

**CITY OF INDEPENDENCE
ALCOHOL CONCESSION AGREEMENT**

BETWEEN: City of Independence, an Oregon
Municipal Corporation ("City")

AND: ("Contractor")

Tax ID #: _____

**EFFECTIVE
DATE:**

RECITALS

A. City owns and operates the Independence Amphitheater (Amphitheater), located in the City of Independence in Polk County, Oregon. Contractor is a concessionaire that sells alcoholic beverages and is licensed to do such business in Oregon.

B. Alcohol concession services at the Amphitheater are important for events at the Amphitheater. City desires to make such services available at the Amphitheater and Contractor represents that it is qualified and prepared to provide such services and the facilities for use in connection therewith, as provided in this Alcohol Concessions Agreement (Agreement).

EXHIBITS

The following are attached and incorporated as part of this Agreement:

- Exhibit A – Request for Proposals
- Exhibit B - Proposal Submitted by Contractor in Response to Request for Proposals
- Exhibit C - Depiction of City Facilities
- Exhibit D – Schedule of Events
- Exhibit E – ORS 279B Public Contracting Requirements

AGREEMENT

SECTION 1. Concession Rights to be Granted. City grants to Contractor the exclusive right to conduct and operate alcohol concession services at the Amphitheater, under the terms and conditions described below and in the Request for Proposals (RFP) attached to this Agreement as Exhibit A and hereby incorporated by reference, for the purpose of providing alcohol at the Amphitheater for concerts and movies held as part of the City’s River’s Edge Summer Series. Contractor shall not use the Amphitheater for other purposes or to conduct any other business without City’s prior written consent.

SECTION 2. Initial Term; Renewal; Fiscal Year.

2.1. Initial Term. Subject to rights of earlier termination, as hereafter provided, the initial term of this Agreement shall commence on April 1, 2025 and shall expire on February 28, 2026.

2.2 Renewal. City may renew this Agreement for up to two one-year renewal terms, with each term commencing on March 1 and ending on the ensuing the last day of February. City shall deliver a written notice to Contractor of its decision to renew no later than January 31st of the renewal year.

SECTION 3. Use of City Property. During the term of this Agreement, City hereby sets aside and permits Contractor to operate its alcohol service business from the area at the Amphitheater depicted in Exhibit C (Concession Area).

3.1 Right of Use. Contractor's possession and use of the Concession Area shall be exclusive, except as otherwise provided in this Agreement.

3.2 Supplies and Equipment Provided by Contractor. Contractor shall provide all equipment, utensils, containers, and supplies required to provide alcohol concession services, including, but not limited to:

- i. Tents and related materials necessary to cover the Concession Area;
- ii. All necessary cleaning equipment and supplies, including dishwashing materials;
- iii. Kegs, cans, cups, containers, ice, ice chests, tables, and other miscellaneous items needed to provide alcohol concessions to patrons;
- iii. Fuel, electrical wiring, and equipment to generate power necessary for Contractor to provide alcohol concessions services.
- iv. Fencing and related materials needed to separate the Concession Area from the Amphitheater.

SECTION 4. Obligations of City.

4.1 Facilities. City will provide access to the Concession Area without charge to Contractor.

SECTION 5. Contractor's Services. Contractor shall sell the alcoholic beverages specified in its proposal, attached as Exhibit B and incorporated by this reference, at all concerts included in the City's River's Edge Summer Series and listed in Exhibit D. If City and Contractor renew this Agreement after the initial term, the parties will finalize the dates of Amphitheater events during 2026 and 2027 in a mutually signed writing. Contractor shall begin selling concessions an hour before the start time of the concert and shall stop selling concessions at the end of the last song of each event. Contractor shall maintain the Concession Area in a clean and attractive state.

5.1 Performance Standards.

5.1.1 Licensing. Contractor shall secure and maintain proper Oregon Liquor Control Commission (OLCC) licensing to permit service of beer, wine, and hard liquor. Contractor shall be the exclusive provider of beer, wine and hard liquor for Amphitheater events. Contractor shall pay all license fees for alcohol sales and service.

5.1.2 Health Department Requirements. Contractor shall maintain proper sanitary cleaning procedures in the Concession Area and comply with all State, County, or City sanitation regulations.

5.1.3. Recyclable Products. Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

5.1.4 Deliveries; Trash. Contractor shall coordinate deliveries so as not to disrupt activities and operations of the Amphitheater. Contractor shall be responsible for placing trash in sealed plastic bags in a dumpster.

5.1.5 Personnel. Contractor shall provide all personnel necessary to perform all concession services to be performed by Contractor hereunder. Contractor shall employ adequate numbers of qualified personnel to ensure adequate customer service. Contractor shall not permit its employees to conduct themselves in a loud, noisy, boisterous, offensive, or objectionable manner. Contractor shall not permit its employees to operate any equipment in an unsafe or unsanitary manner at the Amphitheater.

5.1.6 Price Increases. City must approve all increases in beverage, labor and gratuity charges before implementation. Contractor shall provide details of increased operating expenses with the request for a price increase.

5.1.7 Management and Cost of Operation. Contractor shall bear at its own expense all costs of operating the concession and pay all expenses in connection with the use of the Concession Area and rights and privileges granted by this Agreement, including, without limitation by reason of enumeration, permit fees, license fees and taxes and assessments lawfully levied or assessed upon Contractor's property. Contractor shall be responsible for processing any credit card charges through their own system and bank.

SECTION 6. Concession Fees.

6.1 Percentage Fees. As consideration for the Contractor's use of the Amphitheater to generate customers, Contractor agrees to pay City the following concession fees: Contractor agrees to pay City X% of its gross revenues from all concession services provided under this Agreement.

6.2 Time and Manner of Payments. On or before the 15th day of each month, Contractor shall furnish to City a detailed written statement, signed and certified by an officer or authorized agent of Contractor, setting forth the amount that Contractor shall pay City for the prior period. Contractor shall remit such payment with each monthly statement. Payments and statements due from Contractor under these provisions shall be delivered to a person and/or place designated by City.

6.3 Late Payment/Statement Administrative Charge. The parties recognize that City will incur additional administrative costs if Contractor is late in making its monthly payments or providing the monthly statements required by this Section 7.2, and that the amount of those costs is difficult to determine with certainty. City may assess such costs and, if it does, Contractor agrees to pay a late charge of \$10 per day for each day on which a payment due under this Section is late.

6.4 Calculation of Gross Revenues.

6.4.1 Gross Revenues. Gross catering revenues are defined as all income from sales made by Contractor in connection with any event at the Amphitheater for which Contractor provides alcohol concessions. Gross Revenue shall be determined in accordance with Contractor's usual accounting procedures, so long as such procedures accurately reflect the value of all income, whether in cash, trade or otherwise accepted by Contractor as compensation for its goods and services.

6.4.2 Exclusions from Gross Revenue. The following transactions and charges are specifically excluded from Gross Revenues.

- i. Gratuities paid to employees or received by Contractor when owners are acting as sole service staff.
- ii. Sales or similar taxes or fees imposed by federal, state, county, or municipal law which are separately stated to and paid by the customer and which are payable directly to the taxing authority by Contractor, provided that this exclusion does not include income taxes, franchise taxes, taxes levied on Contractor's activities, facilities, equipment, or real or personal property, or payroll taxes.
- iii. Sums received from customers or insurance carriers for the damage, loss or conversion of Contractor's personal property, provided that this exclusion shall not include sums received to compensate Contractor for lost sales or profit.

iv. Any other transactions or charges specifically approved in writing for exclusion by the City in response to a written request from Contractor.

6.4.3. Inclusion in Gross Revenue Unless Expressly Excluded. Unless a sum is expressly and particularly excluded from Gross Revenue under the foregoing subsection of this Agreement, as it may be amended from time to time, that sum shall be included in Gross Revenue.

SECTION 7. Records and Reports; Audit.

7.1 Records. Contractor shall keep and maintain in accordance with generally accepted accounting principles and procedures, complete, accurate, and customary records and books of account concerning its operations at the Amphitheater. Contractor shall keep all records relating to Gross Revenue for a period of not less than thirty-six (36) months.

7.2 Annual Report/Adjustment. Within forty-five (45) days after the close of each fiscal year, Contractor shall submit to City a written statement detailing the total Gross Revenue during the immediately preceding fiscal year. Each annual report will include documentation of Contractor's advertising and promotion expenditures for the year just completed.

7.3 Inspection and Audit by City. City shall be entitled at all reasonable times during business hours, through its duly authorized agents, attorneys or accountants, to examine, audit, and make copies of any and all information in Contractor's records and books of account related to Contractor's Gross Revenue and its operations at the Amphitheater. Contractor shall provide full cooperation in City examination of Contractor's procedures in maintaining records and books of account. Contractor shall provide access to such records and books to City upon request at no charge. If any examination or audit by City discloses that Contractor's Gross Revenue, as previously reported for any month during the period inspected, was understated, Contractor shall, after written notice by City specifying the amount due, immediately pay to City the additional fee due, together with interest at the rate of 1.5% per month on such amounts due.

SECTION 8. Compliance with Laws, Regulations, and Rules. In addition to all other provisions of this Agreement governing Contractor's actions and compliance with laws, during the term of this Agreement, Contractor shall at all times strictly observe and comply with the following:

8.1 City Rules. All applicable rules, regulations, orders and restrictions now enforced or hereafter adopted by City with respect to the operation of the Amphitheater.

8.2 Other City Directives and Rules. All orders, directions, rules, regulations or restrictions given or imposed by City with respect to use of roadways, driveways, curbs, sidewalks, parking areas and public areas at the Amphitheater.

8.3 Laws and Ordinances. All applicable laws, ordinances, statutes, rules, regulations or orders of federal, state and local governmental authorities and agencies lawfully exercising

authority at or over the Amphitheater or the Contractor operations under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit E.

SECTION 9. Insurance. Contractor shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Contractor sole expense, the following insurance:

9.1 Commercial Public Liability Insurance. A commercial public liability insurance policy, including coverage for products and completed operations, independent contractors, contractual liability, and liquor liability covering, bodily injury, property damage and personal injury, with a combined single-limit coverage of not less than Two Million Dollars (\$2,000,000) per occurrence for each type of claims and Two Million Dollars annual, on an occurrence basis. The liability policy shall name City as an additional insured, protecting City from any and all claims, losses, actions, or damages resulting directly or indirectly from any act, default, error or omission of Contractor or as a result of the joint, concurring or contributory act, omission or negligence of Contractor and City arising in connection with or related to Contractor operations under this Agreement.

9.2 Automobile Liability Insurance. Automobile liability insurance is required for all automobiles used by Contractor in its business with coverage limits of not less than \$1,000,000 per occurrence and annual aggregate.

9.3 Workers Compensation Insurance. Workers compensation insurance in the amounts and form required by the workers compensation insurance laws in the State of Oregon, and employers' liability coverage.

9.4 Policy Requirements. The insurance policies specified above shall be approved as to the form and surety by City and shall bear an endorsement entitling City to at least sixty (60) days prior written notice of any material change, non-renewal or cancellation. A copy of all such policies, or certificates thereof, satisfactory to City, shall be delivered to City prior to the execution of this Agreement and commencement of operations by Contractor. All policies required by these provisions shall be written as primary policies, not contributing with or in excess of any coverage which City may cover and shall have loss payable clauses in favor of and satisfactory to City.

9.5 Waiver of Subrogation. Contractor hereby waives all rights of recovery against City and its agents, officers and employees for any loss or damage, including consequential loss or damage caused by any peril enumerated in a standard fire insurance policy with endorsement for extended coverage, and in the event of an insured loss, Contractor's insurance company shall not have a subrogated claim against City.

SECTION 10. Indemnification. Contractor shall indemnify and hold City, its agents, officers, and employees harmless from and against any and all claims, losses, actions or damages made or suffered by any person for death, bodily injury or property damage which results directly or indirectly from any act, default, error or omission arising in connection with or related to

Contractor's operations under this Agreement. In the event any such action or claim is brought against City, Contractor shall, upon notice of the commencement thereof, defend the same at its sole cost and expense, promptly satisfy any judgment adverse to City or to City and Contractor, jointly, and reimburse City for any loss, cost, damage or expense (including legal fees) suffered or incurred by City. The foregoing liability of Contractor shall not be diminished by the fact that any death, injury, damage or loss, claim, cost or expense may have been, or may be alleged to have been, the result of the joint, concurring or contributing act, omission, or negligence of City, unless caused by or resulting from the sole negligence or willful misconduct of City. Contractor's obligations under this Section shall survive termination of this Agreement.

SECTION 11. Contractor's Default. Contractor shall be in default under this Agreement upon the occurrence of any of the following events:

11.1 Default in Payment. Contractor's failure to pay any concession fee when due and such failure continues for ten (10) days after written notice is given to Contractor.

11.2 Violation of Other Covenants. Upon Contractor's failure to perform any obligation under this Agreement or cure any failure of performance, other than the failure to pay concession fees, within thirty (30) days after notice of such failure or demand for cure is given by City to Contractor.

11.2.1 Alcohol Service and Quality. If City receives complaints from attendees at Amphitheater events regarding the quality of service provided by Contractor, City may issue a notice to Contractor detailing such complaints and instituting a probation period. If City receives additional complaints during the probation period, it may deem Contractor in default of this Agreement.

SECTION 12. Termination by Contractor

12.1 Termination for Breach. Upon sixty (60) days prior written notice to City, if Contractor has notified City in writing that City is in default in the performance of any covenant or obligation contained in this Agreement, which notice specified the nature of the default, and City has failed to cure or to make satisfactory arrangements with Contractor for of a cure of such default within thirty (30) days of the notice of default.

SECTION 13. Termination by City. This Agreement may be terminated by City upon the occurrence of any one or more of the following events:

13.1 Contractor Default. Immediately, upon the occurrence of an event of default described in Section 13.

13.2 Casualty. The destruction of all or a material part of the Amphitheater or its facilities by fire, explosion, earthquake, other casualty, or acts of God.

13.3 For Any Reason. At any time and for any reason, considered to be in the best interests of City, as determined by City in the exercise of its sole discretion, upon giving ninety (90) days prior written notice to Contractor.

SECTION 14. City's Right to Act. In the event Contractor fails to perform any obligation under this Agreement, City shall have the right, but not the obligation, to take action that Contractor has failed to take, after giving at least thirty (30) days' notice in advance of taking such action, except in the event of an emergency, as determined by City, in which case no advance notice shall be required. In the event City takes such action, Contractor shall promptly pay to City, upon demand, the sum or sums expended or incurred by City to take such action. Any such action taken by City shall not by itself constitute a termination of this Agreement. In addition, any such action shall not constitute a waiver by City of Contractor's default of City's remedies on account of such default.

SECTION 15. Property Rights Upon Termination. Upon termination of this Agreement, whether by expiration or by earlier termination, Contractor shall remove all of its personal property and all improvements installed by Contractor, and restore the Concession Area to the condition existing when originally turned over to Contractor, ordinary wear and tear excepted. Except as provided herein, Contractor shall be deemed to have abandoned to City any of its personal property and improvements which it has failed to remove from the Concessions Area within the fifteen (15) days following termination, unless City grants in writing a longer period for removal. In the event of abandonment, City may remove Contractor property and improvements and charge Contractor the reasonable expense of removal and restoration.

SECTION 16. Access by City. Contractor shall allow City's authorized representatives access to the Concession Area at all reasonable hours for the purpose of examining and inspecting the facilities Contractor uses to perform under this Agreement.

SECTION 17. Alterations and Improvements by City. City shall have the right to regulate, police, and further develop, improve, reconstruct, modify, or otherwise alter the Amphitheater or any portion thereof, including the Concession Area, in such manner as City sees fit without any liability to Contractor.

SECTION 18. Miscellaneous Provisions.

18.1 Independent Contractor. Nothing in this Agreement is intended or shall be construed to create or establish Contractor as anything but an independent contractor. Contractor shall not be deemed an agent of City.

18.2 Assignment and Sublease. Contractor shall not assign or transfer any of its obligations under this Agreement without the prior written consent of City.

18.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

18.4 Notices. Any notices required to be given under this Agreement shall be sufficient if sent by first class or certified mail, return receipt requested, postage prepaid, or by a recognized overnight courier service, or by a tested or otherwise authenticated facsimile, addressed to the parties as shown below or to such other address or facsimile as a party may designate to the other in writing from time to time. A notice mailed shall be deemed delivered on the date postmarked.

To City: Shawn Irvine
Assistant City Manager
P.O. Box 7
Independence, OR 97351

To Contractor: _____

18.5 Attorney Fees. If any suit or action is instituted in connection with any controversy arising under this Agreement, the prevailing party shall be entitled to recover and the losing party agrees to pay, in addition to costs, such sum as the trial court may adjudge reasonable as attorney's fees and upon appeal therefrom, such sum as the appellate court may adjudge reasonable as attorney's fees. This provision shall survive termination by either party with respect to causes of suit or action that survives termination.

18.6 Limitation. Nothing in this Agreement shall be construed or interpreted in any manner as limiting, relinquishing or waiving any rights of ownership enjoyed by City in any City property, including the Concession Area, or in any manner limiting, relinquishing or waiving City's control over the operation and maintenance of the Amphitheater property.

18.7 Non-waiver. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver or prejudice the party's right to require strict performance of the same provision in the future or any other provision.

18.8 Interpretation/Jurisdiction. The Polk County Circuit Court shall have jurisdiction over any disputes that arise under this Agreement. This Agreement shall be governed and construed by the laws of the State of Oregon.

CITY OF INDEPENDENCE
("CITY")

("Contractor")

By: _____

By: _____

Title: _____

Title: Owner _____

Date: _____

Date: _____

F:\1Clients\Muni\Independence, City\General\General 2020\AGT Alcohol Concessions DL 041720.docx