

RESOLUTION NO. 22-94

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH A&W OF PCB, LLC FOR THE FRANK BROWN PARK CONCESSIONS IN THE AMOUNT OF \$61,500.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and A&W of PCB, LLC relating to the provision of concessions at Frank Brown Park, in the annual amount of Sixty One Thousand, Five Hundred Dollars (\$61,500), in substantially the form **attached** 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 10th day of February, 2022.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

EXHIBIT D
Concession Agreement

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement"), made as of this 27 day of JANUARY, 2022 ("Effective Date"), by and between the CITY OF PANAMA CITY BEACH, a municipal corporation in Bay County, Florida, as City, and [A+W OF PCB LLC], whose address is P.O. Box 18727 PCB FL 32417, as Contractor;

WITNESSETH

That in consideration of the covenants herein written and from the original Proposal document specifications and the rent agreed to be paid, the 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 (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 2 years and shall commence upon approval of City Council, execution of agreement by both parties and deposit money received. Thereafter, the City shall have the option to renew this Concession Agreement upon the same terms and conditions for two additional one (1) year terms.
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 \$ 601,500.00 (the "annual rent") payable in eight installments. a.) 2.5% of the Annual Rent shall be due on or before March 1, 2022 b.) 2.5% of the Annual Rent shall be due on or before April 1, 2022 c.) 5% of the Annual Rent shall be due on or before May 1, 2022 d.) 10% of the Annual Rent shall be due on or before June 1, 2022 e.) 20% of the Annual Rent shall be

due on or before July 1, 2022 f.) 25% of the Annual Rent shall be due on or before August 1, 2022 g.) 25% of the Annual Rent shall be due on or before September 1, 2022 h.) 10% of the Annual Rent shall be due on or before October 1, 2022. A late fee of \$25 per day will be assessed beginning on the 10th of the month in which payment is due.

4. 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.
5. 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.
6. 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 1st through December 31st.
7. 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.
8. 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.

9. 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.
10. 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.
11. 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.
12. This Concession Agreement and any exhibits or appendices attached hereto and incorporated herein, constitutes the entire agreement between 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 representations, warranties, covenants or other agreements among them.

The term "Agreement" means and includes the following documents, all of which are incorporated into this Agreement by this reference:


NOTICE TO PROPOSERS
GENERAL INFORMATION
TERMS AND CONDITIONS
SCOPE OF SERVICES
STANDARDS FORMS
AGREEMENT
EXHIBIT A
EXHIBIT B
EXHIBIT C
EXHIBIT D

[Remainder of this page is intentionally left blank]

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: 
Drew Whitman, City Manager

Attest: 
Lynne Fasone, City Clerk

Signed, sealed and delivered
In the presence of:

CONTRACTOR:

By: _____