

# **CONCESSIONAIRE AGREEMENT FOR THE OPERATION OF PADDLE BOATS AND MINIATURE GOLF IN LANDA PARK**

THIS AGREEMENT is entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, hereinafter referred to as "CITY", and PADDLE TX, LLC, a Texas limited liability corporation, hereinafter referred to as "Concessionaire" or "Paddle TX", together collectively referred to as "Parties", for the operation and maintenance of the City's Paddle Boats and Miniature Golf Concessions at Landa Park.

## **PREAMBLE**

WHEREAS, the City has provided paddle boats and miniature golf (sometimes referred to as "mini-golf") concession services in Landa Park for over 20 years; and

WHEREAS, historically, the other city park concessionaires have paid the City 15% of their gross receipts as compensation for the contract to operate the miniature train and food and beverage concessions on public property; and

WHEREAS, Paddle TX agrees to pay 14% of their gross receipts by increasing from 10% year 1, 12% year 2, and reaching 14% by the beginning of year 3, with City paid utilities and solid waste services reflected in this payment structure; and

NOW THEREFORE, the City of New Braunfels and Concessionaire's agreement for the provision of paddle boats and miniature golf services in Landa Park will be governed by the following terms and conditions:

### **1. CONCESSIONS GRANTED**

- 1.01 Paddle TX, hereinafter referred to as "Concessionaire," is hereby exclusively authorized to operate the paddle boats and miniature golf concession within City owned Landa Park.
- 1.02 This Agreement does not preclude any other lease or agreements between the City of New Braunfels, hereinafter referred to as "City" and other concessionaires in Landa Park.

### **2. CONCESSION PREMISES**

- 2.01 The concessions for paddle boats and miniature golf will be conducted within the two Concession Premises described and depicted in Exhibit A, attached hereto and incorporated for all purposes.
- 2.02 This Agreement is exclusively for the operation of the paddle boats and miniature golf concession services within Landa Park. As part of its concession services, and in addition to the paddle boat rides and mini-golf games, the Concessionaire is authorized to sell those items listed in Exhibit B. Before selling services, refreshments, souvenirs, or items not listed in Exhibit B, Concessionaire must receive the prior written approval of the City's Parks and Recreation Director.
- 2.03 Concessionaire accepts the Concession Premises in their present physical condition, and agrees to make no demands upon the City for any improvements or alterations. Concessionaire is responsible for the daily inspection, maintenance, and clean-up of the Concession Premises and surrounding area.
- 2.04 Any improvements, additions, alterations, repairs or changes to the Concession Premises must be approved by the City. Concessionaire is responsible for securing all applicable permits and

complying with all City ordinances and policies. All construction will be at Concessionaire's expense.

- 2.05 Except as provided below, Concessionaire acknowledges the City's title to the Concession Premises, including all improvements and assets listed in Exhibit C, and covenants and agrees never to assail, contest or resist said title.

Upon execution on this agreement, Concessionaire shall have the option to purchase from the City some or all of the assets listed in Exhibit C. Concessionaire shall have up to thirty (30) days to make payment to the City for all or some of the assets in accordance with the pricing in the attached exhibit.

- 2.06 Ownership of all structures, buildings or improvements constructed by Concessionaire upon the Concession Premises and all alterations, additions or betterments thereto, shall remain in Concessionaire's control until termination of this Agreement. Upon termination, whether by expiration of the term, cancellation, forfeiture, or otherwise, ownership of all structures, buildings, and/or improvements, including alterations, additions or betterments, shall vest in the City without further compensation to Concessionaire.

- 2.07 Upon termination of this Agreement, Concessionaire will provide the City the first right of refusal for the purchase of some or all of its assets and inventory at prices mutually agreeable to the parties.

### 3. TERM

- 3.01 The term of this Agreement will commence on June 1, 2024 and terminate in three years on May 31, 2027, at which time all structures, buildings, and/or improvements made by Concessionaire shall vest in the City, without further compensation to Concessionaire.
- 3.02 The Concessionaire must notify the City in writing at least one hundred and eighty (180) days prior to the original termination date, of their intent to terminate, renew, modify or extend the Agreement past the termination date.

**CONCESSIONAIRE AGREES AND ACKNOWLEDGES THAT THE CITY IS UNDER NO OBLIGATION TO RENEW, MODIFY OR EXTEND THE AGREEMENT AND THE CITY RESERVES THE RIGHT TO SOLICIT BIDS FOR THE LANDA PARK PADDLE BOATS AND MINIATURE GOLF CONCESSIONS IN ANTICIPATION OF THE TERMINATION OF THIS AGREEMENT.**

### 4. PAYMENT

- 4.01 Concessionaire shall pay the City on the 15th of each month for the prior month's revenues either by ACH (automated clearing house) or check made out to the City and remitted by mail or in person to the City's Finance Department. Payments for the concession and use granted herein in accordance with the following:
- a. For year 1 of this agreement, Concessionaire will pay the City ten percent (10%) of all gross sales from both concessions. based on the Concessionaire's gross receipts as defined in Paragraph 21.02;
  - b. Beginning on the first day of year 2 of this agreement, Concessionaire shall pay the City twelve percent (12%) of gross sales from both concessions; and

- c. Beginning on the first day of year 3 of this agreement, Concessionaire shall pay the City fourteen percent (14%).

4.02 Late Payments. Payments made after the 15<sup>th</sup> day of each month are subject to a 10% penalty on the amount due. Payments made more than 30 but less than 60 days late are subject to a 15% penalty. Payments made more than 60 days late are subject to a 20% penalty. If payments are 90+ days in arrears, City has option of terminating contract effective immediately without issuing a notice of default and without an additional period to cure this delinquency.

## 5. ACCOUNTING RECORDS

5.01 Concessionaire is required to submit documents to support gross sales as defined in Section 20.02, and a reconciliation of the amount remitted to the City.

5.02 Concessionaire is responsible for collecting and remitting all sales taxes dues to the State Comptroller as required by law and provide to the City Finance Director a copy of the remittance confirmation page from the State Comptroller's Office, along with a summary report from Concessionaire's accounting system that verifies the amount remitted.

5.03 Concessionaire agrees to allow and cooperate in the examination and audit by the City of all accounting records kept in connection with both concessions.

## 6. REQUIRED CONSTRUCTION

6.01 Concessionaire is not required to construct any new facilities during the term of this Agreement.

## 7. OPERATING RESPONSIBILITIES

### 7.01 Compliance with Law

Concessionaire will follow all applicable municipal and county ordinances, and all state and federal laws and regulations.

### 7.02 Compliance with Rules and Regulations

Concessionaire will follow all applicable rules and regulations of the City of New Braunfels and the Parks and Recreation Department.

### 7.03 Disorderly Persons

Loud, boisterous or disorderly persons will not be allowed to loiter about the Concession Premises.

### 7.04 Illegal Activities

Illegal activities will not be allowed upon the Concession Premises.

### 7.05 Signs

Concessionaire is responsible for following city ordinances regulating signage. All Signs and advertisements placed on the Concession Premises must have the prior approval of the City's Parks and Recreation Director, or their designee. Said signage location will be limited to that signage plan attached to this agreement as Exhibit D.

7.06 Non-interference

Concessionaire will not interfere with the public's use of Landa Park.

7.07 Concession Staff

The Concessionaire agrees to maintain adequate staff for its operation of the concession. Following notice from the City, the Concessionaire agrees to remove any staff from the Concession Premises whose conduct has been deemed by the City to be detrimental to the public patronizing the Concession Premises. The Concessionaire agrees to designate at least one member of their staff as the Concession Manager who oversees both concessions whom the City may contact during normal business hours, including at all times when the concessions are being operated, and agrees to provide the City with an emergency contact phone number for said manager. Due to the nature of the concessions, Concessionaire is prohibited from employing staff on the Concession Premises that are required by any law enforcement or judicial entity, to register as sex offenders.

7.08 Days and Hours of Operation

The Concessions will operate every day, with limited exceptions listed below. The minimum hours of operation will be 10 AM to 5 PM, but concessions shall not be operated earlier than 8 AM or later than 10 PM. If the Concessionaire has a regular operating schedule they intend to adhere to, they are required to provide a copy to the Parks and Recreation Department Director. Exceptions: Concessionaire is not required to remain open if doing so is impractical due to equipment failure, inclement weather, or the absence of concession customers. The Concessionaire agrees to provide the City immediate notice of any equipment failures requiring the unscheduled closing of the concession for more than 3 hours and an estimate of when the concession(s) will reopen, as well as notice of any closures expected to exceed 8 hours. The operation of the paddle boats and minigolf must cease during inclement weather for customer safety. Notices required by this Section must be provided by email to the Parks and Recreation Department Director rather than pursuant to notice provision in Section 22.

7.09 Prices

Concession prices will be posted for public information. Prices will be at a fair and reasonable cost. In the event the City notifies Concessionaire that prices are not fair and reasonable, Concessionaire will have the right to confer with the City and justify its prices. Following consultation, Concessionaire will make price adjustments as required by the City. Concessionaire may appeal to the City Manager whose decision shall be final.

7.10 Removal of Objectionable Goods and Services

Concessionaire will immediately remove or withdraw from sale any goods or services which may be found objectionable by the City.

7.11 Utilities

The City shall provide and pay for all utilities, including water and electricity, consumed by the Concessionaire in the operation of the concession; or the construction, maintenance and operation of any new or additional facilities constructed by Concessionaire; or the impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the Concession Premises.

#### 7.12 Sanitation

Concessionaire is responsible for ensuring the Concession Premises are kept clear and free of garbage, fire and health hazards. Concessionaire is responsible for trash collection on and around the Concession Premises. Concessionaire is allowed to utilize the three City dumpsters depicted in the attached Sanitation Exhibit E. Concessionaire shall deposit its trash collected in its own receptacles into City dumpsters at least twice a week and more often if necessary to ensure sanitary conditions. The City shall be responsible for all associated fees and equipment.

#### 7.13 Maintenance

The Concessionaire is responsible for maintaining the Concession Premises in good and substantial repair, including but not limited to all painting and general maintenance. All maintenance and repairs will be at the Concessionaire's expense.

#### 7.14 Security Devices

With prior written approval by the City, Concessionaire may install a security system. All equipment purchases and installation costs will be at the Concessionaire's expense.

#### 7.15 Trade Fixtures

Concessionaire will provide all appliances, furniture, fixtures and equipment that are required for the concession. During the last thirty (30) days preceding the termination of this Agreement, Concessionaire will remove same from the Concession Premises, other than for those items which have been furnished by the City or so affixed that their removal cannot be accomplished without damage to the realty. Should Concessionaire fail to remove said appliances, furniture, fixtures and equipment within a thirty (30) day period, Concessionaire will lose all right, title and interest to these items, and the City may elect to keep same upon the premises or to sell, remove or demolish same. Concessionaire shall reimburse City for any costs incurred in excess of any consideration received from the sale, removal or demolition of Concessionaire's appliances, furniture, fixtures and equipment left on the Concession Premises.

#### 7.16 Programmed Events

Any private or special event by Concessionaire that expects to include 50 or more participants must receive prior written approval in writing, which includes via email for this limited purpose, from the Parks and Recreation Director at least thirty (30) days before the private or special event. The Parks Director shall have the authority to approve any modifications to this requirement as deemed in the best interests of the City.

#### 7.17 Habitation

The Concession Premises will not be used for human habitation, other than an approved night watchman or patrolman.

7.18 Sponsorships and Advertisements

Prior to agreeing to any sponsorships or advertisements by Concessionaire with third parties, Concessionaire must obtain prior written approval from the City of any such third-party affiliations and the location of such sponsorships and advertisements.

7.19 Camp Minnehaha

The City reserves the right to exclusive use of the two Concession Premises depicted in Exhibit A for twelve (12) weeks in the summer by the City's Camp Minnehaha campers as part of its regular summer programming. Use by the City shall be scheduled prior to 10:00 AM so as not to interfere with the Concessionaire's operations. The Parks Director will make best efforts to share a schedule of use by the City in advance. The City will pay \$4,000.00 to Concessionaire for this exclusive use for Year 1 of this Agreement. Future costs will be negotiated by the parties at a later date.

8. DESTRUCTION OF CONCESSION PREMISES

8.01 In the event the Concession Premises is totally or partially destroyed from a risk covered by the insurance required herein, Concessionaire shall either restore the premises or terminate this Agreement. If the destruction is from a risk for which coverage is not required or provided under said policy of insurance, City and/or Concessionaire shall either restore the premises or terminate this Agreement. City shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance.

8.02 If the premises are restored, this Agreement shall continue in full force and effect except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the City may determine the damage and/or restoration interferes with the concession, provided a claim therefore is filed with the City within ninety (90) days of notice of election to restore the premises. Any such claim shall be denied, if the destruction of the Concession Premises is found by the City to have been caused by the gross negligence of the Concessionaire or its staff. Concessionaire agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the concession, and permitting examination and audit of all accounting records kept in connection with said concession.

8.03 Concessionaire shall cooperate in the restoration of the Concession Premises by vacating and removing all items of inventory, trade fixtures, equipment and furnishings for such periods as are required for the restoration thereof.

8.04 The aforesaid provisions for relief shall also be applicable to a total or partial destruction of Landa Park by the aforementioned causes, except that the relief to be provided shall be based upon the extent the City may determine that the reduction in the public's use of Landa Park due to the partial or total closure thereof has affected the concession.

8.05 Concessionaire agrees to accept the remedy heretofore provided in the event of a destruction of the Concession Premises and/or Landa Park and waives all additional rights and remedies for relief or compensation that are presently available or may hereinafter be made available under the laws or statutes of this state.

9. HOLD HARMLESS AND INDEMNIFICATION

- 9.01 Concessionaire agrees to indemnify, defend, and hold harmless the City, its agents, officers, and employees from and against any and all liabilities and expenses, including defense costs and legal fees, and claims for damages of any nature whatsoever, arising from or connected with Concessionaire's operations or services under this Agreement, including, but not limited to, liability, expense, and claims for: bodily injury or property damage caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, or intentional infliction of harm, including any worker's compensation suits, liability, or expense, arising from or connected with services performed by or on behalf of Concessionaire by any person pursuant to this Agreement: nonpayment for labor, materials, appliances, or power, performed on, or furnished or contributed to the Concession Premises; infringement of a patent or copyright; and violation of state and federal antitrust laws.

## 10. INSURANCE

- 10.01 Without limiting Concessionaire's indemnification of City, Concessionaire shall provide and maintain at its own expense during the term of this Agreement the liability insurance covering its operations on the Concession Premises as specified in Section 5.5 of the City's Request for Competitive Proposals, Solicitation #23-025, attached to this Agreement as Exhibit F. Such insurance shall be provided by insurer(s) satisfactorily to City's Risk Manager and evidence of such programs satisfactory to City shall be delivered to the City on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that the City is to be given written notice at least thirty (30) days in advance of any modification or termination of any program of insurance.
- 10.02 Failure on the part of Concessionaire to procure or maintain the required insurance shall constitute a material breach of Agreement upon which the City may immediately terminate this Agreement.
- 10.03 Concessionaire will not be allowed to operate either concession until all insurance requirements are met. Operations will be suspended during any period that Concessionaire fails to maintain said policies in full force and effect.

## 11. TAXES AND ASSESSMENTS

- 11.01 Concessionaire will pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used.

## 12. TRANSFERS

- 12.01 Concessionaires will not assign, hypothecate, or mortgage this Agreement or sublease or license any portion of the Concession Premises without the prior written consent of the City. Any attempted assignment, hypothecation mortgage, sublease or license without the consent of the City, other than a transfer occurring as a result of the Concessionaire's death, shall cause an immediate termination of this Agreement.
- 12.02 This Agreement is not transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law.

## 13. NONDISCRIMINATION

- 13.01 Concessionaire certifies and agrees that all persons employed thereby, and/or the affiliates, subsidiaries of holding companies thereof are and shall be treated equally without regard to or because of race, religion, ancestry, national origin or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964.
- 13.02 Concessionaire certifies and agrees that subcontractors, bidders, and vendors thereof are and shall be selected without regard to or because of race, religion, ancestry, national origin or sex.
- 13.03 All employment records shall be open for inspection and re-inspection at any reasonable time during the term of this Agreement for the purpose of verifying the practice of nondiscrimination herein contained.

#### 14. EASEMENTS

- 14.01 City reserves the right to establish, grant or utilize easements or rights of way over, under, along and across the Concession Premises for utilities and/or public access to Landa Park provided City shall exercise such rights in a manner as will avoid any substantial interference with the concessions. Should the establishment of such easements permanently deprive Concessionaire of the use of a portion of the Concession Premises, an abatement of payments shall be provided in an amount proportional to the total area of the Concession Premises in the before and after conditions.

#### 15. CANCELLATION

- 15.01 Concessionaire's default on the stipulations of the Agreement will result in the termination of the Agreement. After providing any required time to cure, if any is applicable by the terms of this Agreement, the City will give Concessionaire ten (10) days' notice by registered or certified mail of the date set for termination, the reason for such action, and that an opportunity to be heard by the Parks and Recreation Director on the issue will be afforded on or before a said date, if a request is made prior to the date set for termination.
- 15.02 Upon termination for any reason, City shall have the right to take possession of the Concession Premises including all improvements, equipment, and inventory, and use for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement. Upon termination of the Agreement, the Concessionaire shall peaceably vacate the Concession Premises.

#### 16. EVENTS OF DEFAULT

The following is a list of events of default:

- 16.01 The abandonment, vacating, or discontinuance of operations of the Concession Premises for more than forty-eight (48) consecutive hours, except for off-season periods and except as provided in paragraph 7.08.
- 16.02 Failure of Concessionaire to punctually pay or make required payments when due, where the delinquency continues beyond ten (10) days.
- 16.03 Failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than ten (10) days after written notice from the City to correct the specified condition.



- 16.04 Failure to maintain the Concession Premises and the improvements in the required state of repair, and in a clean, sanitary, safe and satisfactory condition, where such failure continues for more than ten (10) days after written notice from the City to correct the condition.
- 16.05 Failure of Concessionaire to keep, perform and observe all promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days, unless shorter cure period or no cure period is provided elsewhere in this Section 16, after written notice from the City; provided that the correction of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, the thirty (30) day time limit may be waived in the manner and to the extent allowed by the City.
- 16.06 The filing of a voluntary petition in bankruptcy by Concessionaire; the adjudication of Concessionaire as bankrupt; the appointment of any receiver of Concessionaire's assets; the making of a general assignment for the benefit of creditors, a petition or answer seeking an arrangement for the reorganization of Concessionaire under any Federal Reorganization Act, including petitions or answers under the Bankruptcy Act; the occurrence of any act which operates to deprive Concessionaire permanently of the rights, powers and privileges necessary for the proper conduct and operation of the concession; the levy of any attachment or execution which substantially interferes with Concessionaire's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.
- 16.07 Determination by the City, the State Workforce Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Concessionaire in violation of state and/or federal laws.
- 16.08 Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this Agreement except for any transfer occurring with the prior consent of the City or as a result of the Concessionaire's death.
- 16.09 Employing staff on the Concession Premises that are required by any law enforcement or judicial entity to register as sex offenders.

## 17. WAIVER

- 17.01 Any waiver by the City of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of City to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping City from enforcing the full provisions thereof.
- 17.02 No delay, failure or omission of the City to reenter the Concession Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter accrued shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.
- 17.03 No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by City of any default.

- 17.04 No option, right, power, remedy or privilege of the City shall be construed as being exhausted by the exercise thereof in one or more instances. The rights powers, options and remedies given the City by this Agreement shall be cumulative.

## 18. RIGHT OF ENTRY

- 18.01 Any officer and/or employee of the City may enter upon the Concession Premises at all reasonable times for the purposes of determining if Concessionaire is complying with the terms and conditions of this Agreement, or for any other purpose incidental to the rights of the City within Landa Park.
- 18.02 In the event of an abandonment, vacating, or discontinuance of concession operations for a period in excess of forty-eight (48) hours which is not allowed under the provisions of paragraph 7.08-Days and Hours of Operation, Concessionaire hereby irrevocably appoints City as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the Concession Premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublease or license the premises; and (4) after payment of all expenses of such subleasing or licensing apply all payments received to the satisfaction and/or mitigation of all damages arising from Concessionaire's breach of this Agreement. Entry by the officers and employees of the City upon the Concession Premises for the purpose of exercising the authority conferred herein shall be without prejudice to the exercise of any other rights provided herein or by law, to remedy a breach of this Concession Agreement.

## 19. SURRENDER

- 19.01 Upon expiration of the term hereof, Concessionaire shall peaceably vacate the Concession Premises and any and all improvements located thereon and deliver up the same to City in a reasonably good condition ordinary wear and tear excepted subject to the right of City to demand removal thereof to the extent that Paragraph 2.06 may be applicable.

## 20. INTERPRETATION

- 20.01 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.
- 20.02 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

"Concession": The privilege of engaging in the commercial activities authorized herein on the public property designated therefore.

"Concessionaire": Paddle TX, LLC.

"City": The City of New Braunfels, Comal and Guadalupe Counties, Texas.

"Gross Receipts": All money, cash receipts, assets, property or other things of value, including but not limited to gross charges, sales, rentals, fees and commissions made or earned by Concessionaire and/or assignees, subleases, or permittees thereof, whether collected or accrued

from any business, use or occupation, or any combination thereof, transacted or performed in whole or in part, on the Concession Premises or Landa Park, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise. There shall be excepted from said gross receipts the following:

- a. Sales and excise taxes applicable thereto, required to be collected by concessionaire, and remitted to the State Comptroller and/or the sub-leaseholder or permittees thereof.
- b. Federal, state, municipal or other taxes collected from the consumers, regardless of whether the amount thereof is stated to the consumer as a separate charge, provided the amount of such taxes shall be shown on the accounting records for the concession as hereinafter required.
- c. Receipts from the sale or trade-in value of any equipment used on the Concession Premises and owned by Concessionaire.
- d. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to the shippers, suppliers or manufacturers.
- e. Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, in the form of cash or credit.

## 21. ENFORCEMENT

- 21.01 The City Manager or his designated representative shall be responsible for the enforcement of this Agreement on behalf of City and shall be assisted therein by those officers and employees of the City having duties in connection with the administration thereof.
- 21.02 In the event City commences legal proceedings for the enforcement of this Agreement or recovery of the premises used herein, the prevailing party in any legal action shall be awarded reasonable attorney's fees.
- 21.03 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created under this agreement are performable in Comal County, Texas.

## 22. NOTICES

- 22.01 Unless stated otherwise in other sections of this agreement, any notice required to be given under the terms of this Concession Agreement or any law applicable thereto may be placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United State Postal Service. The address to be used for any notice served by mail upon Concessionaire shall be:

Paddle TX, LLC  
c/o Stacy A. Thigpen, Registered Agent/Manager  
532 Mallow Drive  
New Braunfels, Texas 78130

or such other place as may hereinafter be designated in writing to the City by Concessionaire. Any notice served by mail upon City shall be addressed to the City Manager, City of New Braunfels, 550 Landa St., New Braunfels, Texas 78130 or such other place as may be designated in writing to Concessionaire by the City with copies thereof to the Director of Parks and Recreation, 110

Golf Course Road, New Braunfels, Texas 78130. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

- 22.02 In performing the obligations hereunder, Concessionaire is engaged solely in the capacity of an independent contractor, it being expressly understood that no relationship between the contracting parties hereto other than that of independent contractor, has been or intended to be created. This Agreement does not constitute, and the parties hereto do not intend to create thereby a partnership, or a joint venture, or a relationship of master and servant or principal and agent, as it is mutually understood and agreed that the relationship created thereby and the construction of rights and duties hereunder is to be determined in accordance with the laws relating to owners and occupants of real property.

### 23. ENTIRE AGREEMENT

- 23.01 This document and the exhibits attached hereto, constitutes the entire Agreement between the City and Concessionaire for the concession and use granted at Landa Park. All other Agreements, promises and representations with respect thereto, other than contained herein are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provision of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality or any provision of this Agreement shall not render the other provisions thereof unenforceable, invalid or illegal.
- 23.02 This document may be modified only by further written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of the City, until approved by the City Manager and executed by the Parties.

IN WITNESS WHEREOF, the parties have hereto set their hands this \_\_\_\_\_ day  
of \_\_\_\_\_, 2024.

CITY OF NEW BRAUNFELS, TEXAS:

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Robert Camareno, City Manager

ATTEST:

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Gayle Wilkinson, City Secretary

CONCESSIONAIRE:

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Stacy Thigpen, Manager, Paddle TX, LLC

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Nicole Wolf, Manager, Paddle TX, LLC