

BILL NO. 25-28

ORDINANCE NO. 25.28

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH OSAGE BEACH SCOUT TROOP #118 TO MANAGE AND STAFF THE OSAGE BEACH CITY PARK CONSESSION STAND FOR THE 2025 SEASON.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute a contract with Osage Beach Scout Troop #118 under substantially the same terms and conditions as the attached draft, **Exhibit A** to this ordinance.

Section 2. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: March 20, 2025

READ SECOND TIME: May 1, 2025

I hereby certify that the above Ordinance No. 25.28 was duly passed on May 1, 2025, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 5 Nays: 0 Abstain: 0 Absent: 1

This Ordinance is hereby transmitted to the Mayor for his signature.

May 1, 25
Date

Tara Berreth
Tara Berreth, City Clerk

Approved as to form:

Cole Bradbury
Cole Bradbury, City Attorney

I hereby approve Ordinance No. 25.28.

May 1, 25
Date

Michael Harrison
Michael Harrison, Mayor

ATTEST:

Tara Berreth
Tara Berreth, City Clerk



CITY OF OSAGE BEACH CONCESSION STAND AGREEMENT

THIS CONCESSION STAND AGREEMENT (the "Agreement") states the terms and conditions that govern the contractual relationship between the City of Osage Beach, Missouri ("**City**") and Scout Troop 118 ("**Operator**"), on the following terms.

WHEREAS, Operator wishes to provide volunteers to manage the concession stand at Osage Beach City Park; and

WHEREAS, the City of Osage Beach wishes to compensate Operator for promoting such volunteerism.

NOW THEREFORE the parties make the following Agreement in furtherance of the above:

I. TERMS

1. **Definitions and Common Terms.** The following terms shall have the following specific meanings:
 - a. Concession Stand: The interior of the food-service concession stand at Osage Beach City Park, together with a non-exclusive right to use the adjacent covered patio area, but excluding the Osage Beach Parks and Recreation offices and any locked space not otherwise authorized herein.
 - b. Operator. Scout Troop 118 and any officers, agents, employees, volunteers, or subcontractors thereof.
2. **Term.** This Agreement shall commence May 1, 2025 and conclude October 31, 2025 (the "Initial Term"). The City may authorize the City Administrator to extend this Agreement for the same dates in 2026, 2027, and 2028 (each a "Renewal Term") by motion no later than December 31 of the preceding year.
3. **Description of Relationship.**
 - a. Compensation. City shall pay to Operator a share of gross concession sales for the duration of this Agreement, calculated as follows: Forty percent (40%) of all net revenues generated at the Concession Stand, where net revenues are equal to gross revenue less cost of goods sold.
 - b. Payment. Compensation shall be paid no later than November 15 of each year for that year's sales. Rent may be paid annually or in periodic installments. All such payments shall be accompanied by a report showing the calculation of such sums and acceptance thereof

shall represent a certification by Operator that such reports/calculations are true and accurate.

c. Additional conditions.

- i. The Concession Stand shall collect all applicable sales taxes, which taxes shall be a cost of goods sold.
- ii. The concession stand shall be staffed by Operator's volunteers and open a minimum of 24 hours per week. The City shall approve the scheduled hours, with such approval not to be unreasonably withheld.
- iii. Operator shall be responsible for complying with all food safety regulations and other state or local requirements.
- iv. City shall be responsible for setting prices for all concessions.
- v. Operator shall not sell non-food items in the Concession Stand without prior written approval from City. Such approval is in City's sole discretion and shall be subject to the same terms, requirements, and fees as above. All outside vendors must receive prior written approval from City and otherwise comply with City Code § 245.050.
- vi. Operator shall be responsible for cleaning the concession stand to comply with or exceed health department standards. Operator may be asked to check the adjacent bathrooms from time to time and replace paper products, but City shall remain responsible for cleaning said bathrooms.
- vii. All decisions not expressly provided for herein shall be up to the discretion of the City Administrator or his/her designee.

d. Maintenance

- i. Operator agrees not to paint or otherwise alter any structure without City's prior written consent. City will be responsible for maintenance of and repairs to the roof, walls, and structural components of the Concession Stand structures. Operator will provide its own signage to clearly communicate that it is managing the Concession Stand by agreement with the City.
- ii. Except the foregoing, City will be responsible for all maintenance of the Concession Stand, which shall be returned to City in the same or similar condition at the termination of this lease. Operator shall keep the Concession Stand in the same condition as delivered by the City. Any additional maintenance desired by Operator may be provided by Operator at its expense with City's prior written approval.
- iii. Notwithstanding the foregoing, if either party causes damage to the Concession Stand, the maintenance or repair of which would otherwise be the responsibility of

the non-damaging party, the damaging party shall be responsible for all such repairs.

- iv. Operator shall not cause or permit any waste, misuse, or neglect of the water, gas or electric fixtures. Operator shall not bore, cut into, or otherwise structurally weaken any column, beam, or other part of the Concession Stand for any purpose whatsoever without the written consent of City, and in the event Operator shall so bore, cut, or structurally weaken any part of the Concession Stand, City may at once enter and repair any damage done or replace any parts, and charge the cost of the same to Operator, or City may, at its option, pursue any other remedy herein provided.

e. Volunteers.

- i. Operator shall be solely responsible for all costs associated with providing the volunteers necessary to perform the terms of this Agreement.
- ii. Operator shall ensure that no minor is present in the Concession Stand without adult supervision. No adult shall be responsible for supervising more than four minors at a time.
- iii. No minor shall handle cash, credit cards, or other forms of payment or money.
- iv. Minors shall only handle prepackaged (dry, frozen, or refrigerated) foods in their original packaging (i.e. candy bars, chips, soda cans, popsicles, etc.). No minor shall operate any kind of equipment involved in food preparation, including but not limited to grills, hot dog rollers, hot cheese, meat slicers, knives, soup pots/lades, or other kitchen utensils (except that scissors are acceptable for opening food packaging).
- v. Operator must provide proof of background check clearance (criminal and sex offender) in a form acceptable to the City for each of Operator's adult staff/volunteers to City before said staff/volunteer begins any work that is covered by this Agreement. Operator shall maintain records thereof in an electronically accessible format for not less than three years from the end of the Term for which the check was performed.

- f. Keys, Inspections. City shall retain working keys necessary to access the Concession Stand, including all exterior and interior doors but excluding Operator's filing cabinets, safes, cash drawers, and other personal property. Operator shall insure the City has all such keys and shall inform City of any changes in locks and keys and provide new keys to City at Operator's expense.

- g. Records. Operator shall utilize City's point-of-sale (POS) system which records sales in each category, producing valid receipts therefor. Said POS system shall produce an audit trail

which is acceptable to the City Administrator or his/her designee who may audit Operator's records and accounts on behalf of the City.

4. **Operator's Obligations.**

- a. *Professionalism.* Operator understands that it will be perceived as a representative of the City and will ensure its personnel and any subcontractors will conduct themselves in a thoroughly professional and respectable manner while performing all Work for the City and while on-site. Operator shall ensure its personnel and any subcontractors comply with all City policies while on-site. Operator and its personnel and any subcontractors will comply with all reasonable instructions and requests by the City. City property and resources are to be used only in ways that are consistent with their lawful intended purpose.
- b. *Insurance.* Operator shall purchase and maintain insurance as set forth below:
 - i. Commercial General Liability insurance with a minimum limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate; Operator shall name City as additional insured on said policy, but only to the extent necessary to cover claims not barred by City's sovereign immunity. Operator agrees to submit any claim arising out of this Agreement or the subject matter thereof to its liability carrier first and before submitting any claim to the City's insurance carrier.
- c. *Licenses, Permits, Taxes.* Operator shall be responsible for applying for, obtaining, and maintaining all licenses, permits, and other approvals required for itself, including but not limited to its obligations herein. Operator shall be responsible for paying all sales, income, property, and other taxes required to carry on its business.
- d. *Communication.* Operator will provide timely replies to City's inquiries and requests for information. Operator's point of contact for this Agreement is: Janelle Stockstill,

II. STANDARD CONDITIONS

The following conditions are standard in all City of Osage Beach contracts and are only to be modified with substantial justification, and then only as much as necessary to accommodate such justification.

5. **Appropriations.** The continuation of this Agreement is contingent upon annual appropriation of funds by the Osage Beach Board of Aldermen. In the event the Board of Aldermen shall not budget and appropriate, specifically with respect to this Agreement, on or before January 1, subsequent years of the contract moneys sufficient to make all payments under this Agreement, the City shall not be obligated to make those payments.
6. **Pre-Contract Expense.** The City shall not be obligated to pay or liable for any cost incurred by Operator prior to execution of this Agreement. All costs to prepare and submit a response to this and any other RFQ, RFP, or IFB shall be borne by the proposer.

7. **Assignment or Transfer.** Neither this Agreement, nor any portion thereof, shall be transferred or assigned without formal written approval by the City.
8. **Discrimination Policy.** The City of Osage Beach advises the public that it does not discriminate on the basis of disability, race or color, national origin, religion, age, or sex in employment or the provision of municipal services. Operator shall not discriminate on any prohibited basis and shall comply with all applicable employment laws.
9. **Laws, Ordinances, and Regulations.** Operator shall conform to all Federal, State, and local regulations, ordinances, and laws applicable to Operator, the City, or the subject matter of this Agreement. The City shall not be responsible for any fees, charges, money, or other obligations due as result of from any service provided under this Agreement. Operator shall conform to all changes made to this Agreement as a result of any ordinance, law and/or directive issued by the Federal, State, or local authority having jurisdiction over this Agreement, Operator, or the City. Operator specifically acknowledges that it has read and understands Chapter 245 of the Osage Beach City Code, which applies to City Park and Peanick Park.
10. **Certifications Regarding Debarment.** Operator certifies that, except as noted below, it and any other person associated therewith in the capacity of owner, partner, director, officer, or manager (collectively "Operator Principals"), are not presently nor have ever been under suspension, debarment, voluntary exclusion, or determination of ineligibility by any governmental unit or agency (whether federal, state, tribal, local, or other), nor is any such action pending. Operator further certifies that it and its Operator Principals have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct, nor has Operator or any Operator Principal been party to any public transaction (whether federal, state, tribal, local, or other) terminated for cause or default. Operator further certifies that any and all exceptions to these representations were disclosed with its bid, and City relied on these certifications as a material inducement into entering this Agreement. Operator must notify City within thirty days of being debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during the operation of this Agreement.
11. **E-Verify.** If this Agreement is for an aggregate value in excess of \$5,000.00, Operator shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Operator shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the Work. See R.S.Mo. § 285.530.
12. **Anti-Israel Discrimination.** Operator certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. See R.S.Mo. § 34.600.

13. **Indemnification by Operator.** Operator shall indemnify, save, and hold harmless the City, its employees, and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Operator or its employees, agents, subcontractors, or assignees arising out of this Agreement.
14. **No Indemnification by City.** Nothing in this Agreement shall be construed to require the City to indemnify Operator. Such indemnification is illegal under Missouri law. See Mo. A.G. Opinion 138-87 (1987).
15. **Sunshine Law.** All material submitted to the City will likely become public record and will be subject to the Missouri Sunshine Law, R.S.Mo. Chapter 610. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from other materials. Operator must include justification for the request. The City's obligation to comply with the Sunshine Law supersedes any request by Operator that material be treated as proprietary or confidential.
16. **Ownership of Work Product.** All documents and other work product created by Operator under this Agreement shall become the property of City once submitted to City.
17. **Termination.** The City reserves the right to terminate this Agreement without cause by giving 30 days' written notice to Operator. City may terminate this Agreement upon written notice of any violation of this Agreement if such violation is not cured within 7 calendar days of such notice. City may immediately terminate this Agreement for any material violation or any violation which creates a risk to the health, safety, or welfare of any person or property.
18. **Notices.** All formal notices or other documents required by this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at:

For City:
City Clerk
1000 City Parkway
Osage Beach, MO 65065

For Operator:
Girl Scout Troop 118

City may also serve written notice to Operator by personal delivery to any of its officers or employees over the age of 18.

19. **Necessary Documents.** The parties agree to execute and deliver without additional consideration such instruments and documents and to take such further actions as they may reasonably request in order to fulfill the intent of and give effect to this Agreement and the transactions contemplated thereby.
20. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them. Without limiting the foregoing, this Agreement expressly supersedes any click-through, browse-wrap, or any other terms related to the subject matter of this Agreement on

any website or that otherwise may be presented to or required to be accepted by the City or its employees and contractors while exercising rights under this Agreement.

21. **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.
22. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
23. **Governing Law; Venue for Disputes.** This Agreement was made in the State of Missouri and shall be interpreted under and governed by the laws of the State of Missouri. Any action arising out of this Agreement or its subject matter, including both state and federal causes of action, shall be filed in the Circuit Court for Camden County, Missouri or the Associate Division thereof and the parties hereby consent and agree to the exclusive personal and subject-matter jurisdiction of that Court.
24. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.
25. **Severability.** If any provision in this Agreement shall be found to be void, the other provisions of this Agreement shall survive and remain enforceable.
26. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or electronic (such as .PDF) copy of this Agreement or a signature thereto shall have the same force and effect as an original.
27. **Binding Effect.** This Agreement, subject to the above conditions of assignment, shall be binding upon and inure to the benefit of all parties and their respective legal representatives, successors, heirs, and assigns.

III. ACCEPTANCE

THIS AGREEMENT CONTAINS A WAIVER OF THE PARTIES' RIGHTS TO TRIAL BY JURY. THE UNDERSIGNED HEREBY MUTUALLY RELINQUISH AND WAIVE THEIR RIGHT TO TRIAL BY JURY.

CITY:
CITY OF OSAGE BEACH, MISSOURI

OPERATOR:
GIRL SCOUT TROOP 118


BY: Michael Harmison
ITS: Mayor
5/27/25
Date


BY: _____
ITS: _____
5/27/25
Date

Attest:

BY: Tara Berreth

Date

ITS: City Clerk