

**AMENDED EXTENSION AGREEMENT FOR GOLDEN EAGLE REGIONAL  
PARK CONCESSION SERVICES**

THIS AMENDED EXTENSION AGREEMENT made on this \_\_\_\_ day of \_\_\_\_\_, 2014 between the City of Sparks, hereinafter referred to as the “City”, and SBAL, LLC, hereinafter referred to as "Contractor" for the provision of concession services at Golden Eagle Regional Park, hereinafter referred to as “Park”.

**WITNESSETH**

**1. RECITALS:** The City requires certain concession services be performed, and the Contractor represents that they are qualified, equipped, staffed, ready, willing and able to perform and render such services as shall be necessary, required or desired, for and on behalf of the City. Further, the Contractor represents they have read and understand RFP Number 08/09-022 for the provision of such services and that the original RFP and the Contractor’s response to the RFP are included as components to this contract (attached hereto as Exhibit A). If a conflict arises between this contract and the RFP, the language contained in this contract shall control.

**2. SCOPE OF SERVICES:** During the term of this Agreement, Contractor shall operate from the Premises (as shown in Exhibit A) a food concession business, serving food, alcoholic and nonalcoholic beverages to all patrons of Park as well as the general public. Further, Contractor shall have the exclusive rights to offer food, beverage and catering business throughout the Park. This Agreement is contingent on Contractor obtaining a City of Sparks business license and liquor license and complying with all applicable federal, state and City laws, ordinances and regulations.

2.1. Contractor shall apply for a business, liquor, and gaming license (if applicable) within thirty (30) days of the effective date of this agreement.

**2.2. HOURS OF OPERATION SHALL BE AS NEGOTIATED AND IN COMPLIANCE WITH THE REQUIRED AND ALLOWABLE HOURS OF OPERATION AS DEFINED IN THE RFP (SECTION 5).**

2.3. Contractor shall operate and maintain the concession area in a first-class manner and shall keep the premises in a safe, sanitary, clean, orderly and inviting condition at all times, in accordance with current policies and practices as regulated by the Washoe County District Health Department and to the satisfaction of the City. Daily and complete housekeeping activities shall be performed by the Contractor in all areas under its control and operation. All concessions shall be operated as a convenience to the general public, therefore all food, beverages, confections and other items sold or kept for sale under the concession shall be of high quality, wholesome and conform in all respects to federal, state and Washoe County District Health Department laws, ordinances and regulations. Service shall be prompt, clean, courteous and efficient.

- 2.4 Contractor shall fully cooperate with the City in providing food and beverage services for scheduled events at Park.
  - 2.5 Contractor shall have the right to conduct additional services after the required hours of operations. Private parties may be conducted provided, however, that any event or activity does not interfere with normal park operations.
  - 2.6 Retail prices for all food, beverages, and confections at the concession stand shall be evident to the general public either by a "reader board", a printed menu, or both.
  - 2.7 Contractor shall retain an active, qualified, competent and experienced manager.
  - 2.8 All staff shall be instructed by Contractor's management for proper:
    - \* preparation methods and timing;
    - \* dress (uniform);
    - \* personal hygiene;
    - \* cleaning and sanitary procedures;
    - \* responsibilities and duties
  - 2.9. Contractor's employees shall be polite and courteous at all times, providing exceptional customer service.
  - 2.10. Housekeeping and sanitation programs shall meet and be maintained within the highest standards of cleanliness.
  - 2.11 In connection with the performance of this Agreement, Contractor agrees not to discriminate because of race, creed, color, national origin, disability, sex, sexual orientation or age. Any violation of these provisions by Contractor shall constitute a material breach of this Agreement.
3. **BUSINESS LICENSE:** Contractor shall be required to maintain a City of Sparks business license, prior to commencing performance.
4. **LIQUOR LICENSE:** Contractor shall be required to maintain a liquor license from the appropriate governmental entity authorized to issue licenses for selling, dispensing and consuming alcoholic beverages on the premises.
- 4.1 Failure to maintain said liquor license shall result in cancellation of this Agreement unless otherwise agreed to in writing by the City.
    - 4.1.1 Notwithstanding anything to the contrary in this Agreement, Contractor shall not be obligated to perform any of the other

requirements in this Agreement until the liquor license for the Contractor is obtained. City shall cooperate with Contractor in applying for and obtaining the liquor license.

**5. TERM OF AMENDED EXTENSION AGREEMENT:** This Agreement shall be for five (5) years. At the expiration of the term, the Agreement may be extended by Contractor for up to one (1) option period of five (5) years. Contractor shall provide written notice to City at least one hundred twenty (120) days prior to the end of Term or option period, as applicable, of its exercise of this option to extend.

**6. INVESTMENT BY CONTRACTOR:** Contractor shall provide, at its own expense, all required tenant improvements, decorations, fixtures, equipment, supplies, utensils, furniture, chairs, tables, cooking equipment, furnishings, and appliances which may be necessary to the operation of concession other than existing improvements already provided by the City. The City represents the existing plumbing is in good working order and repair.

6.1 Intended furniture and decoration shall be inspected and approved, which approval shall not be unreasonable withheld, by the City prior to installation by the Contractor.

**7. COST OF OPERATION:** Contractor shall bear, at his own expense, all costs of operating all concessions, and shall pay, in addition to the compensation to the City, all other costs connected with the use of the premises and facilities, including maintenance, (except the building structures and outside walls and roofs), insurance, any and all taxes, janitorial services and supplies, and all permits and licenses required by law. The Contractor shall not pay for water, sewer, electricity, gas, and garbage costs.

**8. RENT/SECURITY DEPOSIT:** On the date this Agreement is executed, Contractor shall pay the City the sum of \$1,000.00 as security for the faithful performance by the Contractor of the Terms, Conditions and Covenants of this Agreement. In the event the Contractor defaults pursuant to Section 29, the City is entitled to retain the rent/security deposit as liquidated damages.

**9. COMPENSATION AND TIME OF PAYMENT:** The amount/rate of compensation shall be \$4,000.00 monthly (\$48,000.00 annually) and 8% of annual sales in excess of the natural breakpoint (\$600,000.00). For illustration purposes only, if annual sales were \$650,000.00 then percentage rent would be \$4,000.00 (\$650,000.00 less breakpoint of \$600,000.00 equals \$50,000.00 times 8% equals \$4,000.00). Such percentage rent, if any, shall be paid within sixty (60) days of the end of each contract year. City shall receive the monthly payment within fifteen (15) days after the end of each month of the term hereof. The annual report of gross receipts per section 10 below shall be submitted within sixty (60) days of the end of each contract year.

**10. GROSS RECEIPTS:** The term "gross receipts" as used herein shall include all receipts net of taxes, whether collected or accrued, derived by Contractor or any licensee, concessionaire, or tenant of Contractor, from all business conducted upon or from the premises, including but not limited to receipts from sale of food, beverages, alcoholic

beverages, merchandise, and rental of space, or from any source whatsoever derived from operation and occupation of the concession.

**11. RECORDS, ACCOUNTS, AND STATEMENTS:** Contractor shall keep on the premises, or such other place within Washoe County, Nevada approved by the City, true, accurate, and complete records and accounts of all sales, rentals, and business being transacted upon or from the premises and shall give the City or the City's representative access during reasonable business hours to examine and audit such records and accounts. Within fifteen (15) days after each month of the term hereof, Contractor shall deliver to the City a written monthly statement of the gross receipts for such month certified as true and complete by Contractor or its Certified Public Accountant, to be true, accurate, and complete.

- 11.1 Within sixty (60) days after the end of each contract year of this Agreement, Contractor shall deliver to the City a written statement of the gross receipts for that contract year. Said statement shall be certified as true, accurate, and complete by Contractor.
- 11.2 Contractor shall obtain and install cash registers or other accounting equipment acceptable to the City, to be used in all operations at which cash and payments are received for the proper control and account of revenue. Contractor shall record all sales from the concession operations in this equipment. Such machines shall be non-resettable and shall supply an accurate recording of all sales on tape and a receipt of each transaction.
- 11.3 The City shall have the right at any reasonable time to examine and audit said records and accounts.

**12. LICENSES AND PERMITS:** Contractor shall pay for all licenses, permits, and fees necessary for Contractor to construct improvements, if any, and conduct Contractor's business on the premises.

**13. SALES AND USE TAX:** It is also agreed and understood that the applicable Nevada State Sales and Use Tax on concession fees shall be paid by Contractor.

**14. LATE CHARGES:** In the event Contractor fails to pay any payment due hereunder within ten (10) days of the due date, there shall be added to such payment a late charge of one hundred fifty dollars (\$150.00).

**15. INSPECTIONS:** The City shall reserve the right, but shall have no affirmative obligation, to have designated representatives for the City review, inspect, and evaluate the operation and condition of the food service facilities with respect to the safety, sanitation and maintenance of the facilities and equipment, all of which shall be maintained at levels satisfactory to the Washoe County District Health Department.

15.1. Contractor shall comply with all current federal, state, and Washoe County, health and sanitation regulations, including any which may become effective during the effective period of this Agreement.

**16. HAZARDOUS SUBSTANCES AND MATERIALS:** Contractor shall maintain on-site, Material Safety Data Sheets (MSDS), as defined and prescribed in 29 C.F.R. Section 1910.1200, or from time to time as amended, for all hazardous substances purchased by Contractor for use under this Agreement.

16.1 Contractor shall apprise personnel of the hazards to which they may be exposed in using, handling, transporting, or disposing of hazardous substances, and to obtain medical treatment for those who may be affected by the substance.

16.2 Contractor shall immediately report all spills of hazardous substances to the Washoe County District Health Department; the City of Sparks Parks and Recreation Department; and the City of Sparks Risk Manager.

**17. CITY RESPONSIBILITIES:** The City shall be responsible for the following:

17.1 Provide the space/facilities as mutually agreed to by the parties commonly known as the downstairs concession area, upstairs restaurant, and Little League and Babe Ruth concession stands, all of which shall be and remain the sole property of the City.

17.2 Outside maintenance and repair of the building structures and City equipment resulting from negligence of the City.

17.3 **The City will not be responsible nor shall the City guarantee the following services:**

**The City does not guarantee an uninterrupted supply of water, natural gas or electric current; nor does the City guarantee uninterrupted service in providing any utilities. The City shall not be liable to Contractor or to others for any loss, damage, cost or expense which may result from the interruption or failure of any utility services.**

**The City does not guarantee uninterrupted access to the facility in the event of snow or other significant weather, natural or man-made events that may block the street or service road(s) to the facility. The City shall not be liable to Contractor or to others for any loss, damage, cost or expense which may result from the interruption or access.**

- 17.4 The City shall continue to enforce the following rule at all times throughout the term and extended term, if exercised, of this Agreement on all playing fields irrespective of the use of such fields: “No alcoholic beverages or ice chests may be brought into the Park. Any person not abiding will be removed from the Park. 2<sup>nd</sup> offense and the person will be suspended for the year from the Park. The consumption of alcoholic beverages in the Park parking lots is prohibited.”
- 17.5 City agrees to provide a schedule of events thirty (30) days in advance of such scheduled event(s).
18. **CONTRACTOR RESPONSIBILITIES:** Contractor shall be responsible for the following items for the duration of this Agreement:
- 18.1 Provide laundry, paper, kitchen and janitorial supplies, uniforms, linen, and grease removal services associated with kitchen, food service, and bar areas.
- 18.2 Provide daily cleaning of food preparation and service areas.
- 18.3 Promptly pay any and all taxes imposed by the local, state or federal government with respect to its operation of the food service program at a City facility.
- 18.4 Promptly pay all food and beverage costs to all vendors.
- 18.5 Promptly pay all laundry service costs to all vendors.
- 18.6 Comply with all applicable ordinances, laws, rules, and regulations of the county, City, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operations of the food service program, including but without limiting the generality of the foregoing, such rules and regulations of the City as are consistent with the rights herein granted Contractor.
- 18.7 Maintain sanitary conditions in compliance with Washoe County District Health Department standards. Premises shall be maintained by Contractor at an “a” rating of the Washoe County District Health Department. Failure to maintain this rating will result in the City of Sparks hiring a company of their choice to restore facilities to an “a” rating and charging contractor for all related costs.
- 18.8 Contractor shall also clean areas around the loading docks, dumpsters, grease traps, vent hoods, decks, and outdoor BBQ areas.
- 18.9 Upon termination of this Agreement, Contractor shall surrender City’s property in as good condition as when received, ordinary wear and tear excepted.
- 18.10 Operate all food service facilities on Contractor's own credit and shall hold

harmless the City from any and all claims, demands or liability on account thereof. The City shall not be responsible for any debts incurred by Contractor in the performance of any resulting agreement.

18.11 Outside maintenance and repair of all building structures and equipment damaged due to negligence on the part of the Contractor.

18.12 Contractor shall be responsible for snow removal from entrances and outdoor upper-level patio areas.

18.13 Contractor shall provide to City copies of any and all agreements made between Contractor and individual youth sports organizations for use of Little League and Babe Ruth concession stands.

**19. CONTRACTOR'S USE AND POSSESSION OF PREMISES:** The premises (as shown in Exhibit A) shall be used by Contractor as a food concession business, serving food, alcoholic and nonalcoholic beverages to all patrons of Park as well as the general public. Further, Contractor shall have the exclusive right to offer food, beverage and catering business throughout the Park. It is understood and agreed that the premises shall be used by Contractor during the term of this Agreement only for the above purpose, for directly ancillary uses, with the prior written approval of the City, and for no other purposes or uses whatsoever.

19.1 Contractor will not make or permit any use of the premises which, directly or indirectly, is forbidden by public law, ordinance or government regulation which may be dangerous to life, limb or property. Contractor may not commit waste on the premises, use the premises for any illegal purpose, or permit a nuisance on the premises.

19.2 In the event that Contractor uses the premises for any purposes not expressly permitted herein, the City may terminate this Agreement, subject to the curative periods set forth herein, and with prior written notice to Contractor, and restrain such improper use by injunction or other legal action.

**20. IMPROVEMENTS BY CONTRACTOR:** Contractor has inspected the premises and hereby accepts the premises in its present "as is" condition.

20.1 CONTRACTOR improvements to said real property will be at its own expense after the written approval of the City, satisfying all code requirements of applicable governmental entities.

20.2 All improvements of Contractor shall be solely at Contractor's cost and expense and shall be performed in a good workmanlike manner in accordance with sound construction practices. Contractor shall keep the premises and said improvements free and clear of liens for labor and materials and shall hold the City harmless from any responsibility in respect thereto.

**21. OWNERSHIP OF IMPROVEMENTS:** All improvements, furnishings, and equipment constructed or installed on the premises by the Contractor, shall be personal

property and Contractor shall have legal title thereto during the term of this Agreement. Upon the expiration or termination of this Agreement, title to all permanent improvements constructed or installed on the premises shall vest in the City.

21.1. Title to all supplies, furnishings, inventories, and removable equipment not originally provided by the City, shall remain the Contractor's, and Contractor shall have the right to remove such items, including licenses, from the premises without damaging the premises unless the Contractor is in default hereunder.

21.1.1 Contractor shall consider an offer to buy the above items from the City, at Contractor's sole discretion, upon expiration or termination of this Agreement.

**22. MAINTENANCE AND REPAIRS:** During the term hereof, Contractor, at Contractor's expense, shall, to the satisfaction of the City, keep and maintain the premises and all improvements thereon in good and sanitary order, condition, and repair, consistent with the operation of a quality restaurant in the Washoe County area.

22.1 Upon expiration or termination hereof, Contractor shall surrender and deliver to the City the premises and all permanent improvements thereon in good and usable condition, ordinary wear and tear excepted. Permanent improvements shall be defined to include but not limited to: all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or around the premises. Generally, fixtures may not be removed that would cause material damage to the facility.

**23. SIGNS:** In accordance with and subject to applicable zoning regulations, the Contractor may cause the placement or display of signs, plaques, lettering or advertising material on the premises subject to the consent of the City, which may not be unreasonably withheld or denied. Contractor agrees that all signs, plaques, lettering or advertising material placed or displayed by it on the premises shall be of an appearance complimentary to the facility and Golden Eagle Regional Park and shall be subject to the written consent of the City.

**24. LIENS:** Contractor will not permit any mechanics, laborers or material man's liens to stand against the premises or improvements for any labor or materials to the Contractor or claimed to have been furnished to Contractor's agents or subcontractors, in connection with work of any character performed or claimed to have been performed on the premises, or improvements by or at the direction or sufferance of the Contractor; provided, however, Contractor shall have the right to contest the validity or amount of any such lien or claimed lien.



In the event of such contest, Contractor shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure or forfeiture of the premises or improvements by reason of such non-payment.

Such security shall be posted by the Contractor within fifteen (15) days of written notice from the City, or Contractor may "bond off" the lien according to statutory procedures.

- 24.1 **Contractor will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Contractor's own expense.**

**25. RIGHT OF CANCELLATION:** The City shall reserve the right to cancel this Agreement for any of the following reasons:

- 25.1 If either party breaches a material provision hereof ('cause'), the non-breaching party shall give the other party notice of such cause. If the cause is remedied within ten (10) days in the case of failure to make payment when due or if such failure is remedied within a period of thirty (30) days after written notice thereof from City to Contractor, provided, however, that if the nature of Contractor's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Contractor shall not be deemed to be in default if Contractor commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion, then such notice shall be null and void. If such cause is not remedied within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period.
- 25.2 In addition to all other rights herein, either party may terminate this Agreement without prior written notice should the other party become insolvent, voluntarily file for bankruptcy or receivership, or make any assignment for the benefit of creditors, or should the other party have commenced against it any proceeding, suit or action in bankruptcy or receivership provided such proceeding, suit or action is not dismissed within thirty (30) days.
- 25.3 Failure to maintain sanitary conditions acceptable to the Washoe County District Health Department.

26. **DEFAULT:** Termination for default shall result in proceedings against the Contractor, which may result in their being debarred from providing future services to City for a period not less than two (2) years after the expiration date of the defaulted Agreement.

27. **THIRD PARTY RIGHTS:** This Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person not a party hereto.

**28. EXCLUSIVE:** This Agreement has been entered into as a result of a competitive bidding process through which Contractor was selected to provide the services stated herein to City on an exclusive basis during the term of this Agreement.

**29. NOTICES:** Except as otherwise specified, all notices under this Agreement shall be in writing.

Notice to Contractor shall be addressed to:

SBAL, LLC  
c/o Red's Old 395 Grill  
1055 S Carson St.  
Carson City, NV 89701

Notice to City shall be addressed to:

City of Sparks  
Purchasing Division  
P.O. Box 857  
Sparks, NV 89432-0857

**30. NOTICE TO PROCEED:** Execution by both parties to this Agreement shall constitute Notice to Proceed. Contractor shall not perform on any portion this Agreement without providing satisfactory insurance certificates.

**31. GOVERNING LAW:** This Agreement shall be governed, interpreted and construed in accordance with the laws of Nevada.

**32. SEVERABILITY:** If any provision of this Agreement shall be held or declared to be void or illegal for any reason, all other provisions of this Agreement which can given effect without such illegal provision shall nevertheless remain in full force and effect.

**33. HEADINGS:** The section headings of this Agreement are intended solely for convenience; they are not part of this Agreement and shall not affect its construction.

**34. ASSIGNMENT:** Assignment of this Agreement by the Contractor is prohibited without the prior written approval of the City, such approval shall not be unreasonably withheld.

**35. INSURANCE, INDEMNIFICATION AND HOLD HARMLESS:** The City has established specific insurance requirements for Agreements with Contractors to help ensure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to ensure that Contractors are aware of and accept the responsibility for losses or liabilities related to their activities. Exhibit A, is attached and included by reference. All conditions and requirements identified in this Exhibit shall be completed prior to the commencement of any work under this agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year in this Contract first above written.

CONTRACTOR:  
\_\_\_\_\_

CITY OF SPARKS  
A Municipal Corporation

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

ATTEST:

\_\_\_\_\_  
CITY Attorney

\_\_\_\_\_  
CITY Clerk