

**CITY OF CROSSVILLE  
FACILITY USE "CONCESSION SALES" AGREEMENT**

THIS AGREEMENT is made and entered into this 7<sup>th</sup> day of MARCH, 2017, by and between NICK'S ITALIAN ICE; (hereafter "Concessionaire") and the City of Crossville (hereafter "City") and its Parks & Recreation Department (hereafter "Parks").

WHEREAS, Concessionaire desires to utilize the City's Park & Recreation facilities located at Duer Soccer Complex, Centennial Park, and Garrison Park (hereafter "Facilities") for the purpose of providing concession sales from the City's on-site concession stand; and

WHEREAS, the City hereby authorizes such use of its Facilities for the express purpose(s) set forth here:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. **Scope of Use.** City agrees to provide a 'dedicated location' for the purpose of allowing Concessionaire to sell concession food items at the parks owned by City. Such concession sales will not conflict with any other activities or programming scheduled or approved by Parks. All activities conducted with the Facilities or immediate vicinity shall be governed in accordance with applicable Park policies, rules and regulations. Concessionaire agrees that no unlawful use or acts shall occur on the premises during such time that the Facilities is being used by the Concessionaire and that misconduct on the part of Concessionaire shall be grounds for immediate termination of this Agreement. Concessionaire

further agrees that no alcoholic beverages, drugs, or drug paraphernalia or any tobacco brand shall be sold or used on the Facilities premises, and that such activities shall result in the immediate termination of the Agreement and ejection for the Facilities. Concessionaire shall also comply with each specific requirement set forth in Section 9 of this Agreement.

2. **Term and Termination.** The term of this Agreement shall be for a period of 8 months, beginning March 15, 2017 through November 17, 2017. After the first successful year of operation, City will retain the option to renew agreement for three (3) additional seasons. Notwithstanding the foregoing, either party may terminate this Agreement upon providing thirty (30) days written notice. This Agreement shall also be subject to termination in accordance with any other applicable provisions set forth herein.
3. **Performance and payments.** Concessionaire hereby agrees to pay the City a rental facility use fee of \$1 per stand per season for the term of the Agreement - March 15, 2017 through November 17, 2017. This Agreement covers an eight (8) month period for all scheduled games and events at all parks. The facility use fee of \$1 per stand per season is due and payable to the City of Crossville upon execution of this Agreement. Should the Concessionaire not show for a scheduled game or event, a NO SHOW penalty of \$100 will be assessed at the City's option, which shall be paid to the City by the end of the month in which the No Show penalty occurs. The City reserves the right to cancel this agreement at any time after three No Shows have occurred.

4. **Indemnity and Release.** Concessionaire hereby agrees to indemnify and release the City of Crossville, the Parks & Recreation Department, its employees, and volunteers from and against any and all liability, claims, losses, damages (consequential or otherwise), costs, expenses or fees (including reasonable attorney's fees) incurred by City, its officers and employees as a result of any negligent act or omission arising in part or in whole, directly or indirectly, from Concessionaire's performance of this Agreement. Concessionaire shall not be liable under this Section for damages arising out of injury or damage to persons or property directly caused by the negligence of the city, or any of its offices or employees.
5. **Relationship of Parties.** This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto.
6. **Amendments.** This Agreement may be modified or amended only by a written document signed by both parties.
7. **Assignment.** This Agreement may not be assigned or transferred without the prior written consent of the other party hereto.
8. **Compliance with Applicable Law.** Concessionaire shall comply with all applicable state, local and federal laws and regulations in the performance of this Agreement.
9. **License, Certification and Insurance Requirements.** Concessionaire agrees to submit, provide and/or comply with the following:
  - a. Provide a copy of Concessionaire's Health Department Food Certificate and maintain above 90 score on its yearly evaluation.

- b. Provide a copy of Concessionaire's standard Ballpark Concession Menu with applicable pricing.
- c. Maintain Cleanliness of Concession facilities/site – Concession will be responsible for fully cleaning/removing all litter from and around the on-site concession Facilities and/or around food truck, whichever is being used by Concessionaire. Concessionaire will also be responsible for maintaining the adjacent restroom facilities. The City of Crossville will provide the following:
- Trash receptacles
  - Equipment itemized by concession stand, List at the Parks & Recreation office
  - Supplies – toilet paper, paper towels, trash bags
- d. Provide a valid City and County business license
- e. Concessionaire shall provide a Certificate of Insurance, showing the City as additional insured, which should also reflect appropriate insurance coverage as follows:

**Worker's Compensation:**

Concessionaire shall maintain in force Worker's Compensation coverage in accordance with the Statutory Requirement and Limits of the State of Tennessee and shall require all subcontractors to do likewise.

**Commercial General Liability:**

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage with Minimum Limits of:

- \$1,000,000 General Aggregate
- \$1,000,000 Products-Completed Operations
- \$1,000,000 Personal and Advertising Injury
- \$1,000,000 Each Occurrence (Bodily Injury & Property Damage)
- \$ 100,000 Damage to Rented Property
- \$ 5,000 Medical Expense any One Person

**Property Insurance:**

Concessionaire shall be responsible for maintaining any and all property insurance on its own equipment

**NOTICE**

Concessionaire shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in Concessionaire's insurance policy from the insurer. Such notice shall be provided to City by registered mail, return receipt requested, to the following addresses:

City of Crossville  
City Manager  
392 N. Main Street  
Crossville, TN 38555

City of Crossville  
Parks & Recreation Director  
837 Industrial Blvd.  
Crossville, TN 38555

**PROOF OF INSURANCE**

Concessionaire shall provide proof of the foregoing insurance at the time of execution of this Agreement.

**10. FIBULATOR**

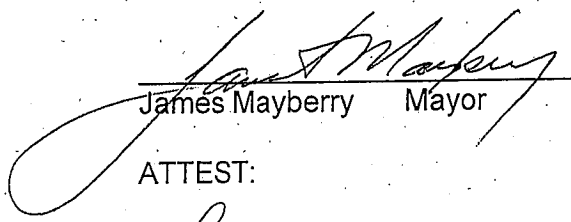
The facilities have defibrulators at each concession stand. The City will provide CPR training free for any employees of the Concessionaire that would be willing.

**11. EQUIPMENT**

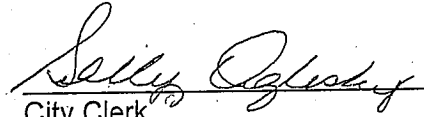
The Concessionaire shall be responsible for the equipment. All equipment under the cost of \$200 will be up to the Concessionaire to repair or replace. Any of the large pieces of equipment that can be repaired for under \$200 will be the responsibility of the Concessionaire. If equipment repairs will exceed \$200 or replacement is warranted, the Concessionaire will be charged an amount of \$200 per piece of equipment.

IN WITNESS WHERE, the parties, by and through their duly authorized signatures below, have affirmed and executed this Agreement.

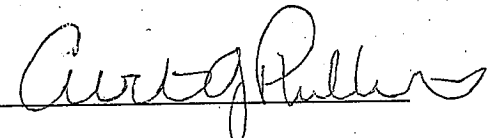
**CITY OF CROSSVILLE, TENNESSEE**

  
\_\_\_\_\_  
James Mayberry Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

**CONCESSIONAIRE**

By:   
\_\_\_\_\_  
Title: owner