

**2020 Seasonal Concessions
Request for Proposal**



**PARKS AND
RECREATION**

CONCESSION SPECIFICATIONS

Annually, the City, through its Parks and Recreation Department, seeks to fill seasonal concession opportunities in Boise City parks, as they come available. For 2020, the City is seeking food vendors to provide concessions for a number of parks and facilities. The selected vendor(s), based on the written proposal and interview process as the best qualified vendor for the services herein described, will be requested to enter into contract negotiations with the City of Boise.

If compensation or other terms cannot be agreed upon with the best qualified proposer, the City may terminate negotiations with that proposer and enter into negotiations with the next most qualified proposer.

The selected vendor shall agree to all of the terms and conditions as set forth in the professional agreement with the City “**Exhibit B – Self-Contained Concession Licensing Agreement Sample**” or **Exhibit C – Boise City Facility Seasonal Concession Licensing Agreement Sample,**” and be ready to execute same at time of award.

Concession Permit: The successful proposer(s) shall meet all concession permit requirements and obtain a Boise City Vending License. If this requirement is not met, the City will award the contract to the next most qualified proposer. This permit is not required at the time of this application, but will be required if proposer is awarded the contract. Proposer will need to indicate if this permit will need to be obtained.

Prime Vendor: The vendor(s) awarded a contract shall be the operator of the concession being proposed. No subcontractor, consignment or other transfer of concession responsibilities to another party is allowed without the approval of Boise City.

Intent: The City's intent in awarding the concession contract is to provide courteous, efficient service to the public with a maximum monetary return to the Boise Parks and Recreation Department.

Contract Award: A concession contract shall be awarded to the responsible vendor(s) submitting a proposal which provides the best service to the public, and/or greatest income potential to the City. The term of the contract shall be for an initial term of one (1) year, with an option to renew for additional years.

Applications can be accepted throughout the year, with first consideration being for applications received by **January 31, 2020**. If vacancies occur in existing locations, applications on file will be reviewed with the same

consideration, process and requirements.

Structure/Cart and Operations: Some concession areas are located within Boise Parks and Recreation Facilities (Natatorium/Hydrotube, Ivywild Pool, Willow Lane Athletic Complex), in which some electrical and water may be available for use.

Locations not in existing facilities will require a concession/vending cart be fully self-contained and removed from the park each evening, unless otherwise negotiated and agreed upon by both parties. Electricity and water are not available at these locations, **requiring the vendor to be responsible for providing their own electricity and water. Power provided by a generator must meet current sound ordinances.**

Products for Resale/Merchandise: The vendor shall include products for resale such as: Coffee and espresso drinks, snow cones, soda, sandwiches, candy, and other approved food and beverage products that are geared to the clientele at Boise City parks. Vendors must honor existing contractual agreements the City holds with current vendors, i.e. beverage products.

Healthy Food Policy: The vendor shall provide a menu that is compliant with the City of Boise's Healthy Food Policy (**Exhibit A**). The City shall approve all proposed products in writing.

Billing: Vendors must submit payments on a monthly basis. Checks shall be made payable to the Boise Parks and Recreation Department. Payments are due on the first day of each month. Payments may be mailed or hand-delivered to the Department of Parks and Recreation Administration Office, 1104 Royal Blvd, Boise, ID 83706.

Limitations: Vendor contracts do not guarantee participation in community or department sponsored events, or activities held within the vendor's designated area. If selected to participate in a community or department sponsored event, vendor is responsible for all fees and stipulations of the named event.

Public Information: Proposals may be considered a public record after the award of the contract. Confidential information will not be accepted on this project without prior written authorization.

Indemnification and Insurance: Vendors shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, including consequential damages, or injury to persons or property and losses and expenses caused or incurred by vendor, its servants, agents,

employees, guests, and business invitees, or by failure of the equipment provided by vendor, and not caused by or arising out of the tortious conduct of CITY or its employees. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, vendor covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. Vendor shall provide CITY with a Certificate of Insurance or other proof of insurance **naming the City of Boise as an additional insured** and evidencing vendor's compliance with the requirements of this paragraph and file such proof of insurance with the City.

Additionally, vendor shall maintain, and specifically agrees that it will maintain, throughout the term of the agreement, product liability insurance. This is not required at the time of application, but will be required if proposer is awarded the contract. Application needs to indicate if insurance is current or needs to be obtained.

Additionally, the vendor shall have and maintain during the life of this contract, statutory Workers Compensation, regardless of the number of employees, or lack thereof, to be engaged in work on the project under this agreement (including self). In case any such work is sublet, the vendor shall require that subcontractor to provide Workers Compensation Insurance for himself and any/all the latter's employees to be engaged in such work. Proof of insurance must be provided to the owner. This is not required at the time of application, but will be required if proposer is awarded the contract. Application needs to indicate if worker's compensation is current or needs to be obtained.

CLARIFICATION/PROTEST/CHALLENGE PROCESS

Clarification and/or Protest of Bid Requirements, Standards, Specifications, or Process: Any Vendor who wishes to request clarifications about or protest the requirements, standards, specifications, or process outlined in this Request for Proposals may submit a written notification to the Boise Parks and Recreation Community Programs Coordinator, 1104 Royal Blvd, Boise, ID 83706, to be received no later than three (3) working days prior to proposal opening. The notification shall state the exact nature of the clarification request or protest. In the case of a protest, vendor shall describe the location of protested portion or clause in the proposal document and explaining why the provision should be struck, added, or altered, and contain suggested corrections. In the event of a protest, the project Manager may deny the protest, require that the proposal be

modified, modify the proposal, and/or reject all or part of the protest.

Clarification and/or Protest of Contractor Selection or Contract Award: Any actual or prospective proposer who is aggrieved in connection with the selection of a firm or award of the contract or proposal may submit a protest to the Purchasing Agent. The protest shall be submitted in writing within seven (7) calendar days after such aggrieved person knows or should have known the facts which give rise to the protest. The protest must set forth in specific terms the alleged reason the Vendor selection or contract award is erroneous. Any protest addressed to the Mayor or City Council will be referred to the Purchasing Agent.

THE CITY OF BOISE RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS, TO WAIVE ANY IRREGULARITIES IN THE PROPOSALS RECEIVED, AND TO ACCEPT THE PROPOSAL DEEMED MOST ADVANTAGEOUS TO THE BEST INTEREST OF THE CITY. THE CITY WILL ALSO CONSIDER WHETHER THE PROPOSER IS A RESPONSIBLE PROPOSER AS DESCRIBED IN BOISE CITY CODE 1-11.

CONCESSION OPPORTUNITIES

The following locations are available for mobile food vending in 2020. Starting date, ending date, and days and time of vendor operation may be negotiated and set by both Boise Parks and Recreation and chosen vendors.

ESTHER SIMPLOT PARK

Esther Simplot Park is an urban park located along the Boise River, in the heart of Boise. The 55-acre park features 23 acres of ponds suitable for fishing, wading and swimming. Park amenities include open play areas, wetlands, two reservable shelters, Friendship Island, a playground and restrooms.

Concessions may be in operation from April through October, Sunday – Saturday.



There are no utilities available at this location. The chosen vendor will need to be fully self-contained, providing its own power and water.

VETERANS
MEMORIAL PARK

Veterans Memorial Park is a pilot location for mobile food vending in 2020. The park is located along the Boise River in northwest Boise, and features a shelter, playground, and numerous memorials in honor of Idaho’s veterans.

The targeted season of operation is during reservation season, from mid-April through mid-October, Sunday - Saturday.



There are no utilities available at this location. The chosen vendor will need to be fully self-contained, providing its own power and water.

WILLOW LANE
ATHLETIC COMPLEX

Willow Lane Athletic Complex is a 57-acre special use park adjacent to the Boise River Greenbelt. The complex features six lighted softball fields, a soccer field, playground and BMX dirt jump park. Adult softball leagues, consisting of approximately 625 teams annually, are run by the City of Boise from April through October with games being played on weeknights from 6:30–10:30 p.m. On weekends, an average of twenty (20) softball tournaments (benefit, invitational and championship levels) are held with a range of 10-65 teams per tournament (560 teams annually). The Willow Lane Athletic Complex location includes beer and wines sales which are a requirement of this proposal. Licensing is the responsibility of the selected



vendor. The awarded vendor for Willow Lane Athletic Complex will also be required to provide concession services at Ann Morrison Park for three (3) pre-scheduled tournaments. Glass bottles are prohibited, and patrons of the park are able to bring their own beverages.

Extra consideration will be given to vendors that can service fields 4, 5, and 6 via a fully self-contained trailer or shed, as well as the on-site concession building at fields 1, 2, and 3.

Renovations are currently being considered for the concession area, which may include equipment upgrades. Following are what currently comprises the concession area:

Facility Space:

- Main Concession Area – 18' x 10' + 4'10" x 5" (approx. 204 sq. ft.)
- Beer Booth – 10'1" x 10'3" (approx. 100 sq. ft.)
- Storage – 11'1" x 13'2" + 4'6" x 4'6" (approx. 163 sq. ft.)

Equipment & Amenities:

- Roller Grill
- Commercial Microwave
- Food Warmers (2)
- Upright Commercial Freezer
- *Upright Coca Cola Branded Drink Coolers (2)*
- Ice-cream Freezer
- Bun Rack
- Dish Washing Sink – 2 Compartment
- Hand Washing Sink
- Ice Machine
- A/C Unit
- Water Heater – 50 Gallon
- Shelving (Length x Height x Depth)
 - 4'8" x 2'10" x 2'6"
 - 6' x 2'10" x 2'6"
 - 8'2" x 2'10" x 2'6"
 - 5'5" x 2'6" x 1'
 - 12' x 1'4" x 1'
- In-Ground Safe

All equipment is to be maintained by the vendor. The City of Boise will not fix or

replace any equipment due to failure. Additional equipment is negotiable.

Site visits available upon request.

VENDOR SELECTION

We appreciate your interest in our projects, and realize that the development of proposals is a costly and time consuming effort. Please be assured your proposal will be given every consideration by Boise City.

The scope of work for this RFP shall include, but is not limited to, the furnishing of food and beverage products, supplies, equipment, services, products offered and cost to the patrons as stated in these specifications. Only complete applications will be reviewed.

Vendor selection shall be based on the following:

1. Services Provided by Vendor
2. Experience in Managing Comparable Sized Operations
3. Product and Proposed Prices
4. Equipment
5. Backup/Inventory Program
6. Financial Responsibility/Soundness
7. Seasonal Rental Fee
8. References
9. Additional Information
10. Commitment of continued use of contractual arrangements with current vendors (i.e. beverage products).
11. Interview

NOTE: Only the top rated proposers will be invited for the interview process. Samples which accurately reflect the food type and quality may be required at the interview.

Completed applications should be submitted to:

City of Boise Department of Parks and Recreation
Attn: Community Volunteer Coordinator
1104 Royal Blvd.
Boise, ID 83706



**CITY OF BOISE
DEPARTMENT OF PARKS AND RECREATION
SEASONAL CONCESSIONS PROPOSAL**

Return in Sealed Envelope

We appreciate your interest in applying to provide concessions in Boise City's parks, and realize that submitting an application may be a costly and time consuming effort. Please be assured your application shall be given every consideration by the City of Boise. However, **only complete applications shall be reviewed.** So please be thorough in your responses.

Name of Business: _____

Address: _____

City, State, Zip Code: _____

Phone #: _____

E-mail Address: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

It is the intent of the City to enter into a contract for services (see Exhibit B – Sample Self-Contained License Agreement), with an initial term of one year, with two options to renew upon mutual agreement for additional terms of one year. As required by Idaho Code, the contract will contain a "Non-Appropriation" clause, allowing the City to cancel the agreement should the City fail to receive adequate appropriations to continue the agreement.

PROPOSAL QUESTIONNAIRE

The following questions and specifications will help the city determine the most qualified vendor to provide services the City desires to contract for. It is the intent

of the City to evaluate the responses to this RFP based on cost, the ability and willingness to provide equipment and services, and the reliability of the vendor. Please include any additional information you feel will assist the City in fairly evaluating your company's services. The vendors selected based on the written proposal may then be interviewed in order for the City of Boise to select the best-qualified candidate. Attach additional pages if needed.

1. What services will you as a vendor provide?

2. Number of Staff: _____

3. Season of Operation: _____

4. Days of the Week Open: _____

5. Hours: _____

6. Experience in Managing Comparably Sized Operations (please describe your experience in this area):

7. Product and Price Schedule: List all proposed products and prices you anticipate charging customers for the season. Include products such as coffee and espresso beverages, snacks, sandwiches, snow cones or ice cream novelties. Provide detail on products that bring your menu into compliance with the City of Boise's Healthy Food Policy (Percentage of menu and content of calories, fat, saturated fat, Trans fat, sugar, sodium, etc.).

Menu attached (required)? Yes No

8. **Equipment** (equipment listed above per site will be included as part of this rental agreement/if self-contained unit, please indicate type and dimensions of equipment to be used):

9. **Backup/Inventory Policy:** What is your company's policy regarding providing backup equipment, should the equipment in use fail?

10. **Financial Responsibility/Soundness:** All proposals shall submit a financial statement, a current credit report (or authorize the City to obtain a credit report), and/or a 2016 tax return. Proposals which do not comply with this requirement may be found non-responsive and disqualified from further consideration.

11. **References:** Please include 3 References.

Name	Address	Phone Number
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12. **Additional Vendor Comments/Information:** Include any additional information that you feel can add additional value to the City, or you wish to be considered in awarding the RFP.

13. Vendor agrees to use all products currently under contract with the City (i.e. beverage products). Yes No

14. Vendor License (Check one).

Check	Item
<input type="checkbox"/>	Vendor has license and copy is attached.
<input type="checkbox"/>	Vendor agrees to obtain all required license/permit promptly at time of award announcement.

15. Insurance (Check One).

Check	Item
<input type="checkbox"/>	Insurance is current and copy is attached.
<input type="checkbox"/>	Vendor agrees to obtain all required insurance promptly at time of award announcement.

16. Licensing Fee Proposal(s)

- a. Esther Simplot Park
3206 Pleasanton Ave.
Boise, ID 83702

The City will accept a minimum Licensing Fee of \$8.00/day Monday -Friday and \$26.00/day for Saturday-Sunday.

Please specify amount per week day: \$_____

Please specify amount per weekend day: \$_____

- b. Julia Davis Park
700 S. Capitol Blvd.
Boise, ID 83702

The City will accept a Licensing Fee of \$8.00/day, Monday – Friday and \$26.00/day Saturday - Sunday. Please indicate your bid:

Please specify amount per week day: \$_____

Please specify amount per weekend day: \$_____

- c. Kristin Armstrong Municipal Park
500 S. Walnut St.
Boise, ID 83712

The City will accept a minimum Licensing Fee of \$8.00/day, Monday – Friday and \$26.00/day Saturday - Sunday. Please indicate your bid:

Please specify amount per week day: \$_____

Please specify amount per weekend day: \$_____

- d. Veterans Memorial Park
930 Veterans Memorial Parkway
Boise, ID 83703

The City will accept a minimum Licensing Fee of \$8.00/day, Monday – Friday and \$26.00/day Saturday - Sunday. Please indicate your bid:

Please specify amount per week day: \$_____

Please specify amount per weekend day: \$_____

- e. Willow Lane Athletic Complex
4623 Willow Lane
Boise, Id 83703

PROPOSAL: Minimum proposal accepted is \$8,000.00 or 12% of gross sales, whichever is greater, to be paid monthly from April thru October. One-sixth of accepted proposal amount shall be due the first of each month (April, May, June, July, August, September); if 12% of gross sales is greater than \$8,000 the balance will be due November first.

Please specify annual bid amount \$_____ or 12% of gross sales, whichever is greater.

City of Boise Healthy Food Policy

Vending Machine Nutrition Standards

30% of items in the machines must meet *all* of the following nutritional standards:

Food

- Calories \leq 250 per package
- Total Fat \leq 35% calories from fat - exception for nuts, seeds, dried fruits with no nutritive sweeteners (agave, honey, fructose and high fructose corn syrup) sold with nuts or seeds
- Saturated Fat \leq 10% of calories from saturated fat - exception for nuts, seeds, dried fruits with no nutritive sweeteners sold with nuts or seeds
- Sugar \leq 35% calories from sugar- exception for fruit (including dried) with no nutritive sweeteners
- Sodium \leq 230mg per package
- Trans Fat 0g per package

Beverages

- Plain water (with or without carbonation)
- Calorie-free, flavored water (with or without carbonation)
- Unflavored low fat milk (2% or 1%)
- Unflavored or flavored fat free milk and milk alternatives
- 100% fruit or vegetable juice
- 100% fruit or vegetable juice diluted with water {with or without carbonation), and no added sweeteners
- Beverages with \leq 40 calories per 8 fluid ounces, or \leq 60 calories per 12 fluid ounces

Concessions Nutrition Standards

30% of items sold must meet *all* of the following nutritional standards:

Pre-Packaged Snacks, Beverages and Side Items

- Same standards as above

Entrees - food generally regarded as the primary food in a meal including, but

not limited to sandwiches, burritos, pasta and pizza.

- Calories \leq 400
- Total fat \leq 35% of calories from fat - exception for legumes, nuts, nut butters, seeds, eggs, non-fried fruits and vegetables and cheese packaged for individual sale)
- Saturated fat \leq 10% calories from saturated fat - exception for eggs or cheese packaged for individual sale
- Sugar \leq 35% calories from sugar - exception for fruit and vegetables (including dried) with no nutritive sweeteners
- Sodium \leq 575mg per serving
- Trans fat 0g per serving

Recommendations

- Include a non-fried fruit or vegetable option with each entrée
- Where dairy items are offered, offer low-fat and non-fat dairy options
- Where grains are offered, include whole grain items



LICENSE AGREEMENT City of Boise Parks and Recreation

This LICENSE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, by and between the **City of Boise Department of Parks and Recreation** (“Licensor”) and _____ (“Licensee”).

RECITALS

[Recitals to be added]

ARTICLE I - DEFINITIONS

1.1. Defined Terms: The following terms shall have the meanings stated below:

[Defined terms to be added]

ARTICLE II - TERMS OF LICENSE AGREEMENT

2.1. Term: This License Agreement shall become effective _____ and shall continue until _____ or until such termination or default as provided for by this Agreement.

2.2. Renewal: This License Agreement can be renewed twice for successive Concession Seasons. Formal execution of an Addendum to this Agreement, setting forth the intentions of the Licensor and Licensee to renew and any new or modified terms and conditions, shall be required for renewal. Neither Licensor nor Licensee shall be under any obligation to renew this License Agreement.

2.3. Termination: Either party may terminate this Agreement without cause and without regard to payment periods by providing the other party thirty (30) days written notice. The ability to terminate this Agreement without cause expressly includes Licensor’s ability to terminate under any circumstances which involve non-appropriation of funds by the Boise City Council. Under the following circumstances, a shorter termination period is allowed, as well:

- a. Total destruction: Should the park/facility or an essential part of the area used by Licensee for business operations be totally destroyed by fire, flood, or other casualty, this Agreement shall immediately terminate.
- b. Partial destruction: In the case of partial destruction of the area used by Licensee for business operations, either party may terminate this Agreement within ten (10) days following such partial destruction, such notice to be given to the other party not less than ten (10) days prior to the chosen date of termination.
- c. If Licensee makes an assignment for the benefit of creditors, or is placed in receivership or adjudicated bankrupt, or takes advantage of any bankruptcy or insolvency law,

Licensor may terminate this Agreement by giving written notice to Licensee specifying the date of termination, such notice to be given not less than ten (10) days prior to the date specified in such notice for the date of termination.

- d. Licensor expressly reserves the right to terminate this Agreement without cause under any circumstances which involve non-appropriation of funds by the City of Boise.

ARTICLE III – LICENSE AND PREMISES

3.1. Grant of License: Licensor hereby grants to Licensee an exclusive license to operate the business of _____ in area(s) of _____ generally identified on Exhibit A, attached and incorporated herein in accordance with the terms and conditions of this Agreement.

- a. [Specific terms to be added.]
- b.
- c.

3.2. License Premises: The Licensee is allowed access to the area of use and the ability to operate the business known as _____ therein only during regular operating hours of the park/facility.

3.3. Exclusive and Revocable License: Licensee acknowledges this exclusive License is revocable should Licensee's business operations not comport with the terms of this Agreement. Licensee acknowledges that Licensor, when possible, will seek competitive proposals for the same or similar services. Licensor reserves the right to solicit other business proposals for the same or similar services and to award additional licenses that, at Licensor's discretion, best meet the needs of the City of Boise City.

3.4. Limitations on Use: Licensee acknowledges this exclusive, revocable License does not guarantee participation in community or department sponsored events and activities held within the area of use. Any arrangements for Licensee's participation at such events or activities, including all fees to event sponsors, are the sole responsibility of Licensee. The terms of this Agreement shall continue to apply during Licensee's participation at such events, including Licensee's obligations to Licensor under *Article V – Fees and Related Provisions*.

3.5. Lawful Business Use: During the term of this Agreement, Licensee shall use the facility exclusively for the business described herein and in any attached exhibits. The Licensee shall not allow such premises or any part thereof to be used for any immoral or illegal purposes and shall not allow, suffer, or permit such premises to be used for any purpose, business, activity, use, function, or object to which Licensor objects in writing. The Licensee shall, at all times during the terms of this Agreement, be subject to the lawful exercise of the police power of Boise City.

ARTICLE IV – DUTIES OF LICENSEE

4.1. Duties: In exchange for the privilege of obtaining this exclusive, revocable license, Licensee agrees to:

- a. Provide all services and business operations in a safe and law-abiding manner.

- b. Follow all rules and regulations of the area of use, the laws of the City of Boise City, and applicable laws of the State of Idaho.
- c. Provide daily and continuous clean-up of all debris in the area used, occupied, and immediately adjacent to Licensee's business at the facility that is caused or created by Licensee's employees, servants, agents, business invitees, patrons, and guests.
- d. Keep all company vehicles on roadways and improved parking lots within or associated with the property boundaries.
- e. Pay for all damages to the area of use caused directly or proximately by Licensee's business equipment, employees, servants, agents, business invitees, patrons, and guests and not a result of normal wear and tear that would have occurred had Licensee's business not operated at the facility.
- f. At the termination of this Agreement, either by natural expiration or default as provided, return the area of use to its original condition excepting normal wear and tear.

4.2. No Assignment: Licensee shall not assign this Agreement or any of its privileges hereunder, either voluntarily or involuntarily, without the prior written consent of Licensor.

4.3. Limitations: This Agreement shall apply to and be binding on Licensee only to the extent Licensee's business operates within the confines of the area of use.

4.4. Default and Cancellation: If Licensee is in default of any of the terms and conditions of this Agreement or violates any laws of the United States, the state of Idaho, or applicable City of Boise ordinances, rules or regulations and thereafter fails or refuses to perform or correct the conditions constituting a breach or default, after five (5) days written notice this Agreement shall be deemed terminated and forfeited without further notice or demand, and all rights of Licensee hereunder shall be terminated.

4.5. Code of Conduct: In order to ensure a professional and respectful relationship with the general public, the City of Boise requires its business licensees to behave in a civil and courteous manner at all times. While it is impossible to list every type of conduct that is unacceptable, the following are examples of behavior that may, at the sole discretion of Licensor, result in license revocation:

- a. Harm or threat of harm to any member of the public, City employee, City government, or City property, regardless of location.
- b. Physical violence against persons or property.
- c. Sabotage of City property or processes.
- d. Theft or unauthorized removal or possession of the City's property or another person's property from City premises.
- e. Speech or conduct with the public that violates commonly accepted standards and that, under present circumstances, has no redeeming social value, including the use of profane, indecent, or abusive language.
- f. Speech or conduct deemed rude, disrespectful, aggressive, intimidating, harassing or otherwise inappropriate when conducting licensee's business.
- g. Making malicious, vindictive, false, and/or harmful statements about others or engaging in verbal abuse, altercations or outbursts.
- h. Any conduct that obstructs, disrupts, or interferes with City business, service, work environment or administrative functions, including City sponsored events.

- i. Untruthfulness related to use of the license which could hinder or jeopardize the City's interests.
- j. Use, possession, distribution, or sale of illegal drugs, paraphernalia, or controlled substances not prescribed to the user by a physician, on City property or at City sponsored events, including the use of alcohol, drugs, or controlled substances while working in accordance with the license.

4.6. Criminal History: Licensee shall not employ to work under the terms of this License any employee, servant, or agent who is unsuitable to interact with children. "Unsuitable to interact with children" shall mean having been convicted of a crime listed in Idaho Code § 18-8304 (or similar statute from any other state or territory) or required to register under Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, Idaho Code § 18-8301 et seq. (or similar statute from any other state or territory).

- a. Licensee, at their own expense, shall conduct appropriate and applicable background and reference checks on each of its employees, servants, and/or agents to ascertain that there is no history of behavior that would make Licensee or its employees, servants, or agents unsuitable to interact with children.
- b. By signing this Agreement, Licensee hereby certifies to Licensor that each of Licensee's employees, servants, and/or agents is suitable to interact with children and shall continue to be suitable to interact with children during all times that Licensee is conducting business operations within the facilities.

ARTICLE V – FEES AND RELATED PROVISIONS

5.1. License Fee: For the privileges herein described, Licensee agrees to pay to the Licensor a license fee of _____ dollars (\$XX.XX) per weekday (Monday through Friday) and _____ dollars (\$XX.XX) per weekend day (Saturday and Sunday) for each day or partial day of business operation within the area of use.

- a. Minimum payment: Licensee shall operate the business _____ under the terms of this License Agreement a minimum of five (5) days per week during the license Term. If Licensee is unable or unwilling to work a minimum of five (5) days per week during the Term, Licensee still agrees to pay a minimum license fee of _____ dollars (\$XX.XX) per week during the Term. Licensor shall have the sole discretion to waive this requirement if severe weather (e.g. torrential rains, flooding, smoke) or closure of the area of use makes business operations unnecessarily difficult.
- b. Licensee shall complete Affidavits of Licensing Fees, attached hereto as **Exhibit B**, attesting to all days worked and not worked within the area of use and setting forth the amount owed Licensor.
- c. Licensee shall submit the affidavits monthly with the corresponding payment.

5.2. Payment of License Fee: Payment of the license fee shall be monthly and shall be due by the tenth (10th) day of the following month for which the fee was incurred. Payment of the license fee and all notices to Licensor set forth in this Agreement shall be made at the following address, without demand, or such other place as the Licensor may designate to Licensee in writing:

**City of Boise – Department of Parks and Recreation
Attn: Community Programs Coordinator
1104 Royal Boulevard
Boise, Idaho 83706**

5.3. Unpaid Fees: All amounts not paid by Licensee to the Licensor when due shall bear a service charge at the Licensor's prevailing rate on delinquent accounts. The said rate shall be applied from the date when the same was due until paid by the Licensee. Past due accounts shall be subject to a minimum Administration charge per month which shall cover the costs of handling. Licensee agrees that it shall pay and discharge all costs and expenses, including reasonable attorney's fees, incurred or expended by Licensor in collection of any delinquent amounts due.

5.4. Other Taxes, Fees, or Charges: Fees and charges paid to the Licensor shall not include any taxes, fees or license charges that may be levied, assessed or charged by any governmental entity on Licensee. Licensee agrees to pay such taxes, fees or license charges directly to the appropriate taxing authority, without involving the Licensor, or in the event Licensee desires to contest such taxes, fees or license charges, such contest shall be in good faith and the taxes, fees, or charges in contest shall be bonded if not paid when due.

5.5. Inspection of Records: Licensee agrees to maintain accurate business records and to allow Licensor to inspect any and all financial books, records, and receipts from the business operations conducted by Licensee in the area of use.

ARTICLE VI – INDEMNIFICATION AND INSURANCE

6.1. Indemnification: Licensee shall protect, defend, and hold Licensor and its officials, agents and/or employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of the negligent acts or omissions of Licensee or its officers, agents, employees, contractors, subcontractors, or invitees incident to this License and/or the use or occupancy in the area of use regardless of where the injury, death, or damage may occur. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this License.

6.2. Liability Insurance: Licensee shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, Commercial General Liability Insurance, Workers' Compensation Insurance, and Employers' Liability Insurance in the form of a certificate of insurance issued on behalf of the City of Boise, naming the City (Licensor) as an additional insured on the liability policies, for the following minimum limits and coverages:

Commercial General Liability Insurance in the following amounts:

General Aggregate \$2,000,000
Product/Completed Operations Aggregate \$2,000,000
Personal & Advertising Injury Liability \$1,000,000
Per Occurrence \$1,000,000

Fire Legal Liability \$50,000

Workers' Compensation Insurance – regardless of the number of employees or lack thereof – in the statutory limits as required by the State of Idaho.

Employers' Liability Insurance in the following amounts:

Bodily Injury by Accident \$100,000 each accident
Bodily Injury by Disease \$500,000 policy limit
Bodily Injury by Disease \$100,000 each employee

The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Licensor. And if Licensor becomes liable for an amount in excess of the insurance limits herein provided, Licensee covenants and agrees to indemnify and save and hold harmless Licensor from and for all such losses, claims, actions or judgments for damages or liability to persons or property. Licensee shall provide Licensor with a Certificate of Insurance or other proof of insurance evidencing Licensee's compliance with the requirements of this paragraph and file such proof of insurance with Licensor's Risk Manager and Department of Parks and Recreation. In the event the insurance minimums of the Idaho Tort Claims Act are changed to exceed the above-listed amounts, Licensee shall immediately submit proof of compliance with the changed limits. If Licensee fails to provide or maintain said insurance in the amounts listed, even if cured by Licensee at a subsequent date, such shall be deemed an incurable default by Licensee, and Licensor may exercise any rights or remedies for such default that Licensor may have under this License or at law or equity, including, without limitation, the right to terminate this License.

6.3. Other Insurance Coverage: Licensee shall be solely responsible for obtaining any other types of insurance issued for the benefit of Licensee, including but not limited to Property Insurance insuring the property owned by Licensee which is used, held, or stored at the park(s). Evidence of all such insurance shall be furnished to Licensor upon execution of this Agreement

ARTICLE VII – GENERAL PROVISIONS

7.1. Non-Discrimination: Licensee, in their use of the License herein granted, shall not discriminate or permit discrimination against any person or group of persons in any manner on the grounds of race, color, sex, religion, national origin or ancestry, age, physical handicap, sexual orientation or gender identity/expression. Non-compliance with such assurances shall constitute a breach of this License Agreement, and in the event of non-compliance, Licensor may take appropriate action to enforce compliance and may terminate this Agreement or seek judicial enforcement thereof.

7.2. Compliance with Laws: In performing the scope of services required hereunder, Licensee shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments including, but not limited to, required licensing for drivers of commercial vehicles in the State of Idaho, workers compensation insurance, and all sales and use tax legislation. The Licensor hereby requires Licensee to show proof of workers compensation insurance and of compliance with any applicable statute, ordinance or regulation with which Licensee is required to comply.

7.3. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho and the ordinances of the City of Boise City.

7.4. Interpretation: The paragraph headings used herein are for convenience only, are not a part of this Agreement, and are not to be used in construing it.

7.5. Notices to Licensee: The Licensee's address for all notices set forth in this Agreement shall be as follows, or such other Idaho address as the Licensee may designate to Licensor in writing:

Anyone, LLC
123 River Way
Boise, Idaho 83701
(208) 123-4567

7.6. Attorney's Fees: Should any litigation be commenced between the parties to this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

7.7. Independent Parties: Licensee is and shall at all times be considered as an independent permittee and is in no way an employee of the City of Boise City.

- a. The parties intend that this Agreement create only an independent license relationship. Licensee shall complete the services agreed upon with Licensor according to its own means and methods, which shall be in the exclusive control of Licensee and which shall not be subject to the control or supervision of Licensor. The parties agree that this Agreement does not entitle Licensee or its employees or agents (if any) to workers' compensation benefits, unemployment compensation benefits, or any other benefits or protections that accrue from an employment relationship, all of which shall remain the sole and exclusive responsibility of Licensee and/or its employees or agents.
- b. Licensee is not required to perform its services exclusively for the Licensor. Licensee, its employees or agents shall be responsible for any business registrations or licenses required by any governmental entity. Licensor shall not control, directly or indirectly, the number of hours Licensee its employees or agents shall perform services under this Agreement. Licensor shall not combine business operations with Licensee.
- c. Neither Licensee nor its employees or agents are to be considered agents or employees of Licensor for any purpose, including that of federal and state taxation, and neither Licensee nor its employees or agents are entitled to any of the benefits that the City may provide to its employees. It is understood and agreed that Licensor does not require Licensee to provide services exclusively to Licensor and that Licensor is free to contract to provide services to other entities during the term of this Agreement.

7.8. Entire Agreement: This instrument embodies the whole Agreement of the parties and supersedes any and all other agreements or understandings. No failure of Licensor to exercise any power given it hereunder, or to insist upon strict compliance by Licensee of any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Licensor's right to demand strict compliance with the terms hereof.

7.9. Duplicate Originals: This Agreement may be executed in several counterparts each of which shall be deemed an original.

7.10. Modification: There shall be no modification of this Agreement, except in writing, executed with the same formalities was this License Agreement.

7.11. Severability: If any provision of this Agreement or application thereof is held invalid, such invalidity will not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to that end, the provisions hereof are declared to be severable.

End of Agreement

[Signatures appear on following page.]

SAMPLE

IN WITNESS WHEREOF the parties hereto have subscribed their names the date first written above.

CITY OF BOISE

Licensor

By: _____
Doug Holloway, Director
Department of Parks & Recreation

By: _____
President
Boise Parks & Recreation Commission

ANYONE, LLC

Licensee

By: _____
Owner, Anyone, LLC

SAMPLE



LICENSING AGREEMENT City of Boise Parks and Recreation

This LICENSE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, by and between the City of Boise Department of Parks and Recreation ("Licensor") and _____ ("Licensee").

RECITALS

[Recitals to be added]

ARTICLE I - DEFINITIONS

1.1. Defined Terms: The following terms shall have the meanings stated below:

[Defined terms to be added]

ARTICLE II - TERMS OF LICENSE AGREEMENT

2.1. Term: This License Agreement shall be for three (3) years, become effective _____ and shall continue until _____ or until such termination or default as provided for by this Agreement. At the end of the Primary Term, provided Licensee is not in default under any of the terms and conditions of this Agreement, and only upon mutual consent, Licensor and Licensee may agree to extend the License Agreement for a first renewal option term of two (2) years and thereafter a second renewal option term of two (2) years according to the terms set forth in Section 2.2 of this Agreement.

2.2. Option Terms: This License Agreement can be renewed twice for successive Concession Seasons. Formal execution of an Addendum to this Agreement, setting forth the intentions of the Licensor and Licensee to renew and any new or modified terms and conditions, shall be required for renewal. Neither Licensor nor Licensee shall be under any obligation to renew this License Agreement.

- a. First Option Term. Licensor hereby grants Licensee a right to extend the term of this License for a period of up to two (2) years from the expiration of the Primary Term, and ending on _____, on the same terms and conditions as during the term then in effect so long as this License is not then in default and Licensee gives Licensor (30) days written

notice of intent to extend. Once having given such notice of intent to extend, Licensee shall be obligated to enter into the First Option Term; provided, however, in the event Licensee is in default of the terms of this License after delivery of such notice, Licensor shall not be obligated to enter into the First Term Option.

- b. Second Option Term. Licensor hereby grants Licensee a right to extend the term of this License for a second period of up to two (2) years from the expiration of the First Term Option, and ending on _____, on the same terms and conditions as during the term then in effect so long as this License is not then in default and Licensee gives Licensor (30) days written notices of intent to extend. Once having given such notice of intent to extend, Licensee shall be obligated to enter into Second Option Term; provide, however, in the event of Licensee is in default of the terms of the License after delivery of such notice, Licensor shall not be obligated to enter into the Second Term Option.

2.3. Termination: Under the following circumstances, a shorter termination period is allowed:

- a. Total destruction: Should the park/facility or an essential part of the area used by Licensee for business operations be totally destroyed by fire, flood, or other casualty, this Agreement shall immediately terminate.
- b. Partial destruction: In the case of partial destruction of the area used by Licensee for business operations, either party may terminate this Agreement within ten (10) days following such partial destruction, such notice to be given to the other party not less than ten (10) days prior to the chosen date of termination.
- c. If Licensee makes an assignment for the benefit of creditors, or is placed in receivership or adjudicated bankrupt, or takes advantage of any bankruptcy or insolvency law, Licensor may terminate this Agreement by giving written notice to Licensee specifying the date of termination, such notice to be given not less than ten (10) days prior to the date specified in such notice for the date of termination.
- d. Licensor expressly reserves the right to terminate this Agreement without cause under any circumstances which involve non-appropriation of funds by the City of Boise.

2.4 Termination of Licensee: If Licensee terminates this Agreement at any time prior to the end of the Primary Term or any Option Term and for any reason except those set forth in Section 2.3 (above), Licensee shall pay a termination fee equal to twenty percent (20%) of the License Fee from the date of termination through the end of the current term.

ARTICLE III – LICENSE AND PREMISES

3.1. Grant of License: Licensor hereby grants to Licensee an exclusive license to operate the business of _____ in area(s) of _____ generally identified on Exhibit A, attached and incorporated herein in accordance with the terms and conditions of this Agreement.

- a. [Specific terms to be added.]
- b.
- c.

3.2. License Premises: The Licensee is allowed access to the area of use and the ability to operate the business known as _____ therein only during regular operating hours of the park/facility.

3.3. Limitations on Use: Licensee acknowledges this exclusive, revocable License does not guarantee participation in community or department sponsored events and activities held within the area of use. Any arrangements for Licensee's participation at such events or activities, including all fees to event sponsors, are the sole responsibility of Licensee. The terms of this Agreement shall continue to apply during Licensee's participation at such events, including Licensee's obligations to Licensor under *Article V – Fees and Related Provisions*.

3.4. Lawful Business Use: During the term of this Agreement, Licensee shall use the facility exclusively for the business described herein and in any attached exhibits. The Licensee shall not allow such premises or any part thereof to be used for any immoral or illegal purposes and shall not allow, suffer, or permit such premises to be used for any purpose, business, activity, use, function, or object to which Licensor objects in writing. The Licensee shall, at all times during the terms of this Agreement, be subject to the lawful exercise of the police power of Boise City.

3.5. Equipment Use, Repair, and Replacement: A list of equipment and amenities for the facility is attached to this Agreement as **Exhibit B**. Licensee's right to use the premises shall include the right to utilize all existing fixtures or items owned by Licensor and currently installed at the premises at no additional cost to the Licensee. Licensee's use of fixtures or items which are owned by an independent vendor shall be arranged by Licensee directly with the particular vendor. Throughout the Primary Term or any extension thereof, any and all repairs, maintenance, and replacement of fixtures shall be at Licensee's sole expense. All fixtures, merchandise, supplies, and equipment owned by the Licensee or installed at the premises at Licensee's expense shall be the property of the Licensee, and at the expiration or termination of the License shall remove the same.

3.6 Maintenance and Repairs: Licensee shall keep the interior, non-structural portions of the premises in good order and condition as when delivered to it, excepting ordinary wear and tear or damage by fire, elements or other casualty not due to the intentional

act or negligence of Licensee, and shall provide at its sole cost and expense any and all additions or improvements to the premises that may hereafter be required by any law or ordinance for safety purposes.

3.7. Liens and Encumbrances: Licensee shall not permit any lien to stand against the premises or facilities for work done or materials furnished by or on behalf of Licensee, provided that the Licensee may contest the validity of any such lien (provided Licensor may require Licensee to transfer said lien to bond as provided under applicable law), but upon a final determination of the validity thereof, Licensee shall cause the lien to be satisfied and released of record. Licensee shall indemnify Licensor against all damages, costs, and charges, including attorney fees reasonably incurred, in any suit involving any liens, judgments, or encumbrances caused or suffered by Licensee with respect to the premises, the facilities, or any part thereof. Licensee shall have no authority to create any liens for labor or materials on or against Licensor's interest in the premises or the facilities, and all person contracting with Licensee for the destruction or removal of any equipment or structure or for the erection, installation, alteration, or repair of any equipment, structure, or improvements, including all material men, contractor, mechanics, and laborers involve in such work, shall be notified by Licensee that they must look to Licensee and Licensee's interest only to secure the payment of any bill or account for work done or materials furnished during the Terms of this Agreement.

3.8. Keys: Five (5) keys shall be provided to the Licensee by Licensor at no cost. Additional keys will be charged to Licensee at the cost of the key. In the event that doors or locks must be re-keyed due to Licensee's loss of key(s), the cost of re-keying shall be Licensee's alone.

3.9. Signage: Licensee shall install, maintain, and operate such signs as are necessary or convenient for Licensee's use and occupancy, provided that such installment is within the premises or facilities and at Licensee's sole expense and with the prior written consent of Licensor, which consent shall not be unreasonably withheld, denied, or delayed. Signage shall be subject to applicable state and local laws.

ARTICLE IV – DUTIES OF LICENSEE

4.1. Duties: In exchange for the privilege of obtaining this exclusive, revocable license, Licensee agrees to:

- a. Provide all services and business operations in a safe and law-abiding manner.
- b. Follow all rules and regulations of the area of use, the laws of the City of Boise City, and applicable laws of the State of Idaho.
- c. Provide daily and continuous clean-up of all debris in the area used, occupied, and immediately adjacent to Licensee's business at the facility

- that is caused or created by Licensee's employees, servants, agents, business invitees, patrons, and guests.
- d. Dispose of all trash and garbage in covered containers and in locations, as designated by Licensor, which are out of view of customers, business invitees, patrons and guests; Licensee shall provide for proper handling and disposal of all trash and garbage.
 - e. Keep all company vehicles on roadways and improved parking lots within or associated with the property boundaries.
 - f. Pay for all damages to the area of use caused directly or proximately by Licensee's business equipment, employees, servants, agents, business invitees, patrons, and guests and not a result of normal wear and tear that would have occurred had Licensee's business not operated at the facility.
 - g. At the termination of this Agreement, either by natural expiration or default as provided, return the area of use to its original condition excepting normal wear and tear.

4.2. No Assignment: Licensee shall not assign this Agreement or any of its privileges hereunder, either voluntarily or involuntarily, without the prior written consent of Licensor.

4.3. Limitations: This Agreement shall apply to and be binding on Licensee only to the extent Licensee's business operates within the confines of the area of use.

4.4. Default and Cancellation: If Licensee is in default of any of the terms and conditions of this Agreement or violates any laws of the United States, the state of Idaho, or applicable City of Boise ordinances, rules or regulations and thereafter fails or refuses to perform or correct the conditions constituting a breach or default, after five (5) days written notice this Agreement shall be deemed terminated and forfeited without further notice or demand, and all rights of Licensee hereunder shall be terminated.

4.5. Code of Conduct: In order to ensure a professional and respectful relationship with the general public, the City of Boise requires its business licensees to behave in a civil and courteous manner at all times. While it is impossible to list every type of conduct that is unacceptable, the following are examples of behavior that may, at the sole discretion of Licensor, result in license revocation:

- a. Harm or threat of harm to any member of the public, City employee, City government, or City property, regardless of location.
- b. Physical violence against persons or property.
- c. Sabotage of City property or processes.
- d. Theft or unauthorized removal or possession of the City's property or another person's property from City premises.

- e. Speech or conduct with the public that violates commonly accepted standards and that, under present circumstances, has no redeeming social value, including the use of profane, indecent, or abusive language.
- f. Speech or conduct deemed rude, disrespectful, aggressive, intimidating, harassing or otherwise inappropriate when conducting licensee's business.
- g. Making malicious, vindictive, false, and/or harmful statements about others or engaging in verbal abuse, altercations or outbursts.
- h. Any conduct that obstructs, disrupts, or interferes with City business, service, work environment or administrative functions, including City sponsored events.
- i. Untruthfulness related to use of the license which could hinder or jeopardize the City's interests.
- j. Use, possession, distribution, or sale of illegal drugs, paraphernalia, or controlled substances not prescribed to the user by a physician, on City property or at City sponsored events, including the use of alcohol, drugs, or controlled substances while working in accordance with the license.

4.6. Criminal History: Licensee shall not employ to work under the terms of this License any employee, servant, or agent who is unsuitable to interact with children. "Unsuitable to interact with children" shall mean having been convicted of a crime listed in Idaho Code § 18-8304 (or similar statute from any other state or territory) or required to register under Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, Idaho Code § 18-8301 et seq. (or similar statute from any other state or territory).

- a. Licensee, at their own expense, shall conduct appropriate and applicable background and reference checks on each of its employees, servants, and/or agents to ascertain that there is no history of behavior that would make Licensee or its employees, servants, or agents unsuitable to interact with children.
- b. By signing this Agreement, Licensee hereby certifies to Licensors that each of Licensee's employees, servants, and/or agents is suitable to interact with children and shall continue to be suitable to interact with children during all times that Licensee is conducting business operations within the facilities.

4.7. Uniforms: All employees involved in Lessee's concession operations shall wear a uniform consisting of a golf or t-shirt style shirt of standardized color and imprinted with the Lessee's business logo.

ARTICLE V – FEES AND RELATED PROVISIONS

5.1. License Fee: For the privileges herein described, Licensee agrees to pay to the Licensors a license fee of _____ dollars (\$XX.XX) per year for business operation within the facility.

- a. One third of the licensing fee shall be due and owing on the first day of June, July, and August.
- b. Minimum payment: Licensee shall operate the business _____ under the terms of this License Agreement a minimum of five (5) days per week during the Concession Season. If Licensee is unable or unwilling to work a minimum of five (5) days per week during the Concession Season, this Agreement will be subject to immediate termination by Licensor. Licensor shall have the sole discretion to waive this requirement if severe weather (e.g. torrential rains, flooding, smoke) or closure of the area of use makes business operations unnecessarily difficult.

5.2. Utilities and Improvements: In addition to the license fee set forth above, Licensee shall pay all costs of utilities in excess of Five Hundred Dollars (\$500.00) during each Concession Season as long as Licensee makes no alteration to the premises that result in an increase in utility costs to the Licensor. In the event Licensee seeks to alter the premises during the term of this Agreement or any extension thereof, such alterations shall occur only with the written consent of Licensor and shall, if approved include installation of separate utility meters to measure Licensee's utility consumption. Unless otherwise agree upon in writing, any alterations and improvements, including utility metering shall be at Licensee's sole expense and shall be maintained at the expense of Licensee. Upon expiration of this Agreement, all alterations and improvements become the property of Licensor without reimbursement of value to Licensee.

5.3. Payment of License Fee: Payment of the license fee shall be monthly and shall be due by the tenth (10th) day of the following month for which the fee was incurred. Payment of the license fee and all notices to Licensor set forth in this Agreement shall be made at the following address, without demand, or such other place as the Licensor may designate to Licensee in writing:

**City of Boise – Department of Parks and Recreation
Attn: Community Programs Coordinator
1104 Royal Boulevard
Boise, Idaho 83706**

5.4. Unpaid Fees: All amounts not paid by Licensee to the Licensor when due shall bear a service charge at the Licensor's prevailing rate on delinquent accounts. The said rate shall be applied from the date when the same was due until paid by the Licensee. Past due accounts shall be subject to a minimum Administration charge per month which shall cover the costs of handling. Licensee agrees that it shall pay and discharge all costs and expenses, including reasonable attorney's fees, incurred or expended by Licensor in collection of any delinquent amounts due.

5.5. Other Taxes, Fees, or Charges: Fees and charges paid to the Licensor shall not include any taxes, fees or license charges that may be levied, assessed or charged by any governmental entity on Licensee. Licensee agrees to pay such taxes, fees or license charges directly to the appropriate taxing authority, without involving the Licensor, or in the event Licensee desires to contest such taxes, fees or license charges, such contest shall be in good faith and the taxes, fees, or charges in contest shall be bonded if not paid when due.

5.6. Inspection of Records: Licensee agrees to maintain accurate business records and to allow Licensor to inspect any and all financial books, records, and receipts from the business operations conducted by Licensee in the area of use.

ARTICLE VI – INDEMNIFICATION AND INSURANCE

6.1. Indemnification: Licensee shall protect, defend, and hold Licensor and its officials, agents and/or employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of the negligent acts or omissions of Licensee or its officers, agents, employees, contractors, subcontractors, or invitees incident to this License and/or the use or occupancy in the area of use regardless of where the injury, death, or damage may occur. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this License.

6.2. Liability Insurance: Licensee shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, Commercial General Liability Insurance, Workers' Compensation Insurance, and Employers' Liability Insurance in the form of a certificate of insurance issued on behalf of the City of Boise, naming the City (Licensor) as an additional insured on the liability policies, for the following minimum limits and coverages:

Commercial General Liability Insurance in the following amounts:

General Aggregate \$2,000,000
Product/Completed Operations Aggregate \$2,000,000
Personal & Advertising Injury Liability \$1,000,000
Per Occurrence \$1,000,000
Fire Legal Liability \$50,000

Workers' Compensation Insurance – regardless of the number of employees or lack thereof – in the statutory limits as required by the State of Idaho.

Employers' Liability Insurance in the following amounts:

Bodily Injury by Accident \$100,000 each accident
Bodily Injury by Disease \$500,000 policy limit
Bodily Injury by Disease \$100,000 each employee

The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Licensor. And if Licensor becomes liable for an amount in excess of the insurance limits herein provided, Licensee covenants and agrees to indemnify and save and hold harmless Licensor from and for all such losses, claims, actions or judgments for damages or liability to persons or property. Licensee shall provide Licensor with a Certificate of Insurance or other proof of insurance evidencing Licensee's compliance with the requirements of this paragraph and file such proof of insurance with Licensor's Risk Manager and Department of Parks and Recreation. In the event the insurance minimums of the Idaho Tort Claims Act are changed to exceed the above-listed amounts, Licensee shall immediately submit proof of compliance with the changed limits. If Licensee fails to provide or maintain said insurance in the amounts listed, even if cured by Licensee at a subsequent date, such shall be deemed an incurable default by Licensee, and Licensor may exercise any rights or remedies for such default that Licensor may have under this License or at law or equity, including, without limitation, the right to terminate this License.

ARTICLE VII – GENERAL PROVISIONS

7.1. Non-Discrimination: Licensee, in their use of the License herein granted, shall not discriminate or permit discrimination against any person or group of persons in any manner on the grounds of race, color, sex, religion, national origin or ancestry, age, physical handicap, sexual orientation or gender identity/expression. Non-compliance with such assurances shall constitute a breach of this License Agreement, and in the event of non-compliance, Licensor may take appropriate action to enforce compliance and may terminate this Agreement or seek judicial enforcement thereof.

7.2. Compliance with Laws: In performing the scope of services required hereunder, Licensee shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments including, but not limited to, required licensing for drivers of commercial vehicles in the State of Idaho, workers compensation insurance, and all sales and use tax legislation. The Licensor hereby requires Licensee to show proof of workers compensation insurance and of compliance with any applicable statute, ordinance or regulation with which Licensee is required to comply.

7.3. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho and the ordinances of the City of Boise City.

7.4. Interpretation: The paragraph headings used herein are for convenience only, are not a part of this Agreement, and are not to be used in construing it.

7.5. Notices to Licensee: The Licensee's address for all notices set forth in this Agreement shall be as follows, or such other Idaho address as the Licensee may designate to Licensor in writing:

**Anyone, LLC
123 River Way
Boise, Idaho 83701
(208) 123-4567**

7.6. Attorney's Fees: Should any litigation be commenced between the parties to this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

7.7. Independent Parties: Licensee is and shall at all times be considered as an independent permittee and is in no way an employee of the City of Boise City.

- a. The parties intend that this Agreement create only an independent license relationship. Licensee shall complete the services agreed upon with Licensor according to its own means and methods, which shall be in the exclusive control of Licensee and which shall not be subject to the control or supervision of Licensor. The parties agree that this Agreement does not entitle Licensee or its employees or agents (if any) to workers' compensation benefits, unemployment compensation benefits, or any other benefits or protections that accrue from an employment relationship, all of which shall remain the sole and exclusive responsibility of Licensee and/or its employees or agents.
- b. Licensee is not required to perform its services exclusively for the Licensor. Licensee, its employees or agents shall be responsible for any business registrations or licenses required by any governmental entity. Licensor shall not control, directly or indirectly, the number of hours Licensee its employees or agents shall perform services under this Agreement. Licensor shall not combine business operations with Licensee.
- c. Neither Licensee nor its employees or agents are to be considered agents or employees of Licensor for any purpose, including that of federal and state taxation, and neither Licensee nor its employees or agents are entitled to any of the benefits that the City may provide to its employees. It is understood and agreed that Licensor does not require Licensee to provide services exclusively to Licensor and that Licensor is free to contract to provide services to other entities during the term of this Agreement.

7.8. Entire Agreement: This instrument embodies the whole Agreement of the parties and supersedes any and all other agreements or understandings. No failure of Licensor to exercise any power given it hereunder, or to insist upon strict compliance by Licensee of any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Licensor's right to demand strict compliance with the terms hereof.

7.9. Duplicate Originals: This Agreement may be executed in several counterparts each of which shall be deemed an original.

7.10. Modification: There shall be no modification of this Agreement, except in writing, executed with the same formalities was this License Agreement.

7.11. Severability: If any provision of this Agreement or application thereof is held invalid, such invalidity will not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to that end, the provisions hereof are declared to be severable.

8.12. Approval by Appropriate City Officials: Each party acknowledges that this Agreement, even though agreed upon by the City's representatives, is not binding upon the City until such time as the Boise City Council approves this Lease and authorizes the Mayor to execute this Lease on behalf of the City.

End of Agreement

[Signatures appear on following page.]

IN WITNESS WHEREOF the parties hereto have subscribed their names the date first written above.

CITY OF BOISE

Lessor

ANYONE, LLC

Lessee

By: _____
David H. Beiter, Mayor

By: _____
Owner, Anyone, LLC

Attest: Debbie Broughton
Ex-Officio City Clerk

Approved as to Form and Content:

Doug Holloway, Director
Department of Parks and Recreation

By: _____
President
Boise Parks and Recreation Commission

Assistant City Attorney

Risk Management

