

## **FOOD CATERING SERVICES AGREEMENT**

**THIS AGREEMENT**, effective on the last date shown below the signatures (“Effective Date”) by and between the City of Leesburg, a municipal corporation existing under the laws of the State of Florida, (“CITY”) and Puff ‘n Stuff Catering, (“CATERER”), for the term specified herein, with the CITY having the option of extending this Agreement for another period of time, upon a mutual agreement of the parties, agree as follows: **WITNESSETH:**

**WHEREAS**, the CITY desires to have a catering service operated at the Leesburg Venetian Center (hereinafter referred to as “Venue”); and,

**WHEREAS**, the CITY issued RFP #190332, seeking qualified Caterer’s to operate such services and received the CATERER’s Proposal; and

**WHEREAS**, the CITY deems it advantageous to grant unto CATERER certain rights, licenses and privileges as set forth herein for the purposes of operating a catering operation, which term shall mean and be limited to the food catering operation as described herein; and

**WHEREAS**, the Venue is schedule to open the first week of November 2019 (“Opening”).

**NOW, THEREFORE**, subject to the terms and conditions contained herein the parties agree as follows:

### **I. INCORPORATION OF PREAMBLE**

- a. The foregoing premises are true and correct and are hereby incorporated in this agreement as though fully set forth below.

### **II. FOOD CONCESSION OPERATION**

- a. Location: The CITY hereby grants to the CATERER the right, subject to certain exceptions hereinafter set forth, to provide catering services located at the Venue. Catering rights under this agreement do not include the right to operate vending machines.
- b. Equipment, Fixtures and Services to be provided by CATERER: The CITY shall provide equipment common, in the CITY’s opinion, to an institutional food service kitchen. Said

equipment will be provided for use by CATERER should they choose to use the equipment. Provision of any and all additional items of equipment needed by CATERER for its operation at the Venue shall be the sole responsibility of the CATERER.

The CITY will not provide foodservice equipment such as utensils, cookware, cutlery, serving utensils, hand tools, pots, pans, and trays. Dining ware such as plates, bowls, cups or glasses, napkins or table drapes/linens will not be provided by the CITY.

CATERER is responsible for familiarizing themselves with the provided equipment. CITY will not be liable for CATERER's lack of knowing what equipment is or is not provided in the Venue foodservice areas.

- i. Level of Service: Continuation as CATERER is based upon "satisfactory" performance of duties outlined herein including, but not limited to, the following:
  1. Quality of service to patrons of the Venue;
  2. Quality of product served to Venue Renters
  3. Recordkeeping;
  4. Cleanliness of kitchen and associated equipment;
  5. Cooperation with City personnel;
  6. Compliance with the terms of this Agreement;
  7. Ability to meet financial obligations

The City Manager or designee will advise the CATERER in writing if, in the CITY's opinion, the CATERER is not performing in a "satisfactory" manner. Such notice will cite the specific reason for the CITY's notice. CATERER will respond in writing within 15-days and may request a review of CATERER's performance. Such a review shall be provided if requested. Failure or inability to resolve performance related problems will be sufficient cause for the termination of this Agreement by the CITY.

- ii. Deposits: The CATERER is to provide the CITY with a **two-thousand dollar (\$2,000.00) deposit** to establish a fund for delinquent or unpaid User Fees by the CATERER or for payment of damage caused to the Venue by CATERER or their employees. **The Deposit is due no later than 10 days after the Opening of the Venue and can be paid to the CITY by company check.** Should the CITY draw

funds from the Deposit the CATERER is required to replenish the Deposit amount to the two-thousand dollar (\$2,000.00) level within 10 days. Failure by the CATERER to maintain the specified deposit amount may result in their ability to use the facility being suspended or terminated. Should this Agreement be terminated, any deposit balance will be released back to the CATERER by issuance of a CITY check.

iii. Equipment Maintenance and Repair: CATERER shall pay the CITY for any loss, breakage or damages, other than normal wear and tear, to CITY property which is caused during CATERER's operations at the Venue. CITY may use the CATERER's deposit to offset the costs incurred as a result of damage to CITY property or equipment, clean-up of the facilities, or other expenses as a result of negligence or omissions by employees of the CATERER. CATERER shall report any and all malfunctions or damage to CITY property immediately to the CITY's Representative. CATERER shall cooperate with CITY in completion of an event closeout checklist immediately after each event at which CATERER operates at the Venue. The CATERER is responsible for all set up in excess of CITY-owned tables, chairs or stage arrangement. Following the event, the CATERER must assist Venue staff with clearing and sanitizing all CITY-owned tables, cleaning all tables and wiping down chairs, sweep the floor in the foodservice areas, spot mop any spills, remove all debris from rental and common areas including the bar service area, decks and clean kitchen and equipment, remove all waste to the dumpsters, and remove all items that are not CITY-owned materials, including food. If cleanup is unacceptable to the Venue Supervisor, corrections must be made within two (2) hours of notification. The first infraction will result in a verbal warning, the second infraction will result in a written warning that will be kept in the CATERER's file, and the third infraction will result in immediate termination of this Agreement. The CITY reserves the right to utilize the deposit to pay for any and all cleanup not completed or damages not fixed by the CATERER within two (2) hours from notification by the City Representative.

iv. Food Service: On an event basis, CATERER agrees to provide catering services

for Renters of the Venue. CATERER agrees to provide high quality food products, attractively displayed, to Venue Renters.

- v. Marketing: CATERER agrees to provide, at its expense, reasonable marketing and advertising of its services to the general public, as well as targeted groups. CATERER agrees to review its marketing plan with the Venue Manager at least once per year. Supply Venue Manager with catering brochures and business cards for potential CATERER clients, Venue Renters.
- vi. Compliance with regulations: It is the CATERER's responsibility to ensure that all operations conducted pursuant to this Agreement, comply with all applicable state, federal and local regulations, including, but not limited to, health regulations. The Venue must be operated in such a manner as to not generate offensive noise levels and is to be kept clean and neat, in areas open to the public and in areas not open to the public, at all times.
- vii. Staffing levels: The CATERER is to staff Venue events, which are catered by CATERER at all times to handle patron demand efficiently.
- viii. Courtesy to the Public: In all circumstances, the CATERER shall exercise, and shall require its employees and agents to exercise, courtesy and consideration in their relations with the public.
- ix. Trash / Cleanup: CATERER will be responsible for collection of all waste material, garbage and refuse and emptying trash receptacles from the Venue and delivering the trash to the designated dumpster area without dragging the bags across Venue flooring, porches, terrace or Venue grounds. CATERER shall ensure that all work areas are left in a clean condition. The CATERER is to provide all cleaning supplies and equipment necessary for post-event cleanup.
- x. Pre-Event / Post-Event: The CATERER must perform a pre and post walk-through with CITY Staff. If CITY staff are not available at the time of entry by the CATERER, a walk-through form will be provided to the CATERER. At the conclusion of each event the CATERER is responsible to clean the kitchen to an acceptable level as determined by the CITY Representative. Any infractions will be noted on the post walkthrough form. CITY Staff

will set up city-owned tables and chairs in accordance with the submitted floor plan. The CATERER is to wipe off tables following each event; CITY staff will rearrange these items for the next event or remove them to storage.

- xi. Maximum post-event tear down time is one (1) hour: The CATERER is required to have adequate organization and staff to tear down and clean up after an event in less than one (1) hour.
- xii. Alcoholic Beverages: Alcoholic beverages are to be served directly by the CATERER.
  - 1. No subcontracting of the providing or serving of alcoholic beverages is allowed.
  - 2. The Alcoholic Beverage license must belong to the CATERER and cannot be associated to the City's Venue.
- c. Management Duties: CATERER shall have all management duties normally arising from providing catering services. By way of illustration, but not limitation for its events, CATERER shall be responsible for keeping the Venue free of catering-related trash and debris and for keeping the chairs and tables located in both the interior and exterior dining areas clean and in reasonable order, normal wear and tear excepted. CATERER shall immediately clean any spills. CATERER shall report any accidents or hazardous conditions to the City Representative as soon as possible. CATERER shall not permit its personnel, equipment or operations, nor those of its approved subcontractors, to create any hazardous conditions. CATERER shall be responsible for making sure all of its personnel, as well as personnel of any subcontractors, are properly attired, are courteous and professional in dealings with patrons, and operate in a manner consistent with good health and hygiene. Likewise, CATERER shall be responsible for assuring that all equipment, food, and beverages meet all applicable health codes.
- d. CITY Responsibilities: The CITY will be responsible for, and bear the expense for, the following services related to the Venue catering: all utilities, pest control, and structural repairs (including HVAC, Plumbing, and Electrical).
- e. Menus with Pricing: All menus with pricing will be provided for viewing by all prospective renters of the CITY Facilities at the Venue. The CATERER is to continually

provide a wide array of menus and prices to suit different budgets and tastes. The CITY expects the CATERER to be flexible when working with their clients relative to additional items directly food related or not which the client desires to complete on their own initiative (i.e., wedding cake or special deserts, side dishes of ethnic food or entertainment).

- f. Price Quotes: All price quotes requested by potential CATERER clients, Venue Renters, are to be submitted to the potential client within seven (7) calendar days from their request and are to be fully complete and detailed. Each quote is to contain a description of all items to be charged (i.e., setup, bartender, dance floor, props, wedding cake, etc.) and the corresponding price, as well as the menu with prices. Any violations of these requirements will be cause for termination of the Agreement.

### III. CATERER SERVICES AGREEMENT

- a. Agreements with Venue Renters: The CATERER is required to hold a written agreement with Venue Renters for CATERER services provided at the Venue.
- b. Parties to the Agreement: The CITY is not a party to any Agreement between the CATERER and Venue Renter(s).

### IV. TERM / SCHEDULE

- a. Term: The period of this Agreement shall be for thirty-six (36) months, beginning on the Effective Date. This Agreement may, by mutual written assent of the parties, be extended for two (2) additional twelve-month periods or portions thereof, up to a cumulative total of sixty (60) months.
- b. Operating Schedule: The CATERER shall conduct its operation at the Venue in accordance with the CITY's Facility Reservation Handbook.

### V. CONCESSION FEE, TAXES, PERMITS / LICENSES

- a. Fees and Accounting:
  - i. User Fee: In exchange for the rights and privileges granted pursuant to this Agreement, and for each and every catered event held while this agreement is in effect, CATERER shall pay to the CITY a sum of money (hereinafter called

**“User Fee”**) equal to ten percent (10%) of CATERER’s gross receipts from all food, staffing or service charge, beverages, alcohol, delivery and general rentals such as Tables, Linens, Chairs, China, Silver, Stemware and all normal catering equipment to the CITY. The server gratuity is not to be included as part of the user fee collection. The User Fee shall be paid to the CITY whether the CATERER has collected from their client or not on a weekly basis each Friday for the prior week’s (Monday-Sunday) catered events and shall be due and payable to the City of Leesburg, Attention: Finance Department, Accounts Receivable, 501 West Meadow Street, Leesburg, FL 34748. Send along with the User Fee 1) all invoices issued by the CATERER relative to such User Fee, 2) a completed financial report included herein as Attachment ‘F’. The User Fee shall not be due to CITY if CATERER has agreed to cater a CITY-sponsored event for a price equal to the CATERER’s actual cost. “CITY sponsored event” shall mean events held at the Venue, which have been specifically designated as “CITY Events”.

- ii. **Gross Receipts**: “Gross receipts from sales” shall mean the total sales of all food, staffing or service charge, beverages, alcohol, delivery and general rentals such as Tables, Linens, Chairs, China, Silver, Stemware and all normal catering related equipment to the CITY by CATERER in or upon any part of the Venue. In addition, the gross receipts from sales shall also include the total sales price of all above mentioned items that are exchanged by the CATERER in return for products or services of equal or lesser value from others such as but not limited to patrons, vendors, contractors, professional service companies, and the like, in lieu of cash or credit.
- iii. **Record Keeping**: The CATERER’s record keeping for the operation at the Venue shall include, at a minimum, weekly sales reports and receipts, including bank deposit slips and verifications of refunds. All such records shall be made available to the CITY for inspection and copying upon request.
- iv. **Late Fees and Interest**: Any fee due and payable by CATERER under this Agreement which is not paid within thirty (30) calendar days of the event date shall

be subjected to an automatic late fee of one hundred dollars (\$100.00) per week until the debt is paid.

- b. Taxes: CATERER shall pay any and all taxes or special assessments, of whatever nature, which may be levied or assessed upon or as a result of this Agreement and the rights granted hereunder, including, but not limited to, all taxes on its own personal property and all sales or use taxes which may arise in connection with the operation of its business.
- c. Permits / Licenses: CATERER shall obtain, at its own expense, all permits and licenses which may be required by any governmental agency and shall adhere to all applicable laws and ordinances of the City, Lake County, State of Florida and Federal Government.
- d. Booking of the Venue: The CATERER is not allowed to book any room at the Venue, only clients of the CATERER or sponsors of the event i.e., bride or groom, company representative or governmental agencies may book the facility.

## **VI. BOOKS, REPORTS, AND AUDITS**

- a. Books and Records: CATERER shall maintain, for a period of no less than three (3) years, and shall also require subcontractors to maintain for a period of three (3) years, weekly sales reports, receipt books, inventory reports and other such records customarily used by CATERER and its subcontractors to document weekly sales transactions. The CITY's Finance Director or designee has the authority to audit and make transcripts of all sales records for the purpose of verifying the accuracy of payments made to the CITY.

The CITY is not responsible for any costs incurred by the CATERER as a result of a CITY audit. In the event that such audit results in an assessment by and an additional payment to the CITY, such additional payment shall be subject to interest at the rate of one (1) percent per month retroactive to the date such payment originally should have been paid.

- b. Finality of Reports: Unless intent to audit shall be served by the CITY on the CATERER within three (3) years after the receipt of any statement submitted by the CATERER as herein provided, such statement shall be deemed final and binding upon the parties.

## **VII. INDEMNITY AND INSURANCE REQUIREMENTS**



- a. **Scope of Insurance:** The Contractor shall procure and maintain at its own expense the following minimum insurance coverage, unless otherwise specified in the agreement, contract or lease.
- i. All required insurance shall be provided by insurers acceptable to the City with an A.M. Best rating of at least A: VII.
  - ii. The Contractor shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractor's work.
  - iii. The required insurance shall be secured and maintained for not less than the limits required by the City, or as required by law, whichever is greater.
  - iv. The required insurance shall not limit the liability of the Contractor. The City does not represent these coverages or amounts to be adequate or sufficient to protect the Contractor's interests or liabilities, but are merely required minimums.
  - v. The provisions of the required insurance are subject to the approval of the City's Risk Manager, and upon request, the Contractor shall make available certified copies of the various policies for inspection.
  - vi. All liability insurance, except professional liability, shall be written on an occurrence basis.
  - vii. The Contractor waives its right of recovery against the City to the extent permitted by its insurance policies.
  - viii. Insurance required of the Contractor, or any other insurance of the Contractor shall be considered primary, and insurance of the City, if any, shall be considered excess as applicable to any claims which arise out of the agreement, contract or lease.
- b. **Indemnification:** The Contractor shall indemnify and hold harmless the City and its officers and employees, from liabilities, damages, attorneys' losses, and costs, including, but not limited to, reasonable fees, to the extent caused by the negligence, recklessness, or

intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the contract.

- c. Certificate of Insurance: The Contractor shall provide evidence of required minimum insurance by providing the City an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the City, before any work under the agreement, contract or lease begins.
- i. Except for workers' compensation and professional liability, the Contractor's insurance policies shall be endorsed to name the City of Leesburg as additional insured to the extent of the agreement, contract or lease.
  - ii. The Certificate(s) of Insurance shall designate the City as certificate holder as follows: City of Leesburg, Attn: Purchasing Manager, P.O. Box 490630, Leesburg, Florida 34749-0630.
  - iii. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
  - iv. The Certificate(s) of Insurance shall indicate that the City shall be notified at least thirty (30) days in advance of cancellation.
  - v. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
  - vi. The Contractor, at the discretion of the Risk Manager for the City, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the Contractor's liability coverage(s).
- d. Comprehensive General Liability: The Contractor shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations\*, independent contractors, contractual liability covering the

agreement, contract or lease, broad form property damage coverage, and property damage resulting from explosion, collapse or underground exposures (x, c, u).

- e. Business Automobile Liability: The Contractor shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.
- f. Workers' Compensation: The Contractor shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease. Contractors exempt from maintaining Workers' Compensation insurance must provide a valid certificate of exemption issued by the State of Florida.
- g. Liability: The Contractor shall hold and save the City of Leesburg, its officers, agents, and employees harmless from liability of any kind in the performance of or fulfilling the requirements of a Contract resulting from this solicitation.

#### **VIII. SUBTRACTING AND CONTRACTING ASSIGNMENTS**

CATERER shall not assign this Agreement and its rights hereunder, in whole or in part, nor subcontract with any other person or entity to provide any of the services contained in this agreement, except with the prior written consent of the Venue Manager and the CITY Administrator; provided, however, the foregoing shall not prevent the assignment of this Agreement and of CATERER's rights hereunder to any corporation into or with which the CATERER may merge or consolidate, or which may succeed to the business and assets of the CATERER provided that no such assignments shall release the CATERER from its obligations contained in this Agreement. Before any such assignment shall become effective, the assignee shall, by written instrument, assume and agree to be bound by the terms and conditions of this

Agreement during the remainder of the term hereof.

## **IX. DEFAULT / REMEDIES / WAIVER**

- a. Default: If any of the following events occur, the CITY, at any time hereafter, shall have the right at its election to immediately terminate this Agreement:
  - i. Failure to Pay Any Fee: In the event the CATERER shall fail to pay any fee due hereunder in the amounts and at the times and in the manner herein specified;
  - ii. Failure to Replenish Deposit Accounts: In the event the CATERER shall fail to replenish all or portions of deposit accounts utilized by the CITY within seven (7) calendar days from notification by the CITY of such draw down.
  - iii. Failure to Submit Timely and Detailed Price Quotes: In the event price quotes are not submitted to clients within seven (7) calendar days from their request or if the price quotes do not provide a complete breakdown of all items of which there will be a charge and their corresponding price.
  - iv. Violation of Covenant: In the event the CATERER shall fail to keep and perform or shall violate any of the terms, covenants and conditions of this Agreement on its part to be kept and performed, and CATERER shall not have cured or corrected such failure or violation within twenty (20) calendar days after written notice thereof or if in the opinion of the Venue Manager it cannot be cured within twenty (20) calendar days with diligent effort, such other time not to exceed thirty (30) days, shall have been given to CATERER; or immediately should the violation affect the health, safety and welfare of the CATERER's employees, CITY employees or the public.
  - v. Continuous Violation of Covenants: In the event the CATERER shall, after three (3) separate occasions during the term of this Agreement, fail to keep and perform or shall violate any of the terms, covenants and conditions of this Agreement on its part to be kept and performed during the term of this Agreement, then the CITY has the right to terminate this Agreement, whether or not such violations have been cured by the CATERER.
  - vi. Insolvency: If CATERER shall make an assignment for the benefit of creditors,

or shall file a petition in bankruptcy or shall be adjudged a bankrupt, or the interest of the CATERER under this Agreement shall be levied upon and sold upon execution or shall by operation of law become vested in another person, firm or corporation because of the insolvency of the CATERER; or in the event that a receiver or trustee shall be appointed for the CATERER or the interest of the CATERER under this Agreement.

vii. Abandonment: In the event the CATERER shall cease to operate the catering operation awarded herein, or shall vacate or abandon the Venue catering operations, or shall permit the same to remain vacant or unoccupied without the consent of the CITY first had and obtained.

b. Remedies:

i. Removal of CATERER from the Venue: Upon the occurrence of any one or more of the events of default specified herein, CATERER's right to operate the catering operation at the Venue shall terminate and the CITY may expel and remove the CATERER or any other person who may be found at the Pavilion, and the CITY may use such force in and about expelling and removing the CATERER and said other person as may reasonably be necessary. The CATERER shall make no claim of any kind against the CITY, its agents and representatives by reason of such termination or any act incident thereto.

ii. Damages: In addition to terminating this Agreement, the CITY may sue for and recover all damages and fees earned under this Agreement or arising out of any breach thereof.

iii. Other Remedies: The CITY may, if it so elects, pursue any other remedies provided by law for the breach of this Agreement or any of its terms, covenants, conditions or stipulations. No right or remedy herein conferred upon or reserved to the CITY or the CATERER is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

iv. Removal of Property: Any and all property which may be removed from said premises by the CITY pursuant to the provisions hereof or of law, may be handled,

removed, or stored by the CITY at the sole risk, cost and expense of the CATERER, and the CITY shall in no event be responsible for the value, preservation or safekeeping thereof. The CATERER shall pay to the CITY upon demand any and all expenses incurred in the removal of said property and all storage charges against such property so long as the same shall be in the CITY's possession or control.

c. Waiver of Default: The acceptance of any fee by the CITY, whether in a single instance or repeatedly in part or in whole, after it falls due, or after knowledge of any breach hereof by the CATERER, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except an express waiver in writing, shall not be construed as a waiver of the CITY's right to act or of any other right hereby given the CITY, or as an election not to proceed under the provisions of this Agreement.

i. Effect of Demand: The obligation of the CATERER to pay the fees reserved hereby during the balance of the term hereof or during any extensions hereof, shall not be deemed to be waived, released or terminated by the service of any thirty (30) day notice, other notice to collect, demand for possession, or notice that this Agreement will be terminated on the date therein named, the institution of any action of forcible detainer or ejection or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of the CATERER's right to operate the catering operations. The CITY may collect and receive any fees due from the CATERER, and payment or receipt thereof shall not waive or affect any such notice, demand or suit, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which the CITY may have by virtue hereof.

## **X. TERMINATION FOR CONVENIENCE**

a. Termination for Convenience: The CITY may terminate this agreement by providing the other party with thirty (30) days advance written notice.

## **XI. MISCELLANEOUS PROVISIONS**

- a. Addition of New Caterers: The CITY reserves the right to add new caterers of a similar type i.e., full-line or smaller. The CITY reserves the right to add new caterers the CITY deems necessary to provide an improved selection or options for Venue Renters.
- b. Lawful Uses: CATERER agrees that in its use of the Venue, the CATERER will comply with all present and future valid laws, ordinances and regulations of the Federal Government, State of Florida, Lake County, City of Leesburg and agencies thereof relating to the occupancy or use of the premises (including, but not limited to, those applicable to health and sanitary conditions and safety and fire prevention) and that it will not use the Venue for any illegal, unsafe or immoral purposes. CATERER further agrees that it will use the Venue including all equipment therein, to service only Venue operation. If the CITY determines that the CATERER is using the Venue facilities to provide services outside the scope of this Agreement, then the CATERER shall be in default.
- c. Non-Discrimination: The CATERER agrees that it shall not discriminate in hiring or in service on the basis of race, sex, religion, national origin, age, marital status or handicap.
- d. Fire or Other Causality: In the event that the Venue is damaged or destroyed by fire or other casualty, the same may be promptly repaired, rebuilt or abandoned by the CITY at its discretion, but the CITY shall not be obligated to repair or rebuild any personal property of the CATERER.
- e. Closing of the Venue: The CITY maintains the right to close any part or all of the Venue either permanently or temporarily. CITY agrees to give advance notice to CATERER of such closures unless such advance notice is prohibited by an Act of God. If the Venue is thereafter re-opened, during the original term of this Agreement, the CATERER shall, upon approval by the CITY, commence servicing its catering operations again.
- f. Declared Emergency Event: The CITY shall, during any Declared Emergency Event such as a hurricane, flood, fire or any other type of disaster, cooperate with the CATERER for the security of the Venue. Closure of the Venue due to a Declared Emergency Event will also automatically cancel all scheduled events by Renters of the Venue.  
  
The CITY will not be liable for any costs associated with a cancelled event due to a Declared Emergency Event. Furthermore, the CATERER will not charge the Venue

Renter any costs or fees associated with the cancellation due to CITY closure of the Venue due to a Declared Emergency Event.

The CITY reserves the right to close the Venue to all uses other than official CITY use. The CITY will not be liable for utilize the Venue before and following the Declared Emergency Event for any purpose deemed to be in the best interest of the CITY and suspend this Agreement for an indefinite period of time.

- g. Force Majeure: The performance of all covenants herein contained, except for the payment of fees which shall be paid as and when provided in this Agreement, shall be postponed and suspended during such periods as the performance thereof is prevented by Acts of God, accidents, weather and conditions arising there from, strikes, boycotts, lockouts and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration of existence of a national emergency and conditions arising there from, the exercise of paramount power by the Federal Government, either through the taking of said premises or the imposition of regulations restricting the conduct of business therein, acts of enemies, sabotage, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency thereof, including any court of competent jurisdiction, inability to secure labor or adequate supplies of materials, products or merchandise or any other delay or contingency beyond the reasonable control of the CITY or the CATERER.
- h. Loss and Spoilage: The CITY will not be held responsible or liable for any foods or other perishable goods belonging to the CATERER that may spoil due to the failure of equipment, power failure, theft or other damage.
- i. Not Joint Venture: It is mutually understood and agreed that nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of co-partners or joint ventures between the parties hereto or as constituting the CATERER as the agent or representative of the CITY for any purpose or in any manner whatsoever, CATERER is in all respects an independent contractor.
- j. Rules and Regulations: The CATERER shall observe and obey all rules and regulations applicable to the Venue, which may from time to time during the term of this Agreement



be promulgated by lawful authority for the care, operation, maintenance and protection of the Venue. A copy of the current rules is attached incorporated by reference.

- k. Right of Access: The CITY hereby grants to the CATERER the right of access and ingress to and egress from the Venue by the CATERER and its employees, contractors, suppliers, servicemen, subcontractors, guests, patrons and invitees; provided, that such rights of access, ingress and egress are at all times exercised in conformance with any and all regulations promulgated by the CITY, or other lawful authority, for the care, operation, maintenance and protection of the Venue and the public.
- l. No Liability of CITY to CATERER in Operations: The CITY shall not be liable to the CATERER or to its agents, representatives or employees for any injury to, or death of any of them or of any other person or for any damage to any of the CATERER's property or loss of revenue, caused by any third persons in the maintenance, construction or operation of the Venue or its facilities, its appurtenances, facilities and equipment, or caused by any third persons, whether such injury, death or damage is due to negligence or otherwise. Third persons as used herein shall include the United States, State of Florida or any of their agencies and all persons other than the CITY.
- m. Mechanics' Liens: CATERER shall not suffer or permit any mechanics' liens to be filed against the CITY, or any of its facilities or equipment, by reason of work, labor, services or materials supplied or claimed to have been supplied to the CATERER or any assignee of the CATERER or suffer or permit any other lien to attach to the Venue or any part thereof. Whenever the CATERER makes any repairs, all contracts shall contain a clause, which provides that the CATERER will not perfect a lien against any CITY property.
- n. Disposition of Equipment: Upon the termination of this Agreement by lapse of time or otherwise, except for CATERER's default, the CATERER shall have the right (subject only to the preemption hereinafter stated), and on direction from the CITY shall be obliged, to remove without damage to CITY Property or premises all equipment and personal property installed or located within the Venue (but not pipes, conduit and wiring which CATERER may have installed and which may be affixed to or embedded in walls, ceilings or floors), and whether or not such equipment shall be deemed real or personal property, CATERER shall have a reasonable time, not to exceed seventy-two (72) hours, to remove

such equipment and personal property and to restore the premises to the conditions which they were in immediately prior to CATERER's completion of the improvements required, ordinary wear and tear excepted. CATERER shall be deemed to have abandoned to the CITY any such equipment and personal property which it has failed to remove from the Concession area within said seventy-two (72) hours, unless the CITY shall grant a further period in writing for this purpose.

- o. Inurement: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and assignees. This paragraph shall not be deemed to authorize the CATERER to make an assignment of its interest in this Agreement except as hereinabove expressly provided.
- p. Advertising: The CATERER will not advertise the City's Venue without prior approval of the CITY. Use of the City logo and any pictures or likenesses of the Venue in advertising must be approved by the CITY prior to any advertising being published. This condition applies to both print and digital advertising media.
- q. Modification of Agreement: No waiver, alterations, consent or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the CITY's City Manager.
- r. Resolution of Disputes: The disposition of any dispute is at the sole discretion of the CITY Administrator.
- s. Choice of Laws / Venue: This Agreement is deemed to be under and shall be governed by, and construed according to, the laws of the State of Florida. Any litigation arising out of this Agreement shall be had in the Courts of Lake County, Florida.
- t. Non-Collusion Clause: The undersigned hereby certify that this Agreement is made without prior understanding, agreement or connection with any corporation; firm or person who submitted proposals for the Catering services covered by this Agreement and is in all respects fair and without collusion or fraud. As to CATERER, the undersigned hereby warrants and certifies that he/she is authorized to enter into this Agreement and to execute same on behalf of the CATERER as the act of the said CATERER.
- u. Whole Agreement: This Agreement, including all Exhibits and Attachments, which are incorporated by reference, contains all the terms and conditions agreed upon by the parties.

In any instance of discrepancy, however, between this Agreement and the Request for Qualifications or CATERER's proposal, this Agreement shall control. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

- v. Attorney's Fees: If it should become necessary for either party to seek to enforce this agreement or to seek a declaration of rights hereunder, in a court of law, the parties hereby agree that each party shall bear their own attorney's fees and costs, including costs on appeal, regardless of the outcome of such litigation.
- w. For Other Uses: The CATERER is not permitted to use the Venue facilities to prepare food for events not taking place at the Venue or the grounds around the Venue.
- x. Non-Exclusive Agreement: This Agreement is considered a non-exclusive Agreement between the parties.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the day and year first above written in one or more counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original Contract.

**CATERER**

By:  Warren Dietel (Aug 12, 2019)

Printed: Warren Dietel


Title: CEO & Owner

Company Name: Puff 'n Stuff Catering, LLC

Mailing Address: 250 Rio Drive  
Orlando, FL 32810

Date: Aug 12, 2019

**CITY OF LEESBURG, FLORIDA**

  
Al Minner, City Manager

Date: 8/13/19