

RESOLUTION NO. 2019 - 317

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE CONTRACT AMENDMENT #8 WITH PROFESSIONAL CONCESSIONS, INC UNDER RFP NO: 08-102 (MASTER CONTRACT NO: 08-MCC-PRO-04197)

RECITALS

WHEREAS, On October 1, 2008, the County entered into a continuing services contract with Professional Concessions, Inc for the provision of concessionaire services at the SJC Cultural Events Division Facilities; and;

WHEREAS, the contract's current expiration date is September 30, 2019 based on a Board approved amendment in March 2019; and;

WHEREAS, the Cultural Events Division is still within their peak event season during September and October, which would make potentially transitioning to a new concessionaire detrimental to their operation and inadvisable, and transitioning to a new concessionaire during the off-season, in December and January is much more operationally feasible; and;

WHEREAS, there is no cost associated with this contract, as the Concessionaire pays to the County a percentage of the revenue collected; and;

WHEREAS, the County has reviewed the terms and conditions of the Master Contract and finds that executing the amendment serves a public purpose; and;

WHEREAS, the amendment will be in substantially the same form and format as the attached draft amendment.

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 finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute Contract Amendment #8, on behalf of the County, in substantially the same form and format as the attached draft, with Professional Concessions, Inc to provide the services set forth therein.

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.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 17 day of September, 2019.

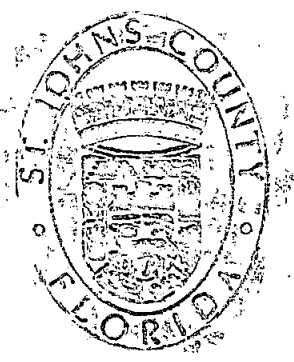
BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: Paul M. Waldron
Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Pam Halterman Deputy Clerk

RENDITION DATE 9/23/19





St. Johns County Board of County Commissioners

Purchasing Division

CONTRACT AMENDMENT NO: 08

RFP No: 08-102; Concessionaire for Cultural Events Division Venues

Master Contract No: 08-MCC-PRO-04197

Concessionaire: Professional Concessions, Inc
9067 Southern Blvd
West Palm Beach, FL 33411

Date: August 23, 2019

Contract Amendment No: 08 is hereby issued to amend the above referenced Master Contract as follows:

1. Extend the Contract Term for a period of three (3) calendar months, from October 1, 2019 through and until 11:59pm Eastern Daylight Saving Time (EDST) on December 31, 2019.
2. No changes to pricing are granted by this Amendment.

St. Johns County shall compensate the Concessionaire based upon the terms as stated in the Master Contract dated October 1, 2008, as amended thereafter.

With the exception of the amendments, changes, modifications and revisions noted in this Amendment, all other terms and conditions contained in the Master Contract, as previously amended, shall remain in full force and effect. The County and the Concessionaire acknowledge that any further changes, amendments, modifications or revisions to the Contract shall be in writing and executed by duly authorized representatives of each party.

In Witness Whereof, authorized representatives of the County and Concessionaire have executed this Amendment on the dates below noted.

Signature of County Representative

Date

Jaime T. Locklear, MPA, CPPO, CPPB, FCCM, Purchasing Manager
Printed Name & Title – County Representative

Signature of Concessionaire Representative

Date

Printed Name & Title

End of Amendment No: 08

Professional Concessions, Inc

9067 Southern Blvd, West Palm Beach, Fl., 33411 | 561 793 1971 | bbeckpci@aol.com

August 23, 2019

Jaime T. Locklear, MPA, CPPO, CPPB, FCCM | Purchasing Manager

Contract Extension Request,

Professional Concessions Inc. would like to extend our current contract with St Johns County to 12/31/2019 to give the County time to complete the new contract proposals and bidding, and for a suitable transition period.

Sincerely,



Bruce Beck

President

Professional Concessions

PCI PROFESSIONAL CONCESSIONS, INC.

9067 Southern Boulevard
West Palm Beach, FL 33411
(561) 795-6435
fax (561) 795-6414

TO JOE BURCH
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Handwritten initials and number 3

Approval (initial & date)
 Requested By: RP
 Dept Head: ZB
 Buyer: RP
 Legal: MH
 Purch. Director: ADD

Concession Agreement St Augustine Amphitheatre

This Concession Agreement (Agreement), made and entered into this 15th day of OCTOBER, 2008 by and between St. Johns County Board of County Commissioners, (hereinafter referred to as Board), by, and on behalf of, St. Johns County, Florida (hereinafter referred to as County), and Professional Concessions, Inc., a Florida corporation, (hereinafter referred to as Vendor), (FEID 59-2691892), whose address is 9067 Southern Blvd, West Palm Beach, Fl. 33411.

WITNESSETH:

WHEREAS, the Vendor is engaged in the business of selling refreshments, food and beverages, for the consumption by patrons in places of public amusement; and

WHEREAS, the County represents that it is the owner of the premises located at 1340 A1A South, St. Augustine, Florida, 32080 known as the St. Augustine Amphitheatre, (hereinafter referred to as Amphitheatre) at which there have been and will continue to be special events; and

WHEREAS, said Amphitheatre includes buildings and concession stands, (hereinafter referred to as Concession Areas), intended to be used for the sale of refreshments and beverages to its patrons; and

WHEREAS, the County solicited proposals (RFP 08-102) from qualified and experienced firms to provide food and beverage concessions at the Amphitheatre.

WHEREAS, Vendor desires to acquire the right to sell refreshments, food and beverages to patrons of the Amphitheatre, and responded to RFP 08-102 (said response incorporated herein) in order to use and occupy those portions of the buildings which are to be used for the sale of food and beverage to patrons of the Amphitheatre and for storage, as County is willing and has the authority to grant such rights to the Vendor, and to permit the use of such portions of the buildings by the Vendor, as hereinafter set forth; and

NOW THEREFORE, in consideration of the premises and of the conditions and covenants hereinafter set forth, the County and Vendor agree as follows:

A. LICENSE AND TERM

Upon the terms and conditions hereinafter set forth in this Agreement, Vendor is understood to be an Independent Contractor. As such, County does hereby license and grant unto the Vendor, and the Vendor hereby accepts and agrees to act as an Independent Contractor, and to exercise the sole and exclusive rights and privileges at those parts and privileges at those parts and portions of the Concession Areas which are designed and are to be used for the sale of refreshments, including alcoholic and non alcoholic beverages, and food sales made on Amphitheatre premises, together with storage areas adjacent or

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relating thereto, for a term of five (5) years from the date of contract execution, with options to renew, at the County's discretion, for an additional five (5) each one (1) year periods after negotiations with Vendor and providing the negotiation is approved by the Board, unless the Board delegates authority to the County Administrator, or Purchasing Manager. Written notice of intent to renew shall not be required.

B. RENEWAL

Renewal of the contract shall be based on the Vendor's agreement to all the Terms, conditions and requirements for the following year and shall occur no later than 60 days prior to the end of this Agreement.

C. INDEMNITY

To the fullest extent permitted by law, the Vendor shall indemnify and hold harmless the County, its officials and employees, from and against liability, claims, damages, losses and expenses including attorneys' fees arising out of or resulting from performance of the work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Vendor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder. (See Attachment "D" incorporated herein)

In claims against any person or entity indemnified under this Paragraph by an employee of the Vendor, a Subcontractor or any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by, or for, the Vendor, or a Subcontractor under workers' compensation acts, disability benefits acts or other employee benefit acts.

D. RENT

Vendor shall have the exclusive right to manage the food and beverage sales at the Amphitheatre for all events other than backstage food catering for the performers and designated community events (not to exceed ten (10) without the written approval of both the County and the Vendor). A designated community event would require the promoter or promoters for the designated community event to pay a "buy-out" fee to the Vendor for the privilege of providing concessions to the designated community event. During those events, Vendor would not supply food and beverage. The Vendor will be allowed to negotiate a rental fee for any equipment owned by the Vendor that the Event Promoter would desire to use. Such rental fee would be in addition to the buy out fee. The buy out fee will be \$200.00 flat fee per event; 50% to the County and 50% to Vendor.

Vendor shall pay monthly rent of Five Hundred Dollars (\$500.00) and commission based on gross sales for any and all food and beverages, less sales tax. The rental fee of 40% of gross Alcohol Sales and 25% of gross food and non alcoholic beverages shall be paid to the County immediately following each event.

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Vendor will also provide the County with a one time donation of \$10,000.00 to be used toward additional Capital improvements at the amphitheatre. This donation to be provided within 60 days of the effective date of this agreement.

The Vendor shall furnish to the County a copy of the sales tax report furnished by the Vendor to the State Department of Revenue no later than the 20th day of the month. The Vendor's commission payment to the County is due not later than 11 A.M. of the day following each event for which concessions are sold. The County reserves the right to have furnished, on a form furnished by the Finance Department of the County, a monthly summary of all sales made by, or on behalf, of the Vendor. All sales will be rung up on the cash register and a validated sales slip will be used for each transaction and maintained with that day's cash register tape for audit purposes.

The Vendor shall report monthly to the County Finance Department, on a form furnished by the County Finance Department, all financial activity pertaining to its operations under this Agreement.

The fixed monthly payment is due on or before the first day of each month with a late payment penalty of \$21.00 per day beginning on the 16th day of the month and every day thereafter until rent is paid. The check from Vendor to the County will be accompanied by a copy of the sales tax report furnished by the Vendor to the State Department of Revenue accompanied by the Z Tape from the cash register.

The County reserves the right to have furnished it, on a form furnished by the County Finance Department, a monthly summary of all sales made by or on behalf of the Vendor.

All sales will be rung up on a cash register and a validated sales slip will be used for each transaction and maintained with that day's cash register tape for audit purposes.

E. EXISTING EQUIPMENT

The Vendor shall have the use, without payment of additional compensation to the County, of any counters, tables, and other related equipment that are owned by the County, and that are located at the Amphitheatre. The Vendor shall not be liable for any such items as may be worn out through normal wear and tear, nor shall the Vendor be responsible to the County for replacement of such items. The Vendor shall be responsible for damage resulting from the willful damage relating to negligence or willful acts of neglect or default, of the Vendor.

F. VENDOR'S EQUIPMENT

The Vendor will maintain a clean and hygienic operation that reflects positively on the Vendor, the County, and the St. Augustine Amphitheatre Management. All equipment and facilities regardless of ownership will be cleaned and maintained by the Vendor.

The Vendor will be responsible for providing and maintaining all necessary equipment, furnishings and any capital improvements needed to operate the Concession Area, which will remain the the Vendor's property. Any furnishings, including tables and chairs, and all capital Improvements must be approved by the Amphitheatre Manager, prior to their

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installation. Both the Director of Parks and Recreation and the successful Concessionaire, prior to the commencement of any work, must approve any capital improvements, and their respective schedules, in writing. The Vendor shall provide the County, prior to the effective date of this Agreement, with a detailed, written list of equipment and furnishings owned by the Vendor. Within one week of the Vendor purchasing additional equipment and/or furnishings, the Vendor shall notify the County, and update the Vendor's above-referenced list.

G. USE

The Vendor, the Vendor's agents, servants, employees, suppliers, and business visitors shall have, at all times during the term of this Agreement, the right of ingress and egress, in order to perform the duties, and obligations noted in this Agreement.

H. INSPECTION

The County shall have access at all times to any Concession Areas for the purposes of inspecting and maintaining the same, or complying with the County's obligations under this Agreement, or for furthering the operations of the County's business at the Amphitheatre.

I. INSURANCE REQUIREMENTS

The Vendor shall indemnify and hold the County harmless against all loss, damage, or expense for reason of injury to person or property arising out of the use of, or activities on, any either the Amphitheatre, or the Concessions Areas by the Vendor, the Vendor's agents, representatives, contractors, subcontractors, or employees. Prior to commencement of service/deliveries under this Agreement, the Vendor's insurance coverage shall comply with the following insurance requirements:

A. Worker's Compensation - to meet statutory limits in compliance with the Workers Compensation Law of Florida. This policy must include Employer Liability with a limit of \$100,000 for each accident, \$500,000 disease policy limit and \$100,000 disease each Employee limit.

B. Commercial General Liability Insurance - coverage shall provide minimum limits of liability of \$500,000. per occurrence, \$1,000,000. Aggregate, for bodily injury and property damage. This shall include coverage for: a) Premises/operations, b) products/complete operations, c) Contractual liability, d) Independent contractors

C. Business Auto Liability - coverage shall provide minimum limits of liability of \$100,000. Per occurrence, \$300,000. Aggregate for bodily injury and property damage. This shall include coverage for: a) Owned Autos, b) Hired Autos c) Non-owned Autos

Special Requirements:

A. Prior to execution of a contract, a certificate of insurance will be provided that shall provide for the following:

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a. The County will be named as additional insured on both the commercial general liability, business auto liability policies.

b. The County will be given thirty (30) days notice prior to cancellation on modification of any stipulated insurance.

B. It is the responsibility of the Vendor to insure that all subcontractors comply with all insurance requirements.

C. It should be remembered that these are minimum requirements which are subject to modification in response to high hazard operations.

In the event of unusual circumstances, the County Administrator, or designee, may adjust these insurance requirements.

Insurance companies providing the required types of insurance coverage for the Vendor must be rated in the current issue of "Best's Insurance Key Rating Guide" at "A" for the policy holder's category and XIII for the financial category to be specifically approved by the County.

INSURANCE CERTIFICATE

A Certificate of Insurance, naming the St. Johns County Board of County Commissioners as an additional insured, will be required from the Vendor at the time of signing of the Agreement. Certificates of Insurance are to be authorized in writing by an officer of the insurance company or companies, identifying their agent and executed by the agent with a copy of the agent's license by the insurance company attached. The Certificate must reflect the required coverages and guarantee the County that at least a 30 day written notice of cancellation or material change in coverages will be given to the County. Certified copies of all policies must accompany the Certificate of Insurance when requested by the County. Also required is the original Certificate of Insurance showing St. Johns County as the Certificate Holder. The ORIGINAL CERTIFICATE OF INSURANCE will be faxed or mailed directly from the Insurance Company. Insurance certificates which are faxed or mailed from the Vendor will not be accepted.

J. LIQUOR LICENSE; POURING RIGHTS

The Vendor shall have in place a valid liquor license issued in the Vendor's name prior to selling alcoholic beverages at the Amphitheatre. The License must be updated yearly with a copy of said License provided to the County Administrator and appropriate County Department Head.

At times, County will prohibit Vendor from selling alcohol at certain special events. These special events may include childrens festivals, church events, and school events. Amphitheatre Management will inform the Vendor prior to said events.

The County retains all Pouring Rights associated with any, and all, events presented/performed at the Amphitheatre. To the extent that the County contracts with another entity with respect to Pouring Rights, then the Vendor shall be expected to use

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that entity's products and services at the Amphitheatre, specifically including the Concessions Areas.

If the County enters into a pouring rights agreement, it will make a good faith effort to avoid contract terms which result in an increase in the average wholesale price paid by the vendor that is significantly above industry standard for the market area.

Nothing in this Agreement prevents the Vendor from purchasing the County's Pouring Rights at the Amphitheatre. In such a case, the purchase price, as well as, all other terms, conditions, and provisions, shall be contained in an Amendment to this Agreement.

K. RUBBISH REMOVAL

For the duration of the Agreement, the Vendor shall be responsible for keeping the Concession Areas in a clean and safe condition. All solid waste, animal waste, yard trash/waste, construction and demolition debris shall be removed and/or disposed of in receptacles approved by the County. The County will supply a limited number of lined trash receptacles. It is the responsibility of the Vendor to empty and reline the trash receptacles.

The Vendor shall not produce, and/or create hazardous waste for the duration of the Agreement, unless authorized in advance, and in writing, by the County.

To the extent that the production and/or creation of hazardous waste is approved by the County (as *hazardous waste* is defined by Federal or State law, rule, or regulation), or hazardous waste is introduced onto the Concession Areas by the Vendor, or by a person/entity not under the control of the Vendor, the County may elect to supervise the removal and/or disposal of the hazardous waste, or contract with another party, in order to remove and dispose of such hazardous waste. In either case, the Vendor shall be responsible for any costs and/or expenses associated with the removal and disposal of such hazardous waste. This provision shall survive any expiration and/or termination of this Agreement.

Failure by the Vendor to maintain the Concessions Areas in a clean and safe condition may result in the County having to expend funds for clean-up and/or repair of the Concessions Areas after the expiration of this Agreement. If such a case occurs, then the Vendor shall re-imburse the County for all costs/expenses associated with the clean-up and/or repair. The Vendor shall re-imburse the County within sixty (60) days of the clean-up and/or repair for all costs/expenses associated with the clean-up and/or repair.

L. UTILITIES

The County agrees to provide the Vendor adequate plumbing for providing hot and cold water to all permanent concession stands. The County shall also supply electric at County's cost for the operation of Vendor areas.

M. PORTABLE STANDS

The County shall supply areas sufficient for Vendor to operate portable bars, food stands, and beer stands necessary for Vendor's operations. The Vendor agrees to break down said portable stands at the conclusion of events.

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N. LICENSES, PERMITS, AND REGULATIONS

The Vendor shall comply with all local, state and federal rules, regulations and laws and obtain all necessary licenses and permits at Vendor's sole expense.

O. GOVERNING LAW AND VENUE

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

P. SEVERABILITY

If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

Q. ACCESS TO RECORDS

The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes).

R. REVIEW OF RECORDS

As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable law, rule, or regulation, the Vendor authorizes the County to examine, review, inspect, and/or audit the books and records, in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this Agreement. It is specifically noted that the Vendor is under no duty to provide access to documentation, not related to this Agreement, and that is otherwise protected by County, State, or Federal law, rule, or regulation.

S. USE OF COUNTY LOGO

Pursuant to, and consistent with, County Ordinance 92-2, and County Administrative Policy 101.3, the Vendor may not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal/Logo without the express written consent of the Board.

T. NO THIRD PARTY BENEFICIARIES

Both the County and the Vendor explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

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U. EFFECT OF FAILURE TO INSIST ON STRICT COMPLIANCE WITH CONDITIONS

The failure of either party to insist upon strict compliance of any term, condition, provision, and/or requirement of this Agreement, shall not be construed as a waiver of such term, condition, provision, and/or requirement on any subsequent occasion.

V. ABSENCE OF DURESS

Both the County and the Vendor enter into, and execute, this Agreement, free from any duress, or any other illegal form of enticement.

W. PROCEDURE FOR ACHIEVING ASSIGNMENT; EFFECT OF NOT FOLLOWING PROCEDURE

In light of the scope and rationale for this Agreement, neither the County, nor the Vendor may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party. Should either the County, or the Vendor assign, transfer, and/or sell any of the rights of this Agreement, without such prior written approval of the other party, then such action on the part of either the County or the Vendor, shall result in the automatic termination of this Agreement, without further notice or required on the part of the other party.

X. TERMINATION OF AGREEMENT

Either the County or the Vendor may terminate this Agreement with, or without cause, under the following conditions:

Without Cause: The County or the Vendor provide at least one hundred eighty (180) days advance written notice to the other party, setting forth the County or the Vendor's intention to terminate this Agreement on a specific date. No reason need be given with respect to termination without cause.

With Cause: The County or the Vendor provide at least sixty (60) days advance written notice to the other party, setting forth County or the Vendor's intention to terminate this Agreement on a specific date. Termination for cause requires the party seeking termination to set forth the specific reason or reasons which give rise to the termination. Though not exhaustive, termination for cause may be based on one or more of the following reasons: 1) repeated breach of one or more terms of this Agreement that negatively impact on the relation between the County and the Vendor; 2) failure to timely pay (within forty-five (45) days of due date) any rents, charges, fees, commissions, or other monies due under this Agreement; 3) involuntary insolvency or bankruptcy; 4) failure to secure, and maintain, any required permits and/or licenses; 5) failure to comply with, and/or adhere to, any applicable law, rule, or regulation; 6) failure to maintain any required insurance; 7) refusal to timely provide (within fifteen (15) days) any requested public records; 8) refusal to allow access to books and records of the Vendor; or 9) any other material breach or violation of this Agreement.

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In circumstances where the offending party corrects the violation, and/or cures the breach within thirty (30) days, the non-offending party may rescind the non-offending party's notice of termination with cause.

Automatic Termination occurs under the circumstances noted elsewhere in this Agreement.

Y. NOTICES

All Official Notices to the County shall be delivered either by hand (receipt of delivery required), or by certified mail to:

County Administrator
4020 Lewis Speedway
St. Augustine, Florida 32084

With a copy to:

County Purchasing Director
2446 Dobbs Road
St. Augustine, Florida 32086

All Official Notices to the Vendor shall be delivered either by hand (receipt of delivery required), or by certified mail to:

Professional Concessions, Inc.
9067 Southern Boulevard
West Palm Beach, Florida 33411

All other correspondence, not classified as Official Notices, may be delivered, disseminated, and/or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing, or text messaging.

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DOB

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date noted below.

**ST. JOHNS COUNTY BOARD OF
COUNTY COMMISSIONERS—BY
AND BEHALF, OF ST. JOHNS COUNTY,
FLORIDA**

BY *Joe Burk*

DATE 9-30-08

**ATTEST:
CHERYL STRICKLAND
CLERK OF COURT**

BY _____
Deputy Clerk

PROFESSIONAL CONCESSIONS, INC.

BY *Am Am*

WITNESS

BY *Richard D. Ray*

DATE 9-30-08

DATE 9-30-08

WITNESS

BY *Jennifer Keltz*

DATE 9-30-08