

CONCESSION OPERATIONS AGREEMENT

THIS CONCESSION OPERATIONS AGREEMENT (“**Agreement**”) entered into as of this ____ day of _____, 2019, between the City of Clearwater, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 4748, Clearwater, Florida 33758-4748 (“**Owner**”) and Edward Bates, individually, Kinney’s Kitchen, whose mailing address is 1540 Club Drive Tarpon Springs, FL 3468933755 (“**Operator**”) (individually referred to herein as “**Party**” or collectively as the “**Parties**”).

WHEREAS, Owner is the owner of certain real property improved with various athletic facilities located in Pinellas County, Florida (“**Property**”); and

WHEREAS, Owner desires for Operator to provide concession services at the property; and

WHEREAS, Owner and Operator have previously entered into an agreement, which began on July 1, 2014 and ended on June 30, 2019; and

WHEREAS, Owner selected Operator pursuant to Request For Proposal #33-19, and based on information and representations given Operator in a proposal dated May 21, 2019; and

WHEREAS, the Owner and Operator wish to formalize the terms of Operator’s use, occupation and provision of concession services at Owner’s Facilities (“**Concession Operations**”).

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Facilities Premises and Term:** Owner hereby grants to Operator the non-exclusive right to occupy and use Owner’s property as more particularly described in **Exhibit A**, attached hereto and made a part hereof, (the “**Premises**” or “**Facilities Premises**”), subject to the terms and conditions herein set forth, commencing on August 14, 2019, and expiring on July 31, 2022 (“**Term**”), unless sooner terminated as herein provided. The Term may be extended as provided for in paragraph 3 below. The Facilities Premises shall be used for the sole purpose of providing food concession services for programs and activities held at the **Eddie C. Moore Softball Complex**, and additional areas at other athletic sites and recreation facilities, as may be added under this Agreement by consent and approval of the Parks and Recreation Director, as designee of the City Council.
2. **No Interest in Land:** The rights granted to Operator under this Agreement are not coupled with an interest in land. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other real property interest in the Facility Premises to the Operator. The City specifically reserves the right to grant other rights of entry in regard to the Property as long as the same do not interfere with the rights granted to Operator herein.
3. **Options to Renew:** The Director of Parks and Recreation for the City of Clearwater, as designee of the Owner, may, by written agreement between the Parties, extend this Agreement for up to one (1), three (3) year renewal, on the same terms and conditions as are set forth herein without obtaining additional approval by the Clearwater City Council. For purposes of this paragraph, written agreement may include letter form or email notice.

4. **Operator Fees:** That for and in consideration of the foregoing rights and privileges, Operator shall pay a flat fee to Owner **\$2,500.00 per month, plus** applicable sales tax, to be delivered by the first Friday of each month to the Parks and Recreation office at the Municipal Services Building (MSB) located at 100 S Myrtle Avenue Clearwater, FL 33756.

In addition, Operator shall pay annually, at the end of each agreement year, the percentage specified on the amount between the figures listed below:

- 15% - Between \$0 and \$300,000 of gross revenue sales
- 14% - Between \$301,000 to \$400,000 in gross revenue sales
- 13% - Between \$401,000 to \$500,000 in gross revenue sales
- 12% - Between \$501,000 or greater in gross revenue sales

Operator shall pay all amounts due as stated above within thirty (30) days of the end of each agreement year.

The term "Gross Sales" as used in this section means the entire amount of actual sales prices, whether for cash or otherwise, of all sales of food, services, beverages, clothing, or other receipts whatsoever of all business conducted. Such term shall not include, however, any sums collected and paid out for any sales or excess tax imposed by any duly constituted governmental authority wherein Operator is regarded as the collecting agent.

The Operator agrees to submit an audited certification of annual gross sales, as certified to by a Certified Public Accountant, within thirty (30) days of the end of each agreement year. The scope of the audit must include the Lessee's compliance with the terms of the Agreement to disclose the gross sales at or from the demised premises. The statement shall be prepared according to generally accepted accounting principles and practices, showing in all reasonable detail the amount of gross sales during the prior Agreement year.

5. **Costs of Operations:** Operator shall pay all costs of its operations, with the exception of water and electric costs, and any costs resulting from facility/amenity upgrades, which must be authorized by the Owner in writing prior to work.
6. **Independent Contractor.** This License does not create a partnership, joint venture, or any affiliation other than Owner and Operator. The Operator agrees that persons employed by Operator for purposes related to the installation, operation or other purposes under this Agreement are not employees of the Owner for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. Operator agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with its operations and the Operator's Fee paid by Operator to Owner.

7. **Operator Duties and Responsibilities:**

(a) Operator shall provide food concessions services in the concession stand at **Eddie C. Moore Softball Complex, Fields 1-4** for all city sponsored league games and events.

- a. Concession service may consist of, but is not necessarily limited to; soda, sports drinks, water, snacks, hotdogs and other sports related concession food items normally sold at sporting events. Operator must provide a menu and

pricing structure to Owner as set forth in **Exhibit D**. Any changes in prices must be approved in writing by owner.

- b. Operator agrees to honor and comply with all requirements of third-party City contracts, with regards to product choice and purchasing (at the inception of this Agreement the only such contract existing is with Coca-Cola Refreshments USA, Inc.).
- (b) The City is responsible for all capital maintenance items within the Facilities Premises. The Operator is responsible for the maintenance; repair and replacement of the concession equipment existing within the Premises at the inception of this Agreement as reflected in **Exhibit B** attached hereto and incorporated herein.
- (c) Operator shall not make any alterations, additions, or improvements to the Concession Stand or the Concession Equipment without the City's prior written consent, which consent may be withheld for any reason. In the event the City consents to the making of any alterations, additions, or improvements to the Concession Stand or Equipment, the same shall be made at the Concessionaire's sole cost and expense. The City has no obligation to alter, remodel, improve, or repair, decorate, or paint the Concession Stand
- (d) Operator shall provide the same food concession services in a portable fashion at **Eddie C. Moore Softball Complex, Fields 5-9** for events and tournaments.
- (e) Operator shall also be available to provide portable concession services at other athletic sites and facilities throughout the City for major tournaments and events, as determined and noticed by the Parks and Recreation Director or designee.
- (f) Where no separate concession stand is available, Operator shall setup the site in a manner to be safe and easily accessible to the public.
- (g) Operator shall operate in or on the Facilities Premises, as designated by Owner. Hours of operation shall be according to a schedule produced on a weekly basis by the Parks and Recreation Athletic Division and submitted to the Operator one week in advance in order to schedule staff and supplies. Operator must keep concessions open except during inclement weather as determined by an Owner-sponsored athletic field monitor. The City reserves the right to shut down the operation of the concessions if, in its sole discretion, it is in the best interest of the City, or to protect the safety and welfare of the public.
- (h) Operator will ensure that the portable concessions are a structure that can be broken down and removed within 24 hours if needed.
- (i) Operator shall maintain a valid certificate with the Health Department, as applicable and immediately correct any and all violations noticed by the Health Department. Operator will ensure that the concessions are run and operated by properly trained employees and that Operator has provided any necessary and appropriate technical, safety and operational training for its employees to carry out operations in a safe

manner. It is additionally encouraged that employees obtain CPR & First Aid Certifications. By entering into this Agreement, Operator represents that each employee has specific food service, safety, and operational training.

- (j) Operator acknowledges that it, its applicants for employment, employees, or volunteers, work or will work with children, the elderly, or the disabled. Therefore, if not otherwise required to conduct background checks by law, Operator voluntarily agrees to register with the Florida Department of Law Enforcement ("FDLE") to participate in the Volunteer & Employee Criminal History System ("VECHS") for background checks, as authorized by the National Child Protection Act ("NCPA"), as amended, and Florida Statute 943.0542 (1999), as may be amended from time to time. Operator agrees to secure the highest level of background screening available under VECHS, and that this level of background screening is necessary to effectively screen out those not suitable for contact with children, the elderly or the disabled. Operator voluntarily agrees to require such screenings in accordance with the processes and procedures set forth by the FDLE and the FBI in order to secure criminal history information on its employees, volunteers and applicants. The Operator acknowledges that the VECHS program is not available to entities currently mandated to obtain background checks by statute or other law. Operator shall pay all costs associated with such background checks and will submit an Affidavit of Criminal Background Screening in substantially the form attached hereto, and incorporated herein, as **Exhibit C**. Operator shall secure releases from screened parties, use said criminal history information only as permitted by law, and shall unilaterally make the determination of a screened parties' fitness and suitability for working with children, the elderly or the disabled. Owner shall not be required to make such a determination under any circumstance. Operator shall submit the Affidavit of Criminal Background Screening to Owner *prior to* beginning its operations under this agreement. If for any reason, including denial of eligibility by the Florida Department of Law Enforcement, Operator is unable to secure background checks in accordance with the VECHS program, Operator shall secure the highest level of background screening allowed by law.
- (k) Operator will provide customer with the option to pay by cash or credit card.
- (l) Customer Service: Concessionaire and all of its employees, agents, and representatives shall provide the highest quality of customer service and shall treat customers with courtesy and respect. Concessionaire shall honor all reasonable requests for refunds, including from customers that are dissatisfied with any food and or beverage product.
- (m) Employee Appearance: All of Concessionaire's employees, agents, or representatives shall have a neat, clean, and sanitary appearance.
- (n) Employee Training: Concessionaire shall provide a training program for its employees, agents, or representatives for the development of the skills necessary to perform its obligations under this Agreement including but not limited to promoting customer service, produce and service presentation, cleanliness, positive attitude and promoting the City Parks and Recreation Department philosophy and policy.

(o) Staffing: The Concession Stand shall be properly staffed in order to prevent undue delay to the public.

(p) Accept credit cards at Eddie C. Moore Softball Complex, Fields 1-4 and as many secondary sites as possible.

8. **Insurance.** Operator agrees to acquire and maintain at its own cost and expense the following types and minimums of insurance, with a carrier having an AM Best Rating of A-VII or better, on an occurrence basis, or in the case of coverage that cannot be obtained on an occurrence basis, then coverage on a claim-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.

b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.

c. **Professional Liability/Malpractice/Errors or Omissions Insurance** coverage appropriate for the type of business engaged in by the Respondent with minimum limits of \$2,000,000 (two million dollars) per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (SERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

d. **Theft or Loss coverage** shall be maintained with minimum limits of \$1,000,000 (one million dollars) per occurrence. Coverage shall be provided using ISO form CR 00 01 Employee Dishonestly Coverage Form or its equivalent and shall include ISO endorsement CR 04 01 Clients' Property or its equivalent.

e. Unless waived by the State of Florida and proof of waiver is provided to the City, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$500,000 (five hundred thousand dollars) each employee each accident, \$500,000 (five hundred thousand dollars) each employee by disease, and \$500,000 (five hundred thousand dollars) disease policy limit. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Vendor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance. In addition, when requested in writing from the City, Vendor will provide the City with certified copies of all applicable policies.

The City of Clearwater is to be specifically named as an "Additional Insured" on the Commercial General Liability and Commercial Automobile Liability policies and as a "Loss Payee" on the Property Insurance policy. Prior to the execution of the Agreement, and then annually upon the anniversary date of the insurance policy's renewal date, the Operator will furnish the City with a Certificate of Insurance evidencing the coverage's set forth above. Operator shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage. Operator's insurance as outlined above shall be primary and non-contributory coverage for Operator's negligence. Operator understands that the City of Clearwater is not representing that the above types or amounts of insurance are sufficient or adequate to protect the Operator's interests or liabilities, but are merely minimums, and the City's failure to request evidence of this insurance shall not be construed as a waiver of Operator's obligation to provide the insurance coverage specified.

9. **Liability/Indemnification.** Owner will not accept and explicitly renounces any liability of any nature for use of the Property or Facilities Premises by the Operator, its employees, agents, contractors and invitees. Operator agrees to indemnify, defend and hold harmless the Owner, its successors and/or assigns, from any and all liability, demands, damages, losses or costs: (i) arising from any and all injury to person or property, or (ii) caused by the negligence, recklessness or intentionally wrongful conduct of Operator, during the term hereof. Nothing contained herein shall be construed to waive or modify the provisions of Florida Statute 768.28 or the doctrine of sovereign immunity. In addition, nothing contained herein shall be construed as creating third party beneficiaries or as consent by the Owner to be sued by third parties in any manner arising from this grant of License. This provision shall survive termination or expiration of this Agreement.

10. **Maintenance and Operations.** Operator shall at its sole cost and expense
 - (a) Maintain the Premises in a safe, clean and proper manner;
 - (b) Secure any and all licenses or permits required by any governmental agency or authority with respect to Operator's operation of the concessions, occupancy and use of the Premises, including any and all rights or licenses required under applicable copyright or trademark law;
 - (c) Secure and be responsible for the security of the concessions at close of business each day and during hours of operation;

- (d) Not make or permit to be made any alterations, additions or improvements in the Premises without the prior written consent of Owner;
- (e) Not permit any mechanic's lien to be filed against the Premises by reason of any work, labor, service or materials performed at or furnished to the Premises; and
- (f) Abide by all rules and regulations established by Owner, from time to time, with respect to the use and occupancy of the Premises. All signs used at the Premises shall be subject to Owner's prior approval and applicable law.

11. All notices to either party must be sent by either U.S. Mail or e-mail to the addresses below:

As Owner

City of Clearwater
P.O. Box 4748
Clearwater, FL 33758-4748
Carla.scrivener@myclearwater.com

As to Operator

Kinney's Kitchen
c/o Edward Bates
1540 Club Drive
Tarpon Springs, FL 34689
batesedward@hotmail.com

Miscellaneous Provisions

- 12. The provisions of this License shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties, as permitted herein. Any provision hereof which imposes upon Owner or Operator, any obligations after termination or expiration of this Agreement, shall survive termination or expiration hereof and be binding upon Owner or Operator.
- 13. This License is personal to Operator. It is not assignable, and any attempt to assign this Agreement or any rights and privileges hereof, shall immediately terminate such privileges and this Agreement excepting provisions herein expressly intended to survive termination. In addition, Operator shall not sell, mortgage, pledge or in any manner transfer this Agreement or any interest therein, not sublet all of any part of the Premises. Operator shall notify Owner of any name change made in accordance with applicable law.
- 14. Owner may terminate this Agreement immediately, at will, in Owner's sole discretion, with or without cause. This Agreement may also be terminated at any time upon the mutual written agreement of Owner and Operator.
- 15. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto it being understood that nothing contained herein, or any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Owner and Operator.
- 16. Operator agrees to comply with all local, state, and federal statutes and ordinances, and is responsible for obtaining all necessary state and local permits prior to setting up and operating the concessions.
- 17. All advertising or related communications pertaining to Owner must be pre-approved in writing by the Owner.

18. Owner shall have the right to enter upon the Premises at all times. Owner shall not unduly interfere with Operator's business.
19. If this Agreement, or its operation, shall create any ad valorem or other tax obligations, it shall be incumbent solely upon Operator to timely discharge same.
20. This Agreement contains all of the terms, conditions and covenants binding the parties hereto. There are no other terms, conditions, covenants or understandings, either written or oral, binding upon the parties unless expressed herein in writing or subsequently addended hereto by mutual agreement of the parties.
21. Public records disclosure. In addition to all other Agreement requirements as provided by law, the Operator/Contractor executing this Agreement agrees to comply with public records law specifically to:

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

Operator/Contractor shall comply with the following:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor

of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
- h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
 - 1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.
- i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Signed in the Presence of:



Signed in the Presence of:



Countersigned:

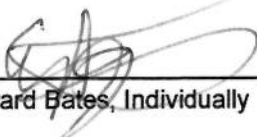
George N. Cretekos
Mayor

Approved as to form:

Owen Kohler
Assistant City Attorney

OPERATOR:

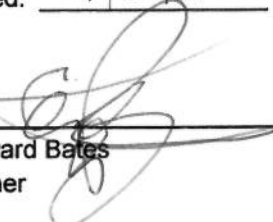
Dated: 7/30/19



Edward Bates, Individually

KINNEY'S KITCHEN

Dated: 7/30/19

By: 

Edward Bates
Owner

CITY OF CLEARWATER, FLORIDA

By: _____
William B. Home II
City Manager

Attest:

Rosemarie Call
City Clerk

EXHIBIT A

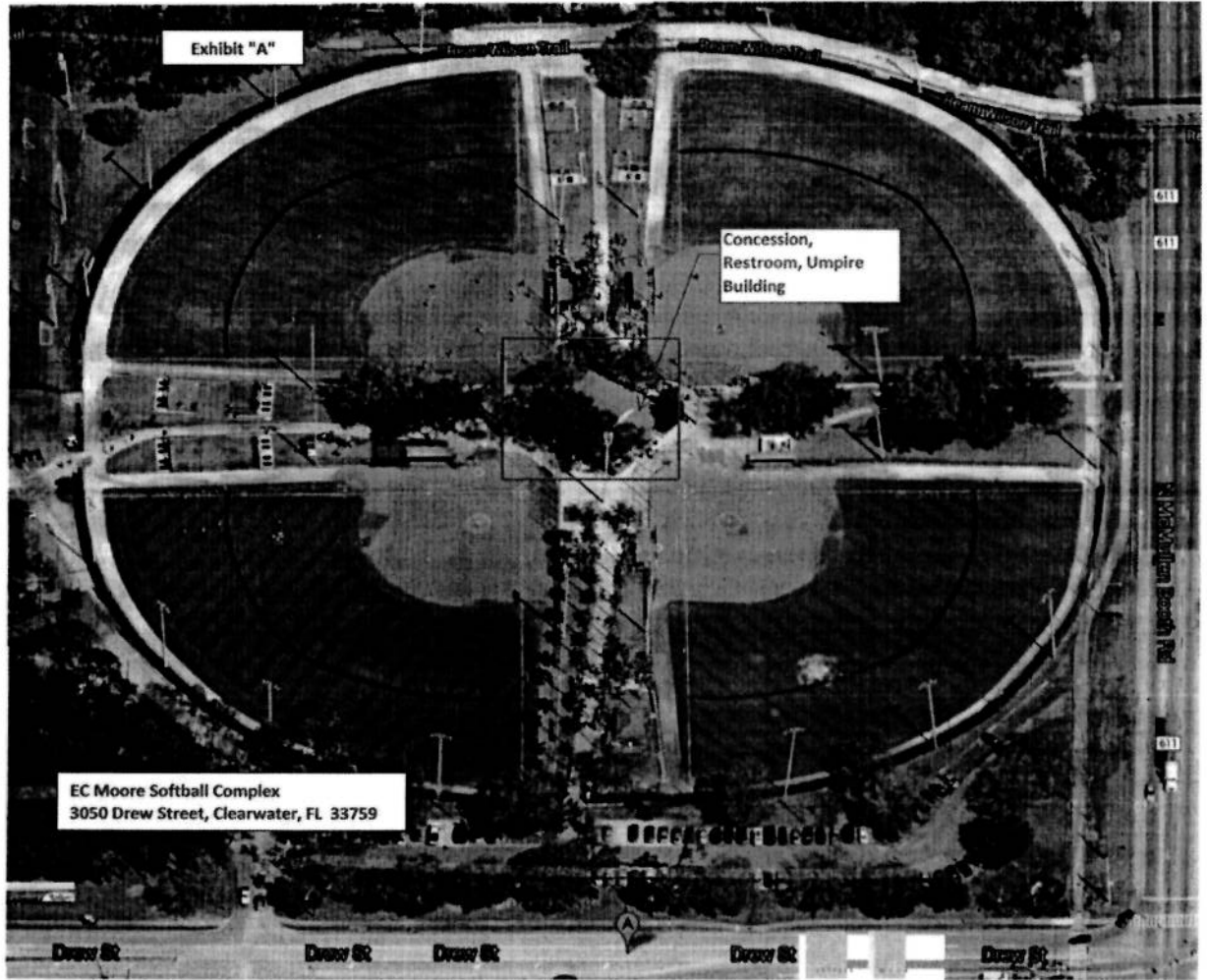


EXHIBIT B

Ice machine

Flat top grill

Exhaust hood

Aluminum stand for grill

Coke cooler

Cabinets/counters

EXHIBIT C

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

OPERATOR NAME: _____

DATE: _____

By signing this form, I am swearing or affirming that all individuals employed by _____ (Operator) or providing services to City under the Revocable License Agreement on behalf of Operator on City property have been background screened in accordance with the background screening requirements set forth in Revocable License Agreement and been deemed eligible by Operator to provide services as described in Revocable License Agreement. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to City Parks and Recreation Department per the requirements of Section 7 of the Concession Operations Agreement.

All individuals providing services under the Concession Operations Agreement on City property are listed below. Each individual shall be identified by name, birth date and date deemed eligible.

(List of Individuals)

Signature of Affiant

Sworn to and subscribed before me this ____ day of _____, 20____.

Notary Public
My Commission Expires:

My signature, as Notary Public, verifies the Affiant's identification has been validated by

_____.

EXHIBIT D

BEVERAGES:

Water-\$2.00
Sodas-\$2.50
Powerade-\$3.00
Juices/Bottled Tea-\$3.00
Monster Energy Drink-\$4.00

SNACK ITEMS:

Candy-\$1.50
Gum-\$.10
Chips-\$1.50
Nachos-\$3.00
Peanuts (roasted/boiled)-\$3.00
Popcorn-\$1.50
Slim Jim-\$2.00
Crackers-\$1.50
Cookies-\$2.00
Twizzlers/Blowpops-\$.25
Ring Pops-\$1.00
Extremes-\$2.00

FOOD ITEMS:

Bacon/Egg/Cheese Sandwich-\$3.00
Sausage/Egg/Cheese Sandwich-\$3.00
Breakfast Burrito-\$5.00
Hot Dog (1/4 lb)-\$4.00
Hamburger- \$4.00
Cheeseburger-\$4.50
Bacon Cheeseburger-\$5.50
Chicken Sandwich-\$5.00
Italian Sausage-\$5.00
Chicken Caesar Wrap-\$8.00
Chicken Salad Sandwich-\$5.50
Tossed Salad with Chicken-\$6.00