

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
AGREEMENTS WITH TRI-CITIES SOCCER CLUB RELATED TO
THE USE OF THE ATHLETIC FIELDS AND CONCESSION
STAND OPERATIONS AT EASTMAN PARK AT HORSE CREEK

WHEREAS, Tri-Cities United Soccer Club has worked with the city to organize and operate a recreational soccer program and to provide competitive soccer opportunities within the region, and in recent years their primary facility for program operations has been Eastman Park at Horse Creek; and

WHEREAS, the city desires to enter into an agreement with Tri-Cities United Soccer Club for a term of twelve (12) months with the option to renew for an additional twelve (12) months for the use of the soccer fields and storage facilities at Eastman Park at Horse Creek; and

WHEREAS, the city also desires to enter into an agreement with Tri-Cities United Soccer Club for the use of the Eastman Park at Horse Creek facilities which includes operation of the concession stand for twelve (12) month agreement.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an agreement for use of Eastman Park at Horse Creek is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with Tri-Cities United for the use of Eastman Park at Horse Creek, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

**AGREEMENT BETWEEN
CITY OF KINGSFORT, TENNESSEE
AND
TRI-CITIES UNITED SOCCER CLUB**

THIS AGREEMENT (hereinafter "Agreement") is hereby made and entered into as of this _____ day of August, 2023, by and between CITY OF KINGSFORT, TENNESSEE, a Tennessee municipal corporation (hereinafter "CITY"), and TRI-CITIES UNITED SOCCER CLUB (hereinafter "TRIC"), a Tennessee nonprofit corporation.

W I T N E S S E T H

WHEREAS, CITY has a major emphasis on the provision of a recreational youth soccer program for the citizens of CITY; and

WHEREAS, Eastman Park at Horse Creek is a soccer facility in Northeast Tennessee; and

WHEREAS, a special Oversight Committee has been created by this Agreement to work with TRIC; and

WHEREAS, CITY is the owner of that certain public park known as Eastman Park at Horse Creek located at 2969 Sullivan Gardens Parkway, Kingsport, Tennessee, and hereafter referred to as "Facilities;" and

WHEREAS, TRIC and CITY desire to enter into this Agreement for the purpose of evidencing the Agreement of the parties with regard to the use of the Facilities by TRIC and the respective obligations contained herein.

NOW, THEREFORE, the premises considered, in consideration of the mutual promises contained herein, the parties agree as follows:

I. TERM

1. This Agreement shall begin on the date of the execution hereof and end on June 30, 2024. However, this Agreement may be terminated with or without cause by either party by giving one hundred twenty (120) days written notice to the other party. If requirements of the Agreement are not met during the term, a special meeting of the Oversight Committee will be held to discuss any corrective action necessary.

II. OVERSIGHT COMMITTEE

1. Under the direction of the Kingsport Parks and Recreation Advisory Committee, an Oversight Committee will be appointed for the purpose of providing general guidance and overall direction for the soccer program that is conducted at the facilities. The committee will be composed of the following members:

- a. Parks and Recreation Advisory Committee Member or designee;
- b. TRIC Recreation Coordinator;
- c. TRIC President or representative appointed by TRIC Board of Directors;
- d. Parks and Recreation Department staff member;
- e. Dobyys Bennett Boys Varsity Soccer Coach or designee; and
- f. Dobyys Bennett Girls Varsity Soccer Coach or designee.

2. It is preferred that the individuals appointed to fill the positions of (c) and (d) be City of Kingsport residents. These six positions must be six different persons.

3. The Oversight Committee will continuously review the operations of the soccer program and ensure that the Agreement between CITY and TRIC is followed. Responsibilities of the Oversight Committee will include, and not be limited to the following:

- a. Review of residency issues;
- b. Review of program statistics related to participation and benchmark data;
- c. Review of scheduling and of facility and program operations; and
- d. Items in Section IV.9 pertaining to items that TRIC provides to CITY.

4. Items that CITY received from TRIC are to be submitted to the Program Coordinator for Parks and Recreation, who will prepare for review by the Oversight Committee. The Oversight Committee will meet on a quarterly basis throughout the year, and on more occasions if necessary.

III. OPTION TO RENEW

1. This Agreement may be renewed for one additional term of one year at the option, but not at the obligation, of the parties conditioned upon the following:

a. If not in violation of any obligation hereunder, TRIC, shall be given the option to renew the Agreement for a like term upon conditions set forth by CITY. If TRIC, should desire to renew this Agreement, it shall do so by giving written notice to CITY prior to May 1 of the year for which the extension is requested. In the event unforeseen circumstances cause a delay in renewal, the Agreement will remain in place until it is renegotiated.

b. An evaluation shall be performed jointly by the Oversight Committee and members of the Board of Directors of TRIC in order to measure the success of the Agreement. This is to ensure that the service to the citizens of Kingsport and the emphasis of the Kingsport Recreational Soccer program has remained the primary focus.

IV. USE OF FACILITIES

1. TRIC will be the primary youth soccer provider, hereinafter referred to as "Kingsport Recreational Soccer Program," for CITY. Thus, during the period ending June 30, 2024, TRIC, shall have the primary right to use the Facilities, as assigned by CITY, during TRIC regular Fall and Spring recreational seasons, and two tournaments, without assignment of any associated facility rental fees. Participation in the Kingsport Recreational Soccer Program must maintain 51% or more CITY residents each season. The percentage requirement is to be followed on a per season basis. The first priority for field use is for the Kingsport Recreational Soccer Program. At any time, the soccer facilities are not being used by TRIC, CITY may assign such facilities to other associations or parties. To qualify as a CITY resident, a participant must meet one of the following criteria:

- a. Lives inside the city limits of Kingsport based on 911 address;
- b. Parent/Legal Guardian pays city of Kingsport property tax; or
- c. Participant attends a school operated by the city of Kingsport School system.

2. The second priority for use of the Facilities is by the TRIC Academy programs that have 51% or more CITY residents. This program will be referred to as "Tribe Academy Program" and these age divisions of play may be scheduled after the Kingsport Recreational Soccer Program has been given the appropriate amount of play.

3. The third priority for use of the facilities is the TRIC Academy programs that have less than 51% CITY residents.

4. "Friendlies:" The scheduling of matches commonly referred to as Friendlies may be scheduled at the Facilities as long as at least one of the teams participating is a TRIC team based at the facilities. Other games not involving TRIC teams may not be held at facility without prior approval of CITY.

5. Normal usages outlined include the following for the Kingsport Recreational Soccer Program and academies:

- a. 2 practices per week
- b. 5 – 7 league days during the season
- c. 1 local festival per season
- d. 2 – 3 friendlies per season
- e. 1 – 2 level appropriate tournaments per season

6. Additional uses must have the approval of the Oversight Committee and the recommendation for fees shall come from the committee.

7. TRIC may use the conference room located at facilities for official TRIC use and temporary office space during the term of this Agreement. It is the responsibility of TRIC to keep the room clean and organized during the term of this agreement. CITY is not responsible for the security of any items belonging to TRIC that are in this room.

8. CITY will allow minimal storage for equipment and supplies, inside the designated maintenance area of the facilities main building. TRIC will also be allowed to have one maintenance storage unit on property. Location and style of the storage unit to be approved by the CITY.

9. TRIC understands and agrees that CITY is not responsible for the security or maintenance of any TRIC equipment or supplies that are stored at Eastman Park at Horse Creek.

10. TRIC regular Fall and Spring Recreational Soccer Program seasons will be within the months of August through October and March through May respectively. During either or both the Fall and Spring TRIC Recreational Soccer Program seasons, CITY may resume the primary right to designate use of the facilities for up to three consecutive days. This interruption may not occur more than once during each Recreational Soccer Program season. CITY will provide notice of these scheduled interruptions no later than February 1 for the Fall season and August 1 for the Spring season. CITY will make reasonable efforts during these scheduled interruptions to minimize disruption to TRIC Recreational Soccer Programs. The conditions described in the concession lease with TRIC will continue to apply during these designated periods.

11. CITY reserves the right to utilize the facilities when TRIC league activities are not scheduled. If facilities are abandoned, the Agreement is terminated. "Abandonment" shall be defined as no play taking place on allocated field(s) during the entire term of the Agreement.

12. TRIC may not make any additions and/or alterations to the facilities including the soccer facility buildings, equipment, grounds, and/or furnishing without written consent from CITY.

13. TRIC understands and agrees that at times weather, scheduled maintenance, and/or field conditions may result in CITY denying the use of certain fields on dates for which approval has been granted.

14. CITY shall at all times have the right to inspect the facilities being used by TRIC and all TRIC sponsored activities related to the use of facilities.

15. If TRIC should desire to use facilities for additional tournaments, special events, or programs, TRIC shall make a request to CITY in accordance with the guidelines established for assigning and scheduling of activities at CITY sports facilities. Any and all additions, tournaments or special programs shall not be included in this Agreement but shall require a separate written Agreement between the parties.

V. **OBLIGATIONS OF CITY**

1. CITY agrees to provide the following maintenance and repairs in a manner generally equal to normal CITY maintenance and repair of similar CITY recreational facilities:

- a. Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
- b. Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary by CITY staff.
- c. Maintain all bleachers in a safe and secure condition.
- d. Provide trash receptacles and dumpster and provide for the removal of trash that has been deposited in dumpsters as warranted.
- e. Maintain structural integrity of concession stands, restrooms, and city storage areas, including repair or replacement of damaged roofs, doors, and windows.
- f. Maintain all city buildings and field lighting systems, including repair or replace lights, poles, wiring, and other equipment related to the lighting of each field and buildings.
- g. Maintain all scoreboards and control systems as needed.
- h. Maintain field irrigation systems and watering schedules of turf areas.
- i. Communicate with TRIC field mowing, fertilization, and irrigation schedules. Inform TRIC of any other required maintenance on the fields that would alter playing schedules.
- j. Provide TRIC with contact information for after-hour and everyday needs.
- k. Maintain and repair all parking areas to include gates.
- l. Maintain all trails within the facilities.
- m. Establish key control and Musco control link access.
- n. Provide custodial supplies to be stocked in appropriate areas by TRIC. CITY will provide toilet paper and cleaning supplies to be used, TRIC will put supplies in place and continuously reload holders. CITY will

clean restrooms once per day as needed, 7 days per week, with TRIC responsible for cleaning as needed at all other times.

- o. Determine rental fees and rules for usage of facility.
- p. Allow nonvoting ex-officio representation by TRIC on the Parks and Recreation Athletics Advisory Board.
- q. Establish all rules to include facility safety, signage as appropriate, emergency notification process, traffic control, and environmental regulations.
- r. Establish policy for field lighting usage and access to computer codes.
- s. Provide a plan for and approve all capital improvements with input from TRIC.
- t. Provide for insurance on buildings.
- u. Provide white field paint (in an amount not to exceed 100 cases per year) to be used by TRIC at the facilities.
- v. Line fields as needed for events and activities assigned to user groups other than TRIC.
- w. Ensure the facility is locked when not in use.
- x. Assist TRIC with distribution of information and refer interested parties to TRIC, when necessary. It is understood and agreed CITY'S obligations under this Agreement will be performed when and to the extent that budgeted funds are available for of its obligations. If CITY is unable to fulfill its obligations due to budget restraints, it will not be obligated to TRIC for any monetary damages.

VI. OBLIGATIONS OF TRIC

1. TRIC agrees to:

- a. Provide the citizens of Kingsport a quality recreational soccer program that operates with reasonable participant fees and associated services. Recreational soccer is the primary focus and emphasis of service. Any proposed change to the fee for the Kingsport Recreational Soccer program must have the advanced approval of the Oversight Committee.
- b. Provide a scholarship program for the underprivileged.
- c. Meet the following benchmarks for the Kingsport Recreational Soccer Program:
 - 1. Increase overall participation in the Recreational Program annually. The benchmark goal is to increase by a percentage established by the Oversight Committee annually. Participation increases will be assessed by comparing the previous year's recreation program participant numbers to the annual recreation program participation numbers after the completion of the Spring season. TRIC will provide participant data with 911 addresses.
 - 2. Perform a Customer Satisfaction survey annually of both Recreational soccer and Academy participants and analyze and implement changes based on the results of each survey. Questions for the survey will be developed jointly with the Kingsport Parks and Recreation staff.
 - 3. Provide educational and training sessions for coaches throughout each season through multiple training outlets (in person trainings, web-based trainings, printed materials, etc.).
 - 4. Consider hosting two tournaments each year that include TRIC teams and may also include non-TRIC teams in order to create a positive economic impact on the Kingsport community.
 - 5. Submit a marketing and promotion plan to Kingsport Parks and Recreation prior to the beginning of the fall season and monitor and evaluate the effectiveness of each plan.
 - 6. Perform a criminal background check through Tennessee State Soccer on each volunteer who coaches or has one-on-one contact with youth. The purpose of this is to make the program as safe as possible for the youth participants. TRIC agrees that no coach shall come in direct contact with children if the background check indicates that he or she has ever been convicted of any of the offenses listed in Tenn. Code Ann. § 49-5-413, including the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessor to:
 - i. a sexual offense or a violent sexual offense as defined in Tenn. Code Ann. § 40-39-202;
 - ii. any offense in Title 39, Chapter 13 (offenses against persons);
 - iii. Tenn Code Ann. § 39-14-301 AND Tenn Code Ann. § 39-14-203 (arson, aggravated arson;
 - iv. Tenn Code Ann. § 39-14-401 through § 39-14-404 (definition for burglary and related offenses; burglary; aggravated burglary; especially aggravated burglary);
 - v. Tenn Code Ann. § 39-15-401 through §39-15-402 (child abuse and child neglect or endangerment; Haley's Law – aggravated child abuse and aggravated child neglect or endangerment);
 - vi. Tenn Code Ann. § 39-17-417 (controlled substances offenses);
 - vii. Tenn Code Ann. § 39-17-1320 (providing handgun to juveniles); or
 - viii. any other offenses in Title 39, Chapter 17, Part 13 (weapons).

TRIC shall certify to CITY, in writing, that all coaches coming into direct contact with children have successfully completed the required background check and that such individuals have none of the listed convictions listed above, are not registered sex offenders, and have no other disqualifications.

2. At no expense to CITY, provide the following maintenance and repair:

- a. Maintain soccer goals, nets, cables, net clips, program supplies and equipment including motorized vehicles and storage buildings owned by TRIC.

- b. TRIC shall be responsible for daily game day policing of all litter at facilities to include playing areas, bleachers, concession stands, offices, maintenance buildings, and adjacent grounds.
- c. Line all fields for TRIC recreations league, academy, and tournament play.
- d. Monitor restroom facility and stock supplies to be provided by CITY.
- e. Adhere to CITY rules that pertain to field usage and provide input on overuse.
3. Furnish to city Parks and Recreation Department a calendar of events Fall, Spring, and Summer seasons respectively. The schedule may be updated and adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Any adjustments must be relayed to the city Parks and Recreation Department.
4. Refer all groups requesting use of the facilities to the Kingsport Parks and Recreation Department. TRIC is not authorized to schedule the fields for anyone other than TRIC practices and/or games. This includes all school systems in the area.
5. Schedule and meet with the city Parks and Recreation Department prior to the season to discuss schedules, field playability and department guidelines and maintain regular communication with city staff.
6. Provide CITY with completed accident and incident reports pertaining to TRIC's use of facilities.
7. Report any facility maintenance problems to city designated personnel.
8. CITY will provide toilet paper and cleaning supplies to be used. TRIC will put supplies in place and continuously reload holders. CITY will clean restrooms once per day, 7 days per week, with TRIC responsible for cleaning as needed all other times.
9. Sign a lease agreement for concession rights and request approval by CITY for any and all additional concession trailers and follow City, County, and State Health Codes. CITY will retain all pouring rights for beverages and TRIC agrees to honor this arrangement and will not do anything in the way of concessions or advertising that would violate such Agreement.
10. Post no advertising or signage at the facilities that may conflict with existing facility sponsors and/or naming.
11. A minimum payment of \$6,000.00 fee is required per season. This fee offsets the field usage by TRIC for non-recreation-based programs. As an incentive to increase participation in the Kingsport Recreational Soccer Program, TRIC will be given a credit of \$20.00 for every City of Kingsport resident that is registered in the recreation soccer league (per season) and/or as enrolled in each fee based instructional clinic. (Residency is defined in section IV.1 of this document) The \$6,000.00 fee will be reduced based on the cumulative amount of those credits. Fee payment shall be made by cash/check and reconciled per season.
12. Provide a responsible adult to be on-site at each and every activity scheduled at facilities.
13. Ensure the facility is locked each day at the conclusion of TRIC's use.
14. Not make any permanent changes to facilities or fields without the expressed prior written permission of CITY.
15. Adhere to facility rules and regulations which includes proper use and care of lights, grounds, keys, facilities, and amenities.
16. Utilize the sports lighting in an efficient manner to help reduce electrical costs.
17. Follow all park rules that have been established by the CITY Parks and Recreation Department.
18. Assist CITY in moving and relocating soccer goals in the facilities. TRIC is responsible to ensure goals are properly anchored. As per City of Kingsport Risk Management recommendations, the goals should be anchored in one of the following ways to avoid the injury that may occur when goals overturn:
 - a. Auger-style anchors that are screwed into the ground; or
 - b. Semi-permanent anchors, which require a permanently secured base that is buried underground combined with the use of tethers or bolts to secure the goal.
19. Allow ex-officio representation by city Parks and Recreation Department on TRIC Board.
20. Conduct only TRIC sanctioned and organized events and activities under the terms of this Agreement. Personal use of the facilities by TRIC members is outside the scope of this Agreement.
21. Hold CITY harmless from all damage or loss to TRIC equipment located at the facilities unless specifically caused by the sole negligence of CITY.
22. Provide city Parks and Recreation Department statistical data pertaining to participation and attendance at Facilities on a monthly basis.
23. Include a Photo and Video Policy on all advertisement and registration forms: Please be aware that photos and videos may be taken to promote the services and facilities that CITY offers and become the CITY's sole property. City of Kingsport and the media may publish these photographs or air these videos in printed publications, cable TV, and online on CITY's website and social media.
24. Abide by and comply with the requirements of Tenn. Code Ann § 68-55-503 "Sports Concussion Law" and Tenn. Code Ann. § 68-54-100 "Sudden Cardiac Arrest Prevention Act."
25. Maintain a website and social media presence with updated information regarding the Kingsport Recreational Soccer Program. Assign and monitor a public phone number and email for program questions, responding to messages within an appropriate timeframe.

VII. ASSIGNMENT and EXCLUSIVITY

1. This Agreement is a privilege for the benefit of TRIC only and may not be assigned in whole or part by TRIC to any other person or entity. Both parties understand that TRIC use of the facilities is nonexclusive.

VIII. INSURANCE and INDEMNIFICATION

1. TRIC will provide Commercial General Liability Coverage. At all times during the Term of this Agreement, TRIC will maintain in full force and effect policies of contractual and commercial general liability insurance, including public liability and broad form property damage, for not less than a Combined Single Limit for Bodily Injury (including death), Property Damage, and Personal Injury Liability of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such policy or policies shall name CITY as an additional insured thereunder. All of such insurance shall insure the performance by TRIC of its indemnity agreement as to liability for injury to or death of persons and injury or damage to property. All of such insurance shall be primary and noncontributing with any insurance which may be carried by CITY and shall contain a provision that CITY, named or not named as an insured, shall nevertheless be entitled to recover under said policy for any loss, injury or damage to CITY, its agents and employees or the property of such persons, by reason of the negligence of TRIC. Such policy shall expressly provide that such policy shall not be canceled or altered without thirty (30) days prior written notice to CITY. CITY shall be named as an additional insured on all such policies. TRIC shall, before using transportation services, provide CITY with a certified copy of the policies of insurance, declaration page and all endorsements thereto, required by this Agreement, and which endorsements must provide CITY the coverage set out herein and be acceptable to CITY. TRIC also shall provide CITY with a certificate of insurance for each policy required under this Agreement showing that the coverages required hereunder are in force with premiums paid and that such policies are non-cancellable and may not be materially modified except upon thirty (30) days prior notice to CITY (or, if such thirty (30) day period of notice is not obtainable on a commercially reasonable basis, upon such notice as is commercially reasonable). Additionally, TRIC shall provide certified copies of the policies of insurance required by this Agreement and all endorsements thereto when requested by CITY, but no less than annually during the term of this Agreement. All insurance provided for in this Section, and all renewals thereof, shall be issued by responsible insurance companies authorized to do business in the State of Tennessee. If any insurer which has issued a policy of insurance required pursuant to this Agreement becomes insolvent or the subject of any bankruptcy, receivership, or similar proceeding, TRIC shall, in each instance, obtain a like policy issued by another insurer, which insurer and policy meet the requirements of this Agreement.

2. TRIC shall indemnify, defend and hold harmless CITY, its officers, employees and agents from any and against any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of, or is any way related to the acts or the failure to act in whole or in part, by TRIC or its agents, volunteers, or employees in the use of the Facilities or arising out of obligations of TRIC as set forth in this Agreement.

IX. MISCELLANEOUS PROVISIONS

1. No modification of this Agreement shall be effective unless it is made in writing and issued by the authorized representatives of the parties hereto.

2. This Agreement shall be construed under and in accordance with the laws of the State of Tennessee, and all obligations of the TRIC and CITY created hereunder are performable in Sullivan County, Tennessee.

3. Nothing in this Agreement shall be construed to make CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.

4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement, dated above, in duplicate originals.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the concession agreement with Tri-Cities United Soccer Club at Eastman Park at Horse Creek is approved.

SECTION IV. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with Tri-Cities United for the use of Eastman Park at Horse Creek, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and

consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

**CONCESSION LEASE AGREEMENT BETWEEN
CITY OF KINGSPORT
and
TRI-CITIES UNITED SOCCER CLUB**

THIS AGREEMENT (hereinafter "Agreement") is hereby made and entered into as of this _____ day of July, 2023, by and between CITY OF KINGSPORT, TENNESSEE, a Tennessee municipal corporation (hereinafter "LESSOR"), and TRI-CITIES UNITED SOCCER CLUB (hereinafter "CONCESSIONAIRE"), a Tennessee nonprofit corporation.

W I T N E S S E T H

That for and in consideration of \$50.00 per season, to be paid seasonally by CONCESSIONAIRE to LESSOR, LESSOR does hereby lease unto CONCESSIONAIRE for the period of August 1, 2023, through June 30, 2024, the concession rights for the sale of food, refreshments, confectionery, and beverages at the soccer fields at 2969 Sullivan Gardens Parkway, Kingsport, Tennessee.

CONCESSIONAIRE agrees to and shall abide by the following conditions:

1. CONCESSIONAIRE will be responsible for furnishing all the equipment, food supplies, or other items offered for sale, and any other incidentals necessary for the operation of the concession.
2. CONCESSIONAIRE shall be responsible for the maintenance of its equipment to ensure that it is always in a safe and usable condition; and shall provide, at its own cost, a sufficient number of employees to serve the public promptly and in a manner satisfactory to the Parks and Recreation Manager.
3. CONCESSIONAIRE agrees not to sublet or sublease, in any form, the rights as approved herein by City.
4. LESSOR'S Parks and Recreation Manager (hereinafter "Parks and Recreation Manager") shall approve all items offered under this Agreement and shall approve all prices charged to the public.
5. LESSOR retains all pouring rights for beverages and CONCESSIONAIRE agrees to honor such and will not do anything that would violate such pouring rights, including concessions or advertising.
6. CONCESSIONAIRE shall agree to comply with and abide by all rules regulating the operation of the park and the hours of operation of the concession shall coincide with the hours of the park in agreement with the Parks and Recreation Manager.
7. CONCESSIONAIRE shall furnish all labor and other materials necessary to maintain the concession in a clean, orderly, and inviting condition that shall be satisfactory to the Parks and Recreation Manager. This shall include the area immediately surrounding the concession area.
8. CONCESSIONAIRE shall be responsible for keeping the designated eating and shelter area free of all trash and litter by placing it in a trash container.
9. LESSOR will furnish lights, power, and water in such locations where these utilities now exist. All additional installations which require the use of these utilities shall be made and maintained at the expense of CONCESSIONAIRE and upon the approval of the Parks and Recreation Manager.
10. Any alterations, repairs, or additions to the building area occupied by CONCESSIONAIRE must be approved, in advance, by the Parks and Recreation Manager. LESSOR shall make all ordinary and reasonable repairs to preserve the building occupied by CONCESSIONAIRE.
11. It shall be the obligation of CONCESSIONAIRE to secure or obtain all permits and licenses required by law for the operation of the concession and the sale of approved merchandise.
12. CONCESSIONAIRE shall comply with all ordinances of the City of Kingsport, Sullivan County, and the State of Tennessee, and shall comply with all applicable State and Federal rules and regulations concerning the serving of food, hours of work, pay and equal employment of personnel without discrimination as to race, color, age, or sex.
13. LESSOR shall have the right of inspection and audit at all times during regular business hours. A violation of any provisions of this contract shall work a forfeiture of this Agreement and LESSOR may take possession upon a twenty-four (24) hour notice.
14. CONCESSIONAIRE may voluntarily terminate this Agreement upon five (5) days written notice to LESSOR.
15. CONCESSIONAIRE will provide Commercial General Liability Coverage. At all times during the Term of this Agreement, CONCESSIONAIRE will maintain in full force and effect policies of contractual and commercial general liability insurance, including public liability and broad form property damage, for not less than a Combined Single Limit for Bodily Injury (including death), Property Damage, and Personal Injury Liability of \$1,000,000 per occurrence and \$2,000,000 aggregate.

Such policy or policies shall name LESSOR as an additional insured thereunder. All such insurance shall insure the performance by CONCESSIONAIRE of its indemnity agreement as to liability for injury to or death of persons and injury or damage to property. All such insurance shall be primary and noncontributing with any insurance which may be carried by LESSOR and shall contain a provision that LESSOR, named or not named as an insured, shall nevertheless be entitled to recover under said policy for any loss, injury or damage to LESSOR, its agents and employees or the property of such persons, by reason of the negligence of CONCESSIONAIRE. Such policy shall expressly provide that such policy shall not be canceled or altered without thirty (30) days prior written notice to LESSOR. LESSOR shall be named as an additional insured on all such policies. CONCESSIONAIRE shall, before using transportation services, provide LESSOR with a certified copy of the policies of insurance, declaration page and all endorsements thereto, required by this Agreement, and which endorsements must provide LESSOR the coverage set out herein and be acceptable to LESSOR.

16. CONCESSIONAIRE also shall provide LESSOR with a certificate of insurance for each policy required under this Agreement showing that the coverages required hereunder are in force with premiums paid and that such policies are non-cancellable and may not be materially modified except upon thirty (30) days prior notice to LESSOR (or, if such thirty (30) day period of notice is not obtainable on a commercially reasonable basis, upon such notice as is commercially reasonable). Additionally, CONCESSIONAIRE shall provide certified copies of the policies of insurance required by this Agreement and all endorsements thereto when requested by LESSOR, but no less than annually during the term of this Agreement. All insurance provided for in this Section, and all renewals thereof, shall be issued by responsible insurance companies authorized to do business in the State of Tennessee. If any insurer, which has issued a policy of insurance required pursuant to this Agreement, becomes insolvent or the subject of any bankruptcy, receivership, or similar proceeding, CONCESSIONAIRE shall, in each instance, obtain a like policy issued by another insurer, which insurer and policy meet the requirements of this Agreement.

17. CONCESSIONAIRE shall indemnify, defend, and hold harmless LESSOR, its officers, employees, and agents from any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of or is in any way related to the acts or the failure to act, in whole or in part, by CONCESSIONAIRE or its agents, volunteers, or employees in the use of Facilities or arising out of obligations of CONCESSIONAIRE as set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, dated above, in duplicate originals.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION V. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION VI. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort, and prosperity of the citizens of the city.

SECTION VII. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 18th day of June, 2023.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY