

Park - see
3-21-16

CITY OF MANITOWOC
PARKS AND RECREATION DEPARTMENT

VENDOR AGREEMENT

This agreement was made and entered into this _____, day of _____, 20 16, by and between the City of Manitowoc through its Parks and Recreation Department (hereinafter City) and Tim Becker dba HPE Enterprises (hereinafter Vendor).

The City and Vendor agree that, for consideration as provided for herein, the parties shall have certain rights and obligations. Those rights and obligations are set out as follows:

1. The rights granted hereunder are not assignable without the written consent of the City.
2. That for consideration to be paid by the Vendor to the City, the Vendor agrees to abide by this agreement, and for so long as, and conditioned upon, Vendor's compliance with all provisions hereunder and all applicable laws, the City hereby grants to the Vendor the use of the concession stand at _____ Park or other City owned space at Park and Recreation Maintenance Facility for the sale of wood & floatwood "Goods". These "Goods" include but are not limited to food and beverages (excluding wine and hard liquors), known hereinafter collectively as "Goods." No Goods shall be dispensed in glass containers, at and/or within the municipally owned facilities or property.
3. The Vendor shall have use of the concession Stand or space indicated above beginning Date to be determined (Beginning Date) and ending Saturday, May 14, 2016 (Ending Date), on Saturday (Day(s) of the week), from 6:00 am/pm until 8:00 am/pm, unless this Agreement is sooner terminated by mutual consent of both parties, by default of Vendor, for failure of the Vendor to pay consideration, or for failure of Vendor to uphold this agreement and faithfully perform as required.
4. Vendor shall have the temporary use of the premises solely for the purpose of purveying and selling of Goods. The City shall have reasonable access to the premises as provided hereunder in order to determine compliance with this Agreement, applicable laws, and in emergency situations, at all times acknowledging Vendor's right to be free from unreasonable interference. The City is granting a non-exclusive right to sell and the City may grant this right to others.
5. In consideration for the use of the premises for the sale of goods the Vendor agrees to the pay the following sums: Vendor agrees to pay 5% of total gross sales to the City on a monthly basis. The vendor shall maintain accurate and complete accounting records. On or before the 15th day of each month of financial activity, Vendor shall submit to the City a monthly financial report which shall include a summary of gross sales, along with the monthly receipts, and their payment on said gross sales for the month. The City shall have the right at any time to audit, examine and copy vendor's records for up to three years after the expiration or termination of this Agreement.
6. If Vendor fails to submit a financial report, receipts and payment as stated above, Vendor will be subject to a \$25 late fee for every month not in compliance.
7. a. Vendor shall indemnify the City, its agents, officers and employees, and hold them harmless from any and all claims, demands, damages, losses, injuries, deaths, actions, and expenses of any nature and in any manner arising or resulting from any operations of Vendor hereunder. The provisions of this section shall survive any termination or expiration of this Agreement.
b. Vendor shall provide and maintain throughout the term of this Agreement, public liability and products liability insurance in the name of the City and Vendor said insurance shall be written on an occurrence basis and have minimum limits of \$1 million for any one accident or occurrence \$2,000,000 aggregate and \$50,000 property damage insurance for each accident. An insurance certificate with an endorsement listing the City as an additional insured and an endorsement giving the City 30 day notice of cancellation, modification or non-renewal shall be submitted by Vendor

to the City for approval by the City Attorney and shall be from a City approved Insurance Company. Vendor shall pay the premium thereof in advance. Before Vendor takes possession of the premises, the insurance certificate with endorsements shall be sent to the City Attorney and approved by the City Attorney with a copy sent to the City's Recreation and Parks Director.

8. The Vendor agrees to conduct the sale of goods in a clean, healthful, and orderly manner and shall have responsible adult supervision on duty at all times. The Vendor shall comply with all applicable federal, state, county, and city laws, rules and regulations, including but not limited to, sanitation, licensing, and operation. Vendor shall obtain all necessary licenses or permits prior to the use of the concession stand or space.
9. The Vendor shall remove from the concession wagon or space all equipment, supplies, materials, and trash from the park/space nightly.
10. The Vendor accepts the Concession space in its current condition on the beginning date of this Agreement, and agrees to maintain this condition during the Agreement's term. The City shall not be obligated to supply storage facilities or any equipment to Vendor.
11. The Vendor shall provide the City with a price list of goods it intends to sell on the Concession space. Vendor shall report, to the City, any updates to this list before the changes are implemented. The City retains the right to deny the sale of any product it deems inappropriate for any reason. Throughout the term hereof, the City reserves the right in its sole and absolute discretion to make or enter into exclusive product marketing agreements, which shall be binding on the Vendor.
12. The City reserves the right to procure, operate and service soft drink and snack food vending machines in all concession areas that they deem appropriate. Vendor shall not be allowed to unplug, cover or otherwise interfere with these machines or with any other concessionaire in any way.
13. It is understood and agreed that the Vendor is in all respects an independent contractor in its relationship with the City under this Agreement. It is not intended nor shall it be construed that the Vendor, any subcontractor of Vendor or its employees are partners, employees, officers or agents of the City for any purpose whatsoever. Vendor shall hold the City harmless with respect to such matters.
14. The Vendor shall upon termination of this Agreement remove immediately all equipment belonging to Vendor from the City premises, so long as such removal does not cause damage to the City property. The Vendor shall leave the premises in a condition at least as good as they were on the beginning date of this agreement, normal wear and tear excepted.
15. In the event of breach of this Agreement or violation of any law by Vendor, the City may terminate this Agreement by giving the Vendor fourteen (14) days notice in writing, specifying the matter(s) in which the Vendor is in default or has violated the law. In the event such matter(s) are not remedied within the 14 day period, the Agreement shall be ended and be of no further force and effect. The Vendor shall immediately remove its equipment, or said equipment shall become the property of the City.
16. The parties' duty to perform under this agreement shall be either abated or suspended, including the payment of money due hereunder, if conditions render it impossible to perform because of an Act of God, invasion, or natural disaster. This Agreement shall be binding upon the heirs, legal representatives, agents, successors, and duly authorized assigns of the parties hereto.
17. Notice & Demand: Any notice, demand or communication under this Agreement by any party to the other party shall be given or delivered by first class mail, registered or certified mail, postage paid, return receipt requested or delivered in person as follows to:

Vendor: Tim F. Becker dba HP Enterprises
Name
PO Box 326 Manitowoc WI 54221-0326
Address
920-~~88~~ 920-973-5106
Phone

Fax

City: City Clerk
900 Quay Street
Manitowoc, WI 54304
920-686-6950 Phone
920-686-6959 Fax

Copy to: Parks & Recreation Director
900 Quay Street
Manitowoc, WI 54304

The above address or designated party may be changed at any time by the parties by giving notice in writing in the manner provided above.

18. This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin and shall be governed by the laws of the State of Wisconsin. The parties agree that all actions or proceedings shall be litigated in the circuit court of Manitowoc County, Wisconsin and hereby submit themselves to the jurisdiction of the courts of Manitowoc County, Wisconsin.
19. Miscellaneous:
- a. **Waiver and Amendment:** No provision of this Agreement shall be deemed waived or amended unless by a written instrument unambiguously setting forth the matter waived or amended and signed by the parties. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.
 - b. **Successors:** All of the terms, covenants and conditions thereof shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties hereto.
 - c. **Partial Invalidity:** The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision of this lease.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first written above.

Vendor:

By: Tim F. Becker Title: owner

Print Name: Tim F. Becker

By: _____ Title: _____

Print Name: _____

STATE OF WISCONSIN) ss.
MANITOWOC COUNTY)

Personally came before me this 18 day of February 2016, the above signed Tim F. Becker, to me know who executed the foregoing instrument and acknowledged the same.

John Kueh
Notary Public
Manitowoc County, WI

My Commission (expires) (is) 5-15-16

City: _____

By: _____
Justin M. Nickels, Mayor

By: _____
Jennifer Hudon, City Clerk

STATE OF WISCONSIN) ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of _____ 20____, the above signed Justin M. Nickels, Mayor and Jennifer Hudon, City Clerk, to me known who executed the foregoing instrument and acknowledged the same.

Notary Public _____ County, WI

My Commission (expires) (is) _____

IN WITNESS WHEREOF, the Board has caused this statement to be signed on the day and date first above written.

Secretary

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/08/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Wojta Hansen Insurance 3618 Calumet Avenue, PO Box 36 Manitowoc, WI 54221	CONTACT NAME: Robyn Hanson	FAX (A/C. No.): (920)682-8850	
	PHONE (A/C. No. Ext.): (920)682-8858	E-MAIL ADDRESS: Rhansen@scotthansenlns.com	
INSURED Tim Becker PO Box 326 Manitowoc, WI 54221-0326	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: West Bend Mutual Insurance Company		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES CERTIFICATE NUMBER: 00000000-32262 REVISION NUMBER: 6

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL (SUBR INSD) WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR	Y	NSS0679486 10	09/09/2015	09/09/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excl PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/>					EACH OCCURRENCE \$ AGGREGATE \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate holder is listed as additional insured.

*all
part
9/15/15*

CERTIFICATE HOLDER

CANCELLATION

<p>City of Manitowoc 900 Quay St. Manitowoc, WI 54220</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE <i>Scott Hansen</i> (RH1)</p>
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POLICY NUMBER: 0679486

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
City of Manitowoc 900 Quay St Manitowoc, WI 54220-4543
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.