

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONCESSIONAIRE AGREEMENT WITH JAVA & HOPPS FOR CONCESSION SERVICES TO BE PROVIDED AT THE ADDISON CIRCLE PARK PAVILION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with Java & Hopps to provide concession services at the Addison Circle Park Pavilion for an initial term of one (1) year with an option to extend the term for up to four (4) additional one year terms in conformance with the Town of Addison’s Request for Proposals No. 22-117 (the “RFP”) contained in the agenda memorandum accompanying this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The City Council hereby approves the concessionaire agreement between the Town of Addison and Java & Hopps for concession services to be provided at the Addison Circle Park Pavilion in conformance with the above-referenced RFP which includes the contract, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute the agreement.

SECTION 2. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **28th** day of **JUNE**, 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary



Town of Addison

Request for Proposal

Concession Services for Addison Circle Park Pavilion

Bid # 22-117

Issue Date: **March 31, 2022**
Due Date: **April 28, 2022**

REQUEST FOR PROPOSALS

Notice is hereby given that proposals will be received by the Town of Addison, Texas, for:

Concession Services for Addison Circle Park Pavilion Kitchen

File with Wil Newcomer Purchasing Agent, Finance Department, 5350 Beltline Rd.

Addison, TX 75019. Proposals received later than **2:00 p.m. on April 28, 2022**

will not be considered.

A copy of this Request for Proposal (RFP) may be obtained from Bid Sync at <http://www.bidsync.com>

The Town of Addison reserves the right to reject any and all proposals, and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

A Service Provider response that indicates that any of the requested information in this RFP will only be provided if and when the Service Provider is selected as the apparently successful Service Provider is not acceptable, and, at the City's sole discretion, may disqualify the proposal from consideration.

The Town of Addison assures that no person shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Town of Addison further assures that every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs are federally funded or not.

In addition to nondiscrimination compliance requirements, the Service Provider(s) ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

Dated this 31st day of March, 2022

Wil Newcomer
Purchasing
Agent 972-450-
7091

Background Information

Addison Circle Park (ACP) is a 10-Acre regional park located at 4970 Addison Circle in Addison, Texas. The park is owned and maintained by the Town and is located in the Addison Circle District. The park hosts national and regional recognized events such as Taste Addison, Kaboom Town and Oktoberfest. The park also hosts third party events such as 5K Runs, daily fitness classes and other programmed activities. Large lawn areas for gathering, walking paths, a splash pad and a water gardens attract daily visitors looking for fun and relaxation. ACP is adjacent to the DART Transit Center, which will include a stop for the DART Light Rail Silver Line which is currently being constructed.

The Pavilion is located at the northeast corner of the park adjacent to Quorum Rd. roundabout which contains Addison's most significant public art installation, Blue Prints, which was designed by artist Mel Chin and landscape architect Michael Van Valkenburgh. The modern architecture pavilion was designed by Cunningham and Associates and is located next to an interactive fountain that functions as a splash pad and at the top of the hour plays a song choreographed to music and color changing lights in the evening hours. Free Wifi, tables and chairs are provided for pavilion users. This RFP includes use of the following items located within the Pavilion - kitchen, grease trap and covered patio. The concessionaire will also have shared access to a public restroom at the pavilion. The proposer should not assume access and use of other areas in the park.

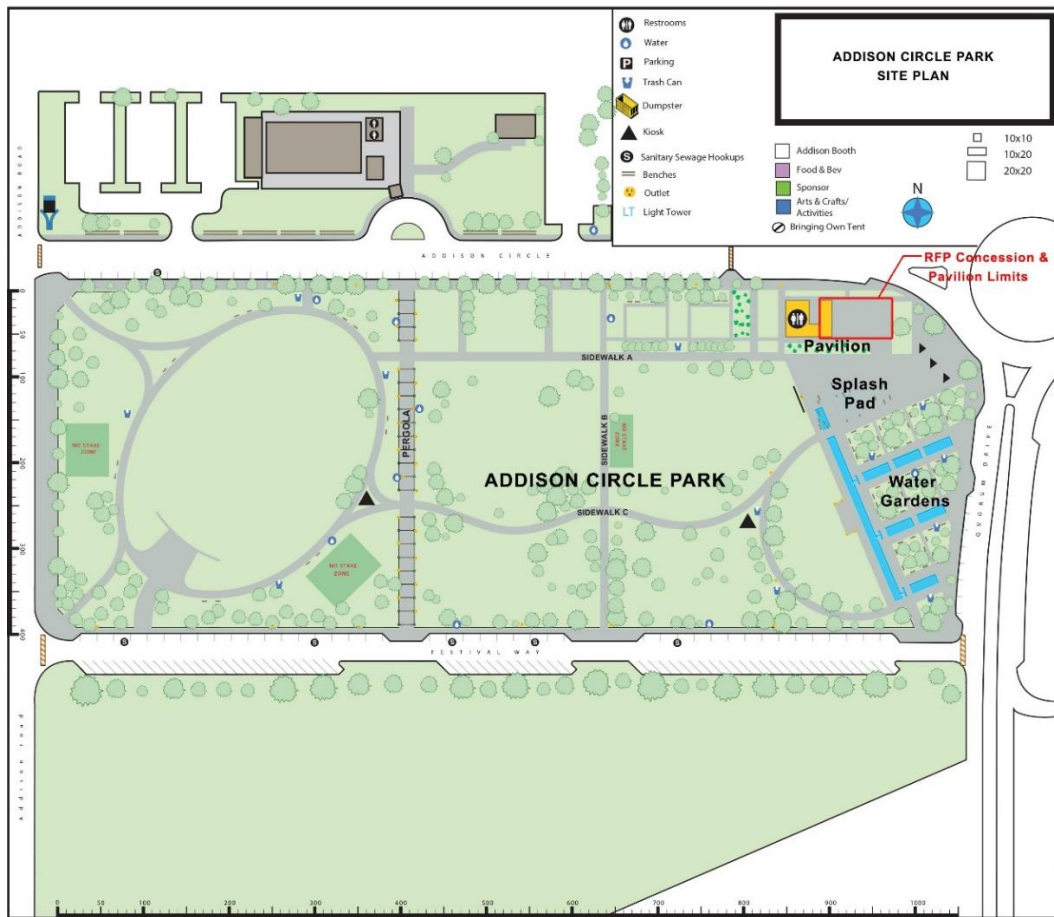


Figure 1 – Addison Circle Park Site Plan

Purpose and Background

This REQUEST FOR PROPOSAL (RFP) represents a publicly advertised and competitively awarded solicitation by the Town of Addison. The Town is seeking, and will select, a concessionaire that best demonstrates the ability to provide innovative, affordable and reliable products and services to park patrons. The Town wishes to increase the amount of time people use the park, attract more users to the park and positively influence the Addison Circle District. One component in realizing this goal is through concession offerings at Addison Circle Park Pavilion. This RFP covers operating concession services through the concession building located at the northeast end of Addison Circle Park. Applicants are encouraged to tailor concession offering products that would fit typical park users that come to Addison Circle Park and to offer products that may draw people to or encourage them to return to the park. Typical daily park patrons include participants in yoga, bootcamp and other fitness classes, participants in programmed activities, families enjoying the splash pad, trail users / walkers and people walking by the park to commute.

In addition to typical concession merchandise offerings could also include picnic baskets / boxes, smoothies, charcuterie boards and beverages. Seasonal offerings should also be considered and included in the proposal. The concessionaire may also propose renting out park equipment such as games and portable chairs etc. The proposal may include the sale of beer and wine but this would require approval by Town staff and would require the proper permitting be followed. The concessionaire may also rent out the pavilion's covered seating area for parties and gatherings as a source of revenue generation.

The Town will grant access to the selected concessionaire to use the concession building, grease trap and covered patio as illustrated in Figure 2. The Town will also grant access to an adjacent location where the vendor can locate a storage building.

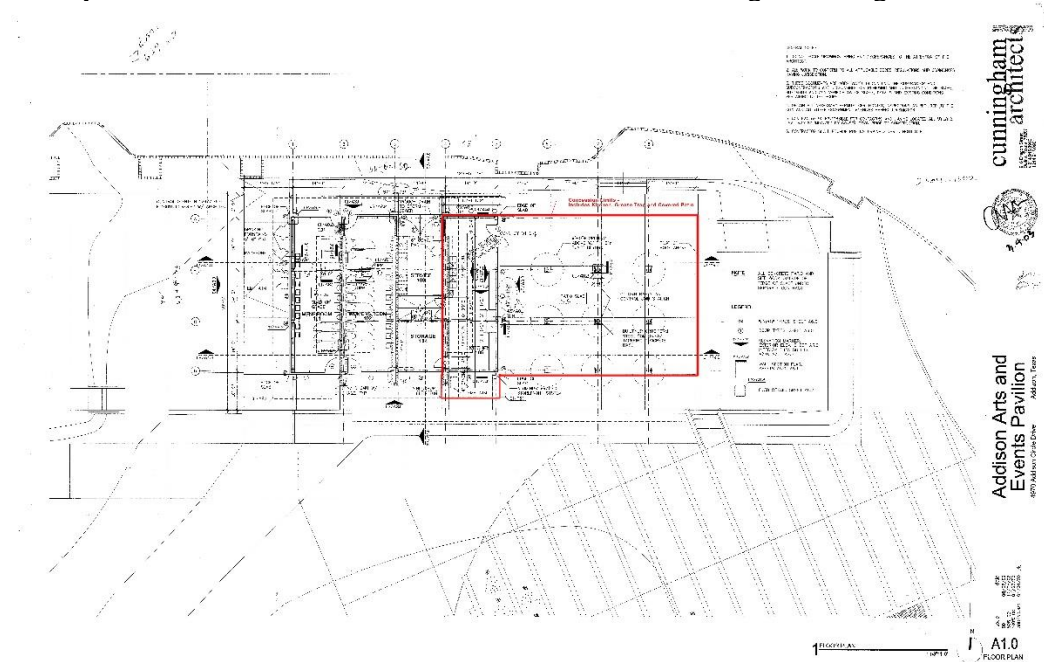


Figure 2 – Concession Limits (Enlargement provided in the Appendix of this document.)

The Kitchen is equipped with the following equipment:

Insert list of Kitchen Equipment:

| Quantity | Equipment | Manufacture / Model Number |
|----------|-------------------------|-------------------------------|
| 1 | Portable Ice Bin | Lakeside |
| 2 | Portable Rolling Tables | |
| 1 | Hand Sink | Advanced Taboo |
| 1 | Three Compartment Sink | |
| 2 | Stationary Tables | |
| 1 | Commercial Refrigerator | Traulsen Model #RHT132WUT-FHS |
| 1 | Commercial Refrigerator | Traulsen Model #RR132HUT-FHS |
| 1 | Table Warmer | Duke Model # EP4CBSS |
| 1 | Warming Drawers | Model #HDS-2 |
| 1 | Grease Trap | |
| 1 | Mop Sink | |

Performance Schedule

Concession Agreement award(s) will be for a (1) one-year period beginning May 25, 2022 with an option by the City to renew the agreement with the concessionaire on an annual basis for an additional (4) four years. The Town reserves the right to approve or disapprove any proposed business activity. The Town will not be liable for any expense or cost associated with the preparation and/or submittal of a Vendor's response to this RFP.

If you are awarded the Agreement for Concession Services at the Addison Circle Park Pavilion, concession rights may **NOT** be sold, transferred or given to anyone else without full disclosure to the Town of Addison and without obtaining prior written permitting from the Town.

In order to provide concession services, use of the Pavilion's Kitchen, Grease Trap and Covered Patio will be extended to the concessionaire and is offered on an as is basis.

This agreement does not cover any other areas within the park. It is the responsibility of the applicant to visit the facility and verify that adequate water and electrical service is available to support any additional equipment and service they intend to operate. Any suggested modifications or improvements shall be at the sole expense of the successful bidder and will require advance written approval from the Town of Addison.

In consideration for the right and privilege to conduct business within Addison Circle Park at the Concession / Pavilion, the vendor must compensate the Town of Addison a Concession Fee an amount to be proposed in the RFP application process. Compensation must include:

- a flat Concession Rental payment of \$500 per month beginning May 25, 2022 will begin and will cease once concession services are operational.
- and a monthly Concession Fee payment of a percentage of gross monthly receipts for food / beverage sales, alcohol sales and rentals to be proposed in the concessionaire's RFP Submittal.

Note: A Concessions Agreement provides an on-site vendor the right to be included in the three major Special Events held by the Town. Special Event involvement may not necessarily be at the Park Pavilion. The location may be modified for the duration of the event to accommodate Special Event footprint needs of the event organizer. The

concessionaire may be asked to provide products that fit the theme of the event.

The Covered Patio is used for early morning and early evening yoga classes offered by Addison Outdoors. The Town will provide the concessionaire with a seasonal schedule of classes and will work with the instructor to make any needed minor modifications to the class schedule or location.

Contract Requirements and Fees

If your proposal is accepted, the following requirements will be due upon award, prior to issuance of your concession agreement:

1. Town of Addison Certificate of Occupancy

- The concessionaire/contractor shall obtain and maintain for the duration of the agreement, a Certificate of Occupancy for the Concession Building and have the business registered with the Town of Addison.
 - Certificate of Occupancy Information: <https://addisontexas.net/econ-dev/register-my-business>
 - Business Registration Information: <https://addisontexas.net/econ-dev/register-my-business>

2. Insurance Coverage and Proof of Policy

- The concessionaire/contractor shall obtain and maintain for the duration of the agreement, policies of comprehensive general liability insurance with combined single limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Texas.
- A \$2,000,000 products/completed operations aggregate is also required for contractors that prepare food.
- The insurance policy shall be written on an occurrence basis.

The Town of Addison shall be named as Additional Insured and a copy of the Additional Insured Endorsement naming the City as Additional Insurance shall be attached to the Certificate of Insurance. The Certificate of Insurance and Additional Insured Endorsement shall be filed with the City a minimum of two weeks prior to the contractor providing services.

3. Health Permit

- It will be the contractor's responsibility to contact, arrange and comply with specific Health Department requirements. A copy of an Addison Health Department permit must be provided prior to opening. It is the responsibility of the Vendor to verify adequate water, restroom and electrical service is accessible to support the equipment they intend to operate at a particular location. Any modifications or improvements to concession area(s) shall be at the sole expense of the successful vendor and will require advance written approval from the Town of Addison. For more information contact Sandra Long, Environmental Health Manager Town of Addison 972-450-2821 or slong@addisontx.gov.

4. Permitting and Zoning Entitlements for the Sale of Alcoholic Beverages

- If the concessionaire / contractor intends to sell alcoholic beverages, it will be the concessionaire / contractor's obligation to apply for approval of a Special Use permit from the Town, and shall obtain all necessary permits, and pay all associated permit and license fees required by the Texas Alcoholic Beverage

Commission and the Town. Alcoholic Beverage sales shall be limited to on-premise consumption only and the concessionaire / contractor must achieve at least sixty percent (60%) of their gross revenues from the sale of food.

5. Contract Agreement (Not Lease)

- The contractor understands and agrees the Town will only grant concessions by contract and not by lease. Concession Agreement(s) will only confer permission to occupy and use the premises described for concession purposes. A successful contractor's expenditure of capital and/or labor in the course of use and occupancy will not confer any interest or estate in the premises by virtue of said use, occupancy and / or expenditure of money thereon. Town of Addison will only grant successful contractors an individual, revocable and non-transferable privilege of use in the premises for the concession granted. A sample, "Agreement for Concessions" is included for review.

6. Concession Fee

- Concession Fee of \$500 per month plus a percentage of sale is required until concession services are offered. After concession services are offered a concession sales percentage will be paid by the concessionaire to the town. The sale percentage will be determined through the RFP process and would be paid monthly.

Submittal Requirements

Proposals should be prepared simply, providing straight forward, concise descriptions of the applicant's capabilities to satisfy the requirements of the request.

Proposals must include the following:

1. A description of the proposed equipment to be used for operation designating existing Town of Addison equipment that will be used and designating additional equipment that will be provided by the concessionaire;
2. A complete list and description of all product(s), services and seasonal offerings you intend to offer; Offerings, strategies and materials that use Addison businesses must be identified in the list.
3. A list of pavilion reservation rates offered and listing of any party packages that might be offered.
4. Visual aids/pictures describing business operations, proposed signage, menu boards and service equipment;
5. Detailed information on the prices proposed for each service or product and any variation for non-routine services inclusive of Texas sales tax and any other applicable governmental charges;
6. Days and hours of operation; A brief overview of bidders' professional history that conveys their expertise and experience with the activity or service proposed;
7. A minimum of three references each for the following categories: business operations; financial stability; and customer satisfaction;
8. A statement outlining proposed compensation to the Town of Addison and how the payment schedule will be structured, and the company's documentation and reporting process for revenues and expenditures. Standard percentage based remittance ranges from 15-40% of gross receipts, before sales tax; Percentage based remittance should include remittance for Concession sales, alcohol sales, game / equipment rentals and pavilion rental.

9. Tenant improvements – list any and all desired improvements. Include items such as power, water, security, and restroom needs, service area enhancements, customer seating, signage, storage, etc.;
 - It is to be understood that the **Pavilion’s Kitchen, Grease Trap and Covered Patio is offered as is** and any modifications or improvements desired by the bidder shall be installed at the sole expense of the bidder and requires advance written approval by the Town. All improvements shall become the property of the Town of Addison upon completion of installation; provided the vendor shall be entitled to utilize the modifications and improvements in accordance with this Agreement while this agreement is in effect.
 10. A description of on-site storage needs, if any. The Town will allow a storage container to be placed in the fenced yard directly adjacent to the Theatre.
 11. Concessionaires history operating similar facilities. List length of experience, locations, and services offered.
- Applicants are encouraged to attend pre-bid at the site prior to submitting a proposal. The pre-bid meeting is April 12, 2022 at 11:00 AM.
 - The successful bidder will be expected to abide by all State laws, County laws, Town Addison ordinances, and all business licensing requirements, Town of Addison insurance requirements, and State of Texas Department of Public Health Food Service requirements.
 - The Town of Addison reserves the right to reject any and all proposals and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.
 - All proposals become the property of the Town of Addison.

Proposal Submittal Instructions

Please note: The following general requirements are mandatory for all proposals. Proposals submitted after the deadline date and time or lacking one or more of the following requirements will not be accepted.

1. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed 10MB.
2. If paper proposals are being submitted, they must consist of one original and one copy.
3. Please include your name, business name, business address, email address, phone number and fax number.
4. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principle place of business, phone numbers and primary contact person.
5. The proposal must be signed by an official who is legally authorized to bind the organization.
6. Complete, sign and submit all RFP forms provided by the Department.
7. To be evaluated, a proposal must address all of the requirements contained within this RFP.
8. Provide all references and materials required by the RFP instructions within.

Questions: Questions regarding the RFP process, scope of work or evaluation process must be submitted in writing through BidSync and will be answered in a timely fashion.

Submittal Instructions: Proposals must be received by no later than 2:00 p.m. on April 28,

2022 at the Addison Finance Building located at 5350 Belt Line Road Dallas, TX 75254.

Submittal Deadlines

The department's proposed schedule for review of the RFP's submittals and final selection of the contractor is as follows:

| | | |
|--|---------------------------|----------|
| Issue RFP | March 31, 2022 | |
| Pre-Bid Meeting | April 12, 2022 | 11:00 AM |
| Deadline to Submit Proposal | April 28, 2022 | 2:00 PM |
| Staff Review Proposals | April 22 – April 26, 2022 | |
| Preferred Vendor Notified | April 27, 2022 | |
| Proposal Brought to Council for Approval | May 24, 2022 | |
| Concessionaire authorized to access the facility | May 24, 2022 | |
| Concession Services to Begin No Later than | June 21, 2022 | |

Selection Criteria

A panel of City staff will review the qualified bids and qualifications as submitted in this RFP process. The panel will score the RFP submittals, determine the highest qualified applicants, conduct interviews as necessary, and make a final recommendation the City Council.

The criteria contained within the Submittal Requirements section above will be used to evaluate RFP submittals. Evaluation/review will be of proposals which:

1. Answer and complete the requirements detailed within;
2. Provide the best and most days and hours of operation;
3. Provide the best products and services to be offered to the public – prices, quality and nutritional value;
4. Provide products and services which are complimentary to the existing uses of the park and its business neighbors;
5. Provide products, services and / or materials that utilize other Addison businesses.
6. Provide the most concession experience and meet or exceed the minimum number of positive business references required;
7. Meet professional appearance, quality of unit/business, and character/theme attributes;
8. Meet licensing and insurance requirements;
9. Provides satisfactory concession fee to be paid to the Town of Addison for the proposed business operations.

The Owner will consider Previous Experience, Proposed Concession Fees in conjunction with proposed operation for the concession facility along with other criteria requested of the offerors to determine which proposal offers the best value to the Owner. The proposals will be evaluated using the criteria weighting below:

| Category | Selection Criteria | Score |
|---------------------|--|------------|
| A | Schedule – Days and Hours of Operation | 10 |
| B | Products / Services Offered | 10 |
| C | Previous Experience | 20 |
| D | Professional Appearance | 10 |
| E | Ability to Meet Licensing and Insurance Requirements | 10 |
| F | Concession Fee | 40 Points |
| Total Points | | 100 |

Selection Process

A selection committee will review all proposals, select finalists and may conduct interviews prior to making the final selection of the consultant. The City reserves the right not to award any portion or all of the project if it finds that none of the proposals submitted meets the specific needs of the project.

Prior to the commencement of work, the City and the selected vendor will meet to settle contract details. A letter notifying the vendor of the City’s award will constitute notice to proceed. The City is not responsible for any costs incurred by the vendor in the preparation of the proposal. Once submitted to the City, all proposals will become public information.

Contract

Upon award the Vendor and the City will negotiate and execute a concessionaire agreement (the “Agreement”) based upon the City’s standard agreement terms. A sample standard concessionaire agreement has been provided herein as Exhibit A for reference.

EXHIBIT A

CONCESSIONAIRE AGREEMENT

This Concessionaire Agreement ("Agreement") is made by and between the **Town of Addison, Texas** (the "City") and **Java and Hopps** ("Concessionaire") (the City and Concessionaire are sometimes referred to herein together as the "Parties" and individually as a "Party").

Recitals:

WHEREAS, The City owns the Addison Circle Park Pavilion which is located within the City at 4970 Addison Circle, Addison, TX (the "Pavilion"). The Pavilion is managed by the City through its Department of Parks and Recreation Director (the Parks and Recreation Director, or Director's designee, being the "Manager"). A general diagram or depiction of the Pavilion is on file with the Manager and is attached hereto as **Exhibit B** and incorporated herein by reference.

WHEREAS, Concessionaire is the owner and operator of a recreation service and/or food and beverage service (the "Services") with its principal address located at **7112 Saint Phils St. Frisco, TX** Concessionaire has the experience, skills, and capability to provide the Services set forth herein with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for others.

WHEREAS, Concessionaire has been approved by the City to provide food and beverage items along with rental of games and rental of the pavilion. Services at the Pavilion (the Pavilion being referred to herein as the "Facilities" except as set forth in Section 1 of this Agreement, below) and desires to provide the Services at the Facilities in accordance with this Agreement and the rules, regulations, standards, and polices of the City.

NOW, THEREFORE, for and in consideration of the privilege provided to Concessionaire of being allowed to operate a recreation service and/or food services within the Pavilion, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and subsequently detailed, the City and Concessionaire do agree as follows:

Section 1. Concessionaire Services.

A. Beginning July 1, 2022, Subject to the terms, conditions and provisions of this Agreement, Concessionaire shall provide food and beverage, rental of recreation equipment and games and / or rental of the pavilion space and / or recreation rental services ("Services") to persons or entities ("Users" and each a "User") who desire to use the Facilities, for recreation or dining, and including an event or an activity hosted by an entity other than the City ("Third Party Event"). Additionally, Concessionaire shall provide Services during events as may be scheduled from time to time by the City ("City Event"). A Third Party Event and a City Event are, for purposes of this agreement, each an "Event".

B. The City may modify, remove, add, and change the Facilities covered by this agreement at any time and in its sole discretion. If the City modifies, removes, adds, or changes the Facilities, the City will give written notice thereof to Concessionaire. After such notice is given to Concessionaire, the Agreement shall be applicable to those facilities included in the notice, and for purposes hereof the term Facilities shall include the facilities identified in the notice. At the City's request, the Parties shall execute a formal amendment to this Agreement identifying the Facilities included in the notice.

C. The Concessionaire hereby recognizes that the City produces City Events on scheduled dates each year. These scheduled events shall take priority over any other use, and concessionaire may not host private or Third Party Events during a City Event. Notice of City Events will be made available to Concessionaire at the City's earliest reasonable opportunity, as determined by the City, but no later than six (6) months in advance. During Events the covered outdoor Pavilion shall be made available for use exclusively by the City.

D. The Concessionaire will be required to apply for a Special Events Permit with the Town for any gatherings that include 100+ people or live music / DJ. A Special Events permit will also be required if any gatherings expand past the Concession Limits, as illustrated in **Exhibit B**.

Section 2. Term, Termination.

A. Unless otherwise terminated in accordance with this Agreement, this Agreement shall be in effect beginning July 1, 2022 (the "Effective Date") and shall continue in effect for a period of one (1) year thereafter (the "Term"). The City shall have the option to renew this Agreement for four (4) additional one (1) year terms upon written notice to Concessionaire at least thirty (30) days before expiration of the Term.

B. If either Party hereto (the "Defaulting Party") fails to comply with or breaches any term or provision of this Agreement, the other Party (the "Non-Defaulting Party") may give written notice of such failure or breach to the Defaulting Party, and the Defaulting Party shall have not less than two (2) business days (or such longer period of time as may be set forth in the notice) from the time of the Defaulting Party's actual receipt of such written notice in which to cure such failure or breach (such period of time in which to cure being the "Cure Period"). If the Defaulting Party does not cure the failure or breach within the Cure Period, the Non-Defaulting Party may terminate this Agreement and give notice of such termination to the Defaulting Party. The term "business days" means Monday through Friday; but excluding any Monday through Friday that is any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Friday immediately thereafter, Christmas Eve, and Christmas Day.

C. In addition, either the City or Concessionaire may terminate this Agreement for any reason or for no reason by providing to other Party at least 60 days prior written notice of such termination.

Section 3. Concessionaire Responsibilities; Prohibitions.

A. *Compliance with Laws.* Concessionaire shall use its best efforts, skill, judgment, and abilities to perform the Services in accordance with the highest business standards in effect at the time of providing the Services (such standards being those then in place in the Dallas/Fort Worth metroplex area) and in compliance with all applicable federal, state, and local, laws, rules, regulations, codes, ordinances and orders (collectively, "Applicable Laws"). Concessionaire shall secure, maintain and comply with at all times any and all permits or licenses which may be required for Concessionaire to provide Services (or any portion thereof). Concessionaire shall not do or permit anything to be done at the Facilities or on any City property other than the provision of its Services.

B. *Compliance with Rules.* Concessionaire shall provide and perform Services in accordance with all rules, regulations, standards, and policies approved or adopted by the City, City Department, or City officer or employee that are then in effect at the time Concessionaire provides Services ("Rules").

C. *Concessionaire Personnel Compliance with Laws, Rules, Standards.* Without limiting the foregoing or any other provision of this Agreement, Concessionaire shall cause its owners, employees, representatives, agents, contractors, and subcontractors to comply with Applicable Laws and Rules. Concessionaire shall cause all of its employees, personnel and staff assigned by Concessionaire to perform any Services at the Facilities according to the highest standards of courtesy, service, and professionalism, including being dressed professionally and not drinking of alcoholic beverages while performing Services. Concessionaire shall provide adequate and competent supervision of its personnel and staff in the provision of the Services.

1. Concessionaire shall be solely liable and responsible for any and all damages caused to any equipment, materials, or other property of the City or belonging to any third person, and for all injuries (including death) to any person, which are caused by any act or omission of Concessionaire or any Concessionaire Persons (as defined in Section 10, below).
2. The Manager has the right to bar any employees, personnel, and/or staff of Concessionaire from working at or in the Facilities if the highest standard of professionalism is not met in the Manager's sole opinion.

D. *Other Concessionaire Responsibilities.* Among other duties and responsibilities of the Concessionaire and without limiting any provision of this Agreement, Concessionaire shall, on or before the Effective Date, provide the City a Five Hundred Dollar (\$500.00) refundable security deposit. The security deposit shall be refundable to the Concessionaire upon the termination of this Agreement. However, the City reserves the right to use any or all of the security deposit to perform any upkeep the Facilities may need to restore the Facilities to their same condition, minus normal wear and tear, on the Effective Date. The Concessionaire shall at all times:

1. Leave the Facilities and all property of the City in at least as clean a condition as existed prior to the Concessionaire's entry on to the Facilities. Concessionaire

shall immediately report to the Manager any damage to any equipment or other property at the Facilities.

2. Remove from the Facilities all trash and garbage generated by Concessionaire or in connection with the Catering Services and deposit the same in a lawful, appropriate trash or garbage receptacle located outside of the Facilities, to the satisfaction of the Manager.
3. Pay to the City the costs incurred by the City if the City is required to use its personnel or a third-party contractor to provide cleaning services for Concessionaire's failure to comply with the immediately above paragraphs 1 or 2. Such payment shall be made by Concessionaire within five (5) business days following Concessionaire's receipt of notice from the City regarding such payment.
4. Cause its owners, employees, representatives, contractors, and subcontractors to act professionally at all times (including, without limitation, no consumption of alcoholic beverages while providing Catering Services hereunder, and no smoking within the Facilities).
5. Conduct all of its Services activities in a manner that (a) does not disturb or interfere with activities or programs being conducted within the Facilities; (b) does not interfere with entry to or exit from a building, structure, or facility; and (c) does not interfere with the flow of pedestrians or vehicular traffic on sidewalks or streets or at places of ingress and egress to and from the Facilities.
6. Keep all of its materials and equipment associated with the Services in a clean and good working condition.
7. Remove from the Facilities or secure all of its equipment and materials within the Facilities following the end of each day of operation. Inside storage of equipment and materials shall require prior written approval from the Manager.
8. Provide menus at Concessionaire's expense.
9. Promote the Facilities at appropriate times and through appropriate mediums and channels.

E. *Prohibitions.*

1. The cooking of food shall be predicated upon proper licensing and other required regulatory approvals. Any damages to facility or equipment will be the responsibility of the Concessionaire.
2. Concessionaire shall not make any changes or alterations to the Facilities without written the prior written consent of the Manager.

Section 4. Facility Responsibilities; Prohibitions

A. *Cleanliness.* Concessionaire is responsible for the overall cleanliness of the Facilities before, during, and after each day of operation. City staff is not required to bus tables or assist with food and beverage service.

B. *Janitorial Service.* Janitorial service will be provided by the City for the adjacent restroom facility, only. All other areas will be the responsibility of the Concessionaire.

C. *Marketing.* The Town will cross promote/market the Concessionaire through social media. The Concessionaire will be allowed to display and distribute promotional collateral materials, printed at Concessionaire's cost.

Section 5. Inspection; Space Sharing; Risks, Release.

A. *Inspection.* The Manager (and other personnel of the City) shall have the right at all times to (i) inspect the food and beverages provided or to be provided by Concessionaire in the Facilities and to reject any such food and beverages which the Manager determines do not comply with the terms of this Agreement, (ii) inspect all equipment, materials, and wares to ascertain proper state of repair and appropriate quality.

B. *Sharing of Space.* Concessionaire and Manager may agree at any time to secure space for Concessionaire to store inventory and equipment. If Concessionaire chooses to store its inventory and equipment, Concessionaire does so at Concessionaire's sole risk, and the City is not and shall not be responsible for any lost, stolen or damaged goods or inventory stored by Concessionaire.

C. *Risks; Release.* **WITH RESPECT TO THIS AGREEMENT AND CONCESSIONAIRE'S PROVISION OF CATERING SERVICES AT THE FACILITIES, CONCESSIONAIRE DOES HEREBY AGREE TO AND ASSUME ANY AND ALL RISKS ARISING FROM OR OUT OF THE SERVICES AT THE FACILITIES, INCLUDING ANY INCIDENT, ACTION, ACCIDENT, LOSS, HARM, INJURY (INCLUDING DEATH), OCCURRENCE OR ACTIVITY OCCURRING ON OR WITHIN THE FACILITIES THAT MAY AFFECT CONCESSIONAIRE OR ANY CONCESSIONAIRE PERSONS (AS DEFINED IN SECTION 10, BELOW) IN ANY MANNER WHATSOEVER, AND DOES HEREBY RELEASE, WAIVE, ACQUIT, AND FOREVER DISCHARGE THE CITY AND ALL ADDISON PERSONS (AS DEFINED IN SECTION 10, BELOW) FROM, AND DO COVENANT NOT TO SUE THE CITY AND ALL ADDISON PERSONS (OR ANY OF THEM) FOR, ANY AND ALL CLAIMS, LIABILITY, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, ACTIONS, CAUSES OF ACTION, FEES, FINES, PENALTIES, EXPENSES, OR COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES AND COURT COSTS) WHATSOEVER FOR OR RELATED TO ANY ILLNESS OR INJURY OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DEATH), OR ANY DAMAGE TO OR DESTRUCTION OF ANY PROPERTY, OR ANY OTHER HARM OR**

LOSS WHATSOEVER, (COLLECTIVELY, “DAMAGES”), WHICH MAY BE SUSTAINED OR SUFFERED BY CONCESSIONAIRE OR ANY CONCESSIONAIRE, INCLUDING, WITHOUT LIMITATION, ANY AND ALL DAMAGES WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Section 7. Alcoholic Beverages.

A. *Required Permits, Licenses, Registrations.* For Services including alcohol, Concessionaire warrants, represents, and agrees that Concessionaire and all individuals assigned to provide alcohol-related Services will obtain and maintain, at Concessionaire’s sole cost, any and all approvals, licenses, filings, registrations and permits required by Texas Alcoholic Beverage Commission (“TABC”).

B. *City Approvals and Procedures.* Concessionaire represents, warrants and agrees that alcoholic beverages will be served and sold in connection with its Services only (a) when service of alcohol has been approved in writing by the City prior to the service, and (b) in compliance with all Applicable Laws and Rules.

C. *Certified Training.* Concessionaire will require that all employees or other personnel of Concessionaire serving alcoholic beverages in connection with its Services have prior TABC certified server training and shall provide proof of training to the City in connection with any of its Catering Services.

Section 8. Services Commission, Payment.

D. Beginning on the effective date, the Concessionaire shall pay a monthly rental fee of Five Hundred Dollars (\$500.00) to the City on or before the 1st of each month until the concession is open and operational. The concessionaire will also pay 20% of gross monthly receipts for concession revenue up to \$2,000.00, 10% for gross monthly receipts for concession revenue between \$2,001 and \$3,000 and 5% for all gross monthly receipts above \$3,000 before sales tax, on all sales. Monthly receipts include revenues from all operations of Concessionaire including related equipment rentals from the preceding month for all operations hereunder. The term “receipts” means entire receipts from concessions of every kind, whether on credit or cash, from the business hereunder, not to include sales tax.

E. The Utility Fees (electricity and water) will be billed to the Concessionaire quarterly. The Utility Fees are due on or before the 10th day of the month following the month during which the Utility Bill was received by Concessionaire.

F. Should payment not be received on or before the 1st of each month, concessionaire agrees to pay a late fee equal to \$25.00 and No/100 dollars (\$25.00) for each day late after the 10th day of the month.

G. Concessionaire shall maintain an adequate set of bookkeeping records, from which the City may readily determine whether Concessionaire is making payments required hereunder. City may inspect and audit the books of account and records at all reasonable times; the time of such inspections and audit to be at the discretion of the City.

Section 9. Insurance.

A. In connection with this Agreement and at all times relevant hereto or in connection herewith, Concessionaire shall acquire and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

1. Commercial General Liability insurance, with combined single limits of not less than \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury; and a \$1,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations (and if such commercial general liability insurance contains a general aggregate limit, it shall apply separately to the Catering Services under this Agreement);
2. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form;
3. Liquor Liability insurance with minimum limits of \$2,000,000 per each single occurrence, covering Concessionaire's potential liability to any person, including without limitation its invitees, customers, or any other person, for each Event for which Concessionaire serves or provides alcoholic beverages.

B. With reference to the foregoing insurance requirement, Concessionaire shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to all liability policies (and including, without limitation, to products/completed operations coverage in the Commercial General Liability insurance policy).
2. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any change in the insurance coverage that

would bring such coverage below the minimum amounts required by this Section.

5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Concessionaire may maintain reasonable and customary deductibles.
9. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Concessionaire and the Town of Addison prior to the commencement of any Catering Services by Concessionaire hereunder (and the same shall be updated and new certificates of insurance prepared, executed and delivered to reflect the renewal and/or continuing coverage of such insurance), and shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

D. Upon request, Concessionaire shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

Section 10. Concessionaire's Indemnity Obligation. CONCESSIONAIRE COVENANTS, AGREES TO, AND SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO ADDISON), INDEMNIFY, AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, THE PAST, PRESENT AND FUTURE ELECTED AND APPOINTED OFFICIALS, AND THE PAST, PRESENT AND FUTURE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE SAID TOWN OF ADDISON, TEXAS, ELECTED AND APPOINTED OFFICIALS, AND OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON

PERSON” AND COLLECTIVELY THE “ADDISON PERSONS”), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE TOWN OF ADDISON, TEXAS AND/OR ANY OTHER ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE “CLAIMS”), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (I) THE CATERING SERVICES TO BE PROVIDED BY CONCESSIONAIRE PURSUANT TO THIS AGREEMENT AS DESCRIBED IN SECTION 1, ABOVE, (II) ANY REPRESENTATIONS AND/OR WARRANTIES BY CONCESSIONAIRE UNDER THIS AGREEMENT, (III) ANY PERSONAL INJURIES (INCLUDING BUT NOT LIMITED TO DEATH) TO ANY CONCESSIONAIRE PERSONS (AS HEREINAFTER DEFINED) ARISING OUT OF OR IN CONNECTION WITH THE CATERING SERVICES, AND/OR (IV) ANY ACT OR OMISSION UNDER, IN PERFORMANCE OF, OR IN CONNECTION WITH THIS AGREEMENT BY CONCESSIONAIRE OR BY ANY OF ITS OWNERS, DIRECTORS, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, LICENSEES, SUBLICENSEES, OR ANY OTHER PERSON OR ENTITY FOR WHOM CONCESSIONAIRE IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, LICENSEES, SUBLICENSEES (COLLECTIVELY, “CONCESSIONAIRE PERSONS”). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, CONCESSIONAIRE’S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE ADDISON PERSON OR PERSONS’ PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, CONCESSIONAIRE’S LIABILITY FOR ADDISON PERSON’S DEFENSE COSTS AND ATTORNEYS’ FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS’ FEES EQUAL TO ADDISON PERSON OR PERSONS’ PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

CONCESSIONAIRE SHALL PROMPTLY ADVISE THE TOWN OF ADDISON IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON RELATED TO OR ARISING OUT OF CONCESSIONAIRE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONCESSIONAIRE'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS’

OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONCESSIONAIRE OF ANY OF ITS OBLIGATIONS HEREUNDER. THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 11. Notice.

A. For purposes of this Agreement, notices provided for herein shall be in writing, addressed as provided hereinafter to the Party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received if delivered personally forty-eight (48) hours after deposit in the United States mail if sent by mail and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier.

Addresses for the giving of notice are as follows:

To the City:

Town of Addison
5300 Beltline Road
Addison, Texas 75254
Attn: Director of the Department of Parks
and Recreation

To Concessionaire:

Java and Hopps
Attn: Benjamin Gossman
7112 Saint Phils Street
Frisco, TX 75035

B. The addresses and addressees in this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

Section 12. Miscellaneous.

A. *Governing Law; Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of Texas without regard to its conflict of laws principles. Each Party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each Party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper. Venue for any suit, action, or legal proceeding under or in connection with this Agreement shall lie exclusively in Dallas County, Texas.

B. *Independent Contractor.* In providing or performing Catering Services, Concessionaire is an independent contractor, and nothing in this Agreement creates, nor shall be

construed to create, an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow Client to exercise discretion or control over the manner in which Concessionaire performs the Catering Services which are the subject matter of this Agreement. Concessionaire is solely responsible for all labor and expenses in connection with its Catering Services provided under or in connection with this Agreement, and for any and all damages, injuries, liability, or other harm of whatever nature caused by, arising out of, or resulting from any act or omission of Concessionaire or of any Concessionaire Persons (as defined in Section 10, above).

C. *Assignment; No Third Party Beneficiaries.* Concessionaire shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a “Conveyance”) in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City, which may be withheld in the City's sole discretion. Any Conveyance of any kind or by any method without the City's prior written consent shall be null and void.

D. Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Concessionaire shall obtain a written agreement (the “Assumption Agreement”) from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

E. This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the Parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

F. *Entire Agreement; Changes and Amendments.* Except as otherwise provided in this Agreement, this Agreement represents the entire and integrated agreement between the City and Concessionaire with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Except as otherwise provided in this Agreement, this Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Concessionaire.

G. *Severability.* The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement; and in lieu of such severed provision there shall be added automatically as a part of this Agreement a provision as similar in its terms to such void, illegal, unenforceable, or conflicting provision as may be possible and that will be legal, valid and enforceable.

H. *Incorporation of Recitals, Exhibits.* The Recitals to this Agreement set forth above, and all exhibits referenced herein and/or attached hereto, are incorporated herein and made a part of this Agreement for all purposes.

I. *No Waiver of Immunity.* Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

J. *Remedies; Waivers.* Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either Party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either Party may elect. The exercise of any remedy or right by either Party shall not be deemed an election of remedies or rights or preclude that Party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving Party.

K. *Headings; Includes.* The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement. For purposes of this Agreement, “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

L. *Authorized Persons.* The undersigned representatives of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

SIGNATURE PAGE TO FOLLOW ON NEXT PAGE

EXECUTED to be effective as of the Effective Date as described herein.

TOWN OF ADDISON, TEXAS

CONCESSIONAIRE

By: _____
Wesley S. Pierson, City Manager

By:  _____

Date of signing: _____

Date of signing: 6/17/22 _____

