

AGREEMENT BETWEEN

CITY OF WAUKESHA

AND

IN THE PARK, LLC

This agreement (“Agreement”) is made and entered into effective May 1, 2025 by and between City of Waukesha through its Parks, Recreation and Forestry Department (the “City”) and In the Park, LLC (the “Vendor”), as represented by: Jerry Lemke, 414-688-0138. Referenced together, the City and Vendor are “Parties” to this Agreement.

WITNESSETH:

WHEREAS, Vendor wishes to enter into an Agreement for the 2025, 2026 and 2027 summer seasons with the City for the use of designated concession area at Frame Park Boathouse to provide rental of paddleboats, kayaks and bicycles as well as food and beverage concessions; and to provide mobile vending of food and beverage concessions throughout Frame Park; and

WHEREAS, The City is interested in affording individuals using Frame Park the opportunity to rent paddleboats, kayaks and bicycles, and to purchase concession type food and beverage products; and

WHEREAS, Vendor is willing and able to operate such a rental operation and food and beverage concession in a publicly owned park in the City; and

WHEREAS, recognizing that the development of an Agreement for the use of the designated areas at Frame Park is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. PREMISES:

City is the owner of real property in the City of Waukesha used for the purpose of recreation, including Frame Park and the Frame Park Boathouse located at 1154 Baxter Street, Waukesha, WI. 53186 (the “Premises”). City agrees to allow the Vendor the exclusive use of certain designated areas of the Premises to provide to the public recreational rental opportunities as well as food and beverage concessions.

2. CONDITION OF THE PREMISES:

Vendor acknowledges that it has inspected the Premises and is aware of its general overall condition and accepts the Premises on an “as-is” basis.

3. PERMITTED USE:

Vendor is authorized and permitted to use the Premises for activities directly related to its rental and concession activities. No other activities may be conducted on the Premises without the prior written approval of the City of Waukesha Parks, Recreation and Forestry Department Director or designee.

4. **TERM:**

The term of this Agreement shall commence on May 1, 2025 and shall end by December 31, 2027, unless terminated earlier by either Party. This Agreement may be extended on the same terms as set forth herein for one year at a time for a total of two additional years if, prior to expirations of the term in effect at the time, both Parties agree in writing to an extension.

5. **PERMITS, LICENSES, AND OTHER COSTS:**

Vendor is to procure, maintain, and pay the fees for all appropriate federal, state, and local licenses and permits required for the operation of all activities and provide copies to City. Vendor shall be responsible for all costs related to rental and concession business.

6. **OBLIGATIONS OF VENDOR:**

The vendor shall comply with the following.

- a. Vendor will comply with all local, state, and federal laws, ordinances and regulations.
- b. Vendor shall assume full responsibility for staffing and operating facilities and provide concession and rental services in the designated areas during the times provided in Paragraph 9. Any amendments to the times the concession and rental areas will be open shall be approved by the Director or designee.
- c. Vendor shall require that all persons working in said concession shall be neat and clean in appearance.
- d. Vendor shall provide all routine custodial services necessary to keep the assigned area clean; keep papers and refuse picked up from the premises and the immediate area outside the rental area and concession area.
- e. Vendor shall not serve, handle or otherwise possess or store alcoholic beverages or tobacco products of any kind in the concession area.
- f. Vendor shall ensure that all deliveries of merchandise shall be made at a time as not to disrupt scheduled activities.
- g. Vendor shall devote as much of his/her time this concession as may be necessary to provide first-class service to the patrons, including customer service that is courteous and professional as well as adequate staffing to meet customer demands. A schedule indicating the days and hours the rental and concession operations shall be open for business shall be determined and approved by the City. Any adjustments or amendments to the schedule must be agreed upon by both parties. All closures, regardless of the circumstances, must be approved by the City or a representative thereof. The City shall supply the Vendor a schedule of activities at the site.
- h. Vendor shall provide the City with the product and pricing information it intends to charge the public for rental and concessions. The Director or designee maintains the right to prohibit the rental or sale of any items that he/she deems to be inappropriate or otherwise within the City Parks.

- i. Vendor will visibly post prices of items for rent and sale as well as hours of operation.
- j. All beverages must be dispensed in disposable cups, plastic bottles or cans. No glass allowed.
- k. Vendor shall be responsible for the collection and placement of all trash, litter and garbage associated with the rental and concessions into containers provided by the City. City shall provide for the hauling and disposal of all trash that is properly placed in the City's containers.

7. OBLIGATIONS OF VENDOR FOR MOBILE VENDING:

- a. Vendor shall sell from a non-motorized professional mobile unit in good repair.
- b. Vendor shall not use sounds or noises of any kind to promote the mobile concession sales.
- c. Vendor shall remain within boundaries of Frame Park.
- d. Vendor shall sell from mobile unit only products that are also available for sale at Frame Park Boathouse.
- e. Vendor shall use same pricing as provided in 6h above.
- f. Vendor shall operate the mobile unit only during hours as stated herein.
- g. Vendor shall have exclusive mobile vending rights except during and within boundaries of public events in Frame Park which have received a sales permit or have otherwise requested that mobile unit not encroach upon the event..
- h. Vendor shall include sales from the mobile unit in total sales, as described in Paragraph 9.

8. OBLIGATIONS OF CITY:

- a. The City will be responsible for trash removal.
- b. The City will be responsible for maintenance of ground area around concession stand.
- c. The City will be responsible for furnishing light, power, and water for the premises used by the vendor.
- d. The City will include a phone number listing for vendor in printed activity guides.

9. PAYMENT:

Vendor shall pay to the City \$1,000 in 2025, \$1,000 in 2026 and \$1,000 in 2027. In addition, Vendor shall pay City ten (10) percent of gross revenue (less sales tax) on all sales in excess of ten thousand (10,000) dollars each year. Vendor shall keep accurate records of its activities, including: daily sales totals, expenses, payroll and disbursements. Said records shall be provided with payments to the City following the schedule below:

- 1. \$500 by June 1, 2025, 2026 and 2027.
- 2. \$500 by July 1, 2025, 2026 and 2027.
- 3. 10% of gross revenue greater than \$10,000 less sales tax payment by October 31 each year.

Please make checks payable to: **WAUKESHA PARKS, RECREATION AND FORESTRY**

Waukesha Parks, Recreation and Forestry
Attn: Greg Wilcox
1900 Aviation Drive
Waukesha, WI. 53188

10. DESIGNATED AREA(S); SCHEDULE:

Vendor may operate at Frame Park Boathouse and Mobile Concessions during the following:

From Memorial Day weekend through Labor Day weekend:

BICYCLE RENTALS AND CONCESSIONS
SUNDAY – SATURDAY: 10:00 AM - 8:00 PM

Vendor agrees to be in operation at Frame Park Boathouse during the schedule above. Weather permitting, vendor may conduct its operation prior to Memorial Day weekend and after Labor Day weekend (10:00 AM – 7:00 PM). Any exceptions must be approved by City director or designee.

11. APPROVAL OF SIGNAGE:

One exterior sign may be erected by the concessionaire at their expense. The exact size, language and location shall be pre-approved in writing by the Director and/or designee, which shall not be unreasonably withheld. The exterior sign shall be placed no earlier than April 9th and be removed no later than October 31st each year.

12. REMOVAL OF EQUIPMENT AND SUPPLIES:

Upon expiration or termination of this Agreement for any reason, Vendor shall remove, at its expense, all of its supplies, equipment, displays, and related items from the Premises within fourteen (14) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory at the Director and/or designee inspection.

13. INSURANCE:

City assumes no responsibility for any loss or damage to Vendor’s personal property while in use or stored at or on the Premises. Vendor shall maintain comprehensive liability, workers compensation and automobile liability insurance as required below. Vendor shall provide the City with evidence of said coverages in the following minimum amounts.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	
Bodily Injury and Property Damage	\$1,000,000 per Occurrence
(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$3,000,000 General Aggregate
Product liability	\$1,000,000
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 per Accident
All autos-Owned, non-owned and/or Hired Uninsured Motorists	Per Wisconsin Requirements

Wisconsin Workers' Compensation or Proof
Of all States Coverage

Statutory, if applicable

Employers' Liability

\$100,000/\$500,000/ \$100,000 If
applicable

The City of Waukesha, as its interests may appear, shall be named as an additional insured and be afforded a thirty (30) day written notice of cancellation or non-renewal. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the City for the duration of this Agreement. Coverages shall be placed with an insurance company approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the City Risk Manager.

14. INDEMNIFICATION:

To the fullest extent permitted by law, Vendor shall indemnify the City for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts, or omissions of the vendor, its agents or employees.

Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

15. AUDIT:

Vendor shall allow the City of Waukesha, the City of Waukesha Department of Audit, or any other party the City of Waukesha may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information related to matters under this Agreement, all at no cost to the City of Waukesha. Any subcontracting by vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor) shall maintain and make available to the City of Waukesha the aforementioned audit information for no less than three years after the conclusion of this Agreement.

16. INTEREST:

Unless waived by the City, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent City property taxes (one percent (1%) per month or fraction of a

month) as described in Wisconsin Statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

16.1 Penalty:

In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by the City. The penalty shall be the statutory rate in effect for delinquent City property taxes (.5% per Month, or fraction of a month) as described in the City ordinances and Wisconsin statutes section 74.47 (2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

16.2 Audit Results:

If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the City, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the City any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the City.

16.3 Nonexclusively:

This provision permitting collection of interest and penalty by the City on delinquent payments is not to be considered the City's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the City of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

17. ASSIGNMENT/SUBLETTING:

Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Director and/or designee.

18. TERMINATION:

Either Party may terminate this agreement upon thirty (30) days written notice to other party.

19. PARTNERSHIP:

Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the City or its successors or assigns and the Vendor or its successors or assign. This Agreement does not create the relationship of principal and agent.

20. OFFICIAL NOTICES:

All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Vendor:

In The Park, LLC
Jerry Lemke
P.O. Box 340675
Milwaukee, WI 53234

To City of Waukesha:

Parks, Recreation & Forestry
Ron Grall, Director
1900 Aviation Drive
Waukesha, WI, 53188

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

21. SOLE AGREEMENT

This document contains the entire agreement between the parties. It may not be modified except by written agreement signed by the duly authorized agents of the City and Vendor.

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

In The Park, LLC

by _____ Date _____
Jerry Lemke, Member

City of Waukesha Mayor

City of Waukesha Clerk/Treasurer

by _____ Date _____
Shawn N. Reilly

by _____ Date _____
Linda Gourdoux