

Concession Agreement

AGREEMENT

This Agreement is entered into by the CITY OF MIDWEST CITY and (Name, Address, Phone)

Ronald S Kolander (405) 623-4969  
306 Pinetree Rd Chectaw, OK 73020

(hereinafter referred to as Concessionaire) whereby, for and in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. City of Midwest City Midwest City shall provide one (1) site for the operation of a retail concession facility to be located in Reed Ball Park, 2601 S. Post Road, and Doug Hunt Complex, 8700 E. Reno Avenue, Midwest City, Oklahoma. Concessionaire shall furnish the building and all other improvements required all of which must be approved by the City.
2. Concessionaire shall operate the concession facility for the term of this agreement, provided Concessionaire faithfully complies with all terms hereof.
3. Concessionaire accepts the location in "as is" condition and containing whatever appurtenances that may be contained therein or thereon. City makes no warranty of any kind as to fitness for intended use of the location or appurtenances.
4. Concessionaire shall operate the concession facility in Reed Ball Park and Doug Hunt Complex during the dates specified in concessionaire's bid or as otherwise modified by agreement of both parties.
5. Concessionaire agrees to have the concession facility operational and ready for retail business. Any variance from this requirement shall be effected only after approval thereof by City.
6. Concessionaire shall maintain the highest practicable standards of sanitation and shall meet or exceed all applicable federal, state, and local standards governing food handlers. All necessary permits and/or licenses to engage in the concession business shall be acquired and maintained by Concessionaire at all times during the term of this Agreement.
7. Concessionaire is responsible for the cleanliness and sanitation of all surrounding areas adjacent to the concession facility.
8. Concessionaire will be limited to equipment (i.e. pump style chili and cheese sauce to minimize dishwashing of grease containers) that produces minimal grease. Concessionaire will be responsible for the proper care, cleaning, and maintenance of the grease traps located within the Premises. Concessionaire agrees to reimburse the City of Midwest City for the prorated share of the cost of cleaning and maintaining any of the grease traps on the premises.
9. Concessionaire is solely responsible for the purchase and maintenance of a sufficient inventory of products to serve the patrons of Reed Ball Park and Doug Hunt Complex.

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Concessionaire agrees to be bound by such decision. Additional products may be added to Concessionaire's inventory with the prior written approval of City of Midwest City as to item and price.

11. City shall have the right to inspect Concessionaire's facilities and operation at any time and as often as is necessary in the City's judgment. If, as the result of such inspection, any unacceptable conditions, not involving life safety issues, are found the City of Midwest City shall give Concessionaire thirty-six (36) hours notification in writing, within which time it shall be Concessionaire's duty to effect the required corrections. Upon Concessionaire's failure to make such corrections, City shall have the option, at its discretion, of either (a) making the corrections itself with reimbursement to be made by Concessionaire or (b) immediately terminating this Agreement.
12. Concessionaire shall neither stock nor sell any alcoholic beverages of any description, to include beer and liquor. No alcoholic beverages, including beer and liquor, shall be permitted on the premises by Concessionaire, regardless of the means by which it reached said premises. No glass containers can be utilized.
13. Concessionaire shall be wholly and solely responsible for Concessionaire's agents, servants, and employees, and shall furnish such Workers Compensation, Unemployment and other insurance coverage as may be required by applicable law. Concessionaire hereby expressly agrees to indemnify and hold City harmless against any claims of any nature whatsoever which may arise out of Concessionaire's operation or management of the concession facility or the conduct of Concessionaire or his agents, servants, and employees. This Agreement shall have no force or effect until such time as Concessionaire shall furnish to City certificates of insurance in no less than the statutory amounts. City shall be shown as an additional insured on the certificates.

The parties hereby acknowledge and covenant that:

A. The Concessionaire is an independent contractor and will act exclusively as an independent contractor and is not an agent or employee of the City in performing the duties in this Agreement. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship. All payments to the Concessionaire pursuant to this Agreement shall be due and payable in the State of Oklahoma, even if services of the Concessionaire are performed outside the State of Oklahoma.

B. The City shall not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to the Concessionaire as the Concessionaire is an independent contractor and the employees and/or agents of the Concessionaire, assigned to work are not employees of the City. Any such taxes, if due, are the responsibility of the Concessionaire and will not be charged to the City.

C. The Concessionaire acknowledges that as an independent contractor it and the Concessionaire's employees and/or agents, assigned to work are not eligible to participate in any health, welfare or retirement benefit programs provided by the City or its employees.

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14. Concessionaire shall furnish whatever uniforms, tools or equipment that may be required by Concessionaire or Concessionaire's agents, servants or employees.
15. Concessionaire shall have full and complete control over the operation of the concession facility, subject only to the obligations of this Agreement and applicable law. The Concessionaire shall obtain and maintain all required state and local permits and/or licenses.
16. On the first of each month by 4:00 p.m. Concessionaire shall pay over and deliver to the City of Midwest City Parks and Recreation Department \$ 5.00 (monthly rent) and % 35 (percentage of sales). Failure of Concessionaire to so compensate City shall result in immediate termination of this Agreement without discharging Concessionaire's liability for the unpaid monies.
17. Concessionaire shall procure and maintain a good and sufficient liability insurance policy in an amount not less than \$100,000.00 per claim and \$500,000.00 per occurrence covering any losses or injuries that may occur as the result of acts or omissions by Concessionaire or Concessionaire's agents, servants, or employees while operating the concession facility. Such insurance shall include, but not be limited to, losses or injuries resulting from the preparation, handling, storage, supply or delivery of products designed for human consumption. This Agreement shall not be deemed to be in force and effect until such time as a certificate of insurance showing the coverage required hereunder has been received and approved by City, notwithstanding anything else herein to the contrary. City shall be shown as an additional insured on such certificate.
18. Non-compliance with the terms of this Agreement by Concessionaire shall be deemed to immediately terminate this Agreement and all rights hereunder. City may thereafter contract with anyone else for operation of the concession facility for the balance of the term.
19. This Agreement may be renewable annually with the mutual consent of both parties. However, this Agreement may otherwise be terminated by either party upon thirty (30) days written notice of intent to terminate.
20. All insurance coverage required by this Agreement will be with insurance companies licensed to do business in the State of Oklahoma and in good standing with the State Insurance Commissioner's office on the effective date of this Agreement.
21. Concessionaire will be responsible for all applicable federal, state, and local taxes for all products sold as well as any federal and state taxes for himself and any employees he might employ.
22. Concessionaire will maintain the highest requirements of sanitation and meet or exceed Oklahoma Health Department standards and codes.
23. The City of Midwest City is a political subdivision of the State of Oklahoma, and is therefore covered under the Oklahoma Governmental Tort Claims Act at Title 51 of the Oklahoma Statutes, Section 151 et seq. Any claim against the City of Midwest City

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concerning this Agreement must be filed in compliance with the Oklahoma Governmental Tort Claims Act.

- 24. Any amendment to the agreement must be in writing and signed by both parties.
- 25. This agreement shall be controlled and interpreted using the Laws of the State of Oklahoma. Any dispute arising from this Agreement shall be filed in the District Court for Oklahoma County.
- 26. The concession mobile food unit must be removed within 30 days after the last day of operation.
- 27. The Concessionaire shall not sublease or transfer any portion of this Agreement to any third party without prior written consent of the City of Midwest City.
- 28. The Concessionaire shall obtain and maintain all required state and local permits and/or licenses.

Dated this 22 day of February 2022.

FOR THE CONCESSIONAIRE

Ronald S Koland  
Ronald S Koland

FOR THE CITY

Matthew D. Dukes II  
Matthew D. Dukes II, Mayor

ATTEST:

Sara Hancock  
Sara Hancock, City Clerk



Approved as to form on this 22<sup>nd</sup> day of February 2022.

Don Maisch  
Don Maisch, City Attorney