



**REQUEST FOR PROPOSALS (RFP)
CONCESSION SERVICES FOR THE ARMCO PARK SOFTBALL COMPLEX
(CONTRACT EXHIBIT A)**

RESPONSE DEADLINE: February 13, 2025, 3:00pm

Deadline for Inquiries: February 5, 2025, 3:00pm
Contract Start Date: March 28, 2025

Warren County Park District is requesting proposals from qualified companies or individuals (hereinafter referred to as Proposers or Concessionaires) to provide concession services for the Armco Park Softball Complex (Complex), located in Armco Park, 1223 North State Route 741, Lebanon, Ohio 45036.

Inquiries may be made to parks@co.warren.oh.us or 513-695-3993 by the inquiry deadline. Only written answers to questions may be relied upon.

Proposals are to be submitted via e-mail in the form of a single PDF file attachment to parks@co.warren.oh.us by the above deadline. Proposals received after the deadline will not be accepted.

I. BACKGROUND INFORMATION

This Request for Proposal is for the provision of concession services at the Armco Park Softball Complex, located in Armco Park, 1223 North State Route 741, Lebanon, Ohio 45036. The Armco Park Softball Complex features four lighted diamonds with synthetic turf infields, electronic scoreboards, and a public address system. The complex will accommodate youth baseball up to age 12 and all types of softball. The outfield fences are approximately 300 feet. Bases can be placed at 60, 65, or 70 foot intervals.

The complex is offered for tournament rentals Friday-Sunday and is used for slow pitch softball leagues Monday-Thursday and Fridays when not otherwise being used for tournaments.

Intent

The Park District views the concession operations as a service to the community. As a result, the Park District is requiring the successful Concessionaire to be experienced in concession operations.

The Park District desires a full-service contract under which the vendor provides all stock items and equipment not otherwise furnished by the Park District (See Exhibit C) and pays a commission to the Park District in accordance with the enclosed Agreement.

The Park District expects that the successful proposer will provide excellent service and be sophisticated in concessions sales and equipment.

II. INSTRUCTIONS TO PROPOSERS

1. Submittal Requirements:
 - a. Proposal Form (Exhibit B) fully and legibly filled out and signed by an authorized representative of the Proposer.
 - b. References / Past Performance History - Attach a list of at least three references for concession services including client name, phone, email, location where services were provided, and a brief description of concession services provided. One of the references must be the Proposer's largest client. Proposer may include up to one additional page to provide relevant information about its past performance history. Preference will be given to references and examples similar in nature to the Armco Park Softball Complex.
 - c. Company Narrative - Attach a one-page narrative that details Proposer's history of providing professional food service including years of experience and company background information.
 - d. Proposed Menu and Pricing - Attach a proposed menu of suggested food and beverage options, with proposed pricing, that complies with the terms of the RFP.
 - e. Value-Added Services and Ideas - Attach up to one page describing any proposals for value-added services and ideas that may distinguish your company's services from other Proposers.
 - f. Proposals are to be submitted via e-mail in the form of a single PDF file attachment to parks@co.warren.oh.us by the above deadline. Proposals received after the deadline will not be accepted.
2. Proposals may be withdrawn at any time prior to the proposal deadline only by written notification sent to parks@co.warren.oh.us.
3. Proposals not meeting the above Submittal Requirements may be rejected. Proposals must be signed by an individual authorized to extend a formal proposal. Unsigned proposals will be rejected. Any proposal submitted that depends on an exception to the Scope of Work requirements or Contract provisions included in this RFP may be considered nonresponsive and be rejected.
4. Park District staff will review the proposals and make a preliminary selection of the proposal deemed to be most beneficial to the Park District (the Selected Proposer) and will also select a Contingent Proposer that submits the proposal deemed second most beneficial to the Park District.

5. Park District staff may then conduct discussions with the Selected Proposer, accept revisions of the proposal, and negotiate price changes. During this discussion period, the Park District will not disclose any information derived from other proposals submitted, or from discussions with other proposers. If negotiations are successful, the final proposal and contract will be executed by the Selected Proposer and submitted to the Board of Park Commissioners for approval and award of the Contract. The Park District will then sign the contract following approval by the Board of Park Commissioners.
6. If negotiations with the first Selected Proposer are unsuccessful, and do not result in mutually acceptable terms, the first Selected Proposer will be so notified in writing by the Park District. At that point, negotiations with the first Selected Proposer will end and the Park District will proceed to negotiations with the Contingent Proposer as the new Selected Proposer.
7. Proposers are advised that once an award is made, the solicitation file, and the proposals contained therein, are in the public record and are subject to disclosure under Ohio's Public Records Laws.
8. The award shall be made to the responsible proposer whose proposal is determined to be the most advantageous to the Park District based on the evaluation factors set forth in this RFP. Commissions and fees, although a consideration, will not be the sole determining factor. Experience (for at least the past three years) and positive references for other similar services provided will also be strongly considered. See "Evaluation Criteria" below for details.
9. If information is submitted that Proposer considers to be proprietary, that information must be clearly marked as "Proprietary Information." If the information purported to be Proprietary Information falls under an exception to Ohio's Public Records Law, it will not be released. If the information does not fall under an exception to Ohio's Public Records Law, it will be released if requested, but the Park District will notify the Proposer prior to releasing the information. Pricing information cannot be considered proprietary. The Park District retains the sole right to determine whether information submitted by Proposers is subject to Ohio's Public Records Law. By submitting a Proposal, the Proposer releases the Park District from all liability associated with the Park District's duty to comply with Ohio's Public Records Law.
10. The Park District reserves the right to reject any or all proposals or any part thereof, or to accept any proposal or any part thereof, or to withhold the award and to waive or decline to waive any nonmaterial irregularities in any proposal. The Park District also reserves the right to hold all proposals for a period of 30 days after the opening date.
11. The successful proposer is expected to enter into the Contract included with this RFP. Proposers may suggest alternatives to the terms and conditions to the agreement. However, proposals that are contingent upon any changes to these terms and conditions may be considered nonresponsive and be rejected.
12. Any person, firm, corporation or association submitting a proposal shall be deemed to have read and understood all the terms, conditions and requirements in the Specifications and Contract.

13. All responses and accompanying documentation will become the property of the Park District at the time the proposals are opened.
14. Any proposer who has questions regarding this Request for Proposal, please email them to parks@co.warren.oh.us. Only written responses may be relied on by Proposers. Proposers shall not rely on any verbal responses from the Park District. All written questions must be submitted by the Deadline for Inquiries specified above. Failure to submit inquiries by this deadline may result in the inquiry not being answered.
15. Proposers are strongly advised to check the Park District website for amendments to this RFP. Amendments, if any, will be published in the same location as the original RFP no later than February 6, 2025.
16. The Park District will not reimburse any Proposer the cost of responding to a Request for Proposal.

III. SPECIFICATIONS / SCOPE OF WORK

1. The Park District seeks a company or individual that is experienced in the provision of concession services. Note that submitted proposals must meet the Park District's Specifications, Scope of Work, and Contract provisions.
2. It is expected that the concessions shall be open and operating when two or more softball fields are in use at the Complex. The Park District will establish open lines of communication and methods for sharing information with the Concessionaire about Complex reservations and expected use to determine expectations for concession stand operating hours. Since the Complex features synthetic turf infields, weather closures are rare but may still occur. Weather-related closures will be determined according to Park District policy and communicated with the Concessionaire via text or phone call as soon as possible after a determination is made.
3. Concessionaire will open the concession facility and ready for business no later than 30 minutes prior to the start of the first game of the day and may close the facility 30 minutes after the start of the last game of the day, or no later than 10:00 pm on any event day.
4. Concessionaire will be granted the right by the Park District to restrict Complex patrons from bringing in their own food and beverages, except that water (bottled or otherwise) and fruit shall always be allowed to be brought in. The Concessionaire will be solely responsible for enforcing this policy. Concessionaire is required to allow patrons to fill their own containers with tap water free of charge.
5. The Concessionaire will be required to provide its own concessions/food service software, be able to accept cash and credit card payments and provide weekly revenue reports. Concessionaire shall be responsible for providing and paying for its own internet connection. The Park District will work with Concessionaire's chosen provider to facilitate setup of internet service.

6. **Liquor License:** Concessionaire is required to obtain, at Concessionaire's sole cost and expense, its own Class D-1 or similar liquor permit from the Ohio Department of Commerce Division of Liquor Control allowing concessionaire to sell beer Monday-Saturday at the Complex by the Contract Start Date and must maintain that permit throughout the life of the Contract. Concessionaire is expected to have adequate staff on hand of the required legal age to sell beer when the concession stand is in operation. A liquor license allowing Sunday sales is desired but not required.

In the event that Concessionaire is unable to obtain the required liquor license and offer beer sales, the Park District may either, 1) immediately terminate the Agreement, or 2) offer its own beer sales at the entrance to the Complex using its own staff, and compel Concessionaire to allow beer purchased from Park District staff at the Complex entrance to be brought into the Complex. Electing option 2 does not preclude the Park District from terminating the Agreement at a later date if Concessionaire continues to be unable to procure the required liquor license.

7. **Additional Included Services:** In addition to providing concession services, the Concessionaire is expected to provide cleaning services, gate fee collection, and softball sales in conjunction with its concession operations. Expectations for these additional included services are as follows:

8. **Cleaning Services:** The Concessionaire is expected to provide cleaning services in the form of restroom cleaning and litter pickup during events when the Concessionaire is providing concession services. The Concessionaire shall monitor the restrooms and provide services as needed to keep the restrooms clean and sanitary for use by softball complex patrons, and Concessionaire shall be responsible for litter pickup within the outer fenced enclosure of the Softball Complex, and litter pickup shall occur on the same night as the event.

The Park District will provide supplies of the same type used throughout the park at no charge to Concessionaire for Concessionaire's use in performing cleaning services, and Armco Park will allow Concessionaire to use its waste containers for disposal of litter removed from the softball complex by Concessionaire.

The Concessionaire shall factor in the cost of providing cleaning services into its commission proposal and shall not be entitled to any further deductions from commissions otherwise due to the Park District for providing cleaning services.

9. **Gate Fee Collection:** Concessionaire shall collect the Softball Complex admission fee of \$3.00 per person ("Gate Fee") for entry to the softball complex for all attendees aged 16 years and older (Concessionaire and Park District staff, coaches (one per team), and umpires excepted), during events when Concessionaire is providing concession services, except when a tournament organizer has made a prior arrangement with the Park District to buy out the gate fee. Attendees under the age of 16 are admitted without a fee. If the gate fee is bought out, this will be communicated to Concessionaire in advance of the event. In the case of a Gate Fee buyout, the gate is not expected to be staffed, and the Park District will retain the revenue from the Gate Fee buyout.

In addition, when requested by a tournament organizer, the Concessionaire may, at its option, collect admission fees on behalf of the requesting tournament organizer in addition to the Gate Fee (“Additional Fees”) and shall remit the proceeds of these Additional Fees directly to the tournament organizer. Concessionaire, at its option, may separately negotiate its own fee directly with the requesting organizer for providing this service. The Concessionaire shall maintain a record of Additional Fees charged per person by tournament organizers for each tournament, including any portion retained by Concessionaire, and shall provide those records to the Park District upon request. As a public agency, the Park District has an interest in making sure that fees charged are reasonable and comparable to similar facilities. The Park District reserves the right, at its sole discretion, to prohibit excessive Additional Fees and may revoke the right of Concessionaire to collect Additional Fees upon written notice to Concessionaire.

In exchange for collecting the Gate Fee, Concessionaire shall be entitled to retain a portion of Gate Fees collected according to the amount proposed by Concessionaire in the response to this RFP or as subsequently negotiated between the Proposer and the Park District, and shall remit the remaining amount to the Park District. Gate Fees are calculated separately from the gross revenue/sales figures used to determine the commission paid to the Park District for food and beverage sales.

10. The Park District and Concessionaire shall mutually agree upon a tracking system for Gate Fees and the Concessionaire shall provide its Gate Fee tracking records to Armco Park with each payment to the Park District.
11. **Softball Sales:** Concessionaire shall sell softballs to softball complex patrons during events when Concessionaire is providing concession services. The Park District will obtain the softballs and sell them to Concessionaire at an approximate 10% markup. Concessionaire may then sell the softballs by the dozen or individually to teams at a markup to be determined by Concessionaire, not to exceed the markup percentage quoted in the Proposal or subsequently negotiated. The markup on softballs that is retained by Concessionaire will be excluded from the gross revenue/sales figures used to determine the commission paid to the Park District for food and beverage sales. At the end of the season, Park District will buy back unsold and unused softballs in groups of a dozen balls each at the same cost they were initially sold to Concessionaire. Concessionaire shall not resell used softballs to park patrons.

IV. EVALUATION CRITERIA

The Selected Proposer will be determined according to the following formula: Each proposal will be assigned a score of up to 1000 points, broken down as follows:

- Commission, up to 600 points, made up of the following:
 - Gross receipts percentage (revenue minus sales tax and credit card fees), excluding Gate Fee collections and Softball Sales, up to 450 points. 450 points will be awarded to the Proposal with the highest Estimated Total Payment to Park District. Points will be awarded to lower proposals according to the following formula:
$$(\text{Proposer's Estimated Total Payment to Park District} / \text{Highest Estimated Total Payment to Park District of All Proposers}) \times 450$$
 - Gate Fee Commission Proposal, up to 100 points. 100 points will be awarded to the Proposal with the highest Estimated Total Payment to Park District. Points will be awarded to lower proposals according to the following formula:
$$(\text{Proposer's Estimated Total Payment to Park District} / \text{Highest Estimated Total Payment to Park District of All Proposers}) \times 100$$
 - Softball Pricing Proposal, up to 50 points. 50 points will be awarded to the Proposal with the lowest price to the customer for a dozen softballs. Points will be awarded to higher proposals according to the following formula:
$$(\text{Lowest Price to Customer of All Proposers} / \text{Proposer's Price Proposal}) \times 50$$
- References / Past Performance History, up to 100 points
- Company Narrative, up to 100 points
- Proposed Menu and Pricing, up to 100 points
- Value-Added Services and Ideas, up to 100 points
 - See the Proposal Form for more details on the requirements for the above four categories.
 - For the above four categories, 100 points will be awarded to the Proposal that the Park District determines to be the best in that category, and a smaller number of points will be awarded to Proposals according to their ranking in each category as determined by the Park District.

V. PRE-PROPOSAL MEETING AND TOUR

An individual pre-proposal meeting and tour can be scheduled for a mutually agreeable time before the Deadline for Inquiries by emailing parks@co.warren.oh.us or calling 513-695-3993.

VI. ATTACHMENTS

1. FORM OF CONTRACT
2. PROPOSAL FORM (EXHIBIT B)
3. PARK-DISTRICT OWNED EQUIPMENT LIST (EXHIBIT C)



**WARREN COUNTY PARK DISTRICT
ARMCO PARK SOFTBALL COMPLEX
CONCESSIONS AGREEMENT**

This Agreement is entered into as of the latest signature date below by and between the Warren County Park District (the “Park District”) and _____ (the “Concessionaire”).

The Park District and the Concessionaire mutually agree that the Concessionaire shall provide goods and services in accordance with the specifications and terms of this Agreement.

1. **Intent.** The intent of this Agreement is to establish the terms under which Concessionaire will supply and support food and drink concession services, and other services as specified in the Request for Proposal (RFP), attached and included herein as Exhibit A, for the Armco Park Softball Complex (referred to herein as the “Complex” or the “Premises”), as requested by the RFP and as offered by the Concessionaire’s response thereto (Proposal), attached and included herein as Exhibit B, both of which are incorporated herein by reference. In the event of any conflict among these documents, this Agreement will govern, followed by the terms of the RFP.
2. **Term.** Unless sooner terminated under the provisions of this Agreement, the term of this Agreement shall begin at the full execution of this Agreement (the “Commencement Date”) and end December 31, 2025. Concession services shall be provided for the Softball Complex season which begins on March 28, 2025 and ends on or around November 15, 2025.

Concessionaire and Park District will have an option to renew this Agreement for up to two additional one (1) year terms. Any agreement reached by Armco Park and Concessionaire for renewal of this Agreement shall be subject to approval of the Warren County Park District Board of Park Commissioners, if any significant changes to the Agreement are included. The option to renew shall be exercised by the Concessionaire by serving written notice thereof, on or before November 15 of the year of the current contract term, to the Park District.

3. **Premises**
 - a. **License.** Subject to all the terms and conditions hereof, the Park District hereby grants to the Concessionaire a license to use and occupy the Premises for the purpose provided herein. The Concessionaire accepts the Premises in an, “as is, where is,” condition, based upon its own inspection and investigation, and without any reliance or warranty of the Park District.
 - b. **Use.** The Concessionaire shall occupy and use the Premises only for the purpose of providing services in accordance with the terms of this Agreement and for no other

purpose. The Concessionaire, at its expense, shall comply with all applicable laws now or hereafter in force, pertaining to the use, occupancy and possession of the Premises. The Concessionaire shall not use or allow the Premises to be used for any unlawful purpose. The Concessionaire shall not commit or allow to be committed any waste or nuisance on the Premises. The Concessionaire shall not subject the Premises to any use that would damage the Premises or raise or violate any insurance coverage maintained by the Park District. The Concessionaire shall have access to and use of the facilities. The Concessionaire shall exercise prudent control over the facilities to minimize wear and tear on building and fixtures. Repairs necessitated from misuse by the Concessionaire shall be paid by the Concessionaire. The Park District shall maintain the right of entry to areas occupied by Concessionaire.

- c. **Park District-Owned Equipment.** Concessionaire shall have use of the Park District-Owned Equipment described in Exhibit C attached hereto while this agreement is in effect, which shall be maintained in good working condition by Concessionaire, subject to reasonable wear and tear. Upon completion/termination of this agreement, all items shall be accounted for and returned to the Park district. During the course of this Agreement, any damage to Park District-Owned Equipment shall be reported to the Park District.

- d. **Alterations.** No alteration shall be made to Park District owned, leased or controlled buildings or fixtures, or to utility services, by the Concessionaire without the prior written consent of the Park District, who reserves the right to approve or disapprove of the alterations. Any and all such approved alterations shall be constructed with diligence, in a safe and good and workmanlike manner, and in compliance with applicable laws.

- e. **Maintenance and Repairs.** The Concessionaire shall, at its sole cost and expense, maintain the concession stand and adjacent storage areas in good condition and perform such repairs that become necessary from time to time during the term of this Agreement and any renewals hereof as set forth herein.

Routine minor maintenance expenses directly related to the food service operation will be the responsibility of the Concessionaire. Concessionaire shall use due care in the use of the premises, interior and exterior. Necessary maintenance and repairs to Park District-owned equipment and facilities not occasioned by the lack of care on the part of Concessionaire which require more than Two Hundred Dollars (\$200.00) in costs per incident shall be the responsibility of the Park District upon Concessionaire giving the Park District notice in writing of the need for the repairs.

Predictive routine maintenance such as; filters, grease trap cleaning, exhaust system cleaning and maintenance shall be the responsibility of the Concessionaire with initial oversight provided by the Park District.

A preseason and post season walk through of the facilities will be performed with both parties to identify preventive maintenance items that require action.

Any maintenance performed by either party will be documented and shared in written form.

- f. **Utilities.** The Park District shall pay for garbage and refuse removal, Concessionaire is required to place all trash in the dumpster at the end of the day. The Park District will pay for utilities except for internet and propane gas for cooking. Costs for propane used for cooking will be the responsibility of the Concessionaire.

No change or alteration of electric service will be made by the Concessionaire without the prior written authorization of the Park District. In the event that an installation of a machine causes disruption of the electrical service at the Premises, the Concessionaire shall immediately discontinue use of the machine and either install a dedicated electrical circuit at the Concessionaire's expense, or request approval from the Park District to relocate the machine. For any machines that require water, the Concessionaire must use existing Park District-provided water sources. No change or alteration of water service will be made by the Concessionaire without the prior written authorization of the Park District. Any permitted changes to either the electric service or water service shall be done by contractors with the applicable commercial license in the State of Ohio.

- g. **Condition of the Premises upon Termination.** At the termination of this Agreement, the Concessionaire shall surrender the Premises in as good condition as the Premises were in on the Commencement Date, reasonable wear and tear excepted. All property belonging to Concessionaire shall be removed from the premises, and if not removed within 30 days of this Agreement's expiration or termination, shall be considered abandoned.

4. **Concession Services.**

- a. **General.** The Concessionaire agrees to operate concession services on the Premises in accordance with the requirements, terms, conditions, information and descriptions contained in this Agreement, including the Request for Proposals and Concessionaire's response to the RFP. The Concessionaire shall always conduct its business on the Premises in a professional and reputable manner. During the terms of this Agreement, the Concessionaire shall take all actions as may be reasonably requested by the Park District to carry out the purpose and intent of this Agreement. If, at any time, the Park District receives complaints from the public about the behavior or professionalism of the Concessionaire's employees, which the Park District believes to be bonafide, the Park District will notify the Concessionaire and the Concessionaire shall take immediate steps to rectify the situation to the Park District's satisfaction. The concession services are viewed as a service to the public and professionalism from the Concessionaire's personnel is a top priority to the Park District. The service employees of the Concessionaire must wear identifying name tags, uniforms, or some other easily visible item that identifies them as employees of Concessionaire. Concessionaire shall provide signage indicating the name of the company providing services and a phone number and/or email address where customers may direct feedback.

- b. **Service to be Rendered.** The Concessionaire will provide at least the menu and pricing of the concession services as contained in Concessionaire's response to the RFP or as subsequently negotiated between Park District and Concessionaire and shall also provide the "Additional Included Services" listed in the Request for Proposal (Exhibit A). The Park District shall have the discretion to prohibit certain menu items should those items prove to be harmful to the operation of the Complex or that could create maintenance problems for the Park District. Concessionaire may implement pricing changes as needed upon written notice to Park District.
- c. **Concessionaire Services and Expenses.** The Concessionaire understands and agrees that it is responsible for paying the cost of all merchandise, services and other expenses in connection with the operation of its business. The Concessionaire indemnifies and holds the Park District harmless from and against any and all liability or claims arising from the operations of the Concessionaire on the Premises. The Concessionaire shall be responsible for, and indemnify and hold the Park District harmless from, all taxes arising out of the operations, including, without limitation, all payroll taxes, property taxes and equipment, sales and use, or similar taxes.
- d. **Compliance with Laws.** The Concessionaire, at its expense, shall at all times during the term of this Agreement, and with respect to all phases of operating its business, comply with all applicable laws now or hereafter in effect at any time during the term of this Agreement, including without limitation, all applicable rules, regulations and policies of the Park District. The Concessionaire shall also obtain and keep current all licenses and permits required to conduct its business at the Premises, and pay promptly when due, all applicable fees. Copies of any inspection reports, notices, etc., from any agency having jurisdiction shall be forwarded to the Park District within one day of receipt.
- e. **Park District Representative.** The Park District shall designate a person who shall be responsible for communicating with the Concessionaire, and only through whom changes to this Agreement may be authorized.

5. **Commissions.** The Concessionaire shall pay _____% on the gross receipts for all items sold at the Armco Park Softball Complex as commission to the Park District. The term "gross receipts" is defined as the total amount received by Concessionaire minus sales taxes and credit card fees. Gross receipts also do not include the value of any promotions or discounts Concessionaire may offer to customers. Gross receipts do not include Gate Fee collections or softball sales, which are calculated separately. The Concessionaire shall be responsible for paying all taxes, included but not limited to sales and use taxes, licenses, and other expenses, if any.

The Concessionaire shall retain _____% of Gate Fee collections and remit the remaining amount of Gate Fee collections to the Park District.

Concessionaire's markup on softballs shall not exceed _____%.

6. **Reporting.** The Concessionaire shall submit a monthly report that shows, at a minimum, the concession sales on a weekly basis, total dollar sales for each week and for the month, product

inventory and commission for concession service. Said report shall also include an accounting of Gate Fee and Softball sales. The Concessionaire shall timely provide any additional information requested by the Park District that shows or substantiates its concession sales under this Contract, including permitting the Park District to view its financial logs/books and sales receipts, upon reasonable notice to the Concessionaire.

7. **Accountability.**

- a. **Commission Report.** The Concessionaire shall submit to the Park District's designated representative, within 20 calendar days following the conclusion of each month (except for March, which shall be included with the April reporting), a commission report that includes the information in Section 6, accompanied by a check for the commissions earned.
- b. **Interest.** If monthly commission payments are not received by the Park District on the due dates prescribed above, the unpaid commissions shall accrue interest at the lesser of 18% per year or the highest contractual interest rate allowed by the State of Ohio. All such amounts shall be calculated on a daily basis and shall be due and owing in the same manner and at the same time as the commission payments.
- c. **Records.** The Concessionaire shall retain for inspection and audit by the Park District, or its agents, all books, accounts, reports, files and records relating to this Agreement for a period of at least three years after expiration or termination of this Agreement; provided, however, that records relating to disputes, litigation or the settlement of claims arising out of the performance of this Agreement, shall be retained by the Concessionaire, or its agents, until such litigation or claim is fully resolved. The Concessionaire shall provide all such records at the office of the Park District. Further, the Park District has the right, at the Park District's expense, to request that the commission statements for the current and any previous Agreement year be examined in accordance with generally accepted auditing standards by an independent certified public accountant. In the event that the audit uncovers a significant finding of irregularity, the Park District may seek to recover fees paid to the independent certified public accountant from Concessionaire in addition to recovery of any monies found to be owed to the Park District as a result of the audit.
- d. **Internal Controls.** The Park District shall have the right to review the Concessionaire's internal controls and accounting procedures relative to the Concessionaire's operation at the Park District. Significant weaknesses shall be rectified as soon as possible, but not later than 30 days after written notice specifically describing such condition is received by the Concessionaire from the Park District. Within 30 days after the Commencement Date, the Concessionaire will furnish the Park District with a statement of how the Concessionaire maintains accountability of revenues.

8. **Pricing.** The concession menu and pricing shall be as submitted to the Park District in Concessionaire's RFP response or as subsequently negotiated. Concessionaire shall provide written notification to the Park District of any subsequent change in the price of the merchandise or in the quality or unit sizes of the products provided.

Pricing shall be reasonable and comparable to other similar facilities in the area so as not to deny participation by the public. In the event that the Park District deems price increases to be excessive and make the Complex uncompetitive with other facilities in the local area, it shall be considered a “Concessionaire Default” and the Park District will so notify Concessionaire in writing, at which time Concessionaire may cure the default or the Park District may terminate this Agreement according to the “Defaults and Remedies” section of this Agreement. Gate Fee and Softball prices and commissions may not be modified by Concessionaire during the Agreement term but may be renegotiated as part of a one-year renewal.

9. **Licenses/Permits and Taxes.** The Concessionaire shall pay all transaction privilege, sales, and use taxes together with any possessory interest or other taxes levied in connection with the Concessionaire’s use of the facilities. The Concessionaire shall acquire, at its expense, all licenses or permits required by local, state and federal agencies and shall comply with all applicable laws. The Concessionaire shall indemnify and hold the Park District harmless from any and all claims and demands made against it by virtue of the failure of the Concessionaire or any subcontractor to comply with the provisions of any or all laws, as amended.

10. **Insurance.** Without limiting any liabilities or any other obligations of the Concessionaire, the Concessionaire shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of Ohio, and rated at least a VII in the current A.M. Best’s, the minimum insurance coverage below:
 - a. **Commercial General Liability.** Concessionaire shall, at its own expense, provide such public liability insurance that will protect Concessionaire and Park District from all claims for
 - b. damages to property and persons, including death, and particularly the use of products prepared, and/or sold, which may arise in the operation of the activities conducted under this Agreement or anyone directly or indirectly employed by Concessionaire. All policies shall name Warren County Park District as a named insured. The public liability insurance shall provide limits of not less than \$1,000,000.00 for one person or occurrence, \$1,000,000.00 for more than one person injured or killed in any one accident or occurrence and shall include products liability coverage. Property damage liability insurance shall provide a limit of not less than \$2,000,000.00.
 - c. **Workers Compensation Insurance.** As required by the State of Ohio.
 - d. **Certificates of Insurance.** Insurance certificates must be acceptable to the Park District and shall be issued and delivered prior to the commencement of the work defined in this Agreement and shall include endorsements naming the Park District as an additional insured. The certificates, insurance policies, and endorsements required by this section shall contain a provision that coverages afforded will not be cancelled until at least 30 days prior written notice has been given to the Park District. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Agreement.

Failure on the part of the Concessionaire to meet these requirements shall constitute a material breach of this Agreement upon which the Park District may immediately terminate this Agreement or, in its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Park District shall be repaid by the Concessionaire upon demand. Costs for insurance coverage are to be borne solely by Concessionaire. The Concessionaire and its insurer(s) providing the required coverages shall waive their rights of recovery against the Park District, its departments, boards, commissions, employees, officers and agents.

11. **Signs.** The Concessionaire shall not erect or place on or about the Premises any sign without the Park District's prior written approval of the location, material, size, design and content.
12. **Subcontracts.** This Agreement may not be assigned by the Concessionaire. The Concessionaire shall not subcontract the performance of any part of this Agreement without the prior written approval of each subcontractor by the Park District, which approval the Park District may refuse at its discretion and without recourse to the Concessionaire. The Concessionaire shall be responsible for any subcontractor activities the same as if the Concessionaire were furnishing the service.
13. **Deliveries.** At the times when deliveries are being made to Concessionaire in the concession areas, the Concessionaire shall have a representative present to receive and sign for the deliveries. The Park District will not be obligated to provide personnel at those locations for the purpose of receiving deliveries.
14. **Inspections.** The Park District shall have the right to inspect any operations of the Concessionaire, in the presence of a Concessionaire representative at any reasonable time.
15. **Park District Logo.** The Concessionaire shall not use the name of the Park District or any Park District sign, logo, symbol, trademark or word mark, etc., for any purpose, without the prior written consent of the Park District in each instance.
16. **Independent Contractor.** It is the intention of the Park District and the Concessionaire that the Concessionaire shall be deemed to be an independent contractor, and nothing in this Agreement, including the Concessionaire's proposal, shall be deemed to create a partnership or joint venture or the relationship of principal and agent between the Concessionaire and the Park District. Nothing herein shall cause the employees, agents or representatives of either the Concessionaire or the Park District to be deemed or construed to be the employee, agent or representative of the other. Any reference in the Concessionaire's proposal to a partnership relationship between the Concessionaire and the Park District shall have no legal effect.
17. **Personnel.**
 - a. **Equal Opportunity Employer.** The Concessionaire shall operate as an equal opportunity employer.

- b. **Concessionaire Personnel Matters.** The Concessionaire shall have control over and be responsible for all personnel and employment matters involving its employees including, but not limited to, work schedules and compensation. All employees shall be employed by the Concessionaire in its own name at its own expense, and the Concessionaire shall pay all salaries, wages and employee benefits payable to or on behalf of its employees. All personnel matters shall be handled in the accordance with applicable law and standard procedures established for all of the Concessionaire's locations.
 - c. **Staffing.** The Concessionaire shall maintain an adequate staff at all times to ensure a high-quality service operation on the Premises. The Concessionaire shall identify one manager made known to the Park District, in writing, by name to routinely review and inspect operations on the Premises.
 - d. **Employee Conduct.** The Concessionaire shall ensure that its employees engage in appropriate conduct while working at the Premises. All personnel must be subject to Park District regulations regarding personal behavior and use of Park District facilities.
18. **Waiver of Subrogation.** The Concessionaire assumes all risks in connection with the adequacy of any insurance and waives any claim against the Park District for liability, cost or expense arising out of any uninsured claim, in part or in full, of any nature whatsoever. All policies of insurance obtained by the Concessionaire in connection with the services provided under this Agreement shall contain a clause waiving the insurance company's right of subrogation against the Park District.
19. **Bankruptcy; Insolvency.** In the event that any proceeding under the Bankruptcy Act or any amendment thereto are commenced by or against the Concessionaire and, if against the Concessionaire, are not dismissed within 30 days after the commencement thereof, or in the event the Concessionaire is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a writ of attachment or execution is levied on the Concessionaire's interests under this Agreement and is not released or satisfied within 10 days, any such event shall constitute a breach of this Agreement by the Concessionaire, and the Park District, at the Park District's option and without notice, may terminate this Agreement and also all rights of the Concessionaire under this Agreement.
20. **Defaults and Remedies.**
- a. **Concessionaire Default.** The occurrence of any of the following events or conditions shall constitute, and is hereby defined to be, an, "Event of Default." The Concessionaire: (i) fails to comply with or perform under any of the terms, covenants or conditions hereof; (ii) fails to pay any commissions or other sums required by this Agreement within 5 days of the date such payment is due; (iii) abandons the Premises; (iv) files any proceeding under the federal bankruptcy laws now or any other similar statute now or hereafter existing or in effect, enters any order for relief under such laws with respect to the Concessionaire, or the appointment of a receiver, trustee, custodian or conservator of all or any part of the assets of the Concessionaire. Upon the occurrence of any Event of Default and at the time thereafter while such Event of Default is continuing, the Park

District shall have the following rights and remedies and, at the Park District's sole and absolute discretion, from time to time may do one or more of the following: (a) notify the Concessionaire in writing of such failure and demand that the same be remedied within 30 days, and should the Concessionaire fail to remedy the same within such period of time, the Park District shall then have the right to terminate this Agreement without further notice; and (b) pursue any legal and/or equitable remedy available to the Park District to prevent removal of property from the Premises by any lawful means it deems necessary to protect its interest. The Park District may exercise its rights and remedies at any time, to any extent and as often as the Park District deems desirable to protect its interests. No action of the Park District shall be construed as an election to terminate this Agreement unless written notice of such intention is given by the Park District to the Concessionaire.

- b. **Park District Default.** If the Park District shall fail to observe or perform any of the provisions of this Agreement to be observed or performed by the Park District, and such failure is not cured within 30 days after notice by the Concessionaire to the Park District, then the Park District shall be in default hereunder, and the Concessionaire may, at any time thereafter either terminate this Agreement or continue this Agreement and seek to recover damages resulting from the Park District's default. Notwithstanding the foregoing, if a default cannot reasonably be cured within 30 days, the Park District shall not be in default of this Agreement if it commences to cure the default within the 30-day period and thereafter diligently and in good faith cures the default. In no event, however, shall the Park District be liable for any lost income, profits or consequential damages of the Concessionaire or any other person or entity.

21. **Casualty.**

- a. **Concessionaire.** In the event of any damage or destruction of the Premises caused by the negligence or willful acts or omissions of the Concessionaire, its employees, agents, or invitees, then at its sole cost and expense, the Concessionaire shall restore, repair and replace the Premises to as good a condition as existed prior to such damage or destruction and this Agreement shall continue in effect without any reduction in commissions payable by the Concessionaire hereunder. Such restoration shall be commenced promptly; shall be prosecuted with diligence to completion; and shall be performed in a good and workmanlike manner in accordance with plans and specifications approved by the Park District and in compliance with all applicable laws, regulations and codes. All restoration work performed by or on behalf of the Concessionaire on the Premises shall be performed by the Concessionaire as approved the Park District (or at the Park District's option, by the Park District's employees, at the Concessionaire's expense), and the Park District shall have the right to require the Concessionaire to provide such insurance and post such payment and performance bonds as the Park District deems necessary.
- b. **Park District.** In the event of any other damage or destruction of the Premises, at its sole cost and expense, the Park District may promptly repair and replace the same to as good a condition as existed previously. In respect to any damage or destruction that the Park

District elects to repair under the terms of this section, to the extent that Park District continues to diligently pursue such repairs, the Concessionaire waives all rights that would authorize the Concessionaire to terminate this Agreement by reason of such damage or destruction.

22. **Exclusivity.** Except as otherwise provided herein, this Agreement gives the Concessionaire exclusive rights for food and beverage concessions at the Premises. Nothing in this Agreement shall prevent the Park District from using the Premises when it deems necessary, so long as the Concessionaire's products and services are not negatively impacted.
23. **Liens.** The Concessionaire shall not suffer or permit to be enforced and shall indemnify and hold the Park District and the Premises harmless from and against all mechanic's, material supplier's, contractor's, subcontractor's and all other liens, claims, security interest and demands of every kind and nature arising out of any work performed, materials furnished or obligations incurred by or on behalf of the Concessionaire. If within 30 days following the filing of any such lien or claim of lien, the Concessionaire does not cause such lien to be released in a manner satisfactory to the Park District, the Park District shall have the right but not the obligation to cause the same to be released by any means the Park District elects, and all expenses incurred shall be payable by the Concessionaire to the Park District upon demand.
24. **Liability.**
- a. **Indemnity.** The Concessionaire shall indemnify and hold harmless the Park District, its officers, agents, and employees from and against any and all claims, suits, liabilities, loss, damage, costs and expenses (including reasonable attorney's fees) that may be brought or made against or incurred by the Park District on account of (i) the Concessionaire's possession, use or occupancy of the Premises, the conduct of its business thereon, or any activity, work or thing done, performed or suffered by the Concessionaire, its agents, employees or invitees (including, without limitation, the making of the improvements to the Premises); or (ii) any injury or death to persons or damage to property on or about the Premises from any cause whatsoever during the term hereof; or (iii) any violation by the Concessionaire in provision of this Agreement or any breach or default by the Concessionaire in the performance of any obligation of the Concessionaire under the terms of this Agreement; or (iv) any act, omission or negligence of the Concessionaire, or any of its agents, employees or invitees. Notwithstanding the foregoing, the Concessionaire shall not be liable for damage or injury occasioned by the sole negligence of the Park District or its officers, agents or employees unless covered by insurance that the Concessionaire is required to provide under this Agreement.
- b. **Waiver.** As a material part of the consideration to the Park District, the Concessionaire hereby assumes all risk of damage to and upon or about the Premises from any cause whatsoever, and the Concessionaire hereby waives all claims in respect thereof against the Park District.
25. **Interpretation.** The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall not affect the validity of any other provision hereof. This

Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, the courts of which state shall have jurisdiction of the subject matter of this Agreement. This Agreement shall bind the parties, their personal representatives, successors and assigns. The paragraph headings in this Agreement are for convenience only and shall not be considered in construing the intent of the parties under this Agreement. All exhibits attached hereto are a part hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. No prior or contemporaneous agreement or understanding pertaining thereto shall be effective. This Agreement may not be modified or amended except by written instrument signed by the Concessionaire and the Park District.
27. **No Assignment.** This Agreement, any part hereof, or any right or duty hereunder may not be assigned, delegated, or subcontracted by the Concessionaire without the prior written approval of the Park District, which approval may be granted or withheld in the sole discretion of the Park District. The Concessionaire shall not sublicense any part of the Premises or permit any sublicense or concessionaire to operate on the Premises, without the prior written consent of the Park District, which consent may be granted or withheld in the sole discretion of the Park District.
28. **Nondiscrimination.** The Concessionaire shall comply with applicable laws relating to non-discrimination, in its dealings with customers and employees. In connection with the performance of work under this Agreement, the Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, military status, national origin, disability, age or ancestry. The foregoing sentence shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training or apprenticeship.
29. **No Waiver.** No delay or omission of the Park District to exercise any right or remedy arising from any default by the Concessionaire of the terms hereof shall impair any such right or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. No waiver of a default shall be effective unless it is in writing. The acceptance of any fee, rebate or other payment by the Park District shall not be a waiver of any preceding breach by the Concessionaire of any provision hereof regardless of the Park District's knowledge of such preceding breach at the time of acceptance.
30. **Release of Information.** The Park District reserves the right to use and/or release for any purpose any data available under the terms of this Agreement in response to a valid request under Ohio's Public Records Law.
31. **Notices.** All statement, notices, and other communications pertaining to this Agreement shall be written, and unless otherwise provided, shall be deemed to have been duly given when delivered in person, when sent via an express delivery service that provides proof of delivery, or when sent by the U.S. Mail in a manner that provides proof of delivery (e.g., certified return receipt

requested or registered), or via electronic mail acknowledged by electronic return receipt or acknowledgment of the recipient, to the address set forth below, or to such other address or addresses as may be designated in writing by notice to the other party pursuant to this section.

If to the Park District:

CEO
Warren County Park District
1223 North State Route 741
Lebanon, Ohio 45036
Tel: (513) 695-3993
E-mail: matt.latham@co.warren.oh.us

If to the Concessionaire:

Email _____

Either party may by written notice to the other specify a different address for subsequent notice purposes.

- 32. **Authority.** The individual signing below on behalf of the Concessionaire hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Concessionaire and that this Agreement is binding upon the Concessionaire in accordance with its terms. This person authorized to act for and bind the Park District in matters concerning this Agreement shall be the Chief Executive Officer of the Park District, as authorized by the Board of Park Commissioners.
- 33. **Remedies and Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The Park District and the Concessionaire shall have all remedies afforded each by Ohio law.
- 34. **Force Majeure.** Neither party shall be liable for any failure or delay in performing its obligations under this Agreement if such failure or delay is caused by events including but not limited to acts of God, natural disasters (such as floods, earthquakes, or hurricanes), war, terrorism, civil unrest, strikes or labor disputes (excluding strikes or labor disputes involving the affected party’s personnel), extraordinary government actions, pandemics, or interruptions in utilities or transportation.

The affected party must promptly notify the other party in writing of the force majeure event, providing sufficient details and an estimate of its likely duration. The affected party shall use

reasonable efforts to mitigate the effects of the force majeure event and resume performance of its obligations as soon as practicable.

If the force majeure event continues for more than 30 days following written notification, either party may terminate this Agreement upon written notice to the other party, without liability except for obligations accrued prior to the force majeure event.

35. **Interpretation.** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

IN WITNESS WHEREOF, authorized representatives of the Park District and the Concessionaire have signed this Agreement, effective as of the latest signature date below.

CONCESSIONAIRE

PARK DISTRICT

By _____

By _____

Its _____

Its _____

Date _____

Date _____

**Exhibit B
Proposal Form**

Part 1: Contact Information and Signature

Concessionaire Legal
Company Name _____

Concessionaire Contact
Person _____

Mailing Address _____

City, State Zip _____

Phone _____

Email
Concessionaire Authorized
Representative Signature _____

Date _____

Part 2: Commission (600 points total)

Proposal for commission percentage to be paid to Park District on gross receipts (revenue minus sales tax and credit card fees, as defined in the Agreement), excluding Gate Fee collections and Softball Sales (450 points):

A. Estimated Sales per Season <u>\$260,000</u>	B. Proposed Commission Percentage to be Paid to Park District	C. Estimated Total Payment to Park District (A x B) _____
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Gate Fee Commission Proposal (100 points):

C. Estimated Gate Fee Collections per Season <u>\$56,000</u>	D. Proposed Percentage to be <u>Retained by Concessionaire</u>	E. Estimated Total Payment to Park District for Gate Fee (C x (1-D)) _____
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Softball Pricing Proposal (50 points):

F. Estimated Softball Cost to Concessionaire per Dozen <u>\$67</u>	G. Proposed Markup Percentage <u>Retained by Concessionaire</u>	H. Total Price to Customer (F+(FxG)) (May be rounded to nearest dollar) _____
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Part 3: References / Past Performance History (100 points)

Attach a list of at least three references for concession services including client name, phone, email, location where services were provided, and a brief description of concession services provided. One of the references must be the Proposer's largest client. Proposer may include up to one additional page to provide relevant information about its past performance history. Preference will be given to references and examples similar in nature to the Armco Park Softball Complex.

Part 4: Company Narrative (100 points)

Attach a one-page narrative that details Proposer's history of providing professional food service including years of experience and company background information.

Part 5: Proposed Menu and Pricing (100 points)

Attach a proposed menu of suggested food and beverage options, with proposed pricing, that complies with the terms of the RFP.

Part 6: Value-Added Services and Ideas (100 points)

Attach up to one page describing any proposals for value-added services and ideas that may distinguish your company's services from other Proposers.

Exhibit C
Park District-Owned Equipment List

Description	Model	Make	Serial Number	Condition
Hot Dog Roller	4094	Ultra-Dog	N/A	ETL Listed/UL Listed - New 2019
Nacho Chip Merchandiser	12NCPW	Star-Mfg	1237908	NSF - Very Used
Microwave	R308Jw	Sharp	252910	Very Used 2005 Mfg Date
Ice Machine		Ice-O-Matic		New
Single Door Freezer				New
50lb Deep Fryer	ATFS-50	CookRite		ETL Listed
50lb Deep Fryer	ATFS-50	CookRite		ETL Listed
Food Warming Lamps	EHL-2	Winco		ETL
Food Warming Lamps	EHL-2	Winco		ETL
36" Griddle/Oven	TAR-36G-LP	Radiance		New
Prep Counter Refrigerator	MSF8301	ATOSA		New
Single Door Refrigerator		Everest		New Rear Storage Room
Pop Corn Popper				Unable to access Mfg Info
Pepsi Counter Top Cooler	G7F	IDW	PB1811066735	
Pepsi 48" Single Door Cooler		TRUE		
Exhaust System		CaptiveAir		New
Pepsi Fountain System (2)				Two Systems installed - upstairs and downstairs
Beer Tap System (2)				Two Systems installed - upstairs and downstairs