

## **AGREEMENT FOR THE OPERATION OF CONCESSION SERVICES**

This Agreement for Operation of Concession Services (the "Agreements") is entered into by and between the City of Seguin, a Texas municipal corporation, ("City") acting herein by and through its City Manager and RRL Concessions. ("Concessionaire").

**WHEREAS**, Concessionaire desires to manage the City's concession facilities at the Seguin Coliseum ("Coliseum"), the Volleyball Complex, and the Rodeo Arena; and

**WHEREAS**, the Seguin City Council has authorized Concessionaire to be the designated operator of the concession facilities under the specified arrangements outlined below;

### **NOW, THEREFORE, City and Concessionaire agree as follows:**

1. Concessionaire shall have the exclusive right to operate the concession facility at the Coliseum for the provision of concession services at scheduled events requiring the same.
2. Concessionaire shall have the exclusive right to operate a concession stand at the Volleyball Complex, provided that Concessionaire's right to provide said service shall not include not-for-profit events approved by the City Manager unless the City Manager exempts such events from coverage by this section in writing.
3. Concessionaire shall have the exclusive right to operate the concession booth in the Rodeo Arena, including sales of alcoholic beverages. During the week of the County Fair, the Guadalupe County Agricultural & Livestock Fair Association shall also be allowed to sell food and alcoholic beverages in the Rodeo Arena, but no one other than Concessionaire shall be allowed to use the concession booth.
4. Items and Prices; Customer Service.
  - a. Concessionaire will not charge a price for an item sold at any concession facility in excess of that listed on Exhibit "A" to this Agreement, and will not sell any item which is not listed on Exhibit "A". A request for adjustment in prices or additions to concession items must be approved by City Council and shall be limited to once per year. Any such request must be submitted in writing to the City Manager annually by November 15, who will present the request to City Council in December of that year. Following approval by City Council, the adjustments will be effective on January 1 for the calendar year.
  - b. With regard to the Coliseum and the Rodeo Arena, Concessionaire will provide each Coliseum client a typed document listing the prices and services to be offered, which document shall be approved by the Director of Parks & Recreation or designee. No changes will be made or approved to said document nor will any prices, items or services deviate from said document unless approved by the Seguin City Council as per Section 4(a) above.

- c. Concessionaire shall post an 8 ½ x 11 sign in plain view in each concession area stating the name of the Concessionaire and giving the following phone numbers for customer service issues:
  - i. With regard to the Coliseum, the customer service phone number shall be that of the Coliseum Management office.
  - ii. With regard to the Rodeo Arena and the Volleyball Complex, the customer service phone number shall be that of the Parks & Recreation office.
- d. Concessionaire shall inform all Coliseum clients of all service options available for their events.
- e. At all times during the term of this Agreement, Concessionaire shall be required at a minimum to maintain a current Beer and Wine Permit with the Texas Alcohol and Beverage Commission (TABC) in accordance with all local and state laws governing alcohol consumption. This Permit shall be addressed for both the Coliseum and Rodeo Arena Concession Booths. Concessionaire must have the ability to obtain a temporary Mixed Beverage Permit from TABC as needed for Coliseum events.

5. Insurance and Indemnity.

- a. The Vendor will procure and maintain at its expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Vendor or its agents, subcontractors or employees. Before commencing the work the Vendor will furnish to the City an original certificate or certificates in a form satisfactory to the City, showing that Vendor has complied with this paragraph.
- b. The Vendor shall not cause any insurance policy cancelled or permit to lapse, and all insurance policies shall include an endorsement to the effect that the insurance policy shall not be subject to cancellation or to reduction in the required limits of liability or amounts of insurance until notice has been mailed to the City of Seguin, ATTN: Director of Finance, P.O. Box 591, Seguin, TX 78156-0591. The notice shall state the date when such cancellation or reduction shall be effective. The cancellation date shall not be less than thirty (30) days after such notice.
- c. Commercial general liability and motor vehicle insurance will be written with the City as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The types and amounts of insurance required are set forth below:

TYPE	AMOUNTS
1. Worker's Compensation	Statutory
2. Commercial General Liability Insurance	\$1,000,000 combined single limits

to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$500,000 per occurrence

- d. The stated limits of insurance are minimum only. They do not limit the Vendor's indemnity obligation, and it will be the Vendor's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Vendor from compliance with these requirements.
  - e. The Vendor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts errors or omissions of the Vendor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation or enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Vendor or its agents or employees. This obligation by the Vendor will not be limited by reason of the specification of any particular insurance coverage required under this Agreement.
7. Concessionaire will provide well-trained, well-groomed and courteous workers. Concessionaire will provide a uniform for all workers, which shall consist of a clean, well-pressed, collared shirt bearing the name of the Concessionaire. Each worker shall display a nametag with the name of the worker and the Concessionaire. The City may request changes in personnel if problems arise with a worker(s). In addition,
- a. With respect to the Coliseum, workers may not wear shorts.
  - b. With respect to the Volleyball Complex and Rodeo Arena, workers may wear shorts.
  - c. While working, workers are prohibited from participating in an ongoing event in any capacity other than that fitting their job description and may not eat catered food.

8. City will not be liable to Concessionaire or to any other person for loss, theft, vandalism, or damage, or injury of any kind to any person or property.
9. This Agreement may be terminated at the option of either party for non-performance of any covenant contained herein or when the City Manager deems that such cancellation is in the best interest of the City. Notice of such cancellation will be delivered to the interested party by certified mail, return receipt requested, at least thirty (30) days prior to the date of termination of this Agreement.
10. Concessionaire will comply with all state and City statutes, regulations, and ordinances governing the operation of concession facilities under this Agreement.
11. Concessionaire will monitor and maintain the concession facilities and areas surrounding them. The "area surrounding" will be construed to mean property subject to trash or debris blown, carried by patrons, or otherwise distributed from any concession facility. Trash and debris includes paper, bottles, wrappers, caps, and other waste materials originating from the concession facility. The City Manager will have the right to suspend operations of any concession facility until further notice should this provision be violated. Notice of such suspension will be delivered in writing at least twenty four (24) hours prior to the effective time of suspension.
12. Concessionaire will perform the following maintenance at the following sites, to wit:
  - a. With respect to the Coliseum, Concessionaire is solely responsible for the maintenance of equipment provided for its use by the City of Seguin. Concessionaire will make no alterations or additions to said premises or equipment without prior written consent of the Facilities Manager or designee.
  - b. With respect to the Volleyball Complex, Concessionaire will perform all maintenance to the concession facilities, including, without limitation, the installation of screens, windows, and sinks, to make and keep such facilities in compliance with all applicable health and safety codes. The Concessionaire will also be responsible for all plumbing and electrical repairs and modifications as well as securing the premises from theft or burglary, but such modifications must be approved by the City Manager and Building Inspection Department in writing before work begins.
  - c. With respect to the Rodeo Arena, Concessionaire is solely responsible for the maintenance of equipment provided for its use by the City of Seguin. Concessionaire will make no alterations or additions to said premises or equipment without prior written consent of the Director of Parks & Recreation or designee.
  - d. Any repairs to major appliances costing five hundred dollars (\$500.00) or less shall be the responsibility of Concessionaire.
13. Concessionaire will assure that all electric lights (other than night security lights) are properly turned off at the conclusion of all scheduled events and that all utilities are used in a prudent manner.

14. Term.
  - a. The term of the Concession will be for a period of three (3) years commencing on October 1, 2015, and terminating on September 30, 2018.
  - b. The City of Seguin will have the right to exercise an option for an additional two-year term commencing on October 1, 2018 and ending on September 30, 2020, on the same terms, covenants, and conditions herein. The City of Seguin must notify the Concessionaire in writing six (6) months prior to the contractual expiration date if the contract will not be extended, otherwise, the extension will be automatic.
  
15. Concessionaire will pay the City of Seguin for the concession and use granted herein as follows:
  - a. Twelve and a half percent (12.5%) of the amount of the Concessionaire's monthly gross receipts as herein defined. (The term "gross receipts" will mean the gross amounts received by the Concessionaire from all cash or credit sales, and all charges for services of any type or nature made per this Agreement or related thereto.) When a percentage of gross receipts is not suitable or applicable for a particular activity not otherwise provided for herein, the City may establish a minimum monthly amount as payment for the privilege of engaging therein. Said amount will be set by mutual consent of the City and Concessionaire and will be reasonable in accordance with the revenue to be generated.
  - b. Payment will be made to the City on or before the twenty-fifth (25<sup>th</sup>) day of the calendar month following each month of the term provided herein. Payment may be made by check or draft issued and payable to the City of Seguin, and mailed or otherwise delivered to the City of Seguin Finance Department, P. O. Box 591, Seguin, Texas 78156-0591. In the event payment is not made on or before said date, a penalty of two hundred dollars (\$200) will be added to the unpaid amount.
  
16. Accounting Records

Concessionaire will be required to maintain a method of accounting which will, to the satisfaction of the City's Finance Director, correctly and accurately reflect the gross receipts and disbursements of Concessionaire in the connection with the concession. The method of accounting, including bank accounts, established for the concession will be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method will include the keeping of the following documents:

- a. Regular books of accounting such as general ledgers.
- b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.

- c. State and Federal income tax returns and sales tax returns, checks, and other documents providing payment of sums shown which the City will keep in confidence to the extent allowed by law.
  - d. Cash register tapes (daily tapes may be separated, but will be retained so that from day to day the sales can be identified).
  - e. Any other reporting records that the City Finance Director or its auditor deems necessary for proper reporting of receipts.
17. All sales will be recorded by means of cash registers, which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers will in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings will be made a matter of daily record. Vendor will be required to submit cash register tapes to the City weekly.
18. All documents, books and accounting records will be open for inspection and re-inspection at any reasonable time during the term of this Agreement and for twelve (12) months thereafter. In addition, the City Finance Director or its auditor may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by the concessionaire should be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire will pay the delinquent amount within thirty (30) days of billing therefore. If the additional amount due exceeds two percent (2%), and there is no reasonable basis for the failure to report and pay thereon, Concessionaire will also pay the cost of the audit and the penalty heretofore provided for delinquent payments. All information obtained in connection with the City's inspections of records or audit will be treated as confidential information and will be exempt from public disclosure to the extent allowable by law.
19. Concessionaire will furnish the City's Finance Director with a monthly gross receipts report showing the amount payable to the City. Such a report will accompany each monthly payment as required to be made as provided herein. The monthly reporting period will be by calendar month, rather than monthly anniversary date of the effective date of this Agreement. In addition thereto, Concessionaire will furnish the City's Finance Director with an annual profit and loss statement and a balance sheet prepared by a person and in a form acceptable to the City. The annual financial statements will be submitted not later than April 15<sup>th</sup> of each calendar year.
20. Default  
Concessionaire shall fail to pay any sum Concessionaire is obliged to pay hereunder and such failure shall continue for a period of ten (10) days after receipt of written notice to Concessionaire.

Concessionaire shall fail to comply with any term, provision or covenant of this Concession Agreement or fail to pay any sum Concessionaire is obliged to pay hereunder and shall not correct such failure within thirty (30) days after receipt of written notice.

Concessionaire becomes defunct, merges or joins with another entity, changes the name or changes physical location of its business without the City's written consent.

Concessionaire shall make an assignment for the benefit of creditors or a receiver or trustee shall be appointed for Concessionaire or its property.

Concessionaire shall file a petition under any section or chapter of the National Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Concessionaire shall be adjudged bankrupt or insolvent in proceedings filed against Concessionaire thereunder and such adjudication shall not be vacated or set aside or stayed within sixty (60) days thereafter.

21. Vacate Premises: The Concessionaire has 10 business days to remove all owned property at the Coliseum, Volleyball Complex, and the Rodeo Arena upon notice of contract termination. Any remaining property not removed in 10 business days will become property of the City of Seguin.
22. Closing  
The City is not responsible for lost revenue to the Concessionaire in the event the Coliseum, Volleyball Complex, and the Rodeo Arena closes. The City reserves the right to close the facility(s) while it is undergoing renovations or repairs, opens as an emergency shelter, or suffers irrevocable damage, either man-made or acts of God. The Concessionaire will resume normal operations once the facility is reopened.
23. Anti-Discrimination  
The Concessionaire may not refuse service to any clients on the basis of race, color, religion, national origin or sex. (This clause will be added to the contract.)

EXECUTED this \_\_\_\_\_ day of April, 2016.

**CITY OF SEGUIN, TEXAS**

By: \_\_\_\_\_  
Douglas G. Faseler, City Manager

**RRL CONCESSIONS**

By: \_\_\_\_\_  
Robert Stange