

CONCESSION AGREEMENT

THIS AGREEMENT is made and entered into effective on _____, 2017, by and between the CITY OF FRESNO, a California municipal corporation (City), and MAXIMUM PAINTBALL THE FIELD, INC., a California corporation (Concessionaire).

RECITALS

WHEREAS, City owns, operates and has full rights to use for the purposes herein the water basin in the REGIONAL SPORTS PARK, which is located in the City of Fresno, County of Fresno, State of California, as more specifically described in **Exhibit A** hereto and incorporated herein (Basin); and

WHEREAS, in response to City Request for Proposals dated January 3, 2007, Concessionaire submitted a Proposal to City to build, operate and maintain a "Paintball facility" to provide paintball activities including equipment rental, food concession sales and tournament play to the public, and entered into a concession agreement with the City on July 1, 2008, and has operated since in said Basin, in said facility paid for, contracted for and owned by Concessionaire; and

WHEREAS, City entered a concession agreement with the Concessionaire on July 1, 2008, granting Concessionaire use for such facility, non-exclusively and subordinate to all City uses, financing, debt, liens, ground leases, leases and agreements, upon the terms and conditions herein.

NOW THEREFORE, in consideration of the above recitals which are contractual in nature, the mutual covenants and conditions contained herein, and for other good and sufficient consideration hereby acknowledged the parties do hereby agree, each for itself and its successors and assigns, as follows:

AGREEMENT

The parties agree as follows:

1. **General:** The above recitals are true and correct and adopted as part of this Agreement. This Agreement is issued subject to the terms, covenants, conditions, and provisions herein contained and Concessionaire covenants and agrees, as a material part of the consideration for this Agreement, that Concessionaire shall fully and faithfully comply with, keep, perform, and/or observe each and every term, condition, agreement, and/or provision hereof to be complied with, kept, performed, and/or observed by Concessionaire, and Concessionaire shall comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

2. Term, Default, and Termination:

A. Initial Term Of Agreement And Automatic Annual Renewal: The initial term of this Agreement shall be for the one year period commencing July 1, 2017, and ending June 30, 2018, unless sooner terminated in the manner hereinafter, and thereupon provided Concessionaire is not in default the term hereof shall be automatically renewed for up to four additional one-year periods. Either party may terminate this Agreement at any time with or without cause by serving written notice upon the other party no less than thirty days before such termination is to be effective. Upon any termination Concessionaire shall promptly remove all its improvements, fixtures and property and reasonably restore the Basin to its original condition and thereupon surrender the Basin. City, at its option may take possession of, remove and/or destroy any improvements, fixtures and property not removed, and cause restoration of the Basin at Concessionaire's cost, should Concessionaire fails to timely do so. Any material failure by either party to perform hereunder upon fifteen days' notice of nonperformance shall be a default hereunder.

B. Definition: The phrase, "the life of this Agreement" and any and all reasonably identifiable derivations thereof, when used herein, means the initial term and any and all automatic annual one year extensions thereof as set forth within Section A of this Article, above, unless and/or until sooner terminated as hereinafter provided.

3. Grant Of Concessionaire Uses And Rights: During the Term of this Agreement, City grants to Concessionaire non-exclusive and subordinate use and concession rights, to the Basin in "as is" condition, consistent with this Agreement and controlling law regulations, approvals, and permits:

A. Concessionaire will operate the facility on weekends from 9 am – 4 pm, closed most weekdays except school holidays and some Holidays.

B. Concessionaire shall be responsible for the security of all its buildings, materials, and equipment.

C. Concessionaire shall be responsible for opening and closing all its buildings and park Basin fencing.

4. Obligations Of The Concessionaire:

A. Concessionaire shall be responsible for any and all its irrigation and electrical needs.

B. Concessionaire shall be responsible for the repair of damaged sprinkler heads and lines.

- C. Concessionaire shall ensure that all its building structures satisfy building and fire codes.
- D. Concessionaire shall be responsible for the construction of all courses, buildings, obstacles using American Society for Testing and Materials (ASTM) standards, subject to prior City approval.
- E. Concessionaire shall ensure that no oil or glass will be allowed in course area.
- F. Concessionaire shall be responsible for providing restroom facilities and weekly cleaning of the restroom facilities.
- G. Concessionaire shall provide a minimum one restroom in compliance with the American Disability Act (ADA).
- H. Concessionaire shall provide concessions until City builds its own Concession Stands at the Regional Sports Park, whereupon City may at its option require Concessionaire to discontinue [food/beverage] concessions.
- I. Concessionaire shall use and sell "biodegradable paint only" at facility.
- J. Concessionaire shall have adequate and trained employees on staff during operating hours.
- K. Concessionaire shall operate course in a manner that satisfies Occupational Safety and Health Association (OSHA) and safety regulations.
- L. Concessionaire shall be responsible for providing security cameras and security service.
to prevent break-ins and loss of property, subject to prior City approval.
- M. Concessionaire shall dispose of paintball materials and clean course area daily.
- N. Concessionaire shall place poles and netting in course area upon approval by PARCS management.
- O. Concessionaire shall be responsible for the cost of removing the poles at the end of the Agreement.
- P. Concessionaire shall take all necessary safety precautions to protect both spectator and participants.
- Q. Concessionaire shall allow after school program participants to use facility at a discounted or reduced rate agreeable to PARCS.
- R. Concessionaire shall provide paintball equipment rentals to public.

- S. Concessionaire shall ensure that all compressed oxygen (CO₂) tanks are properly serviced and stored.
 - T. Concessionaire's staff shall attend the PARCS first aid and safety training course.
 - U. Concessionaire shall be responsible for any equipment and/or supplies left on park site.
5. Obligations Of The City Of Fresno – PARCS: The City of Fresno-PARCS shall bear no cost or liability under or in relation to this Agreement, including without limitation:
- A. The City shall not be responsible for the disposal of paintballs, poles or any other equipment used for the course.
 - B. The City shall not be held liable for any personal injuries, property damage or loss due to theft, water damage or accidents.
 - C. The City shall not be responsible for any utility costs and/or charges.
 - D. The City shall not be responsible for any inability of Concessionaire to access/use the Basin, in whole or part, including any direct/consequential damages resulting therefrom.
6. Pricing And Fees
- A. Pricing
 - (1) Fees charged by Concessionaire shall be established by Concessionaire subject to prior approval of the PARCS Director, consistent with controlling law.
 - (2) Concessionaire shall provide to PARCS Director in writing a current price schedule for approval thereby prior to implementation/launch of the program or to any pricing changes. Concessionaire shall be accessible for customer service inquiries 24 hours a day, 7 days a week. Any questions or complaints regarding the quality of services and/or prices shall be submitted to Concessionaire for Concessionaire's prompt response. At the Director's request, Concessionaire shall meet with the City to review any complaints or concerns and to correct any deficiencies promptly. The Director's determination as to quality of operation or services shall be conclusive and curative measures shall be implemented by Concessionaire as expeditiously as possible.
 - (3) Concessionaire shall provide two weekends per calendar year to PARCS for city sponsored events free of charge.

- (4) Concessionaire shall provide PARCS with an operating schedule for the calendar year annually.

7. Concession Fee:

- A. As consideration for the rights and privileges herein granted, so long as this Agreement shall be in effect, Concessionaire shall pay to City a monthly Concession Fees of \$500.00 (Annual Guarantee of Six Thousand and NO/100 Dollars (\$6,000) per Year.)
- B. Payment, Place of Payment: Concessionaire shall pay to the City monthly, in advance on the first day of each month: A Concession fee in the amount of Five Hundred Dollars (\$500.00) All fees/charges due to be paid to City by Concessionaire hereunder shall be paid to City at the address shown below or at such other address to which City, by service of written notice upon Concessionaire, may direct the payment thereof from time to time during the term hereof.

CITY OF FRESNO
PARCS DEPARTMENT
ATTN: ACCOUNTING
1515 E. DIVISADERO STREET
FRESNO, CA 93721-1115

- C. Late Payment Charge: Should any installment of Concession fees accruing to City under the provisions of this Agreement not be RECEIVED by City within ten calendar days after such shall be due, a LATE PAYMENT CHARGE EQUAL TO ONE AND ONE HALF PERCENT (1.5%) OF THE OVERDUE AMOUNT added thereto and constituting a part thereof shall be imposed by City each and every month until the entire delinquent amount is received by City.
8. Additional Fees, Charges and Rentals: Concessionaire shall pay to the City additional fees, charges and rentals in the event of any of the following:
- A. If the City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse the City, or for which Concessionaire is otherwise responsible;
- B. If City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the promises, terms, conditions or covenants required of it hereunder.

- C. Concessionaire's obligations pursuant to this section shall include all interest, cost, damages and penalties allowable by law or contract in conjunction with such sums so paid or expenses so incurred by the City. If billed by City, Concessionaire shall pay City within thirty days following the date of such billing.

9. Records and Reports

- A. No later than the 10th of each month, Concessionaire shall submit a written report, in a format and detail as approved by the City, of all Concessionaire's Paintball activity at the Basin under this Agreement during the preceding calendar month. Such monthly report shall provide the following:

- (1) A detailed schedule of the number of events or activities each day by category (Public or Private) including all retail transactions, whether paid by pre-paid card or credit card, and all wholesale connections sold or otherwise provided to Paintball Service Providers.

- (2) A monthly summary report that provides the following information for that month:

- i. Number of paintball services for each category including:

- * Number of participants (private and public)
- * Number of Tournaments or Special engagements
- * Amount and type of equipment being rented

- ii. Gross Revenues received from:

- * Retail sales
- * Food and beverage sales
- * Wholesale access
- * Equipment rental
- * Other access/services/transactions

10. Concessionaire's Duty To Operate Concession

- A. Concessionaire shall, at its sole cost and expense, commence operations of the Concession, including making any modifications/improvements approved by the City as may be necessary to make the paintball facility functional.
- B. Any modifications/improvements installed by Concessionaire shall be prior approved by the City and installed in accordance with all applicable building codes, Uniform Fire Code, ASMT standards, and all other applicable laws, regulations, and permit requirements, including those of the City.

- C. Removal of Unapproved Paintball Installation: Any Paintball facility repairs, replacements or modifications made without City approval as outlined herein shall upon written notice by City be immediately removed/corrected by Concessionaire at Concessionaire's sole expense.

11. Maintenance Of Parking Area:

City shall, at its expense, maintain the parking lot and exterior of paintball facility in good and safe repair and in a neat, clean, and orderly condition.

12. Insurance And Indemnification

A. INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, Concessionaire shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion. The City of Fresno and each of its officers, officials, employees, agents and volunteers (referred to collectively as "City") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Concessionaire or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Concessionaire shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Concessionaire of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Concessionaire shall not be deemed to release or diminish the liability of concessionaire, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or

purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. MINIMUM LIMITS OF INSURANCE CONCESSIONAIRE

Concessionaire, or any party the Concessionaire subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY :
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY :

\$1,000,000 per accident for bodily injury and property damage.

3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

C. UMBRELLA OR EXCESS INSURANCE

In the event Concessionaire purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

D. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Concessionaire shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Concessionaire shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Concessionaire shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

E. OTHER INSURANCE PROVISIONS/ENDORSEMENTS

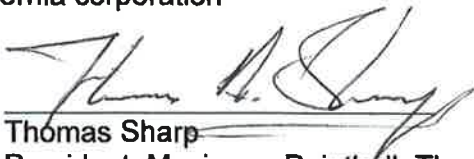
- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice has been given to

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement:

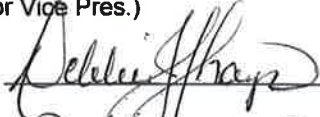
CITY OF FRESNO,
a California municipal corporation

MAXIMUM PAINTBALL THE FIELD, INC.,
a California corporation

By _____
Kristina Chamberlin, Assistant
Director
Parks, After-school, Recreation and
Community Services

By: 
Thomas Sharp
President, Maximum Paintball, The
Field Inc.
(If corporation or LLC, Board Chair, Pres.
or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

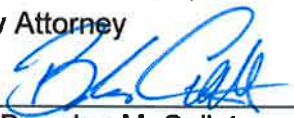
By: 
Name: DEBBIE J. SHARP

By: _____
Deputy

Title: SECRETARY
(If corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

APPROVED AS TO FORM

By:  9/12/17
Brandon M. Collet
Deputy City Attorney Date

By: _____
Name: _____
Title: _____

Attachment: Exhibit A Basin Description