
AGREEMENT

THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called COUNTY) and Treasure Coast Consulting, Inc. DBA Treasure Coast Concessions (hereinafter called CONCESSIONAIRE). COUNTY and CONCESSIONAIRE, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

Concessionaire shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Concession services

ARTICLE 2 - THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name: Concession Services at County Recreation Facilities

RFP Number: RFP 2022059

Project Address: Primarily at the North County Aquatic Center ("NCAC") located at 9450 95th Street (CR 512), Sebastian, Florida, Gifford Aquatic Center ("GAC") at 4895 43rd Ave, Vero Beach Florida, Intergenerational Recreation ("IG") Facility located at 1590 9th Street SW, Vero Beach, Florida, and Dick Bird Park at 800 20th Ave SW and Fran B. Adams Park at 9450 CR 512, Sebastian, Florida. Additional sites and events may be added, as needed.

ARTICLE 3 - CONTRACT TERM

The term of this agreement is three years ("Initial Term"), with two one-year extensions ("Renewal Terms") subject to CONCESSIONAIRE acceptance and determination renewal is in the best interest of the County. The parties may agree to alter time periods and locations at which food service will be provided at one or more of the Parks during those times of year when park attendance is low or minimal. The County shall make the ultimate determination in its sole discretion as to whether Concessionaire is permitted to provide concession services on any County owned property.

ARTICLE 4 - PAYMENTS

Concessionaire shall pay the County a flat daily fee ("License Fee") by location, as detailed in their proposal and summarized in the following table. The License Fee shall be due at the close of business by the 7th business day of each applicable month (the "Due Date"). License Fee payments will be made by business check and will be mailed or given directly to the Indian River County Recreation Department, 1800 27th Street, Vero Beach, Florida 32960-0310, on the Due Date. Payment shall be past due after the 7th business day of each month, with a \$10 penalty assessed for each day payment is delinquent.

Facility	Daily Fee	Daily Schedule	Tournament Fee (per day)
NCAC	\$75	9 a.m.-4:30 p.m. daily during school breaks and during swim meets and special Olympics events; weekends only during school.	N/A
GAC	\$20	5 days per week (weekdays)	N/A
iG	\$30	Upon request	N/A
Dick Bird Park	\$20	Upon request	\$100
Commissioner Fran Adams Park	\$20	Upon request	\$100

ARTICLE 5 – ACCOUNTING PROCEDURE

Concessionaire will provide a monthly worksheet for each location showing days worked and fee calculation, which will be reviewed by County.

ARTICLE 6 - USE OF PREMISES

Concessionaire shall operate the Concession, which Concession shall be limited solely to the sale of menu items approved by the Indian River County Parks and Recreation Director, or designee. No other goods or services shall be offered or sold by the Concessionaire without the prior written approval of the Indian River County Parks and Recreation Director, or designee. It is specifically agreed and understood that the use herein set forth shall be the only use allowable under the Agreement and that any variance in such use shall require the written consent of the County.

The location of the Concession at each of the Parks shall be determined by the County in its sole discretion.

The Concession may not operate after the general hours of operation of the Parks unless the County provides otherwise. Periodically, the North County Aquatic Center closes for swim meets and other private functions not open to the general public, and Concessionaire agrees that Concession will not be open during those times, unless otherwise agreed by the parties.

County may utilize, and/or allow patrons renting a facility to utilize, other food service vendors. Additionally, vending machines are or may be in place at various sites, and will not be powered off, altered or blocked from use in favor of Concessionaire.

Finally, patrons will not be prohibited from bringing their own food and beverages, unless in violation of the use allowed at the facility.

ARTICLE 7 - DUTIES OF CONCESSIONAIRE

Concessionaire agrees as follows:

- a. To maintain an inventory sufficient to satisfy the demands and needs of the public.
- b. To secure and maintain all licenses, insurance, and permits required and to pay when due all taxes and assessments which shall be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of this Agreement and to otherwise comply with all applicable laws, ordinances, rules, regulations, or policies established by the County or local, state and federal governmental

unit or authority.

c. To provide service to the public in accordance with an operating schedule approved by the Indian River County Parks and Recreation Director, or designee, for the period of the Initial Term or Renewal Term, as applicable, of this Agreement. Said schedule shall not be modified or altered without written approval of the Indian River County Parks and Recreation Director, or his designee. The cost to purchase the food items shall be posted and in full view of the public.

d. To maintain equipment in good working condition and appearance of equipment must meet standards that will not conflict with the overall decorum of the Parks.

e. To have background checks completed on every new employee to ensure the safety of the public.

f. To establish rules regarding customer service if and when required, subject to approval of the Indian River County Parks and Recreation Director, or designee.

g. To maintain good public relations, to conduct said Concession in a manner which is courteous and fair to the public and to be responsive to customer's requests and complaints.

h. To cooperate fully with County officials in all matters relating to the Concession and the recreation complex of which they are a part.

i. To purchase and install any equipment required for operation of the Concession.

j. To notify the County immediately in writing of any potentially hazardous condition existing on or about the Concession or the Parks.

ARTICLE 8 – DUTIES OF COUNTY

County agrees as follows:

a. To make available to Concessionaire water and electricity connections for operation of the Concession.

b. To provide adequate collection and disposal of garbage by a dumpster located on site.

c. To provide access to the Parks during normal operating hours to the best of its ability, subject to the right of the County or any other governmental authority to temporarily restrict or deny access to said facility for the purpose of constructing, installing, operating or maintaining any public facility, including, but not limited to, public works and public utilities, or for the purpose of performing any other governmental function. The Indian River County Parks and Recreation Director, or his designee, shall administer the County's interest in said Concession.

ARTICLE 9 – MISCELLANEOUS

10.1 Improvements. Concessionaire agrees that improvements made by him/her shall be at his/her expense and shall have the prior written approval of the Indian River County Parks and Recreation Director, or designee,

and all regulatory agencies where applicable.

10.2 Indemnification and Insurance. Concessionaire shall defend, indemnify and hold harmless the County and its commissioners, officers, employees and agents, from any and all losses, damages, expenses (including reasonable attorneys fees) and other liabilities of any type whatsoever, arising out of or relating to any negligence, intentional tort, breach of contract, or breach of applicable law by the Concessionaire, or its employees, agents, subcontractors, or other persons or entities performing work under this Agreement.

The Concessionaire agrees to provide and maintain at all times during the Term , and if applicable, the Renewal Term of this Agreement, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Concessionaire against any and all claims, demands, or clauses of action whatsoever for the injuries received and damage to property incurred in connection with the use, occupation and management or control of the property and any improvements thereon by Concessionaire. Such policies of insurance shall insure the Concessionaire in the amount not less than \$1,000,000.00 to cover any and all liability claims arising in connection with any particular accident or occurrence. Such liability policies shall provide that the County is an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of such action.

The Concessionaire shall provide the described insurance on policies and with insurers acceptable to the County and licensed and authorized under the laws of the State of Florida. These insurance requirements shall not relieve or limit the liability of the Concessionaire. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Concessionaire's interest or liabilities, but are merely minimums.

A certificate of insurance indicating that the Concessionaire has coverage in accordance with the requirements of the Agreement shall be furnished by the Concessionaire to the Indian River County Parks and Recreation, prior to commencement of operations in the Parks.

All personal property housed or placed at the Parks shall be at the risk of Concessionaire, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Concessionaire agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Concessionaire's interest therein. The Concessionaire further agrees and understands that no storage will be made available for his/her use, unless a negotiated monthly rent has been negotiated [if agreement is for Commissioner Fran B. Adams Park, NCAC or GAC].

10.3. Covenants Against Assignment and Subletting. The Concessionaire shall not assign any portion of the Agreement nor allow same to be assigned by operation of law without the express written approval of the County.

10.4 Independent Contractor. The Concessionaire shall perform the conditions of this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be in any way construed to constitute the Concessionaire or any of his agents or employees as the agent, employee, or representative of the County.

10.5 Additional Locations. Upon written agreement by the parties, this Agreement may include additional concession locations at various other county parks. The terms of this Agreement shall form the basis of any future

written document, notwithstanding that a different term, location, and hours of operation would apply.

10.6 Attorney's Fees. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

10.7 Concessionaire is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. Concessionaire is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors.

10.8 Governing Law. This Agreement shall be deemed to have been executed and entered into in the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

10.9 Venue. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Indian River County, Florida, and any trial shall be non-jury.

10.10 Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) month from the date of being placed on the convicted vendor list. Concessionaire represents and warrants that no fact or circumstance exists which constitutes a violation of the above prohibitions.

10.11 Modification. No modification of this Agreement shall be binding on the County or the Concessionaire unless reduced to writing and signed by a duly authorized representative of the County and the Concessionaire.

10.12 Emergencies. In the case of a declared emergency in Indian River County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of Indian River County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.

10.13 Force Majeure. Neither the County nor the Concessionaire shall be considered in breach of this Agreement to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an Event of Force Majeure that arises after the effective date of this Agreement. An "Event of Force Majeure" shall include, but not be limited to an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); war, hostilities (whether declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo; rebellions, revolution, insurrection, or military or usurped power, or civil war; contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly; riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of any supplier or of its subcontractors; or acts or threats of terrorism.

10.14 Public Records Compliance. Indian River County is a public agency subject to Chapter 119, Florida Statutes.

The Concessionaire shall comply with Florida's Public Records Law. Specifically, the Concessionaire shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the 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 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 contract term and following completion of the contract if the Concessionaire does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Concessionaire or keep and maintain public records required by the County to perform the service. If the Concessionaire transfers all public records to the County upon completion of the contract, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the contract, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

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

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of the Concessionaire to comply with these requirements shall be a material breach of this Agreement.

11: TERMINATION OF CONTRACT

This Agreement may be terminated by the County in its sole discretion and shall be effective immediately upon written notice to Concessionaire. Upon termination of this Agreement, the Concessionaire shall immediately remove any personal property. Any property not removed within five (5) days after termination shall become the property of the County.

Concessionaire certifies that it and those related entities of respondent as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of respondent as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exist for the purpose of making profit is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

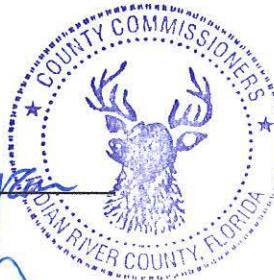
IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on August 16, 2022.

OWNER:
INDIAN RIVER COUNTY

By: Peter D. O'Bryan
Peter D. O'Bryan, Chairman

By: Jason E. Brown
Jason E. Brown, County Administrator



CONCESSIONAIRE:
Treasure Coast Consulting, Inc. DBA Treasure Coast Concessions

By: Thomas J. Burger - Pres.
(Concessionaire)

(CORPORATE SEAL)

Attest _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Dylan Reingold
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: Maureen James
Deputy Clerk

(SEAL)

(If Concessionaire is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:
Name: Thomas J. Burger
Title: President
Address: 2585 Little Eagle Lane SW
Vero Beach, FL 32962
Phone: (772) 453-9322
Email: tjburger60@yahoo.com

Designated Representative:
Name: Elizabeth Powell
Title: Parks and Recreation Director
Address: 1800 27th Street, Vero Beach, FL 32960
Phone: 772.226.1873
Email: bpowell@ircgov.com

