



118 Central Avenue North, New Prague, MN 56071  
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## MEMORANDUM

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**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**CC:** JOSHUA TETZLAFF – CITY ADMINISTRATOR  
**FROM:** KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR  
MATT RYNDA – PUBLIC WORKS DIRECTOR  
**SUBJECT:** MEMORIAL PARK BASEBALL STADIUM CONCESSIONS USE AGREEMENT  
**DATE:** JANUARY 3, 2024

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As indicated during the discussion regarding the 2024 fee schedule, staff noted that the ball team fees for teams that use the Memorial Park Baseball Stadium were still under discussion by the Park Board, staff and all teams that utilize the facility. A related discussion regarding Memorial Park Baseball Stadium is that of the use of the concessions facilities within the stadium.

Dating back to the state amateur baseball tournament in 2018, City Attorney Scott Riggs suggested that an agreement should be put in place with the operator of the concessions area largely due to the sale of alcoholic beverages from a city owned facility and to indemnify the city from any related claims. Staff has recently worked with City Attorney Riggs to draft an agreement specifically between the City and New Prague Orioles who have historical operated the concessions area of Memorial Park Baseball Stadium for all games that occur at the facility, not just for their own games.

Attached is the agreement which has been reviewed and approved by the Orioles. The agreement also includes a payment to the City of \$500 for the 2024 season to utilize the concessions facilities. This amount was determined based on discussions with the Orioles and area teams that have arrangements with cities whereby 10% of net revenues are provided to the City. The Orioles estimated that they make approximately \$5,000 from the concessions and therefore a \$500 fee was discussed for this first agreement. The fee will be reviewed annually with each new agreement.

### Staff Recommendation

Approval of the attached “Memorial Park Baseball Stadium Concessions Use Agreement” between the City and New Prague Orioles, Inc for 2024.

## MEMORIAL PARK BASEBALL STADIUM CONCESSIONS USE AGREEMENT

THIS CONCESSIONS USE AGREEMENT (the “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the City of New Prague, a Minnesota municipal corporation (the “City”), and New Prague Orioles, Inc., a Minnesota nonprofit corporation (“NPO”). The City and NPO may hereinafter be referred to individually as a “Party” or, together, the “Parties.”

### RECITALS

**WHEREAS**, the City owns and operates the Memorial Park Baseball Stadium, a ballpark located at 400 Lexington Avenue South, New Prague, Minnesota 56701 (the “Ballpark”); and

**WHEREAS**, the Ballpark is intended to serve the residents of the City and its surrounding communities, and is suitable for adult amateur baseball games; and

**WHEREAS**, NPO is an amateur baseball organization located within the City and hosts adult amateur baseball games throughout the warm-weather season; and

**WHEREAS**, NPO desires to use, and the City agrees to allow NPO to use, the concessions and its appurtenances for all baseball games held at the stadium including those not hosted or played by NPO; and

**WHEREAS**, the Parties wish to memorialize their use agreement in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties, in consideration of the representations, covenants and agreements set forth herein, represent, covenant and agree as follows:

### AGREEMENT

1. **Recitals.** The above recitals are hereby incorporated into and made a part of this Agreement as if fully set forth herein.
2. **Use of Concessions.** The City hereby agrees to permit NPO the exclusive use of the concessions building for all of 2024.
3. **Compensation.** The lease payment from NPO to the City shall be \$500 for the 2024 year.
4. **Parking.** NPO and its members and patrons may use the parking lots located at the Ballpark during all NPO events; provided, however, that the City retains the right to restrict parking in certain parking areas in order to accommodate other events, programming, or activities at the Ballpark or at other nearby City facilities.

5. **Term.** The term of this Agreement shall be for the 2024 season and shall end on 12/31/2024.

6. **Hours.** NPO's use of the concessions shall occur only during prescheduled ballgames.

7. **Concessions; Food and Alcohol.** During prescheduled games, NPO may operate the food and beverage stand at the Ballpark. This authorization shall include the ability to sell wine and strong beer, but only during adult amateur baseball games, provided, however, that NPO first secures a valid wine/strong beer liquor license from the City for the premises and adheres to the insurance requirements provided in Section 9 of this Agreement. NPO agrees to comply with all state and local laws related to food and alcohol sales, and all other rules and regulations imposed at the Ballpark by the City. No consumption of alcohol is allowed at the Ballpark except by sale pursuant to licenses issued by the City. No alcohol shall be sold for off-site consumption, and the NPO are responsible for ensuring that alcohol is only consumed in the area specified in its wine/strong beer liquor license.

8. **Indemnification; Release of Claims.** NPO agrees to release, indemnify, and hold harmless the City from any and all claims, demands, suits, actions, or liabilities resulting from injuries or death to any person, or damage or loss of any property, arising from or alleged to arise from NPO's use of the concessions building pursuant to this Agreement. Each Party agrees to accept full responsibility for its own negligence and actions. Nothing contained in this Agreement shall be construed as a limitation on or waiver of any immunities or limitations on liability otherwise available to the City under law.

NPO and NPO's contractors, attorneys, agents, employees, former employees, insurers, heirs, administrators, representatives, successors and assigns, hereby releases and forever discharges the City, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors and assigns of and from any and all past, present or future claims, demands, obligations, actions or causes of action, at law or in equity, whether arising by statute, common law or otherwise, and for all claims for damages, of whatever kind or nature, and for all claims for attorneys' fees, and costs and expenses, including but not limited to all claims of any kind arising out of the negotiation, execution and performance of this Agreement between the Parties. Nothing contained in this paragraph is intended to prevent the exercise of any rights available pursuant to this Agreement.

9. **Insurance.** Prior to using the Ballpark and throughout the entire term of this Agreement, NPO, at its sole cost and expense, shall maintain in full force and effect general liability insurance in the minimum amounts of \$1,000,000 personal injury, \$1,000,000 per occurrence, \$300,000 fire damage, \$5,000 medical expense, and a general aggregate of at least \$2,000,000, and liquor liability insurance of \$1,000,000 per occurrence and \$2,000,000 general aggregate. A certificate of insurance evidencing compliance with this Agreement shall be provided to the City by NPO and the City shall be named as an additional insured on the insurance policies described herein. Such policies shall contain a stipulation that NPO's insurer(s) will provide sixty (60) days' prior written notice of cancellation of such insurance to the City. The insurance shall be carried by solvent and responsible insurance companies licensed to do business in the State of Minnesota.

10. **Compensation for Damages.** NPO agrees to reimburse the City for any and all damages to the Ballpark concessions area resulting from NPO's use of the Ballpark concessions area. If it is established that any portion of the concessions area, or the Ballpark's surrounding landscapes or parking lots, are damaged by the act or failure to act of NPO, its members, agents, or invitees during the term of this Agreement, the City shall charge NPO, and NPO agrees to pay the City, the sum necessary to restore the premises back to its pre-damaged condition.

11. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail and addressed to:

If to the City:                      City of New Prague  
   118 Central Avenue N  
   New Prague, MN 56071  
   Attn: City Administrator

If to NPO:                              New Prague Orioles, Inc.  
   108 Lincoln Ave. N.  
   New Prague, MN 56071  
   Attn: Nick Shoenecker

Or such other address as either Party may provide to the other by notice given in accordance with this provision.

12. **Governing Law.** This Agreement shall be interpreted in accordance with and be governed by the laws of the State of Minnesota.

13. **Compliance with Other Laws.** NPO agrees to conform to and comply with all of the laws, rules, and regulations of the United States, the State of Minnesota, and the City.

14. **Data Practices.** Data provided, produced, or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. NPO will immediately report to the City any requests from third parties for information relating to this Agreement. NPO agrees to promptly respond to inquiries from the City concerning data requests. NPO agrees to defend and indemnify the City from any claim, liability, damage or loss asserted against the City as a result of NPO's failure to comply with the requirements of this paragraph; provided that NPO shall have no duty to defend or indemnify where NPO has acted in conformance with the City's written directions.

15. **Audits.** NPO must allow the City, or its duly authorized agents, and the state auditor or legislative auditor reasonable access to NPO's books, records, documents, and accounting procedures and practices that are pertinent to all payments made under this Agreement for a minimum of six years from the termination of this Agreement.

16. **Severability.** The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.
18. **Entire Agreement.** This Agreement shall constitute the entire agreement between the City and NPO and supersedes any other written or oral agreements between the City and NPO. This Agreement can only be modified in writing signed by both Parties.
19. **Waivers.** By entering into this Agreement, the City does not waive its entitlement to any immunities under statute or common law. Any waiver by either Party of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
20. **Non-Assignability.** Neither Party shall assign an interest in this Agreement, nor shall either Party transfer any interest in the same, without the other Party's written consent.
21. **Modification.** No modifications or amendments may be made to this Agreement unless in writing and signed by both Parties hereto.
22. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit, or affect the scope and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in their behalf by their authorized representatives on or as of the date first above written.

**CITY OF NEW PRAGUE, MINNESOTA**

By: \_\_\_\_\_  
Duane J. Jirik  
Its: Mayor

By: \_\_\_\_\_  
Joshua M. Tetzlaff  
Its: City Administrator

**NEW PRAGUE ORIOLES, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_