

AGREEMENT FOR CONCESSION SERVICES BETWEEN WHAT'S POPPIN' GOURMET POPCORN & SWEET TREATS AND THE CITY OF POWDER SPRINGS, GEORGIA

This Agreement made this _____ day of _____, 2023, by and between What's Poppin' Gourmet Popcorn & Sweet Treats (hereafter "WPGPST") and City of Powder Springs (hereafter "the City") is for the provision of concession stand services to be provided by WPGPST to the City of Powder Springs, Georgia.

WHEREAS, the City desires to make available to the public concession services at the concession stand which it built for the linear park on the Silver Comet Trail at Richard D. Sailors Parkway, said concession stand being shown and described on attached Exhibit A and being hereafter referred to as the "Location", or the "Premises".

WHEREAS, WPGPST has made a proposal to provide such services and has been determined to be a responsible provider of such services; and

NOW THEREFORE, in consideration of mutual covenants contained herein the parties agree as follows:

A. SILVER COMET TRAIL LOCATION: WPGPST agrees to provide concession services to the public at the Location shown and described within the boundaries of the floor plan attached hereto as Exhibit "A".

B. TERM: The term of this Agreement shall be for two (2) years. However, pursuant to official code of Georgia Annotated, Section 36-60-13, this Agreement shall terminate absolutely and without further obligation on the part of the City at the close of the calendar year in which it is executed and at the close of each succeeding calendar year for which it may be renewed. The Agreement shall, however, automatically renew for the remainder of the initial two twelve (12) month periods unless the City provides notice to WPGPST thirty (30) days prior to the end of any calendar year of its intent to terminate. In addition there shall be an option to renew the Agreement for up to two (2) additional twelve month periods, to be exercised upon mutual written Agreement with all the original terms, conditions, and commissions adhered to with no deviations and providing that there have been no defaults.

C. WPGPST AGREES TO:

1. Procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of the work hereunder by WPGPST, its agents, representatives, employees or subcontractors. Said insurance coverage shall name the City as insured or additional insured, and shall provide the following minimum coverages for all occurrences,

incidents and activities at the concession stand: one (1) million dollars per occurrence, two (2) million dollars in the aggregate, and damages to premises of \$100,000.00.

2. Provide appropriate and acceptable rental and sales/concession services for the Location and any other temporary location approved by the City. Services shall include, but not be limited to, providing food, nonalcoholic beverages and food products for any permissible activity (non-motorized) on the Silver Comet Trail. The City shall have the right to approve all merchandise. No alcohol or tobacco products will be sold.
3. Hire and manage all personnel who shall be WPGPST's employees. WPGPST shall be responsible for continuous staffing to provide efficient service. All local, state and federal laws, codes and regulations regarding personnel shall be adhered to. All personnel shall maintain a clean and neat appearance.
4. Hire and/or appoint a full-time qualified and experienced manager who will be on the Premises or available to personally resolve problems during operating hours.
5. Timely pay all sales and use taxes and other taxes and fees of whatever nature applicable to the operation of the services hereunder.
6. Keep current all municipal, county, state and/or federal licenses required to perform services hereunder, and provide current copies of the same to the City Manager within thirty (30) days of the effective date of this Agreement.
7. Abide by the terms of this Agreement including any and all exhibits hereto, provided by the City of Powder Springs.
8. Submit all fees identified in Section E of this Agreement to the Parks Director on or before the tenth day following the end of each calendar month.
9. Assume financial responsibility for all improvements/modifications requested by WPGPST. Any and all such improvements must be approved by the Parks, Recreation, and Cultural Affairs director in advance.
10. Maintain the entire Premises, including the restrooms, in a neat, clean, well stocked condition at all times.
11. Purchase and erect a sign posting the days, dates, and hours of operation.

D. THE CITY AGREES TO:

1. Make periodic inspections of the Premises and equipment to determine if they are being maintained in a proper and orderly condition.

2. Provide utilities, including electricity, solid waste disposal, water, sewer, one (1) telephone line, internet connection for security system and Wi-Fi purposes, utility services, paper products, soap, and related restroom supplies.
3. Be responsible for the routine structural maintenance of the facility unless such maintenance is required as a result of damage caused by WPGPST, its employees, agents or representative.

E. FEES AND REPORTS:

YEAR (1) of Contract: WPGPST shall submit to the City on or before the 10th day of each month a fee made payable to the City in the amount of ~~-12-~~ **percent** of the gross receipts earned during the preceding calendar month for Year (1). "Gross Receipts" are defined as all transactions for cash or credit, less applicable sales tax and added gratuities, if any. Fees are not contingent on profitability of the concessions. If payment is not timely received, a 1.5% per month interest shall be assessed.

YEAR (2) of Contract: WPGPST shall submit to the City on or before the 10th day of each month a fee made payable to the City in the amount of ~~-15-~~ **percent** of the gross receipts earned during the preceding calendar month for Year (2). "Gross Receipts" are defined as all transactions for cash or credit, less applicable sales tax and added gratuities, if any. Fees are not contingent on profitability of the concessions. If payment is not timely received, a 1.5% per month interest shall be assessed. -

WPGPST shall submit a report of gross receipts earned during the preceding month on forms provided by the City. WPGPST will submit a copy of their income tax return annually. In addition, upon reasonable notice by the City to WPGPST, WPGPST shall provide to the City, its attorneys and/or agents the right to examine and make copies of the books and records relating to this Agreement, provided such examination is conducted during normal business hours and with as little disruption to the business of WPGPST as possible.

F. CANCELLATION BY THE CITY: In addition to the cancellation provisions provided under the term paragraph of this Agreement, the City reserves the right to terminate this Agreement should any of the following occur:

1. Institution of proceedings in voluntary bankruptcy by WPGPST.
2. Institution of proceedings of involuntary bankruptcy against WPGPST if such proceedings continue for a period of ninety (90) days.
3. Assignment by WPGPST for the benefit of creditors.
4. Abandonment by WPGPST for a period of seven (7) days, excluding acts of God.
5. Total or partial destruction of premises by fire or any other act of God.
6. Failure of WPGPST to follow any and all requirements of this Agreement, including payment of sums due.

The City shall provide WPGPST with thirty (30) days written notice of its intent to terminate. If WPGPST is able to cure the reason for termination to the satisfaction of the City within such thirty (30) day period, termination will not result. If WPGPST persistently fails to abide by the terms of the Agreement (i.e., two termination proposals in one twelve month period), the City may terminate the Agreement immediately with no right of WPGPST to cure.

G. CANCELLATION BY WPGPST: WPGPST shall have the right to terminate the Agreement upon thirty (30) days written notice sent to the City via registered mail, upon occurrence of any of the following:

1. Issuance by a court of competent jurisdiction of any permanent injunction substantially restricting the use of the facilities for commercial purposes, with the injunction remaining in force for ninety (90) calendar days or more.
2. A breach by the City of any of the terms or conditions of the Agreement, and failure of the City to remedy such breach during a period of thirty (30) calendar days after receipt of written notice sent via registered mail of existence of such breach.
3. The assumption by the United States Government or any agency thereof, or any other governmental agency, of the operation, control or use of the concessions or any substantial part thereof in such a manner as to substantially restrict WPGPST's operations for a period of ninety (90) calendar days or more.

H. LICENSING: WPGPST shall be responsible for securing all necessary permits and licenses for the operation of the sales/rental facility. These shall include, but not be limited to, building permits, health permits, food service inspections, and City occupational licenses.

I. INSURANCE: WPGPST shall provide copies of insurance policies in the form and amounts required by Paragraph "C" above.

J. HOURS OF OPERATION: WPGPST agrees to use and operate the Premises on a daily basis and for special events. Service will be required seven (7) days a week, including holidays, excepting Thanksgiving, Christmas Eve, and Christmas Day, unless otherwise agreed to in writing by the Parks, Recreation, & Cultural Affairs Director. Sufficient attendants shall be available to provide paramount service. WPGPST shall provide the City with a schedule of intended hours of operation. The proposed staff schedule shall be made available for review and approval by the City. WPGPST shall submit to the City each month a schedule of intended hours of operation for the next month. WPGPST will be notified promptly of approval or disapproval.

K. ASSIGNMENT: WPGPST shall not sub-lease the Premises in whole or part; assign the Agreement or any rights or obligations thereunder to any other person, or change ownership or name without first obtaining the City's written approval.

L. GOVERNING LAW AND VENUE: The provisions of this Agreement shall be governed by the laws of the State of Georgia. If any dispute arises with regard to interpretation or meaning of

the Agreement which cannot be resolved amicably it will be settled by litigation. Both parties agree exclusive venue shall lie in Cobb County, Georgia.

M. SEVERABILITY: Should any portion of this Agreement be deemed unconstitutional or otherwise enforceable by a Court or body of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.

**What's Poppin' Gourmet Popcorn
& Sweet Treats**

By: _____

Date: _____

Attest: _____

CITY OF POWDER SPRINGS

By: Albert Sturman

Date: 10/2/23

Attest: Jelly