

Food and Non-Alcoholic Beverage Concession Services Contract
City of Waukesha – Saratoga Complex

This Contract is entered into by and between the City of Waukesha and its Parks, Recreation and Forestry Department, 1900 Aviation Drive, Waukesha, Wisconsin 53188, referred to herein as the City; and Babalou Enterprises, LLC, 9328 North Broadmoor Road, Bayside, Wisconsin 53217, referred to herein as Concessionaire. City and Concessionaire together are referred to herein as the Parties.

Recitals

The City wishes to provide fermented malt beverage sales at the Saratoga Complex ball fields. Concessionaire has represented that it is capable of providing such service, and is willing to contract with the City to do so.

Now, therefore, the Parties agree and contract as follows:

1. **Grant of Concession.** The City grants to Concessionaire the exclusive food and non-alcoholic beverages concession at the Saratoga Complex, subject to all terms and conditions of this Contract.
2. **Term.** This Contract is for the 2016 and 2017 seasons. It shall commence upon execution, and will terminate on December 31, 2017.
3. **Premises.** The City shall designate the Premises within the Saratoga Complex in which the Concessionaire will provide its concession services. All services to be performed by Concessionaire shall take place only within the designated Premises. Concessionaire acknowledges that it takes the Premises as-is.
4. **Services to Be Provided by Concessionaire.** Concessionaire shall provide concession services according to the following terms:
 - a. Concessionaire shall offer for sale only food and non-alcoholic beverages. Concessionaire shall not offer for sale any tobacco- or alcohol-containing products.
 - b. Concessionaire shall be open for sales no later than 15 minutes before the commencement of any scheduled games conducted by the City at the Saratoga Complex, and shall close no later than the conclusion of any such games.
 - c. If games are cancelled or the Saratoga Complex is closed by the City for any reason, Concessionaire shall not conduct sales.
 - d. Concessionaire may open for sales during games at the Saratoga Complex sponsored by organizations other than the City, provided the games are conducted with the permission of the City, and the timing of services shall be as agreed upon by Concessionaire and the private sponsoring organization. Concessionaire shall be subject to all terms and conditions of this Contract while conducting sales at such privately-sponsored games.
5. **Concessionaire Duties.**
 - a. In general, Concessionaire shall be responsible, at its sole expense, for the conduct of its concession services, and the City shall be responsible only for the specific obligations listed in this Contract.
 - b. Concessionaire shall have complete responsibility for its concession operation, including purchasing inventory, hiring and training employees, sales, promotion and marketing.

- c. Concessionaire shall ensure that the concession is adequately-staffed and stocked with inventory to meet reasonably-expected demands, by adequately-trained personnel, so that good customer service is provided at all times during which sales are conducted.
 - d. Concessionaire shall comply with all applicable local, state, and federal laws, ordinances and regulations, including but not limited to, the acquisition of all licenses and permits for the sale of food and non-alcoholic beverages.
 - e. Concessionaire shall be solely responsible for obtaining any required sales permits, and for the collection and payment of all sales taxes.
 - f. Concessionaire shall be solely responsible for the payment of its employees' compensation, and for the payment of any required payroll taxes, workers comp premiums, and unemployment insurance contributions.
 - g. Concessionaire shall ensure that all of its employees are neat and clean in appearance, and are courteous to customers.
 - h. Concessionaire shall be responsible for keeping the Premises and adjacent areas clean. All solid waste and recyclables must be placed in designated containers.
 - i. Deliveries shall not be made in the time between one-half hour before the earliest scheduled game to one-half hour after the conclusion of the last scheduled game.
 - j. Concessionaire shall provide the City with a list of the products to be sold, and pricing of the products, no later than one week before the first anticipated sales. The City may prohibit the sale of any items that are deemed by the City to be inappropriate.
 - k. Concessionaire shall clearly and visibly post the prices of all items for sale.
 - l. All food and beverages shall be dispensed in recyclable, non-glass containers.
 - m. Concessionaire shall maintain the Premises at all times in a clean condition, and shall upon the termination of this Contract leave the Premises in the condition it was in upon commencement, normal wear and tear excepted.
 - n. Concessionaire shall be responsible for any damage to the Premises or City property caused by its employees or volunteers at any time. Concessionaire shall replace or repair all damaged items, at its sole expense.
 - o. Concessionaire shall not use amplified sound or music, and shall not disrupt the conduct of activities at the Saratoga Complex.
6. **Relationship of Parties.** The Parties are independent contractors, and this Contract shall not be deemed to create any other relationship between them, including that of landlord and tenant. The Parties agree that Chapter 704 of the Wisconsin Statutes does not apply to their relationship. Neither Party is authorized to bind the other contractually, and neither shall be responsible for the acts or omissions of the other's employee or agents.
7. **Indemnification.** Concessionaire shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind, including court costs and actual attorney fees, arising out of, or connected in any way with:
- a. The presence of Concessionaire or Concessionaire's employees or agents at the Saratoga Complex.

- b. The conduct of concession services by Concessionaire or Concessionaire's employees or agents, including, but not limited to, damages for personal injury, death, or casualty loss to personal property.
 - c. Concessionaire's breach of any provision of this Contract.
 - d. Concessionaire's violations of any laws.
8. **Insurance.** Concessionaire shall maintain insurance of the following kinds and for not less than the following limits, at Concessionaire's sole expense, at all times during the term of this Contract. Policies shall be occurrence, and not claims-made, policies. Concessionaire shall obtain an endorsement making the City an additional insured and loss payee, and Concessionaire's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Concessionaire shall deliver a certificate of insurance to City showing that all requirements of this section are met.
- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Umbrella, \$1,000,000.
9. **City Obligations.**
- a. The City shall designate the Premises within the Saratoga Complex, having sufficient area for Concessionaire's conduct of concession services, and shall give Concessionaire complete access to the Premises at all times reasonably necessary for conducting the Services.
 - b. The City shall dispose of solid waste and recyclables placed by Concessionaire or Concessionaire's employees in designated containers.
 - c. The City shall provide electric power to the Premises at no cost to Concessionaire.
10. **Fees.** Concessionaire shall pay to City \$2,626 each year during the Term of this Contract, in five equal installments due no later than June 15, July 15, August 15, September 15, and October 15 each year.
11. **Default in Payment of Fees.** Time is of the essence with respect to the payments required in section 10. A default in payment of any installment may result in the immediate termination of this Contract, at the City's option.
12. **Relocation of Premises.** The City may relocate the Premises within the Saratoga Complex, provided the relocation is of necessity for causes beyond the City's control, and the relocated Premises are of comparable size and accommodation to allow Concessionaire reasonably to continue operations.
13. **Casualty Loss to Premises.** If the Premises suffer a casualty loss by fire, flood, wind, vandalism or other similar reason, then the City shall undertake repairs to restore the Premises as promptly as reasonably possible. If Concessionaire is unable to continue its services during repairs, then the fee payments required by section 10 shall abate pro-rata.
14. **Public Accommodations Law.** Concessionaire shall not discriminate against any persons for concession services on the basis of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.
15. **Record Keeping.** Concessionaire shall keep all documents and records generated in its conduct of the Services for no less than 7 years after completion of the Services, and shall make them available to the City at

the City's request. Concessionaire acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

16. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
17. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
18. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
19. **Contacts.** Communications regarding this Contract shall be directed to the City, Ron Grall, Director of Parks, Recreation and Forestry, rgrall@ci.waukesha.wi.us, (262) 524-3734, or Karen Richards, SPARS Coordinator, krichards@ci.waukesha.wi.us, (262) 524-3741; and to Concessionaire, Louis R. Maniscalco, Owner, Catman1219@aol.com, (414) 315-3016.

City of Waukesha

By Shawn N. Reilly, Mayor
Date:_____

Attested by Gina L. Kozlik, City Clerk
Date:_____

Concessionaire

Louis R. Maniscalco, Owner, Babalou Enterprises, LLC
Date:_____