

**CITY OF MARIANNA AGREEMENT FOR
PARK FOOD CONCESSION**

THIS AGREEMENT, is made and entered into this 02/08, 2016,
Between the City of Marianna, a municipal corporation of the State of Florida hereinafter referred to
as the "City," and Scott Phelps, hereinafter referred to as "Concessionaire."

WITNESSETH:

WHEREAS, the City is interested in affording individuals using the publicly owned parks in
the City the opportunity to purchase concession type food and beverage products; and

WHEREAS, the City is interested in ensuring the safety, quality and handling of concession
products; and

WHEREAS, the concessionaire is willing and able to operate such a food and beverage
concession in a publicly owned park in the City, and

WHEREAS, the City and the Concessionaire have reached an agreement for providing such
food and beverage concession in the City. Now Therefore,

IT IS HEREBY AGREED AS FOLLOWS:

1. **CONCESSION RIGHTS** - The City grants to the Concessionaire on the terms and conditions hereafter specified the right and privilege to sell food and beverages within confines of the MERE Complex Park owned by the City of Marianna, subject to approval by the City of the food and beverage or other products to be sold by the Concessionaire. **In consideration therefore, Scott Phelps / Concessionaire agree to pay the City of Marianna a flat rate of \$650.00 a month.**
2. **TERM OF CONCESSION CONTRACT** - The terms of this contract shall be for the period beginning on **FEBRUARY 8, 2016** and ending on **JANUARY 1, 2021**, subject to terms and conditions of this Agreement. The term of this Agreement is for five (5) years with the option to renew at the City's request. Should the City decide not to renew the Agreement, the City will provide 60 days notice to the Concessionaire, prior to the end of the Agreement.
3. **RESERVATION OF RIGHTS BY CITY** - The City hereby expressly reserves the right, in connection with this Concession Contract, to make rules, regulations and requirements relating to the location and management of any and all of the premises occupied by and used by the Concessionaire hereunder, and, further, reviewing and approving the prices at which food and beverages or services are sold to the public.
4. **TERMINATION FOR FAILURE TO COMPLY** - The failure on the part of the Concessionaire to comply with any of the provisions set forth in this contract, or to obey, perform or comply with any such rules, regulations and requirements now existing or hereafter to be made, after notice from the City, or the violation of any Ordinance of the City of Marianna by the Concessionaire, or Jackson County of any law of the State of Florida, shall be sufficient grounds for the termination by the City of this contract and all rights of the Concessionaire therein or thereafter; and there is hereby expressly reserved to the City the right and power so to terminate the same prior to the expiration of the term hereinabove specified upon any of the grounds herein provided; and the Concessionaire hereby expressly waives the right to claim or recover any damages on account of such termination, against the City.
5. **LOCATION OF SALES IN PARK** - The location of points of sale, methods of sale, and prices charged for commodities sold or business transacted under the provisions of this contract at all times shall be subject to the supervision, direction and approval of the City.
6. **OBLIGATIONS OF CONCESSIONAIRE** - The Concessionaire shall comply with the following:

- a. The Concessionaire shall assume full responsibility for staffing and operating facilities and provide concession services and have the concession business open during the requested or approved time periods during the calendar year or term of this contract, and any extension thereof, with amendments there from being mutually approved as provided herein below.
- b. The Concessionaire shall require that all persons working in said concession shall be neat and clean in appearance.
- c. The Concessionaire shall provide all routine custodial services necessary to keep the assigned area clean; keep papers and refuse picked up and removed from the premises, in and around the area; and upon failure to do so, after due notice as provided herein, the City shall have the right to have the area cleaned, provided that the Concessionaire shall reimburse the City for any and all costs and expenses incurred by the City in cleaning the area, including the costs involved in the use of City personnel to clean the assigned area and charge said labor and disposal costs to the Concessionaire.
- d. If a permanent city facility is used, the Concessionaire shall provide repairs, replacements or major maintenance to the concession premises. This will be done to the Park Department's standards and with materials and methods approved by the City.
- e. The Concessionaire shall allow the City, and any representative from the City, to enter and/or inspect the Concessionaire's area of operations at any time, including inspection of and/or entry into any structures, trailers, vehicles or other facilities used by the Concessionaire for the purposes of the concession contract.
- f. No liquor, tobacco or illegal substances shall be handled, sold or allowed in or about said assigned concession area, or in any areas over which the Concessionaire shall have a contract interest or right.
- g. All deliveries of merchandise shall be made at a time as not to disrupt scheduled activities.
- h. The Concessionaire shall devote as much of his/her time to this concession as may be necessary to provide first-class service to the patrons. A schedule indicating the days and hours the concession shall be open for business shall be determined and approved by the City. Any adjustments or amendments to the schedule must be agreed upon by both parties. All closures, regardless of the circumstances, must be approved by the City or a representative thereof. The City shall supply the Concessionaire a schedule of activities at the site.
- i. A menu of the products the Concessionaire intends to sell will be given to and approved by the City. Any deletions from the original menu must first be approved by the City.
- j. The Vendor shall comply with the City of Marianna Policy for Concession / vending operations in public parks as follows:

CONCESSION SERVICES AT THE CITY OF MARIANNA MERE COMPLEX

- 1) On all public parks and public park property within the corporate limits or owned by the City, the operator of a food concession or vending service (vendor) shall enter into an agreement for use of park property for concession / vending purposes, or shall submit to the City a copy of such a lease or other agreement executed by the owner of the property, if not owned by the City, for City approval.
- 2) The site and location(s) of concession / vending operations shall be as approved by the City Manager or designee.
- 3) Vending operations are precluded from operations in all public rights-of-way.

- 4) The Vendor shall be at a specific designated location - "roving" (i.e., moving from one location to another) shall not be allowed unless specifically permitted, where the locations, routes and times are spelled out in the lease or other agreement.
- 5) Vending apparatus / equipment shall be maintained in a safe and functional condition at all times.
- 6) All signs shall be affixed to the vending apparatus/facilities and shall not exceed eight square feet in total signage.
- 7) The Vendor shall submit a schedule to the City outlining the hours and days of operation. The City Manager or designee shall have the discretion to approve and/or modify the schedule based on peak visitor hours and potential impacts to the park facilities and surrounding neighborhood.
- 8) Any lighting associated with the concession / vending operations shall be of such intensity to avoid glare or visual distraction. Likewise, the lighting shall be directed downward or in another direction so as to avoid glare or visual distraction.
- 9) The Vendor shall include provisions for litter containment and / or including recycling options, and cleanup of sales items or packaging, in and about the area of such concession / vending operation.
- 10) Excessive noise shall not be permitted. Requests for music or other use of audio equipment shall be approved only if the City Manager or designee finds that the noise resulting there from will not cause a disturbance to the use of the park by others, and that the resulting noise will not cause a disturbance to the surrounding neighborhood.
- 11) The Vendor shall be responsible for the security of Vendor's concession / vending apparatus/equipment.
- 12) The Vendor shall be responsible for installing any additional electrical and utility connections, including the obtaining of any permits as required. All utility connections and related facilities shall be underground or otherwise visually screened, and shall be located in a manner consistent with public safety.
- 13) Vendor shall arrange for access to a restroom for the operator; such facility for any vendor with food service shall have hot and cold running water.
- 14) Food service operations may require a permit which is issued separately by the Jackson County Health Department.

7. LICENSES, PERMITS AND INSURANCE - It shall be the responsibility of the Concessionaire to obtain all business licenses and food handling permits as required by the City, County and State. The Concessionaire shall obtain a comprehensive liability insurance policy of not less than \$100,000 combined bodily injury and property damage and shall have a certificate of insurance issued to the City of Marianna naming the City an additional insured. Such certificate shall cover the total activities of the Concessionaire with respect to this agreement. Thirty days prior notice is required by the City of Marianna on cancellation. The Concessionaire shall provide the City and keep the City supplied with a current insurance certificate.

8. INDEMNIFICATION - The Concessionaire agrees to indemnify and save harmless the City, its officers, employees and agents, from any and all claims, actions, judgments, losses, costs (including reasonable attorney fees) and damages whatsoever; including claims arising out of, in connection with, or incident to the work of this contract, except caused by the sole negligence of the City.
9. EQUIPMENT - The Concessionaire will provide all equipment to include a cash register (with tape), screens, extension cords, fixtures, stoves, refrigeration units, soft drink dispensers and any of the necessary equipment to furnish proper services to the public. This applies only to such space or spaces as are occupied by the Concessionaire for concession purposes. The City is not responsible for the maintenance, repair or replacement of this equipment.
10. ASSIGNMENT PROHIBITED WITHOUT CONSENT - Neither party to this contract shall assign or sublet, or otherwise transfer any interest, right acquired therein or thereto by operation of law or otherwise, without the consent in writing of the City thereto having been first had and obtained, which consent shall be within the City's absolute and unfettered discretion.
11. ADVERTISEMENT - UNNECESSARY NOISE - Calling out of wares by the Concessionaire and/or his/her employees, representatives and assigns must be done in a quiet manner, and no unnecessary loud noises will be permitted. No advertisement, sign, notice, poster or other advertising or any kind of character whatsoever shall be placed, affixed, distributed and/or used in or upon any part of the park without the prior written approval of the City.
12. REMOVAL OF MERCHANDISE – EQUIPMENT - At the end of each season, the Concessionaire shall, within five (5) days, remove all merchandise and equipment from the premises and see that the premises are left in the condition in which they existed at the commencement of the season.
13. VACATION OF PREMISES - At the expiration of the term of this contract, or upon the prior termination thereof, in the manner or for any of the causes herein provided, the Concessionaire agrees to promptly vacate and surrender to the City all premises occupied or used by the Concessionaire hereunder, without any right or claim to reimbursement, compensation, or remuneration of any kind.
14. NONDISCRIMINATION - Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, gender, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.
15. COSTS AND ATTORNEY'S FEES - If, by reason of any default or breach on the part of either party to hereto, in the performance of any of the provisions of this agreement, a legal action is instituted, the prevailing party shall be entitled to all reasonable costs and attorney's fees in connection therewith. It is agreed that the venue of any legal action brought under the terms of this agreement shall be in Jackson County, State of Florida.

16. CONTRACT ADMINISTRATION - This Contract shall be administered by Scott Phelps, on behalf of the Concessionaire and by the City Manager or designee on behalf of the City. Any written notices required by terms of this Contract shall be served or mailed to the following address(es):

If to the City:

City of Marianna, City Manager
2898 Green Street
Marianna, FL 32446
850-482-4353

If to the Concessionaire:

Scott Phelps
2886 Chase Way
Marianna, FL 32446
850-643-6089

17. CONSTRUCTION AND VENUE - This Contract shall be construed in accordance with laws of the State of Florida. In event of any litigation regarding the construction or effect of this Contract, or the rights of the parties pursuant to this Contract, it is agreed that venue shall be Jackson County, Florida.

18. MERGER AND AMENDMENT - This Contract contains the entire understanding of the parties with respect to the matters set forth herein and any prior or contemporaneous understandings are merged herein. This Contract shall not be modified except by written instrument executed by all parties hereto

IN WITNESS WHEREOF, the parties hereto caused this contract to be executed on the date and year first above written

CONCESSIONAIRE

By: Scott Phelps
Scott Phelps

CITY OF MARIANNA, FLORIDA

By: Travis H. Ephriam
Travis H. Ephriam
Mayor

ATTEST

By: Kimberly J. Applewhite
Kimberly J. Applewhite
City Clerk

