

**2018 FOOD TRUCK AGREEMENT**  
**Between the City of Des Moines and**  
**\_\_\_\_\_ for**  
**Food and Beverage Sales in the City of Des Moines Marina**

This is an **Agreement** between the **City of Des Moines**, a municipal corporation of the State of Washington (the “**City**”), and \_\_\_\_\_, **dba** \_\_\_\_\_ (the “**Concessionaire**”).

In consideration of the mutual covenants and agreements set forth or attached and incorporated herein, the parties agree as follows:

**1. Definitions.** The words and phrases used in this agreement shall have the following meanings:

“Concession” means sales and service made directly to individuals through either fixed or portable stands, vehicles, vending machines and/or vendors in accordance with the terms of this Agreement.

**2. Grant of Concession, Premises, and Term.** The City grants to the Concessionaire, for a month to month period commencing on the date this agreement is signed by both parties and ending on December 31, 2018, the non-exclusive right and privilege to sell food and beverages within The Des Moines Marina on days and times approved by the City. The Concessionaire will park a food truck at a location specified and approved by the City pursuant to confirmed reservations on the City’s food truck website reservation system. This Grant of Concession is subject to all of the terms and conditions as set forth in this agreement.

**3. Adjustments or Changes to Concession Premises.** The City retains the right from time to time during the term hereof to change the location or use of areas designated for concession functions. If such relocations or adjustments are required the parties shall cooperate so that such changes shall not unnecessarily interrupt the quality and quantity of services rendered by the Concessionaire or damage the business of the Concessionaire.

**4. Concession Fee/Percentage Payments =.** Concessionaire shall pay to the City \$30 per meal slot reservation per day pursuant to confirmed reservations on the City’s food truck website reservation system.

**5. Concessionaire Payments and Reports.** Payment shall be made through the website at the time of reservation. No refunds will be provided.

**6. Equipment.** The Concessionaire shall maintain adequate equipment to service all concession activities during the term of this agreement. All such equipment shall be and remain the property of the Concessionaire. All equipment placed on the premises shall bear the name of the Concessionaire and a statement that said equipment is the property of the Concessionaire.

**7. Quality and Price Control.** The Concessionaire shall provide the public with concession facilities, food and beverage service of high quality and shall comply with such standards of quality as may from time to time be adopted by the City.

**8. Personnel.** The Concessionaire shall provide an adequate staff, trained in food handling and in courteous, efficient, sanitary service to patrons of the City. Persons handling and vending food and beverage products shall have a valid food handler's license and comply with all requirements of the State and City Code with regard to food preparation and service.

**9. Use of Premises.** The Concessionaire shall not use the concession premises for any purpose other than herein specifically designated without prior written consent of the City.

**10. Utilities/Garbage.** The Concessionaire shall be responsible for the disposal of all garbage and trash. If exterior power is required it can be purchased and contracted by month. Power is available at a cost to the Concessionaire if required. Concessionaire will be required to provide all their own electrical cables from Power tower to the vehicle.

**11. Signs and Advertising Media.** The Concessionaire shall hang no signs or other advertising or decorative materials, either indoors or outdoors, without prior approval of the City. The Concessionaire shall not use any advertising within the concession premises that shall be deemed objectionable by the City, such as loudspeakers, phonographs or radio broadcasts.

**12. Interruption of Event or Utilities.** The City shall not be liable for a cancellation of any event scheduled at the concession premises and shall not be liable in damages or otherwise should the furnishing of utilities or the holding of events be interrupted by fire, accident, strike, riot, Act of God, the making of necessary improvements or repairs, or any other causes beyond the control of the City.

**13. Reserved.**

**14. Assignment or Sub-Concessions.** The Concessionaire shall not assign or transfer this agreement or any interest therein, nor shall this agreement or any interest therein be assignable or transferable by operation of law or by process or proceeding of any court, or otherwise, without the consent of the City.

**15. Independent Contractor.** The Concessionaire is an independent Contractor for the performance of services under this Agreement. Nothing in this Agreement shall be construed to create the relationship of employer and employee between the parties.

**16. Non-Exclusive Right.** This Agreement does not grant Concessionaire an exclusive right to distribute its products. The City reserves the right to grant to other persons or entities any of the rights contained herein or otherwise.

**17. Liability Insurance.** The Concessionaire shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Concessionaire, its agents, representatives, employees or subcontractors.

The Concessionaire shall provide a Certificate of Insurance evidencing:

- a) Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- b) Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion; collapse and underground (XCU) if applicable; and employer's liability.
- c) Any payment of deductible or self-insured retention shall be the sole responsibility of the Concessionaire. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on the behalf of the Concessionaire and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request a certified copy of the insurance policies. The Concessionaire's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Concessionaire's insurance shall be primary insurance as respect the City and the City shall be given thirty (30) days prior written notice of any cancellation, suspension, or material change in coverage.

**18. Indemnification.** The Concessionaire shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Concessionaire's performance of this Contract, except for that portion of the injuries and damages caused by the City's sole negligence.

In the event that the City elects to defend itself against any claim or suit arising from any injury, death, or damage, the Concessionaire, in addition to providing indemnification and holding the City harmless as set forth above, shall indemnify the City for all expenses incurred by the City in defending such claim or suit, including reasonable attorney fees.

**19. Performance Standards.** Concessionaire's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance.

**20. Notices.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to:

- (a) City of Des Moines Attn. Shannon Kirchberg  
22030 Cliff Ave. South  
Des Moines WA 98198  
(206) 870-9370
  
- (b) \_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

**21. City Representative.** The City representative responsible for administering the services of the Concessionaire, for providing necessary information for and direction of the Concessionaire's services, and for reviewing, monitoring and approving the quality and quantity of such services is Events and Facilities Manager Shannon Kirchberg.

**22. Disputes.** Any dispute concerning questions not disposed of by agreement shall be referred for determination to the City Manager. The City Manager's decision in the matter shall be final and binding upon the parties to this Agreement; provided, however, that dispute resolution procedures are available under Section 25.

**23. Termination.** Either party may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other party. Any such notice shall be given to the address specified above. The City may terminate this Agreement immediately if reasonable cause exists for the termination.

**24. Non-Discrimination.** The Concessionaire agrees not to discriminate against any customer, employee, or applicant for employment, subcontractor, supplier or

materialman, because of race, color, creed, religion, national origin, marital status, sexual orientation, sex, age, or handicap, except for a bona fide occupational qualification.

**25. Mediation/Arbitration.** If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions or the City Manager, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a qualified mediator before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through mandatory arbitration which shall be conducted under the American Arbitration Association's Rules. The arbitrator may be selected by agreement or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

**26. Taxes and Licenses.** The Concessionaire will be solely responsible for the payment of any and all applicable taxes and licenses related to the concession services provided under this Agreement and if such taxes and licenses are required to be passed through to the City by law, the same shall be duly itemized on any billings submitted to the City by the Concessionaire. Prior to the commencement of this agreement, the Concessionaire shall obtain a Mobile Itinerant Vendor license from the City of Des Moines and all other permits and licenses required for the lawful operation of Concessionaire's business.

**27. Entire Agreement.** This Agreement represents the entire integrated Agreement between the City and the Concessionaire, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

**28. Conflicts.** The City reserves the right to require the Concessionaire to close concessions or eliminate items from its menu where such concessions and/or items, in the judgment of the City, conflict with other functions being carried on at the concession premises.

**29. No Waiver.** Failure of the City to enforce at any time any of the provisions of this agreement, or to require at any time performance by Concessionaire of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this agreement or any part thereof, or the right of the City to thereafter enforce each and every such provision.

**30. Governing Law.** The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

**31. Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

**32. Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

**33. Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

**34. Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

**35. Counterpart Originals.** This Agreement may be signed in counterpart originals.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates set forth below.

**CITY OF DES MOINES:**

\_\_\_\_\_  
By: Michael Matthias

\_\_\_\_\_  
(Print Name)\_\_\_\_\_

Its: City Manager

(Title)\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Tim George, City Attorney