



RESOLUTION

APPROVING AN AMENDMENT TO THE CONCESSION AGREEMENT BETWEEN
THE CITY OF NASHUA AND AMERICAN DEFENDERS OF NEW HAMPSHIRE, LLC

CITY OF NASHUA

In the Year Two Thousand and Eight

RESOLVED by the Board of Aldermen of the City of Nashua to approve the Amendment to the Concession Agreement between the City of Nashua and the American Defenders of New Hampshire, LLC, the term of said Concession Agreement terminating at the conclusion of the 2011 Championship Season.

LEGISLATIVE YEAR 2008

RESOLUTION: R-08-121

PURPOSE: Approving an Amendment to the Concession Agreement
between the City of Nashua and American Defenders of New
Hampshire, LLC

ENDORSER(S): Mayor Donnalee Lozeau

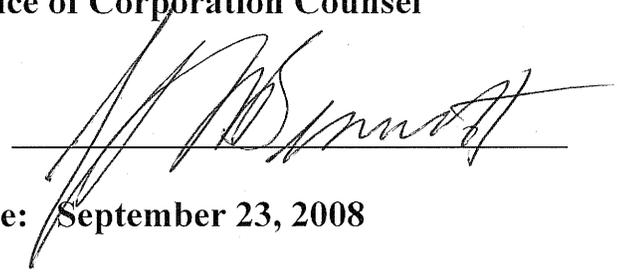
**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: Fiscal impact cannot be determined at this time.

ANALYSIS

This resolution approves an Amendment to the Concession Agreement between the City of Nashua and the American Defenders of New Hampshire, LLC which concludes with the 2011 Championship Season.

Approved as to form: Office of Corporation Counsel

By: 

Date: September 23, 2008

THIRD AMENDMENT TO CONCESSION AGREEMENT

NOW COME the parties, the City of Nashua, a New Hampshire municipal corporation located at 229 Main Street, Nashua, Hillsborough County, New Hampshire, its successors and assigns (hereinafter "City") and American Defenders of New Hampshire, LLC, its successors and assigns, with an address of One Cranberry Hill, 750 Marret Street, Suite 100, Lexington, Massachusetts 02421 (hereinafter "Franchisor"), and Amend the Concession Agreement (hereinafter "Agreement") entered between the parties on or about May 2001, as amended on April 4, 2004 and further amended on or about February, 2006, as follows:

I. SITE AND STADIUM RENOVATION

D. FRANCHISOR PAYMENTS

B. 2009, 2010, 2011 Championship Seasons

Franchisor will pay to City the sum of:

- 1) \$50,000.00 payable on or before June 1st of each Championship Season.
- 2) In addition, Franchisor shall pay to the City a percentage of Franchisor's net profits up to an additional \$70,000.00 annually. The City shall be entitled to twenty (20%) percent of Franchisor's net profits during the 2009 Championship Season, twenty-five (25%) percent of Franchisor's net profits during the 2010 Championship Season and thirty (30%) percent of Franchisor's net profits during the 2011 Championship Season.

D. Concession Agreement Payments (April 4, 2004 Amendment)

Deleted in its entirety.

E. Non-CAN-AM League Games

Franchisor will pay to the City the sum of \$1,000 per non-CAN-AM League game, including military all-star games, college games and non-CAN-AM League professional games. CAN-AM League games include regular season games, regularly scheduled pre-season exhibition games and post-season play-off games of the CAN-AM League. Payments for non-CAN-AM League games are due within five (5) business days of the date the game is played.

F. July 4th Baseball Games

Franchisor shall have the right to schedule a baseball game on July 4th of each Championship Season. If the scheduled the game is not a CAN-AM League game, Franchisor shall pay to the City the sum of \$1,000.00. Any game on July 4th shall be scheduled cooperatively with the City of Nashua so as not to interfere with the City's July 4th celebration activities.

II. TERM

A. The term of this Agreement shall be for three (3) years (2009, 2010, 2011 Championship Seasons), the balance remaining on the original Concession Agreement of May, 2001.

III. USE

B. FRANCHISOR USE. Franchisor shall have the right to schedule up to thirty (30) additional dates for non-CAN-AM League baseball games during each season.

The scheduling of these additional non-CAN-AM League games shall not interfere with scheduled community use of Holman Stadium.

C. MUTUAL USE/NON-PROFESSIONAL BASEBALL REVENUE EVENTS. Franchisor shall have the right to hold up to four (4) music events (concerts) during each year of this Agreement from the months of April through October under the following conditions:

1. Franchisor shall pay to the City the sum of \$2,500.00 per music event on or before the date of the scheduled music event.

2. The Franchisor shall pay to the City a sum equal to twenty (20%) percent of the net profits from each music event after Franchisor receives its \$75,000.00 promotion fee. Revenue received from tickets sales and concession sales shall be included in calculating net profits.

3. The Franchisor shall notify the City of the name(s) of the schedule musician(s) and a sample of their music at least ten (10) days prior to entering into a contract for the music event. The City shall have the right to refuse permission to any musician(s) to perform whose music or reputation does not conform to the family oriented theme of Holman Stadium.

4. Music events shall conclude on or before the following times:

- a. 11:00 p.m. on Friday or Saturday night;
- b. 10:00 p.m. on week nights (Sunday – Thursday) during school vacations;
- c. There shall be no music events scheduled on week nights (Sunday – Thursday) when school is in session.

5. Franchisor shall be solely responsible for the planning, organizing and production of each music event except as noted above. The Indemnification Provisions of Section XXI A and the Insurance and Hold Harmless Provisions of Section XX shall apply to any music event.

6. Prior to conducting a music event, the Franchisor shall consult with the City, including the Superintendent of Parks and Recreation, to determine the best means for protecting and preserving the facility and playing field during a music event.

7. The Franchisor shall be responsible for securing and paying the cost of all necessary security, including all police officers deemed necessary for an event by the chief of police for the City of Nashua.

8. The Franchisor shall be solely responsible for assuring that the facility, including the playing field, is not damaged as a result of the scheduled music event. The Franchisor agrees to bear the cost of any repairs required to the facility, including the playing field, resulting from the music event, including reimbursing the City for any cost incurred by the City for the preparation or repair of the facility and playing field for any music event.

9. The Franchisor shall provide to the City a full and complete accounting of all proceeds including ticket sales and concession sales received by Franchisor for each music event. Said accounting shall be provided to the City within thirty (30) days of each music event. Any sum due the City for its percentage of the net profits for an event shall be paid by Franchisor at the time the accounting is provided to the City.

10. The parties agree that the terms and conditions related to music events shall be reviewed and renegotiated by the parties after four (4) music events have been completed.

IX. SPONSORSHIPS (April, 2004 Amendment)

A. It is understood that the Franchisor may enter into a field sponsorship agreement with Nokona Athletic Goods to name the field at the stadium “Nokona Field at Holman Stadium”.

1. The parties agree that, if entered into with Nokona, the annual value of the field’s sponsorship is \$30,000.00. The annual value of the sponsorship shall be utilized in the calculation of the net profit/percentage payments to be made to the City as herein indicated.

2. Deleted.

XII. ASSIGNMENT

Delete the following sentence: “However, said Assignee shall not have the option relating to negotiation exclusivity as outlined in Paragraph II(B) herein.” For clarity, Franchisor shall specifically have such option relating to negotiating exclusivity.

XXIII. ALTERATIONS

The cost of any alterations proposed by the Franchisor and approved by the City shall be borne solely by the Franchisor unless otherwise agreed by the City. Franchisor

shall be solely responsible for obtaining all necessary approvals, permits and/or licenses required by law for the construction and/or operation of any such alterations.

CITY OF NASHUA

Date: September _____, 2008

By: _____
Donnalee Lozeau, Mayor
DULY AUTHORIZED

**AMERICAN DEFENDERS OF
NEW HAMPSHIRE, LLC**

Date: September _____, 2008

By: _____
DULY AUTHORIZED
By: _____
DULY AUTHORIZED

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D. FRANCHISOR PAYMENTS

B. 2009, 2010, 2011 Championship Seasons

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1) \$50,000.00 payable on or before June 1st of each Championship Season.

2) In addition, Franchisor shall pay to the City a percentage of Franchisor's net profits up to an additional \$70,000.00 annually. The City shall be entitled to twenty (20%) percent of Franchisor's net profits during the 2009 Championship Season, twenty-five (25%) percent of Franchisor's net profits during the 2010 Championship Season and thirty (30%) percent of Franchisor's net profits during the 2011 Championship Season.

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Deleted in its entirety.

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Franchisor will pay to the City the sum of \$1,000 per non-CAN-AM League game, including military all-star games, college games and non-CAN-AM League professional games. CAN-AM League games include regular season games, regularly scheduled pre-season exhibition games and post-season play-off games of the CAN-AM League. Payments for non-CAN-AM League games are due within five (5) business days of the date the game is played.

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Franchisor shall have the right to schedule a baseball game on July 4th of each Championship Season. If the scheduled game is not a CAN-AM League game, Franchisor shall pay to the City the sum of \$1,000.00. Any game on July 4th shall be scheduled cooperatively with the City of Nashua so as not to interfere with the City's July 4th celebration activities.

Deleted: the

II. TERM

A. The term of this Agreement shall be for three (3) years (2009, 2010, 2011 Championship Seasons), the balance remaining on the original Concession Agreement of May, 2001.

III. USE

B. FRANCHISOR USE.

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The following shall be added to the existing provisions of Paragraph III B:
Franchisor shall have the right to schedule up to thirty (30) additional dates for non-CAN-AM League baseball games during each season. The scheduling of these additional non-CAN-AM League games shall not interfere with scheduled community use of Holman Stadium.

C. MUTUAL USE/NON-PROFESSIONAL BASEBALL REVENUE EVENTS. Franchisor shall have the right to hold up to four (4) music events (concerts) during each year of this Agreement from the months of April through October under the following conditions:

1. Franchisor shall pay to the City the sum of \$2,500.00 per music event on or before the date of the scheduled music event.

2. The Franchisor shall pay to the City a sum equal to twenty (20%) percent of the net profits from each music event after Franchisor receives its \$75,000.00 promotion fee. Net profit is defined for this section of the agreement as the amount calculated by deducting from all gross income obtained from all sources (including sales, licensing or other revenues) all expenses reasonably related to the Franchisor's operations (including cost of goods sold, wages, salaries, benefits, operating expenses including overhead costs) and taxes. Revenue received from tickets sales and concession sales shall be included in calculating net profits.

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3. The Franchisor shall notify the City of the name(s) of the schedule musician(s) and a sample of their music at least ten (10) days prior to entering into a contract for the music event. The City shall have the right to refuse permission to any

musician(s) to perform whose music or reputation does not conform to the family oriented theme of Holman Stadium.

4. Music events shall conclude on or before the following times:
 - a. 11:00 p.m. on Friday or Saturday night;
 - b. 10:00 p.m. on week nights (Sunday – Thursday) during school vacations;
 - c. There shall be no music events scheduled on week nights (Sunday – Thursday) when school is in session.

5. Franchisor shall be solely responsible for the planning, organizing and production of each music event except as noted above. The Indemnification Provisions of Section XXI A and the Insurance and Hold Harmless Provisions of Section XX shall apply to any music event.

6. Prior to conducting a music event, the Franchisor shall consult with the City, including the Superintendent of Parks and Recreation, to determine the best means for protecting and preserving the facility and playing field during a music event.

7. The Franchisor shall be responsible for securing and paying the cost of all necessary security, including all police officers deemed necessary for an event by the chief of police for the City of Nashua.

8. The Franchisor shall be solely responsible for assuring that the facility, including the playing field, is not damaged as a result of the scheduled music event. The Franchisor agrees to bear the cost of any repairs required to the facility, including the playing field, resulting from the music event, including reimbursing the

City for any cost incurred by the City for the preparation or repair of the facility and playing field for any music event.

9. The Franchisor shall provide to the City a full and complete accounting of all proceeds including but not limited to ticket sales and concession sales received by Franchisor for each music event. Said accounting shall be provided to the City within thirty (30) days of each music event. Any sum due the City for its percentage of the net profits for an event shall be paid by Franchisor at the time the accounting is provided to the City.

10. The parties agree that the terms and conditions related to music events shall be reviewed and renegotiated by the parties after four (4) music events have been completed.

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XII. ASSIGNMENT

Delete the following sentence: "However, said Assignee shall not have the option relating to negotiation exclusivity as outlined in Paragraph II(B) herein." For clarity, Franchisor shall specifically have such option relating to negotiating exclusivity.

XXII. CERTIFICATE OF GOOD STANDING

Franchisor agrees and warrants unto the City that it is a Delaware Limited Liability Company, duly authorized to do business in the State of New Hampshire and in good standing.

XXIII. ALTERATIONS

The cost of any alterations proposed by the Franchisor and approved by the City shall be borne solely by the Franchisor unless otherwise agreed by the City. Franchisor shall be solely responsible for obtaining all necessary approvals, permits and/or licenses required by law for the construction and/or operation of any such alterations.

CITY OF NASHUA

Date: September _____, 2008

By: _____
Donnalee Lozeau, Mayor
DULY AUTHORIZED

**AMERICAN DEFENDERS OF
NEW HAMPSHIRE, LLC**

Date: September _____, 2008

By: _____
DULY AUTHORIZED

By: _____

DULY AUTHORIZED

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Comment: Infrastructure Approved this amendment on 9/24/08

Deleted: the

II. TERM

A. The term of this Agreement shall be for 10 years with an option for an additional 10 year term subject to, *inter alia*, the terms contained herein, with said term to commence for the 2002 Championship Season.

Comment: This amendment restores the language that is in the current agreement. The paragraph stating the term of 3 years is not necessary, because the remaining term of the original agreement is three years, and that term is assumed by the new owners as a result of the assignment. They are also entitled to assume the right under the original agreement to exercise a ten year extension option. Eliminating that option was an oversight and not intended by the parties.

Deleted: II. TERM
A. The term of this Agreement shall be for three (3) years (2009, 2010, 2011 Championship Seasons), the balance remaining on the original Concession Agreement of May, 2001.

III. USE

B. FRANCHISOR USE.

The following shall be added to the existing provisions of Paragraph III B:

Franchisor shall have the right to schedule up to thirty (30) additional dates for non-CAN-AM League baseball games during each season. The scheduling of these additional non-CAN-AM League games shall not interfere with scheduled community use of Holman Stadium.

Comment: Infrastructure Approved this amendment on 9/24/08

C. MUTUAL USE/NON-PROFESSIONAL BASEBALL REVENUE

EVENTS. Franchisor shall have the right to hold up to four (4) music events (concerts) during each year of this Agreement from the months of April through October under the following conditions:

1. Franchisor shall pay to the City the sum of \$2,500.00 per music event on or before the date of the scheduled music event.

2. The Franchisor shall pay to the City a sum equal to twenty (20%) percent of the net profits from each music event after Franchisor receives its \$75,000.00

promotion fee. Net profit is defined for this section of the agreement as the amount calculated by deducting from all gross income obtained from all sources (including sales, licensing or other revenues) all expenses reasonably related to the Franchisor's operations (including cost of goods sold, wages, salaries, benefits, operating expenses including overhead costs) and taxes. Revenue received from tickets sales and concession sales shall be included in calculating net profits.

Comment: Infrastructure Approved this amendment on 9/24/08

3. The Franchisor shall notify the City of the name(s) of the schedule musician(s) and a sample of their music at least ten (10) days prior to entering into a

contract for the music event. The City shall have the right to refuse permission to any musician(s) to perform whose music or reputation does not conform to the family oriented theme of Holman Stadium.

4. Music events shall conclude on or before the following times:
 - a. 11:00 p.m. on Friday or Saturday night;
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6. Prior to conducting a music event, the Franchisor shall consult with the City, including the Superintendent of Parks and Recreation, to determine the best means for protecting and preserving the facility and playing field during a music event.

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City for any cost incurred by the City for the preparation or repair of the facility and playing field for any music event.

9. The Franchisor shall provide to the City a full and complete accounting of all proceeds including but not limited to ticket sales and concession sales received by Franchisor for each music event. Said accounting shall be provided to the City within thirty (30) days of each music event. Any sum due the City for its percentage of the net profits for an event shall be paid by Franchisor at the time the accounting is provided to the City.

Comment: Infrastructure Approved this amendment on 9/24/08

10. The parties agree that the terms and conditions related to music events shall be reviewed and renegotiated by the parties after four (4) music events have been completed.

IX. SPONSORSHIPS (April, 2004 Amendment)

A ~~It is understood and agreed that Franchisor has the exclusive right to~~ market and obtain a Field Sponsorship agreement with a sponsor and may currently do so. Assuming that Franchisor obtains such a sponsor, the City would receive payment as follows:

Comment: The Franchisor wishes to retain the general naming rights under the existing agreement. The negotiations regarding the specific naming rights for "Nokona Field" were intended to set a value for those rights in the event the Franchisor uses that name instead of auctioning the rights to another bidder. The Language Paragraph A. is the current language of the agreement concerning those naming rights. The proposed further amendment will leave that language in place.

1) 100% of the net revenues from this sponsorship until any amounts due as indicated in ¶ 1 (D) B.1, are paid in full. The net revenues for this sponsorship would be less expense related to the creation of any signage or other promotional information/items or the like related to the sponsorship.

Comment: The proposed further amendment amends the paragraph reference from 1 (D) to 1 (D) B.1 in order to clarify that the annual concession fee must be paid in full before the Franchisor receives any of the field sponsorship fee.

2) ~~It is understood that the Franchisor may enter into a field~~ sponsorship agreement with Nokona Athletic Goods to name the field at the stadium

Comment: The proposed further amendment places the language approved by the Infrastructure Committee on September 23, 2008 (shown here in green italics) in a new location.

“Nokona Field at Holman Stadium”. The parties agree that, if entered into with Nokona, the annual value of the field’s sponsorship is \$30,000.00. The annual value of the sponsorship shall be utilized in the calculation of the net profit/percentage payments to be made to the City as herein indicated.

XII. ASSIGNMENT

Delete the following sentence: “However, said Assignee shall not have the option relating to negotiation exclusivity as outlined in Paragraph II(B) herein.” For clarity, Franchisor shall specifically have such option relating to negotiating exclusivity.

Comment: Infrastructure Approved this amendment on 9/24/08

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CITY OF NASHUA

Date: September _____, 2008

By: _____
Donnalee Lozeau, Mayor
DULY AUTHORIZED

**AMERICAN DEFENDERS OF
NEW HAMPSHIRE, LLC**

Date: September _____, 2008

By: _____
DULY AUTHORIZED

By: _____
DULY AUTHORIZED

RESOLUTION

R-08-121

**Approving an Amendment to the
Concession Agreement between
the City of Nashua and
American Defenders of New
Hampshire, LLC**

Endorsed by

Donna Lee Logan
Michael J. Fabry
Barry Cummings
Walter D. Damon
Ben S. Miller
Lari Willshire
Jeffy D. Gil

IN THE BOARD OF ALDERMEN

1ST READING SEPTEMBER 23, 2008

Referred to:

COMMITTEE ON INFRASTRUCTURE

2nd Reading SEPTEMBER 25, 2008

3rd Reading _____

4th Reading _____

Other Action _____

Passed _____

Indefinitely Postponed _____

Defeated _____

Attest: *Donna Lee Logan*
City Clerk

Steve B. ...
President

Approved *Donna Lee Logan*
Mayor's Signature

September 29, 2008
Date

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____

City Clerk

President