

U.S. Cellular Community Park Concessions Service Lease

THIS AGREEMENT entered into by and between the City of Medford, hereinafter "CITY" and Michael Walker, dba Aloha Grill, hereinafter "CONTRACTOR".

Pursuant to and resulting from direct negotiations, the parties agree as follows:

A. Scope of Agreement

Unless specifically amended, clarified, or expanded in writing the agreement between the parties shall consist of this Agreement. Hereinafter, the complete contract package shall be referred to as "contract documents".

B. Term of Agreement

The term of this Agreement shall be one (1) year beginning June 15, 2012 and ending May 30, 2013.

C. Contractor Responsibilities

1. Building, Capital Equipment and Furnishings:

CONTRACTOR shall:

- a. Provide food concessions at U.S. Cellular Community Park (USCCP) concession areas provided by CITY or through a portable vending non-motorized system provided by CONTRACTOR at USCCP locations approved by Parks and Recreation administration. All building modification plans must receive prior approval by the CITY.
- b. Be responsible for all costs incurred in utility modifications and hookup within concession building(s). CITY will provide water, electricity and trash collection utilities to premises.
- c. Restore the area to its original condition upon termination of the contract and remove any and all logo or trademark items, including signage and murals. CONTRACTOR shall be responsible for any costs incurred by the CITY in repairing damage caused by CONTRACTOR in removing these items and other trade fixtures upon termination of this Agreement.

2. Operations

CONTRACTOR shall:

- a. Perform all services in the most highly professional manner, and in accordance with the utmost industry standards. Unless the means or methods of performing a task are specified elsewhere in this contract, CONTRACTOR shall employ methods that are generally accepted and used by the industry.
- b. At all times remain responsible for ensuring the adherence to all operational standards and the fulfillment of all other CONTRACTOR obligations as originally proposed and negotiated.
- c. Adhere to all local and state sanitary codes applicable to a licensed restaurant.
- d. Operate on its credit and be responsible for all costs of operations of said facilities including all fees paid to the corporate office.
- e. Comply with applicable laws, ordinances, regulations and rules of federal, stated and local authorities relating to sanitation and safety requirements, wages and hours of

employment, business/operating licenses, withholding taxes, and Equal Employment Opportunity.

- f. Be responsible for the control and safe keeping of keys issued. If a key is lost, CONTRACTOR will be responsible for the cost of re-keying.
- g. Fully cooperate with CITY staff in developing operating hours based on USCCP events and activities.
- h. Grant CITY staff or its agents access to concession area for inspection purposes within a period of four hours following verbal notification unless such advance notice, for any reason, conflicts with CONTRACTOR's activities. If so, a time of mutual convenience shall be arranged. City's right of inspection is solely for the purpose of ensuring compliance with this lease.
- i. Pay all costs associated with a concessions operation including but not limited to:
 - 1. Management
 - a. Menu Planning
 - b. Food Preparation and Service
 - c. Personnel Supervision
 - d. Labor relations, personnel development and training
 - e. Financial accounting/reports
 - f. Procurement
 - 2. Operations
 - a. Applicable fees, licenses and taxes
 - b. Food products
 - c. Supplies
 - d. Laundry
 - e. Telephone (installation, base rate, and long distance calls)
 - f. Employee meals
 - g. First aid supplies
 - h. Menu boards/signs
 - i. Cleaning of drains, disposals, and grease traps
 - j. Extermination and pest control services for service and storage areas
 - k. Maintaining equipment and furnishings
 - l. Cleaning service equipment and carts
 - m. Cleaning service counters and wall surfaces
 - n. Spot cleaning of doors and window surface
 - o. Custodial care of immediate service area
 - p. Reasonable effort to pick up concessions-related litter around building premises and playground
 - 3. Proposed Hours of Operation
 - Monday-Friday, 5:30 - 9:00 p.m.
 - Saturday-Sunday, 9:00 a.m.- 6:00 p.m.
 - Days, time subject to change based on facility use schedules

3. Accounting

CONTRACTOR shall:

- a. Maintain accurate, complete and separate books of account according to generally accepted account principles reflecting the food service operation with appropriate supporting data and documents.
- b. Collect all revenue.

- c. Submit to CITY payments due and operating statements, including cash sales receipts for the operation within ten (10) days after the close of each calendar month. Causes of abnormal revenues and expense deviations shall be noted by CONTRACTOR as part of this statement.
- d. Make accounting and supporting data and documents available for CITY inspection, reproduction, and audit within a reasonable time upon request.

4. Food Quality Specifications

CONTRACTOR shall use the following minimum food specifications throughout the contract term:

- a. Beef and veal, USDA Choice
- b. Pork and lamb, USDA #1
- c. Poultry, USDA grade "A"
- d. Ground beef, USDA Standard or better, not to exceed 20% fat content with no soy additive or extender. All ground beef is to be 100% all Beef.
- e. Eggs and dairy products, USDA grade "A"
- f. Cheese, USDA grade "A". All cheese products are to be 100% real cheese, with the exception of non-dairy substitutes for lactose intolerant customers, i.e. soy cheese
- g. Canned fruits, vegetables, juices, USDA grade "A" fancy
- h. Fresh fruits and vegetables, USDA #1 Quality
- i. Frozen fruits, vegetables, juices, USDA grade "A" fancy

5. Personnel:

CONTRACTOR shall:

- a. Hire and pay all concession employees
- b. Require employees while on duty to wear identifiable uniformed dress such as hat and shirt, apron, etc.
- c. Provide work opportunities for individuals in keeping with the minimum wage scale for the State of Oregon.
- d. Instruct its employees to abide by the policies, rules and regulations with respect to use of the premises as established by the CITY. Be responsible for acts and omissions of all CONTRACTOR employees.

D. City of Medford Responsibilities

CITY shall:

- a. Provide light, power, water and facility trash removal. CITY shall not be responsible for any loss to CONTRACTOR due to a temporary interruption of utility service unless that interruption is caused by the negligence of the CITY, its agents, or employees, in which case the CITY's liability shall be limited to the wholesale value of the loss of foodstuffs due to the failure of refrigeration.
- b. Assume responsibility for general concession building maintenance, not including maintenance of any equipment provided or used by CONTRACTOR. CITY shall maintain the exterior of the building, including the roof, walls, foundations, walks,

driveways, parking areas, and the structural portions of the premises in good condition and repair, except when damaged by CONTRACTOR.

- c. Not unreasonably withhold consent if it is required at any time under the provisions of this agreement.
- d. Assume responsibility for ensuring the building complies with applicable laws.

E. Consideration

- a. CONTRACTOR shall pay CITY fifteen (15) percent of total monthly gross sales. Total monthly gross sales are defined as: All cash, charge, and debit transaction were, or in the ordinary course of business should have been, rung up on the cash register, less any applicable city, county, state, or federal meals/beverage taxes, less any employee meal and employee beverage costs.
- b. CONTRACTOR shall pay CITY building usage fee of \$75 per month if the Contractor elects to utilize the Concession area provided by the City on an ongoing basis
- c. Discounts, employee meal and beverage costs, and applicable taxes are to be entered in the cash register and reflected on the journal and "Z" tape or equivalent for each day's transaction. CONTRACTOR shall use the cash register equipment on the premises to account for all product flow through the premises, including discounted or free meals.
- d. CONTRACTOR payments must be postmarked no later than the 7th day of each month unless alternate arrangements receive written approval by the Parks and Recreation Director.

F. Additional Assignment

CONTRACTOR may not assign this agreement or sublet the premises without written consent from the CITY.

G. Default Provision

- a. If the CONTRACTOR defaults on its obligations under this agreement and the default continues for a period of thirty (30) days after the receipt of written notice from CITY specifying the default, CITY may declare this agreement terminated with an additional ten (10) days notice.

H. Insurance

During the life of this Agreement, CONTRACTOR shall maintain the following minimum insurance:

- a. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The following minimum limits are required: General Aggregate- \$1,000,000; Products/Completed Operations Aggregate- \$1,000,000; Personal & Advertising Injury Aggregate- \$1,000,000; Each Occurrence- \$500,000. "The City of Medford and its officers, employees and agents while acting within the scope of their duties as such" shall be named an additional Insured.
- b. Commercial automobile bodily injury and property damage liability insurance covering owned, non-owned, rented and hired autos. The combined single limit for bodily injury and property damage shall be not less than \$500,000. "The City

of Medford and its officers, employees and agents while acting within the scope of their duties as such” shall be named an additional Insured.

- e. ~~Statutory workers compensation and employers liability insurance as required by State law.~~ **Waived by Risk Manager**
- d. Coverages (a) and (b) shall be written on an occurrence basis, not on a claim made basis. Coverages (a) and (b) shall be primary and non-contributing over any other insurance available to CITY. CONTRACTOR shall submit to CITY certificates of insurance for all policies listed above. The certificates shall provide that the insurance company give written notice to CITY at least ten (10) days prior to cancellation of or any material change in the policy.

I. Damage to the Premises

In the event the premises are destroyed by fire, or other unavoidable casualty or are so damaged as to render the same wholly unfit for occupancy and such damage or destruction cannot be reasonably repaired within ninety (90) days from the date thereof, then this lease shall terminate as of the date of said damage or destruction, and CONTRACTOR shall immediately surrender said Premises to CITY. If, however, said destruction or damage can be repaired within ninety (90) days, or the Premises are so damaged as not to be rendered wholly unfit for CONTRACTOR's occupancy, then CITY shall be entitled to repair the same with all reasonable dispatch.

J. Waiver

One or more waivers by either party of any covenant or condition shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition. CITY's consent to or approval shall not be deemed to waive or render unnecessary CONTRACTOR's consent to or approval of any subsequent similar act by Lessee.

K. Notices

All notices required hereunder shall be given to the parties herein at their addresses provided below unless and until advised by the parties of a change in such address:

City of Medford
Parks & Recreation Director
411 W. 8th Street
Medford OR 97501

CONTRACTOR
Michael Walker dba Aloha Grill
1180 Oak St.
Ashland OR 97520

Any notice required or permitted under this lease shall begin to run on the date such notice is delivered, if properly sent, postage prepaid by certified or registered mail addressed to the address first given in this lease, or to such other address as may be specified from time to time by each of the parties in writing. Notice shall be construed as delivered as of the postmark date of sender's mail receipt form.

L. Successor Interests

The covenants, conditions and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, assigns and successors in interest of the parties hereto, provided, however, that nothing contained in this paragraph shall alter the restrictions hereinabove contained relating to assignment.

CITY OF MEDFORD, OREGON

By _____

Title _____

CONTRACTOR

By _____

Title _____

**U.S. Cellular Community Park Concessions Contract
Amendment No. 2**

This Amendment No. 2 is entered into the 2nd day of September, 2014, between the CITY OF MEDFORD, OREGON, an Oregon municipal corporation, hereinafter called "City," and ALOHA GRILL.

The parties agree as follows:

1. Aloha Grill is hereby authorized to conduct food and beverage sales in City-designated concession areas at U.S. Cellular Community Park through Aug. 30, 2016.
2. Aloha Grill shall remain open for business for the duration of City-coordinated tournaments unless otherwise authorized by the Recreation Superintendent.
3. The parties will abide by the terms and conditions of the current Contract, as previously written.

Aloha Grill :

CITY:

By: _____

Printed Name/Title

Address: _____

Tax ID# _____

By: _____

Brian Sjothun
Parks and Recreation Director
701 N. Columbus Ave.
Medford, OR 97501