

## **Stubbs Park Concession Stand Operation Agreement**

This agreement made as of February 15, 2022, is between the **CITY OF CENTERVILLE**, 100 West Spring Valley Road, Centerville, OH 45458-3759 (the “City”) and **[VENDOR NAME HERE]** (the “Contractor”).

WHEREAS, the City desires to contract for food/beverage services for the Stubbs Park Amphitheater for the 2022 Summer Concert Series; and

WHEREAS, Contractor desires to provide such food/beverage services in accordance with the terms and conditions contained herein;

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

1. Contractor shall operate the concession stand in Stubbs Park during the 2022 Summer Concert Series for the summer of 2022, starting with the first concert on June 5, 2022 and ending on July 31, 2022. Contractor may occupy the concession stand one week prior to the first concert, through one week after the last concert for the purposes of set up and clean up. Attached hereto and incorporated herein as Exhibit “A” is the list of events during which the Contractor shall operate.
2. Contractor shall be responsible for the maintenance and cleanliness of the concession area in accordance with all Federal, State and local laws and regulations governing the sale and service of food to the general public. Contractor shall receive and post, as necessary, appropriate approval from the Montgomery County Combined Health District and will provide proof of such approval to the City.
3. Contractor shall be responsible for operating, hiring, staffing, paying, ordering and receiving food supplies.
4. All concession proceeds shall be retained by the Contractor.
5. Contractor shall offer a variety of food and drink options at different price points. Some patrons choose to eat dinner while others want to purchase snacks or drinks.
6. Contractor shall operate the concession stand a minimum of 90 minutes before each concert begins and may close after intermission.

7. Contractor shall protect, indemnify and save the City harmless from and against all liabilities, damages, losses, claims, actions, costs and expense of any nature resulting from injuries or damages to persons or property on or about the premises arising from the sale of food or operation of the food concession service in any manner connected with the use, condition or occupancy of the concessions area by the Contractor or any act or omission of the Contractor, its agents or employees.
8. Unless waived or modified by the Municipal Attorney, the Contractor shall furnish evidence to the City of a comprehensive general liability insurance policy in an amount of at least One Million Dollars (\$1,000,000.00) and shall name the City and its duly elected and appointed officers, employees and members as additional insured on the above policy. A copy of the Certificate of Insurance shall be provided to the City before the first concert.
9. Contractor shall police the grounds around the concession area and amphitheater and remove any concession litter. Contractor shall keep the concession stand clean and in proper repair and order.
10. The City agrees that the Contractor is to be the sole user of the concession stand, unless notified by the City 72 hours in advance. The City may authorize food trucks or other vendors at concerts or events. The City, Sponsors, and/or not-for-profit vendors approved by the City, are permitted to sell or give away food items.
11. Contractor may not sell alcohol without City permission. The City shall be allowed to authorize the sale of alcohol by other groups.
12. Food Disposal is not permitted down the sink drain. Contractor shall notify the City if any equipment is inoperable and needs replacement. The City shall be the sole party to determine if a piece of equipment needs repair or replacement.
13. Contractor shall provide the City's Arts Commission Stage Manager with a 10-pound bag of ice prior to each concert at City's expense.
14. The City may request meals from the Contractor in advance of a concert performance for the artist at City's expense. If requested, meals will be ready when concession stand opens.
15. Contractor is responsible for any damage incurred or caused by Contractor to the concession building and/ or any equipment in the concession building (refrigerator,

freezer, popcorn machine, etc.). Contractor is responsible to coordinate all concession activities with the City Manager's office. Contractor shall provide its own commercial-grade freezer.

16. A walk through with City staff will occur at the start and end of the season where keys will be released and returned and the concession stand and its contents will be inspected. The concession stand shall be returned to the City at the end of the season in the same condition as at the beginning of the season, less normal wear and tear.
17. The existence, validity and construction of the Agreement shall be governed by the laws of the State of Ohio, without giving effect to conflict of law provisions. The exclusive jurisdiction of disputes between the parties shall be vested in the federal and state courts of Montgomery County, Ohio. Each party agrees that such courts shall have personal jurisdiction over it and waives, fully and completely, any right to dismiss the action for forum non conveniens, and/or transfer the venue of the action. Any provision requiring arbitration or mediation will be void. The parties will not be required to arbitrate or mediate any claim, action, or other dispute.
18. If any term of the Agreement is found to be unenforceable in any jurisdiction, then such term shall be enforced to the maximum extent permitted by law, rather than voided, and the remaining terms of this Agreement shall remain in full force and effect.
19. All notices, requests and demands, other than routine communications under the Agreement, shall be in writing and shall be deemed to have been duly given: (a) when delivered, if hand delivered; (b) the date designated as the delivery date, if delivered by nationally recognized overnight courier; (c) five (5) business days after the day of mailing, when mailed by United States certified or registered mail, postage prepaid. All notices, requests and demands will be addressed to the addresses set forth on the signature page of this Addendum. Either party may from time to time change its address for notice by giving the other party prior written notice of its new address for notice and the date upon which the change will become effective.
20. All sales are subject to combined county and state sales tax. It is expressly understood and agreed that Contractor shall be responsible for any taxes due as a result

of the operation of the concession stand. Neither Contractor, nor any of its employees, workers or personnel shall be considered an employee of the City. In the event Contractor receives a notice of levy or similar order by Federal, State, or Local tax authorities making a claim upon or demanding all or a portion of Contractor's payment to a vendor or governmental agency, the City will comply with such order and Contractor waives any and all claims against City related to such compliance.

21. This Agreement represents the entire agreement between the parties and there are no separate agreements, oral or in writing, understandings or representations, which are not incorporated herein.
22. The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing limitations and the congregation of groups of people to help prevent the spread. In consideration of operating the Concessions Stand, the Contractor is expected to comply with all federal, State of Ohio, Ohio Department of Health and local health department requirements and guidelines for the operation of a food vendor. Contractor understands that the circumstances regarding COVID-19 are changing day by day, and that CDC and ODH guidelines are regularly modified. With full awareness and appreciation of the risks involved, Contractor, for himself/herself and on behalf of its employees, family, spouse, estate, heirs, executors, administrators, assigns, and personal representatives, and on behalf of my guests or invitees hereby forever release, waive, discharge, and covenant not to sue the City of Centerville, its officials, employees and volunteers. Understanding these risks, Contractor willingly chooses to participate in this activity and further understands that the City of Centerville does not warrant that COVID-19 infection will not occur through participation in these events. Contractor agree to indemnify, defend, and hold harmless the City, its officials, employees and volunteers, from and against any and all costs, expenses, damages, claims, lawsuits, judgments, losses, and/or liabilities (including attorney fees) arising either directly or indirectly from or related to any and all claims made by or against the City, its officials, employees and volunteers due to

bodily injury, death, loss of use, monetary loss, or any other injury from or related to operation of the Concession stand, whether caused by the negligence of the City or otherwise specifically related to COVID-19. Contractor further understands and agrees that changes to the schedule, cancellations or other arrangements due to COVID-19 may occur to the Summer Concert Series, which may result in the need to modify this Agreement. Contractor agrees to abide by any instructions of the City with regards to COVID-19.

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**[OWNER]** Date  
**[VENDOR NAME HERE]**

CITY OF CENTERVILLE

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By: Wayne S. Davis Date  
Its: City Manager

Approved as to form:

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Scott A. Liberman  
Municipal Attorney for City of Centerville

**EXHIBIT "A"**

**Stubbs Park Concession Stand Operation Agreement 2022 Summer Concert  
Series  
Schedule of Performances**

<b>#</b>	<b>Day</b>	<b>Date</b>	<b>Time</b>	<b>Performer</b>
1	Sunday	June 5	7:00 to 9:00 p.m.	Jersey Band: Bruce Springsteen Tribute
2	Sunday	June 12	7:00 to 9:00 p.m.	Elton John Show
3	Sunday	June 19	7:00 to 9:00 p.m.	Tom Petty Tribute
4	Sunday	June 26	7:00 to 9:00 p.m.	Hotel California: Eagles Tribute
5	Sunday	July 10	7:00 to 9:00 p.m.	Simply Queen: A Tribute to Queen
6	Sunday	July 17	7:00 to 9:00 p.m.	Mike Sugg: Tribute to Toby Keith
7	Sunday	July 24	7:00 to 9:00 p.m.	The Rock Show: A Tribute to Journey
8	Sunday	July 31	7:00 to 9:00 p.m.	The Fries Band