

CONCESSION SERVICES AGREEMENT

This Concession Service Agreement (this “Lease” or “Agreement”) is made effective as of the ____ day of _____, 20__ (the “Effective Date”) by and between **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (“City”), and _____

 (“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. **Definitions.** As used in this Agreement, the below terms have the following meanings:
 - a. “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.
 - b. “Area” means property within the boundary of the Graham Creek Nature Preserve, as designated by the Director.
 - c. “Days” shall mean calendar days.
 - d. “Director” means the Nature Parks Director acting on behalf of the City.
 - e. “Exhibit” shall mean the exhibit attached to the Agreement, which shall be deemed incorporated therein and made part thereof.
 - f. “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.
2. **Scope of Services.** Graham Creek Nature Preserve hosts events throughout the year in which having a food truck would be mutually beneficial to both parties. Concessionaire will provide food/beverages to event patrons utilizing their own food truck. 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.
3. **No Exclusivity.** 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.).
4. **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.

- b. Commission. Concessionaire shall pay the City of Foley 10% of gross receipts from each event that is attended by the Concessionaire.
- c. Event Locations. Event locations: Graham Creek Park 23030 Wolf Bay Drive, Foley, AL 36535.
- d. Contract Term. This contract shall be in place October 1, 2020 – September 30, 2021.
- e. Set-up in Advance of Event. Concessionaire shall adhere to the City’s policy that requires set-up to be completed prior to the start of the event.
- f. Utilities; Generator. Concessionaire shall provide all necessary utilities and its own generator, if required. Power may be available on site.
- 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.
- j. 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.
- k. 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.
- 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 and pricing for all food and beverages as well as pricing for available merchandise and services utilizing professional signage.
- n. Inventory. Concessionaire shall maintain sufficient inventory/stock to serve the patron need at all events.

- o. Conduct of Business. Concessionaire is responsible for providing and maintaining a clean, sanitary, orderly, safe and attractive business. 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.
 - p. Storage. On-site storage is not available to Concessionaire. Concessionaire is responsible for storing and securing its supplies, product or other property.
5. **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:
- a. Federal, State, and local health, safety and licensing laws relating to the sale of concession goods;
 - b. City Code provisions requiring any person or entity doing business in the City to obtain a business license;
 - c. City rules, regulations and ordinances; and
 - d. Foley Fire Department Mobile Food Trucks/Trailers Fire Code Requirements and approval by Foley Fire Inspector (see Exhibit "A")

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.

6. **Reports and Record Keeping.**
- a. Event Reports. The Concessionaire shall provide a report to the City for each event that the Concessionaire attends at Graham Creek Nature Preserve in such a form and with such supporting documentation as the City may require, including a Gross Receipts/Revenue Report for the event transmitted with City Revenue Remittance Form for each commission payment.
 - b. 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.
7. **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 \$1,000,000 per person and \$1,000,000 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.

8. **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.
9. **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.
10. **Event of Default.** Upon the happening of any one or more of the events as expressed below in (a) to (g) 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 fails to submit commission in accordance with the terms of this Agreement;
 - b. In the event Concessionaire violates any Applicable Laws with respect to Concessionaire's operations hereunder;
 - c. In the event Concessionaire fails to comply with all insurance requirements herein contained;
 - d. In the event the Director determines, in his or her sole discretion, that Concessionaire's operations are detrimental to public safety, health or welfare;
 - e. 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;

- f. 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
- g. 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.

11. **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.

12. **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, nor shall nothing contained herein 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.

13. **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
Attn: Finance Department
407 E. Laurel Avenue
Foley, Alabama 36535

Concessionaire:

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.

14. **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.
15. **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.
16. **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.
17. **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.
18. **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.
19. **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.
20. **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.

**CITY OF FOLEY, ALABAMA, an
Alabama Municipal Corporation**

By: _____

As its: _____

Date: _____

Company

By: _____

As its: _____

Date: _____

EXHIBIT “A”

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 CONCESSION 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.

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-kindling 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

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 have 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 cooking 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 be kept away from any open flames and heat sources. Portable cylinders must 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.

If you have any questions or require additional information, please contact:

Office: 251-971-6028

Fax: 251-943-7432

Email: fireinspections@cityoffoley.org



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

FOOD VENDOR REQUIREMENTS

These requirements apply to single vendor, freestanding booths. All food vendors are subject to inspection prior to an event. Failure to comply with the following regulations may result in closure of the location.

Concession Trailers

A restaurant suppression system check is required (certification must be current within 6 months prior). If deep frying is conducted, you must have a K-Type fire extinguisher to accompany your kitchen system. For all other cooking, you must have a 2A-10B:C classification fire extinguisher (5 lb.).

Flame Retardant Requirements

The sidewalls, drops and tops of tents and canopies shall be of flame resistant material or treated with a flame retardant in an approved manner. A tag shall be permanently fixed to the structure that proves that the tent is compliant.

Portable Fire Extinguishers

A portable fire extinguisher shall be provided for each food booth. The minimum size for the extinguisher is 2A 10B: C (5 lbs.). If a Deep Fat Fryer is being used, a K TYPE extinguisher shall also be provided. Extinguishers shall have a current inspection tag (certification must be current within 12 months prior). The extinguishers shall be securely mounted in an accessible and visible location, between 3 and 5 feet above the ground.

Gas Stoves

All gas stoves, grills and burners shall be listed by either Underwriters Laboratories (UL) or the American Gas Association (AGA).

Portable LP Gas Cylinders

Fuel tanks (LPG) shall be stored outside of the structure. The tanks shall also be located away from public access. The size of the tank shall be limited to 7 gallons, unless otherwise approved. Fuel tanks shall be secured from falling.

Smoking

Smoking is not allowed at anytime within the food booth, or within 25 feet of any fuel source. (No Smoking signs shall be posted within each food booth.)



Generators

Generators shall be located a minimum of 20 feet from tents or canopies. They shall also be isolated from contact with the public by approved means. The refueling of hot generators is not allowed.

Flammable and Combustible Liquids

Flammable and combustible liquids shall not be stored within or adjacent to the structure.

A copy of these regulations shall be posted in the structure and signed by the vendor. By signing this form, the vendor agrees to comply with these regulations. The signed copy will be available on request for review by the Foley Fire Department.

Vendor's Signature

Date of Event

If you have any questions or require additional information, please contact:

Office: 251-971-6028

Fax: 251-943-7432

Email: fireinspections@cityoffoley.org