

Auction Committee,

Tim Becker dba HP Enterprises would like to sell food and beverages during Manitowoc's Bike Auction on April 25<sup>th</sup> 2015. We would like to sell coffee, hot chocolate and donuts in the morning. Throughout the day we would be selling popcorn, hotdogs, hot pretzels and possibly soda. Menu could vary slightly and be adjusted up until the day of the auction. We anticipate to be set up on the South side of building near overhead door. Exact location will be determined at a later time depending on the total auction set-up. HP Enterprises will give 10% of its gross sales to the Police Department.

HP Enterprises would appreciate being included in the auction announcements, so that it is known that food/lunch will be on the grounds.

Thank you for your time and consideration.

HP Enterprises  
Tim Becker  
920-973-5106  
h-p-enterprises@comcast.net

Received at the Police Dept March 23rd 2015  
The police have no issues with this addition  
to the Auction area

Oscar Diek

CITY OF MANITOWOC  
PARKS AND RECREATION DEPARTMENT

VENDOR AGREEMENT

This agreement was made and entered into this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_, 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 Parks & Rec Maintenance Facility on Wards for the sale of "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 4/25/15 (Beginning Date) and ending 4/25/15 (Ending Date), on SAT (Day(s) of the week), from 7:00 am/pm until 7:00 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 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 15<sup>th</sup> 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  
920 973 5106  
 Phone  
 \_\_\_\_\_  
 Fax

<b>City:</b>	City Clerk 900 Quay Street Manitowoc, WI 54304 920-686-6950 Phone 920-686-6959 Fax	<b>Copy to:</b>	Parks & Recreation Director 900 Quay Street Manitowoc, WI 54304
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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 30 day of March 2015, the above signed Tim F. Becker, to me know who executed the foregoing instrument and acknowledged the same.

Sandra Buschman  
Notary Public

Manitowoc County, WI

My Commission (expires) (is) 1-31-16

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) \_\_\_\_\_