

CONCESSION AGREEMENT

This Agreement is by and between the Board of Trustees of the Northside Independent School District ("District"), 5900 Evers Road, San Antonio, Texas 78238 and the Northside Booster Association ("Association"), a Texas Nonprofit Corporation, Northside Sports Gym, 8400 N Loop 1604 W, San Antonio, Texas 78240, which is composed of the Band and Athletic/Spirit Booster Organizations of District high schools ("Member Organizations"). Such Member Organizations render valuable support financially as well as educationally to the senior high schools of the District. The parties agree as follows:

1. *Purpose.* This Agreement is entered into solely for the support and benefit of the band and athletic/spirit programs of the District. It is mutually agreed by the parties that the income which is distributed to the Member Organizations as a result of this Agreement will be used to improve and strengthen the band and athletic/spirit programs of the District senior high schools.
2. *Term.* This Agreement shall be for a period of one (1) year commencing on August 1, 2018. This Agreement may be cancelled by the District or the Association at any time upon thirty (30) days' notice with or without cause.
3. *Scope.* The Association agrees to provide all concession services for all athletic events at the Don Hardin Athletic Complex, the Dub Farris Athletic Complex, and the District Gym at Harlan High School ("Athletic Facilities"). Concession services means the serving of all food and drink items. The Association shall have a right of first refusal to provide concession services at any new venue operated by the District during the term of this Agreement.
4. *District Approval.* At the annual regular meeting of the District's Board of Trustees ("Board"), the Association shall submit a list of all food and drink items to be sold and a corresponding price schedule for approval or modification by the Board. Any change of items or prices proposed by the Association is subject to approval by the Board.
5. *Association Services.* The Association shall provide the following services under this Agreement:
 - 5.1 Services as described herein shall be provided for football, soccer, track, baseball, softball, volleyball, and basketball events held at the Athletic Facilities. Services may also be provided at other events upon agreement by the District and the Association.
 - 5.2 Provide all food and drink preparation, and, except staff provided by the District, engagement of staff to operate the concession stands.
 - 5.3 Provide proper clean-up and sanitation of all equipment.
 - 5.4 Provide proper storage for all food items to prevent spoilage and insect or rodent infestation.
 - 5.5 Provide final clean up and sanitation to concession facilities at the end of each sports season. Remove any equipment or items from concession facilities that need to be removed, and ensure proper storage of all items left in concession facilities.

- 5.6 Calculate the amounts due to Member Organizations and send a written recommendation for distributions to the District Business Office.
 - 5.7 Recommend the compensation amount for the Coordinator and necessary assistants which compensation will be determined by the NBA in its reasonable discretion.
6. *District Services.* The District shall provide the following services under this Agreement:
- 6.1 Employ a concession services coordinator ("Coordinator") and necessary assistants as required to perform the services set out in Exhibit A.
 - 6.2 Contract with personnel to open and close concession stands at each event.
 - 6.3 Contract with providers for special vending services.
 - 6.4 Collect all revenues from concession events at the conclusion of each event.
 - 6.5 Deposit all revenues from concession events in a separate District agency account identified to the concession services ("Concessions Agency Account").
 - 6.6 Purchase all food and drinks required for concession services.
 - 6.7 Maintain, repair and replace equipment required for concession services.
 - 6.8 Distribute the Net Income, defined herein, to the Association and Member Organizations based on the recommendation of the Association and determined by the District in its sole discretion.
 - 6.9 Prepare a financial report of concession funds quarterly.
7. *Facilities.* The Association is granted a license to use all concession facilities needed to provide concession services under this Agreement.
8. *Exclusive Beverage Agreements.* The District will purchase all food and drink products in accordance with District policy and any agreement between the Association and any vendor effective prior to the effective date of this Agreement. The Association will not extend the term of any such agreement and will not enter any new purchase agreement for food and drink products.
9. *Insurance.* Association shall purchase and maintain in force at all times throughout the term of this Agreement, and provide proof to District of, the following insurance coverage:
- 9.1 Commercial General Liability (combined single limit) \$ 1,000,000.00
 - 9.2 Coverage provided by all policies or riders must apply to the death or injury of any person and the damage to property that result, directly or indirectly, from the intentional or negligent act or omission of the Association, the Association's officers, agents, employees, guests, or invitees.

- 9.3 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the District.
- 9.4 The policy or policies so issued in the name of the Association shall also name the District as additional insured and include a waiver of subrogation in favor of District on each policy. Such coverage shall be primary coverage.
- 9.5 Nothing contained herein shall limit or waive the Association's legal or contractual responsibilities to District or others.
- 9.6 The Association shall have its insurance carrier(s) furnish to the District insurance certificates in form satisfactory to the District specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed during the term of this Lease without thirty (30) calendar days prior written notice to the District. The Association shall permit the District to examine the insurance policies, or at District's option, the Association shall furnish District with copies, certified by the carrier(s), of insurance policies required.
10. *Fidelity Bond.* The Association shall purchase and maintain in force at all times throughout the term of this Agreement a blanket fidelity bond in the amount of \$5,000.00 on persons who are authorized by the Association to make payments or handle funds for the Association. The Association shall provide a copy of the fidelity bond to the District.
11. *Indemnification.* The Association shall indemnify and hold harmless the District and its Board of Trustees, officers, employees and volunteers, in both their official and individual capacities, from all suits, actions, losses, damages, claims, or liability of any character, type or description including without limiting the generality of the foregoing all expenses of litigation, court costs, attorney's fees, and penalties of any kind or nature arising directly or indirectly from the negligent or willful acts of Association, its agents, servants, employees, contractors, and suppliers in the execution or performance of this Agreement.
12. *District Fee.* As consideration for the services performed by the District, the Association will pay to the District an amount equal to twelve and one-half percent (12.5%) of the Gross Adjusted Revenue generated by concession sales ("District Fee"). "Gross Adjusted Revenue" means all revenue from commission sales less the cost to maintain, repair and replace equipment required by commission sales determined in the sole discretion of the District.
13. *Distribution of Net Income.* "Net Income" means Gross Adjusted Revenue, less: (1) all costs incurred by the District for labor and materials provided pursuant to Section 6 of this Agreement, (2) the District Fee, (3) any amount distributed to the Association for payment of its costs attributable to providing concession services, and (4) an amount recommended by the Association and determined by the District to remain in the Concessions Services Account as operating funds for the provision of concession services. Net Income shall be distributed by the District to the Member Organizations in equal shares with modifications. Modifications include the debts due to concession consumption by Member Organization volunteers while working an event or due to penalties for failure by a Member Organization to work an assigned event. The Association shall submit its written recommendation for distribution, including calculation of modifications, to the District on November 1, February 1, May 1 and

August 1, unless otherwise agreed by the District and the Association. Distribution by the District shall be not later than 30 days after receipt of the Association's written recommendation unless otherwise agreed by the District and the Association. Distribution shall be made by crediting the funds due to each Member Organization's District agency account.

14. *Compliance with Safety Regulations.* The Association and the Member Organizations, and their respective volunteers, employees, or agents, shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the Occupational Safety and Health Administration (OSHA) and those promulgated by the District and communicated in writing to the Association. In case of conflict, the most stringent safety requirements shall govern. The Association shall indemnify and hold the District harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Association's obligations under this paragraph.
15. *Assignment.* This Agreement may not be assigned by the Association without the express written consent of the District.
16. *Terms to be Exclusive.* This Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provision more strictly against one party or the other. This Agreement may be modified or amended only by a writing signed by both parties.
17. *Waiver or Modification Ineffective Unless in Writing.* A waiver, alteration or modifications of any of the provisions of this Agreement will not be binding unless in writing and signed by authorized representatives of the parties to this Agreement.
18. *Notice.* Any notice required by or permitted under this Agreement must be made in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
19. *Choice of Law.* This Agreement shall be governed and construed in accordance with the laws of the State of Texas, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Bexar County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts.
20. *No Third Party Beneficiary.* This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it, nor shall this Agreement create any legal rights or claim on behalf of any third party.

21. *Disclaimer of Business Association.* Nothing herein may be construed as the formation of a partnership, joint venture, or other business organization of any description between the parties.
22. *Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.
23. *No Waiver of Immunity.* No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.
24. *Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
25. *Transfer of Association Funds.* Upon execution of this Agreement by the District and the Association, the Association shall transfer to the District any funds held by the Association. Such funds shall be considered operating funds for the provision of concession services.

Executed by the parties effective as of August 1, 2018.

NORTHSIDE INDEPENDENT SCHOOL
DISTRICT

By: 

Brian T. Woods, Ed.D.
Superintendent, Northside ISD

Date 7/25/18

NORTHSIDE BOOSTER ASSOCIATION

By: 

Lara Goldmann
President, Northside Booster Association

Date July 13, 2018

EXHIBIT A

Job Description General Manager for Concessions

The General Manager for Concessions is responsible to the Northside Booster Association (NBA) for the following duties:

1. Manage the operation of all NBA concession stands.
2. Act as the liaison between the NBA and NISD Athletic office.
3. Keep the NBA President informed of all activities and consult with the NBA officers and members at scheduled meetings of the NBA.
4. Supervise the work of employees (Openers/Closers) at assigned concessions areas.
5. Set work schedules and times for all NBA openers/closers to adequately staff all events.
6. To chair the scheduling committee who is responsible for assigning all club work schedules, to include playoff schedules.
7. Work with and provide quarterly inventory sheets and daily event control sheets to the NISD Athletic Office.
8. Buy supplies from approved NISD vendors and stock all NBA concession stands.
9. Supervise the opener/closer for the following duties:
 - a. Prepare start up and back up banks for change.
 - b. Conduct pre game inventory.
 - c. Have control sheets ready for working booster dub to verify.
 - d. Check Syrup and Co2 supply and change when needed.
 - e. Check all food and candy for quality control.
 - f. Start all hot food items to be ready for concession stand to open.
 - g. Fill up coolers with water and powerade.
 - h. Transfer product as needed from visitor and/or home side or from one stadium to another.
 - i. Verify with working booster club the end of event inventory count.
 - j. Count money.
 - k. Prepare deposit.
 - l. Verify with working booster club at the end of the event closing control sheet with signatures from both the opener/closer and representative of the working booster dub.
 - m. Report any repairs that need to be done on any equipment to General Manager of Concessions.
- 10) Conduct quarterly inventories and non-scheduled inventories (if requested) of all NBA concession stands. Inventory sheet will be turned into the NISD Athletic Office.
- 11) Be available to the club concession chairperson or president at all times during the event. Opener/closer must remain in the concession stand at least 90% of the time for an event with the exception of working two events during one night.
- 12) Repair and maintain equipment of the NBA when possible. Report any equipment that needs to be replaced to the NBA for approval.
- 13) Turn in and manage all requests for repairs to NISD, Coke and any vendors as necessary.
- 14) Make and log all repair requests.
- 15) Responsible for hiring/firing of the Opener/closer with the approval of the NBA.
- 16) Responsible for providing a mileage log sheet upon request to the NBA.

EXHIBIT B

Food and Beverage Procurement

In accordance with Section 8 of the Concession Agreement, the following products and their associated vendors are procured under existing NISD procurement policy with appropriate supporting agreements (as applicable)

<u>Product</u>	<u>Vendor</u>
Candy	Sam's Warehouse
Chips	Sam's Warehouse
Snacks	Sam's Warehouse
Peanuts	Liberto's
Nacho supplies (large venues)	Sam's Warehouse
Nacho supplies (small venues)	Liberto's
Frito Pie supplies	Sam's Warehouse
Hot Dog supplies	Sam's Warehouse
Hot Dog supplies (relish)	Liberto's
Popcorn supplies	Sam's
Popcorn supplies (boxes)	Liberto's
Chicken sandwich	Chick-fil-A
Breakfast sandwich	Chick-fil-A
Pizza	Marco's
Snow cones	Kona Ice