

Exhibit “A”

AGREEMENT

By and Between

The Township of West Orange, a New Jersey Municipal Corporation, whose address is 66 Main Street, West Orange, New Jersey (the “Township”),

and

F&B Fine Catering, a New Jersey corporation, whose address is 23 Willet St, Bloomfield, NJ 07003 (the “Vendor”):

The above Parties hereby agree to the following terms and conditions:

1. Use of Concession Stand

Vendor shall operate the Concession Stand at the Ginny Duenkel Pool, located at 60 ½ Cherry Street in the Township (the “Concession Stand”), during the 2021 pool season.

2. Term

The Agreement shall commence on May 29, 2021 and expire on September 20, 2021.

The Vendor shall remove, at its sole expense and by no later than September 30, 2021, all equipment, food goods, and miscellaneous merchandise. The Township shall not be responsible for any of Vendor’s equipment or supplies.

3. Price

Vendor shall pay to the Township the sum of \$0.00 for its use of the Concession Stand during the 2021 season.

4. Security Deposit

Vendor shall furnish a security deposit to the Township in the amount of \$1,500 (the “Security Deposit”). The Security Deposit will be held in escrow by the Township and returned at the satisfactory completion of the Agreement. The full amount of the Security Deposit will be surrendered in the event of any default under the terms or obligations hereunder. In the Township’s sole discretion, the Township may deduct from or require surrender of the deposit for the cost of repairs for any damage caused by Vendor to the Concession Stand. The Security Deposit shall not be released until such clean up is approved and signed off for by the Township’s Health Officer or his/her designee.

5. Weekly Reports

Vendor shall supply to the Director of Recreation a weekly report of earnings from the snack bar. The week shall run from Saturday through Friday and the reports will be provided no later than Wednesday of the following week.

6. Non Assignment

Vendor shall not assign or sublet this Agreement, or any part of its obligations hereunder, without the prior written consent of the Township's Director of Recreation.

7. Equipment

Vendor shall provide all necessary equipment, vehicles and labor necessary for the installation and removal of concession equipment, food and miscellaneous merchandise and to ensure compliance with all health regulations.

The Township will provide a refrigerator, freezer, grill, ice machine, service tables and deep fryer ("Township Items"). All other items must be provided by Vendor.

The Township does not warrant the Township Items as to their operability. All items are "AS IS/WHERE IS." Vendor represents that it has had sufficient opportunity to fully inspect the machinery and equipment and they are satisfactory for Concession Stand operation.

In the event that any of the Township Items become inoperable during the term of this Agreement, Vendor shall inform the Township's Purchasing Agent in writing immediately either by email to preynolds@westorange.org or fax at (973) 736-8380. In such event, the Township shall take all appropriate and reasonable steps to repair same, but in any event, Vendor shall continue to operate the Concession Stand during all hours of operation and will have no right of setoff or deduction under any circumstances concerning the contractual price set forth in Paragraph 3.

Further, Vendor shall be responsible for ensuring that all Township Items and property are used in accordance with normal operations and are not negligently used in any manner so as to cause breakage, disrepair, damage, or injury. In the event of any such breakage, disrepair or damage, Vendor shall be fully responsible for all costs and expenses which shall be paid by Vendor or reimbursed to the Township, whichever is applicable, within forty-eight (48) hours of presentment. If such expenses are not promptly paid, such act or omission will constitute an event of default hereunder.

8. Utilities

Refuse collection, gas, lighting and water service will be furnished by the Township. Vendor shall be responsible for the daily disposal of refuse in and around the Concession Stand and dining deck area. Vendor shall be responsible for the proper disposal of used cooking oil.

9. Health Regulations

Vendor shall be responsible for, and subject to, all applicable health regulations. This shall include a permit or license for operating a retail food handling establishment and/or snack bar.

Vendor shall be required to keep the area in and around the concession stand and dining deck clean of litter resulting from his operation. Vendor shall:

- (a) Wash counters daily before opening and as needed during operation.
- (b) Wash floors completely at least one hour before opening each day.
- (c) Clean snack bar area daily before opening and as needed during operation
- (d) Wash down the dining deck area daily at the close of the business day.
- (e) Remove all gum from the dining deck area.
- (f) Wash and clean tables in the dining deck area as needed.
- (g) Supply all necessary plastic bag inserts for garbage containers in the Concession Stand and dining deck area.
- (h) Ensure Concession Stand employees wear proper attire approved by the Township's Health Department.

Vendor and all of Vendor's employees shall be or become certified food handlers by attending the Food Handlers Training Course offered by the Township. Vendor shall be responsible for the initial cleaning of the Concession Stand prior to bringing in food. Vendor shall maintain the Concession Stand in a sanitary manner at all times during its operation. Vendor shall regularly clean all equipment, interior, and exterior surfaces and, at the conclusion of its seasonal service, provide a final clean up of the entire facility that is approved by the Health Department during their close-out inspection.

Vendor's operation shall be subject to inspection by the Township's Health Department, and shall maintain a Satisfactory Rating at all times.

In the event that Vendor does not comply with the standards set forth in this Section, its approval to operate may be revoked by the Township's Health Officer, therefore nullifying this Agreement and immediately forfeiting all monies paid including the Security Deposit posted. A Satisfactory Rating must also be maintained at Vendor's licensed catering or restaurant operation, which shall be verifiable through the Health Officer in that jurisdiction.

10. Menu/Product List

Vendor may sell edible items and assorted sundries only. Written notice shall be made to the Director of the Township's Recreation Department containing the menu and sundry list with prices with which Vendor shall open the season no later than two (2) weeks prior to opening. The original menu, sundry list and prices, and any changes thereafter, must be approved by the Director of Recreation.

11. Labor Market Conditions

Vendor shall be responsible for any and all labor and other market conditions and changes which may affect Vendor's working expenses and potential profits during the term of the contract including but not limited to all food costs. Vendor shall absorb any and all increases in the cost of raw materials.

12. Adult Supervision of Premises

Vendor shall be responsible for limiting occupation of the snack bar only to employees who are licensed approved food handlers. No later than two (2) weeks prior to commencement of operations, Vendor shall provide the Township's Director of Recreation with a legible list of names, addresses, telephone numbers, ages and social security numbers of all employees hired to meet the obligations of this Agreement no later than two (2) weeks prior to opening.

The above referenced employee information with respect to any new hires made during the pool season must be provided to the Township's Recreation Director prior to the start date of the proposed new employees.

Vendor shall have on the premises at all times during hours of snack bar operation at least one employee, 21 years of age or older, who shall be responsible for supervising all other employees.

Violation of the conditions set forth in this section will result in forfeiture of the \$1,500 Security Deposit.

13. Hours of Business and Delivery Restriction

The Concession Stand's hours of operation shall follow the standard pool hours, unless mutually agreed upon by vendor and Recreation Director or his/her designee. During normal hours of operation, food deliveries to pool patrons or employees shall not be permitted in the pool area or on pool grounds. **Deliveries to Vendor shall not be permitted after 11:00 am on any day of the week.**

14. Special Events

Special events which may occur during or after the normal operating hours are determined by the Township's Director of Recreation, and the Concession Stand may operate during special events with the permission of the Township's Director of Recreation. Food for special events or parties sponsored by the Township's Department of Recreation may also be brought on site or catered, as will be determined in advance by the Director of Recreation in his or her sole discretion. The Recreation Department sponsored Swim Team has authorization to sell food and promotional materials during their anticipated 3-4 weekday evening home meets per season.

15. Utilization of Pool Facilities

Neither Vendor or its employees may utilize the swimming pool unless they are a member in good standing of the Ginny Duenkel Municipal Pool. Violation of this condition will result in forfeiture of the \$1,500.00 Security Deposit.

16. Indemnification

Vendor expressly covenants and agrees to defend, indemnify and save harmless the Township, its agents, elected officials, and employees against and from any and all liabilities,

obligations, damages, penalties, fines, claims, costs, liens, charges and expenses of any kind including but not limited to attorney's fees, which may be asserted by third persons against the Township or its agents, elected officials, or employees by reason of or in connection with any one or all of the following:

- a. the activities of Vendor, its agents, employees, contractors, licensees or invitees;
- b. any negligent or otherwise wrongful act or omission on the part of Vendor or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees;
- c. any violation by Vendor of any provision of any local, state, or federal law or regulation.

17. Insurance

Vendor shall maintain a valid certificate of general liability insurance, inclusive of coverage for Products Liability and Completed Operations Liability, which names the Township as an additional insured, the policy for which shall have not less than a combined single limit of \$1,000,000. The certificate of insurance shall be provided to the Township's Purchasing Agent and Municipal Clerk by no later than June 1st.

18. Compliance with Laws and Regulations

Vendor shall comply with and adhere to all laws and regulations while using the Concession Stand.

19. No Representations

Neither Party has made any representations or promises, other than those contained in this Agreement or in some further writing signed by the Party making the representation or promise.

20. Waiver of Jury Trial

To the extent that waiver is permitted by law, the Parties waive trial by jury in any action or proceeding brought in connection with this Agreement.

21. Choice of Law

This Agreement shall be governed by the laws of the State of New Jersey.

22. Choice of Venue

Venue for the adjudication of any disputes arising from or in relation to this Agreement shall lie exclusively in the Superior Court of New Jersey, Essex Vicinage.

23. Captions

The captions set forth in this Agreement are included for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

24. Severability

If any provision of this Agreement is declared by any Court or tribunal of competent jurisdiction to be illegal, void or unenforceable as written, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

25. Ambiguity

The Parties further stipulate and agree that they have each had an opportunity to participate in the negotiation and drafting of this Agreement, and that any ambiguity in this Agreement will not be construed for or against either Party.

26. Access to Legal Counsel

The Parties further stipulate and agree that they each have had the opportunity to consult with legal counsel of their choosing prior to entering into this Agreement, and that neither Party has relied upon any statement, representation or advice by the other Party's counsel.

27. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

28. Amendments

This Agreement may only be amended in writing, pursuant to an instrument executed by the Parties.

29. Notice

Notices and other communications provided herein shall be in writing and shall be deemed given only if delivered by registered or certified mail (return receipt requested) with postage and registration or certification fees thereon paid, or by any nationally recognized overnight courier, addressed to the Party at its address set forth below:

If to the Township:

Municipal Clerk
Township of West Orange
66 Main Street
West Orange, NJ 07052
Phone: (973) 325-4155
Fax: (973) 731-1196
E-Mail: kcarnevale@westorange.org

Richard D. Trenk, Esq.
Trenk Isabel
290 W. Mount Pleasant Ave
Building 3, Suite 2350
Livingston, NJ 07039
Phone: (973) 533-1000
E-mail: rrenk@trenkisabel.law

If to Vendor:

Robert Gaeta
F&B Fine Catering
23 Willet St
Bloomfield, NJ
Phone: (973) 743-0910
E-Mail: fbcater@aol.com

30. Termination

In the event that Vendor fails or neglects to perform any of the conditions or covenants set forth herein during the term of this Agreement, the Township may immediately terminate this Agreement through delivery, via personal service, registered mail, or overnight courier, of written notice of termination, at which time all rights, privileges or interest in the Agreement shall cease, and Vendor shall be liable to the Township for any damages or loss sustained by it, including but not limited to reasonable attorneys' fees in the event any legal action is necessary, as a result of the default of Vendor.

The foregoing terms and conditions are agreed to and stipulated by:

WITNESS:

F&B FINE CATERING

Dated:

By:

Robert Gaeta

Title:

WITNESS:

TOWNSHIP OF WEST ORANGE

Dated:

By:

Robert D. Parisi, Mayor