

Request for Proposal

Operation of the Industrial Kitchen for Coffee and Café Services at the Estes Valley Community Center

**Estes Valley Recreation and Park District
Estes Park, Colorado**



**Estes Valley Recreation and Park District
660 Community Drive
P.O. Box 1379
Estes Park, CO 80517**

Released Wednesday, March 3, 2021
Due Friday March 19, 2021 by 1 PM (MST)



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REQUEST FOR PROPOSAL

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at the Estes Valley Community Center
Estes Valley Recreation and Park District
Estes Park, Colorado

INVITATION TO SUBMIT PROPOSALS

The Estes Valley Recreation and Park District (EVRPD) is seeking proposals from suitably qualified and experienced individuals/firms to operate the industrial kitchen for coffee and café services, located in the Estes Valley Community Center.

This request for proposals was released on Wednesday, March 3, 2021.

The Request for Proposal, and any addenda will be available on March 3, 2021, on the Estes Valley Recreation and Park District website at: <https://www.colorado.gov/pacific/evrpd/district-information/projects-to-bid> and <https://www.bidnetdirect.com/colorado/estespark>. Copies of the Request for Proposal, and any addenda may also be obtained from EVRPD Administrative Offices, 660 Community Drive, Estes Park, CO 80517.

A pre-proposal meeting will be held on Thursday, March 11, 2021 at 12:00 PM at the Estes Valley Community Center, 660 Community Drive, Estes Park, CO 80517. This is not a mandatory meeting, but attendance is recommended.

Submission of Proposals

Proposal documents shall be sealed and mailed to:

EVRPD

Industrial Kitchen for Coffee and Café Services

P.O. Box 1379

Estes Park, CO 80517

Proposals can be delivered in person to the Estes Valley Recreation and Park District Administration Office, located at 660 Community Drive in Estes Park, CO.

Sealed proposals must be received by 1:00 PM, Mountain Standard Time (MST) on Friday, March 19, 2021 at the Estes Valley Recreation and Park District (EVRPD) Administration Offices, located at 660 Community Drive, Estes Park, CO 80517. Proposals received after that time will not be accepted.

All Proposals must be sealed in a package clearly marked with the proposer's name and "Operation of the Industrial Kitchen for Coffee and Café Services Proposal". Faxed and emailed proposals will not be accepted. Proposals will be opened publicly and read to all those present on Friday, March 19, 2021 at 1:00 PM, at EVRPD's Administration Office, 660 Community Drive, Estes Park, CO., 80517. Individuals/Owners submitting proposals are invited, but not required, to attend the opening. Sole responsibility rests with the individual/owner to see that their proposal is received on time at the above stated location.

Estes Valley Recreation and Park District reserves the right to reject or waive any or all, or any part of any formalities or informalities, and to award the proposal to the firm deemed to be in the best interest of EVRPD. EVRPD will accept the proposal that, in its best judgment, will provide the best workmanship and price for the project. Proposals received after the specified time of proposal closing will be returned unopened.

All correspondence and questions regarding this RFP should be directed to:

Nolan Oberg, Recreation Manager
Estes Valley Recreation and Park District
660 Community Drive
Estes Park, CO 80517
970.480.1336
nolan@evrpd.com

BACKGROUND & DESCRIPTION

The Estes Valley Recreation and Park District is a quasi-municipal corporation and a political subdivision of the State of Colorado. EVRPD was originally created pursuant to State law as the Rocky Mountain Metropolitan Recreation District for the purpose of supplying recreation facilities and programs within its boundaries. EVRPD encompasses approximately 320 square miles in southwestern Larimer County and northern Boulder County. The current year-round population within our district is just over 11,000. EVRPD is located in a unique location home to the majestic Rocky Mountains and adjacent to Rocky Mountain National Park. Beautiful mountain vistas and endless parks and recreation opportunities create a captive visitor audience for EVRPD to serve in combination with our community residents.

EVRPD is governed by a Board of Directors consisting of five elected officials. There are 24 full-time employees and over 100 part-time and seasonal employees that manage facilities and programs.

EVRPD provides a variety of parks and recreation facilities, services, and programs. The majority of our facilities are located in or near the Town of Estes Park. Facilities include; the Estes Valley Community Center, two golf courses (Lake Estes Golf Course and Estes Park Golf Course), Lake Estes Marina, Stanley Park, Carriage Hills Park, the indoor and outdoor gun and archery range, Mary's Lake and East Portal campgrounds, a significant trails system, and Bureau of Reclamation park lands at Lake Estes, Mary's Lake, and East Portal. In addition to maintaining these facilities, EVRPD provides community recreation programs and special events for youth and adults of the District and visitors.

Estes Valley Recreation & Park District (EVRPD) owns and operates the Estes Valley Community Center at 660 Community Drive, Estes Park, CO 80517.

EVRPD desires to grant a concessionaire the concession to operate the industrial kitchen for coffee and café services, which is located in the lower level of the Estes Valley Community Center.

The Estes Valley Community Center constructed and opened by the Estes Valley Recreation and Park District in February 2018.

PROJECT COORDINATION AND ADMINISTRATION

The Estes Valley Recreation and Park District, a.k.a. the “Owner”, will respond to all questions in writing. Correspondence will be shared with all known firms indicating interest in this project. Questions may be submitted by email, fax, or postal mail. Questions must be received no later than five (5) business days prior to the proposal due date. All questions must be submitted in writing and should be addressed to:

Nolan Oberg, Recreation Manager
Estes Valley Recreation and Park District
PO Box 1379
Estes Park, CO 80517
nolan@evrpd.com
Fax: 970.586.8193

PRE-PROPOSAL MEETING

The EVRPD will be holding a non-mandatory Pre-Proposal Meeting at the Estes Valley Community Center, 660 Community Drive, Estes Park, CO 80517, on Thursday, March 11, 2021 at 12:00 PM. Interested parties will be allowed to examine the concession areas at that time and have questions answered pertaining to the request for proposal.

All attendance sign-in sheets, proposal questions and answers, and proposal addenda, if issued, will be available on the District Website at: <https://www.colorado.gov/pacific/evrpd/district-information/projects-to-bid> and <https://www.bidnetdirect.com/colorado/estespark>.

CONCESSION SCOPE OF WORK

The main purpose of this concession is to provide quality coffee and light food service to the public and Estes Valley Community Center (EVCC) members during operating hours. We are looking for a service for those that already frequent the EVCC and for a way to bring new people into the building. This service would complement programming (Elevated Connection) during operating hours.

Programming hours for Elevated Connection are Monday-Friday from 9:00 AM - 2:00 PM. Building Hours are Monday-Friday, 7:00 AM - 8:00 PM and Saturdays from 9:00 AM - 6:00 PM. We are currently closed on Sundays. These hours are subject to change as building demand fluctuates. The primary hours would be, but not limited to, Elevated Connection programming hours (M-F, 9a-2p). These hours are traditionally when we have provided a complimentary coffee service. We are open to expanding hours as the concessionaire sees fit. Some other areas for potential expansion would be high school lunches, after-school programming, and Night in at the Rec. An expansion into these programs would support our vision for a multi-generational atmosphere.

There are two main areas for the concessionaire to operate. The first is preparation space in our commercial kitchen with industrial appliances, which includes a refrigerator/freezer, ice machine, gas stove, oven, dishwasher, tri-sink, microwave and 3 sections of counter space. It also includes a service window. The other area is the lower reception counter of the Elevated Connection programming wing. This space has abundant counter-tops and visibility for serving customers.

It is preferred that the concessionaire would operate under current building infrastructure and food licensing with no major modifications being required. We are currently approved for beverage and pre-packaged food

services. It is possible that modifications will be made in the future as demand increases. The spaces will be shared with EVRPD employee and program needs as food licensing allows.

This is our first attempt at partnering with an outside concessionaire at the Estes Valley Community Center. Therefore, we do not have a precedent for revenue projections. We currently have 5,375 active EVCC members. Of this number, there are 3,769 active senior members and 1700 individuals enrolled in our Elevated Connection email blast.

PROPOSAL SUBMITTAL REQUIREMENTS

No person, firm, or corporation shall make or file more than one proposal for this concession.

Proposals must be sealed, addressed, (please state on the envelope “Operation of the Industrial Kitchen for Coffee and Café Services Proposal”), and deposited with the EVRPD at the following location before the proposal opening on Friday, March 19, 2021.

Estes Valley Recreation and Park District
PO Box 1379
660 Community Drive
Estes Park, CO 80517

A proposal may be withdrawn at any time prior to the proposal opening.

Required Documents – the following shall be submitted with the proposal:

1. A Proposal Questionnaire
2. A Percentage of Return Statement
3. The Non-Collusion Statement

Proprietary data or trade secrets should be clearly identified as such in your proposal.

TERMS AND CONDITIONS

Proposal Terms:

The Estes Valley Recreation and Park District (EVRPD) reserve the right to change the submission deadline or to issue amendments to the RFP anytime or to cancel or reissue the RFP at any time without penalty. EVRPD reserves the right to accept or reject any and all proposals or parts and to waive any technicalities or irregularities as determined by EVRPD. Further, EVRPD is not liable for any costs incurred by the proposer including, but not limited to the costs for the preparation of the RFP and attendance at any presentation or meeting with Project Team representatives.

Proposal Errors:

EVRPD will not be responsible for any error or omission in the information provided, nor for the failure of the proposer to determine the full extent of the effort necessary to provide the requested services. The proposal shall be prepared and submitted in accordance with the provisions of the RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from, or to a proposal will be sufficient grounds for non-acceptance of the proposal.

Late Proposals:

Proposals received after submission deadline will be considered void or unacceptable. EVRPD is not responsible for delay of receipt, such as the non-delivery of U.S. mail or by carrier. The date/time stamp in EVRPD’s Administration Office shall be the official time of receipt.

Altering Proposals:

Proposals cannot be altered or amended after the submission deadline. Any interlineations, alteration, or erasure made before the opening time of proposals must be initialed by the signer of the bid, guaranteeing authenticity.

Withdrawal of Proposal:

A proposal may not be withdrawn or canceled by the proposer without written permission of EVRPD.

Conditional Proposals:

Conditional proposals may be rejected as non-responsive.

Proposal Ownership & Additional Information:

All proposals and accompanying documentation shall become the property of the Owner. Submission of a proposal constitutes proposer's acceptance of the procedures, evaluation criteria and RFP instructions. The Project Team reserves the right to solicit additional information or proposal clarification from anyone submitting a proposal, should the Project Team deem such information necessary.

Reading of Proposals:

Proposals will be received and publicly acknowledged in the EVRPD Administration Office Conference Room Friday, March 19, 2021 shortly after 1:00 p.m. MST. Proposers, their representatives and interested persons may be present.

Sales Tax:

Estes Valley Recreation and Park District is exempt by law from payment of Colorado Sales Tax and Federal Excise Tax.

Conflict Of Interest:

No Project Team official shall have interest in the contract.

Ethics:

The proposer shall not offer or accept gifts of value nor enter into any business arrangement with any employee, official or agent of the Project Team.

Addenda:

Any interpretations, corrections, or changes to the RFP will be made by addenda. Sole issuing authority of addenda shall be vested by the Estes Valley Recreation and Park District Recreation Manager. Addenda will be available on the District website at: <https://www.colorado.gov/pacific/evrpd/district-information/projects-to-bid> and <https://www.bidnetdirect.com/colorado/estespark>

Law Compliance:

Proposals must comply with all federal, state, county and local laws concerning this type of service.

Required Documentation:

The proposer shall provide all documentation required by this RFP. Failure to provide this information may result in rejection of the proposer's proposal.

Colorado State Law Governance:

Any Agreement issued as a result of this RFP shall be governed by and construed in accordance with the laws of the State of Colorado.

PERMITS, LICENSES, FEES, & TAXES

It shall be the responsibility of the concessionaire to make application for the necessary permits and licenses and pay for all fees and taxes in order to operate this concession.

COLLUSIVE OR SHAM BIDS

Any bid deemed to be collusive or a sham bid will be rejected and reported to authorities as such. Your authorized signature of this proposal assures that such bid is genuine and is not a collusive or sham bid.

SALES PROHIBITED/CONFLICT OF INTEREST

No officer, employee, or their dependent or person residing in and sharing the expenses of their household, shall have financial interest in the sale to the EVRPD of any real or personal property, equipment, material, supplies, or services. This rule also applies to subcontractors with the EVRPD. This shall not apply to members of any authority, board, committee, or commission of the EVRPD. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback, or any items of monetary value from any person who has or is seeking to do business with the EVRPD is prohibited. Any individual/owner knowing of this type of activity is encouraged to report it in confidence to the Executive Director of the EVRPD, or the President of the EVRPD Board of Directors.

SPECIFICATIONS, CRITERIA, & AWARD NOTIFICATION

Included in the "Request for Proposals" package is a draft copy of the Agreement that the concessionaire and EVRPD will sign. All elements of the agreement are considered as part of the specifications for the proposals requested. This "Request for Proposals" sheet amplifies the major provisions of the concession operation, as well as defines and provides clarification of several specific points.

1. The concessionaire and EVRPD shall sign an agreement which will grant the concessionaire the operation of the Estes Valley Community Center commercial kitchen and serving space. The duration of the agreement will be for the calendar year 2021 with automatic one-year renewal options (if desired by both parties) for the calendar years 2022 and 2023
2. The concessionaire operator must have prior experience in this type of business for at least two years within the past five years or have sufficient similar past experience to satisfy the judgment of the committee concerning this requirement.
3. The financial condition of the concessionaire must be of such standing that adequate supplies and appropriate operational permits can be purchased/obtained as necessary in order to open the concession area for business no later than May 1, 2021.
4. The concessionaire must carry liability insurance to cover concession operations on the premises. Such insurance coverage must meet or exceed the following limits:
 - \$1,000,000 - Liquor Liability
 - \$1,000,000 - Combined single limit for personal injury and/or property damage.
 - \$1,000,000 – Products Liability
 - Statutory – Workers' Compensation and Employer's Liability Coverage

5. The concessionaire shall be solely responsible for the hiring, firing, and compensation of any persons employed to assist the concessionaire, but shall not retain any person who does not cooperate with and work in a satisfactory manner toward the best interests of the Estes Valley Recreation and Park District. The concessionaire shall also provide and pay for any workers' compensation, social security withholding, payroll taxes, and/or any other taxes that might be required by government authorities related to the operations.
6. The concessionaire must maintain adequate stock of supplies on hand for all occasions as needed to serve the general public.
7. The selected concessionaire must submit to criminal, financial, etc. checks of the principal(s)/owner(s).
8. Selected concessionaire is required to purchase Exhibit A materials/supplies.
9. Selected concessionaire will be required to attend the regular May EVRPD Board of Directors meeting for a short meet and greet with the EVRPD Board of Directors.

Evaluation of Proposals:

1. A three person review committee, composed of the EVRPD Executive Director, the Recreation Manager, and the Recreation Coordinator for Senior and Adult Programs, will individually and independently review the written "Proposal Questionnaire" and the "Percentage of Return Statement". Individual committee members will rank each proposal using the criteria listed.
2. EVRPD staff will then total these individual rankings and the committee then may interview only the top applicants. If interviews are desired, they will be held March 22-26, 2021 between 9 a.m. and 5 p.m. The same criteria and rating structure will be used for the interview sessions. The committee will submit their recommendations to the EVRPD Board of Directors.
3. The EVRPD Board of Directors will make the final decision as to who is awarded the Coffee/Cafe Services at the EVCC. This award is tentatively scheduled to occur at the regular monthly Board meeting on Tuesday, April 13, 2021 at 6:00 p.m. at the Estes Valley Community Center.

Award Notification:

The award of the agreement pursuant to the provisions of this selection will not be based solely on financial considerations but will also include the evaluation criteria listed in this RFP. EVRPD will notify all bidders in writing within four weeks after the bid deadline of selected concessionaire. This RFP does not commit the EVRPD to award an agreement, nor pay any costs incurred in the preparation and submission of the proposal in anticipation of an agreement. Estes Valley Recreation and Park District reserves the right to reject any or all, or any part, to waive any formalities or informalities, and to award the proposal to the individual/owner deemed to be in the best interest of the District. Once the successful individual/owner is selected, the agreement will be negotiated and finalized within thirty (30) calendar days. This recommendation will be presented to the Estes Valley Recreation and Park District Board of Directors for adoption.

SELECTION AND PERFORMANCE SCHEDULE

The following is the anticipated schedule of events for the RFP process:

Request for Proposal Available	March 3, 2021
Pre-Proposal Meeting	March 11, 2021, 12:00 p.m.; MST
Proposals Due	March 19, 2021, 1:00 p.m.; MST
Proposals Publicly Read	March 19, 2021, shortly after 1:00 p.m.; MST
Shortlisting of Firms	March 19 and 20, 2021
Firm Interview's (if necessary)	March 22-26, 2021
Anticipated Notice of Award	April 13, 2021

Note: Individuals/Owners are advised to plan accordingly for key members to be available for interviews between March 22-26, as necessary.

PROPOSAL QUESTIONNAIRE

Please answer each of the following six questions in sufficient detail. You may attach additional sheets, as necessary. Answers to your questions will be graded on a scale of 1 to 10 points, with 10 being the best.

1. What are your qualifications to perform the described concession service? What experience in the described concession business and staffing do you hold? Please submit resume of experience in the food and catering field as applicable. Please include at least three references at a minimum.
(Score: _____)

2. What is your interest in the concession? Motivation? (Score: _____)

3. What is your ability to perform the concession within the timeframes set for the operation?
(Score_____)

4. What is your financial ability for providing service? Please submit financial statements for three (3) years previous, or equivalent acceptable to EVRPD, to be used in determining the ability of the bidder to meet the financial obligations of this operation and its ability to purchase the food supplies necessary to operate the concession (as available).
Please submit letters of credit from food suppliers showing ability of bidder to purchase the food supplies necessary to the operation (as available). (Score:_____)

5. What is your proposed business plan for operating the Coffee/Cafe Services at the EVCC (attach business plan as applicable)? (Score:_____)

6. Type of menu/ items to be served? (Score:_____)

PERCENTAGE OF RETURN STATEMENT

It is the desire of the EVRPD that all the revenues of community center operations should equal or strive to exceed expenditures. Revenues from the Industrial Kitchen for Coffee and Café Services concession are an integral element to achieving that goal. Therefore, 9% (nine percent) is the minimum return that will be accepted from any proposal.

What percentage (%) of your gross sales (as defined in the specifications) at the Industrial Kitchen for Coffee and Café Services Concession will you pay to EVRPD in 2021, 2022, and 2023, if the agreement is awarded and renewed? This will be graded on a scale of 1 to 10 with 10 being the best.

2021 _____ % (In writing: _____) i.e., twenty

2022 _____ % (In writing: _____)

2023 _____ % (In writing: _____)

Respectfully Submitted:

Name: _____

Address: _____

Telephone: _____

Email: _____

Signature: _____

Title: _____

Date: _____

NON-COLLUSION STATEMENT

_____, being first sworn, deposes and says that:

- 1. He/She is the _____ of
(owner, officer, partner, representative, or agent)
_____, the bidder that has submitted the attached bid;
(Company's Name)
- 2. He/She is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;
- 3. Such bid is genuine and is not a collusive or sham bid;
- 4. Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties of interest, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in conjunction with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person or fix the price or prices in the attached bid or of any other bidder or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the EVRPD, or any person interested in the proposed contract; and
- 5. The price or prices quoted in the attached bid are fair and proper and are not tainted by a collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest.

Signed: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss)

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this _____ day of _____, **2021.**

Notary Public Signature

My Commission expires: _____

SUPPORTING DOCUMENTS

Will be available after the pre-proposal meeting

Please check District website at: <https://www.colorado.gov/pacific/evrpd/district-information/projects-to-bid> and <https://www.bidnetdirect.com/colorado/estespark>

CONCESSION AGREEMENT

DRAFT CONCESSION AGREEMENT

This Concession Agreement, hereinafter called the "Agreement", is made and entered into as of the _____ day of April, 2021, by and between **ESTES VALLEY RECREATION AND PARK DISTRICT**, hereinafter called "EVRPD" and _____, hereinafter jointly, severally, and collectively called "Concessionaire".

WHEREAS it is the intent of the parties that the Concessionaire be an independent Concessionaire and the EVRPD, their agents or employees may retain only broad general power of supervision and control of the food and beverage services so as to insure satisfactory performance of Concessionaire, including right to inspect, right to stop work, and right to terminate this Agreement; and

WHEREAS, Concessionaire has given the EVRPD written notice of all conflicts, errors, ambiguities or discrepancies that Concessionaire has discovered in this contract and the written resolution thereof by the EVRPD is acceptable to the Concessionaire, and this document is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing the work; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

WITNESSETH:

ARTICLE 1

Food and Beverage Space

1.1 Definition of Food and Beverage Space.

For the purposes of this Agreement, the term "Food and Beverage Space" shall mean the following areas at the Estes Valley Community Center, 660 Community Drive, Estes Park, Colorado 80517 (as depicted on Exhibit D):

- 1.1.1 The commercial kitchen located in the lower level of the Estes Valley Community Center;
- and
- 1.1.2 The the common areas located in the lower level of the Estes Valley Community Center.

1.2 Definition of Food and Beverage Operations.

For purposes of this Agreement, the term "Food and Beverage Operations" shall mean the offering of food, non-alcoholic beverages, and related services primarily to members of the Estes Valley Community Center and, incidentally, to the public. The commercial kitchen located in the lower level of the Estes Valley Community Center;

ARTICLE 2

Concessionaire's Duties with Respect to the Commercial Kitchen and the Food and Beverage Space.

2.1 In General.

Subject to other limitations expressed in this Agreement, EVRPD grants to Concessionaire the right, duty, and obligation to exclusive management and use of the Food and Beverage Space and the right to use as Concessionaire of the Food and Beverage operations, in common with other public areas of the lower level of the Estes Valley Community Center, in conjunction with EVRPD food and beverage operations (and for no other purpose) in such spaces and manner as may be prescribed by EVRPD.

2.2 Designation of Smoking Areas.

The inside Food and Beverage space shall remain a non-smoking area. EVRPD shall designate employee and customer smoking areas in compliance with applicable EVRPD policies.

2.3 Restriction on Items Offered for Sale.

Concessionaire shall offer such non-food or non-beverage items as are incidental to EVRPD's food and beverage service. A list of such items must be approved in advance by EVRPD.

2.4 Compliance with Applicable Law.

Concessionaire agrees to comply fully with all applicable state and federal laws and regulations and municipal ordinances, as well as all rules and regulations adopted by EVRPD or any of its Boards, Service Areas, Divisions or Departments having jurisdiction over the Estes Valley Community Center.

ARTICLE 3

Rights of Ingress and Egress

3.1 In General.

The Concessionaire shall have the right of ingress and egress to and from the Food and Beverage Space for Concessionaire's employees, agents and invitees to the extent reasonably necessary in connection with the conduct of Concessionaire's business under this Agreement. Areas designated as restricted areas by EVRPD will be excluded.

3.2 Closures.

EVRPD may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or any other way at, in, or near the Estes Valley Community Center, presently or hereafter used as such, so long as reasonable and safe means of ingress and egress remains available to Concessionaire and in compliance with fire code regulations.

ARTICLE 4

Undertakings of Concessionaire

4.1 Service.

Concessionaire agrees:

4.1.1 The Concessionaire shall furnish and pay for all equipment, except as otherwise provided by EVRPD pursuant to Article 8, all goods, labor, transportation, supervision, and services necessary to provide food and beverage services in accordance with this Agreement

4.1.2 Services provided by the Concessionaire shall include the maintenance of an adequate stock of food and beverage supplies, flatware, dinnerware, tableware, napkin dispensers, salt and pepper shakers, glassware, kitchen utensils and operating supplies to serve the demand for such items at the Estes Valley Community Center.

4.1.3 Concessionaire acknowledges the intent of EVRPD to provide the public high quality food and beverage with a high level of public service. Therefore, Concessionaire agrees to offer for sale from the Food and Beverage Space only high quality food and beverage. If, in the opinion of EVRPD, the selection of items offered is inadequate or not of high quality or if any of the items are found to be objectionable for display and/or sale in a public facility, the items shall be removed or replaced as required by EVRPD. An EVRPD representative, Recreation Manager and/or their designee shall meet and confer with the Concessionaire regarding such matters. However, Concessionaire acknowledges that EVRPD's determination as to the same shall be conclusive. Failure of Concessionaire to correct, rectify, or modify its quality within five (5) days of being advised in writing to do so shall be cause for default.

4.1.4 Concessionaire shall submit all proposed prices for sales to EVRPD in writing for its approval and shall charge no more than the amounts so approved. Proposed price changes may be submitted during the term of the Agreement but no more often than once in any three (3) month period.

4.2 Hours of Operation.

Subject to the exception for inclement weather expressed below, the Concessionaire will be required to provide daily food and beverage services in the Food and Beverage Space during the week (Monday – Friday); a limited operation may exist through the approval of the Recreation Manager and/or their designee); at a minimum, the café shall be open the same hours as complement programming such as “Elevated Connection”, or having agreed upon setting different hours with the Recreation Manager and/or their designee.

4.2.1 Throughout the year, Concessionaire may close the Food and Beverage during inclement weather unless the closure is objected to by EVRPD.

4.3 Special Events Option.

Concessionaire shall have the option, upon request by EVRPD or the Recreation Manager, but shall not be obligated, to provide luncheons or other meals for special occasions.

4.4 Concessionaire Personnel.

Concessionaire shall control the conduct and demeanor of its agents and employees. Upon objection from EVRPD concerning the conduct or demeanor of any such person, the Concessionaire shall immediately take all lawful steps to remove the cause of the objection. Concessionaire agrees to supply and require its

employees to wear suitable means of identification, provide a clean and neat appearance, be courteous, and dress in appropriate attire according to the standards of the industry, the forms for which shall be subject to prior and continuing approval of the EVRPD.

4.5 Statements, Recordkeeping and Audits.

Concessionaire shall keep books and records of the business, including an accounting of all revenue and expenses of the Food and Beverage operation, in accordance with good accounting practice and in such form as is satisfactory to EVRPD. The Concessionaire hereby grants to EVRPD the right to audit Concessionaire's books and records for its operation at the Estes Valley Community Center and agrees to make available to EVRPD, or its authorized representative, at any time, Monday through Friday inclusive, between the hours of 8:00 a.m. and 5:00 p.m., at the District offices of EVRPD, at EVRPD's election, all records, books and relevant related information as may be required for audit purposes.

4.6 Physical Interference.

Concessionaire shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewer system, security system, fire protection system, sprinkler system, alarm system, and fire hydrants and hoses, if any, installed or located in the Estes Valley Community Center.

4.7 Taxes.

Concessionaire agrees to pay all local, state and federal social security, unemployment insurance, workers' compensation insurance, sales, use, personal property and other taxes, assessments and payments-in-lieu which, during the term of this Agreement or any extension hereof, may become a lien or which may be levied or charged by the federal government, state, county, Town of Estes Park or other tax-levying body upon or with respect to the Food and Beverage Space or Estes Valley Community Center, upon any taxable interest acquired by the Concessionaire in this Agreement, or any taxable possessory right which Concessionaire has in or to the Food and Beverage Space or facilities or the improvements thereon, by reason of Concessionaire's occupancy or use thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Concessionaire or taxes on Concessionaire's operations or activities in or about the Food and Beverage Space of elsewhere at the Estes Valley Community Center. However, except as otherwise permitted by this Agreement, no charges, fees or taxes of any nature shall be imposed by EVRPD solely upon Concessionaire for exercising any right or privilege granted by EVRPD to Concessionaire in this Agreement with respect to the use of the Food and Beverage Space. Nothing herein shall prevent Concessionaire from protesting, through due process, any taxes levied.

4.8 Licenses.

Concessionaire agrees to obtain and pay for all additional licenses necessary in connection with its operation, including but not limited to, a County Health Department Food Services Establishment inspection, a Town business license and/or occupation license.

4.8.1 Any such licenses held by the Concessionaire in connection with this Agreement shall be surrendered by the Concessionaire upon termination of this Agreement. Concessionaire shall provide daily revenue reports broken down at a minimum by food, beverage, and miscellaneous revenue.

4.9 Vending Machines.

Any installation or use of vending machines is subject to the prior consent of the Recreation Manager and/or their designee.

4.10 Relationship of the EVRPD and Concessionaire.

It is understood by the parties that the relationship of Concessionaire to the EVRPD is that of an **independent Concessionaire**.

4.10.1 Concessionaire shall have no authority to employ any person as employee or agent on behalf of the EVRPD for any purpose. Neither Concessionaire nor any person engaging in any work relating to the concession at the request of or with the consent of Concessionaire shall be deemed an employee or agent of the EVRPD, nor shall any such person represent himself to others as an employee or agent of the EVRPD. Should any person indicate to Concessionaire or any employee or agent of Concessionaire, by written or oral communication, that the person believes Concessionaire or an employee or agent of Concessionaire to be an employee or agent of the EVRPD, Concessionaire shall use its best efforts to correct or to cause its employee or agent to correct that belief.

4.10.2 In ordering any goods or services for the concessions, Concessionaire shall place the order in Concessionaire's own business name and not in the name of the EVRPD, or the Community Center.

4.10.3 Prior to commencing Concession operations or prior to the first utilization of the operations if after the start of the Concession operations, Concessionaire shall provide the EVRPD with a complete list of the names and addresses of vendors from whom Concessionaire will be purchasing goods or services in connection with the Concession. Concessionaire acknowledges that the purpose of the list is to enable the EVRPD to notify the vendors of the independent relationship of Concessionaire and to advise them that Concessionaire and not the EVRPD is solely responsible for the payment of goods or services purchased from the vendors.

ARTICLE 5

Term

5.1 Period.

Subject to the provisions of subparagraph 5.2 regarding termination, the term of this Agreement shall commence on the date this Agreement is executed by the parties and, unless terminated sooner, shall expire on December 31, 2021 with an automatic renewal commencing upon January 1 the following year expiring on December 31, 2023.

5.2 Termination.

This Agreement may be terminated by either party, with or without cause, in the sole discretion of such terminating party by such terminating party serving written notice to the other party of the terminating party's intention to terminate the Agreement. Such notice shall be given in writing on or before November 1 of any year of the term but no earlier than October 1 of any such year. If such notice is given on or before such date, the Agreement shall terminate as of close of business on December 31 of the year in which such notice is given. If this Agreement is terminated, Concessionaire's accrued liability to EVRPD arising under this Agreement prior to such termination shall survive the termination, and EVRPD may re-enter, take possession of the Food and Beverage Space and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

5.3 Holding Over.

In the event that the Concessionaire, or its successor in interest, if any, shall remain beyond the term set forth herein, although no right to remain is given by this Article, it is the intention of the parties and it is hereby agreed that a right of use from month-to-month shall then arise subject to all provisions and

conditions of this Agreement in connection with such right, except that the EVRPD shall have the sole right to determine reasonable fees for any holdover period.

5.4 Written Evaluation.

At the conclusion of each year, EVRPD will provide an evaluation of the services rendered no later than December 31 of each year. The evaluation tool or instrument will be jointly developed by both parties.

ARTICLE 6

Fee for Conducting Business

6.1 Concession Fee.

For the privilege of conducting the Food and Beverage operations hereunder, and the exclusive use of the Food and Beverage Space, each year indicated, the Concessionaire shall pay to EVRPD a fee in an amount equal to 2021 _____%, 2022 _____%, 2023 _____% of gross receipts from the Food and Beverage operations. The net amount retained by Concessionaire after payment of the above fixed fees and corresponding percentages to EVRPD shall be deemed the Concessionaire's fees for services rendered hereunder. For the purposes of this Article 6, the term "gross receipts" shall mean all payments in cash or credit paid to Concessionaire for all food, beverage and other items sold to Concessionaire's customers in connection with the Food and Beverage operations, but shall exclude taxes and gratuities, if any.

6.2 Time of Payment.

The Concessionaire shall pay the Food and Beverage Fee on a monthly basis but, in no event, later than ten (10) days after the first day of the month. The fee shall be accompanied by a monthly report itemizing gross receipts on a daily basis.

6.3 Interest on Past Due Accounts.

Concessionaire shall pay interest on all past due amounts at the rate of fifteen percent (15%) per annum from the due date, until paid. Any amounts which should have been paid as determined by any audit conducted pursuant to paragraph 4.5 above, shall be included in the term "past due amounts".

6.4 Method of Payment.

Payment for all fees under Article 6 shall be by check or money order payable to the order of "EVRPD". Such payment shall be given to the Recreation Manager and/or their designee to be deposited in the community center operations account.

ARTICLE 7

Utilities, Maintenance and Janitorial Duties

7.1 Utilities.

EVRPD shall pay all charges for water, storm water, sewer, gas, trash collection, telephone, cable TV and electric services to the Food and Beverage Space; except, however, that Concessionaire shall reimburse EVRPD on a monthly basis for one-quarter (1/4) of monthly trash removal charges for the Estes Valley Community Center. Any needed adjustments based on unforeseen larger than normal trash bills will be considered by the Recreation Manager and/or their designee.

7.1.1 Internet connection will be supplied by EVRPD. Concessionaire must supply their own computer. All computer needs, supplies, or repairs are the Concessionaire's responsibility.

7.2 Maintenance and Repair. EVRPD shall maintain and repair the Food and Beverage Space and EVRPD equipment and fixtures (defined in Article 8). Concessionaire shall submit all requests for repairs or maintenance to the Recreation Manager and/or their designee. Notwithstanding anything to the contrary contained herein, EVRPD shall not in any way be liable to the Concessionaire for failure to make repairs as herein specifically required of it unless the Concessionaire has previously notified EVRPD in writing of a need for such repairs, and EVRPD has failed to commence and complete said repairs within a reasonable period of time following receipt of the Concessionaire's written notification.

7.2.1 Concessionaire shall neither hold nor attempt to hold EVRPD liable for any injury or damage, either approximate or remote, occasioned through or caused by defective refrigeration, electrical wiring or the breaking of water lines or stoppage of plumbing or sewage upon the Food and Beverage Space, whether said breakage or stoppage results from freezing or otherwise.

7.2.2 The Concessionaire shall be responsible for the annual pumping and cleaning of the underground grease trap(s). This procedure annually occurs in January. Concessionaire shall give the Recreation Manager and/or their designee timely advance notice of when the cleaning will occur and a representative of EVRPD shall be present and log the cleaning. If Concessionaire refuses or fails to perform the required annual cleaning or to give such notice to the Recreation Manager, EVRPD shall forthwith cause the grease trap(s) be cleaned and bill Concessionaire for the costs. Concessionaire shall provide receipt to the Recreation Manager and/or their designee as proof that cleaning has been done.

7.2.3 The Concessionaire shall be responsible for the scheduling and payment of an annual cleaning and servicing of the refrigeration equipment including the charging of any gas to the equipment. EVRPD will be responsible for any needed repairs of the equipment. Concessionaire shall give the Recreation Manager and/or their designee timely advance notice of when the cleaning and servicing will occur and a representative of EVRPD shall be present and log the cleaning. If Concessionaire refuses or fails to perform the required annual cleaning and servicing or to give such notice to the Recreation Manager, EVRPD shall forthwith cause the refrigeration equipment be cleaned and serviced and bill Concessionaire for the costs. Concessionaire shall provide receipt to the Recreation Manager and/or their designee as proof that the cleaning and servicing has been done.

7.3 Cleaning and Janitorial.

Concessionaire shall keep the Food and Beverage Space, its fixtures, the upper level men's and women's restrooms, and all areas used in providing food service for outside events and tournaments, clean, fully stocked, and in good sanitary condition as required by the ordinances, resolutions, statutes and health, sanitary and police regulations of the Town of Estes Park, County of Larimer and State of Colorado and policies of EVRPD.

All custodial, janitorial, and general housekeeping services and materials (such as tools, sanitary supplies, light bulbs, soaps and cleaning compounds); window washing; hoods and filters; cleaning of restrooms; maintenance of all areas of the premises shall be provided by Concessionaire.

7.3.1 Concessionaire shall thoroughly clean the entire Food and Beverage Space, including all equipment, fixtures and windows, whether provided by EVRPD or Concessionaire, the grill and exhaust, floors, counters, refrigerators and all coils three (3) times yearly (around April 1, August 1 and November 1) and additionally as needed. The kitchen hood shall be cleaned professionally at least once a year and shall fall under the responsibility of the Concessionaire.

7.3.2 Concessionaire is responsible for the ongoing cleanliness of the Food and Beverage Space in order to provide a clean and orderly appearance for golfers and the public, including but not limited to, busing and cleaning tables, chairs, deck, floors areas, windows, beverage cart, all appliances, and removing trash accumulations in designated trash containers.

7.4 Beverage Cart.

Concessionaire may serve refreshments, including alcoholic beverages, from a cart which travels to various locations on the golf course subject to any restrictions imposed on them by the EVRPD's liquor license or the EVRPD's broad general power of supervision and control. Concessionaire will be provided the cart by EVRPD for exclusive use by Concessionaire. Concessionaire shall be responsible for training of employees as to safety issues relating to the cart. Concessionaire shall carry insurance to cover any liability to employees or others in the operation of said cart and shall fully and completely indemnify the EVRPD, be amended from all claims, damages and defense costs arising out of any negligence of Concessionaire resulting from Concessionaire's actions or failure to act in performance under this Agreement. In addition to those restrictions, the following restrictions shall apply:

- a) That the particular beverage cart be inspected by the EVRPD Head Mechanic at such times as the Head Mechanic deems necessary to insure satisfactory performance.
- b) The cart operators must meet with the Manager of Golf Services and/or their designee for a specific driving route prior to the cart's use to ensure that the cart will travel only in the areas deemed appropriate by such Manager. The operator of the cart will not travel in areas not authorized by the Manager.
- c) Failure to follow any of the above directions will be sufficient cause to terminate the use of said cart and/or terminate this Agreement.

7.4.1 The EVRPD shall maintain and repair the golf course concession cart used by Concessionaire. Concessionaire shall immediately notify the EVRPD of any repair necessary and EVRPD shall provide such repair in as timely a manner as is practicable. Provided that the Concessionaire shall be responsible to promptly pay for any and all repairs of whatever nature, which may be made necessary by the negligence or misconduct of the Concessionaire, their agents, employees, patrons, customers, or invitees.

ARTICLE 8

Acceptance and Trade Fixtures

8.1 Food and Beverage Space, EVRPD Equipment and Fixtures.

In addition to the Food and Beverage Space, EVRPD shall provide the following:

8.1.1 Existing equipment and inventory as listed on Exhibits B and C, attached hereto and made a part hereof shall be considered EVRPD property.

All of these items shall remain the property of the EVRPD. The EVRPD will provide all kitchen equipment such as stove, refrigeration, dishwasher, etc. related to the kitchen, dining room and dispensing room. Should any of the cook or serving ware or equipment become worn out or broken, Concessionaire shall timely notify the Recreation manager and/or their designee, who shall immediately provide for a replacement in the manner required by the EVRPD's purchasing policy and Concessionaire shall reimburse the EVRPD if the damage is a result of concessionaire's negligence. All such serving ware, cookware, and equipment shall remain the property of the EVRPD and at no time

shall concessionaire gain a property right in such equipment. The serving ware and cookware shall remain on the premises at all times.

Any of the items in Exhibits B and C that the Concessionaire wishes not to use shall be properly packaged and stored in the designated storage area. All of the items in Exhibit A are consumable and shall be entirely accepted by the Concessionaire whether or not use is intended.

- 8.1.2 Lighting fixtures for general area illumination
- 8.1.3 Heat - Utility
- 8.1.4 Televisions
- 8.1.5 Current Memorabilia, Wall and Art Decor

8.2 Acceptance.

On the date of commencement of this Agreement, Concessionaire shall acknowledge that it accepts the Food and Beverage Space as well as any EVRPD equipment and fixtures "AS IS". All fixtures are considered to be in good working order.

8.3 Installation of Equipment and Trade Fixtures.

Except for the items listed on Exhibits B and C, attached hereto and made a part hereof, no equipment, trade fixtures, signs or other personal property used by Concessionaire in its business, whether or not attached to the community center or any improvements thereon, shall be installed without the prior written approval of the Recreation Manager and/or their designee.

8.4 Removal of Equipment, Trade Fixtures.

Concessionaire shall have the right at any time during the term of this Agreement or upon termination and within thirty (30) days thereafter, to remove all personal property, equipment that was added by the Concessionaire, and other personal property, but subject to any valid lien EVRPD may have thereon for unpaid rents or installation of equipment in lieu of Food and Beverage Fee pursuant to Section 6.1. All EVRPD and Concessionaire equipment shall be documented with the Recreation Manager and/or their designee at the time of commencement and within 30 days of purchase for new inventory in order to properly account for all inventory. Any property not so removed by Concessionaire upon termination shall become a part of the realty on which it is located and title thereto shall vest in the EVRPD. An annual physical inventory of all equipment and trade fixtures shall be taken and filed in cooperation with the EVRPD and Concessionaire.

8.5 Title to Improvements.

Upon installation or erection of Improvements (as agreed by EVRPD), such Improvements (but excluding any of Concessionaire's personal property and trade fixtures which are attached or affixed thereto) shall become a part of the realty upon which they are erected and title thereto shall vest in the EVRPD. Upon vesting, the Improvements become part of the Food and Beverage Space and are subject to the terms applicable to the Food and Beverage Space within this Agreement.

8.6 Applicable Law. All Improvements and all trade fixtures, equipment or other personal property installed by Concessionaire shall be subject to and conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of all governmental agencies which have jurisdiction over such matters.

ARTICLE 9

Damage by Concessionaire

Concessionaire shall be liable for and shall repair, replace or cause to be repaired or replaced within fifteen (15) days after occurrence, any damage to the community center, including the Food and Beverage Space, or to EVRPD's property, equipment and fixtures (defined in Article 8) caused by Concessionaire, its board members, officers, agents, employees or anyone acting under its direction and control, ordinary wear and tear excepted. All repairs or replacements shall be made promptly and when necessary and shall be in a quality and of a class at least equal to the original. If the damage for which Concessionaire is liable is to the Food and Beverage Space, Concessionaire shall continue to be liable for all rent owed based on revenue for the Food and Beverage Space, even if it has been rendered untenable.

ARTICLE 10

Total or Partial Destruction

10.1 Food and Beverage Space or Other Major Component Rendered Untenantable.

In case, during the term of this Agreement, the Food and Beverage Space, Community Center, or any principal part of any one of them shall be destroyed or shall be so damaged by fire or other casualty so as to be rendered untenable or unusable as determined by the EVRPD:

10.1.1 Then, in such event, at the option of EVRPD or Concessionaire, the term hereby created shall cease, and this Agreement shall become null and void from the date of such damage or destruction, and Concessionaire shall immediately surrender the Food and Beverage Space and its interest therein to the EVRPD; provided, however, that EVRPD or Concessionaire shall exercise such option to so terminate this Agreement by notice, in writing, delivered to the other party within thirty (30) days after EVRPD's determination of untenability or unusability.

10.1.2 In the event neither EVRPD nor Concessionaire shall elect to terminate this Agreement, this Agreement shall continue in full force and effect; and EVRPD shall repair the Food and Beverage Space, Community Center, excluding improvements or equipment, signs, trade fixtures, or other personal property installed by Concessionaire, with all reasonable speed, placing the same in as good condition as it was at the time of the damage or destruction.

10.2 Food and Beverage Space Only Untenable.

In the event of destruction rendering only the Food and Beverage Space untenable, EVRPD shall endeavor, but not be obligated, to make substitute premises available for Concessionaire's use. During any period of use by Concessionaire of such substitute Food and Beverage Space, the EVRPD may direct that the Concessionaire's Fee shall be abated proportionately.

10.3 Components Tenable.

If the Community Center, Food and Beverage Space shall be only injured by fire or the elements to such extent so as not to render the same untenable and unfit for use and occupancy, the EVRPD shall repair the same with all reasonable speed.

10.4 Removal of Rubbish.

In any event, upon the occurrence of damage or destruction, Concessionaire shall remove all rubbish, debris, merchandise, furniture, furnishings, equipment and other items of its personal property within five (5) days after request being made by EVRPD.

10.5 Exception for Damage Caused by Concessionaire.

In the event of damage caused by Concessionaire, as more specifically addressed in Article 9 of this Agreement, the provisions of Article 9 shall govern in any conflict between Article 9 and Article 10.

10.6 No Claim by Concessionaire.

No compensation or claim shall be made by or allowed to Concessionaire by reason of any inconvenience or annoyance arising from the necessity of repairing portions of the Estes Valley Community Center, however the necessity may occur.

ARTICLE 11

Indemnification and Insurance

11.1 EVRPD's Liability.

EVRPD shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and reasonable expenses of legal services, claimed or recovered by any person whomsoever or whatsoever as a result of any operations, works, acts or omissions performed within the Estes Valley Community Center by Concessionaire, its agents, employees or contractors unless caused or contributed to by the negligence or willful misconduct of the EVRPD or its employees, agents or contractors.

11.2 Indemnification.

Concessionaire covenants that it will indemnify and hold EVRPD harmless from all claims, demands, judgments, costs and expenses, including attorneys' fees, claimed or recovered (whether justly, unjustly, falsely, fraudulently or frivolously) by any person by reason of injury to or death of any individual person or persons, or by reason of damage to, destruction or loss of use of any property, directly or indirectly arising out of, resulting from, or occurring in connection with any operations, works, acts, or omissions of Concessionaire. As used herein, the terms "Concessionaire" and "EVRPD" includes the respective directors, officers, agents, employees and contractors of Concessionaire and EVRPD.

11.3 Concessionaire Insurance.

Without limiting any of the Concessionaire's obligations hereunder, the Concessionaire shall provide and maintain comprehensive liability insurance coverage. EVRPD shall be named additional insured under this Agreement with a minimum aggregate limit of \$1,000,000.00. Concessionaire shall supply EVRPD with a current certificate of insurance which shall be renewed annually. This insurance policy will not be cancelled or reduced without 30 days prior written notice to EVRPD. Concessionaire's insurance shall cover the commercial kitchen, support rooms, and equipment for those businesses. At least 30 days prior to the expiration of any policy, a signed and complete Certificate of Insurance with all endorsements attached, showing that the insurance coverage has been renewed or extended shall be filed with EVRPD's Accounting Specialist.

Insurance requirements must include:

- \$1,000,000 - Combined single limit for personal injury and/or property damage.

- \$1,000,000 – Products Liability
- Statutory – Workers’ Compensation and Employer’s Liability Coverage

11.4 EVRPD Insurance.

Without limiting any of the Concessionaire's obligations hereunder, EVRPD shall provide and maintain its own liability insurance.

11.5 Precautions Against Injury.

The Concessionaire shall take all necessary precautions in performing the operations hereunder to prevent injury to persons and property.

11.6 Failure to Insure.

Failure of Concessionaire to take out and/or maintain, or the taking out and/or maintenance of any required insurance, shall not relieve Concessionaire from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations on Concessionaire concerning indemnification.

11.7 No Waiver of Immunity.

Nothing herein shall be construed as a waiver by EVRPD of any of the immunities, privileges and defenses available to it under the Colorado Governmental Immunity Act, as may be amended from time to time, or arising under common law.

ARTICLE 12

No Interest in Real Property

Concessionaire agrees that this Agreement constitutes merely a right to use and occupy the Food and Beverage Space for a limited purpose and does not create or convey to Concessionaire any interest in real property.

ARTICLE 13

No Assignment/Sublet

The Concessionaire shall not assign this Agreement, and shall not sublet or otherwise allow any person to take possession of all or any portion of the Food and Beverage Space. Any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation, must be approved in advance by EVRPD.

ARTICLE 14

Right of EVRPD to Enter, Inspect, and Make Repairs

14.1 In General.

EVRPD and its authorized employees, agents, contractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption to Concessionaire's operation as is reasonably practicable) to enter upon any part of the Food and Beverage Space for the following purposes:

14.1.1 To inspect such premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement with respect to such premises;

14.1.2 To perform or cause to be performed maintenance and make repairs and replacements; and

14.1.3 To make structural additions and alterations.

14.2 Obstruction by EVRPD.

All entries made for the purposes enumerated above shall, except as otherwise provided in Article 10, Total or Partial Destruction, be without abatement of rent or damage for any inconvenience. However, in the event any entry by EVRPD in the Food and Beverage Space for the purpose of making repairs or alterations as provided for in Section 14.1.2 above (other than repairs necessitated as a result of damage by Concessionaire under Article 9) constitutes a substantial obstruction to and impairment of Concessionaire's right of use of such Food and Beverage Space, then Concessionaire shall be entitled to a fair and just abatement of the rent for such premises during the period required by EVRPD to make such repairs.

14.3 Obstruction by Concessionaire.

In the event that any personal property of Concessionaire shall obstruct the access of EVRPD, its officers, employees, agents or contractors, or a utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, Concessionaire shall move such property, as directed by EVRPD or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Concessionaire shall fail to so move such property after direction from the EVRPD or said utility company to do so, EVRPD or the utility company may move it without liability for damage sustained in moving.

14.4 No Eviction or Abatement.

Exercise of any or all of the foregoing rights in this Article, by EVRPD, or others under right of the EVRPD, shall not be, nor be construed to be, an eviction of Concessionaire, nor be made the grounds for any abatement of rental nor any claim or demand for damages against the EVRPD, consequential or otherwise, except claims for damages to person or property cause solely by the negligence of the EVRPD.

14.5 Repairs and Replacements (Structural and Mechanical).

The EVRPD shall be responsible for repair and replacement of all structural and mechanical components and equipment permanently attached to the structure, including roofs, walls, foundations, heating plant, plumbing and electrical systems.

The EVRPD shall be responsible for the repair and maintenance of the roads, walks and parking areas. The EVRPD will maintain all exterior landscaping, including mowing, within the surrounding premises.

Concessionaire shall at all times maintain the Concession Premises and equipment and furnishings in good repair and in a clean, neat, sanitary and safe condition. Concessionaire shall store all trash in the containers provided for that purpose by Concessionaire and shall empty the containers on a daily basis or more often as required at the location indicated by the EVRPD. Concessionaire shall not permit any debris to remain or obstruction to exist on or about the Concession Premises.

Repair and replacement of items for which the EVRPD is responsible is subject to the availability of sufficient funds in the EVRPD's current appropriations.

ARTICLE 15

Default, Rights of Termination

15.1 Default by Concessionaire.

Time of payment and performance is of the essence in this Agreement. Concessionaire shall be in default under this Agreement upon the occurrence of any one or more of the following events:

15.1.1 Concessionaire's failure to pay any fee or other charge when due to EVRPD and within five (5) working days after notice from EVRPD of such non-payment.

15.1.2 Concessionaire's failure to maintain the insurance required above.

15.1.3 Concessionaire's assignment of any right hereunder, or attempt to sublet the Food and Beverage space, in violation of Article 13.

15.1.4 Concessionaire's failure to perform, keep or observe any of the terms, covenants or conditions of this Agreement within seven (7) days (or such longer time as may be necessary to cure, provided that cure is commenced within the initial seven (7) days) after notice from the EVRPD specifying the nature of the deficiency with reasonable particularity and the corrective action that is to be taken within such period to cure the deficiency.

15.1.5 The filing by Concessionaire of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy against Concessionaire, the taking of possession of all or substantially all of Concessionaire's assets pursuant to proceedings brought under the provisions of any federal reorganization act or the appointment of a receiver of all or substantially all of Concessionaire's assets and the failure of Concessionaire to secure the return of such assets and/or the dismissal of such proceeding within (90) days after the filing.

15.1.6 The abandonment for a period of two (2) days by Concessionaire of the conduct of its services and operations.

15.1.7 The assignment by Concessionaire of its assets for the benefit of creditors.

15.1.8 The death of the Concessionaire if the Concessionaire is a sole proprietor.

15.2 EVRPD's Remedies on Default.

15.2.1 In the event of a default by Concessionaire, EVRPD may terminate this Agreement by notice in writing to Concessionaire. In the alternative, EVRPD may elect to keep the Agreement in force and work with Concessionaire to cure the default. If this Agreement is terminated, Concessionaire's liability to EVRPD for damages and rent shall survive the termination, and the EVRPD may re-enter, take possession of the Food and Beverage Space, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

15.2.2 Following re-entry or abandonment, EVRPD may make arrangements for use of the Food and Beverage Space by others, and in that connection may make any suitable alterations or refurbish the Food and Beverage Space, but EVRPD shall not be required to make such arrangement for any use or purpose.

15.3 Rights and Remedies Reserved.

It is understood and agreed that any rights and remedies reserved pursuant to this Article are in addition to any other rights or remedies the EVRPD may have pursuant to this Agreement or to applicable law to seek judicial enforcement, damages or any other lawful remedy.

ARTICLE 16

Miscellaneous Provisions

16.1 Cumulative Rights.

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other or of any other remedy available to the EVRPD, or Concessionaire, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

16.2 Non-Waiver.

The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition, or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

16.3 Non-liability of Individuals Other Than Concessionaire.

With the exception of Concessionaire, no director, officer, agent, or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of its or their execution or attempted execution of the same.

16.4 Limitations on Use.

Concessionaire shall not use, or permit the use of the Food and Beverage Space, or any part thereof, for any purpose or use other than those authorized by this Agreement. Neither shall Concessionaire permit nor suffer any disorderly noise or nuisance whatsoever about the Food and Beverage Space or Estes Valley Community Center.

16.5 Governing Law.

This Agreement shall be performable and enforceable in Larimer County, Colorado, and shall be construed in accordance with the laws of the State of Colorado.

16.6 Benefits.

This Agreement is made for the sole and exclusive benefit of the EVRPD and Concessionaire, their successors and assigns, and is not made for the benefit of any third party.

16.7 Construction.

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

16.8 Successors and Assigns.

All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

16.9 Key Access.

EVRPD will issue keys to access the Estes Valley Community Center Food and Beverage area. Keys must be returned to EVRPD upon termination of this Agreement.

16.10 Attorney Fees.

In the event any legal action or proceeding is brought to collect sums due or to become due hereunder or any portion thereof or to enforce compliance with this Agreement for failure to observe any of the covenants of this Agreement, the losing party agrees to pay to the prevailing party such sums as the Court may judge reasonable attorneys' fees and costs to be allowed in such action or proceeding and in any appeal therefrom.

16.11 Entire Agreement.

This Agreement, which is the entire agreement between the parties hereto, supersedes all prior agreements, understandings, warranties or promises between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto.

16.12 Severability.

In the event any covenant, condition or provision of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either EVRPD or Concessionaire in his or its respective rights and obligations under the valid covenants, conditions or provisions of this Agreement.

16.13 Surrender of Possession.

Upon the expiration of this Agreement or its earlier termination as herein provided, Concessionaire shall remove all of its property from the Estes Valley Community Center and surrender entire possession of its rights at the Estes Valley Community Center to EVRPD and its improvements in accordance with Section 8 above, unless this Agreement is renewed or replaced.

16.14 EVRPD Representative.

EVRPD designates the Recreation Manager, as its representative who shall make, within the scope of their authority, all necessary and proper decisions with reference to this Agreement. All requests for contract interpretations, amendments, and other clarifications or instructions shall be directed to the EVRPD Representative. The representative may be changed by written notification to the Concessionaire.

16.15 Notices.

Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery with documented receipt or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other address as the parties may designate from time to time by notice given in accordance with this Section:

To Concessionaire: _____

To EVRPD: Executive Director
Estes Valley Recreation and Park District
P.O. Box 1379
660 Community Drive
Estes Park, CO 80517

16.16 Paragraph Headings and Headings.

Paragraph headings contained herein are for convenience and reference, and are not intended to define or limit the scope of any provisions of this Agreement.

The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

16.17 Schedules and Exhibits.

Whenever reference is made in this Agreement to a Schedule or an Exhibit, unless otherwise specifically expressed to the contrary, such Schedule or Exhibit shall be deemed attached to and by this reference incorporated in this Agreement.

16.18 Force Majeure.

However, neither the EVRPD nor the Concessionaire shall be deemed in violation of this Agreement if prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God or nature, act of public enemy, acts of superior governmental authority, weather conditions, rights, rebellion, sabotage or any other circumstances that are not within its control.

16.19 No Limitation on General Powers.

Nothing in this Agreement shall be construed as in any way limiting the general powers of the EVRPD to fully exercise their governmental functions or their obligations under any bond covenants or federal, state or local laws, rules or regulations.

16.20 No Relationship.

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of employer and employee, principal and agent or a partnership or a joint venture between the parties hereto. EVRPD shall not be responsible for any debts or obligations whatsoever of Concessionaire.

16.21 Survival.

To the extent necessary to carry out all of the terms and provisions hereof, the aid terms, obligations, and rights set forth herein required shall survive and shall not be affected by the expiration or termination of this Agreement.

16.22 EVRPD Staff and Concessionaire Discount.

The successful Concessionaire shall provide a percentage discount upon mutual agreement between EVRPD and Concessionaire to all current EVRPD staff members during community center hours. EVRPD will reciprocate this discount for current Concessionaire employees for discounted community center fees.

16.23 Bills.

Concessionaire agrees to pay promptly all bills arising from the operation of the concession.

16.24 Non-Discrimination.

Concessionaire agrees to comply fully with the Federal Equal Employment Opportunities Act and with all applicable state laws, and Concessionaire agrees that no person shall be denied or refused service or other full or equal use of the licensed facilities, nor denied employment opportunities by Concessionaire as a result of race, creed, color, religion, sex, national origin or ancestry, age, physical or mental handicap.

16.25 Signs, Marketing, Advertising.

Concessionaire will submit for approval samples of any sign advertising, marketing, and general advertising of the concession, prior to their erection and publication. All signs erected by Concessionaire shall be the responsibility of Concessionaire and will be kept in good condition by Concessionaire.

16.26 Patent or Copyright Protection.

Concessionaire recognizes that certain proprietary matters, techniques or information may be subject to patent, trademark, copyright, license or other similar restriction, and warrants that no work performed by the Concessionaire or its Sub-Contractors hereunder in connection with the Agreement will infringe any such rights of any person or entity nor will it violate any restriction. Concessionaire shall defend, indemnify and hold harmless the EVRPD from any infringement, violation or alleged infringement or violation of any such patent, trademark, copyright, license or other restrictions.

16.27 Ownership of Documents/Work Product/Materials. All documents, records, field notes, data samples, specimens, and materials of any kind resulting from performance of this Agreement are at times the property of the EVRPD.

ARTICLE 17

Colo. Rev. Stat. §8-17.5-101 *et. seq.*

17.1 Pursuant to Colo. Rev. Stat. §8-17.5-101 *et. seq.*, the Estes Valley Recreation and Park District, as the Concessionaire manager of the Hangar Restaurant herein, cannot enter into or renew a public contract/agreement for services with a Concessionaire who knowingly employs or contracts with an illegal alien to perform work under the Concessionaire. Accordingly, in accordance with the mandatory provisions of Colo. Rev. Stat. §8-17.5-101 *et. seq.* The Concessionaire certifies that it has not knowingly employed or contracted with an illegal alien to perform work under this Agreement/Proposal for Services, and that as the Concessionaire will participate in the E-Verify Program of the Department of Labor in order

to confirm the employment eligibility of all employees who are, or may be, newly hired to perform work under this Agreement.

17.1.1 Employee Eligibility. The Concessionaire has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department of Labor’s applicable program. Concessionaire shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Agreement is being performed.

17.1.2 Department Requests. The Concessionaire shall comply with any reasonable request by the Department of Labor and Employment (hereinafter referred to as the “Department”) made in the course of an investigation that the Department is undertaking pursuant to C.R.S. §8-17.5-102(5).

17.1.3 If the Concessionaire violates the provisions of this paragraph, the District may terminate the contract for breach and the Concessionaire shall be liable for actual and consequential damages.

This Agreement is the result of negotiations between the EVRPD and the Concessionaire, neither of whom has acted under duress or compulsion, whether legal, economic or otherwise.

Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. The parties hereby waive the application of any rule of law which otherwise might be applicable to the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed this ____ day of _____, 2021.

ESTES VALLEY RECREATION AND PARK DISTRICT

Scott Dorman, President of the Board of Directors

ATTEST:

Sarah Metz, Board Secretary

CONCESSIONAIRE:

By:

STATE OF _____)
: ss.)

COUNTY OF _____)

On this ____ day of _____, 2021 _____ of _____, personally appeared before me, and being by me duly sworn, did say that he/she is the signer of the foregoing Agreement for on behalf of _____, with actual and requisite authority, and said _____ acknowledged to me that he/she has fully reviewed and executed the same.

Notary Public