

THE STATE OF TEXAS §

COUNTY OF ECTOR §

This Agreement is made and entered into this 20th day of May, 2014 by and between the Board of Trustees of ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT of Odessa, Texas (hereinafter called District) and the Downtown Lions Club of Odessa, a service club operating under Charter from the Lions International and acting through its duly elected President and Secretary of Odessa, Texas, (hereinafter called Concessionaire), witnesseth:

1. Subject to the terms of this Agreement, the District hereby grants and leases to said Concessionaire the exclusive right and privilege of operating the concession stands located at Ratliff Stadium in Odessa, Texas as well as the concession stands located at the softball and soccer complex located at the Ratliff Stadium complex in Odessa, Texas, for the sole purpose of selling food items and soft drinks all upon the terms and conditions herein contained and the general conditions attached hereto marked "Exhibit A" and incorporated herein for all purpose as part of this agreement.

2. The Concessionaire agrees as consideration for the execution of this contract to pay the District an annual sum in cash equal to eight percent (8%) of sales per year, payable within fifteen (15) days after the end of each calendar month, and mailed to the Chief Financial Officer, P.O. Box 3912, Odessa, Texas 79760. All sales to ECISD will be at 35% discount and the amount to be excluded from the 8% concession fee.

3. The term of this agreement shall be for a period of three (3) years beginning August 1, 2014, and ending July 31, 2017.

4. It is understood and agreed that there is included in this Agreement the right of the Concessionaire to use only the equipment of the District which is permanently

installed, i.e., the shelves and sinks. It is understood and agreed that this equipment is the property of the District, with the Concessionaire having the right of use thereof while it is not in default under the terms and provisions hereof. The Concessionaire shall have the right and responsibility to furnish additional equipment and property, all subject to the approval of the District, and Concessionaire agrees to furnish and place such equipment and complete any necessary installations and be ready to operate fully not later than one day prior to the first game in each year hereunder. The Concessionaire shall retain title to and control of the equipment and personal property which it furnishes. Concessionaire shall obtain consent and approval of District for all equipment to be furnished, and Concessionaire agrees that it will at no time overload or tax the electrical system or service to the concession stands. Concessionaire shall furnish, install and maintain its equipment, property and facilities which normally are installed for use shall be installed in a good and workmanlike manner, with no damage or injury being done to the concession stands or to other property of the District. Upon termination of this Agreement for any cause, the Concessionaire agrees to remove all of its equipment, property and facilities from the concession stands, and further agrees to restore the property of the District to its original condition as same was when this Agreement was executed, reasonable wear and tear only excepted.

5. It is agreed and understood that this Concession Agreement does not include or cover program rights, cushion rights, novelty rights, parking rights, radio rights, telephone rights, television rights, or any other rights not stated under paragraph 1 above and the same are excluded therefrom and reserved as the sole and exclusive property of the District.

6. The Concessionaire agrees to collect all Federal, State and local excise,

sales and use taxes and all other taxes and assessments which may be imposed upon the operation of its business by Governmental Authority having jurisdiction, and Concessionaire agrees to remain solely liable and responsible therefore. The Concessionaire agrees to pay promptly at its expense all occupation licenses, permits, personal property and other taxes or assessment which may accrue to the operation of the Concessionaire's business hereunder.

7. The District reserves the right to place vending machines at the Ratliff Stadium and the Ratliff Stadium complex at locations to be determined in the sole discretion of the District. These vending machines shall not be operational and available to the public at any time during which Concessionaire is providing services under this Agreement. The Concessionaire shall be obligated to open and operate the concessions covered hereby for all regular season high school football games, district and regional track meets, West Texas Relays, NJCAA national track meet, and any other event deemed necessary by the mutual agreement of the Executive Director of Athletics and the Concessionaire. It is expressly understood between the parties that the Kiwanis Club "Kids Day" together with special program use of the stadium wherein the stadium is rented from the District and the producer or lessee handles the concession are not included in this Agreement. The District reserves the right to lease the stadium to include the softball and soccer complex for special program use and purposes as may be approved by the Board of Trustees of the District. Concessionaire will have first right of refusal to operate the concessions during these special use programs. The Concessionaire shall have the right (but not the obligation) to open and operate the concession stands under this Agreement for all softball and soccer games that shall be played during the regular season. The Concessionaire shall notify the District at least 24 hours prior to an event of their intent not

to operate the concession stands under this Agreement for said event. The District may operate its vending machines at any time during which Concessionaire is not operating and the District is entitled to all proceeds of said machines.

8. The Concessionaire recognizes and agrees that he is an independent contractor under the terms of this Agreement with exclusive control and management of its operations, agents and employees. Concessionaire agrees that he will carry adequate Workman's Compensation, Public Liability and Property Damage Insurance including products liability, poisoning or illness from food and drink coverage in a minimum of \$100,000.00 for each person and \$300,000.00 for each single occurrence in companies acceptable to the District, and Concessionaire agrees to mail certificates of insurance evidencing such coverage with the Chief Financial Officer, P.O. Box 3912, Odessa, Texas 79760, of the Ector County Independent School District at the beginning of each school year (August 1). Concessionaire agrees to indemnify and hold harmless the District from all damages, claims and causes of action arising as a result of Concessionaire's operations hereunder.

9. The Concessionaire agrees to keep and maintain adequate books and records of his business transactions hereunder which books and records will be available at all reasonable times to the District or its duly authorized representatives for the purpose of auditing and examining same. Concessionaire agrees to furnish to the Chief Financial Officer, Ector County Independent School District, on or before the twentieth day of each succeeding month a monthly statement covering the previous month's operation reflecting Concessionaire's gross purchases and sales. It being understood that failure of Concessionaire to keep and maintain such books and records or to make them available to District as above specified shall constitute just cause for the termination of the Agreement

by the District upon written notice as provided herein.

10. This contract and agreement and all rights thereunder shall not be transferable or assignable by Concessionaire without the prior written consent and approval of the District. In the event Concessionaire sells or leases his equipment to successor concessionaire, the District reserves the right to approve such sale or lease.

11. It is understood and agreed that the Chief Financial Officer, Ector County Independent School District, shall be for the purposes of this Contract the representative of the Board of Trustees of District. All questions, matters, problems and disputes shall be negotiated between the Chief Financial Officer and the Concessionaire with the advice of the Executive Director of Athletics. In the event of a disagreement arising between such parties concerning any provisions of this Agreement, then either party shall have the right to present such disagreement to the Board of Trustees. It is understood and agreed that the decision of such Board of Trustees shall be final and binding upon all parties hereto.

12. In the event the Concessionaire fails to comply with any terms and provisions of this Agreement or defaults in his performance thereunder, the Board of Trustees of District shall have the right to terminate this Agreement by giving written notice of such termination to Concessionaire at least seven (7) days prior to termination date.

13. This agreement may be extended for an additional three (3) years period with the consent of both parties.

Executed at Odessa, Texas, in duplicate the day and year first above written.

On Behalf of the BOARD OF TRUSTEES, Ector County Independent School District

\_\_\_\_\_ Date \_\_\_\_\_  
By: David Harwell,  
Chief Financial Officer

DOWNTOWN LIONS CLUB OF ODESSA

\_\_\_\_\_ Date \_\_\_\_\_  
By: Morris Shaw,  
Third Vice President

## EXHIBIT 'A'

### General Conditions

- A. The Concessionaire will be permitted to sell items in the concession stand area under the stands and in the aisles in the stands. The Concessionaire will be required to make all service in paper cups or plastic of non-hazardous type in order to eliminate the hazard of broken glass in and around the stadium area. The use of glass bottles is prohibited. The Concessionaire shall not permit the removal of goods in glass bottles by customers from the place of sale. Concessionaire and the Executive Director of Athletics may mutually agree to sell plastic bottles from trailers as the need arises.
- B. Only food and beverages sold by the Concessionaire will be allowed in the stadium. However, "tail gaiting" is allowed in the parking lot adjacent to the fence.
- C. The Concessionaire will require his employees to maintain neat and clean appearances and wear distinctive jackets or uniforms while performing their duties in the operation of the concessions. The Concessionaire will be required to obey all applicable labor laws.
- D. The Concessionaire will practice good housekeeping and at his own expense continuously keep clean and sanitary the concession stands he utilizes. The Concessionaire will obey all health and sanitary laws and regulations of the United States, State of Texas, Ector County, and the City of Odessa. The premises shall be kept free of all offensive smoke, odors, etc. After each performance, the Concessionaire shall promptly clean the premises he uses and shall store all property he utilizes in his operation.
- E. The Concessionaire shall offer customers a reasonable selection of food and soft drinks of standard quality and quantity at reasonable prices. The prices charged shall not be in excess of those charged in West Texas under similar circumstances.
- F. The Concessionaire agrees to sell ECISD all food and soft drinks at 65% the usual prices as set out in paragraph D. All other sales will be at regular prices. Authorization to charge ECISD for any food or soft drinks will be at the sole discretion of the Executive Director of Athletics. These charges will be for "bulk" purchases only and by those authorized by the Executive Director of Athletics, P.O. Box 3912, Odessa, TX 79760, for payment.
- G. The Concessionaire will be limited to and shall not exceed electrical service demand of 150 amperes load in each of the concession stands at Ratliff Stadium.