

CONCESSION STAND AGREEMENT

THIS CONCESSION STAND AGREEMENT (the "Agreement") is made as of this 6th day of April, 2023 (the "Effective Date"), by and between The City of Lansing, KS, with its principal place of business at 800 First Terrace, Lansing, KS 66043 (the "City") and Jarvy's Shaved Ice, a private entity with its principal place of business at _____ (the "User").

WHEREAS, the City owns a public park known as Bernard Park (the "Property"); and

WHEREAS, the User has requested that it be allowed to use a concession stand (the "Concession Stand") located on the Property; and

WHEREAS, the City desires to allow the User to use the Concession Stand, subject to certain terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises made herein, the City and the User agree as follows:

- 1. License.** The City hereby grants the User the exclusive use of the Concession Stand, subject to the terms and conditions of this Agreement, for the purpose of selling concessions during regularly scheduled league games. The Concession Stand may be operated by the User, through its agents, officers, employees, volunteers, and members. Notwithstanding the foregoing, the City reserves the right to use the Concession Stand when it is not being operated by the User.
- 2. Condition of City Property.** During the entire term of this Agreement, the User shall maintain the Concession Stand in substantially the same condition as it was in on the Effective Date, except for normal wear and tear. No improvements or alterations are permitted without the prior written approval by the City.
- 3. Interior.** The User shall maintain the interior of the Concession Stand, including but not limited to all appliances and equipment necessary for the storage, preparation, or serving of food and drinks, in clean and sanitary condition at all times.
- 4. Compliance with other laws.** The User shall obtain any necessary licenses or permits and shall comply with all applicable laws and regulations, including but not limited to state and county regulations governing the public sale of food and drink. The City will procure the Food Establishment License.
- 5. Refuse.** The User shall properly dispose of all refuse of any kind generated by its use of the Concession Stand. Refuse must be placed in receptacles provided by the City and placed at a designated site for pick-up.
- 6. Winterizing and Maintenance.** The City will perform any needed off-season winterizing of plumbing fixtures. If weather conditions necessitate winterizing during the term of this Agreement, the City will notify the User as soon as possible. The City will perform maintenance and repairs as deemed necessary. The City will notify the users as soon as possible of any maintenance that may affect operations.
- 7. Appliances.** The User shall keep only the essential appliances plugged in during periods the Concession Stand is not actively being operated. The User shall ensure that all appliances are unplugged

and associated water lines are unhooked during the off-season. Storage of any kind is prohibited in and around electrical or mechanical control systems located within the concession stand.

8. Hazardous Materials. The User agrees and represents that it shall not store or dispose of on the Property any hazardous materials as defined by Federal, State or local law. The User hereby further agrees that it shall indemnify and hold harmless the City for any injury, loss, costs, fines, penalties, and/or damages arising out of the User's failure to comply with this provision. The indemnification provision of this paragraph shall survive the termination of this Agreement.

9. Security. The User is responsible for the security of the Concession Stand. The City is not responsible for the loss or theft from the Concession Stand of any property belonging to the User. The User is responsible for securing any insurance for the contents of the Concession Stand and for paying the associated insurance premiums.

10. Vehicles. Delivery trucks and other vehicles may only enter the park or concession areas on designated service drives leading directly to the Concession Stand. Large or heavy vehicles shall not enter the complex and should use a dolly or other method to deliver goods.

11. Term and Termination. The term of this Agreement begins on the Effective Date and ends on December 31, 2023. However, either party may terminate this Agreement upon 14 days' prior written notice to the other party. Notwithstanding the foregoing, the City may immediately terminate this Agreement if the City, in its sole discretion, deems such termination necessary to protect the public health, safety, or welfare.

12. Indemnification. The User shall, to the fullest extent permitted by law, indemnify and hold harmless the City, its agents and employees, from and against all claims, damages, losses, and expenses (including attorneys' fees) directly caused by the negligence of the User during its use of the Concession Stand, including but not limited to claims for injury to the person or property of any employee, agent, or volunteer of User or of any third party.

13. Waiver. Except as may otherwise be specifically provided by this Agreement, failure of either the City or the User to require performance of any of the provisions of this Agreement shall not limit either party's right to enforce the provision, nor shall any waiver of any breach of any provision be construed or treated as a waiver of the provision itself or any other provision.

14. Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses: City: City of Lansing, Attn: City Administrator, 800 First Terrace, Lansing, KS 66043

User: _____

15. Jurisdiction and venue. This Agreement shall be governed by the laws of the State of Kansas, and the parties agree that venue for the resolution of any disputes whatsoever shall be in the Leavenworth County District Court, located in Leavenworth County.

16. Severability. If any term or provision of this Agreement is determined by a court to be invalid or unenforceable, such finding will not affect the remaining terms and provisions of this Agreement, which shall remain in full force and effect.

17. **Modification.** This Agreement may not be waived, modified or amended, unless in writing signed by both parties hereto.

18. **Assignment.** The User shall not make any assignment or transfer of any of its rights, obligations or duties to a third party without the express written permission of the City.

19. **Right of Entry.** The City shall have the right to enter the concession stand at any time for inspection, maintenance and access to electrical, mechanical or other systems necessary.

20. **Payment.** The User shall provide the city with payment of 10% of all sales due at the conclusion of the season along with reasonable proof of sales.

21. **Title VI.** The City of Lansing assures that no person shall on the grounds of race, color, national origin, sex, disability, age or low income status as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City of Lansing further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

22. **Insurance.** The user shall provide the city with the following insurance certificate listing the city as additionally insured:

Commercial General Liability Insurance. This insurance shall insure the contractor and shall be endorsed to name the City of Lansing, Kansas as an additional insured. The liability limits shall be not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. A \$2,000,000 per occurrence coverage policy with a per site endorsement will not require the \$4,000,000 annual aggregate.

WITNESS: the hands and the seals of the parties to this Agreement

WITNESS:

THE CITY OF LANSING, KANSAS

VENDOR

By: _____
Anthony McNeill, Mayor
City of Lansing, Kansas

By: _____
Vendor's Representative, CEO (title)
Address
City, State Zip Code

Sufficient as to form:

Gregory C. Robinson
Lansing City Attorney