

**TERM CONTRACT FOR THE  
LAKE EVA AQUATIC CENTER CONCESSION STAND**

**THIS TERM CONTRACT** is made and entered into as of the date of execution by both parties, by and between **City of Haines City**, a political subdivision of the State of Florida, hereinafter referred to as the "City" and **Kona Ice of Winter Haven & Lake Wales**, hereinafter referred to as "Contractor."

**WITNESSETH**

**WHEREAS**, the City requires the services of a contractor to **operate the food and beverage concession stand at the Lake Eva Aquatic Center**; and,

**WHEREAS**, the City issued Solicitation **RFP #24-02** on January 30, 2024; and,

**WHEREAS**, the City evaluated the responses received and found the Contractor qualified to perform the necessary services; and,

**WHEREAS**, the Contractor has reviewed the services required pursuant to this Term Contract and is qualified, willing and able to provide and perform all such services in accordance with its terms.

**NOW, THEREFORE**, the City and the Contractor, in consideration of the mutual covenants contained herein, do agree as follows:

**I. CONTRACTOR'S SERVICES**

The Contractor agrees to diligently provide all materials, services and labor for the **Lake Eva Aquatic Center Concession Stand** in accordance with the specifications/scope of services made part of this Term Contract as Exhibit A, attached hereto and incorporated herein.

**II. TERM**

This Term Contract shall commence immediately upon execution by both the City and the Contractor and shall continue for a period of one year. This Term Contract will automatically renew for up to two additional one-year periods unless written notice is provided by either party at least 60 days prior to termination date.

**III. COMPENSATION AND PAYMENT**

A. The Contractor shall pay the City a monthly rental fee of **\$731.25** for the initial one-year term.

**IV. LIABILITY OF CONTRACTOR**

A. The Contractor shall save, defend, indemnify and hold harmless the City from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Contractor arising out of or in any way connected with the Contractor or subcontractor's performance or failure to perform under the terms of this Term Contract.

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B. This section shall survive the termination or expiration of this Term Contract.

**V. CONTRACTOR'S INSURANCE**

Contractor shall procure and maintain insurance as specified in Exhibit B, Insurance Requirements, attached hereto and made a part of this Term Contract.

**VI. RESPONSIBILITIES OF THE CONTRACTOR**

A. The personnel assigned by the Contractor to perform services shall comply with the terms set forth in this Term Contract. The Contractor shall ensure that all personnel and other agents are fully qualified and capable to perform their assigned tasks.

B. The Contractor agrees to respond to communication from the City within three working days unless a shorter response time is specified by the City.

C. The Contractor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Contractor), to solicit or secure this Term Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor; any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Term Contract.

D. Contractor agrees that it and its employees shall communicate with City employees and members of the public in a civil manner. All aspects of a Contractor's performance, including complaints received from City employees or members of the public, may impact the City's decision to renew or terminate this Term Contract in accordance with the provisions contained herein.

E. Pursuant to §287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

F. The Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work

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thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Term Contract.

- G. The Contractor shall notify the City at least one (1) day in advance of any meeting between the Contractor and any City Commissioner, regulatory agency or private citizen related to this Term Contract.
- H. The Contractor is, and shall be, in the performance of all work, services and activities under this Term Contract, an independent contractor. Contractor is not an employee, agent or servant of City and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Term Contract shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees of the City. The Contractor shall be solely responsible for providing benefits and insurance to its employees.

**VII. FORCE MAJEURE**

The Contractor specifically agrees that all work performed under the terms and conditions of this Term Contract shall be completed within the time limits as set forth herein, or specified by the City, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any cause affecting the performance of this Term Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the parties.

**VIII. TERMINATION**

- A. The City shall have the right at any time upon thirty (30) calendar days' written notice to the Contractor to terminate the services of the Contractor for convenience.
- B. Any failure of the Contractor to satisfy the requirements of this Term Contract shall be considered a default of the Term Contract and sufficient reason for termination.
  - 1. For defaults that are curable (as determined by the City), the Contractor shall be notified in writing by the City and shall have an opportunity to cure such default(s) within ten (10) working days after notification.
  - 2. For defaults that are not curable (as determined by the City), notice of the termination date shall be given as deemed appropriate by the City.
- C. In the event the City's termination of this Term Contract for default is in any way deficient, at the option of the City such termination shall be deemed to be a termination for convenience pursuant to Section VIII.A. above.

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- D. The parties may mutually agree to terminate this Term Contract. Such termination shall be evidenced by a notice issued by the City.
- E. In the event that the Contractor has abandoned performance under this Term Contract, then the City may terminate this Term Contract upon three (3) calendar days' written notice to the Contractor indicating its intention to do so.

**IX. DISPUTE RESOLUTION**

- A. To the extent Chapter 558, F.S. is applicable, the parties expressly opt out of the requirements of Chapter 558, F.S., within the meaning of §558.005(1), F.S.
- B. In the event of a dispute or claim arising out of this Term Contract, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Haines City, Florida, with the parties sharing equally in the cost of such mediation.
- C. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- D. Any dispute, action or proceeding arising out of or related to this Term Contract will be exclusively commenced in the state courts of Polk County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- E. The parties hereby waive all rights to trial by jury for any litigation concerning this Term Contract.
- F. This Term Contract and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- G. Unless otherwise agreed in writing, the Contractor shall be required to continue its services and all other obligations under this Term Contract during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

**X. PUBLIC RECORDS**

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

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City of Haines City  
City Clerk's Office 620 E. Main St  
Haines City, FL 33844  
Phone: 863-421-3600  
Email: [sharon.lautner@hainescity.com](mailto:sharon.lautner@hainescity.com)

**XI. MISCELLANEOUS**

- A. This Term Contract constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter. No amendment, change or addendum to this Term Contract is enforceable unless agreed to in writing by both parties and incorporated into this Term Contract.
- B. Time is of the essence with regard to each and every aspect of the Contractor's performance under this Term Contract.
- C. The language of this Term Contract shall be construed, in all cases, according to its fair meaning and not for or against any party hereto.
- D. The parties hereto do not intend nor shall this Term Contract be construed to grant any rights, privileges or interest to any third party.
- E. The Contractor shall not assign any interest in this Term Contract and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the City, except that claims for the money due or to become due to the Contractor from the City under this Term Contract may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the City. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the City.
- F. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Term Contract or any applicable law.
- G. If any term, condition, or covenant of this Term Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Term Contract shall be valid and binding on each party.
- H. The parties covenant and agree that each is duly authorized to enter into and perform this Term Contract and those executing this Term Contract have all requisite power and authority to bind the parties.
- I. Neither the City's review, approval or acceptance of, nor payment for, the services required under this Term Contract shall be construed to operate as a waiver of any rights under this Term Contract or of any cause of action arising out of the performance of this Term Contract.

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- J. The rights and remedies of the City provided for under this Term Contract are in addition to any other rights and remedies provided by law.
- K. If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- L. This Term Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- M. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Contractor's Representative:	City's Representative:
Name: David Still	Name: Terrell Griffin
Title: Co-Owner & Operations Manager	Title: Parks & Recreation Director
Address: 9062 Cypresswood Dr. Lake Wales, FL 33898	Address: 555 Ledwith Avenue Haines City, FL 33844
Telephone: 863-837-8107	Telephone: 863-421-3700
E-mail: dstill@kona-ice.com	E-Mail: terrell.griffin@hainescity.com

- N. Any change in the City's Representative or the Contractor's Representative will be promptly communicated by the party making the change.
- O. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- P. The solicitation and all attachments and addenda thereto are hereby incorporated in the Term Contract by reference.
- Q. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
  - 1. Term Contract
  - 2. Solicitation

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**IN WITNESS WHEREOF**, the parties have executed this Agreement.

This Agreement will be effective on \_\_\_\_\_.

**City:**

City of Haines City

**Contractor:**

Kona Ice of Winter Haven & Lake Wales

By: \_\_\_\_\_

By: David Still

Title: Mayor

Title: Co-Owner & Operations Manager

Attest: \_\_\_\_\_

Attest: Deborah W. Still

Title: \_\_\_\_\_

Title: Co-owner

Address for giving notices:

City of Haines City  
Attn: City Clerk's Office

Address for giving notices:

Kona Ice of Winter Haven & Lake Wales

620 E. Main Street

9062 Cypresswood Dr.

Haines City, FL 33844

Lake Wales, FL 33898

## **EXHIBIT A SCOPE OF SERVICES**

The City requires the Contractor to operate the food and beverage concession stand at the Lake Eva Aquatic Center, located at 321 S. 6th St., Haines City, FL 33844, and to furnish all necessary labor, supervision, materials, equipment and supplies to satisfactorily operate the concession stand in accordance with the terms, conditions and specifications of RFP 24-02.

1. The Lake Eva Aquatic Center is a heavily used facility and the concession stand includes the building with electric and water services. The concession stand is the only permanent food concession in the Aquatic Center. The City prohibits other commercial concessions except with the specific permission of the City. Park patrons are prohibited from bringing their own food and drink into the Aquatic facility. The exception to this rule is for private parties which typically take place during non-operating hours.
2. Contractor shall pay the monthly rental fee on or before the first day of each month for the use of the concession stand. In consideration of providing the Services and of its payment of the Service Fee, the Contractor shall be entitled to retain all revenue that the Contractor derives from it providing the Services and the sale of food concessions at the Lake Eva Aquatic Center.
3. Contractor shall have proprietary operational rights of the site. No other Contractor shall be allowed in the Aquatic facility or surrounding area, without approval by the City.
4. The Contractor shall maintain a flexible schedule that accommodates daily hours including holidays where the facility is in operation. Facility hours shall be discussed at the Pre-Proposal meeting.
5. The Contractor will be required, at its sole expense, to be responsible for all alterations necessary to accommodate equipment after having first obtained written authorization from the City. The Contractor will be required to tour and to inspect the Facility with City staff prior to final contract negotiation and execution.
6. No signs or advertising of any kind (with the exception of a menu board) shall be installed without prior written approval of the City. In addition, any sign or advertising must be approved by the City, and be in compliance with applicable laws, codes, and ordinances.
7. Contractor shall report vandalism and/or damage to the City's property to the City Designee immediately upon discovery.
8. Contractor shall provide a Concession Manager who shall be responsible for the performance of the contract and remain the Contractor's contact person for the duration of the contract. The Concession Manager shall establish a routine for communications with the City's Designee to



**EXHIBIT A**  
**SCOPE OF SERVICES**

provide a prompt and timely response to any concerns or problems that may arise. Time and frequency of direct meetings may vary as determined by the Parks and Recreation Director or designee. The Concession Manager shall contact the Parks and Recreation Director or designee to review overall performance, receive special instructions or discuss other pertinent items regarding the contract and the Contractor's performance.

9. Contractor shall furnish all supplies and materials necessary for the proper performance of the services and operation of the Facility. The Contractor shall not use any material or supplies which the Parks and Recreation Director or designee determines would be unsuitable for the purpose intended, or offensive or harmful to any part of the facility, its contents, equipment, employees or patrons.
10. Contractor is responsible for providing a clean, organized, safe, and attractive business. Contractor shall at all times keep the area free of clutter, litter and messes (spills). Allowing debris, trash, and spilled fluids to accumulate will not be permitted. All trash generated by the Contractor's operations must be collected and disposed of by contractor daily. City personnel will inspect the concession premises and surrounding area at least once per week, and more frequently as needed.
11. The Contractor will be required to abide by all State, County, and City laws, including all business licensing requirements, food handler requirements and health permitting requirements. It is the contractor's responsibility to maintain, at the contractor's cost, all necessary health permits during the term of the agreement. There should be a certified food services manager on duty at all times and he/she should hold a current ServSafe® Food Manager certification. All employees of the vendor should hold a current ServSafe® Food handler Certificate.
12. Subcontracting of the space is not permitted unless approved by the City.
13. The Contractor shall conduct his/her operation of the concession services in a manner that does not damage City's property. In the event damage occurs to City's property or any adjacent property by reason of any service operations performed under this Contract, the Contractor shall replace or repair the same at no cost to the City. If damage caused by the Contractor has to be repaired or replaced by the City, the cost of such work shall be charged to the Contractor.
14. Contractor shall be responsible for collecting, reporting, and paying all State and Federal taxes.
15. Contractor shall take all precautions and care to conduct its activities in a safe and prudent manner with respect to its agents, employees, visitors, and patrons in any activity within the premises.

**EXHIBIT A**  
**SCOPE OF SERVICES**

16. Contractor’s menus and prices will be subject to continuous review and approval by the City. Such approval will not be reasonably withheld as long as the menu and prices are competitive with the menus and market prices of other comparable concession stands.
17. Contractor shall provide menu boards showing items and pricing. Signs must be professionally made – no cardboard or handwritten signs.
18. Contractor shall keep the concession stand reasonably stocked and reasonably staffed to serve the patrons thereof.
19. Beverages shall be either fountain drinks or served in plastic bottles or cans. No glass bottles shall be allowed. Contractor will be required to install and maintain any fountain service equipment. Such equipment will remain property of Contractor.
20. The sale of alcoholic beverages and tobacco is strictly prohibited.
21. No expired or outdated products may be sold.
22. Contractor shall provide liability insurance as determined by the City of Haines City and shall immediately report all accidents, injuries, and property damage to the Parks and Recreation Director or designee per the terms and conditions of the negotiated contract.

**Suggested Menu Items**

Snacks	Entrees	Drinks
Nachos & Cheese	Hot Dog	Soda
Pretzel & Cheese	Pizza – by the slice	Water
Fruit – apples, bananas, grapes, watermelon, etc.	Pizza – whole	Gatorade
Fries	Chicken Sandwich	Juices
Chips/ Crackers	Chicken Tenders	
Cookies/ Rice Crispy Treats	Hamburger/Cheeseburger	
Candy	Uncrustables	
Ice Cream/ Snow Cones	Walking Tacos	

**Hours of Operation**

- May 4, 2024 – May 26, 2024 (Saturdays and Sundays only)
- Monday, May 27, 2024 (Memorial Day)
- May 31, 2024 – August 9, 2024 (Daily)
- August 10, 2024 – September 15, 2024 (Saturdays and Sundays only)
- Monday, September 2, 2024 (Labor Day)

## **EXHIBIT B INSURANCE REQUIREMENTS**

For purposes of this Exhibit B, the terms "Vendor," "Contractor" and "Consultant" shall be interchangeable and the terms "Contract" and "Agreement" shall be interchangeable.

- A. The successful Bidder/Contractor shall not commence any work in connection with an agreement until it has obtained all of the following types of insurance and has provided proof of same to the CITY, in the form of a certificate prior to the start of any work, nor shall the successful Bidder/Contractor allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.
  
- B. The successful Bidder/Contractor and/or subcontractor shall maintain the following types of insurance, with the respective limits:
  - 1. BODILY INJURY LIABILITY
    - a. \$1,000,000 operations each claim per person
    - b. \$1,000,000 completed operations each claim per person;
  
  - 2. AUTOMOBILE PUBLIC LIABILITY
    - a. Bodily Injury:
      - i. \$1,000,000 each claim per person
      - ii. \$1,000,000 aggregate
    - b. Property Damage:
      - i. \$1,000,000 each claim per person
      - ii. \$1,000,000 aggregate;
  
  - 3. PROPERTY DAMAGE LIABILITY (other than automobile)
    - a. \$500,000 each claim per person
    - b. \$500,000 operations per claim
    - c. \$500,000 protective per claim (covering automobile)
    - d. \$500,000 contractual per claim;
  
  - 4. GENERAL LIABILITY - One Million Dollars (\$1,000,000) any single occurrence;
  
  - 5. AGGREGATE – Two Million Dollars (\$2,000,000);
  
  - 6. EXCESS COVERAGE – One Million Dollars (\$1,000,000);
  
  - 7. PROFESSIONAL LIABILITY – One Million Dollars (\$1,000,000);
  
  - 8. PRODUCT LIABILITY – Two Million Dollars (\$2,000,000); and,
  
  - 9. WORKER'S COMPENSATION – covering the statutory obligation for all persons engaged in the performance of the work required hereunder and Employers' Liability insurance with limits not less than \$1,000,000 per occurrence. Evidence of qualified self-insurance status will suffice for this subsection. In case any class of employees engaged in hazardous work under an agreement at the site of the project is not protected under the Worker's Compensation statute, the successful Bidder/Contractor shall provide, and cause each subcontractor to provide, adequate insurance, satisfactory to the CITY, for the protection of its employees not otherwise protected.

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

- C. **Certificates of Insurance:** The successful Bidder/Contractor shall provide the CITY's Finance Department with a Certificate of Insurance evidencing such coverage for the duration of the awarded agreement. Said certificate shall be dated and show:
1. The name of the insured Bidder/Contractor,
  2. The specified job by name and job number,
  3. The name of the insurer,
  4. The number of the policy
  5. The effective date
  6. The termination date
  7. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy
- D. **City as Additional Insured:** The successful Bidder/Contractor shall name the CITY as an additional insured, to the extent of the service to be provided under the agreement, on all required insurance policies, and provide the CITY with proof of same.
- E. **Waiver of Subrogation:** The successful Respondent shall have a waiver of subrogation instead of listing the City as additionally insured for Workers' Compensation coverage.
- F. **Waiver:** Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY, or by any of its representatives, which indicates less coverage than is required, does not constitute a waiver of the successful Bidder's/Contractor's obligations to fulfill the insurance requirements specified herein.
- G. **Loss Deductible Clause:** The CITY shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the successful Bidder/Contractor and/or subcontractor providing such insurance.