

ATTACHMENT #10 - August 15, 2023

CONCESSION STAND AGREEMENT

This Concession Stand Agreement (“Agreement”) is made and entered into as of the August 15, 2023, by and between Warwick School District, a school district organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office located at 301 W. Orange Street, Lititz, PA 17543 (the “District”), and Full Service Concessions Group, a company organized and existing under the laws of Pennsylvania, with its principal office located at 1901 Olde Homestead Lane, Lancaster, PA 17601 (“Concessionaire”).

RECITALS

WHEREAS, the District owns and operates an athletic field house located at 301 W. Orange Street, Lititz, Pennsylvania (the “Field House”);

WHEREAS, Concessionaire desires to operate an already-existing concession stand located at the Field House (“Concession Stand”) for purpose of selling food and beverages to attendees of District Events; and

WHEREAS, the District is willing to permit Concessionaire to operate the Concession Stand in accordance with and subject to the terms and provisions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

1. Term and Renewal.
 - 1.1. Term. This Agreement shall commence on August 15, 2023, and end on June 30, 2024, unless otherwise terminated early or suspended as permitted by this Agreement.
 - 1.2. Renewal. This Agreement shall terminate absolutely and without further obligation on the part of the District at the close of the school year for which it was executed and at the close of each succeeding school year for which it may be renewed.
2. School Board Approval. This Agreement shall not take effect until and unless the Board of School Directors for the District approves this Agreement.
3. License. The District hereby grants Concessionaire a non-exclusive license to use the Concession Stand, subject to the terms and conditions herein, for the purpose of providing Concession Services during specified home games or other events hosted or sponsored by the District (“Events”).
4. Concession Services. Concessionaire shall offer for sale at the Concession Stand food, drinks, candy, and snacks during specified Events. Concessionaire shall offer only those concessions which are typically sold at comparable school district-sponsored events. No liquor, tobacco or illegal substances shall be handled, sold, or allowed in or about the Concession Stand.

5. Usage Fees. Concessionaire agrees to pay the District on a monthly basis fifteen percent (15%) of gross sales for the use of the Concession Stand for the term of this Agreement. Each monthly payment is due by the 15th of the following month.
 - 5.1. Together with each monthly payment, and as requested by the District, Concessionaire shall provide a detailed report to the District detailing all Concession Stand sales and the usage fee being remitted to the District.
 - 5.2. Concessionaire shall retain all its internal books, records, and documents related to this Agreement in accordance with generally accepted accounting principles and procedures – which shall sufficiently and properly document and calculate all sales and payments made to the District during the term of the Agreement – for a period of at least five (5) years following the date of final payment hereunder or the completion of any audit, whichever is later. Records to be maintained include both financial records and service records.
 - 5.3. Concessionaire shall permit the District to access and examine, audit, excerpt, and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records relating to orders, invoices or payments or any other documentation or materials pertaining to this Agreement, wherever such records may be located, during normal business hours. Concessionaire shall not impose a charge for audit or examination of Concessionaire’s books and records and, if an audit discloses incorrect billings or improprieties, the District reserves the right to charge Concessionaire for the cost of the audit and any other appropriate reimbursements.
6. Common Areas and Parking. The District agrees that Concessionaire shall have the right throughout the term hereof to use, in common with others, school parking areas for employee parking during the hour’s concession services are provided. All entry into and egress from the Concession Stand shall be through school entranceways designated by the District.
7. Hours of Operation. The hours and days of operation of the Concession Stand by Concessionaire shall be based on the schedule of Events at the Field House and will vary by Event and day.
 - 7.1. Home Games. Concessionaire shall provide Concession Services during all District hosted home games or meets of Fall Sports in the Fall Season and Spring Sports in the Spring Season which occur in the Field House, subject to the terms and conditions of this Agreement.
 - 7.1.1. “Fall Season” shall mean the period beginning on the date of the first to occur of a Fall Sport’s first regular season home game and ending on the day of the last Fall Sport’s last home game (including post-season play, if any) of that Fall Season.
 - 7.1.2. “Fall Sports” shall mean varsity football, varsity boys’ soccer, varsity girls’ soccer, and varsity field hockey.
 - 7.1.3. “Spring Season” shall mean the period beginning on the date of the first to occur of a Spring Sport’s first regular season home game and ending on the day of the last

Spring Sport's last home game (including post-season play, if any) of that Spring Season.

- 7.1.4. "Spring Sports" shall mean track and field, varsity boys' lacrosse, and varsity girls' lacrosse.
- 7.2. Other Events. Concessionaire may, subject to the District's prior written approval, provide Concession Services during other District Sponsored and hosted events including, but not limited to powder puff games and homecoming events.
- 7.3. Notice of Event. Except where circumstances beyond the District's control preclude the giving of such notice, the District shall provide Concessionaire with a minimum of seven (7) days' advance written notice of Events.
- 7.4. Right of First Refusal. Concessionaire shall have a right of first refusal for providing Concession Services from the Concession Stand during all events held within the District's Field House. Within forty-eight (48) hours from the receipt of the Notice of Event, the Concessionaire shall have the option to exercise its right of first refusal by providing written notice to the School District ("Exercise Notice") If the Concessionaire fails to provide an Exercise Notice within the forty-eight (48) hour timeframe or explicitly declines to provide services for a particular event, the School District shall be free to engage with other concessionaires.
- 7.5. Non-Interference. The Concession Stand shall be operated in a manner so as not to interfere with the orderly operation of home games, Field House events or Non-Field House events.
8. Concession Equipment.
 - 8.1. Concession Equipment. The District shall provide the Equipment set forth in Exhibit "A" to this Agreement for Concessionaire's use in operation of the Concession Stand for the purposes set forth herein ("Concession Equipment"). Concessionaire shall not make any alterations, additions, or improvements to the Concession Stand or Concession Equipment without the District's prior written consent. In the event the District consents to the making of any alterations, additions or improvements to the Concession Stand or Concession Equipment, the same shall be made at Concessionaire's sole cost and expense, and in the event such alterations, additions or improvements are made to a structure, building or other improvement attached to the real property, the same will become a part of the real property and be surrendered to the District upon the termination if this Agreement.
 - 8.2. Repair and Maintenance. Concessionaire shall use the Concession Stand and Concession Equipment for its intended purpose and shall return same to the District upon the termination of this Agreement in the same condition, reasonable wear and tear excepted. Concessionaire assumes liability for the replacement cost of all Concession Equipment provided with the Concession Stand which is lost, stolen, or destroyed during the term of this Agreement. If any of the Concession Stand Equipment is recklessly or intentionally

damaged, Concessionaire shall, at its sole cost and expense, repair or replace such equipment to the District's satisfaction.

9. Cleaning and Maintenance.

- 9.1. Concessionaire shall be responsible for removal of all garbage, rubbish, and debris from inside the Concession Stand, the areas immediately adjacent to concession areas, and other areas under the control or use of Concessionaire and deposit same in containers or areas designated for such purpose by the District.
- 9.2. Concessionaire shall clean the Concession Stand, Concession Equipment, and other areas immediately adjacent to concession areas, as designated by the parties as concession areas, in a clean and satisfactory condition. Concessionaire must employ the necessary personnel before, during, and after the hours of any events to comply with this provision.
- 9.3. Concessionaire shall not permit any waste, injury, or damage upon or to the Field House, Concession Stand, or the equipment and appurtenances. At the expiration of this Agreement, Concessionaire shall leave the Concession Stand and its equipment and appurtenances in at least the same condition as that in which they were at the commencement of the contract less normal wear and tear.

10. Access.

- 10.1. Concessionaire Access. Concessionaire shall be entitled to enter and remain in the Concession Stand with access at designated areas for the sole purpose of providing concessions during Events and for a reasonable time prior to and subsequent to Events in connection with concessions. Concessionaire shall not enter upon District property or use the Concession Stand for any private use.
 - 10.2. District Access. The District shall have the right to enter upon and have access to the Concession Stand at all times for any reason. Nothing herein contained shall be held to limit or qualify the District to free and unobstructed use, occupational and control of the Concession Stand for itself and other proper purposes.
 - 10.3. District Right to Remove. The District reserves the right to immediately remove any individual from its premises; Concessionaire agrees that this provision applies to its employees and agents. Concessionaire agrees to abide by the wishes of the District should the District determine that any employee or agent of Concessionaire should not work pursuant to this Agreement. The District will be reasonable in the enforcement of this provision.
11. Compliance with Other Laws. Concessionaire agrees to conduct its business and to operate the same in compliance with all health codes, safety standards and other applicable laws, ordinances, and regulations, and to obtain all necessary City, State, and Federal licenses, permits and tax numbers, as required to conduct such operations. Concessionaire further agrees to pay any and all income taxes, sales taxes, or other taxes which may be due or become due in connection with Concessionaire's business. Concessionaire shall train and closely

supervise all concession employees, vendors, and salespersons so they are aware of and adhere to all terms and conditions of this Agreement and all applicable laws, rules, and regulations.

12. Compliance with District Policies. Concessionaire and any of its employees and agents shall, at all times during the term hereof and during the performance of services hereunder, comply with District policies, procedures, regulations, and directives, as modified from time to time.
13. Early Termination or Temporary Suspension. Each party shall have the right to unilaterally terminate or temporarily suspend this Agreement prior to its termination date, subject to the following terms and conditions outlined below:
 - 13.1. a party may terminate this Agreement in its entirety for any reason at any time with thirty days advance written notice given to the other party of such early termination;
 - 13.2. the District may terminate this Agreement in its entirety with seven days advance written notice to the other party, if said party has reasonable evidence that the other party engaged in, or attempted to engage in, conduct that violates the provisions of this Agreement;
 - 13.3. the District may temporarily suspend this Agreement, in whole or in part, with advance written notice given to the other party to the extent practicable, to the extent that the Field House and Concession Stand scheduled for use is/are rendered unavailable or unsafe due to any of the following:
 - 13.3.1. the cancellation of the scheduled Event for any reason;
 - 13.3.2. a federal, state, or local disaster emergency declaration ordering the closure of the Field House or Concession Stand;
 - 13.3.3. property damage to and/or loss of utility services at the Concession Stand;
 - 13.3.4. a weather-related and/or public health-related emergency; or
 - 13.3.5. an unforeseen circumstance beyond the control of either party.
14. Notices. All notices hereunder shall be in writing and shall be deemed to have been given when delivered by hand or by first class U.S. mail, as follows:

If to District, to:

Nathan Wertsch
Warwick School District
301 W. Orange Street
Lititz, PA 17543

If to Concessionaire, to:

Robert Guignet
Full Service Concessions Group
1901 Olde Homestead Lane
Lancaster, PA 17601

15. Independent Contractor. Neither Concessionaire nor any of its employees or agents shall be deemed to be employees or agents of the District, it being understood at all times that Concessionaire is an independent contractor for all purposes and at all times and that Concessionaire shall have no right, power or authority to act or create any obligation, whether express or implied, on behalf of the District. Concessionaire shall, at its own and sole expense, comply with all federal, state, and local laws, rules, and regulations that are now or may in the future become applicable to Concessionaire, Concessionaire's business or Concessionaire's personnel engaged in the services covered by this Agreement including, but not limited to, the withholding and payment of all federal, state and local income and/or sales taxes, Social Security, unemployment, sickness, disability, workers' compensation, and other payroll taxes with respect to its employees, including contributions from them when and as required by law. Concessionaire shall provide all of the tools, materials, equipment, and other business items necessary to perform the Services. Concessionaire shall be solely responsible for paying, and shall pay, all of its own expenses, debts, accounts, obligations, liabilities, employees, taxes, and fees incurred by it in the performance of the Services hereunder.
16. Disclosures. Concessionaire will disclose to the District the existence of any actions, suits, proceedings, claims, or disputes pending or, threatened or contemplated, at law, in equity, in arbitration, or before any Governmental or Regulatory Agency, whether under current business name or designation or a prior business name or designation. Traffic and parking citations do not need to be disclosed. This disclosure will be made prior to any performance under the Agreement.
17. Non-Assignment, Non-Sub-Contracting. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by Concessionaire without the prior written consent of the District, and any purported assignment shall be null and void. Substitutions are not permitted. Concessionaire may not subcontract without the prior written consent of the District. Any such assignment or subcontract without such consent shall be void and at the District's option be grounds to terminate this Agreement.
18. Insurance. Concessionaire shall purchase and maintain, at Concessionaire's sole expense, insurance against claims for personal injury, employment practices, or property damage under a single policy and/or separate policies providing general liability insurance with limits of (i) at least \$1,000,000 for claims, including death, to any one person; (ii) at least \$2,000,000 for claims, including death, in any one casualty; and, (iii) with property damage coverage of at least \$1,000,000, or in such greater amounts as District may from time to time reasonably require. Such policy or policies shall name both the Concessionaire and District as insured and shall be with a company authorized to issue the same in the Commonwealth of Pennsylvania.

Concessionaire shall deliver to District original or duplicate policies, or certificates of insurers evidencing the existence of all insurance which is required to be maintained by Concessionaire hereunder, such delivery to be made (i) promptly after the execution and delivery of this Agreement, (ii) within thirty days prior to the expiration of any such insurance, and (iii) upon the reasonable request of District at any time during the term hereof or any renewal term.

19. Waiver. No waiver of any of the obligations, covenants and conditions of this Agreement, or the breach of any obligations, covenants or conditions shall be taken to constitute a waiver of any subsequent breach of such obligations, covenants or conditions, or to justify or authorize the non-observance of any other occurrence of the same or of any other obligations, covenants and conditions, nor shall the acceptance of usage fees by the District at any time while Concessionaire is in default be construed as a waiver of such default or of the rights of District to terminate this Agreement on account of such default.
20. Force Majeure. Neither party to this Agreement shall be liable to the other for the failure to perform its part of this Agreement, when such failure is due to explosion, storm, unduly harsh or severe weather, fire, flood, war, riot, civil disorder, pandemic, vandalism, sabotage, labor dispute, Act of God, or any other cause beyond the control of the parties to this Agreement, provided, however, said condition was not due to the act, negligence or omission of either party.
21. Governing Law and Venue. This Agreement shall be governed in all respects by the laws of the State of Pennsylvania without regard to any conflict of laws provisions, and the parties hereto irrevocably consent to the exclusive jurisdiction and venue of the appropriate Court in Lancaster County, Pennsylvania, for any dispute arising out of this Agreement or related to the services provided hereunder and that all disputes shall be settled by a judge at a bench trial (i.e., no jury). and that all disputes shall be settled by a judge at a bench trial (i.e., no jury).
22. Hold Harmless. To the fullest extent permitted by law, Concessionaire shall indemnify, defend (at Concessionaire's sole expense) and hold the District, the District's Board of School Directors, its board members, and employees harmless from and against any and all claims for bodily injury or death, damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations, and any liabilities, costs, and expenses (including, but not limited to, attorneys' fees and costs), which arise or are in any way connected with the services contemplated by Concessionaire under this Agreement or the actions of Concessionaire's officers, employees, or agents.
23. Entire Agreement. This Agreement, together with the exhibits and documents attached hereto (if any), represents the entire agreement between the parties and supersedes and replaces all prior oral and written proposals, communications, and agreements with respect to the subject matter hereof. This Agreement may only be amended in writing and executed by the parties hereto. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any exhibits, then this Agreement shall control.

IN WITNESS WHEREOF, the District and Concessionaire have caused this Agreement to be signed as of the day and year first above written.

Warwick School District

Full Service Concessions Group

Todd L. Rucci, President
Board of School Directors

Robert Guignet