



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Approve Revised Concession Contract Between City of Lodi and E.O.B.S. Organization

MEETING DATE: September 4, 1991

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council approve the Food and Beverage Concession contract between the City of Lodi and B.O.B.S. organization for the Complex and Armory Park facilities.

BACKGROUND INFORMATION: This contract has been before the City Council on two previous occasions. Once, it was pulled off the Agenda and the second time it was approved. In each case, the organization had second thoughts as to its content and commitment, which leads us to our third time at trying to reach an agreement. I have consulted/met with B.O.B.S. President Ed Wall and discussed all concerned areas of the contract from the organization's standpoint. Both Mr. Wall and I are now comfortable with the contract and its wording and recommend the contract be accepted and approved. (See attached contract exhibit).

FUNDING: None. This will provide an income source for the City of Lodi.

Ron Williamson
Director Parks and Recreation

RW:srb
Attachment

APPROVED: _____

THOMAS A. PETERSON
City Manager



AGREEMENT

CITY OF LODI

DEPARTMENT OF PARKS AND RECREATION

Concession Operations at
Armory Park and Softball Complex

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THIS AGREEMENT, made and entered into this 4th day of September, 1991, by and between the CITY OF LODI ("City"), and The Boosters of Boys and Girls Sports ("Concessionaire").

W I T N E S S E T H:

Concessionaire agrees to operate concession stands at the below-described Parks under the following terms and conditions:

Areas to be Serviced:

Locations : Armory Park, 333 North Washington Street, Lodi
Softball Complex, 401 North Stockton Street, Lodi

City does hereby grant to Concessionaire the sole and exclusive right/license to vend food and drinks, etc. at the concession stands of the above-described Parks, beginning April 15, 1991 and ending December 31, 1991.

The City will provide:

1. Enclosed concession stands with some limited city-owned equipment, which Concessionaire will be expected to service and maintain at Concessionaire's sole cost and expense.
2. Water, sanitary sewer, gas, electricity, and garbage receptacles outside the concession buildings shall be provided by the City.
3. Maintenance of the general property of the concession buildings, unless abuse and **lack** of general care is apparent, at which time the **cost** and expenditures shall **be** that of the Concessionaire.

Concession Operation Conditions:

1. The length of the contract shall be from April 15, 1991 and ending midnight December 31, 1991. This Agreement ~~may~~ be extended by mutual agreement on **terms** to be negotiated. Negotiations will open two months prior to the expiration of this contract.

2. Concessionaire agrees to maintain in full force during the term hereof, a policy of general liability insurance which contains an Additional Named Insured Endorsement naming the City of Lodi as an Additional Insured, and under which the insurer agrees to indemnify and hold the City of Lodi harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results or is claimed to have resulted, from any act or omission on the part of Concessionaire or Concessionaire's agents or employees in the implementation of this Agreement. The minimum limits of such insurance shall be \$500,000/\$1,000,000 Bodily Injury; \$100,000 Property Damage, or \$1,000,000 combined single limit. In addition to the Additional Named Insured Endorsement on Concessionaire's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said bodily injury and property damage insurance containing the above-stated required endorsements shall be delivered to the Risk Manager after the issuance of said policy, with satisfactory evidence that each carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. The insurance certificate must state on its face or

as an endorsement, the name of the Concessions that it is insuring. If there has been no such delivery within forty-eight (48) hours prior to the commencement of this Agreement, this Agreement shall be null and void. All requirements herein provided shall appear either in the body of the insurance policy or as endorsements and shall specifically bind the insurance carrier. This paragraph and all other provisions of this Agreement shall apply and be construed as applying to any subtenant of Concessionaire, in the event any such subtenant is allowed under the provisions of paragraph 13 of this agreement.

Notwithstanding other provisions contained in this Agreement, the City Manager is granted the right to immediately terminate the Agreement upon failure on the part of the Concessionaire to keep in full force and effect during the entire term of the agreement, the insurance as set forth in this section.

- 3, Concessionaire shall, in January and prior to opening for business, furnish a products and price schedule and shall follow the produce and price schedule as mutually agreed to between the BOBS concession manager and City staff assigned to concession operations.
4. Concessionaire will provide all equipment and products to operate said concessions.
5. Concessionaire will pay twenty five percentage (25%) of net receipts after taxes to the City of Lodi which payments shall be due on September 1, 1991 for the Spring/Summer League, and shall be due on

December 1, 1991 for the Fall League. If said percentage has not been paid by the due dates, there shall be a penalty of five (5) percent per day for any amounts not paid, and owing to the City. The Concessionaire shall keep accurate records and books of accounts of all purchases and sales and does hereby give to the City or its authorized agents, the right to examine and audit said books at any time City desires. The Concessionaire will complete monthly records on forms provided by the City, and these reports shall be provided to the City by the tenth (10th) day of each month while in operation.

6. **The** dates and times of operation shall be as follows: Negotiation on a year to year basis.

◦ Armory Park and Softball Complex.

Concessionaire shall operate from February 15 to November 15 at times commencing one-half hour before City and/or Lodi Unified School District events, and fifteen minutes into the last scheduled game or event.

◦ Saturday tournaments or other non-City or **iodi Unified School** District sponsored games or events, Concessionaire will open within the first hour of the first scheduled game and remain open for ten hours or fifteen minutes into the last scheduled game or event, whichever occurs first.

◦ Sunday tournaments or other non-City or Lodi Unified School District sponsored games or events, Concessionaire will open within

the first hour of the first scheduled game and remain open until 3:00 p.m. or fifteen minutes into the last scheduled game or event, whichever occurs first.

7. Concessionaire agrees to obtain at his/her own expense, any and all permits and incenses which may be required by law or ordinance in conducting the concessions, and to pay any and all taxes which may be assessed against him for whatever purposes in the operation of said concessions.
8. Concessionaire shall keep the concession stands and the immediate surrounding areas in clean and presentable condition at all times and follow the strictest of sanitary conditions, and any State and local ordinances applicable to the business to be conducted. Concessionaire shall be responsible to give to the City, written notice of any maintenance problems.
9. The rights granted hereunder for concession sales at the identified parks, shall be exclusive to Concessionaire, and/or negotiated between both parties. Subleasing by the Concessionaire will not be allowed in this contract. Concessionaire will have first right of refusal on all special events in providing required food and beverage service. If Concessionaire relinquishes its rights under this paragraph, City shall be free to contract with any other Concessionaire of its choosing to provide concessions for such special event.

10. Concessionaire is aware that a Possessory Interest Tax is or may be charged each year by the County Assessor for the use of the facilities and that this tax is the responsibility of the vendor.
11. The Parks and Recreation Director and Concessionaire as mutually agreed shall approve or disapprove any employee or operator of said concession stands on a basis of such considerations as dress, general cleanliness, working relationship with public, and staff needed to successfully vend food for day to day operations, tournaments or special events/activities. (The City will coordinate this action with Concessionaire manager.)
12. City reserves the right to enter upon the premises at any reasonable time, to inspect the operation and equipment thereon, or for any other purpose.
13. Concessionaire shall not have the right to sell, mortgage, assign or sublet the contract/agreement or any part thereof without the prior written consent of the City Manager, and a breach of this condition shall automatically terminate any contract or agreement between City and Concessionaire.
14. The Concessionaire shall be responsible for the security of the concession stands and any storage buildings assigned to his/her exclusive use as far as locks on doors and windows or installation of an alarm system if it is deemed necessary, and Concessionaire shall be

responsible for any acts of vandalism to Concessionaire's equipment and/or inventory.

15. At the conclusion of or termination of any stated agreement/contract, Concessionaire will be expected to surrender said concession premises in as good an order as that in which they would receive same, excepting ordinary wear and tear. Damage to or mistreatment of the buildings or City equipment will be the responsibility of the Concessionaire to repair, replace, or reimburse for repair or replacement.
16. The agreement/contract may be terminated by written agreement of either party hereto without cause upon sixty (60) days' written notice to the other party. Such notice shall be delivered to the City Manager's Office, City Hall, 221 West Pine Street, Lodi, or to the Concessionaire at a premises which is subject to this agreement.
17. If Concessionaire defaults in any of the terms contained herein, the Concessionaire's agreement to provide service as specified herein shall terminate upon failure of Concessionaire to correct the default within thirty (30) days of receiving written notice thereof from the **City**. Upon any termination hereof, Concessionaire agrees to **quit** and surrender possession peaceably and City shall have the right to remove Concessionaire and all others occupying through or under this agreement.

18. In the event that either party brings an action under this Agreement for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs whether or not **such** action is prosecuted to judgment.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the **day** and year first hereinabove written.

CONCESSION OPERATIONS
ARMORY PARK AND SOFTBALL COMPLEX

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CITY OF LODI, a municipal
corporation

CONCESSIONAIRE
BOOSTERS OF BOYS AND GIRLS SPORTS

THOMAS A. PETERSON
City Manager

By _____

ATTEST:

APPROVED AS **TO** FORM:

ALICE M. REIMCHE
City Clerk

BOB McNATT
City Attorney

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AGRCONCE.SS2/TXTA.01V