

THE STATE OF TEXAS §
 §
COUNTY OF ECTOR §

CONCESSIONAIRE'S AGREEMENT

This Agreement is made and entered into on this 1st day of August, 2020 by and between the BOARD OF TRUSTEES of the 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 Elected President and Secretary of Odessa, Texas (hereinafter called Concessionaire") witnessed:

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 Sports Complex in Odessa, Texas, including the concession stands located at the softball and soccer complex located at the Ratliff Sports 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 purposes 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. Said payment, along with the monthly financial statement (referred to in paragraph 9 of this Agreement), shall be mailed to the District's Chief Financial Officer, P.O. Box 3912, Odessa, Texas 79760. All sales to the District will be at a thirty-five percent (35%) discount and the amount to be excluded from the eight percent (8%) concession fee. The Concessionaire may have a separate agreement with the University of Texas Permian Basin ("UTPB") for concessions during certain of its activities. The District shall continue to receive its eight percent (8%) sales for any UTPB event.

3. The term of this Agreement shall be for a period of three (3) years beginning August 1, 2020 and ending July 31, 2023.
4. It is understood and agreed that there is included in the 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 duly 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 the consent and approval of the 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 is installed for use, 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 properly and facilities from the concession stand and further agrees to restore the property of the District to its original condition as same was when the 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 right 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 assessments which may accrue due to the operation of the Concessionaire's business hereunder.
7. The District reserves the right to place vending machines at the Ratliff Sports 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 hereinat 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 the 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 twenty-four (24) hours prior to an event of Concessionaire's 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 Concessionaire is an independent contractor under the terms of this Agreement with exclusive control and management of its operations, agents, and employees. Concessionaire agrees that Concessionaire 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 amount of \$100,000 for each person and \$300,000 for each single occurrence in companies acceptable to the District, and Concessionaire agrees to mail certificates of insurance evidencing such coverage to the District's Chief Financial Officer, P.O. Box 3912, Odessa, Texas 79760 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 Concessionaire's 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 District's Chief Financial Officer, on or before the fifteenth (15th) day of each succeeding month, a statement covering the previous month's operation reflecting Concessionaire's gross purchases and sales. It is understood that failure of Concessionaire to keep and maintain such books and records or to make them available to the District as specified above 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 Concessionaire's equipment to a successor concessionaire, the District reserves the right to approve such sale or lease.

11. It is understood and agreed that the Chief Financial Officer of the Ector County Independent School District shall be, for the purposes of this Contract, the representative of the Board of Trustees of the 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 a disagreement arises 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 Concessionaire's performance thereunder, the Board of Trustees of the District shall have the right to terminate this Agreement by giving written notice of such termination to the Concessionaire at least seven (7) days prior to the termination date.
13. This Agreement may be extended for an additional three (3) year period with the consent of both parties.

SIGNED the 13th day of August, 2020.

Board of Trustees of the
Ector County Independent School District

Downtown Lions Club of Odessa

By: _____

By: Verna M. Callum

Name: _____

Name: Verna M. Callum

Title: _____

Title: 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 Concessionaire's 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 Concessionaire's own expense and continuously keep clean and sanitary the concession stands Concessionaire 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 Concessionaire uses and shall store all property Concessionaire utilizes in Concessionaire's operation.
- E. The Concessionaire shall offer customers a reasonable selection of food and soft drinks of standard quality and quantity at reasonable prices. The price charged shall not be in excess of those charged in West Texas under similar circumstances.
- F. The Concessionaire agrees to sell the District all food and soft drinks at sixty-five percent (65%) the usual prices as set out in paragraph D. All other sales will be at regular prices. Authorization to charge the District 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 for those authorized by the Executive Director of Athletics, P.O. Box 3912, Odessa, Texas 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 Sports Complex.