



REQUEST FOR INFORMAL QUOTATION

PLEASE COMPLETE THE FOLLOWING CONTACT INFORMATION

Company Name: _____

Address: _____

Contact Name: _____

Contact Title: _____

E-mail: _____

NOTES:

1. Quoted prices are to be net thirty (30) calendar days: all discounts are to be deducted and reflected in net prices.
2. The County reserves the right to reject any and/or all quotes, to waive any technicalities in the quote, and to take whatever action is in the best interest of Washington County.
3. The County is exempt from State of Maryland Sales Tax. The County's Maryland Sales Tax Exemption Number is 3000129 2.

RETURN INFORMAL QUOTATIONS TO:

WASHINGTON COUNTY PURCHASING DEPARTMENT
Washington County Administration Building
100 West Washington Street, Third Floor, Room 320
Hagerstown, Maryland 21740-4748

Attention: Rick Curry, CPPO - Buyer

Telephone Number: 240-313-2330

**REQUEST FOR
INFORMAL QUOTATION
THIS IS NOT
AN ORDER**

DATE ISSUED

02/25/2016

DESCRIPTION

**CONCESSION SERVICES FOR PEN MAR COUNTY PARK AND / OR
PINESBURG SOFTBALL COMPLEX**

IQ-16-011

(See Attached Instructions)

INFORMAL QUOTATION DUE: Thursday, March 10, 2016, no later than 3:00 P.M., (EST) and must be time-stamped in the Purchasing Department. Opening of quotations will follow. Interested parties are invited to attend.

INFORMAL QUOTATIONS TO BE ADDRESSED TO: Washington County Purchasing Department, Attn: Rick Curry, CPPO, Buyer, Washington County Administration Building, 100 West Washington Street, Third Floor, Room 320, Hagerstown, Maryland, 21740-4748 and enclosed in a sealed opaque envelope marked **INFORMAL QUOTATION (IQ-16-011)** **“CONCESSION SERVICES”** and bearing the vendor's name.

Having received clarification on all items of conflict or upon which any doubt arose, the undersigned proposed to furnish all labor, materials and equipment called for by said specifications and instructions.

NOTE: Quoters shall submit the FORM OF PROPOSAL as their submittal.

**CONCESSION SERVICES FOR PEN MAR COUNTY PARK AND / OR
PINESBURG SOFTBALL COMPLEX**

IQ-16-011

NOTICE TO QUOTERS & INSTRUCTIONS

1. **AWARD OF CONTRACT:** It is anticipated that the County shall award a contract on the basis of the responsible, highest Quoter submitting the responsive price quotation(s).

Concession Services Agreement at Pen Mar County Park and / or Pinesburg Softball Complex shall be for and during the 2016 park season.

NOTE: All Quoters **must** enter the County Administration Building through the front door, 100 West Washington Street entrance, and **must** use the elevator to access the Purchasing Department to submit their Informal Quotation. Alternate routes are now controlled by a door access system.

2. **CONTRACT TERM:** The successful vendor shall promptly enter into a contract with the Owner in a form approved by the Owner within ten (10) calendar days after notification of award. The contract will be for a one (1) park season period, tentatively commencing April 1, 2016 and ending September 30, 2016 (Pinesburg Softball Complex) and tentatively commencing May 1, 2016 and ending October 9, 2016 (Pen Mar County Park). If the contractor fails to comply with the specifications, the Owner reserves the right to terminate the Contract upon thirty (30) calendar days notice in writing if, in the opinion of the Owner, the services are not satisfactory or in the best interest of the County.
3. **EQUAL OPPORTUNITY:** The Board of County Commissioners of Washington County, Maryland does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Individuals requiring special accommodations are requested to contact the Purchasing Department at 240-313-2330, TDD Dial 711 to make arrangements no later than seven (7) calendar days prior to the Informal Quotation Opening.
4. **INFORMAL QUOTATION OPENING:** Informal Quotations must be received and time-stamped in the Purchasing Department no later than **Thursday, March 10, 2016 at 3:00 P.M., (EST)** Quotations will be opened at that time in the Washington County Administration Building Conference Room 325, Third Floor, 100 West Washington Street, Hagerstown, Maryland. All interested parties are invited to attend.
5. **INSURANCE:** Upon request and prior to execution of contract, the successful bidder must show evidence of insurance as outlined in Washington County's Policy of *Insurance Requirements for Independent Contractors* included herein.
6. **PAYMENT:** The successful vendor shall make monthly payments payable the first Monday of each month at the Washington County Department of Parks and Facilities, 1307 South Potomac Street, Hagerstown, Maryland 21740-7300. Checks shall be made payable to the Washington County Treasurer.

7. **PAYMENT OF COUNTY AND MUNICIPAL TAXES:** Effective October 1, 1993, in compliance with Section 1-106(b)(3) of the Code of the Public Local Laws of Washington County, Maryland, "If a bidder has not paid all taxes owed to the County or a municipal corporation in the County, the County Commissioners may reject the bidder's bid."
8. **POLITICAL CONTRIBUTION DISCLOSURE:** In accordance with Maryland Code, State Finance and Procurement Article, §17-402, the Bidder shall comply with Maryland Code, Election Law Article, Title 14, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or any incorporated municipality, or their agencies during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two (2) calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.
9. **INFORMAL QUOTATION SUBMITTAL:** Informal Quotations are to be enclosed in a sealed opaque envelope bearing the name of the vendor and marked "**QUOTATION – (IQ-16-011) CONCESSION SERVICES**". Quotations are to be addressed to Rick Curry, CPPO, Buyer, Washington County Purchasing Department, Washington County Administration Building, 100 W. Washington Street, Third Floor, Room 320, Hagerstown, MD 21740-4748. Quotations must be received in the Purchasing Department no later than **3:00 P.M., (EST), Thursday, March 10, 2016**. Quotations will be opened at that time in the Washington County Administration Building Conference Room 325, Third Floor, 100 West Washington Street, Hagerstown, Maryland. All interested parties are invited to attend.
10. **RESERVATIONS:** The Board of County Commissioners of Washington County, Maryland, reserves the right to accept or reject any or all Informal Quotations, to waive formalities, informalities and technicalities therein. The Board reserves the right to contact a Quoter for clarifications and may, at its sole discretion, allow a Quoter to correct any and all formalities, informalities and technicalities in the best interest of Washington County.
11. **RESPONSIBILITY OF VENDOR:**
 - a. Each vendor submitting an Informal Quotation for this work shall first examine the site and thoroughly satisfy him/her to the conditions under which he/she will operate or that will in any manner affect any work under his/her contract. The vendor shall accept the site as he/she finds it. All proposals shall take into consideration all conditions that may affect the work. No allowance shall be made to any vendor for negligence in this respect.
 - b. Persons or firms interested in submitting an Informal Quotation may inspect the parks containing the concession area during the Parks and Facilities weekday hours of operation, which are 7:00 A.M. – 3:00 P.M. Monday through Friday. Please call Dave Brooks at 240-313-2700 to make arrangements to visit the sites.

c. The County shall not be responsible for the premature opening of Informal Quotations received and not properly addressed or identified on the sealed envelope.

12. **SECURITY DEPOSIT:** Tenant/Concessionaire shall provide to the Landlord a security/damage deposit in the amount of Five Hundred (\$500.00) Dollars upon the execution of this Agreement. Tenant/Concessionaire shall notify the Department of Parks and Facilities before closing concessions for the season in order to have the building, facilities and equipment inspected for proper operation and cleanliness. Upon satisfactory inspection, the security/damage deposit will be refunded to Tenant/Concessionaire

13. **LEASE AND CONCESSION AGREEMENT:** The information within the Informal Quotation document is for informational purposes only. After the successful vendor(s) is/are awarded the contract(s) the County will notify the vendor(s) via-mail, at which time the vendor may execute the Lease and Concession Agreement and return the executed documents to the County.

**CONCESSION SERVICES FOR PEN MAR COUNTY PARK AND / OR
PINESBURG SOFTBALL COMPLEX**

IQ-16-011

FORM OF PROPOSAL

TO:

**The Board of County Commissioners
of Washington County, Maryland
c/o Washington County Purchasing Dept.
Washington County Administration Bldg.
100 West Washington Street, Room 320
Hagerstown, MD 21740-4748**

FROM:

DATE: _____

**QUOTATION DUE: Thursday, March 10, 2016
3:00 P.M., (EST)**

QUOTATION NO: IQ-16-011

Ladies/Gentlemen:

We hereby submit our proposal for:

- 1. CONCESSION SERVICES AT PEN MAR COUNTY PARK** (*May 1, 2016 – October 9, 2016*)
(Concessions shall be operated for all special events as listed on the attached schedule and other optional days and times)
Tenant/Concessionaire shall **pay** unto the Board of County Commissioners of Washington County, Maryland, a **monthly** rental/concession fee in the amount of:

_____ Dollars \$ _____
(Written) (Figures)

- 2. CONCESSION SERVICES AT PINESBURG SOFTBALL COMPLEX**
(*April 1, 2016 – September 30, 2016*)
(Concessions shall be operated for all special events as listed on the attached schedule and other optional days and times)
Tenant/Concessionaire shall **pay** unto the Board of County Commissioners of Washington County, Maryland, a **monthly** rental/concession fee in the amount of:

_____ Dollars \$ _____
(Written) (Figures)

Company Name: _____

Company Address: _____

Authorized Signature of Officer of Company: _____

Name and Title Printed: _____

Phone No.: _____ / Fax No.: _____

E-Mail Address: _____

Employer's Federal Identification No.: _____

POLICY TITLE: Insurance Requirements for Independent Contractors

ADOPTION DATE: August 29, 1989

EFFECTIVE DATE: September 1, 1989

FILING INSTRUCTIONS:

I. PURPOSE

To protect Washington County against liability, loss or expense due to damaged property, injury to or death of any person or persons and for care and loss of services arising in any way, out of, or in connection with or resulting from the work or service performed on behalf of Washington County.

II. ACTION

The following should be inserted in all Independent Contractor Contracts:

"The Contractor shall procure and maintain at his sole expense and until final acceptance of the work by the County, insurance as hereinafter enumerated in policies written by insurance companies admitted in the State of Maryland, have A.M. Best rating of A- or better or its equivalent, and acceptable to the County."

1. **Workers Compensation:** The Contractor agrees to comply with Workers Compensation laws of the State of Maryland and to maintain a Workers Compensation and Employers Liability Policy.

Minimum Limits Required:

Workers Compensation -	Statutory
Employers Liability -	\$100,000 (Each Accident)
	\$500,000 (Disease - Policy Limit)
	\$100,000 (Disease - Each Employee)

2. **Comprehensive General Liability Insurance:** The Contractor shall provide Comprehensive General Liability including Products and Completed Operations.

Minimum Limits Required:

\$1,000,000 combined single limit for Bodily Injury and Property Damage.

Such insurance shall protect the County, its agents, elected and appointed officials, commission members and employees, and name Washington County on the policy as additional insured against liability, loss or expense due to damaged property (including loss of use), injury to or death of any person or persons and for care and loss of services arising in any way, out of, or in connection with or resulting from the work of service performed on behalf of Washington County.

2. **Comprehensive General Liability Insurance** (continued)

The Contractor is ultimately responsible that Subcontractors, if subcontracting is authorized, procure and maintain at their sole expense and until final acceptance of the work by the County, insurance as hereinafter enumerated in policies written by insurance companies admitted in the State of Maryland, have A.M. Best rating of A- or better or its equivalent, and acceptable to the County.

3. **Business Automobile Liability:** The Contractor shall provide Business Auto Liability including coverage for all leased, owned, non-owned and hired vehicles.

Minimum Limits Required:

\$1,000,000 combined single limit for Bodily Injury or Property Damage.

Certificate(s) of Insurance: The Contractor shall provide certificates of insurance requiring a 30 day notice of cancellation to the Insurance Department, Board of County Commissioners of Washington County prior to the start of the applicable project.

Approval of the insurance by the County shall not in any way relieve or decrease the liability of the Contractor. It is expressly understood that the County does not in any way represent that the specified limits of liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.

All responsibility for payment of any sums resulting from any deductible provisions, corridor, or self-insured retention conditions of the policy or policies shall remain with the Contractor.

General Indemnity: The Contractor shall indemnify, defend and save harmless the Board of County Commissioners of Washington County, its appointed or elected officials, commission members, employees and agents for any and all suits, legal actions, administrative proceedings, claims, demands, damages, liabilities, interest, attorneys fees, costs and expenses of whatsoever kind of nature, whether arising before or after final acceptance and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence whether active or passive by the Contractor, or any one acting under its direction, control or on its behalf in connection with or incident to its performance of the Contract.

Revision Date: August 27, 1991

Effective Date: August 27, 1991

Revision Date: March 4, 1997

Effective Date: March 4, 1997

2016
JIM AND FAY POWERS
MUSIC SERIES
PEN MAR PARK
14600 Pen Mar-High Rock Road
Cascade, MD 21719

May 29	Dave Winter Group
June 5	Helmut Licht Combo
June 12	Rocky Birely Combo
June 19	Headliners
June 26	Back to Back
July 3	Connie Guy Band
July 10	Arrow Trio
July 17	Dave Winters Group
July 24	Jay and the Jingos
July 31	Spectrum
August 7	Joe Borzellino Combo
August 14	Andy Angel Quartet
August 21	Music by Just Us
August 28	Ray Birely Orchestra (Everybody's Day is the 28th)
September 4	Détente
September 11	The Holders
September 18	George Tindall Combo
September 25	Rocky Birely Combo
October 2	The Bill Krantz Combo

Dances are from 2:00pm to 5:00pm

**Dances are provided by the Wash. Co. Parks
& Facilities Department**

For more info contact David Brooks at 240-313-2807

Music Contracted by: Fay Powers 301-739-9424



LEASE AND CONCESSION AGREEMENT

THIS LEASE AND CONCESSION AGREEMENT (hereinafter the "Agreement"), is made this [REDACTED] day of [REDACTED], 2016 by and between the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND**, a body public and corporate and a political subdivision of the State of Maryland, (hereinafter the "Landlord") and the "Tenant/Concessionaire".

RECITALS

The Landlord is the owner of a concession building (hereinafter the "Building") located in the County park known and designated as **Pen Mar County Park** (hereinafter the "Park").

The Washington County Department of Parks and Facilities has requested and received proposals for the privilege of operating a food and soft drink concession located on the premises of the Park in accordance with applicable law and County policies.

The Landlord, in consideration of the monthly rental hereinafter specified and the mutual covenants and agreements hereinafter set forth, desires to lease the Building unto the Tenant/Concessionaire for the 2016 park season upon the terms and conditions hereinafter set forth.

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

1. **Exclusive Concession.** Tenant/Concessionaire is hereby given the exclusive privilege of operating the Building located on the premises at the Park which shall be operated for all special events as listed on a schedule attached hereto and other optional days and times, for the purpose of selling food, confections, ice cream, soft drinks and other related items.

2. **Condition of premises.** Taking possession of the Building by Tenant/Concessionaire shall constitute acknowledgment that such premises are in good condition. Tenant/Concessionaire shall accept the building and concession premises in its present existing condition and Landlord shall not be required to make any alterations thereto.

3. **Alcoholic beverages.** No alcoholic beverages of any kind whatsoever shall be kept, stored, used, displayed, or sold in the Building or on the premises.

4. **Equipment.** The equipment granted to Tenant/Concessionaire under this Agreement for utilization for the specific purposes set forth above is described as follows:

- 1 - Upright freezer, 28 ½ cubic feet
- 2 - Fryers, 15 pound fat capacity each
- 1 - 36" Grill
- 1 - Grill stand
- 1 - 3 Compartment stainless steel sink
- 1 - Stainless steel top worktable
- 1 - Exhaust hood with fan

- 1 - Stainless steel hand sink
- 1 - Built-in Formica work counter and service ledges
- 1 - True stainless steel refrigerator – Model T-19

Tenant/Concessionaire may, at its own option, supply additional equipment or appliances provided that available electric service is not exceeded.

5. **Power failure/Equipment failure.**

(a) Tenant/Concessionaire shall promptly notify the Landlord of any power failure/surge/outage as well as any equipment failure, malfunction, or damage to said equipment.

(b) Tenant/Concessionaire acknowledges and agrees that the Landlord shall not be liable/responsible for the replacement of or the reimbursement for the cost of any foods, goods, or supplies lost or damaged as a result of a power failure/outage/surge or an equipment failure or malfunction.

6. **Compliance with laws.** Tenant/Concessionaire shall observe and obey all of the laws, ordinances, rules and regulations of the federal, State, and County governments which are applicable to the operation of the Building and concession facility. The Building shall be used to conduct a concession business only. Tenant/Concessionaire shall not use or permit the Building to be used for any other purpose, without obtaining the prior written consent of Landlord. All items sold by Tenant/Concessionaire shall be of first class quality, and the services provided by Tenant/Concessionaire shall be rendered courteously and efficiently. Landlord reserves the right to prohibit the sale of any item that it deems objectionable. Landlord shall also have the right to order the improvement of the quality of either the merchandise or the services rendered.

7. **Permits and licenses.** Tenant/Concessionaire shall obtain and maintain all permits and licenses necessary for the operation of its concession as allowed herein at its own cost and expense. Tenant/Concessionaire shall provide Landlord with a copy of all permits issued by the Washington County Health Department for this concession facility.

8. **Taxes.** Tenant/Concessionaire shall pay any and all taxes that may be imposed by law as a result of the concession operation contemplated by this Agreement.

9. **Sanitary condition.** The leased premises (i.e., Building) which Tenant/ Concessionaire is allowed to use under this Agreement and any space adjacent thereto, shall be kept clean and sanitary at all times by Tenant/Concessionaire and its employees. Trash receptacles shall be made available by the Landlord. Tenant/Concessionaire shall be responsible for providing plastic liners for said trash receptacles.

10. **Employee Insurance.** Tenant/Concessionaire shall procure and keep in force adequate liability insurance coverage for its employees and Tenant/Concessionaire shall assure to its employees or their beneficiaries the necessary first aid, medical, surgical, and hospital services and compensation

as provided for by the Maryland workers' occupational diseases and workers' compensation acts now in force and as may be amended from time to time.

11. **Indemnity – Workers' compensation.** Tenant/Concessionaire shall indemnify and keep and save the Landlord harmless, from any and all liabilities, claims, judgments, awards, expenses and costs which may arise against the Landlord by reason of occupational diseases, accidental injuries or death suffered by any of Tenant/Concessionaire's employees in and about the performance of their work under this Agreement.

12. **Landlord's right of access.** Tenant/Concessionaire shall allow the Landlord's authorized agents and representatives access to the leased premises at all reasonable hours to examine and inspect said premises for any purposes, incidental to or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions.

13. **Improvements.** Tenant/Concessionaire shall not erect or install any racks, stands, shelves or any similar items in or around the Building without first obtaining the Landlord's prior written approval.

14. **Sales.** Tenant/Concessionaire shall sell all commodities at reasonable prices, including ice cream, coffee, soft drinks, candy, potato chips, hot dogs, sandwiches, and similar items.

15. **Term.** The term of this Agreement shall be for and during the 2016 park season, commencing May 1, 2016 and ending on October 9, 2016.

16. **Rental.** Tenant/Concessionaire shall pay unto the Board of County Commissioners of Washington County, Maryland, a monthly rental/concession fee in the amount of [REDACTED] Dollars (\$ [REDACTED]), payable the first Monday of each month to the Washington County Treasurer at the Washington County Department of Parks and Facilities, 1307 S. Potomac Street, Hagerstown, Maryland 21740-7300.

17. **Security deposit.** Tenant/Concessionaire shall provide to the Landlord a security/damage deposit in the amount of Five Hundred (\$500.00) Dollars upon the execution of this Agreement. Tenant/Concessionaire shall notify the Buildings, Grounds and Parks Department before closing concessions for the season in order to have the Building, facilities and equipment inspected for proper operation and cleanliness. Upon satisfactory inspection, the security/damage deposit will be refunded to the Tenant/Concessionaire.

18. **Default.** In the event of any default or breach of any covenants contained herein by Tenant/Concessionaire, said default or breach shall result in the automatic termination of this Agreement within the sole and absolute discretion of Landlord.

19. **Liability Insurance.** The Tenant/Concessionaire, and anyone other than the Tenant/Concessionaire leasing the concession rights hereunder, shall procure and maintain at its own expense the following type and amount of insurance:

Comprehensive General Liability
(including products and completed
operations)

\$1,000,000 per occurrence
combined single limit
for bodily injury and
property damage

Tenant/Concessionaire, and anyone other than the Tenant/Concessionaire leasing the concession rights hereunder, shall name the Landlord as an additional insured on all policies required by this paragraph and shall provide the Landlord with a certificate of insurance evidencing the above-referenced insurance and requiring at least thirty (30) days advance notice of cancellation or material change to the policy.

20. **Indemnification.** Tenant/Concessionaire shall hold Landlord harmless from and shall defend and indemnify Landlord from and against all liability for injuries to or deaths of persons or damage to property arising from any activities under this Agreement. Each party shall give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects either party, and both parties shall have the right to participate in the defense of such claim to the extent of its interest. If judgment is entered against Tenant/Concessionaire and Landlord because of concurrent negligence, an apportionment of liability to pay such judgment shall be made in a court of competent jurisdiction, and neither party shall request a jury apportionment.

21. **Bankruptcy.** Either (a) the filing by Tenant/Concessionaire of a voluntary petition in bankruptcy or the making of an assignment for the benefit of creditors, or (b) a consenting by Tenant/Concessionaire to the appointment of receiver or trustee of all or part of its property, or (c) the filing by Tenant/Concessionaire of a petition or answer seeking reorganization under the Bankruptcy Act or any other applicable law, or (d) the filing by Tenant/Concessionaire of a petition to take advantage by any insolvency act shall constitute a breach of this Agreement by Tenant/Concessionaire. On the occurrence of any such event, Landlord may terminate this Agreement by giving Tenant/Concessionaire fifteen (15) days' written notice of termination.

22. **Nondiscrimination.** Tenant/Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, or national origin. Tenant/Concessionaire and its employees shall not discriminate against any person because of race, color, religion, ancestry, sex, age, physical or mental disability, size, national origin, marital status, sexual orientation or genetic status by refusing to furnish such person any service or privilege offered to or enjoyed by the general public. Neither Tenant/Concessionaire nor its employees shall publicize the services provided hereunder in any manner that would directly or inferentially reflect on the acceptability of the patronage of any person because of race, religion, color, ancestry, sex, age, or national origin.

23. **Waiver of Breach.** The waiver by Landlord of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term. The subsequent acceptance of a concession fee payment by Landlord shall not be deemed to be a waiver of any prior occurring breach by Tenant/Concessionaire of any term contained herein regardless of knowledge of Landlord of such prior existing breach at the time of the acceptance of such concession fee payment.

24. **Reasonable Extensions.** Landlord shall have the right to grant reasonable extensions of time to Tenant/Concessionaire for any purpose or for the performance of any obligation of Tenant/Concessionaire hereunder.

25. **Relationship of parties.** It is understood and agreed that nothing herein contained is intended or should be construed as in anywise creating or establishing the relationship of partners between the parties hereto, or as constituting Tenant/Concessionaire as the agent, representative, or employee of the Landlord or any purpose or in any manner whatsoever. Tenant/Concessionaire is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

26. **Assignment.** Neither Landlord nor Tenant/Concessionaire may assign or transfer this Agreement or any rights or benefits under this Agreement to any person or entity without the prior written approval of the other party.

27. **Remedies not exclusive.** The rights and remedies provided in this Agreement are cumulative and not exclusive and are in addition to any other rights and remedies the parties may have at law or otherwise.

28. **Force majeure.** Landlord and Tenant/Concessionaire shall be excused for the period of any delay in the performance of any obligations under this Agreement when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire or other casualty or acts of God.

29. **Headings.** The headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article or section of this Agreement.

30. **Survival.** The covenants contained in or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.

31. **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

32. **Severability.** If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

33. **Time of the essence.** Time is of the essence in the performance of the duties under this Agreement.

34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. **Entire agreement; modification.** This Agreement, and the materials incorporated herein by reference, constitutes the entire agreement between the parties. There are no promises or other agreements, oral or written, express or implied, between the parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by duly authorized representatives of Landlord and Tenant/Concessionaire.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals the day and year first above written by their duly authorized representatives and signatories.

LANDLORD:

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

Vicki C. Lumm, Clerk

BY: _____(SEAL)
Terry L. Baker, President

TENANT/CONCESSIONAIRE:

WITNESS:

BY: _____(SEAL)

Approved:

Washington County Department of
Parks and Facilities

John Pennesi, Deputy Director

Approved as to form and
legal sufficiency:

John M. Martirano
County Attorney

Approved:

Washington County Department
Parks and Facilities



John Pennesi, Deputy Director

Approved as to form and legal
sufficiency:



John M. Martirano
County Attorney

LEASE AND CONCESSION AGREEMENT

THIS LEASE AND CONCESSION AGREEMENT (hereinafter the "Agreement"), is made this [REDACTED] day of [REDACTED], 2016 by and between the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND**, a body public and corporate and a political subdivision of the State of Maryland, (hereinafter the "Landlord") and the "Tenant/Concessionaire".

RECITALS

The Landlord is the owner of a concession building (hereinafter the "Building") located in the County park known and designated as **Pinesburg Softball Complex** (hereinafter the "Park").

The Washington County Department of Parks and Facilities has requested and received proposals for the privilege of operating a food and soft drink concession located on the premises of the Park in accordance with applicable law and County policies.

The Landlord, in consideration of the monthly rental hereinafter specified and the mutual covenants and agreements hereinafter set forth, desires to lease the Building unto the Tenant/Concessionaire for the 2016 park season upon the terms and conditions hereinafter set forth.

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

1. **Exclusive Concession.** Tenant/Concessionaire is hereby given the exclusive privilege of operating the Building located on the premises at the Park which shall be operated for all special events as listed on a schedule attached hereto and other optional days and times, for the purpose of selling food, confections, ice cream, soft drinks and other related items.

2. **Condition of premises.** Taking possession of the Building by Tenant/Concessionaire shall constitute acknowledgment that such premises are in good condition. Tenant/Concessionaire shall accept the building and concession premises in its present existing condition and Landlord shall not be required to make any alterations thereto.

3. **Alcoholic beverages.** No alcoholic beverages of any kind whatsoever shall be kept, stored, used, displayed, or sold in the Building or on the premises.

4. **Equipment.** The equipment granted to Tenant/Concessionaire under this Agreement for utilization for the specific purposes set forth above is described as follows:

- 1 - Manitowoc C320 Ice Machine
- 1 - Artic Air Upright Commercial Freezer
- 1 - True Upright Commercial Freezer
- 2 - Stainless Tables
- 2 - Ceilware Deep Fryers
- 1 - Star 3ft Flat Top Grill
- 1 - 3 Compartment Stainless Steel Sink
- 1 - Stainless Steel Hand Wash Sink

Tenant/Concessionaire may, at its own option, supply additional equipment or appliances provided that available electric service is not exceeded.

5. **Power failure/Equipment failure.**

(a) Tenant/Concessionaire shall promptly notify the Landlord of any power failure/surge/outage as well as any equipment failure, malfunction, or damage to said equipment.

(b) Tenant/Concessionaire acknowledges and agrees that the Landlord shall not be liable/responsible for the replacement of or the reimbursement for the cost of any foods, goods, or supplies lost or damaged as a result of a power failure/outage/surge or an equipment failure or malfunction.

6. **Compliance with laws.** Tenant/Concessionaire shall observe and obey all of the laws, ordinances, rules and regulations of the federal, State, and County governments which are applicable to the operation of the Building and concession facility. The Building shall be used to conduct a concession business only. Tenant/Concessionaire shall not use or permit the Building to be used for any other purpose, without obtaining the prior written consent of Landlord. All items sold by Tenant/Concessionaire shall be of first class quality, and the services provided by Tenant/Concessionaire shall be rendered courteously and efficiently. Landlord reserves the right to prohibit the sale of any item that it deems objectionable. Landlord shall also have the right to order the improvement of the quality of either the merchandise or the services rendered.

7. **Permits and licenses.** Tenant/Concessionaire shall obtain and maintain all permits and licenses necessary for the operation of its concession as allowed herein at its own cost and expense. Tenant/Concessionaire shall provide Landlord with a copy of all permits issued by the Washington County Health Department for this concession facility.

8. **Taxes.** Tenant/Concessionaire shall pay any and all taxes that may be imposed by law as a result of the concession operation contemplated by this Agreement.

9. **Sanitary condition.** The leased premises (i.e., Building) which Tenant/ Concessionaire is allowed to use under this Agreement and any space adjacent thereto, shall be kept clean and sanitary at all times by Tenant/Concessionaire and its employees. Trash receptacles shall be made available by the Landlord. Tenant/Concessionaire shall be responsible for providing plastic liners for said trash receptacles.

10. **Employee Insurance.** Tenant/Concessionaire shall procure and keep in force adequate liability insurance coverage for its employees and Tenant/Concessionaire shall assure to its employees or their beneficiaries the necessary first aid, medical, surgical, and hospital services and compensation as provided for by the Maryland workers' occupational diseases and workers' compensation acts now in force and as may be amended from time to time.

11. **Indemnity – Workers' compensation.** Tenant/Concessionaire shall indemnify and keep and save the Landlord harmless, from any and all liabilities, claims, judgments, awards, expenses and

costs which may arise against the Landlord by reason of occupational diseases, accidental injuries or death suffered by any of Tenant/Concessionaire's employees in and about the performance of their work under this Agreement.

12. **Landlord's right of access.** Tenant/Concessionaire shall allow the Landlord's authorized agents and representatives access to the leased premises at all reasonable hours to examine and inspect said premises for any purposes, incidental to or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions.

13. **Improvements.** Tenant/Concessionaire shall not erect or install any racks, stands, shelves or any similar items in or around the Building without first obtaining the Landlord's prior written approval.

14. **Sales.** Tenant/Concessionaire shall sell all commodities at reasonable prices, including ice cream, coffee, soft drinks, candy, potato chips, hot dogs, sandwiches, and similar items.

15. **Term.** The term of this Agreement shall be for and during the 2016 park season, commencing April 1, 2016 and ending on September 30, 2016.

16. **Rental.** Tenant/Concessionaire shall pay unto the Board of County Commissioners of Washington County, Maryland, a monthly rental/concession fee in the amount of [REDACTED] Dollars (\$ [REDACTED]), payable the first Monday of each month to the Washington County Treasurer at the Washington County Department of Parks and Facilities, 1307 S. Potomac Street, Hagerstown, Maryland 21740-7300.

17. **Security deposit.** Tenant/Concessionaire shall provide to the Landlord a security/damage deposit in the amount of Five Hundred (\$500.00) Dollars upon the execution of this Agreement. Tenant/Concessionaire shall notify the Buildings, Grounds and Parks Department before closing concessions for the season in order to have the Building, facilities and equipment inspected for proper operation and cleanliness. Upon satisfactory inspection, the security/damage deposit will be refunded to the Tenant/Concessionaire.

18. **Default.** In the event of any default or breach of any covenants contained herein by Tenant/Concessionaire, said default or breach shall result in the automatic termination of this Agreement within the sole and absolute discretion of Landlord.

19. **Liability Insurance.** The Tenant/Concessionaire, and anyone other than the Tenant/Concessionaire leasing the concession rights hereunder, shall procure and maintain at its own expense the following type and amount of insurance:

Comprehensive General Liability (including products and completed operations)	\$1,000,000 per occurrence combined single limit for bodily injury and property damage
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Tenant/Concessionaire, and anyone other than the Tenant/Concessionaire leasing the concession rights hereunder, shall name the Landlord as an additional insured on all policies required by this paragraph and shall provide the Landlord with a certificate of insurance evidencing the above-referenced insurance and requiring at least thirty (30) days advance notice of cancellation or material change to the policy.

20. **Indemnification.** Tenant/Concessionaire shall hold Landlord harmless from and shall defend and indemnify Landlord from and against all liability for injuries to or deaths of persons or damage to property arising from any activities under this Agreement. Each party shall give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects either party, and both parties shall have the right to participate in the defense of such claim to the extent of its interest. If judgment is entered against Tenant/Concessionaire and Landlord because of concurrent negligence, an apportionment of liability to pay such judgment shall be made in a court of competent jurisdiction, and neither party shall request a jury apportionment.

21. **Bankruptcy.** Either (a) the filing by Tenant/Concessionaire of a voluntary petition in bankruptcy or the making of an assignment for the benefit of creditors, or (b) a consenting by Tenant/Concessionaire to the appointment of receiver or trustee of all or part of its property, or (c) the filing by Tenant/Concessionaire of a petition or answer seeking reorganization under the Bankruptcy Act or any other applicable law, or (d) the filing by Tenant/Concessionaire of a petition to take advantage by any insolvency act shall constitute a breach of this Agreement by Tenant/Concessionaire. On the occurrence of any such event, Landlord may terminate this Agreement by giving Tenant/Concessionaire fifteen (15) days' written notice of termination.

22. **Nondiscrimination.** Tenant/Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, or national origin. Tenant/Concessionaire and its employees shall not discriminate against any person because of race, color, religion, ancestry, sex, age, physical or mental disability, size, national origin, marital status, sexual orientation or genetic status by refusing to furnish such person any service or privilege offered to or enjoyed by the general public. Neither Tenant/Concessionaire nor its employees shall publicize the services provided hereunder in any manner that would directly or inferentially reflect on the acceptability of the patronage of any person because of race, religion, color, ancestry, sex, age, or national origin.

23. **Waiver of Breach.** The waiver by Landlord of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term. The subsequent acceptance of a concession fee payment by Landlord shall not be deemed to be a waiver of any prior occurring breach by Tenant/Concessionaire of any term contained herein regardless of knowledge of Landlord of such prior existing breach at the time of the acceptance of such concession fee payment.

24. **Reasonable Extensions.** Landlord shall have the right to grant reasonable extensions of time to Tenant/Concessionaire for any purpose or for the performance of any obligation of Tenant/Concessionaire hereunder.

25. **Relationship of parties.** It is understood and agreed that nothing herein contained is intended or should be construed as in anywise creating or establishing the relationship of partners between the parties hereto, or as constituting Tenant/Concessionaire as the agent, representative, or employee of the Landlord or any purpose or in any manner whatsoever. Tenant/Concessionaire is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

26. **Assignment.** Neither Landlord nor Tenant/Concessionaire may assign or transfer this Agreement or any rights or benefits under this Agreement to any person or entity without the prior written approval of the other party.

27. **Remedies not exclusive.** The rights and remedies provided in this Agreement are cumulative and not exclusive and are in addition to any other rights and remedies the parties may have at law or otherwise.

28. **Force majeure.** Landlord and Tenant/Concessionaire shall be excused for the period of any delay in the performance of any obligations under this Agreement when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire or other casualty or acts of God.

29. **Headings.** The headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article or section of this Agreement.

30. **Survival.** The covenants contained in or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.

31. **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

32. **Severability.** If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

33. **Time of the essence.** Time is of the essence in the performance of the duties under this Agreement.

34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. **Entire agreement; modification.** This Agreement, and the materials incorporated herein by reference, constitutes the entire agreement between the parties. There are no promises or other

agreements, oral or written, express or implied, between the parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by duly authorized representatives of Landlord and Tenant/Concessionaire.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals the day and year first above written by their duly authorized representatives and signatories.

LANDLORD:

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

Vicki C. Lumm, Clerk

BY: _____(SEAL)
Terry L. Baker, President

TENANT/CONCESSIONAIRE:

WITNESS:

BY: _____(SEAL)

Approved:

Washington County Department of
Parks and Facilities

John Pennesi, Deputy Director

Approved as to form and
legal sufficiency:

John M. Martirano
County Attorney