

## **AGREEMENT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Gahanna, hereinafter referred to as the "City" and Cardinal Vending Services, LLC, Cardinal Concession Services, LLC, 100 E. Campus View Blvd. Suite 120 Columbus, Ohio 43235 hereinafter referred to as the "Concessionaires",

### **WITNESSETH:**

**WHEREAS**, the parties hereto desire to enter into an agreement for the purpose of determining their respective rights and responsibilities relating to the Concessionaires exclusive use of the City's concession facilities, located at the Municipal Swimming Pools at 341 Harrow Blvd. and 148 Parkland Dr. hereinafter referred to as "HRP" and "GSP", respectively.

**NOW THEREFORE**, the parties hereto agree as follows:

1. The Concessionaires will have the exclusive right to use the City's Concession Facilities located at HRP and GSP, from Memorial Day through Labor Day each year. This right will extend for pool seasons commencing Memorial Day, 2014 and ending Labor Day, 2014. The season for each year will commence upon the opening of the HRP and GSP facility and extend through Labor Day, unless the Parties jointly agree that the season be extended or shortened.

2. The Concessionaires have the right to operate the concession facility at HRP from 11:00 am to 7:00 pm seven days a week and at GSP from 12-8 pm Mon thru Sat; 12-6 pm Sunday during the pool season.

3. The Concessionaires shall pay the City a fee based upon the gross revenue generated by the Concessionaires at the City's concession facility. This fee shall be calculated based on the gross sales for each calendar month using the following

percentages for the length of this contract:

**Vending Machines**

If installed, Concessionaire shall pay the City fifteen percent (15%) of gross revenue (total amounts collected). The City will provide Concessionaires with proof of its Ohio Sales Tax Exemption Certificate upon request.

**Sales**

For total sales (other than vending machines referenced above), Concessionaire shall pay the City six percent (6%) of gross revenue (total amounts collected). If sales at any one location exceed \$5,000 in reporting period as noted below concessionaire shall pay the City eight percent (8%) of gross revenue for that period at specific location.

Concessionaires shall maintain detailed daily records indicating the amount of gross revenue received daily for non-vending machine sales. Using the daily sales records, the Concessionaires shall total the daily gross receipts for sales for each calendar month. Concessionaires shall also keep detailed monthly records indicating the amount of gross monthly collections for each vending machine. Concessionaires shall then submit to the City the recap of the daily sales records for each calendar month and the detailed monthly vending machine record, along with the total fee due, in check form, by the last day of the following month. For example, all fees due for June shall be paid by the Concessionaires to the City by July 31.

**Specific Payment Schedule**

Reporting Period

Payment Due By

Pool opening to June 30, 2014

July 31, 2014

July 1 – July 31, 2014

August 31, 2014

August 1 – pool closing

September 30, 2014

The City shall have access to the Concessionaires general ledger, and other accounting records it deems necessary, to determine the amount due. If a disagreement should arise, the City shall be permitted to conduct an audit of the revenues to determine the amount of the monthly payment due the City under the terms of this Agreement.

4. The Concessionaires shall supply, during the pool season, at their sole cost and expense, total concession operations, which include but is not limited to staffing, inventory, related operating and cleaning supplies and equipment.

5. The City shall pay for and maintain it's Food Service Operation License, issued by Franklin County Board of Health, and Concessionaires shall maintain any vending permits and Health Department certifications as may be required by State law.

Concessionaires shall notify the Department of Franklin County Board of Health Inspections and provide copies of the inspection reports to the City same day close of business.

Concessionaires shall ensure that all applicable Federal, State, County and Local Rules and Regulations regarding operations are adhered to.

6. The Concessionaires shall provide the City with a Certificate of Insurance naming the City as an Additional Insured for coverage including, bodily injury and property damage insurance in an amount of not less than \$1,000,000.00 per person/ \$1,000,000.00 per occurrence and fire liability insurance of no less than \$25,000.00. The Concessionaires shall maintain Worker's Compensation coverage in accordance with

Ohio law and provide the City with a current Certificate of Premium Payment. The City shall be named as an additional insured on all insurance policies herein required to be maintained. The Concessionaires shall provide the City with a certificate of insurance with the required rider, indicating insurability, at the time of signing this Contract, and by May 21<sup>st</sup> of each year thereafter.

7. The Concessionaires shall maintain a menu and price structure as approved by the City's Director of Parks & Recreation or his designee. No alcoholic products, tobacco products, glass products, or gum may be sold. The Concessionaire shall provide the City with the menu and price structure prior to May 21st of each year.

8. The Concessionaires shall indemnify and hold and save harmless the City from any and all liability arising out of the Concessionaires use of the concession facility, including the payment of reasonable attorney fees.

9. The Concessionaires covenant and agree as follows:

- a. The Concessionaires will use and occupy the premises in a careful, safe and proper manner and will maintain the facility in a clean and sanitary manner per the standards provided by the City and Franklin County Board of Health;
- b. The Concessionaires will prepare and clean the premises prior to the opening of the season;
- c. The Concessionaires will not assign this agreement, nor any rights conveyed hereunder, nor sublet said premises nor any part thereof;
- d. That all property of Concessionaires in said building or upon said premises shall be at the sole risk of the Concessionaires. All property of the Concessionaires shall be removed within fifteen (15) days of vacating the property, or the property will be declared abandoned.
- e. Concessionaires covenant and agree not to use or occupy or suffer or permit said premises or any part thereof to be used or occupied for any purpose

contrary to law on the rules or regulations of any public authority or in any manner so as to increase the cost of hazard insurance to the City.

- f. Concessionaires agree not to use or store in any manner, hazardous substances upon the demised premises.
- g. The Concessionaires will surrender and deliver up said premises at the end of said term in as good order and condition as the same now are or may be put by the City, reasonable use and natural wear and tear or unavoidable casualty excepted.
- h. The Concessionaires will honor any and all sponsorship agreements;
- i. The Concessionaires will permit food vendor/parent group sales for swim meets.

10. In the event said payment hereinabove provided, or any part thereof, shall at any time be in arrears and unpaid for a period of thirty (30) days; or if Concessionaires shall fail to keep and perform any of the covenants and conditions of this agreement on Concessionaire's part to be kept or performed, or if said Concessionaires shall abandon or vacate said premises during the term thereof, or shall make an assignment for the benefit of creditors, or if the interest of Concessionaires in the demised premises shall be sold under execution or other regular process, or if Concessionaires shall be adjudged bankrupt, or if a receiver shall be appointed for Concessionaires by any Court, the City may at the City's election, after the City has given Concessionaires written notice by Certified Mail Return Receipt Requested or by personally delivering said notice to Concessionaires at Concessionaires address as designated by Concessionaires, of said default or breach of agreement, at any time thereafter while such condition exists, cancel and terminate this agreement, and the City may enter upon said premises and again have, repossess and enjoy same as if this agreement had not been made. Thereupon this

agreement and everything herein contained on the part of the City to be kept shall cease and terminate.

11. This initial agreement is for the term of the 2014 Municipal Pool season and may be extended on an annual basis by the agreement of both parties.

**IN WITNESS WHEREOF**, the parties hereto have set their hands to duplicates on the day and year first above written.

Signed in the presence of:

Cardinal Vending Services, LLC  
Concessionaire(s)

City of Gahanna  
Mayor

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Rebecca Stinchcomb, City of Gahanna

APPROVED AS TO FORM:

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Shane Ewald, City Attorney