



CITY OF OREGON CITY PARKS & RECREATION

Concerts in the Park Foodservice Agreement

This agreement is between the City of Oregon City's Parks & Recreation Department and the foodservice vendor at the following "Concerts in the Park" event.

Name of Food Vendor: _____ Contact: _____

Telephone Number: _____ Address: _____

Event Dates: every Thursday from 7/4/2024 – 8/15/ 2024 Foodservice Time: 5:00-8:30 PM

Location of event: End of the Oregon Trail Interpretive Center, 1726 Washington St, Oregon City, OR 97045

Description of food:

Responsibilities of the Food Vendor

1. Food Vendor may serve only food items that have been approved by the City. No non-food items or alcoholic beverages can be sold. This includes non-alcoholic beer, wine, or wine coolers.
2. Food Vendor must obtain a temporary restaurant license two weeks prior to the event and must follow all Clackamas County and State of Oregon sanitation rules and regulations. A copy of the license shall be provided to Oregon City Parks and Recreation two weeks prior to the event. Contact the Clackamas County Public Health Department for more information at 503-655-8384.
3. Food Vendor is responsible for supplying all booth items including appropriate counter space, hand washing buckets, and appropriate signage. Signage shall include the name of the organization, food items for sale, and prices.
4. Food Vendor must be set up and ready for business **no later than** 5:00pm on the day of the event.
5. Food Vendor is responsible for all garbage created by preparation of food. Please securely bag garbage and place in the dumpster on-site.
6. Food Vendor is responsible for covering and/or taping down all electrical cords, securing awnings, etc. according to applicable safety codes.
7. **Vendor fee:** \$50 an evening or 10% of gross sales over \$500 (whichever is greater) will be paid to Oregon City Parks & Recreation 7 days after the completion of the series. A receipt stating gross sales should be emailed to the Recreation Supervisor within 24 hours of completion of each event.
 - a. Payment due: 0822/2024

Indemnification Agreement

The food vendor hereby agrees to indemnify and hold harmless the City of Oregon City, its officers, agents, and employees from any and all claims, demands, losses, or damages, including attorney's fees, which may arise in any manner from the food vendor's activities or presence on City property as

authorized by this agreement. This release and indemnification obligation includes, but is not limited to, claims made by the food vendor, its agents, or employees.

Signature: _____ Date _____
Food Vendor

Signature: _____ Date _____
Recreation Manager

Rules & Guidelines for Vendor Participation

(Please retain for reference)

Selection Criteria

1. Vendors are not selected on first-come, first serve basis. The following guidelines will be considered when making a decision:
 - a. The quality of the product.
 - b. For new vendors, did the vendor provide two reference letters, which includes contact information, demonstrating previous success and accountability.
 - c. Previous vending experience (either with the City or at other venues). If applicable, this includes a vendor's past performance and cooperation with other City events.
 - d. Booth display, cleanliness, and signage appropriate for the event.
 - e. Uniqueness of food product.
 - f. Appropriate and affordable cost of items.
 - g. Product promotion and marketing principles.

Setup Requirements

1. Participants shall provide their own booth/tables/chairs and sun/rain covers or food truck/cart. Vendor booth location is determined by the Event Manager. Wind can come up unexpectedly, so weights are required on all four corners of canopies.
2. Please unload your supplies as quickly as possible and remove your vehicle from the event staging area before commencing booth setup. Enter/Exit only on designated route as determined by the site map.
3. Operation timelines are communicated to vendors upon acceptance. Most events require vendors to be ready for operation at least 30 minutes prior to the event start time.
4. Participants are not allowed to disassemble booths before the event closes. In the case a vendor runs out of product, he/she must keep his/her booth intact until the close of the event.
5. Early departures are not permitted.

Maintenance and Clean Up

1. Vendors are responsible for keeping their space attractive during event hours. Additionally, vendors must clean up their space after the event closes, including the removal of garbage and sweeping up of any debris.
2. Vendors will not permit any waste or strip of the property. No shrubs, trees or other vegetation may be damaged, moved or otherwise disturbed as a result of this Agreement.
3. Vendor shall repair, replace or restore the licensed area so that it is free from evidence of Vendor's use.
4. By law, parks throughout the City are tobacco free. Please do not smoke in the park.

Compliance with Government Regulations

1. Vendors must observe and abide by all the laws, rules and regulations imposed by any lawful governmental authority and relating in any way to any activity conducted on the premises, and shall require all of Vendor's agents, employees, and agents upon the premises to do likewise.
2. Vendors are responsible for complying with state and local health and licensing regulations governing the production and sale of their products. Food vendors are responsible for meeting health requirements and obtaining any permits and licenses applicable to their products.
3. Food consumed on premises must have the following applicable documentation.
 - a. ODA Certified Kitchen Oregon Department of Agriculture
 - b. Temporary Restaurant License/Food Truck License from Clackamas County Department of Health
 - c. Current Food Handler's License from at least one individual operating the booth each week.
4. Vendors must provide copies of all required permits and licenses to the event staff at least one month prior to the event date.
5. Because vendors are selected based on product, the vendor shall offer for sale those products that have been approved by the Event Staff on the vendor's application. **NO OTHER PRODUCTS, SERVICES OR ITEMS MAY BE OFFERED FOR SALE WITHOUT THE WRITTEN APPROVAL OF THE EVENT MANAGER.**
6. Vendors who fail to comply with these rules or applicable state and local regulations are subject to removal from the event and forfeiture of their stall fees. Furthermore, if the violation threatens the health or safety of the public or other vendors, or the violation is repeated following a warning, the Event Manager may remove the vendor and prohibit said vendor from returning for future special events.
7. The City reserves the right to adopt additional rules relating to vendor participation in the event or to modify these rules. The additional or modified rules shall be effective 1 week following delivery of a copy of the revised or additional rules to the vendor, or 1 week following the date of mailing by regular mail to the vendor at application address. Continued participation in the event shall be deemed assent to the revised rules.

Cancellation Policy

1. Except in emergencies, vendors must notify event staff of a cancellation one month prior to the event date. If cancellation is reported within the designated time frame, the vendor will not be charged for the space.
2. If Vendor cancellation is reported outside of the designated time frame, the vendor will be charged the event day rate of \$50 for the space.
3. Vendors are not permitted to sub-lease their stalls.

Sustainability

The City of Oregon City is committed to hosting sustainable events. To ensure this objective is met Vendors must comply with all state sustainability laws. Furthermore, the City requests that Vendors refrain from using non-recyclable materials such as; polystyrene/Styrofoam, plastic wrap, wax paper and boxes, and nonbiodegradable plastic utensils and containers.

Inclement Weather Policy

1. In general, it is our event policy to be open rain or shine. A scheduled event will not be closed unless it is determined that severe weather conditions compromise the safety of vendors, volunteers and customers. Any necessary changes or modifications are determined by the Event Manager. Notifications of change will be issued as far in

advance as possible. If a modification or cancellation is required, vendors will be notified via email. In the event of the cancellation of a scheduled event, vendors will not be required to pay booth fees for that event date (if booth fees have already been submitted, the vendor will be refunded). Additionally, the Parks and Recreation website will be updated with information reflecting any change or cancellation.

2. High Winds: It is not uncommon for winds to arise at venues. **All vendors are responsible for making sure canopies are adequately secured with weights on all four corners.** If improperly weighted canopies are a risk to other vendors or customers, the Event Manager may require canopies to be disassembled.
3. Lightning: If lightning arises at an outside event, an announcement will be made stating the need for safety procedures. Vendors should remain calm, unplug all electrical equipment at the first sign of lightning and step away from these items. Please seek shelter indoors and remain a safe distance away from trees or light posts. Those with vehicles are encouraged to get inside their cars for safety. Please avoid any metal.
4. Air Quality: For air quality decisions, the Event Manager will use AIRNow (https://airnow.gov/index.cfm?action=airnow.local_city&zipcode=97034&submit=Go) to monitor the Air Quality Index for basis of decision. If air quality reaches Purple or Dark Red Air Quality Index with numerical values ranging from 201-500 the event will be cancelled.

Indemnification

The vendor shall defend, indemnify, and hold the City of Oregon City, its officer, agents and employees harmless against all liability, loss, or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission of an act sustained in any way in connection with the use of this license or by conditions created thereby, or based upon violation of any statute, ordinance or regulation. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification to the Licenser, but is in addition to such common law or statutory provisions.

Exclusion of damages and representations

1. The City, its officers, employees, and commissions and committees shall not be liable to the Event Vendor for any damages of whatsoever character or nature arising out of or related to the Vendor's application, booth reservation, inventory, or participation in the event, whether direct, indirect, consequential (including lost profits), or special damages.
2. The City is not liable for acts by third parties or acts of nature, including weather.
3. The City is not liable for lost or stolen property; all risk of loss of Vendor's property shall be that of Vendor.
4. Vendor certifies, acknowledges and agrees that this license is accepted and executed on the basis of Vendor's own examination and personal knowledge of the premises and personal property and Vendor's own opinion thereof; all prior negotiations, representations of fact or opinion or agreements relating to said property made by the City or any agent thereof upon which Licensee may have relied have been reduced to writing and are included in this agreement, and if not so reduced to writing, are expressly waived, which waiver is a material part of the consideration of the execution of this contract by the City.

Insurance

Vendors shall obtain prior to participation in scheduled events, and shall maintain in full force and effect during participation, at the Vendor's expense, a completed products insurance policy

for the protection of the Vendor and the City, its officers, agents, and employees. If the insurance policy is issued on a “claims made” basis, then the Contractor shall continue to obtain and maintain coverage for not less than three years following the completion of the contract. The policy shall be issued by a company authorized to do business in the State of Oregon, protecting the Contractor or subcontractor or anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, contractual liability, death and property damage, and any other losses or damages above mentioned. **Vendors must have insurance in an amount not less than \$2,000,000 combined, single-limit, per-occurrence/annual aggregate.**

The Contractor shall not undertake any acts that shall affect the coverage afforded by the above policy. The insurance company shall provide the City with a certificate of insurance and an endorsement thereto naming the City as an additional insured and will provide the City thirty day's written notice of cancellation or material modification of the insurance contract. The obligation to provide notice to the City shall be in substantially the following language: “Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named”; it is not sufficient for the insurance carrier to merely “endeavor” to give notice or for the certificate to absolve the insurance carrier from obligation or liability in the event of the insurance carrier's failure to mail such notice.

The Contractor will not sell any product until the City has received copies of applicable insurance policies or acceptable evidence that appropriate insurance heretofore mentioned is in force (**copies must be submitted at least one month prior to the event date**).

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT (4/2017)

1. **Contractor Identification.** Contractor shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

2. **Payment.**

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Contractor within thirty (30) days after receipt of Contractor's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth in this Agreement, nor shall City pay Contractor any fees or costs that City reasonably disputes.

3. **Independent Contractor Status.**

(a) Contractor is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Contractor represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Contractor maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Contractor provides services for two or more persons within a 12

month period or routinely engages in advertising, solicitation or other marketing efforts. Contractor makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and Contractor has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Contractor shall furnish the tools or equipment necessary for the contracted labor or services. Contractor agrees and certifies that:

(d) Contractor is not eligible for any federal social security or unemployment insurance payments. Contractor is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Contractor under this Agreement.

(e) Contractor agrees and certifies that it is licensed to do business in the State of Oregon and that, if Contractor is a corporation, it is in good standing within the State of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Contractor, delivered by certified mail, email, or in person.

(b) Upon receipt of notice of early termination, Contractor shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of the City provided in this Agreement and relating to defaults by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Contractor shall:

(i) Make payment promptly, as due, to all persons supplying to Contractor labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to the Contractor under this Agreement and, unless Contractor is subject to back-up withholding, the City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, the City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due to the Contractor by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

(d) Contractor and subcontractors, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Sub-Contractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from the City. The City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to the Contractor.

8. Access to Records. City shall have access to all books, documents, papers and records of Contractor that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Contractor that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Contractor under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Contractor shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law.

Contractor shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Contractor shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Contractor acknowledges responsibility for liability arising out of Contractor's negligent performance of this Agreement and shall hold City, its officers, agents, Contractors, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Contractor, or the agents, Contractors or employees of Contractor provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for workers' compensation as required by the State of Oregon. Contractor shall provide the Owner,

within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Contractors of Contractor shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Contractor shall maintain comprehensive general and automobile liability insurance for protection of Contractor and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Contractor's operation, each in an amount not less than \$2,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Contractor.

14. Legal Expenses. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. To the extent there is a conflict, the terms of the Personal Services Agreement will control over the terms of the standard conditions. To the extent there is a conflict between the terms of the standard conditions and any other document, including the scope of services, the terms of the standard conditions shall control those other terms.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Contractor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Contractor shall furnish City, upon request, with

copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Contractor. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Contractor with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Contractor in carrying out the work herein and shall provide adequate staff for liaison with Contractor.

24. Arbitration.

All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.