

**AMENDED PROFESSIONAL SERVICE AGREEMENT FOR CONCESSION
OPERATION AND SALES FOR CITY OF PASCAGOULA
PARKS AND RECREATION DEPARTMENT**

The CITY OF PASCAGOULA (“City”), and SNO FRO’S, LLC and I AM HEALTHLETE (collectively the “Vendor”), hereby enter into a professional service agreement for concession operations and sales at the City’s Beach Park Concession Facility (“Facility”). The respective duties and obligations of the parties are set forth hereinbelow.

I. VENDOR OBLIGATIONS

1. Vendor shall be responsible for operating the Facility located at 600 City Park Street. Vendor shall provide professional staff for the operation of the Facility and the sale of food therein.
2. Vendor shall be responsible for providing any and all equipment necessary to the operation including but not limited to the following: sno-cone machine, freezer, popcorn popper, microwave, under counter ice maker as necessary and any and all other materials and supplies needed by Vendor for the operation the Facility.
3. Vendor shall be responsible for all labor involved in operation of the Facility and shall be responsible for all related employee expenses, including any benefits that Vendor chooses to offer for the employees and the requisite Worker’s Compensation Insurance.
4. Vendor shall be responsible for reporting all sales taxes generated by sales at the Facility and shall make available to City monthly reports of sales and sales tax remittances.
5. Vendor shall acquire all business licensing and MS Health Department permits. All licensing documents and Health Department permits shall be prominently displayed at the Facility and shall remain in place throughout the use of the Facility by the Vendor. Failure of the Vendor to obtain the proper licensing and Health Department permits shall result in the immediate termination of this contract.
6. Vendor agrees to provide a variety of food items to include, but not be limited to, sno-cones, nachos, chicken tenders, hot dogs, chips, drinks, smoothies, coffee, hot chocolate, as provided in the attached Vendor Proposal. Vendor may also offer a seasonal menu as agreed upon by City and Vendor. Vendor agrees that it will charge commercially reasonable prices for all items sold at the Facility and subject to review and approval by the City.
7. The hours of operation for the Facility shall be as follows:
 - a. Friday through Saturday from 9:00 A.M. until 8:00 P.M. and Sunday from 9:00 A.M. until 5 P.M.
 - b. During special events, including but not limited to, Sounds by the Sea, July 4th, Cruisin the Coast, and EMERGE Blues at the Beach, Vendor shall be allowed to keep the Facility open until conclusion of each event on those dates.
 - c. Should the Vendor desire additional hours of operation, then a written request for the same with reasons therefor shall be presented to the City Manager for consideration and approval.
8. Vendor shall maintain liability insurance in an amount not less than \$500,000.00 and shall submit a Certificate of Liability Insurance that names the City as an additional

insured on such policy. This policy shall remain in effect at all times that Vendor operates the Facility and until such time as this agreement should be terminated.

9. Vendor shall maintain the Facility in a clean and orderly manner at all times. All garbage, trash, food remnants and solid waste of any kind shall be removed daily by Vendor and promptly disposed of in appropriate containers. Vendor shall sweep, mop and sanitize the Facility after each use and shall promptly store and secure any and all food items in a safe and sanitary manner. Vendor shall also be responsible for keeping the restrooms in the Facility clean on a daily basis and shall also clean the deck and the grounds immediately surrounding the Facility.

II. CITY OBLIGATIONS

1. City shall be responsible for furnishing Vendor with access to the Park and to the Facility at all times necessary to Vendor's operations. To this end, Vendor shall be furnished with keys to the Park and to the Facility. These keys shall be for the sole and exclusive use of the Vendor and shall not be given to any third parties for any reason whatsoever.
2. The City shall be responsible for the maintenance, repairs and upkeep of the Facility. Should any repairs to the structure be necessary, the Vendor shall immediately notify the City of same.
3. City shall retain a key to the Facility and shall, on a monthly basis, make an inspection thereof to determine compliance with this agreement. City shall notify Vendor immediately of any failure on the Vendor's part to adequately clean the Facility and the restrooms. Vendor, upon receipt of such notice, shall immediately undertake to correct the situation to the satisfaction of the City.
4. Prior to the commencement of this agreement, the City and the Vendor shall conduct and inventory an inspection of the Facility and shall note any and all defects, if any, therein. An inventory and inspection sheet shall be prepared by the City for this purpose and shall be signed by the Vendor upon completion of the inspection.
5. City shall provide water and electricity at no cost to Vendor.
6. With the exception of special events, as determined in the City Manager's sole discretion, the City shall not license or authorize other food or beverage vendors at Pascagoula Beach Park; provided, however, the City may permit and authorize food and beverage vendors possessing all required licenses and permits to sell food, beverages, and related items along the exterior perimeter of Beach Park, provided said vendors do not remain in a single location for more than fifteen minutes.

III. MISCELLANEOUS

1. The parties to the agreement acknowledge that this is an "independent contractor" arrangement and that the Vendor does not operate as an employee or agent for the City. Vendor remains fully responsible for the payment of its employees and for the operation of the Facility subject only to the terms of this agreement.
2. The initial term of this agreement shall be November 1, 2020, to December 31, 2020. Each year thereafter, and by mutual agreement of the parties, the agreement may be renewed for successive one-year terms each ending on the 31st day of December in each successive year. Either party to this agreement may terminate the same upon thirty (30)

days written notice of such party's intent to terminate the agreement. Should termination occur prior to the end of any term of this agreement, then, in such event, Vendor shall be responsible to pay to the City a sum up to 15% of the Vendor's gross sales through the date of the termination of the agreement, as mutually agreed by the parties hereto.

3. For the use of the Facility, Vendor shall pay over to the City as follows:
 - a. November 1, 2020 – December 31, 2020 - a sum equal to 5% of Vendor's gross monthly sales;
 - b. January 1, 2021 – December 31, 2021 (upon renewal) – a sum equal to 7.5% of Vendor's gross monthly sales;
 - c. January 1, 2022 – December 31, 2022 (upon renewal) – a sum equal to 10% of Vendor's gross monthly sales; and
 - d. Any renewal after January 1, 2023 – a minimum of 15% of Vendor's gross monthly sales, unless mutually agreed by the parties hereto.
4. Vendor shall furnish the City with a monthly sales report and shall make available to the City, upon reasonable request, all books of account kept by the Vendor so that the City may determine compliance with this part of the agreement.
5. Vendor agrees that upon termination of this contract, Vendor will immediately surrender the Facility to the City in as good condition as it was at the time of the commencement of the contract, normal wear and tear excepted. On termination of the agreement, Vendor shall surrender all keys to the City and shall promptly remove from the Facility any and all equipment and materials belonging to Vendor. If any equipment or materials remain in the Facility for more than ten (10) days after the date of termination, the City shall have the right to remove the same and to dispose of it as City shall see fit.
6. Vendor agrees to indemnify and hold the City harmless from any and all claims, causes of action, assessments or other matters that may arise from Vendor's use of the Facility and which may be attributable to the either deliberate acts, or negligence, of any of Vendor's employees during the operation of the Facility. This agreement to indemnify shall extend to all costs of litigation, if the same becomes necessary, including attorney fees, court costs and any judgments that might be rendered against the City as a result of such litigation.
7. In the event that the City should place the Vendor on notice of a breach by the Vendor of any of the terms and conditions set forth in this contract, then in such event, the Vendor shall have ten (10) calendar days from date of such notice within which to cure the breach by the Vendor. Failure by the Vendor to cure the breach of the agreement within ten (10) calendar days after notice being given by the City, shall result in the immediate termination of this contract and the immediate relinquishment of possession of the Facility by the Vendor.
8. A waiver of any term or condition of this contract by either party shall not be deemed a waiver of any other terms and conditions and further shall not be deemed to be a waiver of such term or condition in the future. Should any term or condition of this contract be determined to be void or unenforceable, then such invalidity or unenforceability of such term or condition shall not operate to invalidate, or render unenforceable, any of the remaining terms and conditions of this agreement.
9. Vendor acknowledges that it is fully responsible for compliance with this contract and for the operation of the Facility as set forth herein. No sub-leasing or assignment of this contract by the Vendor will be allowed except upon approval by the City Council after a

written request therefor being made by the Vendor. The City, for its part, covenants and agrees that it will not unreasonably withhold permission to sub-let or assign any portion of this agreement.

10. Vendor is prohibited from making any physical modifications to the Facility without first obtaining the written permission of the City to do so. Vendor shall not be allowed to post any signage on the exterior of the Facility with the exception of menus and pricing which must be removed at the close of business each day. The City agrees, however, that Vendor may display its logo on a removable sign attached to the exterior of the Facility. In this regard, Vendor shall comply with all of the sign ordinance regulations of the City and shall obtain a permit for such sign from the Code Enforcement Department.
11. The terms and conditions of this contract shall be construed in accordance with the laws of the State of Mississippi. The parties agree that venue for any litigation that might arise from any breach of this agreement shall be commenced in the Circuit Court of Jackson County, Mississippi.
12. No modifications or alterations of this agreement shall be allowed except in writing properly authorized and executed by the respective parties.

Witness the signatures of the parties by their duly authorized representatives on this the _____ day of _____, 2020.

SNO FRO'S, LLC and I AM HEALTHLETE

BY: _____
SETH TROTTER, MINOR

BY: _____
CYNTHIA TROTTER, PARENT & OWNER

BY: _____
ERICK TROTTER, PARENT & OWNER

CITY OF PASCAGOULA, MISSISSIPPI

BY: _____
MICHAEL SILVERMAN, CITY MANAGER

**STATE OF MISSISSIPPI
COUNTY OF JACKSON**

PERSONALLY APPEARED BEFORE ME, the undersigned authority for said County and State, the within named, SETH TROTTER, on behalf of SNO FRO'S, LLC and I AM HEALTHLETE, who having been first by me duly sworn, states on his oath that he executed the above and foregoing Amended Professional Service Agreement as his free and voluntary act and deed.

SETH TROTTER

SWORN TO AND SUBSCRIBED BEFORE ME, this the _____ day of _____ 2021.

NOTARY PUBLIC

(SEAL)

**STATE OF MISSISSIPPI
COUNTY OF JACKSON**

PERSONALLY APPEARED BEFORE ME, the undersigned authority for said County and State, the within named, CYNTHIA TROTTER, on behalf of SNO FRO'S, LLC and I AM HEALTHLETE, who having been first by me duly sworn, states on her oath that she executed the above and foregoing Amended Professional Service Agreement as her free and voluntary act and deed.

CYNTHIA TROTTER

SWORN TO AND SUBSCRIBED BEFORE ME, this the _____ day of _____ 2021.

NOTARY PUBLIC

(SEAL)

**STATE OF MISSISSIPPI
COUNTY OF JACKSON**

PERSONALLY APPEARED BEFORE ME, the undersigned authority for said County and State, the within named, ERICK TROTTER, on behalf of SNO FRO'S, LLC and I AM HEALTHLETE, who having been first by me duly sworn, states on his oath that he executed the above and foregoing Amended Professional Service Agreement as his free and voluntary act and deed.

ERICK TROTTER

SWORN TO AND SUBSCRIBED BEFORE ME, this the _____ day of _____ 2021.

NOTARY PUBLIC

(SEAL)

**STATE OF MISSISSIPPI
COUNTY OF JACKSON**

PERSONALLY APPEARED BEFORE ME, the undersigned authority for said County and State, the within named, MICHAEL SILVERMAN, on behalf of THE CITY OF PASCAGOULA, who having been first by me duly sworn, states on his oath that he executed the above and foregoing Amended Professional Service Agreement as his free and voluntary act and deed.

MICHAEL SILVERMAN

SWORN TO AND SUBSCRIBED BEFORE ME, this the _____ day of _____ 2021.

NOTARY PUBLIC

(SEAL)