

CONCESSIONAIRE AGREEMENT
(Mobile Vendors)

THIS CONCESSIONAIRE AGREEMENT is made this ____ day of January _____, 2020 by and between the CITY OF LOVELAND, COLORADO, a municipal corporation, (“City”) and “_____” whose principal offices are located at “_____” (“Concessionaire”).

In consideration of the payments and the performance of the covenants and agreements by Concessionaire set forth below, the City hereby grants to Concessionaire the right to operate a food and beverage Concession at the parks and/or facility specified in Exhibit B (“Parks”) under the following terms and conditions:

1. Grant of Concession. The City hereby grants to Concessionaire the non-exclusive right to provide and operate a Concession at certain Parks and Recreation locations on the terms and conditions described herein. Any rights not specifically granted to Concessionaire herein are retained by the City.

2. Term. The term of this Agreement shall be from March 1, 2020 through December 31, 2020, unless earlier terminated in accordance with this Agreement.

3. Concession Operations. Concessionaire shall provide a top-quality Concession to the general public and patrons of the Parks at such prices and under such standards of operation as will ensure prompt, courteous, and convenient services to the general public and patrons including, without limitation, those standards set forth in **Exhibit A**, attached hereto and incorporated herein by reference. Toward this end, Concessionaire shall: provide all food and beverage services available at the Parks; provide all temporary food and beverage facilities as agreed to by the parties; employ, train, manage, and directly supervise all personnel required to properly operate and maintain the Concession; provide repair and maintenance services for City-owned equipment (“**City Equipment**”) listed in **Exhibit B**, attached hereto and incorporated herein by reference; obtain all licenses, permits, and certificates required to operate the Concession, including, but not limited to, a Loveland sales tax license and a Larimer County Health Department certificate for each Concession location; operate the Concession in a manner fully supportive of, and in compliance with, the standards set forth in Exhibit A; operate the Concession as public facilities in a non-discriminatory manner at all times; promote and market the Concession to the general public; and provide any and all equipment in addition to that provided by the City which is necessary to provide the required level of services.

4. Use of Premises. Concessionaire shall sell food and beverages (“**Concessions**”) at the Parks locations indicated on **Exhibit B** and the immediate a fifty foot radius of the location (together, the “**Premises**”) for the purpose of providing the Concession. If Concessionaire is a natural person, he or shall designate a supervisor during the times when the Concessionaire is not present at the Premises; designation of a supervisor shall not excuse Concessionaire from meeting all requirements of this Agreement. Concessionaire shall not use or permit others to use the Premises for any purpose prohibited by law. 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. Concessionaire shall maintain all signs or advertisements approved by the City in good and attractive condition at Concessionaire's expense.

5. Restrictions. Concessionaire shall not:

a. Permit any unlawful practice to be carried on or 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 inflammable 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. Permit any odors to emanate from the Concession in violation of any applicable law.

e. 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.

f. Permit Concessionaire's employees to park anywhere upon the Premises except in employee parking, as designated by the City; provided, however, designated employee parking may be modified from time to time by the Manager upon prior notice to Concessionaire; further, Concessionaire, staff, and/or suppliers shall not drive personal or delivery vehicles on sidewalks or plazas unless access is approved by the Manager or his/her designee.

g. 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 specify a limited area at the Parks that allows smoking by Parks patrons.

h. Conduct, or allow to be conducted, gambling on site.

i. 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. All signs shall be professionally prepared and no "hand written" signage will be allowed on the external glass windows or doors of facilities, to convey information on menu, pricing, or service to the public.

6. Hours of Operation. The Mobile Concession shall be open for business no less than 30 minutes before the first scheduled event/game at Loveland Sports Park, Kroh Park, Mehaffey Park, North Lake Park, Fairgrounds Park West, Civic Center Park or the scheduled hour of opening at Kroh Park, Mehaffey Park, North Lake Park, Fairgrounds Park West, Civic Center Park and until the last game is complete or when the facility closes for the day, as the case may be. Concessionaire shall provide adequate staff at all times. Service shall be provided according to the schedule supplied by the Manager. If Concessionaire fails to open on time, a \$25.00 penalty for each late opening will be assessed, to be billed monthly. Concessionaire's hours of operation and level of service may be adjusted by the City according to changes in the field and facility schedules at the Parks.

7. Concessionaire Personnel. The Concessionaire shall provide all personnel (whether employees or independent contractors) and equipment necessary to perform the work required by this Contract. The Concessionaire's personnel assigned to carry out the work are subject to final approval by the City. The Concessionaire's personnel will be required to adhere to City security, fire, and safety regulations and no smoking policies. The Concessionaire agrees that it will, upon notice from the City, immediately remove any personnel who is, for any reason, unsatisfactory to the City.

The Concessionaire agrees that only assigned personnel will be permitted to operate concessions and no others without prior notice and approval from the City.

Concessionaire represents that all personnel assigned to perform work under this Contract have been subject to and passed a criminal history background check. For both mobile and fixed concessionaires, a list of personnel and potential personnel, date of birth, social security number, and valid ID shall be submitted to the Manager specified in paragraph 15. The City reserves the right to require fingerprints and conduct additional criminal background checks and reject any personnel that in the City's opinion represents a liability or potential liability.

The Concessionaire shall not represent that it and its personnel are agents or employees of the City.

8. Location Modifications. The City retains the right to modify or alter the location of the Concession at any time and in any manner; provided, however, that prior notice of such modifications or alteration of the Premises is given to Concessionaire, with the exception of any emergency modification or alteration is deemed necessary by the City.

9. Maintenance and Repair. All maintenance and repair to the mobile Concession shall be the responsibility of the Concessionaire. As a part of the City's preventive maintenance program, the City may require a closure of the Parks or facility for maintenance and repair; however, such work shall be performed during off-season periods, with the exception of any emergency work deemed necessary by the City. Concessionaire agrees that, if requested in writing by the City, the Concession shall be closed for a reasonable period of time during off-season periods for the City to conduct all necessary work. The City will adjust Concessionaire's fees due hereunder for lost revenue arising from said closures.

10. Equipment. Concessionaire shall furnish its own equipment and smallwares package (such as napkins, cups, plasticware, etc.) to offer food and beverage services per this agreement. Concessionaire shall be responsible for replacing and keeping in service all items in the smallwares package. All such items shall remain the property of Concessionaire at the termination of this Agreement.

11. Utilities. The City shall provide water, sewer, electricity, and gas necessary for the operation of the Concession; provided, however, that Concessionaire shall pay any costs over and above “average” utility costs as determined by the average of the previous three years’ usage at the same location. Concessionaire is responsible for providing telephone services for its exclusive use.

12. Other Operations and Activities. Concessionaire shall conduct the Concession granted to it without infringement upon the rights of others, or any interference in the operation of the Parks and Recreation Department facilities in general, or any facilities adjacent thereto. It shall not engage in any business to sell any commodity upon, in, or around the Premises other than as expressly set out in this Agreement. Concessionaire shall cooperate so as not to interfere with the holding or carrying on of any event upon the Premises, and shall not create unreasonable noise or annoyance to those participating in or attending such events.

13. Permits and Licenses. Concessionaire 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.

14. Authority of Manager. The City’s Park Division Manager (“**Manager**”) shall be responsible for interpreting and applying the standards set forth in Exhibit A. The Manager may revise such standards and guidelines from time to time with thirty days written notice to Concessionaire. The Manager shall decide all questions which 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 shall be deemed a default. In the event Concessionaire disagrees with the Manager’s decision, Concessionaire shall have the right to appeal the decision to the City’s parks and recreation department director (“**Director**”), provided such appeal is in writing and filed with the Director no more than ten (10) days after Concessionaire’s receipt of the Manager’s written decision. The Director shall issue a written decision within twenty (20) days after receipt of the appeal. The Director’s decision shall be provided to both parties and shall be final.

15. Access and Inspection. The Director or designee may enter the Concession at any reasonable time for the purpose of performing an inspection. The City’s entry onto or inspection of the Concession shall not constitute interference with the Concessionaire’s business, and no abatement of any payments due under this Agreement shall be granted.

16. Payments.

a. Monthly Base Concession Fee. Concessionaire as payment for the Concession shall pay a total of \$50 for each event to the City. Payments will be in \$50.00

per event commencing February 2020 through December 2020. Other payment arrangements can be negotiated with City of Loveland Event Coordinator for each event.

b. Equipment Rental Fee. *Not applicable*

c. Books and Records. Concessionaire and each licensee or concessionaire of Concessionaire shall keep a permanent, accurate set of records of all gross sales derived from the conduct of the Concession, including all point-of-sale records, tapes, and printouts; sales reports and ledgers; files; computer records and disks; cash register tapes, sales slips, order records, and invoices; copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in connection with the Concession, as may be reasonably required in order to ascertain, document, or substantiate gross sales. All such records shall be retained for at least three years after the end of the calendar year to which they relate.

d. Late Payment. If Concessionaire fails to pay any Base Concession Fee on the date it is due, the unpaid amount will be subject to a late payment charge equal to four percent of the unpaid amount. This late payment charge is intended to compensate the City for its additional administrative costs resulting from Concessionaire's failure, and has been agreed upon by Concessionaire and the City, after negotiation, to be the reasonable estimate of the additional administrative costs that will be incurred by the City as a result of Concessionaire's failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. This late payment charge will constitute liquidated damages and will be payable to the City together with such unpaid amount. The payment of this late payment charge will not constitute a waiver by the City of any default by Concessionaire under this Agreement.

e. Additional Concession Fees. All other amounts, liabilities, and obligations which Concessionaire assumes or agrees to pay pursuant to this Agreement, together with any late payment charges, or default interest, shall constitute additional Concession fees ("**Additional Concession Fees**"). If Concessionaire fails to pay any Additional Concession Fees, the City shall have the rights, powers, and remedies provided herein or by law for nonpayment of Base Concession Fees. Concessionaire shall pay the Additional Concession Fees upon the City's demand, unless otherwise expressly provided herein, without offset or deduction of any nature.

f. Default Interest. If any payment is not received within ten days after its due date for any reason whatsoever, the overdue amount shall bear interest equal to the lesser of ten and one quarter percent per annum or the highest lawful rate which may be charged Concessionaire under the laws of the State of Colorado. Such interest shall be in addition to any late payment due under this Agreement. Such interest shall accrue continuously on such unpaid amount commencing with the date such amount was due and ending on the date on which Concessionaire makes full payment of such amount. Any such interest shall be payable as Additional Concession Fees hereunder, shall not be considered as deduction from other Concession fees, and shall be payable immediately upon demand.

g. Accounting Controls and Procedures. The City shall have the right at any time, and from time-to-time, to review and approve the internal accounting controls and procedures utilized in connection with, or that are designed for, the operation of the Concession. All sales transactions shall be entered into a cash register and receipts shall be issued for each sale – no exceptions. Concessionaire shall retain all records of sales transactions, including, without limitation any “Z” tapes. Concessionaire shall provide any sales transaction records to the City upon request. Concessionaire shall provide a sales report will be based upon this information and submit to the Manager on the 1st of each month. If a cash register is faulty or in need of repair, it is the responsibility of Concessionaire to report the problem to the City designee immediately and to keep accurate and up-to-date records on all sales until the register is back in working order or until a replacement can be installed. It is imperative that correct and accurate sales records are kept and that Concessionaire implement effective cash control measures to ensure that all sales are recorded and receipts are secured.

17. Security Deposit. *Not applicable*

18. Other Payment Obligations.

a. Concessionaire 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. Concessionaire shall furnish to the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of social security, unemployment compensation, and all taxes and fees referenced above.

b. The City shall promptly pay all bills, debts, obligations, and fees of whatever nature applicable to its operation of the Parks where the Concession is located, and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of Concessionaire under this Agreement.

19. 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 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.

20. Attorneys' Fees. If any action is brought to recover any Base Concession Fees or Additional Concession Fees, or on account of any Event of Default 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.

21. 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.

Commercial general liability insurance with combined single limit of \$1,000,000 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 \$1,000,000 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 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

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 Division Manager
Parks & Recreation Department
City of Loveland
500 East Third Street
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 \$150,000 per person and \$600,000 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 of Loveland, its elected officials, officers, or employees.

22. Non-discrimination.

a. Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government setting forth the provisions of the Equal Opportunity Laws.

b. Concessionaire 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.

23. Work By Illegal Aliens Prohibited. This paragraph shall apply to all Concessionaires whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work.

a. Concessionaire hereby certifies that, as of the date of this Agreement, it does not knowingly employ or contract with an illegal alien and that Concessionaire has participated or attempted to participate in the basic pilot employment verification program as defined in C.R.S. § 8-17.5-101(1) (“**Program**”) in order to verify that it does not employ illegal aliens.

b. Concessionaire shall not knowingly employ or contract with an illegal alien to perform works under this Agreement or enter into a contract with a subcontractor that fails to certify to Concessionaire that the subcontractor shall not knowingly employ

or contract with an illegal alien to perform work under this Agreement.

c. Concessionaire hereby certifies that it has verified or attempted to verify through participation in the Program that Concessionaire does not employ any illegal aliens and, if Concessionaire is not accepted into the Program prior to entering into this Agreement, that Concessionaire shall apply to participate in the Program every three (3) months until Concessionaire is accepted or this Agreement has been completed, whichever is earlier.

d. Concessionaire is prohibited from using Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If Concessionaire obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Concessionaire shall be required to:

(i) notify the subcontractor and City within three (3) days that Concessionaire has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Concessionaire shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. Concessionaire shall comply with any reasonable request by the Colorado Department of Labor and Employment (“**Department**”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. Article 17.5.

g. If Concessionaire violates this paragraph, City may terminate this Agreement for breach of contract. If this Agreement is so terminated, Concessionaire shall be liable for actual and consequential damages to City.

24. Compliance with C.R.S. § 24-76.5-103.

a. If Concessionaire is a natural person eighteen years of age or older, he/she must complete the affidavit attached to this Agreement as **Exhibit C** and attach a photocopy of the front and back of one of the valid forms of identification noted on Exhibit C.

b. If Concessionaire executes the affidavit stating that he/she is an alien lawfully present in the United States, City shall verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the “SAVE

Program,” operated by the U.S. Department of Homeland Security or a successor program designated by said department. In the event City determines through such verification process that Concessionaire is not an alien lawfully present in the United States, City shall terminate this Agreement and shall have no further obligation to Concessionaire hereunder.

25. Termination.

a. This Agreement may be terminated by the Concessionaire, Concessionaire may be entitled to an abatement or reduction of the Base Concession Fee or Additional Concession Fees hereunder, and Concessionaire may be entitled to quit all or any part of the Premises or be released from any obligations hereunder upon thirty (30) days prior written notice for the following reasons:

(i) Damage to all or a substantial part of the Premises not caused by Concessionaire;

(ii) Condemnation or other taking of all or a substantial part of the Premises;

(iii) Any limitation or prevention of, or any interference with, any use or possession of all or a substantial part of the Premises by the City;

(iv) Force majeure causing an inability to perform, due to factors beyond Concessionaire’s control such as acts of God, flood, war, riot, fire, explosion, strikes, or acts of government which last for a period greater than one hundred eighty (180) days;

(v) Any final order or judgment by any court, administrative agency, or other governmental authority requiring such; or

(vi) Any material breach by the City as provided herein.

b. This Agreement may be terminated by the City upon thirty (30) days notice if any of the following occurs:

(i) Concessionaire fails to make any payment when due of Base Concession Fee or Additional Concession Fee; provided, however, Concessionaire shall have a grace period of five (5) business days within which to make such payment to the City; or

(ii) Concessionaire, while in possession of the Premises, files a petition for bankruptcy or insolvency or for reorganization under the Bankruptcy Act, or voluntarily takes advantage of such Act by answer or otherwise, or makes an assignment for the benefit of creditors;

(iii) If proceedings are instituted against Concessionaire under any bankruptcy or insolvency law or if a receiver or trustee is appointed for all or substantially all of Concessionaire's property, and such proceedings or receivership or trusteeship are not vacated or dismissed within thirty days after such institution or appointment.

(iv) The City may, as the non-breaching party, enter the Premises and Concession Facilities, remove any personal property, and store such property in a public warehouse or elsewhere at the cost of Concessionaire.

(v) Concessionaire fails to comply with any of the terms of this agreement.

c. **Events of Default.** Any of the following occurrences or acts shall constitute an "Event of Default" under this Agreement:

(i) Any event or occurrence identified as such in this Agreement, or any violation of the terms and conditions of this Agreement.

(ii) Three notices of default within any twelve-month period shall constitute conclusive evidence of repeated defaults and shall constitute a material breach of this Agreement.

26. **Delivery after Termination.** *Not applicable.*

27. **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 Additional Concession 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.

28. **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.

29. **Independent Contractor.** For the purposes of defining Concessionaire's relationship with the City, it is understood and agreed that Concessionaire is an independent contractor 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 City and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.

30. 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. The sale or transfer of a controlling interest, or any interest in excess of twenty-five percent of the capital shares of Concessionaire or its assigns, or any merger which affects a similar transfer of a controlling interest in Concessionaire or its assigns, shall be deemed to be an assignment of this Agreement. If this Agreement is assigned or transferred, or the Premises are occupied by anyone other than Concessionaire, the City may, after default by Concessionaire, collect Concession fees from the assignee, transferee, or occupant and apply the net amount collected to the Concession fees reserved herein, but no such assignment, transfer, occupancy, or collection shall be deemed a waiver of any agreement, term, covenant, or condition of this Agreement, or the acceptance of the assignee, transferee, or occupant, or a release of Concessionaire from the performance of further performance by Concessionaire of the agreements, terms, covenants, and conditions hereof, and the party originally constituting Concessionaire under this Agreement shall continue liable under this Agreement in accordance with all the agreements, terms, covenants, and conditions of this Agreement. The consent by the City to an assignment or transfer shall not in any way be construed to relieve Concessionaire from obtaining the express consent in writing of the City to any further assignment or transfer.

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

With a copy to: City Attorney
 City of Loveland
 500 East Third Street
 Loveland, CO 80537

If to Concessionaire:
 Name: XXXX Concessions
 Business Address: XXXXX., Loveland, CO 805XX
 Email Address: XXXXX

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

32. 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.

33. 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.

34. Appropriation Required. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City of Loveland, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City of Loveland shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

35. Electronic Signature. This Agreement may be executed by electronic signature in accordance with C.R.S. § 24-71.3-101 *et seq*

36. Counterpart Signatures. 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.

(Remainder of Page left intentionally blank)

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

City of Loveland

By: _____
Dan Willadsen Parks Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Concessionaire

By: _____

Title: _____

The foregoing Concessionaire Agreement was acknowledged before me this ____ day of _____, 2020 by _____.

Witness my hand and official seal.

My commission expires _____.

Notary Public

EXHIBIT A

Cleanliness Standards

1. Concessionaire will maintain, at all times, the mobile concession, food preparation, dining, and service areas, and all equipment, fixtures, paraphernalia, materials, utensils and other items therein, in a clean and sanitary manner. Concessionaire shall keep the Concession Facilities clear of broken glass, litter, debris, and garbage. Concessionaire shall dispose of any waste water or other waste fluid in the sanitary sewer. In the event waste fluids may not legally be disposed of in the sanitary sewer, Concessionaire is responsible for disposing of same in an appropriate and lawful manner.
2. Concessionaire shall comply with all applicable health and sanitation laws and regulations, including:
 - a. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
 - b. All State of Colorado acts and regulations governing food service operations.
 - c. All applicable City and County public health/sanitation regulations.
 - d. Any specific guidelines established by the Manager.
3. At all times, Concessionaire shall permit and facilitate inspection of the food/beverage facilities by the City and by public health/sanitation/building/fire authorities so authorized.
 - a. Concessionaire shall provide a copy of all health department inspections to the Manager on the same day the inspection form was issued. All health department violations are to be corrected within the time period allowed by the health inspector or within forty-eight (48) hours, whichever is sooner, unless approval for a delay is granted by the health department or the Manager.
 - b. Failure to pass health inspections, unless all failures are corrected within forty-eight (48) hours, is a material breach of this Agreement and may result in termination.
4. Concessionaire shall conduct inspections of the food service facilities once weekly. An inspection checklist shall be prepared and completed by Concessionaire for each inspection and the checklists shall be made available to the Manager upon request. The inspection report shall include corrective measures taken or to be taken by Concessionaire. Concessionaire shall also conduct daily inspections and take immediate corrective measures.

5. The City shall conduct a formal inspection of the Concessionaire's Concession Facilities a minimum of four times per year, or as deemed necessary by the City. Concessionaire shall accompany the City's designated representative during the inspection.
6. Failure to comply with this section, after notice from the City, shall be an event of default.
7. Concessionaire and or designated staff shall clean all areas of trash and debris related to the service of food and beverages within a 50 foot radius of the concession location. This must be accomplished periodically during the hours of operation and once at the end of the operating day.
8. The Parks Recreation Coordinator or their designated representative may schedule concession inspections. Cleanliness standards will be mutually agreed upon between the coordinator and the concessionaire. The concessionaire and the coordinator will complete these on-site visits/inspections together. Any variance from agreed upon cleanliness standards should be addressed immediately by the concessionaire – a follow-up inspection will be completed by the coordinator within one week of notification of the variance. If the same variance exists on the second inspection or if a variance continues to appear on subsequent visits or inspections, the coordinator has the right to close the Concession until the variance is corrected on a permanent basis.

Facility and Equipment Maintenance

1. Concessionaire shall be responsible for the maintenance and/or repair, or replacement of all equipment and facilities for food and beverage handling, and Concession Facilities provided by the concessionaire.
2. The City shall be responsible for maintenance, repair or replacement of parking lots, restrooms and park facilities.
3. The City shall make every effort to repair Park facilities damaged by acts of god, vandalism, theft, burglary, etc. that are not the responsibility of the Concessionaire or its agents or employees. However, the city will not reimburse the Concessionaire for losses of product or potential sales due to these events.
4. Failure to comply with this section, after notice from the City, shall be an event of default.

Custodial Maintenance

1. Concessionaire will be responsible for custodial maintenance of the mobile concession and areas surrounding the premises (see #7 Cleanliness Standards).
2. The City shall be responsible for the fields and facilities where concessions are conducted including turf areas, concrete/hard surface areas, adjacent rest rooms, and storage areas.

3. Custodial maintenance shall include, but not be limited to, routine spill clean-up, debris and litter pick-up, laundry of linens and cloths. All areas will be kept clean and neat at all times.
4. Concessionaire shall be responsible for trash removal service, grease removal service, and the grease trap system. Concessionaire shall not discharge any grease into building drains and must keep all grease in proper containers for disposal. If grease is incorrectly disposed in the drain system, Concessionaire shall be responsible for cleaning or repairing drains or grease trap system
6. Failure to comply with this section, after notice from the City, shall be an event of default.

Menu and Pricing

1. Prior to the beginning of each operating season (March 1), Concessionaire shall submit a detailed menu and price schedule of all items it proposes to sell, including size, weight, and amount of each item. All prices are subject to City approval. Concessionaire shall plan and prepare imaginative menu selection with an adequate variety of products, in consultation with the City. Any City contract commitments regarding sole sources, *i.e.* beverage products, will be utilized by Concessionaire.
2. Concessionaire shall adhere strictly to all food laws and regulation as adopted by the State of Colorado or the County Heath Department. Food shall be prepared in such a way as to be acceptable to patrons. Hot food shall be hot and cold food shall be cold. The amount of food served shall be sufficient in relation to price and other services offered. Service shall be prompt, giving attention to the patrons' needs and promoting a friendly relationship. The food shall complement the facility and shall reflect the eating preferences of the patrons.
3. Failure to comply with this section, after notice from the City, shall be an event of default.

Employee Conduct and Appearance

1. Concessionaire shall be responsible for employment and compensation of its own employees. All employees shall provide prompt and courteous service to all customers and the general public. Concessionaire shall provide qualified supervision, competent management staff, and numbers of employees necessary to maintain good service. Employees shall be clean and maintain appropriate clothing and appearance. Concessionaire shall at all times enforce strict discipline and good order among employees.
2. Failure to comply with this section, after notice from the City, shall be an event of default.

Customer Service

1. Complaints from concession customers must be forwarded to the Manager, in writing, within one (1) working day. All complaints, whether received by Concessionaire or the City, are to be reviewed by Concessionaire and the customer contacted by Concessionaire or its designated on-site restaurant manger within forty-eight (48) hours of the filing of the

complaint. A written report of the result of the follow-up will be provided to the Manager within five (5) days.

2. If the City receives ongoing customer service complaints, the City may conduct a performance audit, utilizing customer surveys to determine customer satisfaction. Customers will be asked if they are “very satisfied,” “satisfied,” “dissatisfied,” or “very dissatisfied” with the operations of Concessionaire. A reasonable number of customers shall be surveyed. The acceptable performance standard shall be seventy-five percent (75%) of the surveyed customers rating satisfied or very satisfied. A rating below seventy-five percent (75%) satisfaction may be grounds for termination of this Agreement. If a survey indicates less than seventy-five percent (75%) satisfaction, Concessionaire may request a second survey by an independent third party, at the sole cost of Concessionaire. If the second survey indicates customer satisfaction rating of seventy-five percent (75%) or above, Concessionaire will be deemed to have met the standard of acceptable performance.

Exhibit B
FOOD AND BEVERAGE CONCESSIONS
FOR DESIGNATED PARKS AND RECREATION FACILITIES
IN THE CITY OF LOVELAND

The Concessionaire is authorized by this agreement to provide mobile concessions at the following locations and in accordance with the schedule provided by the Manager:

1.. Kroh Park mobile service

287 & 52nd Street, Loveland Colorado 80538 (March-May) Spring Soccer (September-October) Fall Soccer

- a. Looking for a mobile unit to be set up by bathroom building for Saturday soccer games spring and fall sessions.

- b. Mobile unit to make occasional stops Memorial Day – Labor Day throughout the week to provide refreshments to park users.

2.. Mehaffey Park mobile service (May – September)

North entrance 3350 W 29th St., South entrance 3285 22nd St., Loveland Colorado 80538

Mobile unit to make occasional stops throughout the week to provide refreshments to park users.

3.. North Lake Park mobile service (May - September)

2626 N Taft Loveland, Colorado 80537

Mobile unit to make occasional stops throughout the week to provide refreshments to park users.

- a. West side of park serving playground areas and swim beach Memorial Day – Labor Day.
- b. **(September-October) LYAA Football Games**
Mobile unit to be located in upper fields for fall football games.

4.. Chilson Lobby Saturdays November – February

Coffee Cart Mobile unit for indoor use to provide refreshments during Saturday basketball games for Chilson patrons.

5.. Fairgrounds Park West, mobile service (May-September)

- a. Mobile unit to make occasional stops throughout the week to provide refreshments to park users, excluding Sundays during Farmers Market hours.
 - c. Farmers Market June – September – Mobile unite to provide refreshments to Sunday Market patrons.
 - d. Winter Art and Craft Festival December – Mobile unite to provide refreshments to festival.

6.. **Civic Center Park and other locations**, as needed during specific events sponsored by the City, such as but not limited to, the Lagoon Concert series, Movie in the park series, Library Food Truck Rallies and Cherry Pie Festival.

a. Mobile unit to provide refreshments during specific events in City Parks and facilities

7. **Loveland Sports Park** 950 Boyd Lake Avenue mobile service (March - October)

a. **(September-October) LYAA Football Games**

Mobile unit to be located in east side of park fields for fall football games.

b. Special Events as needed

Exhibit C
(Page left intentionally blank)

Exhibit D

AFFIDAVIT PURSUANT TO C.R.S. 24-76.5-103

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

___ I am a United States citizen, or

___ I am a Permanent Resident of the United States, or

___ I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

INTERNAL USE ONLY Valid forms of identification

- current Colorado driver's license, minor driver's license, probationary driver's license, commercial driver's license, restricted driver's license, instruction permit
- current Colorado identification card
- U.S. military card or dependent identification card
- U.S. coast guard merchant mariner card
- Native American tribal document

The following forms of identification may be accepted through February 28, 2007*

- original birth certificate from any state of the United States
- certificate verifying naturalized status by U.S. with photo and raised seal
- certificate verifying U.S. citizenship by U.S. government, e.g., U.S. passport
- order of adoption by a U.S. court with seal of certification
- valid driver's license from any state of the U.S. or the Dist. of Columbia excluding AK, HI, IL, MD, MI, NE, NM, NC, OR, TN, TX, UT, VT and WI
- valid immigration documents demonstrating lawful presence, e.g., current foreign passport with current I-551 stamp or visa, current foreign passport with I-94, I-94 with asylum status, unexpired Resident Alien card, Permanent Resident card or Employment Authorization card

*A waiver may be available where no identification exists or can be obtained due to a medical condition, homelessness, or insufficient documentation to receive a Colorado I.D. or driver's license. Contact your department director.