

The State of Texas

County of Taylor

**NON-EXCLUSIVE FOOD AND BEVERAGE (NON-ALCOHOLIC)
CONCESSIONAIRE AGREEMENT
FOR THE
ABILENE CONVENTION CENTER, ABILENE TEXAS**

This agreement made and entered into between the City of Abilene hereinafter called "CITY" and the caterer signatory to the agreement, acting by and through it's duly authorized representative and hereinafter called "CONCESSIONAIRE".

Purpose. Subject to the Convention Center Manager's approval, and only at the request of each sponsor of an event at the Convention Center, CONCESSIONAIRE shall have the right to sell food and beverages in all areas of the Abilene Convention Center Building designated for the event, with the exception of food in the Auditorium.

Witnesseth:

Whereas, it has been determined by CITY that high food and beverage service standards must be established and maintained in the Abilene Convention Center, and

Whereas, to ensure the satisfactory performance of those standards, it has been further determined that only those concessionaires who enter into this agreement shall be allowed to cater commercially or otherwise, concessions for events in the Abilene Convention Center.

Now therefore, CITY does hereby approve and authorize said CONCESSIONAIRE to provide food and non-alcoholic beverages for events in the Abilene Convention Center, subject to the following rights and conditions:

I.

The term of the agreement shall be effective from **October 1, 2021 until September 30, 2022**, with option to renew at the end of the term, but may be terminated by either party upon failure of the other party to materially observe any of the conditions of this agreement. Written notice thereof to the other party is required at least ten (10) full working days before such termination. Either party may terminate this agreement without cause upon thirty (30) days written notice to the other party.

II.

The manager of the Abilene Convention Center shall maintain a list of concessionaires who have entered into this agreement and shall provide such a list to all persons scheduling any event for which concession services may be needed but shall not recommend any approved CONCESSIONAIRE over another similarly approved CONCESSIONAIRE.

III.

_____The CONCESSIONAIRE, employed by a person scheduling an event in the Abilene Convention Center, or by the CITY, shall pay to CITY a sum equal to twelve (12%) percent (for beverages served in the Auditorium) and ten (10%) percent (for all other areas of the facility) of the adjusted gross sales from the sale of concessions for any particular event. **A copy of the CONCESSIONAIRE'S bill for the event shall be attached to the payment.** The adjusted gross sales shall mean that amount of gross sales shall mean the amount of gross sales after taxes and gratuities have been deducted. Deductions for gratuities shall not exceed fifteen (15%) percent of sales before taxes. **If food or beverage is donated for an event it is the CONCESSIONAIRE'S responsibility to notify the Abilene Convention Center via email (acc-catering@abilenetx.gov) prior to the event. CONCESSIONAIRE must provide a letter to the Abilene Convention Center stating food and beverage is donated.**

_____ Auditorium Events: The CONCESSIONAIRE may provide non-alcoholic beverages for events in the Auditorium. All beverages must be poured into a souvenir cup provided by the Abilene Convention Center / CITY. It is the responsibility of the CONCESSIONAIRE to notify the Abilene Convention Center via email (acc-catering@abilenetx.gov) two weeks prior to the event to reserve souvenir cups at no additional charge to the CONCESSIONAIRE unless beverages are donated. **If beverages are donated, the CONCESSIONAIRE will be responsible for paying the Abilene Convention Center / CITY two (\$2.00) dollars per cup served.**

_____All monies owed by the CONCESSIONAIRE shall be paid in full no later than the 10th day of the month following the month in which the event took place. Any CONCESSIONAIRE not paying all amounts due in full in accordance with this agreement by the 10th day of the month following the month in which the event took place, shall be notified by email that they are in violation of the agreement and that all monies are past due and payable immediately. Should any amounts be unpaid by 5:00 P.M. on the 20th day of the month, the CONCESSIONAIRE'S name shall be removed from the approved concessionaire's list and shall not be permitted to provide concessions for any event until all amounts are paid in full.

_____A second violation within any twelve (12) month period shall result in permanent termination of the CONCESSIONAIRE'S agreement.

***It shall be the CONCESSIONAIRE'S responsibility to notify any event that has been scheduled of the fact that they will not be permitted to provide concessions for such event.**

IV.

Indemnification

A. Definitions

For the purpose of this section the following definitions apply:

“CITY” shall mean all officers, agents and employees of the CITY.

“CONCESSIONAIRE” includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

“CONCESSIONAIRE'S employees” shall mean any employees, officers, agents, subcontractors, licensee and invitees of CONCESSIONAIRE.

“Claims” shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

“Damages” shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

“Premise Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

“Proven” shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

“Sole negligence” shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

CONCESSIONAIRE must indemnify, hold harmless, and defend the CITY from and against liability for any claims arising out of the CONCESSIONAIRE'S work and activities conducted in connection with this Contract.

The CONCESSIONAIRE is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the CITY.

CONCESSIONAIRE must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of CONCESSIONAIRE'S employees while in the vicinity where the work is being done. The CITY is not liable or responsible for the negligence or intentional acts or omissions of the CONCESSIONAIRE or CONCESSIONAIRE'S employees.

The CITY assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the CONCESSIONAIRE.

The CITY and CONCESSIONAIRE must provide the other prompt and timely notice of any covered event which in any way affects or might affect the CONCESSIONAIRE, or the CITY. The CITY has the right to compromise and defend the same to the extent of its own interests.

THE CITY AND CONCESSIONAIRE EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONCESSIONAIRE TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE THE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

V. INSURANCE

A. GENERAL REQUIREMENTS

The CONCESSIONAIRE agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The CONCESSIONAIRE is solely responsible for providing the required certificates of insurance. The CITY may terminate this agreement if the CONCESSIONAIRE fails to comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the CITY's Office of Risk Management for their adequacy as to content, form of protection, and providing company.

The required insurance naming the CITY as additional insured must be primary insurance and not contributing with any other insurance available to the CITY, under any third party liability policy.

Before the CONCESSIONAIRE proceeds with any work under this agreement, the CONCESSIONAIRE must provide the City Secretary and CITY with either an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the CONCESSIONAIRE must furnish new certificates or copies of the policy before the expiration date.

B. TYPES AND AMOUNTS OF INSURANCE

Type	Amount
Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
Commercial (Public) Liability including , but not limited to: . Premises/Operations . Independent Contractors . Products/Completed Operations . Contractual Liability (Insuring above indemnity) and where the exposures exist . Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
Business Automobile Liability to include coverage for: . Owned/Leased Autos . Non-Owned Autos . Hired Cars	\$500,000 combined single limit for bodily injury

C. ADDITIONAL REQUIREMENTS

Additional Insurance Requirements. With respect to the above insurance. CONCESSIONAIRE agrees to:

- have the CITY named as an additional insured;
- provide 30 days written notice of any material change, termination or cancellation;
- provide the CITY with a Certificate of Insurance prior to the commencement of the activities under this Agreement.
- Comply with newly adopted insurance standards upon issuance of the next policy, should the State Insurance Board adopt changes to the policies of insurance required herein.

Insurance Requirements Subject to Change. The preceding minimum amounts notwithstanding, the CITY reserves the right to increase the minimum required insurance effective 90 days after written notice is sent to CONCESSIONAIRE.

VI.

In the event a CONCESSIONAIRE directly employed by the Abilene Convention Center fails to perform as agreed, and a substitute CONCESSIONAIRE is secured by the Abilene Convention Center then in such event, the CONCESSIONAIRE failing to perform under this contract shall be liable to CITY for any additional expense involved in the securing of a substitute CONCESSIONAIRE.

VII.

_____The Abilene Convention Center / CITY shall be responsible for setting up tables and chairs for the function and maintenance of the kitchen equipment. The following items shall be the responsibility of the CONCESSIONAIRE:

1. Clean all areas of the kitchen, including but not limited to the grill, stove, ovens, steam tables, sinks, deep fryers, gas grill and all other equipment used.
2. Sweep and mop the kitchen and scullery floors.
3. Empty all garbage cans in the proper receptacles (outside dumpsters).
4. CONCESSIONAIRE'S dishes, equipment or foods shall not be stored at the Abilene Convention Center.
5. Clean off all tables, including any and all tables guests have used while consuming food furnished by your business, leaving no trash on the floors in the room used.
6. Remove all serving equipment belonging to CONCESSIONAIRE from facility.
7. Furnish all tabletop items necessary to serve the meal function. These items shall include, but are not limited to: salt and pepper shakers, napkins, tablecloths, sugar and hollowware. **The Abilene Convention Center / CITY will not provide these items.**
8. Use sneeze shields as required by City/County Health Department.
9. The CONCESSIONAIRE shall employ only those people at the Center who have met all required regulations involving services and handling of food and beverages (non-alcoholic).
10. The Abilene Convention Center / CITY is not responsible for returning linens or for any items belonging to the CONCESSIONAIRE which is left behind after an event.
11. The CONCESSIONAIRE and its employees shall be entitled to enter and remain on the premises only during events at the Center and for a reasonable time prior to and after events and only for the purpose of exercising the rights and privileges herein mentioned.
12. In the event the CONCESSIONAIRE is performing a drop-off of food for an event of fifty people or more, the CONCESSIONAIRE will supply at least one employee to remain at the Center to clear all tables and empty all trash that is generated by the event.
13. All deliveries of food, beverage and equipment must be made through the loading dock or an entrance approved by the Convention Center Staff.
14. The CONCESSIONAIRE and its employees shall at all times be neatly and cleanly uniformed at the expense of the CONCESSIONAIRE. All CONCESSIONAIRE employees are required to arrive on site in proper serving uniform. Name badges must be worn at all times with accurate records kept of the names and addresses of those to whom said badges are issued.

_____Failure by the CONCESSIONAIRE to fulfill the requirements of items one (1) through six (6) of this section (VII) to the satisfaction of the Convention Center Manager within two (2) hours after a function shall constitute a violation of this agreement. If a violation occurs, a clean – up fee of \$200.00 - \$500.00, dependent on time and labor involved shall be charged and billed to the CONCESSIONAIRE in addition to the percentage owed. Said amount shall be paid to CITY, prior to the CONCESSIONAIRE working another function within the Abilene Convention Center. In the event that CONCESSIONAIRE shall violate any part of this section (VII) said CONCESSIONAIRE may be suspended from further concessions within the Abilene Convention Center.

The suspension may be appealed to the Abilene Convention Center Manager in writing within five (5) working days of the suspension. The decision of the Abilene Convention Center Manager is final.

VIII.

CITY grants to the CONCESSIONAIRE the right to sell food concessions and beverages (non-alcoholic) at functions where the lessee has employed their services; however, CITY may permit others to sell concessions at other events being held at the same time on the premises. Any alcoholic beverages sold or served on the premises shall be sold or served only by one of the Abilene Convention Center's designated liquor caterers.

IX.

The CONCESSIONAIRE shall comply with all standards, ordinances, laws and regulations which may regulate such service under this agreement. The CONCESSIONAIRE shall comply with all applicable laws concerning employment and nondiscrimination. The CONCESSIONAIRE shall be deemed to be an independent contractor and operator responsible for the conduct of its agents and employees during the service under this agreement. CONCESSIONAIRE and CONCESSIONAIRE's employees are not the agents, servants, or employees of the CITY. The CONCESSIONAIRE, as an independent contractor, shall be responsible for its own acts and omissions and those acts and omissions of its servers and other employees, and the CITY shall in no way be responsible. The CONCESSIONAIRE shall hold the CITY harmless from damage to any of its equipment or employees.

CONCESSIONAIRE agrees to maintain an operation in compliance with all federal, state and local health and safety requirements.

The CONCESSIONAIRE shall not make any improvement, additions or alteration to the premises of the Abilene Convention Center without the written consent of the manager of Abilene Convention Center.

CONCESSIONAIRE and its employees are not allowed to consume alcoholic beverages at any time in the Abilene Convention Center.

Concessionaires who do not control their staff will be subject to termination of the caterer's agreement.

Theft of any Abilene Convention Center items shall result in full retail price charged to the CONCESSIONAIRE for missing items and may also result in termination of concessionaire's agreement.

X.

The CITY, through the Convention Center Manager and/or representatives, shall have the right at all times to inspect the food and beverage product provided in the Abilene Convention Center and to object to any of such products which he or she determines do not comply with the terms of the agreement. The Manager and/or representative shall also have the right at all times to inspect all equipment, material, service wares, and utensils.

XI.

No signs, posters, lithographs, cards, banners, plaques, displays, or other similar material used for advertising purposes shall be installed, posted, located or maintained by the CONCESSIONAIRE upon the premises, nor shall there be any solicitation on the premises without the written approval of the Convention Center Manager.

XII.

The CITY shall have no responsibility under this agreement to attempt resolution of disputes between concessionaires and persons engaging their services at the Abilene Convention Center either legally or otherwise. CONCESSIONAIRE shall pay the CITY the aforementioned twelve (12) percent, or ten (10%) percent, of the adjusted gross sales of the catered event regardless of any disputes arising between the CONCESSIONAIRE and the person engaging his services. Should any amounts be unpaid by 5:00 p.m. on the 20th day of the month following the month in which the event took place; the CONCESSIONAIRE'S name shall be removed from the approved concessionaire's list and shall not be permitted to cater any event until all amounts are paid in full.

A second violation within any twelve (12) month period shall result in permanent termination of the CONCESSIONAIRE'S agreement.

*** It shall be the CONCESSIONAIRE'S responsibility to notify any event that has been scheduled of the fact that they will not be permitted to cater such event.**

XIII.

CONCESSIONAIRE may not assign any interest under this agreement without the prior written consent of CITY.

XIV.

Venue for any cause of action arising under this agreement is Taylor County, Texas. This agreement is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

XV.

CONCESSIONAIRE must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. CONCESSIONAIRE – not the CITY – must verify eligibility for employment as required by IRCA.

XVI.

CONCESSIONAIRE agrees that no payments owed by him, of any nature whatsoever, to the CITY, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The CITY will not knowingly award contracts for goods and services to any CONCESSIONAIRE in arrears to the CITY for any debt, claim, demand or account whatsoever, including taxes, penalty and interest. CONCESSIONAIRE is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the CITY to counterclaim and offset against any debt, claim, demand or account owed by the CITY to any person, firm or corporation in arrears to the CITY for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

XVII.

The CITY hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway Street, Suite 301, Abilene, Texas, 79602, 325-670-0300.

XVIII.

It is the CITY'S policy to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The CITY affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The CITY shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the CITY, Texas, is a fact as well as an ideal.

Executed this _____ day of _____, _____.

Please print or type name of business and indicate below signature whether owner or officer.

CONCESSIONAIRE:

**CITY OF ABILENE – ABILENE
CONVENTION CENTER**

Printed Business Name

Printed Business Name

Address

1100 N 6th St

Address

City/State/Zip

Abilene TX 79601

City/State/Zip

Phone Number

(325)-676-6211

Phone Number

Signature

Signature

Title

Title

Federal Tax ID #

Approved by: City Attorney

Corporate Secretary's Attestation if
Applicable

Approved by: City Manager or Designee

Attest: City Secretary

Corporate Seal if applicable