

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

MAIN STREET CELEBRATION
ALCOHOLIC BEVERAGE CONCESSION AGREEMENT

This agreement (the “Agreement”) is by and between the City of Richardson, Texas (“City”), and the undersigned concessionaire (“Concessionaire”) (each a “Party” and 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 alcoholic beverage service at the Event through concession areas; and

WHEREAS, the Concessionaire desires to be a provider of alcoholic beverage service at the Event in accordance with the terms and conditions set forth herein; and

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

Article I
Term and Conditions

1.1 The term of this Agreement shall begin at 12:00 noon. and terminate at 5:00 p.m. on October 23, 2021, unless sooner terminated as provided herein.

1.2 The City grants Concessionaire a non-exclusive privilege to operate a concession booth at the Event to sell alcoholic beverages to the public.

1.3 Either Party may terminate this Agreement in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within ten (10) days after written notice thereof.

Article II
Duties

2.1 **Concessionaire Duties.** In connection with the operation of the concession booth at the Event, Concessionaire shall have the following duties:

- (a) Employ, manage and supervise all individuals responsible for the service of alcoholic beverages at the concession booth and to perform all such duties with due diligence and in accordance with the Texas Alcohol and Beverage Code, and all

other applicable laws, rules and regulations; allow only persons who hold a valid seller server certificate from the Texas Alcoholic Beverage Commission;

- (b) Concessionaire shall at all times retain exclusive control of the concession booth and the preparation, sale and service of alcoholic beverages upon the Event grounds;
- (c) Provide alcoholic beverages sales at a concession booth in location identified by the Event Director to serve alcoholic beverages.
- (d) Provide the sale and service of alcoholic beverages only during the hours of 12:00 Noon and 5:00 p.m. on the day of the Event
- (e) Provide all labor, equipment, and vehicles for the transport, storage, sale and service of alcoholic beverages at the Event;
- (g) Make application to, and secure the necessary permits and licenses from the Texas Alcoholic Beverage Commission for the transport, sale and service of alcoholic beverages at the Event;
- (h) Immediately notify City whenever representatives of the Texas Alcoholic Beverage Commission are on the Event grounds and of any Texas Alcoholic Beverage Code or Commission rule violations;
- (i) Purchase and provide, at its sole cost, the necessary alcoholic beverages to be sold and served by Concessionaire at the Event;
- (j) Concessionaire shall be responsible for all of Concessionaire's direct expenses, including, but not limited to, labor, vehicles, alcoholic beverages, napkins, cups, straws, supplies, labor, legal fees, professional accounting fees, administrative fines, cash registers, equipment, and supplies; and

2.2 **City Duties.** In connection with the operation of the concession booth at the Event, City shall have the following obligations:

- (a) City will provide barricades and fencing for area for the Concessionaire booth and trash pick-up; and
- (b) City will designate the location for Concessionaire both on City property.

Article III Concession Fees

3.1 Concessionaire shall pay to the City a fee for the privilege of serving as an alcoholic beverage concessionaire in the amount of \$_____ (the "Concession Fee").

**Article IV
Cash and Credit Card Payments**

Concessionaire must accept cash and/or credit card for payment for alcoholic beverages. The Event will not use a coupon system for beverage purchases. The Concessionaire is responsible for collecting and safekeeping its money and credit card receipts. The City assumes no responsibility for lost or stolen money. Concessionaire is required to make and provide change for the concession operations. The City will not provide change for Concessionaire.

**Article V
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 Director. If the Event Director or other City personnel that determine that any of 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 Director shall notify the Concessionaire. If the Concessionaire fails to correct such violation, operation, or conduct, the Event Director shall have the right to require the Concessionaire to immediately cease operations at the Event.

**Article VI
Concession Operation**

6.1 **Booth Location.** The location of the concession booth for the Event each year shall be determined by the City and set forth on a map provided to the Concessionaire prior to the Event, unless otherwise agreed by the Parties.

6.2 **Sponsorships.** The City reserves the right to grant advertising rights to any alcoholic or non-alcoholic 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. The City further reserves the right to sell or grant sponsorship rights for other concession booths to persons or companies not engaged in the sale, distribution or service of alcoholic beverages as allowed by state law.

6.3 **Concession Conditions:**

- (a) Concessionaire accepts the concession area in the condition on the date the City makes the area available. City disclaims all representations and warranties, expressed or implied as to the condition of the area;
- (b) The Concessionaire shall, at its own expense, provide an adequate, courteous and efficient staff to provide service to patrons of the Event. The Concessionaire will utilize its own labor force for set up and tear down;

- (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 or area for any purpose other than for the sale of alcoholic beverages without prior written consent of the City. Concessionaire does not have the right to sublet any concessions without the prior written consent of the City;
- (e) Concessionaire shall staff and operate the concessions in a first class and reputable manner continuously during all hours of the Event. Concessionaire shall not employ any individual under the age of eighteen (18) years to work at the Event. All employees of Concessionaires shall conduct themselves at all times in a manner acceptable to the Event Director. 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 must have the concession area clean, packed-up, loaded, and off of the *Event site as soon as practical after the conclusion of the Event*; and

Article VII Miscellaneous

7.1 **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.

7.2 **Inspection.** The City reserves the right to inspect the concession 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 area and shall impose no liability upon the City for failure to make such inspections.

7.3 **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. THIS SECTION SHALL SURVIVE TERMINATION AND SHALL NOT BE LIMITED TO ANY INSURANCE REQUIRED HEREIN.

7.4 **Insurance.**

- (a) Concessionaire shall during the term hereof maintain in full force and effect the following insurance: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Concessionaire, its officers, agents, and employees, and used in the performance of this Agreement with minimum limits of \$1,000,000 per occurrence; (3) Statutory Worker's Compensation Insurance at the statutory limits covering all of Concessionaire's employees involved in the provision of services under this Agreement with policy limits of not less than \$500,000/\$500,000/\$500,000. Worker's compensation coverage policy shall contain an Alternate Employer Endorsement and such endorsement shall be provided to the City; and (4) Liquor Liability with a minimum of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- (b) All insurance shall be endorsed to provide the following: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) 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.
- (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 the policy endorsements evidencing the required insurance shall be submitted to the Event Director prior to commencement of Event each calendar year. On every date of renewal of the required insurance

policies, the Concessionaire shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Concessionaire shall, within ten (10) business days after written request, provide the City with certificates of insurance and copies of policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Concessionaire by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

7.5 **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.

7.6 **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.

7.7 **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.

7.8 **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.

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

7.10 **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 at the address set forth below the signature of the Party:

If intended for City:

City of Richardson
Attn: City Manager
P.O. Box 830129
411 W. Arapaho Road
Richardson, Texas 75081

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

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

7.11 **Recitals and Exhibits.** The recitals to and the exhibits attached to this Agreement are incorporated herein.

7.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.13 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.14 **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.

(Signature Page to Follow)

EXECUTED this _____ day of _____, 2021.

CITY OF RICHARDSON, TEXAS

By: _____
Doug McDonald
Managing Director, City Managers Office

EXECUTED this _____ day of _____, 2021.

CONCESSIONAIRE

Name of Concessionaire

By: _____
Name: _____
Title: _____

After Agreement is completed - email form to doug.mcdonald@cor.gov