SUBJECT: SPORTS COMPLEX CONCESSION LICENSE

SOURCE: Department of Parks & Leisure Services

COMMENT: The Porterville Youth Amateur Softball Association (PYASA) have expressed an interest in operating the concession facility at the Sports Complex during the baseball season. A concession license has been prepared to allow the PYASA to provide services to the public in the general sale of soft drinks, prepackaged food and snack items during their seasons. The PYASA, as the licensee, will be required to maintain the concession facility, and the area surrounding the concession building, in a good and sanitary condition, and maintain all concession fixtures and equipment in good condition and repair. The PYASA is required to carry worker’s compensation and liability insurance, including product liability, indemnifying the City of Porterville and PYASA in the amount of $1,000,000. PYASA will also pay the City $5.00 per hour for usage of the concession facility. The License is for a period of five years beginning April 1, 2002 through March 30, 2007 and will be used during their season April 1 through July 31 of each year.

RECOMMENDATION: That the City Council approve the Sports Complex Concession License.

ATTACHMENT: Sports Complex Concession License
The City of Porterville, hereinafter referred to as “CITY” hereby grants to the Porterville Youth Amateur Softball Association (PYASA), hereinafter referred to as “LICENSEE”, a license for services to the public in general, of sale of soft drinks, prepackaged foods, ice creams, candies, and general confectionery articles and products at the Concession Building located at the Sports Complex, for a term of five years commencing April 1, 2002 and ending, March 30, 2007. Each year the Licensee shall utilize the concession stand from April 1 through July 31. The LICENSEE shall not sell or serve any type of alcoholic beverage on the premises.

1. The LICENSEE shall, at all times during the terms of said license, keep and maintain the concession building open for the convenience of patrons at said Complex during the hours in which said complex is being utilized for organized soccer and football or at any other time the CITY deems the operation of the concession necessary for special activities.

2. The LICENSEE shall keep and maintain all concession facilities, equipment and grounds at and around said concession building in good and sanitary condition and shall keep and maintain all of the concession fixtures and equipment in good condition and repair. The concession floor shall be wet mopped with a disinfectant after each use.

3. The LICENSEE shall open all gates and secure them open with locks upon opening the park and concession facility. The LICENSEE shall close and lock all gates upon closing the concession building and park.

4. In the event the LICENSEE shall fail, neglect or refuse to abide by and perform the terms, conditions, covenants, and agreements hereof, the CITY may, at its option, terminate and cancel this License and in the event of a termination of this License, the LICENSEE shall surrender up and deliver to the CITY complete possession of the premises where said License is being operated within 30 days after receiving notice to vacate.

5. The LICENSEE shall not assign, transfer or convey this license or any of the rights or benefits hereunder to any person, firm or corporation without first securing the written consent of the CITY.

6. The CITY, by its authorized agents and servants, reserves the right of entry upon the premises where said license is being operated for purposes of inspection.
7. Nothing herein shall be construed as making the CITY and the LICENSEE partners and/or joint ventures.

8. The LICENSEE shall pay monthly to the City a fee of $5.00 per hour for the use of the concession building by the 5th of each month. The fee will be adjusted each year by the San Francisco Consumer Price Index.

9. The LICENSEE shall and they do hereby agree to save, defend and indemnify the CITY, all of its officers, agents and employees of and from all manner of claims, demands, actions or causes of actions of all persons arising from or in any way connected with the use, occupation or employment of said License, or activities engaged in, or carried on or conducted upon the premises by the LICENSEE, together with costs and attorney’s fees and shall secure, at LICENSEE’S expense, liability insurance including product liability indemnifying the CITY and the LICENSEE in the sum of $1,000,000 combined single limit for property damage and injury, including death, to one or more persons, and deposit with the CITY an original certificate of said insurance, naming the CITY, its officers, agents and employees as an Additional Insured on LICENSEE’S policy.

10. The LICENSEE shall maintain Workers’ Compensation Insurance for all its employees and volunteers who are in any way connected with the performance of LICENSEE’S concessionaire interests.

11. That during the entire term of the License, the LICENSEE shall not suffer, allow, or permit any income, profit, or emolument gross and net, from any of its activities arising from, connected with, or in any manner associated with the use and employment by the LICENSEE of this License to enure, to be paid to, or delivered to the benefit of any members, private shareholder, or individual; and/or income, profit, gross and net, or other rights or benefits which shall arise from the use and employment of this LICENSEE shall be used solely, positively and exclusively to meet the necessary expenses or upkeep and operation of the activities of the LICENSEE as such, and not any members, shareholders, or individual.

12. The LICENSEE shall maintain and keep adequate records of its sales from the Licensed premises and agrees to permit the CITY to examine said records on demand.

13. The LICENSEE shall have the right and privilege, provided it is not in default of the terms and provisions of the License, at the end of the term or sooner termination thereof, to remove from premises all personal property belonging to the LICENSEE, together with their stocks, goods and wares and trade fixtures that LICENSEE may have installed, provided the same can be removed without material injury to the premises and the LICENSEE hereby acknowledges receipt of the premises in good condition and repair.
14. Notwithstanding any provision of this agreement to the contrary this agreement may be terminated by either party, with or without cause, by giving the other party thirty (30) days written notice of termination. Notice shall be given by personal delivery or first class mail, return receipt requested.

15. Attorneys Fees. If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for its attorneys fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

IN WITNESS whereof the parties have executed this License Agreement at Porterville, California this ____ day of ____________, 2002.

CITY OF PORTERVILLE

PORTERVILLE YOUTH AMATEUR SOFTBALL ASSOCIATION

By: ___________________________ By: ___________________________
Gordon T. Woods, Mayor President

ATTEST:

______________________________
John Longley, City Clerk

APPROVED AS TO FORM:

______________________________
Julia M. Lew, City Attorney