

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**MAIN STREET CELEBRATION
FOOD CONCESSION AGREEMENT
OCTOBER 23, 2021**

THIS AGREEMENT is by and between the City of Richardson, Texas (“City”) and the undersigned concessionaire (“Concessionaire”) (each a “Party” or collectively the “Parties”), acting by and through their authorized representatives.

RECITALS

WHEREAS, the City intends to conduct the Main Street Celebration on October 23, 2021 between the hours of 12:00 noon and 5:00 p.m. (the “Event”); and

WHEREAS, the City desires to have provided quality food and beverage service at the Event; and

WHEREAS, Concessionaire desires to provide quality food and beverage service at the Event; and

WHEREAS, Concessionaire desires to sell products and merchandise at the Event;

NOW, THEREFORE, in consideration of good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

**Article I
Term and Concession**

The City grants Concessionaire a non-exclusive privilege to occupy a concession booth area at the Event (the “Concession Booth”) to sell food and beverages, merchandise, and products at the Event in accordance with the terms of this Agreement commencing on the date of the Event identified above, or the day the Event Coordinator notifies the Concessionaire that the Concession Booth is available for occupancy, whichever is earlier, unless sooner terminated as provided herein.

**Article II
Concession Fee**

Concessionaire agrees to pay the City the sum of Ten and No/100 Dollars for the Concession Booth.

**Article III
Cash Payments**

Concessionaire must accept cash for payment for food and beverages. The Event attendees will not use a coupon system for food or beverage purchases. Concessionaire shall provide professionally produced signage stating the cost of each item offered for sale. Concessionaire is

responsible for collecting and safekeeping its money and the City assumes no responsibility for lost or stolen money. Concessionaire is required to make and provide change for its Concession Booth. The City will not provide change for Concessionaire.

Article IV Sales Tax

Concessionaire is responsible for collecting and paying all applicable Texas State Sales Tax for the sale of food, beverages, and products.

Article V Beverage Purchases

Concessionaire is required to sell Pepsi-Cola brand beverages and products.

Article VI Event Rules

Concessionaire shall comply with the Event Rules, which are incorporated herein by reference. The operations and conduct of Concessionaire during the Event shall be subject to the approval of the Event Coordinator. If the Event Coordinator or other City personnel determine that Concessionaire, or the Concessionaire's operations or conduct are in violation of the Event Rules or applicable law, or are inconsistent with the standards of the Event, the Event Coordinator shall have the right to terminate this Agreement upon written notice to Concessionaire. In such event: (i) Concessionaire shall immediately cease operations (including the sale of food and beverages or other items) at the Event and immediately cease use of the Event Booth; (ii) immediately check-out with the Event Coordinator; and (iii) remove Concessionaire's equipment and property from the Event at the close of the Event unless otherwise agreed in writing by the Event Coordinator.

Article VII Concession Operation

7.1 **Booth Location.** The Event Coordinator will determine and notify the Concessionaire of the location(s) for Concessionaire's Concession Booth(s) during the Event. The City will try to accommodate Concessionaire's location requests, but due to the number of concessionaires and contractual obligations with Event site property owners and sponsors the City cannot guarantee Concessionaire location requests.

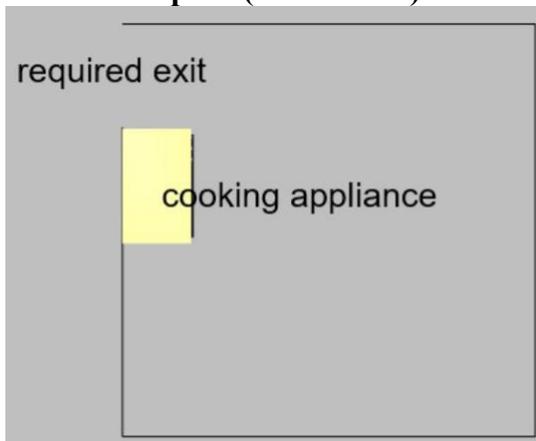
7.2 **Exclusivity.** The City reserves the right to grant exclusive rights to any product/item deemed appropriate for the Event. The City also reserves the right to negotiate sponsorship agreements that allow other companies the right to sell and/or distribute food and beverage products at the Event.

7.3 **General Event Requirements.**

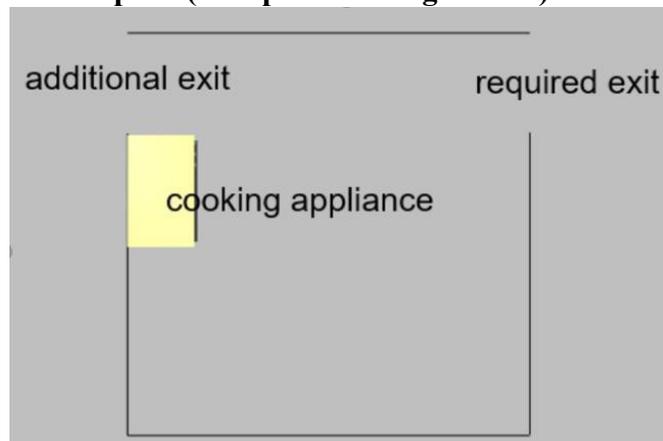
- (a) Concessionaire shall not dispose of any wastewater or grease except through regular water or grease containers provided by the City. Failure to comply with this procedure will result in removal from the Event and Concessionaire's payment of One Hundred Dollars (\$100.00) for grease clean up.
- (b) The owner or agent shall obtain a certificate or documentation by an approved testing laboratory certifying that the tents and membrane structures and their appurtenances; sidewalls, drops and tarpaulins; floor coverings, bunting and combustible decorative materials and effects are composed of material meeting the flame propagation performance criteria of Test Method 1 or Test Method 2, as appropriate, of NFPA 701 or shall be treated with a flame retardant in an approved manner and meet the flame propagation performance criteria of Test Method 1 or Test Method 2, as appropriate, of NFPA 701, and that such flame propagation performance criteria are effective for the period specified by the permit.
- (c) Membrane structures or tents shall have a permanently affixed label bearing the identification of size and fabric or material type.
- (d) A copy of an affidavit or affirmation must be retained on-site that attests to all of the following information relative to the flame propagation performance criteria of the fabric:
 - (1) Names and address of the owners of the tent or air-supported structure.
 - (2) Date the fabric was last treated with flame-retardant solution.
 - (3) Trade name or kind of chemical used in treatment.
 - (4) Name of person or firm treating the material.
 - (5) Name of testing agency and test standard by which the fabric was tested.
- (e) LP-gas containers shall be located outside. Safety release valves shall be pointed away from the tent or membrane structure.
- (f) LPG gas connections shall pass a soap test in the presence of a Fire Code Official.
- (g) LPG tanks less than 125 gallons water capacity accumulative shall be located a minimum of 5 feet from tent, combustibles, or ignition sources.
- (h) LPG tanks equal to or greater than 125 gallons water capacity shall be located 10 feet from tent, combustibles , or ignition sources.
- (i) Portable LP-gas containers with a capacity of 500 gallons or less shall have a minimum separation between the container and structure not less than 10 feet.
- (j) Portable LP-gas containers with a capacity of more than 500 gallons shall have a minimum separation between the container and structures not less than 25 feet.

- (k) Portable LP-gas containers, piping, valves, and fittings that are located outside and are being used to fuel equipment inside a tent or membrane structure shall be adequately protected to prevent tampering, damage by vehicles or other hazards and shall be located in an approved location. Portable LP-gas containers shall be securely fastened in place to prevent unauthorized movement.
- (l) Tents or membrane structures and their appurtenances shall be adequately roped, braced, and anchored to withstand the elements of weather and prevent against collapsing.
- (m) All cooking appliances shall be a minimum of 10 feet from the required exit. {See Examples 3 and 4}

Example 3 (not allowed)



Example 4 (Acceptable configuration)



- (n) All combustibles shall be kept a minimum of 10 feet from ignition sources. This includes the tent wrap used to block the under-table space.
- (o) Provide an inspected and tagged 2A10BC fire extinguisher. All Concessionaire personnel and employees shall be trained on the safe operation of a fire extinguisher.
- (p) If cooking grease is to be used comply with following: (A) provide an inspected and tagged type K fire extinguisher within 30 feet of the cooking operation; (B) provide a readily available non-combustible lid larger than the tub opening {example: sheet pan}; and (C) appliance shall be on top of a non-combustible material.
- (q) All temporary structures, including but not limited to, stages, towers, tents, canopies, may be inspected by a third-party inspector / engineer. Fire Rating of tents shall be verified. A report shall be provided to the Fire Code Official indicating acceptance of all structures as installed prior to the event being opened to the public.

- (r) The barrier required to prevent contamination to the soil / concrete shall be non-combustible {fire treated plywood, fire retardant plastic...} documentation shall be provided of rating or stamp on plywood shall be visible upon inspection by the Fire Code Official.
- (s) Cooking tents without side panels shall be a minimum of 12 feet from any other structure / tent. Cooking tents with side panels shall be a minimum of 20 feet from any other structure / tent.
- (t) A cluster of non-cooking tents shall not exceed 15,000 square feet without a 20-foot wide separation.
- (u) Food Truck: (A) provide an inspected and tagged 2A10BC fire extinguisher. All employees shall be trained on the safe operation of a fire extinguisher; (B) provide an inspected and tagged type K fire extinguisher within 30 feet of the cooking operation; (C) inspected and tagged automatic fire protection of Type 1 hood is required; (D) a current operational permit with the health department is required. This permit will include the Fire Code Requirements; and (E) the vehicle may not be located within 20 feet of any tent.

7.4 **Cleanliness.** Concessionaire's operations at the Event shall be, at all times, conducted in a clean, orderly, and legitimate manner in accordance with existing ordinances and laws requiring operation of the nature of Concessionaire. Concessionaires must supply ground cover for their entire floor space. This material must be impervious to grease, a non-slick surface, and can be rolled up and disposed of at the end of the Event. Concessionaire must provide a MINIMUM of two (2) 30-gallon garbage containers with liners. Concessionaire shall be responsible for emptying garbage containers on a regular basis into dumpsters provided by the City. If water is required for Concessionaire's booth, the Concessionaire must be prepared to bucket the water. No rubbish, glass, bottles, or cans of any kind shall be placed on the ground or in any buildings by Concessionaire or its employees; all such items are to be placed in trash receptacles.

7.5 **Check In.** Concessionaire will check in on Saturday, October 23, before 10:00 a.m. **A packet will be given to you at that time.** Any Concessionaire who has not checked-in will not be permitted to set up for the Event. Move-in will be assigned in order and directed by the Event Coordinator. The location assigned by the City is final. Concessionaire vehicles must: (i) be moved immediately after unloading; (ii) not block designated fire lanes while loading and unloading; and (iii) load and unload after the Event closes.

7.6 **Electric Power.** Concessionaire is responsible for providing electrical power requirements on the form below. Generators will be provided for power supply. Additional fees may be required for devices over 900 Watts.

Electrical Needs.

List All Electrical Devices (Including Truck or Trailer) and Voltage/Watts (i.e., Coffee Pot -- 120/900 Watts; Trailer/Truck -- 240/10,000 Watts)

<u>Devices</u>	<u>Volts</u>	<u>Amps</u>

7.7 **Concession Conditions.**

- (a) Concessionaire accepts the booth area in the condition on the date the City makes the booth area available. City disclaims all representations and warranties, expressed or implied, as to the condition of the booth area.

The Concessionaire shall provide the public with concession food service of the highest quality commensurate with the trade that is accustomed to Events of this kind. As a condition of this Agreement, the Concessionaire agrees to comply with such standards of quality as may from time to time be adopted by the City in order to ensure attainment of quality of food, service and facilities as hereinabove set forth.

- (b) The Concessionaire shall, at its own expense, provide an adequate staff, trained in food handling and in courteous, efficient, sanitary service to patrons of the Event. Persons handling and vending products under this Agreement shall be clean and free from any communicable disease. Food handling and sanitation shall conform to such requirements as may be prescribed by City and State Health authorities.
- (c) The Concessionaire agrees to abide by all City, County, State and Federal laws, ordinances, rules, and regulations to obtain all necessary and proper licenses, permits and authorizations, and to comply with the requirements of any duly authorized person acting in connection therewith.
- (d) The Concessionaire shall not use the Concession Booth for any purpose other than for the sale of food and beverages, merchandise, and products without prior written consent of the City. Concessionaire does not have the right to sublet any Concession Booth space without the prior written consent of the City.
- (e) Concessionaire shall staff and operate its Concession Booth in a first class and reputable manner continuously during all hours of the Event. Concessionaire shall not employ any individual under the age of sixteen (16) years to work at the Event. Any individual under the age of eighteen (18) years working for Concessionaire at the Event shall do so only under the direct supervision of an adult. All employees

of Concessionaires shall conduct themselves at all times in a manner acceptable to the Event Coordinator. Concessionaire agrees that its employees involved with the Event shall not drink any alcoholic beverages while in performance of their duties under this Agreement.

- (f) Concessionaire shall not dismantle and/or remove its Concession Booth until conclusion of the Event. Concessionaire must have the Concession Booth area clean, packed-up, loaded, and off of the Event site by 9:00 p.m., Saturday, October 23, 2021.
- (g) This event may be cancelled or postponed in the event of inclement weather. This event may also be modified or canceled at any time based on current or forecasted health and safety conditions in the community, or as a result of regulatory factors that the City is required to follow.

(h) Miscellaneous:

Business License Number: _____ State: _____

Sales Tax Exempt Number: _____
(If exempt, please attach a copy of State of Texas Tax Exemption Letter)

Will you be selling carbonated sodas or drinking water? (Yes/No) *If yes, you must agree to serve PEPSI products.*

- (i) The Event site will have security throughout the duration of the event. Merchandise may be left overnight at the Concessionaire's risk and responsibility. The City will provide after-hours security for the Event Area beginning Friday, October 23, 2021, from 5 p.m. to 7 a.m.
- (j) City shall provide electricity for Concessionaire's Concession Booth if Concessionaire's electrical requirements were submitted with Concessionaire's application.
- (k) Presentation - Booth presentation is very important to Event Staff and organizers. Concessionaire will make every effort to keep their booth area in a clean professional looking manner, including front counter area, storage of supplies and appearance of staff.

**Article VIII
Miscellaneous**

8.1 **Interruptions; Cancellation.** City shall not be liable for interruption of electricity or any utility service and City shall not be liable in damages or otherwise for a cancellation of the Event for any reason. Concessionaire acknowledges that the City may, in its sole discretion, cancel the Event for any reason without prior notice to Concessionaire.

8.2 **Inspection.** The City reserves the right to inspect the Concessionaire's Concession Booth area and the Concessionaire's operations at any time during the term of this Agreement; provided, however, that it shall not interfere unduly with the Concessionaire's operations. The right of inspection reserved to the City hereunder shall impose no obligation upon the City to make such inspections or to ascertain the condition of the Concession Booth area and shall impose no liability upon the City for failure to make such inspections.

8.3 **Indemnification and Release.** CONCESSIONAIRE, BINDING ITS OFFICERS, HEIRS, EXECUTORS, ADMINISTRATORS, AGENTS AND ASSIGNS, DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, CONTRACTORS, AND EMPLOYEES (COLLECTIVELY THE "CITY"), FROM ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LAWSUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION), CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY, INCLUDING ALL THIRD PARTY PROPERTY RESULTING FROM THE ACTIVITIES AND PROGRAMS OF THE EVENT AND BY REASON OF ANY ACT OR OMISSION ON THE PART OF THE CONCESSIONAIRE, ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, OR ANY ENTITY FOR WHICH CONCESSIONAIRE EXERCISES CONTROL OR BY ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, AND BY ANYONE FOR WHOSE ACTS OR OMISSIONS ANY OF THEM MAY BE LIABLE, AND FOR ANY DAMAGES OR LOSS PROFITS IF THE EVENT IS CANCELLED FOR ANY REASON.

8.4 **Representatives.** If Concessionaire is other than an individual, Concessionaire certifies, warrants, and represents that the individual whose signature appears below is duly authorized to execute this Agreement on behalf of the firm, corporation, partnership, or other entity that is the Concessionaire. Concessionaire shall, prior to commencement of the Event, provide City with satisfactory proof of such authorization, and the existence of the Corporation, partnership, or other entity if Concessionaire is other than an individual.

8.5 **Insurance.**

- (a) Concessionaire shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance covering bodily injury, death and property damage including the property of the City, its officers, contractors, agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to the services provided pursuant to this Agreement with minimum limits on a per project basis of not less than \$1,000,000 combined single limit and \$2,000,000 aggregate; (ii) policy of automobile liability insurance covering all operations of the Concessionaire pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than \$1,000,000 combined single limit for bodily injury, death and property damage

liability; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Concessionaire's employees involved in the provision of services under this Agreement with policy limits of not less than \$500,000.00.

- (b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation or non-renewal of the policy.
- (c) All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service or approved by the City Risk Manager.
- (d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the Event Coordinator prior to commencement of Event.

8.6 **Joint and Several Liability.** If the Concessionaire is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the concessionaire shall be jointly and severally liable under this Agreement.

8.7 **Entire Agreement.** This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

8.8 **Legal Construction.** In the event any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

8.9 **Severability.** In the event any section, subsection, paragraph, sentence, phrase, or word herein is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

8.10 **Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties shall be governed by the laws of the State of Texas;

and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas.

8.11 **Assignment.** This Agreement may not be assigned by Concessionaire without the express written consent of City.

8.12 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective Party as set forth below the signature of the Party:

If intended for City, to:

Attn: Doug McDonald
Event Coordinator
City of Richardson, Texas
411 West Arapaho Road
Richardson, Texas 75080

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201
214.965.0010 – facsimile

Concessionaire's contact information, address, and legal entity name shall be fully noted underneath its signature.

8.13 **Termination.** This Agreement shall terminate upon any one or more of the following:

- (a) by mutual agreement of the Parties;
- (b) upon fifteen (15) days-notice by either Party to the other Party;
- (c) upon written notice by City if Concessionaire is in breach of any of the terms and conditions of this Agreement including the Event Rules; or
- (d) upon expiration of the term of this Agreement.

(signature page to follow)

EXECUTED this _____ day of _____, 2021.

CITY OF RICHARDSON, TEXAS

By: _____
Don Magner, Deputy City Manager

EXECUTED this _____ day of _____, 2021.

CONCESSIONAIRE

By: _____

Name: _____

Title: _____

Company: _____

Address: _____

Facsimile: _____

After Agreement is completed – Click **SUBMIT FORM** or email form to doug.mcdonald@cor.gov