

CONCESSION FACILITY OPERATION AGREEMENT 2022

THIS AGREEMENT, made and entered as of the date subscribed below, by and between the Mitchell Parks and Recreation Board of the City of Mitchell, hereafter “City”, and the Mitchell Skating and Hockey Association, hereafter “Concession Operator”; and

WHEREAS this Agreement shall relate to the operation of one (1) Concession Facility, as further described below, by the Concession Operator.

THEREFORE, upon the consideration of the mutual covenants and obligations hereafter stated, the parties hereby agree as follows:

A. The City agrees to:

1. Permit the Concession Operator to operate one (1) Concession Facility located at the Mitchell Activity Center for the 2022 season (9/21/2022-04/30/2023), hereafter “Term”.
2. To furnish a detailed list of scheduled games and tournaments to Concession Operator.
3. To work in cooperation with the Concession Operator in updating the schedule, making every effort to provide two (2) days’ notice of all schedule changes.
4. Provide the garbage receptacles on the premises for containing all waste and refuse materials as a result of said concession operation.
5. Dispose of all refuse in containers as provided by the Parks and Recreation Department.

B. Concession Operator agrees to:

1. Operate the above-described concession stand and sell pop, candy, and related merchandise and to retain personally all profits therefrom; provided, however, that all prices charged shall be subject to approval of the Parks and Recreation Board. The City hereby authorizes Concession Operator to use the appropriate Concession Facility to provide the services stemming from this Agreement for the entire Term. The City reserves the right to withdraw such authorization during the Term if necessary to protect the Concession Facility or its visitors.
 - a. Concessions Facility as used herein means the building, utility systems, fixtures, equipment, and other improvements assigned hereunder and constructed or acquired by the City and provided by the City for the purpose of this lease.
 - b. The City shall have a right to enter all facilities utilized by the Concession Operator to ensure the proper administration of the terms of this agreement and other purposes the City deems necessary, so long as the same does not substantially interfere with Concession Operator’s operations, and for emergency purposes. Such entry shall not be deemed an eviction.
2. Pay the City \$330.00, included in the second half of hockey season billing.

3. Pay all bills incurred in connection with the operation of said Concession Facility.
4. Indemnify and hold harmless the City of Mitchell from any and all claims of any kind whatsoever arising from or in connection with the Concession Operator's operation of said Concession Facility.
5. Obtain, and maintain throughout the Term, liability insurance satisfactory to the City, and provide a copy to the Park and Recreation Department.
 - a. Comprehensive general liability insurance, including products, bodily injury and property damage with combined single limits of \$1,000,000 for each occurrence.
6. Keep the Concession Facility and the surrounding area in a clean and reasonable tidy condition. Concession Operator shall have the continuing duty to perform cleanup of this area as needed, at the discretion of the Sports Complex Manager, but in no event less often than once per day.
7. Provide building maintenance as further described below:
 - a. Concession Operator, at its sole expense, will physically maintain and repair all facilities used by Concession Operator pursuant to this Agreement and conduct all necessary housekeeping activities associated with such operations to the satisfaction of the City.
 - b. The Concession Operator, with the written approval of the City, may construct or install facility upgrades necessary for the operations arising out of this Agreement and any improvement constructed by Concession Operator which is attached to the realty shall become part of said realty and be deemed the sole property of the City.
 - c. If during the term hereof, a Concession Facility requires major repairs and/or improvements, which costs exceed \$500 per incident, said costs will be paid for by the City, as determined by the City.
 - d. If the Concession Facility is damaged through the negligence of the Concession Operator or its customers, it will be the responsibility of the Concession Operator to make necessary repairs, at its sole expense, to the satisfaction of the City.
8. Provide and maintain appliances necessary for a commercial food service operation.
9. Use the premises solely for the purpose of operating said concession.
10. Never transfer or assign this Agreement or any part hereof except with the express written consent of the Parks and Recreation Board. Should the Concession Operator desire to assign this agreement before its expiration date, it may do so according to the Sports Complex Policy and only to an assignee acceptable to the City who shall agree to be bound by the terms of this

Agreement and said assignment shall be for a consideration not to exceed the amount as described in this Agreement.

11. Keep said Concession Facility open for business during league play and tournaments as scheduled by the Parks and Recreation Department Staff. Hours of operation shall include one-half hour before scheduled start of games.
 12. Observe and comply with all State and Federal laws and City Ordinances applying to the operation of said concession stands. Food handler requirements must be met.
 13. Ensure that any pop machine or other vending equipment is located in a safe and accessible site subject to approval by the City, and to accept all responsibility associated with said machine.
 14. All concession utilities shall be at the expense of the Concession Operator if meters are present. It is the responsibility of the Concession Operator to activate such utilities necessary to conduct the operations of the concession stand.
 15. The Concession Operator shall meet with the Sports Complex Manager prior to each season to discuss the previous season and goals for the upcoming season. The Concession Operator will file an annual accounting statement of gross receipts and expenses and a profit or loss statement. These records shall be provided to the City no later than March 15th of the following year. The City shall have the right to examine any of Concession Operator's books, records, documents, and papers related to this Agreement, including State and Federal income tax records.
- C. Concession Operator shall be subject to any exclusive product supplier agreements to which the City is a party. If no such agreement is in effect at the start of the Term, Concession Operator may utilize whichever product supplier it deems appropriate during that Term only. In either event, Concession Operator shall maintain its right to retain all profits from sales. At the time of entering this agreement, the City currently has an exclusive product agreement relating to: Beverage products: Operator shall only sell, dispense, or otherwise make available Pepsi-Cola products.
- D. Notwithstanding any other provision to the contrary, it is further agreed by the parties that the City reserves the right to cancel or terminate this Agreement upon notice to the Concession Operator, with no liability to the City, upon the determination by the City that the performance by the Concessions Operator is unsatisfactory to the City, which determination shall be at the sole discretion of the City to be exercised in good faith.

IN WITNESS WHEREOF, the parties, being duly authorized, affixed their signatures this _____ day of _____, 2022.

Mitchell Parks and Recreation

By: _____
Board President

Concession Operator (Print)

By: _____

Its: _____