

EQUIPMENT LEASE AND CONCESSION SERVICES AGREEMENT

THIS EQUIPMENT LEASE AND CONCESSION SERVICES AGREEMENT (this “Lease” or “Agreement”) is made effective as of the _____ day of _____, 2017 (the “Effective Date”) by and between **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (“City”), and **SHEFF CAFÉ, LLC**, an Alabama limited liability company, dba **Tropical Smoothie Café** (“Concessionaire”).

FOR AND IN CONSIDERATION of the mutual covenants and benefits to be derived by the parties hereunder, the City and Concessionaire agree as follows:

1. Agreement to Lease. The City does hereby agree to lease and let unto the Concessionaire the concession trailer and related equipment described on Exhibit “A” hereto (the “Concession Equipment”).

2. Term of Lease. The term of this Agreement shall be for a period of one (1) year from the Effective Date (the “Primary Term”), unless sooner terminated as provided herein. Concessionaire shall have two (2) options to extend the term of this Agreement for two consecutive periods of one (1) year each (“Extension Terms”), upon the same terms and conditions as apply to the Primary Term. Renewal for Extension Terms will be automatic unless written notice of non-renewal is provided by Concessionaire to the City at least one hundred eighty (180) days prior to the expiration of the then current term.

3. Scope of Services and Requirements. The scope of services to be provided by Concessionaire pursuant to this Agreement and the requirements applicable to those services and to Concessionaire’s use of the Concession Equipment, shall be as set forth on Exhibit “B” hereto.

4. Rental. Concessionaire shall pay monthly rental fees to the City for the Concession Equipment and concession rights provided herein as set forth on Exhibit “C” hereto. Concessionaire’s monthly payment shall be due and payable by the twentieth (20th) day of each calendar month based on Gross Receipts (as defined in Exhibit “B”) received in each previous month. Concessionaire’s payment and monthly rental report shall be addressed to:

City of Foley
Attn: Revenue Department
P.O. Box 1750
Foley, AL 36536

5. Insurance.

(a) Property Coverage for Concession Equipment. The City will procure standard property insurance coverage for the Concession Equipment for its estimated value. Concessionaire shall reimburse the City for the cost of this coverage within ten (10) days after

request for reimbursement. In the event of any damage to the Concession Equipment during the term of this Agreement, Concessionaire shall reimburse the City for any out of pocket expenses associated with such damage, including any insurance deductible.

(b) Liability Insurance. Concessionaire shall at all times during the term of this Agreement maintain in full force and effect, at its expense, the following insurance: (i) a comprehensive general liability and automobile liability insurance in the amount of \$2,000,000 per person and \$2,000,000 per occurrence; and (ii) worker's compensation and employers' liability coverage as required by the laws of the State of Alabama. Concessionaire's insurance policies shall name the City as an additional insured and shall otherwise be in a form acceptable to the City. Concessionaire shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for thirty (30) days' written notice to the City prior to the cancellation (or material change) of any insurance referred to therein. All such insurance policies shall be endorsed to prevent rights of subrogation against the City. Concessionaire shall provide complete copies of all insurance policies required above within ten (10) days of the City's written request for said copies. All policies maintained by Concessionaire will be written as primary policies, not contributing with and not supplemental to the coverage that the City may carry.

6. Indemnity. Concessionaire shall indemnify, defend and hold harmless the City, its representatives, officers, agents, boards, departments and employees from and against any and all claims, costs, losses, demands, actions or causes of action, liability, damages and expenses, including reasonable attorney's fees and other costs and expenses of litigation, arising out of or resulting from Concessionaire's provision of services pursuant to this Agreement, Concessionaire's use or operation of the Concession Equipment, or any other act or omission of Concessionaire or its personnel, whether or not caused by or contributed to, or alleged to have been caused by or contributed to, by the active, passive, affirmative, sole or concurrent negligence or breach of any statutory duty, whether non-delegable or otherwise, on the part of the City. This indemnity shall include, but not be limited to, claims or liabilities asserted against the City based upon negligence, strict liability or other liability or by operation of law to any third party, and all costs, attorneys' fees, expenses, and liabilities incurred by the City in the defense of any such claim (including appeals). Concessionaire shall defend any such claim at Concessionaire's expense by counsel approved or selected by the City. Indemnification provided in this Agreement shall further apply to and include claims or actions brought by or on behalf of employees of Concessionaire, and Concessionaire hereby expressly waives any immunity to which Concessionaire may otherwise be entitled under any industrial or workers' compensation laws. Concessionaire duties of indemnification under this Agreement shall survive the expiration or termination of this Agreement.

7. Taxes. Concessionaire shall be solely responsible for all local, state and federal taxes and assessments arising from its lease or use of the Concession Equipment or otherwise arising from Concessionaire's operations and business activities pursuant to this Agreement, including, but not limited to, state and federal payroll taxes and other required withholdings with respect to Concessionaire's employees, and Concessionaire shall indemnify and hold the City harmless from all such taxes or assessments.

8. Event of Default. Upon the happening of any one or more of the events as expressed below in (a) to (h) inclusive (which said events shall separately and severally constitute a default hereunder), the City shall have the right at its option of terminating this Agreement (in addition to all other rights and remedies given hereunder or by law or equity):

- (a) In the event Concessionaire is a “No Show” at a scheduled event;
- (b) In the event Concessionaire fails to submit rental fees in accordance with the terms of this Agreement;
- (c) In the event Concessionaire violates any Applicable Laws with respect to Concessionaire’s operations hereunder;
- (d) In the event Concessionaire fails to comply with all insurance requirements herein contained;
- (e) In the event the Director (as defined in Exhibit “B”) determines, in his or her sole discretion, that Concessionaire’s operations are detrimental to public safety, health or welfare;
- (f) In the event Concessionaire breaches any of the other terms, conditions or covenants on the part of Concessionaire herein contained and does not cure such breach within ten (10) calendar days of written demand by the City; or if such breach is of such nature that it cannot be completely cured within such period, if Concessionaire does not commence such curing within such ten (10) calendar days and does not thereafter proceed with reasonable diligence and in good faith to cure such breach;
- (g) In the event a petition in bankruptcy or a petition under the Bankruptcy Act, or any amendment thereto, is filed by or against Concessionaire and the same is not dismissed within sixty (60) calendar days of such petition, or Concessionaire is adjudged a bankrupt; or
- (h) In the event an assignment for the benefit of creditors is made by Concessionaire, or in the event of the appointment of a receiver of Concessionaire’s property.

9. Delivery of Equipment upon Expiration or Termination. Concessionaire shall deliver all Concession Equipment, including any approved improvements made thereto, to the City within five (5) calendar days after the expiration or earlier termination of this Agreement, regardless of any dispute between the parties. All Concession Equipment, together with any approved improvements thereof, shall be returned in clean condition and working order.

10. Assignment Prohibited. Concessionaire shall not have the right to assign, sublease, delegate or otherwise transfer any interest or rights arising under this Agreement, in whole or in part, without the City’s prior written consent. Any such attempted assignment, sublease, delegation, or transfer without the City’s prior written approval shall be null and void. Concessionaire shall not be entitled to encumber, and shall not attempt to encumber, the Concession Equipment in any way.

11. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, franchise, partnership or other such relationship between the City and Concessionaire for any purposes, and neither party shall refer to itself as the authorized representative of the other. Neither party is by virtue of this Agreement authorized as an agent, employee or legal representative of the other, and nothing contained herein shall be construed to create a relationship of agency between the City and Concessionaire. Except as specifically set forth herein, neither party shall have power to control the activities and operations of the other, nor to bind or commit the other. The means and methods employed by Concessionaire in connection with its activities shall be the sole responsibility of Concessionaire, and the City shall not exercise any kind of control and does not have the right to exercise any kind of control over Concessionaire, its agents and employees. All personnel utilized by Concessionaire are and shall be deemed the employees of Concessionaire and in no manner employees of the City. The Concessionaire shall be responsible in full for any payment due its employees, including without limitation all wages, withholdings, worker's compensation or other benefits and costs.

12. Notice. Any and all notices required to be given by one party to the other hereunder, shall be given to the following addresses:

City of Foley:
407 E. Laurel Avenue
Foley, Alabama 36535

Concessionaire:
Sheff Café, LLC
29740 Urgent Care Drive
Daphne, Alabama 36526

Except for any notices, demands, requests or other communications required under applicable law to be given in another manner, whenever the parties give or serve any notices, demands, requests or other communications with respect to this Agreement, each such notice, demand, request or other communication shall be in writing and shall be delivered personally, mailed by certified or registered mail or sent by a nationally recognized courier service such as Federal Express, and properly addressed in accordance with this paragraph and shall be deemed given upon receipt or refusal to accept. Any party may change its address for such notices by delivering or mailing to the other party hereto, as aforesaid, a notice of such change.

13. Waiver of Jury Trial. The City and Concessionaire hereby waive, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any action, suit, proceeding or counterclaim arising out of or in connection with this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had between these parties are merged herein.

No oral statement or prior written matter shall have any force or effect. This Agreement may not be changed or amended orally, but only by an agreement in writing signed by both parties.

15. Severability. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16. Construction; Captions. No presumption or burdens of proof shall be created in favor of or against the City or Concessionaire with respect to the interpretation of any term or provision of this Agreement due to the fact that such term or provision was prepared by or on behalf of one of said parties. The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of the Agreement.

17. Waiver. No requirement, obligation, remedy, term, condition or provision of this Agreement shall be deemed to have been waived unless so waived expressly in writing. The failure on the part of a party to exercise promptly any and all rights given hereunder shall not operate to forfeit any of the said rights nor be deemed a waiver of any rights or remedies so available to such party.

18. Force Majeure. Neither the City nor Concessionaire shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of City or Concessionaire (excluding financial inability) and which by the exercise of due diligence the City or Concessionaire is unable, wholly or in part to prevent or overcome.

19. Governing Law. The parties hereto agree that the laws of the State of Alabama shall be applied in resolving any interpretations, issues or disputes arising under this Agreement, and exclusive jurisdiction and venue for the resolution of any such interpretations, issues or disputes arising hereunder shall be in the Circuit Court of Baldwin County, Alabama.

IN WITNESS WHEREOF the undersigned have caused these presents to be executed as of the day and year first above written.

[SIGNATURES COMMENCE ON THE NEXT PAGE]

**CITY OF FOLEY, ALABAMA, an
Alabama municipal corporation**

By: _____
As its: _____
Date: _____

**SHEFF CAFÉ, LLC, an Alabama limited
liability company dba Tropical Smoothie Cafe**

By: Bradley Sheffield
As its: Managing Member
Date: _____

EXHIBIT "A"

(Concession Equipment)

Description of Food Trailer:

8.5'x20' tandem axles
2 5/16' coupler
100 amp panel box with 50 amp life line
15,000 BTU AC unit w/heat strip
Triple sink with handwash 40 gallon fresh water and 50 gallon waste with sure flo pump and hot water heater
Two 100 lb tanks and regulator
23 cu ft refrigerator
23' cubic freezer
Ice machine

EXHIBIT “B”

(Scope of Services and General Requirements)

1. Definitions. As used in this Exhibit “B”, and otherwise in the Agreement, the below terms have the following meanings:

“Applicable Laws” means all Federal, State, County, City and other local laws, rules, regulations, requirements, ordinances, standards and policies, as now existing or hereafter adopted or amended, including, without limitation, all laws and regulations governing nondiscrimination, protection of the environment and protection of public health and safety.

“Area” means property within the boundary of the Foley Sports Tourism Facilities, Graham Creek Park, Wolf Creek Park and Glen Lakes Golf Course.

“Concession Facilities” shall mean all areas assigned to the Concessionaire under this Agreement and all real property improvements assigned to the Concessionaire.

“Days” shall mean calendar days.

“Director” means the Sports Tourism Director acting on behalf of the City.

“Exhibit” or “Exhibits” shall mean the various exhibits attached to the Agreement, which shall be deemed incorporated therein and made part thereof.

“Gross Receipts” means the total amount received or realized by, or accruing to, the Concessionaire from all sales for cash or credit, of food/drink, services, materials and other merchandise made pursuant to or as a result of the rights granted under the Agreement, including all sales utilizing the Concession Equipment, Concession Facilities and Food Cart.

“Healthy Food” means any natural food popularly believed to promote or sustain good health, as by containing vital nutrients, being grown without the use of pesticides, or having a low sodium or fat content.

2. Scope of Services.

There are primarily four locations at the 16 field multi-purpose complex where concession services are needed. Concessionaire will provide Healthy Food to event patrons utilizing the Concession Equipment leased by Concessionaire from the City. The City may, in its discretion, also permit Concessionaire to utilize a mobile cart owned by Concessionaire that can move about the venue and provide food/drink to event patrons in a fashion similar to that which is commonly used at golf courses.

Unless otherwise directed by the City, Concessionaire shall participate in all events sponsored by the City of Foley Sports Tourism Department with the Concession Equipment placed in a location designated by the Director. Concessionaire shall also provide the Concession Equipment and related services at any other events upon request by the Director or any other City department.

Concessionaire does not have any rights of exclusivity with respect to the provision of concessions at any events. Concessionaire acknowledges that other vendors may be permitted to provide concessions at any events, including vendors who own and operate other food trucks/trailers offering a variety of food choices (i.e. American, Mexican, BBQ, etc.).

3. General Requirements.

(a) Pricing. The Concessionaire shall charge fair and reasonable prices for food and retail goods sold and for all services provided at the Concession Facilities. Concessionaire's prices shall be generally commensurate with, and shall not exceed, the proposed pricing set forth in the Sample Menu attached hereto as Exhibit "B-1" (the "Sample Menu"), unless otherwise agreed by the City.

(b) Menu. Concessionaire shall provide food and retail concession products generally commensurate with the Sample Menu. Concessionaire shall have quality name brand products as part of its menu offerings.

(c) Mobile Food Cart. The City may, in its discretion, permit Concessionaire to operate one (1) mobile food/drink cart ("Food Cart"), at Concessionaire's sole expense, to better serve patrons. The Food Cart would be restricted to a golf cart size vehicle that could easily move around the facility without causing any obstacle to fans or participants. If permitted, the Food Cart will be restricted to navigate a designated route. Concessionaire shall insure that any operator of the Food Cart has a valid driver's license and be at least 21 years old. Food Cart operations may not be allowed at specific events or operation of a Food Cart may be terminated or suspended due to weather, site conditions, operator carelessness, or for any other reason deemed necessary by the Director. The City reserves the right to terminate the use of any Food Cart.

(d) Event Locations. Event locations include, but are not limited to, the 16 field Sports Tourism Complex and Graham Creek Park. Anticipated event locations are within 5 miles of each other.

(e) Set-up in Advance of Event. Concessionaire will be responsible at its expense for moving the Concession Equipment to different venue locations and set-up in a location designated by the Director. Concessionaire shall adhere to the City's policy that requires set-up to be completed the day before an event.

(f) Utilities; Generator Back Up. Water and electricity used by the Concessionaire at City events will be provided at the City's expense. Concessionaire shall provide generator back-up.

(g) Management. Concessionaire shall designate a qualified individual who will serve as Manager and who shall be on duty at the site at all times. The Manager shall be a certified or otherwise qualified food service manager holding all certifications that are required by the Alabama Department of Public Health or any other applicable governmental agencies. The Manager shall have the responsibility and authority to make or take any action necessary to ensure a smooth and safe operation of the Concession Equipment and Concession Facilities and to see that the goals of the City are attained and needs of the patrons are met.

(h) Personnel/Staffing. All operators of the Concession Equipment and all other personnel providing services pursuant to this Agreement shall be employees of Concessionaire. Concessionaire shall not allow any independent contractor or other non-employee of Concessionaire to operate the Concession Equipment or to otherwise provide services pursuant to this Agreement, without the prior written consent of the Director and subject to compliance by such non-employee with all insurance requirements under this Agreement.

(i) Responsibility for Personnel Qualifications, Safety and Training. Concessionaire shall be solely responsible for the proper qualifications of all its employee/operators of the Concession Equipment and for the safe and proper operation of the Concession Equipment and Concession Facilities. Concessionaire shall cause all its personnel to operate and use the Concession Equipment in compliance with all manufacturer operator manuals, warnings and directions for use.

Concessionaire shall cause all operators/servers to be trained in the safe handling of food as prescribed by the ServSafe food handler program or similar industry recognized food handler programs.

(j) Appearance of Personnel. All employees or other personnel of Concessionaire shall be neatly dressed in uniforms/t-shirts that properly identify them as official Concessionaire personnel. All uniforms worn shall be maintained in a neat and clean manner.

(k) Prohibited Products. Other than Healthy Food items as set forth on, or similar to, the approved Sample Menu and non-alcoholic refreshments, Concessionaire shall not sell or offer for sale any products utilizing the Concession Equipment, Concession Facilities or Food Cart without the prior written approval of the Director. Without limiting the foregoing, no sales of alcoholic beverages, tobacco or gum products shall be made. Styrofoam cups will only be permitted in special circumstances upon consideration by the Director of the product being served.

(l) Use of Local Suppliers. Concessionaire is encouraged to use local food providers when possible to provide locally grown products and to benefit our local farmers and fishermen.

(m) Signage. Concessionaire shall clearly display menu items, calories and pricing for all food and beverages as well as pricing for available merchandise and services utilizing professional signage. No cardboard or handwritten signs will be allowed. Concessionaire may provide signage at its expense to identify itself as the concessionaire. Signage may not be of a

permanent nature and no decals or other inscriptions shall be placed upon the Concession Equipment or Concession Facilities, interior or exterior, without the express written consent of the Director. The Director shall approve all proposed signage and the method to attach such signage.

(n) Inventory. Concessionaire shall maintain sufficient inventory/stock to serve the patron need at all events.

(o) Conflicts with Brand Agreements. Concessionaire shall be aware of any Foley Sports Tourism brand agreements and shall not conflict with such.

(p) Use of Concession Equipment for Third Party Events. Concessionaire will be allowed to utilize the Concession Equipment for third parties and events outside of the City of Foley, provided that Concessionaire first obtains written confirmation from the Director that there is no scheduling conflict or need for the Concession Equipment at any sports tourism or other City related event.

(q) Conduct of Business. Concessionaire is responsible for providing and maintaining a clean, sanitary, orderly, safe and attractive business. Periodic inspections by Sports Tourism personnel may be conducted. While on-site, the Concession Facilities and surrounding area within a 15 foot radius must be kept clean and orderly and free of clutter, litter and messes (spills) related to Concessionaire's business and services.

(r) Storage. On-site storage is not available to Concessionaire. Concessionaire is responsible for storing and securing its supplies, product or other property.

(s) Maintenance and Repairs. Concessionaire shall be responsible at its expense for maintaining and repairing the Concession Equipment in good condition and working order during the term of this Lease and shall operate, maintain and make necessary repairs to the interior and exterior of the Concession Facilities at its expense during the term of the Lease.

(t) Operating Costs; Regular Inspections. Concessionaire shall be solely responsible for all operating costs in connection with its lease and operation of the Concession Equipment, including labor for operations, maintenance and repair. Concessionaire shall regularly inspect and check the Concession Equipment for any damage or required maintenance.

(u) Alterations and Modifications Prohibited. Concessionaire shall make no alteration or modification to any safety related component of the Concession Equipment or which may otherwise result in any form of safety hazard or risk of injury. Any other alteration or modification may be made only with the prior consent of the Director.

(v) Improvements to Concession Equipment. If Concessionaire desires to make capital improvements to the Concession Equipment, Concessionaire must present its plan in writing to the Director prior to any work being done. If approved, improvements will be made at the Concessionaire's sole expense.

(w) Protection of Concession Equipment. Concessionaire shall be solely responsible for the security and storage of the Concession Equipment and all property and inventory owned by Concessionaire during the term of this Agreement. Concessionaire shall not permit or cause any act or deed to be performed or any practice to be adopted or followed in or about the Concession Equipment or Concession Facilities which shall cause or be likely to cause injury or damage to person or property. Concessionaire shall keep the Concession Equipment and Concession Facilities in a clean and orderly condition.

4. Compliance with Law.

Concessionaire shall at all times (a) maintain all required business and other operating licenses, permits or other authorizations required in connection with the operation of Concessionaire's business, and (b) observe and comply with any and all other laws, rules and regulations of any and all governmental authorities or agencies having jurisdiction over Concessionaire's business operations and the use and/or operation of the Concession Equipment, Concession Facilities and any Food Cart, including but not limited to:

Federal, State, and local health, safety and licensing laws relating to the sale of concession goods;

City Code provisions requiring any person or entity doing business in the City to obtain a business license;

City rules, regulations and ordinances; and

Foley Fire Department Mobile Food Trucks/Trailers Fire Code Requirements and approval by Foley Fire Inspector (see Exhibit "B-2")

Concessionaire shall give the Director immediate written notice of any violation of Applicable Laws by the Concessionaire, including its employees, agents or contractors, and at its sole cost and expense, must promptly rectify any such violation.

5. Reports and Record Keeping.

(a) Annual Reports. The Concessionaire shall provide the following documentation to the City on an annual basis:

Annual Operating Budget

Cash Handling Policies and Procedures

Sales Volume & Expenses (Profit and Loss)

If Available - Customer Service Reports (Zip Codes & Patron Feedback)

Optional - Recommendations for Next Year

(b) Monthly Reports. The Concessionaire shall provide a monthly report to the City in such form and with such supporting documentation as the City may require by the 20th day of each month, including a Gross Receipts/Revenue Report for the preceding month transmitted with City Revenue Remittance Form for each rental payment.

(c) Record Keeping. During the term of this Agreement and for a period of three (3) years thereafter, Concessionaire shall maintain complete records of its sales and operations pursuant to this Agreement.

EXHIBIT “B-1”

(Sample Menu)

EXHIBIT “B-2”

City of Foley Notice Regarding Fire Code Requirements for Mobile Food Trucks/Trailers



120 West Verbena Avenue
Foley, Alabama 36535
(251) 943-1266
Fax (251) 943-7432
www.cityoffoley.org

Mobile Food Trucks/Trailers and Understanding the Fire Code Requirements

Today, many entering into the restaurant industry are purchasing food concession trucks/trailers and locating them within the City of Foley. A food concession truck or trailer has become an appealing option for an entrepreneur interested in a food related opportunity. This option has become so popular due to the minimal start-up cost and the mobility the truck and trailers presents. Many of these new business owners want to know what the local fire code requires for their new business.

The requirements outlined below will provide each new and existing business owner the information needed to comply with the local Fire Code.

Extinguisher Requirement

All food concession trucks and trailers are required to have at least one class ABC extinguisher with a minimum classification of 2A:10BC rating. This extinguisher shall have a current inspection tag, be fully charged, and mounted properly.

Does your cooking operation produce grease laden vapors? If grease laden vapors are produced, your concession trailer will require a Class K rated portable extinguisher. Class K extinguishers emit a Low PH Wet Chemical Agent in a fine mist that helps prevent grease splash and fire re-kindles while cooling the appliance. A 1.5 gallon Class K extinguisher is sufficient for up to 4 fryers with a maximum capacity of 80 lbs. each. This extinguisher shall have a current inspection tag, be fully charged, and mounted properly.

Type I Hood Requirement

Does your cooking operation produce grease laden vapors? If grease laden vapors are produced, a commercial kitchen exhaust hood and duct system with an automatic fire extinguishing system is required. This suppression system is also required to be serviced every 6-months and tag affixed. The release of grease laden vapors associated with commercial cooking can ignite without warning. The kitchen suppression system will immediately react to high temperatures associated with cooking fires and extinguish them prior to the fire spreading to other combustibles around the cook area.

Compressed Gas

All LP gas cylinders should be secured during transport and must be isolated from the interior or passenger areas. LP gas cylinders must also be kept away from any open flames and heat sources. Portable cylinders must also be isolated from the passenger/work area. They can be securely mounted on the outside or placed in a gastight compartment that prevents vapors from entering the passenger/work area. LP gas cylinders should never be transported or installed inside a vehicle passenger area.

Nelson Bauer, Sr. Fire Inspector

EXHIBIT "C"

(Rental and Payment Terms)

Concessionaire shall pay a rental fee to the City for the Concession Equipment and concession rights provided herein in the amount of \$100.00 per month plus a percentage of Gross Receipts generated each month from sales at both City and non-City related events, calculated as follows:

Gross Receipts up to \$200,000.00 during the Primary Term:

- (i) ~~Twelve~~ percent (12%) of the Gross Receipts produced by food, retail and non-alcoholic sales each month
- (ii) ~~Twelve~~ percent (12%) of the Gross Receipts produced by Food Cart
- (iii) ~~Twelve~~ percent (12%) of the Gross Receipts produced by banquet sales each month

Gross Receipts over \$200,000.00 during the Primary Term:

- (i) ~~Seventeen~~ percent (17%) of the Gross Receipts produced by food, retail and non-alcoholic sales each month
- (ii) ~~Seventeen~~ percent (17%) of the Gross Receipts produced by Food Cart
- (iii) ~~Seventeen~~ percent (17%) of the Gross Receipts produced by banquet sales each month

Gross Receipts up to \$200,000.00 during Years 2 and 3 the Renewal Terms:

- (1) ~~Fifteen percent (15%) of the Gross Receipts produced by food, retail and non-alcoholic sales each month~~
- (2) ~~Fifteen percent (15%) of the Gross Receipts produced by Food Cart~~
- (3) ~~Fifteen percent (15%) of the Gross Receipts produced by banquet sales each month~~

Gross Receipts over \$200,000.00 during Years 2 and 3 the Renewal Terms:

- (1) ~~Twenty percent (20%) of the Gross Receipts produced by food, retail, and non-alcoholic sales each month~~
- (2) ~~Twenty percent (20%) of the Gross Receipts produced by Food Cart~~
- (3) ~~Twenty percent (20%) of the Gross Receipts produced by banquet sales each month~~

Concessionaire shall not reduce or increase the amount of Gross Receipts as a result of:
(a) any error in cash handling by Concessionaire or Concessionaire's employees or agents; (b) any losses resulting from bad checks received from consumers or purchasers, or from dishonored credit, charge, or debit card payments; (c) any other dishonored payment by any customer or purchaser; or (d) any arrangement for a rebate or other form of credit or benefit given or allowed to any customer or purchaser.

508508.1