

RESOLUTION NO. 2011- 181

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE CHAIR, OR DESIGNEE, TO EXECUTE A CONCESSION LEASE AGREEMENT TO OPERATE A HOT DOG CART AT THE HEALTH AND HUMAN SERVICES CENTER.

RECITALS

WHEREAS, Augics Dogs, Inc., the owner, has presented to the County a Concession Lease Agreement, attached hereto as Exhibit "A," incorporated and made a part hereof, to operate a hot dog cart at the Health and Human Services Center for the employees and clients at this location; and

WHEREAS, the owner will pay the County \$400 a month to lease an area outside this facility; and

WHEREAS, the hot dog cart is a self contained operation and no additional utilities are required for the operation; and

WHEREAS, the owner has been based out of St. Augustine for the past 18 years and having this hot dog cart at this location is convenient for the employees and their clients.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms of the Concession Lease Agreement and authorizes the Chair, or designee, to execute the original Concession Lease Agreement.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk is instructed to record the original Concession Lease Agreement in the Public Records at the Clerk's Office.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 19th day of July, 2011.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: [Signature]
Chair

ATTEST: Cheryl Strickland, Clerk
By: [Signature]
Deputy Clerk

RENDITION DATE 7/21/11

EXHIBIT "A" TO RESOLUTION
CONCESSION LEASE AGREEMENT

THIS CONCESSION AGREEMENT made as of _____, 2011 by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter called "**COUNTY**" and **Augies Dogs, Inc. aka A&D Food Concessions and Consultants**, whose address is 2565 Dobbs Road, Ste. 7 St. Augustine, FL 32086 (904) 377-7794, hereinafter referred to as "**CONCESSIONAIRE**", whereby the parties hereto, for and in consideration of the mutual covenants and conditions hereinafter expressed, do hereby agree as follows:

1. **GRANT OF CONCESSION: AREA OF OPERATION**

The COUNTY hereby grants to the CONCESSIONAIRE, and the CONCESSIONAIRE hereby accepts from the COUNTY, exclusive right and duty to operate, maintain and otherwise conduct the services businesses of operating and maintaining a food and beverage facility at the St. Johns County Health and Human Services Center, located at 1955 US1 South, St. Augustine, FL 32086, in the manner hereinafter described and such other food and beverage facility related CONCESSIONS and services as are described herein or may hereinafter be approved in writing by the County and expressly made a part of this Agreement.

2. **TYPE OF BUSINESS**

The CONCESSIONAIRE will continuously operate the facilities described in Section 6 hereof as a food and beverage facility (and for no other purposes without the prior written consent of the COUNTY) during the dates and hours shown on Exhibit "A" and the Menu on Exhibit "B". The COUNTY shall have the right to change such dates and hours upon seven days notice to CONCESSIONAIRE.

Duties of the CONCESSIONAIRE shall include but not limited to:

a) Purchasing with his/her own funds all appropriate merchandise for the food and beverage facility and the pricing, sale, and inventory control of same. Items purchased by the CONCESSIONAIRE with his own funds shall be considered property of the CONCESSIONAIRE. The operation of the food and beverage facility shall consist of providing food and beverage to the general public and such other persons or groups as the COUNTY may from time to time determine. Food and beverage service shall mean as a minimum, the preparation of hot and cold sandwiches and serving of beverages. All food dispensed by CONCESSIONAIRE shall be of good quality and served in a sanitary manner in accordance with health department regulations. A caterer's or sales cart may be utilized to serve customers on the campus and in the

parking and picnic area limits only. No glass containers will be used to dispense sales of drinks or food for consumption outside of County Services Building.

b) Providing at his/her expense all merchandise and inventory for the operation of the food and beverage facility.

c) Providing at his/her expense such equipment and furnishings, in addition to that provided by the COUNTY, that is necessary or desirable for the operation of the food and beverage facility.

d) Paying all sales taxes and other governmental taxes and charges pertaining to the sale of food, beverages and other items at the food and beverage facility.

e) Providing and paying, as employees of CONCESSIONAIRE, all labor necessary to operate the food and beverage facility.

f) Obtaining Health Department clearance prior to its operation of the facility in accordance with Florida Administrative Code Chapter 10D13 and maintaining current recertification.

g) Obtaining and keeping current all other permits necessary to operate the food and beverage facility.

h) Keeping and maintaining the food and beverage facility, including the equipment and furnishings, in a safe and very clean condition.

i) Furnish and maintain approved trash receptacles as required in the atrium area.

3. **NOTIFICATION TO VENDORS**

The CONCESSIONAIRE shall notify each vendor and shall continuously make clear to each vendor from whom CONCESSIONAIRE purchases or leases materials and inventory for the operation of the food and beverage facility pursuant to this CONCESSIONAIRE AGREEMENT that such purchases and/or leases are made for his/her own account and not for the COUNTY and that the COUNTY assumes no responsibility for the payment or protection thereof.

4. **CONCESSION ONLY**

The parties expressly agree that no part, parcel, building, structure, equipment, furnishing, or space is leased to the CONCESSIONAIRE; that he/she is a CONCESSIONAIRE operating as an independent contractor; that he/she is not a lessee; that the CONCESSIONAIRE'S right to operate to CONCESSION shall continue only so long as

a) The CONCESSION operation complies with the terms and condition of this AGREEMENT, and

b) This AGREEMENT has not expired or been terminated pursuant to the termination provisions of this agreement.

Nothing in this AGREEMENT shall be construed as creating a partnership between the COUNTY and the CONCESSIONAIRE or constituting the CONCESSIONAIRE as the agent of the COUNTY.

5. **PRICE OF ITEMS**

Items sold by CONCESSIONAIRE shall be competitively priced and comparable to or less than the prices charged at food and beverage facilities within North and Central Florida. If prices are to change they will need to be approved by St. Johns County.

6. **FACILITIES**

The CONCESSIONAIRE agrees to use such space, equipment, furnishings and facilities as the COUNTY may from time to time designate for use as the food and beverage facility with no representations or warranties from the COUNTY as to size, condition, or suitability of use thereof. Exhibit "C" represents the building area currently designated for the food and beverage facility. The CONCESSIONAIRE acknowledges that it has inspected the area, facilities and items identified on Exhibit "C" and accepts them as adequate for its use "AS IS". Reference in this AGREEMENT to picnic and parking areas shall not be deemed to require that COUNTY provide improvements for or to maintain the same.

7. **USE OF FACILITIES**

The CONCESSIONAIRE agrees to neither permit or commit waste or damage to the facilities, equipment, furnishings, structures and space that are the subject of this AGREEMENT and further agrees to comply with all applicable federal, state, county and city laws and rules and regulations, including payment of all applicable taxes and compliance with all laws and regulations pertaining to the sale of food. Upon termination of this AGREEMENT by lapse of time or otherwise, the CONCESSIONAIRE agrees that his/her right to use the facilities, structures and space which are the subject of this AGREEMENT shall be terminated and that CONCESSIONAIRE shall leave same in at least as good a condition as received, reasonable wear and tear excepted.

8. **STANDARD OF OPERATIONS**

Should the CONCESSIONAIRE fail to perform in a satisfactory manner or should the COUNTY have concerns because of complaints received or from observation by COUNTY inspectors or personnel authorized by the Board of County Commissioners to review operations, the COUNTY may, but is not required to, advise the CONCESSIONAIRE in writing to correct the problem(s) and, upon receipt of such writing, the CONCESSIONAIRE shall answer by return hand delivered letter within four (4) working days stating the corrective action taken, or, if it cannot be completed within the four (4) days, the date completion of the corrective action is anticipated. Failure of the COUNTY to advise CONCESSIONAIRE of the problems prior to termination of this AGREEMENT and/or failure of COUNTY to agree to the actual or proposed corrective action of the CONCESSIONAIRE shall not prevent or delay the COUNTY in terminating this AGREEMENT.

9. **TRADE FIXTURES AND CONCESSIONAIRE FURNISHINGS**

The CONCESSIONAIRE may install his own additional furnishings and trade fixtures upon approval of the County Administrator or his/her designee as to type and manner of installation, but upon termination of this AGREEMENT by lapse of time or otherwise, any damage to any portion of the COUNTY property caused by placement or removal of CONCESSIONAIRES furnishings and/or trade fixtures shall be the responsibility of the CONCESSIONAIRE and will be immediately repaired at the expense of the CONCESSIONAIRE.

10. **MAINTENANCE, UTILITIES, CUSTODIAL SERVICES AND TRASH COLLECTION**

The CONCESSIONAIRE shall be responsible for the maintenance and cleaning of the food and beverage facility, furnishings, inventory and fixtures.

The COUNTY shall provide trash collection and occasionally water and electricity for the operation of the food and beverage facility if required. This is a self contained cart.

The COUNTY shall be responsible for the maintenance of the exterior of all buildings, the interior of restrooms, and the parking area and picnic area. The COUNTY shall provide a trash dumpster in a convenient location. The COUNTY shall be responsible for regular cleaning of the parking and picnic areas. PROVIDED HOWEVER CONCESSIONAIRE shall remove all trash and debris from the parking and picnic area that result from sales made at his/her CONCESSIONS.

The CONCESSIONAIRE shall be responsible for the maintenance and repairs of COUNTY fixtures, and the COUNTY equipment and furnishings, if any, provided under this agreement. The CONCESSIONAIRE shall, at all times, keep and maintain the food and beverage facility in a clean and safe condition. The CONCESSIONAIRE shall deposit all trash in the dumpster and shall keep the area around the dumpster in a clean and sanitary condition.

The COUNTY shall not be held responsible or liable for damages or for loss of inventory due to electricity outages or other failure to provide utility services.

11. **REPAIR OF MAJOR DAMAGE**

In the event of damage by storm, fire or other casualty rendering the COUNTY facilities, structures or space which are the subject of this AGREEMENT unfit for use or occupancy, the COUNTY shall be under no obligations to rebuild or repair and unless the COUNTY has notified the CONCESSIONAIRE of its intention to rebuild or repair within thirty (30) days of such damages, this AGREEMENT may be terminated by either party. If the COUNTY notifies the CONCESSIONAIRE within thirty (30) days after such damage by storm, fire or other casualty, that the COUNTY intends to rebuild or repair, then the COUNTY agrees to exercise its best efforts to accomplish the restoration at the earliest possible date.

In addition, the COUNTY will not be held responsible for any damages or for loss of inventory due to the above or due to the loss of electricity or other outages.

12. **INSURANCE AND INDEMNITIES**

The CONCESSIONAIRE agrees to indemnify and save the COUNTY harmless from any liability, claim or demand by any third party resulting from or arising out of the CONCESSIONAIRE'S actions under this AGREEMENT or his/her use or occupancy of the portion of the COUNTY property that is the subject of this AGREEMENT. The CONCESSIONAIRE shall at all times during the term of this AGREEMENT maintain in full force and effect a policy or policies of liability insurance in a form and written by such companies as may be acceptable to the COUNTY with single limits of liability of at least \$100,000.00 and with the COUNTY named as an additional insured under said policies. This amount will increase per Florida Statute 768.28 Section 5 October 1, 2011 to \$200,000.00 and the CONCESSIONAIRE will need to show proof of this increase. The CONCESSIONAIRE shall provide to the COUNTY upon demand such certificates of insurance or other evidence of the proper maintenance of such liability policies as the COUNTY may require and shall provide to COUNTY such certificates of insurance or other evidence of insurance at least annually during the term of this AGREEMENT. Each policy shall prohibit cancellation without 30 days prior notice to COUNTY. The CONCESSIONAIRE shall be responsible for such insurance as he/she may desire upon his/her own property and inventory. The indemnity provisions of this section shall survive the termination of this AGREEMENT.

13. **PAYMENTS**

In consideration for the privileges granted to him/her under this AGREEMENT, the CONCESSIONAIRE shall perform his/her duties and obligations described herein and, in addition, shall pay to the COUNTY \$400.00 (four hundred dollars) per month for rent which includes the six percent (6%) sales tax.

14. **TERM AND EXTENSIONS**

The scheduled term of this AGREEMENT shall be for a term of 1 year commencing on August 1, 2011, and shall terminate on August 1, 2012, with option to renew, at the St. Johns County discretion, for another year after negotiations with the Concessionaire and providing the negotiated extension is approved by the Department Head and Purchasing Manager. Annual appropriation is also required, but written notice of intent to renew shall not be required.

15. **TERMINATION**

a) The failure of CONCESSIONAIRE to comply with any portion of its duties or obligations under this AGREEMENT, shall be cause for termination of this AGREEMENT. The CONCESSIONAIRE will have three (3) days to correct

non-compliance items after receiving written notice of non-compliance or breach of contract. This AGREEMENT may be terminated by COUNTY for cause upon giving fourteen (14) days written notice to CONESSSIONAIRE that the AGREEMENT will be terminated if the CONCESSIONAIRE does not comply with first notice of non-compliance or breach of contract. Said notice shall also state the cause or causes for the termination.

b) In addition to the above provisions of this section 15, the COUNTY may terminate this AGREEMENT and all rights of CONCESSIONAIRE at any time, without cause, upon ninety (90) days written notice of intention to do so given by COUNTY to CONCESSIONAIRE.

16. **LIEN ON INVENTORY AND FURNISHINGS**

The parties agree that the COUNTY shall have, in addition to all other legal and equitable remedies, a continuing lien on all personal property, inventory, furnishings and trade fixtures of the CONCESSIONAIRE on the County property for all sums which may from time to time become due and unpaid to the COUNTY under this AGREEMENT, and upon default of payment by CONCESSIONAIRE, the county shall have the right to take possession of and retain same until the full amount due the COUNTY shall be paid, or to sell the same at public auction, and after deducting the expenses of such sale, apply the balance of the proceeds to such payment. This section shall survive the termination of this AGREEMENT.

17. **ASSIGNMENT**

The CONCESSIONAIRE'S rights, interest, duties and obligations as set forth in this AGREEMENT shall not be assigned, pledged, hypothecated, subcontracted, transferred or encumbered in any manner whatsoever without the prior written consent of the COUNTY, which consent may be withheld or granted at the COUNTY'S sole discretion. A change in the persons or entities constituting the controlling partners or stockholders of CONCESSIONAIRE shall constitute an assignment.

18. **LIMITATION ON WAIVERS**

If any provision contained in this AGREEMENT should be breached by either party, such by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive the same, any other, or any future breach of this Agreement on any other occasion. No remedy herein conferred upon or reserved to the COUNTY or CONCESSIONAIRE is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this AGREEEMNT or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power under this AGREEMENT or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power under this agreement shall impair any such right or power or shall be

constructed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

19. **HEADINGS NOT PART HEREOF**

The headings preceding the several sections hereof are solely for convenience of reference and shall not constitute a part of this AGREEMENT or affect its meaning, construction or effect.

20. **NOTICE**

All notices required or permitted hereunder and all monies payable hereunder shall be made to the St. Johns County, Attn: Real Estate, Debbie Taylor, 500 San Sebastian View, St. Augustine, Florida, 32084 and to the CONCESSIONAIRE at his/her address first above stated or to such other persons or addresses as the parties may hereafter direct by providing written notice thereof to the other party.

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

ST. JOHNS COUNTY, FLORIDA

Witness: _____

BY: _____

Witness: _____

**AUGIES DOGS, INC.,
aka
A & D FOOD CONCESSIONS
AND CONSULTANTS**

Witness: _____

By: _____

**Louis Boulier
Owner**

Witness: _____

Legally Sufficient

_____ **Date:** _____

ATTEST: _____

Clerk of Courts
Deputy Clerk

EXHIBIT A

The initial days and hours of operation of the food and beverage facility shall be as follows:

Commencing August 1, 2011 the concession shall be open from 9:00am to 5:00pm Monday through Friday. The CONCESSIONAIRE has the option of remaining closed on County Holidays.

County Administrator or his/her Designee may authorize the CONCESSIONAIRE to shut down the concession operations. CONCESSIONAIRE may operate longer hours if desired.

EXHIBIT "B"

AUGIES DOGS MENU

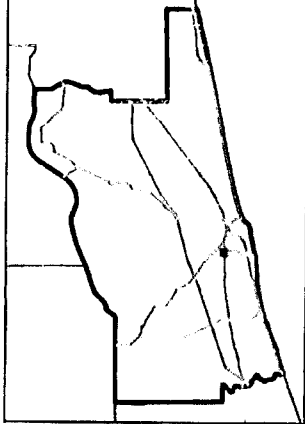
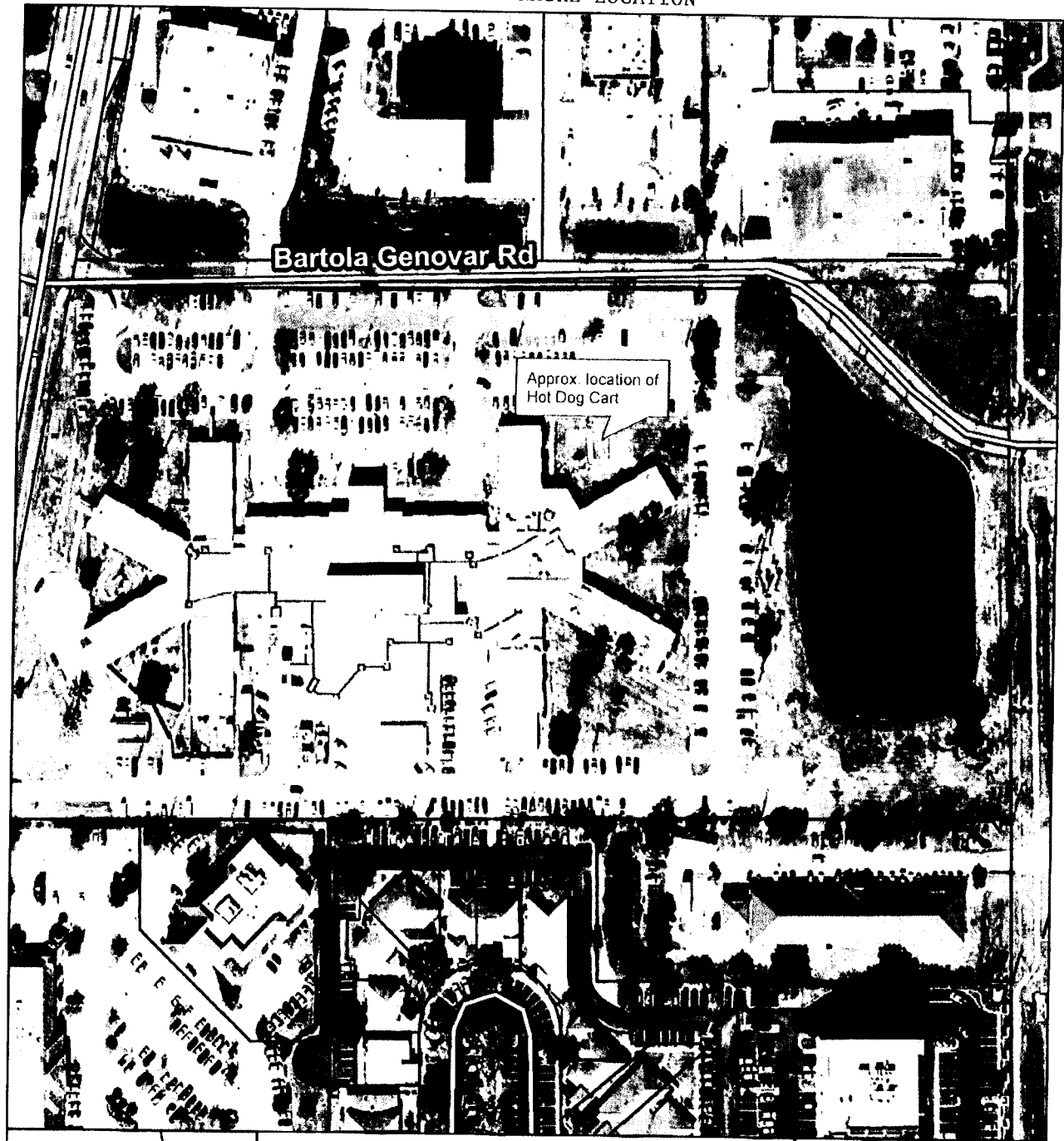
COMBOS

Hot Dog, Drink, and Chip.....	\$3.00
All Beef Dog, Drink and Chip.....	\$4.00
Italian Sausage Hot or Sweet, Drink & Chip.....	\$5.00

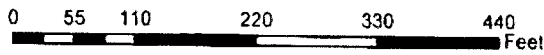
SINGLE ITEMS

Hot Dog.....	\$1.50
All Beef Dog.....	\$2.50
Italian Sausage.....	\$3.75
Canned Drinks.....	\$1.00
Water.....	\$1.00
Slaw.....	\$.50
Bag of Chips.....	\$.50

EXHIBIT "C" CONCESSIONAIRE LOCATION



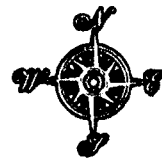
**Health & Human
Services Center**
Hot Dog Cart



St. Johns County
Land Mgmt Systems
Real Estate Division



Map Prepared:
Date: 6/30/11
(904) 209-0796



2008 Aerial Imagery

DISCLAIMER.
This map is for reference use
only. Data provided are derived
from multiple sources with
varying levels of accuracy.