

PARK USE AGREEMENT

This **Park Use Agreement** (“**Agreement**”) is entered into by and between the City of Loveland, Colorado, a municipal corporation (the “**City**”) and _____, an individual, corporation, limited liability company, partnership, or other _____ (“**Concessionaire**”).

In consideration of the payments and the keeping and performance of the covenants and agreements by Concessionaire as described herein, the City hereby grants to Concessionaire the right to “vend,” as defined in Loveland Municipal Code (“**LMC**”) Section 12.30.020(H) (“**Concession**”) at City Parks and Recreation facilities (“**City Parks**”) specified in this Agreement on the terms, conditions, and dates set forth in Exhibit A such that vending within City Parks, for the Concessionaire, is permissible under LMC 12.30.110(G). The right to “vend” for the Concessionaire shall extend to participant-vendors, employees, and independent contractors of an organized short-term event occurring within a City Park (“**Concessionaire Personnel**”). All terms of this Agreement shall apply equally to Concessionaire Personnel.

Concessionaire’s Contact Information:

Name: _____

Address: _____

Phone: _____

Email: _____

Event Name: _____

Parks and/or Facility Name (Premises): _____

Date(s): _____ **Arrival & Departure Times:** _____
(Include Set Up/Take Down)

Event Description: _____

Product(s) being sold (if any): _____

Number of people anticipated: _____

Large groups and/or special events impact Loveland park sites that require a high level of service and certain accommodations from the City. Large groups and/or special events necessitate additional planning and coordination by City staff, impact available parking, utilities, on-site restroom facilities and require additional clean-up. As a result, it is the responsibility of the group organizer to meet the following conditions (please read and initial each condition):

_____ **Base Concession Fee.** Concessionaire shall pay to the City \$_____ per event (“Base Concession Fee”) as payment for the granting of a license through this Agreement.

_____ **Site Impact Fee.** Concessionaire shall pay to the City \$_____ per event (“Site Impact Fee”) as payment for the site and equipment, if applicable.

_____ **Late Payment.** If Concessionaire fails to pay any Base Concession Fee, Site Impact Fee, or any other fee required under the Local Event Permit, on the date it is due, the Concessionaire shall be in default.

_____ **Local Event Permit.** If this event will have an impact to services outside the park site, then a Local Event Permit shall be completed in conjunction with this agreement: <http://lovelandpermits.cityofloveland.org/> and contact the Loveland Police Department at (970) 962-2239 to begin the event permit process.

_____ **Vending.** Selling or offering for sale any goods, services, or any other thing of value is prohibited per City ordinance 5.12.010 unless otherwise specifically stated within this Agreement.

In witness whereof, the parties have executed this Agreement as of the date first above written.

City of Loveland, Colorado

Signature: _____

Name: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Concessionaire

Signature: _____

Name: _____

Title: _____

EXHIBIT A

1. **Grant of Concession.** The City hereby grants to Concessionaire a non-exclusive right to provide and operate a Concession to sell the product(s) as listed above on the terms and conditions described herein and pursuant to Paragraph 5 below. Any sale of alcohol may only occur pursuant to a lawfully granted special event permit pursuant to LMC Chapter 8.10. Any rights not specifically granted to Concessionaire herein are retained by the City.

2. **Term.** The term of this Agreement shall adhere to the dates listed above, unless earlier terminated in accordance with this Agreement.

3. **Use of Premises.** Concessionaire shall have a license to use the Premises to provide the Concession. Concessionaire shall keep the Premises clean and free of trash and debris. Cleaning must be performed at regular intervals during operating hours and at the end of each day. Entertainment of any nature shall be subject to the City's prior approval, which shall not be unreasonably withheld. Concessionaire shall maintain all signs or advertisements approved by the City in good and attractive condition at Concessionaire's expense. Concessionaire agrees to adhere to the following standards.

a. Existing restroom facilities may not be adequately sized for large events. Therefore, it is the responsibility of the Concessionaire to provide portable restrooms, including related service, during the event. One portable toilet must be provided for every fifty (50) people over the set maximum for the chosen location. The following locations and corresponding maximums are as follows: Centennial Park – one hundred fifty (150), Fairgrounds Park – two hundred fifty (250) per pavilion, Hammond Amphitheater – one hundred fifty (150), North Lake Park – one hundred (100) per shelter. The City will provide a maximum number for all other CityParks.

b. Trash receptacles in the City Parks cannot accommodate additional trash produced by large events. As a result, it may be the responsibility of the Concessionaire to provide trash receptacles for their event. Arrangements for trash service may be made by contacting the City's Solid Waste Division at least one (1) week before the scheduled event. Additional fees may apply.

c. Large events in North Lake Park and at the Norma and Lynn Hammond Amphitheater require more parking than is currently available. Therefore, if holding an event at these locations the Concessionaire is responsible for contacting the Thompson School District to arrange utilization of the Loveland High School parking lot for overflow parking. The Thompson School District will require a charge to use the parking lot. Please contact the District Facility Use manager at leah.howard@thompsonschoools.org.

4. **Authority of Manager.** The City's Parks Manager ("Manager") shall be responsible for interpreting and applying the standards set forth in this Agreement. The Manager shall decide all questions that may arise as to Concessionaire's fulfillment of such standards and guidelines. If the service being performed by Concessionaire does not meet the standards and guidelines set out in this Agreement, the Manager shall immediately notify Concessionaire, and

the failure to comply shall be an event of default and this Agreement will be subject to termination and may prohibit future short-term concessionaire agreements with Concessionaire.

5. Restrictions. Concessionaire shall not:

- a. Permit any unlawful practice to be committed on the Premises.
- b. Use or permit the Premises to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by the City, including storage or use of or permitting to be kept or used on the Premises any inflatable amusement rides, flammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the City or the City's insurance carriers without obtaining prior written consent of the City, except for small quantities of cleaning products incidental to their permitted uses described in this Agreement.
- c. Use or permit the Premises to be used for any purpose that creates a nuisance or injures the reputation of the Parks or the City.
- d. Use or permit any portion of the Premises to be used for storage or other purposes except as is necessary and required with its use specified in this Agreement.
- e. Permit Concessionaire's employees and participant-vendors to park anywhere upon the Premises except as designated by the City.
- f. Permit tobacco products to be used by any person in, on, or at the Premises, which are "smoke free"; provided, however, that the City will identify a designated area at City Parks where smoking by Parks patrons is permitted.
- g. Conduct, or allow to be conducted, gambling on site.
- h. Place or permit any sign, advertisement, display, notice, or other lettering to be exhibited or fixed to any part of the Premises without the City's prior written approval.

6. Concessionaire Personnel. Concessionaire Personnel (whether employees, independent contractors, or vendor-participants) shall provide all equipment and personnel necessary to perform the activity authorized by this Agreement. Concessionaire Personnel assigned to perform the work are subject to final approval by the Manager. Concessionaire Personnel are required to adhere to City security, fire, and safety regulations and no-smoking policies. Concessionaire agrees that, upon notice from the City, it will immediately remove any personnel who violates any applicable statute, ordinance, regulation, or order of the Manager. Concessionaire Personnel shall not represent that they are agents or employees of the City.

7. Permits and Licenses. Concessionaire and Concessionaire Personnel shall secure, pay for, and post in places designated by the City, all permits and licenses necessary for the operation of the Concession, and shall pay, at its own expense, all taxes assessed or levied against

its business and merchandise. Concessionaire and Concessionaire Personnel shall promptly pay all taxes and fees of whatever nature applicable to the operation of the Concession and shall maintain all licenses, municipal, state or federal, required for the conduct of business, and shall not permit any of said taxes or fees to become delinquent.

8. Indemnification. Concessionaire agrees to indemnify and hold harmless the City, its officers, employees, and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss, or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with Concessionaire's operation, or Concessionaire Personnel's operation of the Concession, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Concessionaire, any subcontractor of Concessionaire, or any officer, director, shareholder, member, employee, representative, or agent of Concessionaire, or which arise out of any workers' compensation claim of any employee of Concessionaire or of any employee of any subcontractor of Concessionaire. Concessionaire agrees to investigate, respond to, and provide defense for and defend against any such liability, claims, or demands at the sole expense of Concessionaire and agrees to bear all other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

9. Attorneys' Fees. If any action is brought to recover any Base Concession Fees or Site Impact Fees, or on account of any Termination or other breach of this Agreement, or for the recovery of the possession of the Premises, or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment.

10. Insurance.

a. Concessionaire shall procure and continuously maintain at its own expense the minimum insurance coverages listed below, with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) Commercial general liability insurance with combined single limit of One Million Dollars (\$1,000,000.00) per occurrence. This policy must include concessionaire liability, products liability, broad form property damage, and personal injury;

(ii) Owned, hired, and non-owned automobile liability coverage with One Million Dollar (\$1,000,000.00) limit;

(iii) Statutory workers' compensation on all employees;

(iv) All risk insurance for full insurable replacement value of City-owned equipment and personal property; and

b. The required insurance policies shall be endorsed to include the City of Loveland, except for the automobile insurance required by Paragraph 21(a)(ii) above, as an additional insured as its interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City, its elected officials, officers, employees, or others working on behalf of the City, or carried by or provided through any self-insurance pool of the City, shall be excess and not contributory insurance to that provided by Concessionaire. Each party to this Agreement agrees to waive subrogation on respective property insurance.

c. The certificate of insurance provided to the City shall be completed by Concessionaire's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to the commencement of the Agreement. The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

Parks Manager
Parks & Recreation Department
City of Loveland
500 East Third Street, Ste. 200
Loveland, CO 80537

d. The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitation (presently One Hundred Fifty Thousand Dollars (\$150,000.00) per person and Six Hundred Thousand Dollars (\$600,000.00) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et. seq.*, as from time-to-time amended, or otherwise available to the City, its elected officials, officers, or employees.

11. **Non-discrimination.** Concessionaire and Concessionaire Personnel shall not discriminate against any customer, guest, park patron, employee or visitor because of race, color, religion, age, sex, disability, or national origin and shall treat all persons with dignity and respect. Failure to comply with this paragraph shall be an event of default.

12. **Termination.** This Agreement may be terminated by either party for any reason at any time. The City shall not refund any amounts paid to the City under this Agreement. Failure to comply with any term of this Agreement, after notice from the City, shall be an event of default and the City may deny future access to the Premises or other City Parks for future events. In the event of default, the City may bring any action at law or in equity to protect and preserve the City's interests.

13. **Delivery after Expiration or Termination.** Concessionaire will deliver the Premises and all City equipment thereon to the City at the expiration or termination of this

Agreement in as good condition and state of repair as when received, except for ordinary wear and tear, or loss, and damage not otherwise caused by Concessionaire or Concessionaire Personnel.

14. Cumulative Rights. No right or remedy is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of either party to insist at any time upon the strict performance of any covenant or to exercise any right contained in this Agreement shall not be construed as a future waiver. The City's receipt of any Base Concession Fee or Site Impact Fees with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such breach. Neither party shall be deemed to have made any waiver of this or any provision of this Agreement unless expressed in writing and signed by such party.

15. Colorado Open Record Act. The parties understand that all the material provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act, section 24-72-201 *et seq.* of the Colorado Revised Statutes. If the Concessionaire objects to the disclosure of any information provided herein, Exhibit A, or other document provided to the City under this Agreement, the Concessionaire must mark it clearly as confidential. The City is required to make a determination under the Colorado Open Records Act, and may only withhold documents that are confidential under the law. If the City releases records in compliance with the Colorado Open Records Act, the Concessionaire waives any claims for liability or damages. Concessionaire further agrees to defend, indemnify, save and hold harmless the City, its officers, agents and employees from any claim, damages, expense, loss, or costs arising out of the Concessionaire's intervention to protect and assert its claim of privilege against disclosure under this Paragraph, including but not limited to prompt reimbursement to the City of all reasonable attorneys' fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

16. Venue and Governing Law. Venue for any and all legal action regarding this Agreement shall lie in the District Court of Larimer County, Colorado, and this Agreement shall be governed by the laws of the State of Colorado and the Charter and Municipal Code of the City of Loveland.

17. Licensee Status. For the purposes of defining Concessionaire's relationship with the City, it is understood and agreed that Concessionaire and Concessionaire Personnel are short term holders of a limited use license for vending upon City Parks and nothing herein contained shall constitute or designate Concessionaire or any of its employees or agents as agents or employees of the City, nor shall Concessionaire be deemed to be engaged in a partnership or joint venture with the City. **Concessionaire understands and agrees that Concessionaire is not entitled to nor shall it receive any City benefits, including vacation, worker's compensation, sick pay, or any other benefits from the City, and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.**

18. Assignment. Neither Concessionaire nor Concessionaire's successors or assigns shall assign this Agreement, in whole or in part, nor shall this Agreement be assigned or transferred by operation of law or otherwise, without the prior consent in writing of the City in each instance.

19. Notices. All notices, demands and communications hereunder shall be personally served, emailed or mailed via US Mail, postage pre-paid, as follows:

If to the City: Parks Manager
 Parks & Recreation Department
 City of Loveland
 500 East Third Street, Ste. 200
 Loveland, CO 80537

If to Concessionaire: See Contact Name/Email Address/Business Address above in this Agreement.

Any notice given by mail shall be deemed delivered when sent addressed as above, with postage prepaid, or when served personally at the applicable address.

20. Entire Agreement. This is the entire Agreement between the parties and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or written, of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge, or effect an abandonment of this writing.

21. Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. It is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

22. Special Provisions. Waive insurance requirements – 10. a. ii. Owned, hired, and non-owned automobile liability coverage with \$1,000,000 limit.

23. Electronic Signature and Counterpart Signatures. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101 *et seq.* The parties agree that counterpart signatures of this Agreement shall be acceptable and that execution of the Agreement in the same form by each and every party shall be deemed to constitute full and final execution of the Agreement.

EXHIBIT B – CERTIFICATE OF EXEMPTION AND WAIVER

DIRECTIONS:

- ✓ If the Contractor is NOT required under Colorado law to carry workers' compensation insurance and DOES NOT carry it, this exhibit MUST be completed and attached to the Contract.
- ✓ If the Contractor IS required under Colorado law to carry workers' compensation insurance and DOES carry it, this exhibit IS NOT REQUIRED and may be discarded.

The Contractor certifies to the City that it is not required to carry workers' compensation insurance under the Colorado Workers' Compensation Act. The Contractor acknowledges that it will be engaging in activities that may expose it to risk of bodily injury. The Contractor affirms that it is physically capable of performing the activities and that all necessary precautions to prevent injury to the Contractor and others will be taken. The Contractor shall not hold the City liable for any injuries that may arise during or resulting from the work performed under the Contract, and the Contractor shall defend, indemnify, and hold harmless the City from all such claims.

Contractor

By: _____

Title: _____

Date: _____