



This Concession Agreement (this “**Agreement**”) is between:

Bend Park and Recreation District (the “**District**”), an Oregon special district
799 SW Columbia Street
Bend, OR 97702

and

<agreeing organization name> (the “<**short-name**>”)
<street address>
<city, state zip code>

District and <short-name> (each a “**Party**” and, collectively, the “**Parties**”) agree as follows:

1 Purpose

- (a) The District issued Informal Request for Proposals (“**RFP**”) dated <Month DD, YYYY> seeking proposals for Alcoholic Beverage Concessions. Contractor submitted a proposal dated <Month DD, YYYY> in response to the District’s RFP offering to provide the District with the goods and services (“**Proposal**”). Contractor is the successful proposer.
- (b) The District and Contractor now desire to memorialize the terms and conditions pursuant to which Contractor will provide the goods and services.
- (c) The District makes no representation or guarantee that any specific amount of sales will be made under this Agreement.

2 Agreement Term

This Agreement shall be effective upon the Effective Date and the term shall continue through <Month DD, YYYY> (the “**Original Term**”). The District may elect to renew this Agreement for <number> additional terms of one-year each. The District may exercise its renewal right by written notice to Contractor not less than 60 days prior to the last day of the then-expiring term. Timely delivery of a renewal notice shall make this Agreement binding for one additional one-year term without further action of the Parties. The renewal term shall commence on the day immediately following the expiration of the immediately preceding term. The terms and conditions for the renewal term shall be identical with the immediately preceding term except that the District shall no longer have any renewal right that has previously been exercised.

3 Agreement Price

In consideration of the District allowing Contractor to sell the goods at The Pavilion, 1001 Southwest Bradbury Way, Bend, OR (“**The Pavilion**”), Contractor shall pay the District commission of <##>% of all gross sales.

4 **Payment Terms**

Contractor shall remit payment in accordance with section 3 no later than the 10th of each month to the District, at the District Office, Attention: Accounts Receivable, 799 SW Columbia Street, Bend, OR.

5 **Agreement Documents**

(a) For purposes of this Agreement, the “**Agreement Documents**” consist of the following documents listed in order of precedence for the purpose of determining conflicting provisions in the Agreement Documents except that in the event of overlap or inconsistency between the terms of the Agreement Documents, the term that provides a better quality or quantity of service to the District shall control. To the extent that any terms of a Contractor’s document conflicts with terms of this Agreement (including, without limitation, the attached Exhibit A or the District’s RFP), such terms are void and are expressly and wholly subject to the terms of this Agreement.

- (1) This Agreement;
- (2) The Terms and Conditions attached as Exhibit A;
- (3) Statement of Work attached as Exhibit B;
- (4) The District’s Informal Request for Proposals, including all Addenda, if any, issued <Month DD, YYYY> incorporated by reference as Exhibit C; and
- (5) Contractor’s Proposal dated <Month DD, YYYY> submitted in response to the District’s RFP incorporated by reference as Exhibit D.

(b) **Definitions**

For purposes of this Agreement, the following definitions shall apply:

“**Alcoholic Beverage**” means craft beer or cider (each as defined in this section (b)) containing more than 0.5 but not more than 6.5 percent alcohol by volume and capable of being consumed by a human being.

“**Beer**”, “**Ale**”, “**Porter**”, “**Stout**”, and similar beverages means an alcoholic beverage obtained by the fermentation of grain that contains not more than 6.5 percent alcohol by volume.

“**Cider**” means an alcoholic beverage made from the fermentation of the juice of apples, pears, or other fruit that contains not more than 6.5 percent alcohol by volume.

“**Craft**” and “**Craft Brewer**” means a brewer with annual production of not more than 6 million barrels of beer or cider.

“**OAR**” means Oregon Administrative Rules.

“**OLCC**” means the Oregon Liquor and Cannabis Commission.

“**ORS**” means Oregon Revised Statutes.

“**Services**” means the goods and services provided by the Contractor as requested by the District’s RFP, the Contractor’s Proposal, and the attached Statement of Work.

6 **Miscellaneous**

- (a) **Entire Agreement; Signatures.** The Agreement Documents contain the entire understanding of the Parties regarding the subject matter of this Agreement and supersede all prior and contemporaneous negotiations and agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement. This Agreement may be signed in counterparts. An electronically transmitted signature page will be considered an original signature page. At the request of a Party, the other Party will confirm an electronically transmitted signature page by delivering an original signature page to the requesting Party.
- (b) **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- (c) **Waiver.** Failure of either Party to enforce any provision of this Agreement shall not constitute waiver of the right to require such performance in the future nor of the right to enforce any other provision of this Agreement. Payment by the District shall not constitute the District’s waiver of any rights under this Agreement.
- (d) **Time.** Time is of the essence in the performance of all obligations under this Agreement. Contractor shall at all times carry on the Services diligently, without delay and punctually fulfill all requirements of the Services.
- (e) **Amendments.** This Agreement may only be amended by written instrument, signed by both Parties.
- (f) **Assignment.** Except for portions of the Services performed by Contractor’s employees or subcontractors approved by the District, this Agreement is not assignable or transferable by Contractor without the District’s prior written consent, which may be withheld in the District’s sole discretion, and any purported assignment or transfer without the District’s consent shall be void.
- (g) **Further Assurances; Survival.** The Parties will sign such other documents and take such other actions as are reasonably necessary to further effect and evidence this Agreement. The termination of this Agreement, regardless of how it occurs, will not relieve a Party of obligations that have accrued before the termination. All Contractor representations, warranties, covenants, and obligations contained in this Agreement (including, without limitation, Contractor’s indemnity obligations) will survive the termination of this Agreement.
- (h) **Governing Law; Venue.** This Agreement shall be interpreted and administered under the laws of the State of Oregon without regard to conflict of laws principles. Any claim or dispute that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- (i) **Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing Party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing Party's reasonable attorneys' fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP (Oregon Rules of Civil Procedure) 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

- (j) **Interpretation.** As used in this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, governmental agency, political subdivision, or any other entity, as context may require. All pronouns, and any variations, will be deemed to refer to the masculine, feminine, or neutral, as the identity of the person may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The word "days" means calendar days unless expressly provided otherwise. The titles, captions, or headings of the articles and sections in this Agreement are inserted for convenience of reference only and are not intended to be a part, or to affect the meaning or interpretation, of this Agreement.

- (k) **Effectiveness and Date.** This Agreement will become effective when all Parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last Party to sign it (as indicated by the date associated with that Party's signature) (the "**Effective Date**"). If a Party signs this Agreement but fails to date their signature, the date the other Party receives the signing Party's signature will be deemed to be the date the signing Party signed this Agreement.

<(signatures on following page)/(signatures to immediately follow)>

The Parties are signing this Agreement on the date stated below that Party's signature. The signatures of the Parties authorized representatives below acknowledge that they have read and understood this Agreement and agree to be bound by its terms and conditions:

<CONTRACTOR>

BEND PARK AND RECREATION DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



1 Compliance with Applicable Law

Throughout the term of this Agreement, Contractor shall comply with all laws, rules, codes, regulations, policies, and applicable requirements imposed by governmental authorities having jurisdiction over the Services.

2 Indemnification and Hold Harmless

- (a) Contractor agrees to hold harmless, indemnify, and defend the District, and its officers, directors, employees, agents, volunteers, and contractors, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature (including, without limitation, reasonable attorneys' fees and settlement costs) resulting from, arising out of, or related to:
- (1) Any misrepresentation, breach or alleged breach of any representation, warranty, agreement, or obligation under this Agreement by Contractor or its affiliates or subcontractors;
 - (2) Any actual or alleged performance or nonperformance of the Services;
 - (3) Any claim or liability arising from any contract between Contractor and any third party, whether or not made to effectuate the purposes of this Agreement, and regardless of whether Contractor enters into such contracts as the District's agent or as principal;
 - (4) Any actual or alleged violation of any applicable law by Contractor;
 - (5) Taxes, together with interest and penalties, that are Contractor's responsibility under this Agreement;
 - (6) Infringement or alleged infringement of any patent, copyright, trademark, trade secret, right of privacy, right of publicity, or other personal or proprietary right of a third party in connection with the Services; and
 - (7) Any other claim related to the Services and due to any act, negligence, willful misconduct, or omission by Contractor or its affiliates or subcontractors or their respective officers, directors, employees, suppliers, subcontractors, agents, successors, or affiliates.

3 Independent Contractor

Contractor is an independent contractor, and not an employee, of the District. Contractor is free from direction and control over the means and manner of performing the Services, subject only to the right of the District to specify the desired results, and the District reserves the right to evaluate the quality of the Services. The District will not withhold any taxes from any payments made to Contractor, and Contractor will be responsible for paying all taxes arising out of or resulting from Contractor's performance of the Services, including, without limitation,

income, social security, workers' compensation, and employment insurance taxes. Contractor is solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services. This Agreement does not create a joint venture, partnership, or agency relationship between the District and Contractor. Contractor does not have the authority to bind the District to any contract or other agreement or represent to any person that Contractor is an agent of the District. Contractor has the authority to hire other persons to assist Contractor in performing the Services (and has the authority to fire such persons). The District shall neither have nor exercise any control or direction over the means or manner by which Contractor or its employees under its control shall perform their work and other functions.

4 **Force Majeure**

Neither Party shall be responsible for any nonperformance or delay in the performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, government-imposed restrictions, or any other cause which is beyond the Party's reasonable control (each a "Force Majeure Event"). Such Party shall, however, promptly notify the other Party of any Force Majeure Event and shall make all reasonable efforts to perform such obligation as soon as reasonably possible after the end of such cause for delay or nonperformance. No Force Majeure Event shall commence or be deemed to have occurred unless, within 10 days of the event constituting the Force Majeure Event, the Party claiming such delay has provided written notice to the other specifying the circumstances that the claiming Party contends constitutes a Force Majeure Event. Notwithstanding the foregoing, the District may terminate this Agreement upon written notice to Contractor after reasonably determining that the Force Majeure will likely prevent successful performance of this Agreement.

5 **Termination**

- (a) **Mutual Consent.** This Agreement may be terminated at any time by mutual written agreement of the Parties.
- (b) **Termination for Convenience.** The District may, at its sole discretion, terminate this Agreement, in whole or in part, upon 30 days' written notice to Contractor.
- (c) **Termination by District.** The District may, at its sole discretion, terminate this Agreement, immediately upon written notice to Contractor, or on such later date as the District may establish in its notice, upon the occurrence of any of the following events:
 - (1) federal, state, or local laws, rules, regulations, ordinances, or guidelines are modified or interpreted in a way that the goods or services provided under this Agreement are prohibited;
 - (2) contractor is in default of this Agreement beyond all applicable notice and cure periods;
or
 - (3) as otherwise provided in this Agreement.

- (d) **Effect of Termination.** Upon receipt of written notice of termination: (1) Contractor shall stop all performance under this Agreement as directed by the District; and (2) Contractor shall pay to the District the commission reasonably incurred prior to such termination.

6 Events of Default

- (a) The occurrence of any of the following events shall constitute a default by Contractor under this Agreement:
- (1) Contractor institutes, or has instituted against it, insolvency, receivership, or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - (2) Contractor no longer holds any license or certificate that is required for Contractor to perform its obligations under this Agreement and Contractor has not obtained a replacement license or certificate within 14 days after receipt of notice of the default from the District; or
 - (3) Contractor fails to perform any covenant, warranty, or other obligation under this Agreement, including failure to perform any obligation within the time specified or any extension of that time, and Contractor fails to cure such nonperformance within 14 days after receipt of written notice from the District; provided, however, if the default is of such a nature that it cannot be completely remedied within the 14-day cure period, Contractor shall not be in default if Contractor begins correction of the default within such 14-day period and diligently proceeds in good faith to effect the remedy as soon as practicable.

7 Notices

All notices or other communications required or permitted by this Agreement must be in writing, delivered to the Parties at the addresses set forth above, or such other address as a Party may designate by written notice to the other Party. Notices are considered delivered upon actual receipt if delivered personally, by fax (with electronic confirmation of delivery), by email (with hard copy delivered within two business days), or by a nationally recognized overnight delivery service; or at the end of the third business day after the date deposited in the United States mail, postage pre-paid, certified, return receipt requested.

8 Insurance

- (a) **Insurance Coverages.** Contractor shall obtain and maintain throughout the term of this Agreement, the following insurance coverages:
- (1) **General Liability.** Commercial general liability insurance (occurrence form), including coverage for bodily injury, property damage, independent contractors, contractual liability (covering Contractor's indemnification obligations under this Agreement), personal injury, products and completed operations, and liquor liability, with limits of

not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Contractor's liability insurance shall be primary and will not seek contribution from any insurance or self-insurance maintained by the District.

- (2) **Auto Liability.** Applicable to any automobile assigned to or used in the performance of the Services, whether owned, hired or non-owned, with a limit of liability of not less than \$1,000,000 combined single limit per accident.
 - (3) **Workers' Compensation.** Statutory Limits. Contractor shall comply with ORS 656.017, unless exempt under ORS 656.126, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers including employers' liability coverage with limits not less than \$500,000. No workers' compensation insurance has been or will be obtained by the District for Contractor or Contractor's employees and subcontractors.
- (b) **Additional Insured.** Contractor shall name the District, its officers, employees, and agents as additional insureds on all liability policies other than errors and omissions and workers' compensation policies.
 - (c) **Notice.** There shall be no cancellation, material change, potential exhaustion of aggregate limits, or non-renewal of insurance coverage(s) without 30-days written notice from Contractor, or Contractor's insurer(s), to District. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement by District.
 - (d) Contractor shall, within 5 days after execution of this Agreement and prior to commencement of any Services, furnish the District with original certificates of insurance, including the additional insured and all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause), and a copy of the declarations and endorsement page of the commercial general liability policy, listing all policy endorsements. Contractor shall deliver new certificates, endorsements, and declarations and endorsement pages to the District within 5 days after replacement or renewal of any required insurance policy. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section 8, at any time. Failure to obtain the required documents prior to the Services beginning shall not waive the Contractor's obligation to provide them. Any failure of Contractor to provide evidence of required insurance shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement by District.
 - (e) Contractor understands that the stated limits of liability are the minimum acceptable by the District, Contractor further understands it is the responsibility of Contractor to determine the appropriate limits of liability in excess of the District's minimum acceptable limits to meet Contractor's risk.

- (f) If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

9 Non-Discrimination

Contractor shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race; color; gender; age; religion; ancestry, national origin; U.S. military veteran status; marital status; sexual orientation; disability; medical condition; source of income; or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.

10 Warranty

Contractor will perform the Services to the best of Contractor's ability, diligently, and without delay, in good faith, in a professional manner in accordance with the highest professional standards of the industry, free from any material errors, omissions, or defects, and in strict compliance with the terms and conditions of this Agreement.

11 Continuing Obligation

Notwithstanding the expiration date of this Agreement, Contractor is obligated to fulfill its responsibilities until warranty, guarantee, maintenance, and parts availability requirements have completely expired.

12 Identification of Employees

While on District property, Contractor shall ensure that its employees wear identifying uniforms or other designation of identity (e.g. identification badge, hat, and/or coat with Contractor's logo and/or name).

13 Public Contracting Requirements

- (a) As required by ORS 279B.045, Contractor represents and warranties that Contractor has, and will throughout the duration of this Agreement, comply with the tax laws of Oregon or a political subdivision of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Contractor's failure to comply with the tax laws of Oregon or a political subdivision of Oregon before Contractor executed this Agreement or during the term of this Agreement is a default for which the District may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law.
- (b) As required by ORS 279B.220, Contractor shall: (1) make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the Services provided for in this Agreement, (2) pay all contributions or amounts due the Industrial Accident Fund from Contractor or Contractor's subcontractor(s), if any, incurred in the performance of this Agreement, (3) not permit any lien or claim to be filed or prosecuted against the District on

account of any labor or material furnished, and (4) pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- (c) As required by ORS 279B.230, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (d) As required by ORS 279B.235(1)(a), Contractor shall not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, Contractor shall pay the employee at least time and a half pay for: (1) all overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and (2) all work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020.
- (e) As required by ORS 279B.235(1)(b), Contractor shall comply with the prohibition set forth in ORS 652.220. Contractor's compliance with ORS 652.220 is a material element of this Agreement, Contractor's failure to comply is a breach that entitles the District to terminate this Agreement for cause.
- (f) As required by ORS 279B.235(1)(c), Contractor shall not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and Contractor shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- (g) As required by ORS 279B.235(2), Contractor shall give notice in writing to employees who perform any work in relation to this Agreement, either at the time of hire or before work begins on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

– END OF EXHIBIT A - TERMS AND CONDITIONS –