CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: January 7, 2019

ITEM: Motion – Approval of Concession Agreement – Holiday Park Baseball Complex – Ballpark Concessions

FINANCIAL IMPACT: None.

SYNOPSIS: Ballpark Concessions serves as a third party contractor of SportsPlex West for concession operations at Holiday Park Baseball. The City's agreement with SportsPlex West allows for this business relationship. The attached agreement is required because the City owns the concession building that Ballpark Concessions operates out of at Holiday Park.

BACKGROUND: This agreement has been in place since 2014 when SportsPlex West took over the programming of youth baseball leagues at Holiday Park. The agreement was approved by the Parks and Recreation Advisory Board on December 21, 2018.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the Council approve the contract agreement with Ballpark Concessions.

Lead Staff Member: Ryan Penning, Superintendent of Recreation

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

CONCESSION FACILITY AGREEMENT

FOR

HOLIDAY PARK BASEBALL COMPLEX

This agreement is made this _____ day of _____ 2019, by and between the City of West Des Moines, Iowa, a political subdivision of the State of Iowa (hereinafter referred to as the "City"), Sportsplex West, LLC (hereinafter referred to as the "Sportsplex") and Ballpark Concessions, LLC. (hereinafter referred to as "Ballpark Concessions").

WITNESSETH:

WHEREAS, the City desires to provide food and beverage concessions at Holiday Park Baseball Complex in West Des Moines, Iowa, to accommodate the public;

WHEREAS, Ballpark Concessions is interested in serving as the concessionaire as a third party contractor of Sportplex and the parties agree that the goods and services shall be provided by Ballpark Concessions on an independent contractor basis;

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by both parties, the City, Sportsplex and Ballpark Concessions, hereby agree as follows:

A. SCOPE OF SERVICES

1. Ballpark Concessions hereby agrees to furnish food and beverage concessions at Holiday Park Baseball Complex in West Des Moines, including but not limited to, snack foods, sandwiches, candy, soft drinks, non-alcoholic beverages and grilled foods.
2. Ballpark Concessions agrees that no beer, wine, liquor, any other alcoholic drink or no glass bottled beverages will be sold, distributed, possessed or consumed within Holiday Park Baseball Complex. No tobacco products will be sold or distributed within the Holiday Park Baseball Complex.
3. Ballpark Concessions also agrees that no vending machines or other similar devices shall be installed during the period of this Agreement without prior written approval of the City.

4. Ballpark Concessions agrees not to employ callers, criers, or use signs or any other means to solicit business for the concession facility without prior written approval of the City. Ballpark Concessions further agrees not to advertise in any manner or form by T.V., radio, newspaper, or other means without prior approval of the City.
5. Ballpark Concessions assumes all risk of operation of the concession facility and warrants and represents that it will comply with all federal, state and local law and will indemnify and hold the City harmless for any liability arising there from. All City and Facility policies and rules must be followed.
6. The City, Sportsplex and Ballpark Concessions will develop performance standards in the areas of maintenance, cleanliness, and customer service to be used to evaluate the operation.
7. Ballpark Concessions will operate the concession facility in a courteous and professional manner and will respond to customer needs promptly and will treat all customers respectfully.
8. Ballpark Concessions and/or Sportsplex shall be solely responsible for payment of all invoices or bills relating to all inventory delivered or provided by vendors or other similar individuals or entities.
9. The City, Sportsplex and Ballpark Concessions agree that they shall not discriminate against any individual based upon age race, color, sex, national origin, religion, disability, veteran status, gender identity, sexual orientation, nationality, national origin or familial status.
10. Ballpark Concession must operate the concessions in compliance with all federal, state and local laws regarding product served and facility cleanliness during periods when running water is not yet available to building. Permanent restrooms will be opened and operating by approximately April 15. City will provide portable toilets until permanent toilets are in service.

B. TERM

1. One (1) year with renewal option of 1 additional year. This contract shall begin on March 1, 2019 and shall terminate on November 30, 2019, unless terminated at an earlier date as provided for herein. Ballpark Concessions agrees that the concession facility shall be fully staffed and operated by Ballpark Concessions during any scheduled use of the Holiday Park Baseball Complex during all hours the Complex is open for use, generally late March through August. The City, Sportsplex and Ballpark Concessions may cooperatively agree to not have concessions opened during some low volume events.

C. RENEWAL/EXTENSION

1. At the City's and Sportsplex's option, this agreement may be renewed or extended for a period not in excess of one (1) year by execution of a written agreement between the City, Sportsplex and Ballpark Concessions. In order to effectuate a renewal or extension, all parties must agree prior to the expiration of this agreement that it should be renewed and/or extended. If the parties agree to the extension/renewal, it shall be in written form signed by City Representatives and an authorized representative of Sportsplex and Ballpark Concessions. The renewal or extension may include modifications to the original terms of this agreement if mutually agreed to by the City, Sportsplex and Ballpark Concessions.

D. RECORDS

1. Sportsplex and Ballpark Concessions agree to maintain detailed financial records of all other information related to transactions by Sportsplex and Ballpark Concessions including but not limited to cash register receipts and all other documents relating to sales, transactions as well as documents relating to transactions with outside vendors and customers in such a form that will allow the City to evaluate income, expense and conduct a thorough audit of Sportsplex and Ballpark Concessions records if determined to be necessary by the City. The City and its auditor have the right, upon reasonable notice to Sportsplex and Ballpark Concessions, to inspect said financial records and other information.

E. AUDIT

1. The City may conduct an audit of the financial records of Sportsplex and Ballpark Concessions if the City deems necessary. The City may select its own auditor/accountant and the costs of the audit shall be borne by the City.

F. UTILITIES

1. Sportsplex or Ballpark Concessions will pay the costs of water and electricity used in the operation of the concession facility. Sportsplex and Ballpark Concessions may elect to have a telephone installed and operated solely at Sportsplex and Ballpark Concession's expense.

G. PROPERTY AND EQUIPMENT

1. The City is and shall continue to be the owner of the concession facility and all fixtures located therein including but not limited to, fire safety equipment, 3 basin sink, all electric needs, security system, PA system, office equipment and any other equipment provided by the City.
2. Ballpark Concessions shall be solely responsible for furnishing all other equipment, storage shelving, counters, furnish supplies, inventory and signage to be used in operation of the concession facility. Ballpark Concessions shall also furnish a cash register for operation of the concession facility.
3. Sportsplex and Ballpark Concessions agree to maintain in good condition and working order all property and equipment. In the event that any property or equipment is damaged, destroyed or rendered in a state of disrepair or unsanitary condition, Sportsplex or Ballpark Concessions shall repair equipment or replace it with similar make and model.

H. MAINTENANCE/REPAIRS/RENOVATIONS

1. Ballpark Concessions agree to maintain the concession facility in a clean, sanitary, and safe condition at all times. Garbage and trash generated inside the concession shall be completely contained by Ballpark Concessions in trash containers. Ballpark Concessions shall be responsible for removal and placement in to dumpsters of trash and garbage generated inside concessions. The City shall be responsible for removal of all garbage and trash from the exterior trash receptacles located throughout Complex on a regularly scheduled basis. Ballpark Concessions is responsible to maintain and clean the eating tables and area adjacent to the serving windows. Ballpark Concessions will comply with City's Recycling requests and/or policies.
2. Repair and maintenance of the building exterior, including doors and windows, grounds, parking areas, interior walkways and plaza, restrooms, playground, & sports facilities shall be the sole responsibility of City.
3. The City will winterize the concession facility structure (i.e. water pipes, plumbing, etc.). However, it will be the sole responsibility of Sportsplex and Ballpark Concessions to remove any equipment or other personal property and/or winterize the same to ensure that the equipment or building is not damaged or impaired during the winter period.
4. In the event that Sportsplex and Ballpark Concessions wish to repair, alter, decorate, or make improvements to the concession facility, it shall first submit plans and specifications to the City and

seek the written approval of the City before obligating Sportsplex and Ballpark Concessions to such costs. Following approval by the City, any such repairs, alterations, decorations, or improvements made to the facility shall be made at the sole cost of Sportsplex and Ballpark Concessions and, after the Agreement has been terminated, the improvements shall become the sole property of the City. Sportsplex and Ballpark Concessions agree not to attempt to remove said improvement or seek reimbursement from the City for said improvements.

5. Sportsplex and Ballpark Concessions acknowledge that it has no right to sell, mortgage, rent, transfer, assign, or encumber this concession facility, the adjacent premises, or any equipment provided by the City. Sportsplex and Ballpark Concessions agree and acknowledge that it will not incur nor is it authorized to incur any expenses, charges or mechanics liens related to the concession facility or adjacent premises. In the event that such unauthorized action of Sportsplex and Ballpark Concessions is taken or such liabilities are suffered by the City as a result of actions or omissions by Sportsplex and Ballpark Concessions, the City shall be indemnified and held harmless by Sportsplex and Ballpark Concessions.

I. PRICE LIST

1. Ballpark Concessions agrees to sell only those items approved by the City at a retail cost approved by the City. Ballpark Concessions agrees to prepare a yearly proposed price list of all articles offered for sale at the concession facility. This price list is subject to the approval of the City. The initial prices for the concession items shall be as submitted in the request for proposal. The initial prices for concession items are subject to change only upon approval of the City.

J. INDEPENDENT CONTRACTOR RELATIONSHIP

1. Sportsplex and Ballpark Concessions and the City acknowledge that employees of Sportsplex and Ballpark Concessions shall not be City employees and the parties further acknowledge an independent contractor relationship between the City and Sportsplex and Ballpark Concessions and that all individuals employed by Sportsplex and Ballpark Concessions to work at the concession facility shall be employees of Sportsplex and Ballpark Concessions only. In this regard, Sportsplex and Ballpark Concessions shall have the right to control and direct its employees working at the concession facility and shall have the right to hire and fire said employees. However, in the event that the City receives complaints regarding any of Sportsplex and Ballpark Concession's employees, the City reserves the

right to request that appropriate, corrective, action be taken by Sportsplex and Ballpark Concessions in its capacity as employer.

K. LICENSES/PERMITS

1. Sportsplex and Ballpark Concessions shall be solely responsible for acquiring at its own expense from the corporate, federal, state, county, or local agency or governmental unit all permits, licenses, certification, and authority for operating the concession facility.

L. TERMINATION

1. In the event that either party shall fail to maintain or keep in force any of the terms and conditions of this Agreement, or should either party default in the performance of any of the terms, conditions, covenant, warranties or agreements contained herein, the aggrieved party may notify the other party in writing via Certified Mail or personal service of such failure or default and demand that the same be remedied within five (5) days. If the default cannot be reasonably cured within such five-day (5) period, the defaulting party shall have such additional time as is necessary to cure such default so long as the defaulting party is diligently pursuing the cure of such default. Should the defaulting party fail to remedy the same within said period, the other party shall then have the right to terminate this Agreement by giving the other party thirty (30) days written notice.

M. MISCELLANEOUS

1. Ballpark Concessions agrees it will not store any oils, candles, lamps, turpentine, benzene, naphtha, petroleum product or other flammable or other explosive substance in or near the concession facility.
2. Sportsplex and Ballpark Concessions hereby expressly waive any and all claims for compensation reimbursement against the City, its representatives or its insurer(s), for any and all losses, damages, costs and expenses arising out of or resulting from any defects, deficiencies or impairments to the concession facility, structure or any apparatus wiring, etc. therein. Sportsplex and Ballpark Concessions also agree to waive any claim against the City, and its representatives or insurer(s) in the event of loss or damage resulting from fire, water, tornado, explosions, civil commotion, riot or act of God. Sportsplex and Ballpark Concessions shall be solely responsible for any damages, thefts or other incidents which occur within the concession facility and shall indemnify and hold the City harmless for the same.

N. SPECIAL EVENTS

1. If the City authorizes a special event to be held at the Holiday Park Baseball Complex, it shall have the right to make arrangements for operation of the concession facility for the specially scheduled event. The City agrees to notify Sportsplex and Ballpark Concessions three (3) weeks prior to the event. Sportsplex and Ballpark Concessions shall have the right of first refusal to operate the concession facility during the specially scheduled event. However, if Sportsplex and Ballpark Concessions declines to operate the concession facility, the City may select the individual or entity responsible for operating the concession and Sportsplex and Ballpark Concessions shall not participate in or receive any part of gross revenues or net revenues derived there from, unless an agreement to the contrary is reached with the individual or entity selected by the City to operate the concession facility.

O. INSURANCE

1. Sportsplex and Ballpark Concessions agree, that at its own cost, it will procure and maintain comprehensive general liability insurance, to cover any and all losses to the concession facility, and, adjacent properties and equipment and personal property located therein as well as worker's compensation insurance to insure against injuries sustained by employees of Sportsplex and Ballpark Concessions as well as any damages which may result from fire or other natural disaster. Sportsplex and Ballpark Concessions agree to name the City as an additional insured and provide a certificate of insurance to the City within ten (10) days after the City executes this Agreement. Sportsplex and Ballpark Concessions also agree to provide the City with a policy limits declaration page for the general liability and worker's compensation policies. The City Clerk, City of West Des Moines, P.O. Box 65320, shall be named as the certificate holder. The insurance purchased by Sportsplex and Ballpark Concessions shall include but not be limited to and including the proof of the following coverage:

INSURANCE TYPE	MINIMUM COVERAGE
1. Worker's Compensation and Employers Liability	Statutory Requirements And $100,000 of employer Liability
2. Commercial General Liability	
General Aggregate Limit	$2,000,000
Products Completed Operation Aggregate Limit	$1,000,000
Personal and Advertising Injury Limit	$1,000,000
Each occurrence limit	$1,000,000
Comprehensive automobile and motor vehicle/trailer liability insurance for vehicles owned, non-owned or rented and underinsured automobile and vehicle liability	
Fire damage limit (any one occurrence)	$50,000
Medical payments (any one person)	$5,000

2. Sportsplex and Ballpark Concessions agrees that in the event the concession facility adjacent structures or personal property located therein are substantially damaged by fire or other incident, this Agreement may be suspended in part or in whole by the City. The City shall have sole discretion to determine whether the Agreement should be suspended.

Q. RELEASE, INDEMNIFICATION AND HOLD HARMLESS

1. To the fullest extent permitted by law, Sportsplex and Ballpark Concessions agree to defend, pay on behalf of, indemnify, and hold harmless the City of West Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City of West Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of West Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of West Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by Sportsplex or Ballpark Concessions to the City of West Des Moines, Iowa pursuant to the provisions of this contract. It is the intention of the parties that the City of West Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of West Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by Sportsplex and Ballpark Concessions, its officers, employees, subcontractors, and others affiliated with Sportsplex and Ballpark Concessions due to accidents, mishaps, misconduct, negligence, or injuries either in person or property resulting from the work and/or services performed by Sportsplex and Ballpark Concessions pursuant to the provisions of this contract, except for and to the extent caused by the gross negligence of the City of West Des Moines, Iowa.
2. Sportsplex and Ballpark Concessions expressly assume full responsibility for any and all damage or injuries which may result to any person or property by reason of or in connection with the work and/or services provided by Sportsplex and Ballpark Concessions to the City of West Des Moines, Iowa pursuant to this contract, and agrees to pay the City of West Des Moines, Iowa for all damages caused to the City of West Des Moines Iowa premises resulting from the activities of Sportsplex and Ballpark

Concessions, its officers, employees, subcontractors, and others affiliated with the Sportsplex and Ballpark Concessions.

3. Sportsplex and Ballpark Concessions represent that its activities pursuant to the provisions of this contract will be performed and supervised by adequately trained and qualified personnel, and Sportsplex and Ballpark Concessions will observe, and cause its officers, subcontractors and others affiliated with the Sportsplex and Ballpark Concessions to observe all applicable safety rules.

R. TAXES

1. Ballpark Concessions agrees it shall be solely responsible for payment of all federal, state, county or local sales, income or employee taxes or any other said tax or surcharge which are assessable for the operation of the concession facility.

S. ASSIGNMENT

1. This Agreement of the benefits or obligations arising thereunder may not be assigned, transferred, conveyed or sold without the express written authorization if the City.

T. APPLICABLE LAW

1. Sportsplex and Ballpark Concessions shall comply with all state, county, local and federal laws and regulations and with all other applicable laws, ordinances, and regulations where the concession facility is located with regard to all matters including, but not limited to, construction, sanitation, licensing, permits, worker injuries, interpretation of this agreement and all other matters.

U. INSPECTION OF PREMISES

1. The City hereby reserves the right to enter the concession facility at any reasonable time to inspect the same. Sportsplex and Ballpark Concessions agrees that at all times; free access shall be given to the City, its departments and personnel, the Iowa Department of Health and other certain governmental agencies for inspection purposes.

All notices under this Agreement shall be sent to the City:

Bruce Mankle, Recreation Program/Facility Supervisor
West Des Moines Park and Recreation Department
4200 Mills Civic Parkway
PO Box 65320
West Des Moines, IA 50265
Telephone: (515) 222-3454
Facsimile: (515) 222-3459
Email: bruce.mankle@wdm.iowa.gov

The parties agree that the laws of the State of Iowa shall govern this contract and the jurisdiction for actions under this contract shall be in the District Court in Polk County, Iowa.

City of West Des Moines, Iowa

By_____
Sally Ortgies, Director

By_____
Bruce Mankle, Recreation Program/Facility Supervisor

Sportsplex West, LLC

By _____
Pat Yacinich, Owner

Ballpark Concessions, LLC

By _____
Brian Hobbs, Owner