



## DURHAM COUNTY MEMORIAL STADIUM CONCESSION CONTRACT

This Contract is entered into this the (date) of (month) (year) between the DURHAM COUNTY MEMORIAL STADIUM AUTHORITY, hereinafter the "AUTHORITY", and (CONTRACTOR), hereinafter the "CONCESSIONAIRE", for the provision of concession services at the Durham County Memorial Stadium, located at 750 Stadium Drive, Durham NC 27704, hereinafter the "STADIUM".

WHEREAS, the AUTHORITY has a need for a vendor to provide concession services from time to time at the Stadium; and

WHEREAS, CONCESSIONAIRE is willing and able to provide concessions services at the Stadium.

NOW THEREFORE, for and in consideration of the mutual promises and conditions herein, and in recognition of the CONCESSIONAIRE'S role as an independent contractor and not an employee of Durham County, CONCESSIONAIRE and the AUTHORITY agree as follows:

### 1. DUTIES OF THE CONCESSIONAIRE:

- A. CONCESSIONAIRE shall provide all food and drink equipment, supplies, items and articles necessary for the provision of concession sales at the Stadium, subject to sec. 3 below, at the Stadium Events listed on Ex. A, attached hereto and incorporated herein. Ex. A shall be subject to change from time to time by the Stadium Manager with reasonable notice to the CONCESSIONAIRE.
- B. CONCESSIONAIRE shall provide and maintain the necessary inventory required to satisfy the public demand at Stadium Events. All such products sold or kept for sale by the CONCESSIONAIRE shall be first class in quality and conform to the Federal, State and county laws, ordinances and regulations in all respects.
- C. CONCESSIONAIRE shall not offer for sale any misbranded or impure products. **Glass and aluminum can containers are strictly prohibited at the Stadium.** All food items shall be stored and handled with due regard for sanitation.
- D. CONCESSIONAIRE shall submit to the AUTHORITY, or its designee, for approval a general listing of all products to be offered for sale during the term of this contract, which list may be amended from time to time with the approval of the AUTHORITY. This listing shall also include estimated price ranges of each product to be offered for sale. The CONCESSIONAIRE shall notify the AUTHORITY, or its designee, in writing of any proposed price changes during the term of the contract.
- E. CONCESSIONAIRE shall not sell or distribute alcoholic beverages including beer, wine and spirituous liquors and/or tobacco products at the Stadium.
- F. CONCESSIONAIRE shall ensure that the concession stands are adequately and appropriately staffed at all times and shall provide the AUTHORITY a complete listing of those persons operating sales, serving food or volunteering in any capacity in concession services provided hereunder. Such list shall be provided prior or immediately following each Event.

- G. CONCESSIONAIRE shall ensure that all employees and volunteers maintain appropriate attire, including shirts, hats, etc. identifying each worker as an employee or volunteer of the CONCESSIONAIRE.
- H. CONCESSIONAIRE shall abide by all local, state, federal, county and Health Department rules, regulations, instructions and ordinances.
- I. CONCESSIONAIRE shall hold a valid permit from the DURHAM COUNTY HEALTH DEPARTMENT if food and/or beverages requiring such a permit are to be sold, and shall present the permit when applying for a concessions/vending contract. Health Department permits are required for a Push Cart or Mobile Food Units. All vendors must have their set-up plans approved by the Health Department before a permit can be issued.
- J. CONCESSIONAIRE shall display the official, certified Durham County Health Department permit, if applicable, in full view of the public at all times during operation.
- K. CONCESSIONAIRE shall display a price list of goods sold in full view of the public at all times during the operation.
- L. CONCESSIONAIRE agrees to pay the Authority:  
A \$300.00 fee per day at **USATF Outdoor Youth Championships** All monies shall be paid prior to the start of the event to the Stadium Manager or designated representative. This fee is for north or south side **CONCOURSE** spaces.
- M. CONCESSIONAIRE shall not sublease or transfer this contract or any portion thereof to any other party without the written consent of the Authority.
- N. CONCESSIONAIRE shall ensure that it, its agents, employees and volunteers comply with all rules and regulations posted at the Stadium and/or set forth in this Agreement or otherwise provided to CONCESSIONAIRE by the AUTHORITY.
- O. CONCESSIONAIRE shall clean all concession areas of the Stadium after each use.
- P. CONCESSIONAIRE shall provide a report on the form attached hereto as Ex. B, reflecting the inventory before each Event and following the Event. Said Inventory report shall be provided to the Stadium Manager as soon after each Event as possible, but in no event later than five (5) days following the Event.

2. **INDEMNIFICATION AND INSURANCE**

- A. CONCESSIONAIRE shall indemnify and save harmless the AUTHORITY and the County of Durham, its agents and employees and assigns from and against all losses, costs, damages, expense and liability caused by an accident or other occurrence resulting in bodily injury, including death, sickness and disease to any person; or damage or destruction to property, real or personal; arising directly or indirectly from operations, products or services rendered under this contract.
- B. CONCESSIONAIRE shall provide and maintain at its own expense during the term of this contract the following insurance covering its operations. Such insurance shall be provided by insurer(s) satisfactory to the AUTHORITY and evidence of such coverage satisfactory to the AUTHORITY shall be delivered to the AUTHORITY or before the effective date of this contract. The AUTHORITY is to be given written notice of at least thirty (30) days in advance of any modification or termination of any program of insurance.

1. Commercial General Liability: Bodily injury and property damage liability as shall protect the CONCESSIONAIRE and any subcontractor performing work under this contract from claims of bodily injury or property damage which arise from operation of this whether such operations are performed by the CONCESSIONAIRE, any subcontractor or anyone directly or indirectly working/volunteering for either. The amounts of such insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) bodily injury each occurrence/aggregate and ONE MILLION DOLLARS (\$1,000,000) property damage each occurrence/aggregate or ONE MILLION DOLLARS (\$1,000,000) bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability, and contractual liability.

2. Worker's Compensation: Meeting the statutory requirements of the State of North Carolina and Employers Liability if applicable - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

- C. Failure on the part of the CONCESSIONAIRE to procure or maintain required insurance shall constitute a breach of contract upon which the AUTHORITY may immediately terminate this contract.
- D. Conduct of the CONCESSIONAIRE's operations shall not commence until the CONCESSIONAIRE has complied with the aforementioned insurance requirements. Further, said operations, in whole or in part, shall be subject to suspension by the AUTHORITY during any period that the CONCESSIONAIRE fails to maintain said policies in full force and effect.

### 3. **RIGHTS RESERVED BY THE AUTHORITY**

- A. AUTHORITY shall permit the CONCESSIONAIRE to conduct concession sales, as specified below, at the Stadium. Location: Ex. (1x South Side Concourse). Access to the Stadium and concession areas prior to each Event shall be provided by the Stadium Manager or County attendant.
- B. AUTHORITY reserves the right to grant access to the two (2) concession stands on the South side of the Stadium to CONCESSIONAIRE or lessee for the sale of soft goods or other food items. The AUTHORITY reserves the right to request that CONCESSIONAIRE also service the two concession stands on the South side if necessary to meet the demand of a highly attended Event.
- C. AUTHORITY or designated representative reserves the right to conduct random, unscheduled inspections of CONCESSIONAIRE'S operations to inspect sanitation and safety procedures and equipment, sales receipts, cash collection procedures and vending spaces/apparatus.
- D. The AUTHORITY or designated representative reserves the right to order the removal of any item sold or kept for sale that is judged to be less than first class in quality by the AUTHORITY.
- E. AUTHORITY reserves the right to allow free promotional giveaways, events sponsored by the AUTHORITY and any partner (s), non-profit events and other special events at the Stadium which may or may not preclude the CONCESSIONAIRE from vending during such events. AUTHORITY will provide CONCESSIONAIRE advance notice of all events and CONCESSIONAIRE shall not receive any payment from such events.
- F. AUTHORITY shall not liable for any losses incurred by the CONCESSIONAIRE during the term of this contract.
- G. The AUTHORITY reserves the right to require proof on non-profit designation.

4. **TERM OF THE CONTRACT:** The term of this contract shall be in effect as of the date as first written above through \_\_\_\_\_.

5. **TERMINATION**

The AUTHORITY reserves the right to terminate this contract immediately and for any reason (including non-payment) AUTHORITY deems necessary by giving written notice to the CONCESSIONAIRE. CONCESSIONAIRE will immediately, upon receipt of a notification of cancellation, remove only CONCESSIONAIRE-owned operating equipment, materials and supplies and vacate the Stadium. CONCESSIONAIRE is liable for payment for any damages to the Stadium or removal of County-owned equipment.

Further, the AUTHORITY reserves the right to terminate this contract immediately if (i) Health Department inspection scores, if applicable, fall below 95% at any time during the term of this contract or (ii) concession services are operated under conditions that will result in an immediate suspension or revocation or intent to suspend or revoke the operational health permit.

<http://dcopublichealth.org/services/environmental-health/forms-applications>

The AUTHORITY also reserves the right to terminate this contract immediately for repeat violations for improper food temperatures, improper food handling, poor hand washing, and chemicals to close to food, improper dishwashing and sanitizing.

**CONDUCTING SALES ON COUNTY PROPERTY IS A PRIVILEGE**

By signing this document, the CONCESSIONAIRE acknowledges and understands that this contract can be terminated immediately for any reason including the following:

- A. Failure to submit sales revenues, sales or Inventory reports and submit proper commission percentage to the Authority within the required time frame.
- B. Inaccurate (intentional or otherwise) revenue reporting.
- C. Quality of goods, condition of equipment, appearance of employees/volunteers, or any other factor whatsoever which does not represent the AUTHORITY in the highest manner.
- D. Failure to properly service any assigned Event and.
- E. Failure to remove any trash associated with sales on Stadium property including trash which may have been inappropriately placed by customers.
- F. Sales of any item where the customer is given a glass container.
- G. CONCESSIONAIRE damages Stadium or County property.
- H. Expired or inadequate insurance.
- I. Failure to comply with any health and/or safety law, rule, regulation, or instruction.
- J. Failure to comply with any County or Affidavit rule, regulation, or instruction.
- K. Failure to pass any/all required Health Department inspections.
- L. Failure to submit a copy of any/all Health Department inspection(s) as requested.
- M. County receiving competitive proposal from another vendor in response to published RFP.

6. **MISCELLANEOUS**

- A. CONCESSIONAIRE shall not discriminate against any person on the grounds of race, religion, color, national origin, sex, age, or disability in the administration of this contract. Nor shall any person be excluded from participation in, or be denied the benefits of any project constructed under this contract on the grounds of race, color, national origin, sex, age, or disability.

- B. The laws of the State of North Carolina shall control and govern this contract. Any controversy or claim arising out of this contract shall be settled by an action initiated in the appropriate division of the General Court of Justice in Durham County, North Carolina.
- C. All notices and requests for payment which may be required by this contract or any rule of law shall be effective when received by first class mail sent to the following addresses: if to the AUTHORITY, Attn: Stadium Manager 310 South Dillard Street, Durham NC 27701; and if to CONCESSIONAIRE, Attn: Zach Pritchard
- D. By execution hereof, the person signing for CONCESSIONAIRE below certifies that he/she has read this Agreement and that he/she is duly authorized to execute this contract on behalf of the CONCESSIONAIRE.
- E. This Agreement sets forth the entire agreement between the AUTHORITY and the CONCESSIONAIRE and supersedes any and all other agreements on this subject between the parties.

**7. E-VERIFY**

As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY."

**8. IRAN DIVESTMENT ACT CERTIFICATION.**

(Applicable only to contracts/agreements valued at \$1,000.00 or more). The Parties by signing/executing this contract certifies that as of the date of this contract they are not on the Final Divestment List as created by the State Treasurer pursuant to North Carolina General Statute 147-86.58 and they are in compliance with the requirements of the Iran Divestment Act and North Carolina General Statute 147-86.59. The Parties shall not utilize in the performance of this contract any subcontractor that is identified on the Final Divestment List.

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

DURHAM COUNTY STADIUM AUTHORITY

CONCESSIONAIRE

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Durham County Stadium Authority

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(Vendor Name)