Associates	P. O. Box 9595 Panama City Beach, FL 32417	Responsive Bid	<b>\$67,001.01</b>
Adris Pender	P. O. Box 18671 Panama City, FL 32408	Responsive Bid	<b>\$65,260.00</b>

B

## **2019 Frank Brown Park Concession Contract**

### **City of Panama City Beach, Florida**

#### **PART 1 -SCOPE**

- A. The City of Panama City Beach is actively seeking proposals for a contractor to manage and operate the two athletic concessions, (1) the North Complex and (2) the Middle Grounds, of the Frank Brown Park Sports Complex together with designated Concessions Cart areas in the South Complex and Soccer Field Complex.
- B. While the purpose of this specification is to indicate certain minimum requirements, it is not the intent to exclude any bids, but is written to ensure the City of Panama City Beach a suitable contractor for its requirements.

#### **PART 2 –CONTRACT**

- A. The successful bidder, with approval from City Council, will enter into a contract with the City of Panama City Beach.
- B. The contract period for the two athletic concessions and designated cart areas of Frank Brown Park Sports Complex is for a period of approximately 10 months, beginning February 1, 2019, and ending November 30, 2019.
- C. There shall be an option to renew, if agreeable by both parties, at the proposed prices for one (1) additional season, February 1, 2020 through November 30, 2020.
- D. If the renewal option is agreed upon, the contractor will still vacate the facilities to allow for maintenance and inspection of building from December 1<sup>st</sup> through January 31<sup>st</sup>.
- E. The City reserves the right to terminate the contract for convenience or for cause by giving a thirty (30) day written notice prior to the effective date of termination.

#### **PART 3 – MINIMUM ACCEPTABLE BID**

- A. The minimum acceptable bid for the 2019 Frank Brown Park Concession Contract is \$60,000.00.
- B. The payments will be divided into 8 monthly payments:  
1<sup>st</sup> payment due March 1, 2019 and last payment due October 1, 2019.
- C. 

March 1, 2019	2.5% of Total Bid
April 1, 2019	2.5% of Total Bid
May 1, 2019	5% of Total Bid
June 1, 2019	10% of Total Bid
July 1, 2019	20% of Total Bid
August 1, 2019	25% of Total Bid
September 1, 2019	25% of Total Bid
October 1, 2019	10% of Total Bid
- D. If payment is not received by each due date, a late fee of \$25 per business day will be assessed.  
**NO EXCEPTIONS.**

## PART 4 – GENERAL CONDITIONS

- A. A detailed list of all items to be sold and the respective pricing will be submitted by the contractor to the Director of Parks and Recreation for approval. No glass bottles, glass cups or glass bowls in any fashion. The Menus must be listed in the Display Boards provided on the walls of the buildings. Laminated handout menus may be provided if kept in an orderly manner at the concession window. **NO BANNERS OR PROMOTION ITEMS MAY BE PLACED ANYWHERE IN THE COMPLEX.**
- B. The Contractor **will not use Deep Fryers. No Exceptions!** Also the sale of foods with a shell is prohibited. Example, No peanuts with shells, No sun flower seeds, No shrimp with shells, etc... Contractor will provide an over-the-counter type of operation for servicing and dispensing food and beverage items and is only authorized to sell out of the (2) designated concession buildings named in the contract (North Complex Concession and Middle Grounds Concession) with only (2) designated concession cart areas (South Complex & Soccer Fields). No other remote locations will be authorized, this includes carts in front of the designated Concession Stands. **NO EXCEPTIONS.**
- C. No alcoholic beverages are permitted to be sold by contractor. (Exception Part 4V)
- D. Contractor shall not display, distribute, or advertise anything which has not been approved by the City.
- E. Contractor shall be responsible for acquisition, maintenance and replacement of all inventory and equipment in the North & Middle Grounds Concessions excluding (2) three compartment sinks, (2) handwashing sinks, (2) mop sinks, (2) vent hood systems, (2) stainless steel prep tables and (2) ice machines which are both under a lease agreement held by the City of Panama City Beach. Exhibit B
- F. Fountain Drinks are allowed in both concessions stands.
- G. The Concession Carts permitted in the designated Concession Cart Areas are limited to the provision of hot dogs, drinks and snow-cones/shave ice. The cart must be no larger than 60" long and 49" tall, portable and walked into the designated areas. Contractor is prohibited from using a motor vehicle in designated Concession Cart areas. Concession Cart when not in use may be kept in the back of the Soccer Restroom Storage Room at the risk of the Contractor. We will call this small area the Concession Storage Room. It is the Responsibility of the Contractor to request from the City to look at this area if interested. This storage room is not controlled by air condition.
- H. Contractor shall obtain & pay for all necessary permits/licenses applicable for the concession operations.
- I. Contractor shall maintain liability (including auto liability) insurance required by the City. Contractor must carry a minimum of \$1,000,000 liability & \$3,000,000 aggregate naming the City of Panama City Beach as additional insured.
- J. Contractor shall be responsible for maintaining clean, orderly and inviting conditions throughout the concession stand operation.
- K. **Contractor shall not assign, transfer or sublet any part of the concessionaire's contract. NO EXCEPTIONS as per items Part 2-E.**
- L. City shall be responsible for repairs and maintenance of buildings and grounds with the exception of any damage due to the contractor's negligence.
- M. City shall furnish all electric, water and sewage treatment necessary for the ordinary and usual operation of the concession stand.
- N. Contractor shall indemnify the City against all claims for death, bodily injury and property damage.
- O. Contractor shall be responsible for maintaining Workers Compensation as required by State of Florida.
- P. It is the responsibility of the contractor to ensure all employees have passed a background check for crimes against children.
- Q. Neither the City nor the Contractor shall prohibit outside food/drink or personal coolers in the facility. **No Exceptions.** This subject comes up with each bidding process. The City has determined that all personal coolers, food and drinks **"ARE ALLOWED IN THE FACILITIES"**. Alcohol & glass bottles are prohibited.

- R. The contractor will provide Ice in a zip lock plastic bag at all times to Parks and Recreation Staff Employees for injuries that occur in the facility.
- S. Contractor must follow the schedule of events/games provided to the contractor by staff. Concession stands must be open (30) minutes before the start time of the first scheduled game and stay open until (10) minutes after the end of the final game scheduled for that day. If the Contractor is requesting to only have one concession stand open for certain game days, a written request to the Director of Parks and Recreation will need be received a minimum of 72 hours prior to event scheduled. The Director will then either approve or deny request within 24 hours after written request being received.
- T. The City could possibly enter into an Exclusive Sponsorship Agreement with Coca Cola or Pepsi for Frank Brown Park Sports Complex for the year of 2019 and 2020. If this happens, Contractor would be obligated to purchase all products from either Coca Cola or Pepsi as directed by the City of Panama City Beach. It is the intention of the City of Panama City Beach Parks and Recreation Department to work closely with the Concession Contractor for 2019 and 2020 and involve them in discussions regarding Sponsorship details with Coca Cola or Pepsi.
- THE CONTRACTOR AGREES AND WILL ACCEPT ALL FINAL DECISIONS MADE BY THE CITY OF PANAMA CITY BEACH REGARDING ANY AND ALL AGREEMENTS WITH COCA COLA OR PEPSI.**
- U. Special Tournament Events that receive approval for an Alcohol Addendum- Contactor understands that other Vendors under the direction of the Tournament Director with City approval are eligible to sell alcohol in designated areas. Contractor with the proper licensing/approval under the Tournament Director may also be eligible.
- V. Concession employees should maintain a clean appearance and wear a uniform shirt provided by contractor.
- W. The minimum age of workers is 14 & no one without a driver's license will be allowed to use a Golf Cart.
- X. Contractor understands that No Vehicles are allowed into facilities in a period of (1) one hour before the first scheduled game. **No Exceptions.**

## **PART 5 – AWARD CRITERIA – SUBMITTAL REQUIREMENTS**

Each firm or person desiring consideration for this RFP must include sufficient information to enable the City to evaluate the capability of the firm or person to provide the services anticipated.

- A. INTRODUCTION/COVER LETTER: Respondents shall provide a letter of introduction not to exceed two (2) pages. The letter should highlight or summarize whatever information a respondent deems appropriate as a cover letter; this section shall include the name, address, telephone number, fax number and e-mail address of the designated person to whom all correspondence should be directed.
- B. In awarding the bid, the City of Panama City Beach will evaluate the proposals received, considering such facts as listed below, as well as other factors which are considered pertinent: This information can be entered in on the Bid Proposal Form or attached to the Cover Letter and Bid Proposal Form. No more than (1) one page per statement.
- Operational and management experience and reputation.
  - Financial strength. A credit report may be requested.
  - Familiarity with local tourism industry and athletic sporting events.
  - Firm or individual's major claim and litigation history for past five (5) years.
  - The City's return on investment to be generated by the proposed bid.
  - Other information that proves Bidder is capable of the Operations of the Concession Stands.

- C. The City of Panama City Beach reserves the right to reject any or all proposals, to waive irregularities, and to accept any proposal deemed to be in the best interest of the City, as determined by the City Manager.
  
- D. In the event of a tie, the following tiebreaker scenario will be in effect: If one bidder has demonstrated operational and management experience providing favorable service to local government park facilities, they will be awarded the bid. If neither have such experience, or if two or more bidders have equal operational management experience, the successful bidder will be determined by flip of the coin.
  
- E. Exhibit C is the Contract Agreement that will be signed by both the City and the successful bidder.

## **PART 6 – DATES**

1. Job Walks – Please schedule an appointment by contacting Cheryl Joyner, City of Panama City Beach Recreation Administration Supervisor at [cjoyner@pcb.gov](mailto:cjoyner@pcb.gov).
2. Sealed Proposals Due Tuesday, December 4, 2018 at 2:20pm at City Hall Annex, 110 South Arnold Road, Panama City Beach
3. Proposals will be opened at 2:20pm at that same time and place;
4. City Council Approval December 13, 2018.
5. Concessionaire Contract awarded on December 14, 2018.
6. Contract will begin February 1, 2019.

## **PART 7 – LIST OF RFP EXHIBITS**

### **EXHIBIT A**

Illustrations of concession Areas

### **EXHIBIT B**

Inventory of City owned Equipment

### **EXHIBIT C**

Contract Agreement to be signed by the successful bidder



**EXHIBIT A**

**Illustrations of Concession Area**





**EXHIBIT B**

**Equipment Inventory**

**North Complex Concession:**

Qty	Description of Equipment
1	Three compartment sink
1	Mop sink
1	Ice machine
1	Handwashing sink
2	Stainless Steel prep tables
1	Hood vent system

**Equipment Inventory**

**Middle Ground Concession:**

Qty	Description of Equipment
1	Ice machine
1	3 compartment sink
1	Handwashing sink
1	Mop sink
1	Hood vent system

**Exhibit C**

**Concession Agreement**

**CONCESSION AGREEMENT**

THIS CONCESSION AGREEMENT ("Agreement"), made as of this \_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date"), by and between the CITY OF PANAMA CITY BEACH, a municipal corporation in Bay County, Florida, as City, and [ ], whose address is [ ], as Contractor;

**WITNESSETH**

That in consideration of the covenants herein written and from the original bid document specifications and the rent agreed to be paid, city does let and Concession Agreement unto the Contractor the building, fixtures, and equipment for two concession stands located at the Frank Brown Park ("Park"), which premises include: North Complex and Middle Grounds, together with a designated concessions cart area in the South Complex and the Soccer Complex (collectively the "Stands") as they are more particularly described in Exhibit "A" attached hereto, as well as nonexclusive right of ingress and egress through the Park to the Stands, subject to the provisions hereof, which are:

1. The initial term of this Agreement is ten months, and shall commence on February 1, 2019. Thereafter, the City shall have the option to renew this Concession Agreement upon the same terms and conditions for one consecutive term of one (1) year commencing February 1, 2020. Upon any failure to so renew, this Concession Agreement shall terminate.
2. Either party in its sole discretion and without cause may terminate this agreement on the first day of any calendar month by delivering written notice of termination to the other party not less than thirty (30) days prior to the date of termination. If the Contractor fails to timely and properly fulfill any obligation under this agreement, the City may terminate this agreement by giving written notice to the Contractor of such termination and the effective date thereof.
3. Beginning on the Effective Date and throughout the term of this Agreement, Contractor shall pay to the City an annual rent amount of \$\_\_\_\_\_, (the "annual rent") payable in eight

installments. a.) 2.5% of the Annual Rent shall be due on or before March 1, 2019 b.) 2.5% of the Annual Rent shall be due on or before April 1, 2019 c.) 5% of the Annual Rent shall be due on or before May 1, 2019 d.) 10% of the Annual Rent shall be due on or before June 1, 2019 e.) 20% of the Annual Rent shall be due on or before July 1, 2019 f.) 25% of the Annual Rent shall be due on or before August 1, 2019 g.) 25% of the Annual Rent shall be due on or before September 1, 2019 h.) 10% of the Annual Rent shall be due on or before October 1, 2019. A late fee of \$25 per day will be assessed beginning on the 10<sup>th</sup> of the month in which payment is due.

4. Contractor agrees to operate the Stands as concession stands from February 1 through November 30 (the "Season"). Contractor shall operate the Stands according to the schedule of events and games provided by the City. Contractor shall operate the Stands at least thirty (30) minutes prior to and ten (10) minutes after all scheduled athletic play. Contractor shall not close any Stand without the prior authorization from City in its sole discretion, which authorization shall not be unreasonably withheld. If Contractor desires to open less than all 4 concessions for certain games or days, a written request for such limited operation must be submitted to the Director of Parks and Recreation at least 72 hours prior to the scheduled event, who shall approve or deny the request within 24 hours of receipt of the request.
5. Contractor shall offer for sale food and drink, and other items normally associated with a concession stand convenient to the public using the Park; provided, however, that drinks offered for sale in the Stands shall be limited to the City's Exclusive Sponsor, that will be bid at a later date (Coca Cola/ Pepsi). Fountain drinks are allowed in both concessions stands. Contractor shall provide to the City a menu of concession items to be offered at each Stand, and City reserves the right in its sole discretion to reasonably require Contractor to discontinue the sale or rental of any item in the opinion of City constituting a nuisance or hazard at the Park or which conflicts with a sponsor of or any event at the Park. City's rights contained herein and in this Agreement shall not be construed as an obligation or duty of any nature, including a duty to monitor or supervise Contractor's business. Contractor shall not display, distribute or advertise anything which has not been approved by the City.
6. The cart(s) permitted in the South Complex and Soccer Complex shall be limited to the provision of hot dogs, drinks and snow-cones/shaved ice. The cart(s) must be no larger than 60" long and 49" tall, portable

and walked into the brick area under the umbrella adjacent to the large pole in the South Complex. Contractor is prohibited from using a motor vehicle in this area.

7. Contractor shall not sell alcoholic beverages. Exceptions may be made for Special Tournament Events for which the sale and consumption of alcoholic beverages has been approved by the City, provided the Contractor is properly licensed by the State for such distribution and approved by the Tournament Director for such.
8. City retains responsibility of maintenance of the structure and the exterior of the concession buildings in the North Complex and Middle Grounds. City shall not be responsible for damage to any contents owned by Contractor, including inventory, on account of any failure to properly maintain the structure or building unless City fails to act reasonably after written notification by Contractor of needed maintenance.
9. All maintenance of the buildings' interiors in a clean and orderly manner shall be the responsibility of the Contractor. Contractor covenants to maintain the premises in an orderly condition at all times and to assume responsibility for daily trash or garbage disposal. Contractor shall at all times keep the areas and spaces adjacent to and surrounding the Stands clean and free of paper, trash and refuse of any kind generated from the operation of the Stands. Use of Deep Fryers and Cooking oils is prohibited. Recycling and employment of additional disposal services which reduce refuse volume are encouraged where practicable.
10. Maintenance of heating and air conditioning, plumbing, wiring and other systems or machinery owned and installed by City shall be its responsibility. Contractor must have written approval from the City prior to the installation of any equipment that requires additional electrical or plumbing, which shall only be installed at Contractor's expense. Contractor may install trade fixtures upon the approval of City's Building Inspector, in his sole discretion, as to type and manner of installation. Upon termination of this Agreement by lapse of time or otherwise, Contractor at its expense shall immediately remove any installed trade fixtures and restore the Stands to the same condition as immediately before installation.
11. Four keys to the Stands will be checked out to Contractor, and shall be returned to the City upon termination of this Agreement. Contractor will be charged \$250 for each replacement key.

12. City shall be responsible for maintenance of the equipment listed on the inventory attached and incorporated as Exhibit B, until such time as such equipment is deemed obsolete or beyond repair. Contractor shall be responsible for the acquisition, maintenance and replacement of all other equipment necessary to perform the work under this Agreement. The condition and use of the City's equipment listed on the inventory attached and incorporated as Exhibit "B" shall be inspected and verified annually each September at the end of each fiscal year.
13. City reserves the right to enter the Stands at any time for the purpose of inspection of equipment, insect control, fire prevention inspection, or similar purposes.
14. Liability insurance policy acceptable to the City, with single limits of One Million Dollars (\$1,000,000) and an aggregate limit of Three Million Dollars (\$3,000,000), covering the Stands, Contractor, and Contractor's business, shall be maintained by Contractor at all times. The policy shall name the City as an additional insured and include Auto Liability. Contractor shall be responsible for maintaining Worker's Compensation as required by the State of Florida, which policy need not name the City as an additional insured. Contractor shall be responsible for obtaining any other insurance as it may desire upon its operations, property and inventory.
15. Contractor agrees to indemnify and hold City harmless from any claim or demand by any third party arising out of Contractor's occupancy or use of the Stands. Contractor shall at all times relieve, indemnify, protect and save harmless the City, its officers, agents and employees from all claims and liability, including expenses incurred in defending against the same, that may arise from (a) the operation, maintenance, use or occupation of the Stands by Contractor; (b) the acts, omissions or negligence of Contractor, its agents, officers, employees or permittees; or (c) the failure of Contractor to observe or abide by any of the terms or conditions of this agreement or any applicable law, ordinance, rule or regulation. The obligation of Contractor to so relieve, indemnify protect and hold harmless the City, its officers, agents and employees shall continue during any periods of occupancy or holding over by Contractor, its agents, officers, employees or permittees beyond the expiration or termination of this agreement.

16. Contractor covenants to neither permit nor commit waste, and covenants to comply with all applicable Federal, State, County, and City laws, rules, and regulations, including payment of all applicable taxes, respecting the use, operation and maintenance of the Stands, and shall pay for any and all licenses required in connection with the use, operation and maintenance of the Stands. Any license required by the Florida Department of Business and Professional Regulation for food service shall be prominently displayed in each Stand.
17. In the event of damage by storm, fire or other casualty making the premises unfit for occupancy, City shall be under no obligation to rebuild and this Agreement shall be terminated with each party relieved of responsibility to the other. If City notifies Contractor within ten (10) days of intention to rebuild, the rent shall abate during the period of restoration, which City covenants to accomplish with reasonable dispatch should it chose to rebuild.
18. Upon termination of this Agreement by lapse of time or otherwise, Contractor covenants to surrender possession of the Stands in as good a condition as received, reasonable wear and tear expected. Contractor will be charged a \$500 cleaning fee if the Stands are not returned in good condition. If the renewal option is agreed upon, the contractor will still vacate the North and Middle Grounds Concessions to allow for maintenance from December 1<sup>st</sup> through January 31<sup>st</sup>.
19. Contractor understands and agrees that vehicles shall not be permitted to drive through the gates into the North Complex and Middle Grounds in the period one hour before the first scheduled game and one hour after the last game. Notwithstanding the forgoing, Contractor shall be permitted to drive a golf cart into the North Complex and Middle Grounds to service and bring product to the Stands. No one shall operate a golf cart without a valid driver's license.
20. This Agreement is not assignable, and Contractor shall not transfer or sublet any right granted to Contractor under this Agreement.
21. In consideration of the rent aforesaid to be paid and the covenants contained herein, whenever Contractor is not in breach of any covenant contained herein, Contractor is hereby granted the exclusive right to provide concession stand food, drink, and other items usually associated with a concession stand. No other commercial activity or solicitation shall be conducted on the premises.

22. If any rent required by this Agreement shall not be paid within five (5) days after the same shall become due, or should Contractor fail twice within any thirty six (36) hour period to timely open and fully operate a concession stand as required by the Agreement, or should Contractor fail to observe or perform any obligation herein mentioned within five (5) days after the receipt of written notice thereof, the tenancy and all exclusive rights created by this Agreement shall, at the option of the City, terminate, and City shall have right to immediately resume possession of the Stands for its own account, and retain or recover immediately from the Contractor rent through the end of the current month (if not already paid). The City shall also recover all expenses incurred by reason of the breach and retaking of possession, including reasonable attorney's fees.
23. All notices required or permitted hereunder shall be in writing and, together with rent payable, shall be to the City at the Parks and Recreation Department, 16200 Panama City Beach Parkway, Panama City Beach, Florida 32413, and to Contractor at the address first above stated, or to such address as to which notice shall have been given as herein provided.
24. Contractor and its employees shall at all times treat the public honestly and fairly. All sales shall be recorded by cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. At no time shall the Contractor or its employees argue or use profanity while dealing with or in the presence of the public.
25. Contractor and its employees should maintain a clean appearance and wear a uniform shirt provided by Contractor and identifying them as Contractor's employees.
26. Contractor shall permit no person to discharge, in whole or in part, any of the Contractor's obligations hereunder within the geographic boundaries of Frank Brown Park, (i) who shall have been convicted or pled guilty or *nolo contendere*, regardless of whether adjudication was withheld, of a crime against children (a "Disqualifying Crime"), or (ii) who shall have failed to consent in writing to a criminal history background check for a Disqualifying Crime; or (iii) who is a full-time employee of the City. From time to time at City's request, Contractor shall furnish a list of the names and addresses of all persons discharging any of its obligations hereunder within the geographic boundaries of Frank Brown Park, together with



evidence that Contractor has conducted a criminal background check to ensure each such person is eligible under this section to discharge Contractor's obligations within Frank Brown Park.

27. Nothing in this Agreement shall be construed so as to create the relationship of principal and agent, a partnership, joint venture, or any association whatsoever between the City and the Contractor, other than the relationship of the landlord to its tenant.
28. No modification or waiver of this Concession Agreement shall be binding unless executed in writing by both parties. No waiver or delay in the enforcement of any right or power in this Concession Agreement, and no course of dealing between the parties, shall constitute or be deemed a waiver of any other right or power contained in this Concession Agreement or a subsequent waiver of the same right or power.
29. This Concession Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

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

THE CITY:

CITY OF PANAMA CITY BEACH

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

Mario Gisbert, City Manager

Attest: \_\_\_\_\_

Jo Smith, City Clerk

Signed, sealed and delivered

In the presence of:

CONTRACTOR:

\_\_\_\_\_

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

\_\_\_\_\_