

TOWN OF SUPERIOR
RESOLUTION NO. R-32
SERIES 2021

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN AGREEMENT WITH SERENDIPITY
CATERING FOR A FOOD AND BEVERAGE VENDOR

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR, COLORADO, as follows:

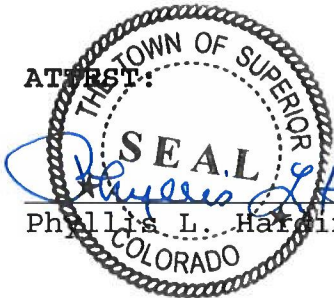
Section 1. The Agreement between the Town of Superior and
Serendipity Catering for a Food and Beverage Vendor is hereby
approved in substantially the same form as attached hereto, subject
to final approval by the Town Attorney.

ADOPTED this 24th day of May, 2021.



Clint Folsom, Mayor

ATTEST:



Phyllis L. Hardin, Town Clerk-Treasurer

CONCESSIONAIRE SERVICES AGREEMENT

24TH
X This Concessionaire Services Agreement (the "Agreement") is made and entered into this day of MAY, 2021 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, Colorado 80027, (the "Town"), and TASHMO KO CO d/b/a Serendipity Catering, an independent contractor with a principal place of business at 7110 West Colfax Avenue, Lakewood, Colorado 80214 ("Concessionaire") (each individually a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

APPOINTMENT OF CONCESSIONAIRE; EXCLUSIVE CONCESSIONS

1.1 Appointment. The Town appoints Concessionaire and Concessionaire hereby accepts the appointment as the exclusive operator and manager of all in-house, food, drink, and alcoholic beverage operations, sales and service as further defined in Article 2; as the programmer, scheduler and manager of entertainment for the Community Center, 1500 Coalton Road, Superior, Colorado 80027 (the "Location"); and as the non-exclusive operator and coordinator for such other Town events, catering and services as set forth in **Exhibit A**, attached hereto and incorporated herein (collectively, the "Concession Services"). The Town shall permit Concessionaire to use, on a non-exclusive basis, all portions of the Location, and, except as provided otherwise herein, Concessionaire shall have exclusive control over the food service facility specifically designed for concessions within the Location (the "Café").

1.2 Concession Services. The Town hereby grants and confers upon Concessionaire the following rights to operate and conduct Concession Services, and Concessionaire accepts the following duties and responsibilities, throughout the term of this Agreement:

a. Concessionaire shall have the exclusive right to sell and serve beer and wine (collectively "Alcohol Beverages") throughout the Location in accordance with applicable law and this Agreement. So long as this Agreement remains in full force and effect, the Town shall not authorize or permit any other person or entity, and shall not, on its own behalf, sell, or offer for sale, Alcohol Beverages at the Location.

b. Concessionaire shall make the Café fully operational and open for business on or before July 4, 2021. If liquor licensing is delayed, the Café may open with limited food and beverage offerings until licensing is secured.

c. Concessionaire shall have the exclusive right to sell and serve in the Café, and within the Location generally, non-alcoholic beverages and foods of all kinds, including, without limitation, bottled water, soft drinks, coffee, tea, candy, snacks, cooked food, prepared food, ready-to-serve food, sweets, dessert, ice cream and popcorn.

d. Concessionaire shall have the right of first refusal to provide Concession Services for all events and operations at the Location.

1.3 Inventory and Supplies. Concessionaire shall order, stock, prepare, pay for and sell all items appropriate for the Concession Services. Deliveries of food and beverage, including without limitation supplies, equipment, Alcohol Beverages, and all other items purchased or leased by Concessionaire for operation of the Concession Services (the "Commodities") shall be at a time, place and manner as reasonably approved by the Town. Concessionaire shall not receive or make any deliveries to or from the Location except through designated entrances and at the times designated by the Town. Only hand trucks or other material handling equipment equipped with rubber tires and side guards may be used in delivery or receipt of Commodities, unless approved by the Town. Town staff may ask Contractor to coordinate delivery or movement of such materials after normal business hours. Contractor is responsible for any damage that may occur.

1.4 Title to Commodities shall remain vested in Concessionaire. Upon termination of this Agreement, the Town shall have the right to purchase any or all Commodities owned by Concessionaire and to assume any of Concessionaire's current leases, with each such item being priced at Concessionaire's actual purchase price or lease payment.

1.5 Level of Service – Café. Concessionaire shall operate the Café Mondays through Thursdays from 8:00 a.m. to 8:00 p.m., Fridays and Saturdays from 8:00 a.m. to 10:00 p.m., and Sundays from 12:00 p.m. to 6:00 p.m. (the "Weekly Requirement"). The Weekly Requirement may be amended from time to time in writing by the Parties and shall at all times reflect the intent of the Parties that the Concession Services at the Café shall adequately meet patron demand. Neither Party has promised or guaranteed to the other any level of attendance, sales, revenues, or payments hereunder, except as expressly set forth herein.

1.6 Other Service at the Location. Concessionaire may also operate Concession Services outside the Café at the Location at Concessionaire's discretion during the Location's regular operating hours. The Town retains the right to require Concessionaire to provide Concession Services for particular events or performances outside the Location's normal operating hours and shall do so with at least two weeks' written notice to Concessionaire. Conversely, the Town may require Concessionaire to suspend or curtail Concession Services for particular events or performances, or portions thereof, as determined in the Town's sole discretion.

1.7 Quality of Service; Pricing. Concessionaire shall conduct Concession Services in a first-class manner at all times. Concessionaire will use its best efforts to limit its charges for each item to a level comparable to other similar venues within the greater Denver metropolitan area. Concessionaire shall be free to charge prices as low as it solely determines. Concessionaire shall quarterly provide for approval by the Town a list of products to be sold with proposed pricing. Prices and items shall reflect market trends, be reflective of the sample menus included in Exhibit A, and shall be comparable to similar events, entertainment, items and facilities. If the Town has reasonable concerns that Concessionaire is overcharging for Concession Services, or is not conducting itself in a first-class manner at all times, the Town and Concessionaire shall promptly meet and discuss such concerns, with the understanding that the ultimate determination as to these matters rests solely in the discretion of Town.

1.8 Compliance with Agreement and Laws. Concessionaire shall operate in the Location for no purpose other than that specified in this Agreement and the business conducted hereunder will

be operated in strict compliance with all laws, rules and regulations of the United States, and all other governmental entities, including without limitation, in compliance with all liquor, health, and fire laws and all applicable rules and regulations issued pursuant to the said laws.

1.9 Security. Concessionaire shall at all times comply with Town measures in place for the security of the Location, its contents and its occupants during operations and after; evacuating the Location for cause, suspected cause, or drill purposes; temporarily denying access to the Location, and enabling alarm systems and closing the Location after normal business hours and as required, subject to Concessionaire's rights to enter when the Location is closed after normal business hours for the purposes of this Agreement and under such reasonable regulations as the Town may prescribe.

ARTICLE 2 **ALCOHOL BEVERAGES**

2.1 Exclusivity at Location. Concessionaire shall have the exclusive control of any activities carried out on the Location related to the storage, distribution, transportation and sale of Alcohol Beverages pursuant to the Colorado Liquor Code, the regulations of the State of Colorado, and Town ordinances. Concessionaire shall employ all personnel required to dispense, sell and serve alcohol beverages and all such employees shall be of legal age and meet all other laws and regulations pertaining to individuals who dispense, sell and serve alcohol beverages.

2.2 License. Concessionaire shall apply for and diligently seek the issuance of a beer and wine license for sale and service of Alcohol Beverages at the Location generally and at the Café specifically (the "Liquor License"). Concessionaire shall comply with all rules, regulations, statutes, ordinances, and other laws governing the Liquor License. Concessionaire shall be considered the "owner" of the Location as defined under 1 C.C.R. 203-2, Regulation 47-318, as promulgated under the Colorado Liquor Code. The entire Location shall be permitted for Alcohol Beverages consumption, including one outdoor patio located on the west side.

2.3 Responsibility. Concessionaire bears the risk of loss and has the opportunity to gain profit from the operation of the Liquor License, and Concessionaire is in total and exclusive possession of the Location for alcohol beverage sales and service purposes. Concessionaire guarantees its own debts and is the beneficiary under its own insurance policies, and that it is liable for its own federal, state or local taxes relative to alcohol beverage sales.

2.4 Managers. Concessionaire may hire managers, and that said managers may be compensated on the basis of profits made, gross or net. The Parties agree to cooperate with one another in furtherance of satisfying the requirements in 1 C.C.R. 203-2, Regulation 47-318, and they shall take all actions to ensure said compliance.

2.5 Protection and Transfer of Liquor License.

a. For good and valuable consideration, and as a material inducement for the Town to enter into this Agreement, Concessionaire shall, at all times, comply with all liquor license laws, rules and regulations, including taking all actions and paying all fees or costs for the prompt and

punctual renewal of the Liquor License. In no event shall Concessionaire attempt to change the location of the Liquor License; attempt to procure a change in the class of Liquor License; or attempt to surrender the Liquor License.

b. Concessionaire covenants and agrees that in the event of any default by Concessionaire under this Agreement, including the obligations and covenants set forth herein, or upon expiration or earlier termination of this Agreement, the Liquor License shall remain with the Location and the Town, or any subsequent concessionaire, and the Town or any subsequent concessionaire at the Location shall have the right to apply for and receive a transfer of the ownership of the Liquor License, or take such other action with respect to the Liquor License as the Town deems appropriate. Concessionaire shall cooperate with the Town or any subsequent concessionaire and timely execute any and all related documents in that regard, including an affidavit of transfer.

c. If Concessionaire is charged with any violations of the Liquor License that could result in the suspension, revocation or non-renewal of the Liquor License, Concessionaire shall immediately notify the Town at which time the Town may elect, in its sole and absolute discretion, to declare Concessionaire in default of this Agreement, at which time the Town shall have the immediate right to terminate this Agreement and retake exclusive possession and control of the Location for Alcohol Beverage purposes, without waiving any other rights under this Agreement, and without the need to file legal proceedings. Concessionaire hereby waives any additional notice as may or may not be required under this Agreement, and Concessionaire shall cooperate in good faith with the Town in the event the Town is required to terminate this Agreement and retake possession of the Location for Alcohol Beverage purposes, including the prompt execution of an affidavit of transfer and related Liquor License documents. The Parties agree and acknowledge that the Town will rely on this provision of the Agreement to repossess the Location and transfer the Liquor License from Concessionaire to the Town, or a subsequent concessionaire, without the need for any judicial proceedings, including the necessity of a forcible entry and detainer action, or any additional agreements or consideration as between the Parties.

ARTICLE 3 **FOOD SERVICE**

3.1 Compliance with Laws. All foods and beverages sold by Concessionaire shall conform to the requirements of all applicable federal, state and municipal laws, statutes, ordinances and regulations. All foods and beverages acquired by Concessionaire shall be stored and handled at all times consistent with excellent standards of sanitation, preservation and purity. Concessionaire shall abide by all federal, state, county and municipal laws, health departments, standards and regulations.

3.3 Public Health Orders. Concessionaire shall follow Boulder County and State of Colorado public health requirements for public health emergencies, such as COVID-19, and additional health requirements that may arise, including without limitation attendance and capacity restrictions and any other restrictions the Town adopts and imposes, in its sole discretion.

3.4 Permits and Licenses. Concessionaire shall secure, maintain, and display all required permits, licensing, and proof of staff training as may be required by the Boulder County Health Department for all food, beverage, alcohol, and event management services provided. Concessionaire shall provide a copy of all such permits and certifications to the Town.

ARTICLE 4 **TERM**

4.1 Term, Termination and Renewal. The term of this Agreement shall commence on the Effective Date date and shall continue until June 24, 2022 (the "Initial Term"). This Agreement shall automatically renew for up to 4 successive one-year terms ("Renewal Terms") unless either Party provides at least 90 days prior written notice to the other Party of its election to terminate the Agreement at the end of the then-current term, or unless the Agreement is otherwise terminated pursuant to the other provisions of this Agreement.

4.2 Condition upon Surrender. Prior to the expiration date of this Agreement, or in the event this Agreement is terminated, within 15 days after the termination date, whichever is earlier, Concessionaire shall remove, at its sole expense, equipment and personal property owned or installed by Concessionaire from the Café specifically or Location generally, as well as those improvements, alterations, and additions to the Location that are specified in the Town's notice. Concessionaire shall take due care during performance to not unreasonably injure or damage the Location and shall make such repairs to the Location as shall be necessary to restore the same to their condition as of the commencement date of this Agreement, ordinary wear and tear and improvements, additions, and alterations, approved by the Town, excepted. In the event Concessionaire fails to remove personal property and the improvements, alterations, and additions specified in the Town's notice on or by the time specified in such notice, the Town may, but shall not be required to remove such material and store the same, all at Concessionaire expense; and in the event the Town removes or arranges for the storage of such material, the Town shall be reimbursed its costs therefore, including any administrative costs, which reimbursement shall constitute a claim upon Concessionaire or, at the Town's option, may be invoiced to Concessionaire or deducted from the security deposit.

ARTICLE 5 **CAPITAL IMPROVEMENTS, EQUIPMENT, REPAIR AND MAINTENANCE**

5.1 Existing Condition of Location. Concessionaire accepts the Location in its AS IS, WHERE IS condition, without any warranty whatsoever. The Town represents that the Location generally, and specifically the Café, contains certain capital improvements, equipment, and Smallwares. As used herein, "Smallwares" means pots, pans, utensils, dishes, glassware, silverware and other items commonly called smallwares in the food-service industry.

5.2 Additional Improvements. From time to time during the term of this Agreement, it may be desirable to consider additional capital improvements and the purchase of additional or replacement equipment for the Café specifically or the Location generally. The Parties agree to cooperate with each other to confer and consider the advisability of any additional capital improvement, or additional or replacement equipment. The Town shall have no obligation to make

additional capital improvements, and Concessionaire shall have no obligation to purchase additional or replacement equipment; provided however, that upon the commencement of the term of this Agreement, Concessionaire shall purchase and set in place such additional equipment as is necessary to operate Concession Services at the Location, and Concessionaire shall at all times be required to immediately repair or replace any equipment that does not work properly, or which was damaged or destroyed by Concessionaire. Notwithstanding the foregoing, Concessionaire shall notify and obtain the Town's written permission prior to purchasing or installing within the Location any additional or replacement equipment.

5.3 Mechanics' Liens. In installing or constructing any equipment, improvements, finishes, decoration or capital improvements at the Location, the Party doing such work shall, at its own cost and expense, obtain and maintain all necessary or required permits, licenses, and approvals, shall conform with all applicable laws and regulation, and shall obtain adequate and customary insurance. Concessionaire shall indemnify and hold the Town harmless from and against any damages resulting from mechanic's liens purportedly filed against the Location or the assets located therein by any contractors engaged by Concessionaire. Notwithstanding the foregoing, Concessionaire shall not make any alterations, improvements, or changes to the Location without the prior written consent of the Town, which may be withheld or conditioned for any reason.

5.4. Maintenance and Repair. The Town, without cost to Concessionaire, shall maintain and repair the Location, as well as the sewer, water, and electricity lines located beyond the Location. Town shall also be responsible for the repair, cleaning, and maintenance of all heating and air conditioning systems serving the Location. Concessionaire, at its sole cost, shall be responsible for the repair, cleaning, and maintenance of all portions of the equipment, additional equipment and replacement equipment in the Café and such other equipment as it may install and operate within the Location generally. The Town is not obligated to repair or replace any damage caused by the act or omission of Concessionaire, its agents, servants, employees or representatives, as all such damage shall be forthwith repaired by Concessionaire, at its sole cost and expense or the Town may take action to repair or replace such damage and recover all related costs and expenses, including, without limitation, court costs and attorney fees, from Concessionaire.

5.5 Condition. Concessionaire shall keep the Café, as well as such other areas of the Location used for Concession Services, in a clean and sanitary condition at all times.

5.6 Signage. No signs, advertisements or notices shall be painted or affixed on or to any part of the Location, including the Café, without the prior written consent of the Town. No nails, hooks or screws shall be driven or inserted in any part of the Location except by Town maintenance personnel or with the Town's prior written consent.

5.7 Hazardous Materials. Concessionaire shall not cause to occur within the Location or permit within the Location the generation, production, manufacture, refinement, transportation, treatment, storage, handling, disposals, transfer, or processing of hazardous substances except in compliance with all applicable laws and regulations. Concessionaire shall provide the Town with Concessionaire's USEPA Waste Generator Number, if any, and with a copy of every Material Safety Data Sheet (MSDS), Generator Annual Dangerous Waste Report, environmentally related regulatory permit or approval, including every revision or renewal thereof, and any

correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire's handling of hazardous substances or the presence, or possible presence, of any hazardous substances.

ARTICLE 6 **COMPENSATION**

6.1 **Concession Fee.** Commencing on July 1, 2021, and throughout the Initial Term and any Renewal Term, Concessionaire shall pay to the Town \$1,450 per month (the "Concession Fee") as payment for the right to conduct the Concession Services, as rent for the use of the Café and associated equipment, as compensation for Concessionaire's use of the Location generally, and for the right to conduct Town Events as described in Exhibit A. The Concession Fee shall be paid to the Town on or before the first day of each month without notice or demand, and without deduction or offset, at the address specified by Town. A delinquent payment charge of 10% of the Concession Fee shall be payable to the Town if the Concession Fee has not been received after the 5th day of each month.

6.2 **Revenues.** Concessionaire shall collect and may retain all revenues from their Concession Services conducted at the Location and at Town Events, as described in Exhibit A, and shall remit and pay all applicable taxes.

6.3 **Security Deposit.** The Town acknowledges receipt of a cash security deposit in the amount of \$10,000 to be held by the Town for the Initial Term and all Renewal Terms, as security for faithful performance of Concessionaire's obligations under this Agreement. The Town may, following any event of a default or breach of this Agreement, and without any prejudice to any other remedy, use all or part of the security deposit to perform any obligation Concessionaire fails to perform hereunder. At the expiration or termination of this Agreement, provided Concessionaire has performed all of its obligation hereunder, the Town shall, within 60 days, return to Concessionaire that portion of the security deposit not used by the Town to satisfy Concessionaire's obligations.

ARTICLE 7 **UTILITIES; TRASH REMOVAL**

7.1 **Electricity.** The Town shall furnish Concessionaire, at no cost to Concessionaire, with electrical connections, at and in the Café and generally in the Location, to permit Concessionaire to operate the electrical equipment customarily used in connection with the Concession Services. The Town shall pay the cost of electrical current used by Concessionaire in connection with its normal and customary operations. If Concessionaire desires to relocate electrical connections to improve its operating efficiency, Concessionaire may relocate such connections at Concessionaire's sole cost and expense with the Town's written prior approval.

7.2 **Other Utilities.** The Town shall, at no cost to Concessionaire, air condition and heat the Location in a proper manner and shall furnish Concessionaire at the Location with cable television service, an adequate potable hot and cold water supply, and appropriate drainage and sewage

facilities to permit Concessionaire to use the Location for Concession Services in the normal and customary manner.

7.3 Trash. Concessionaire shall periodically remove all garbage and trash generated by the Concession Services and shall deposit the same in appropriate receptacles provided by the Town. The Town shall provide and contract for the hauling of garbage and trash from the Location and from Town Events, as described in Exhibit A.

ARTICLE 8 **EMPLOYEES AND ACCESS**

8.1 Training. Concessionaire shall employ, train and supervise such personnel with appropriate qualifications and experience in sufficient numbers to provide all Concession Services in a first class manner. Concessionaire shall require all employees working with Alcohol Beverages to satisfactorily complete and maintain responsible vendor training.

8.2 Identification. At all times when the Location is open to the general public or other patrons, Concessionaire's employees shall be attired in clean uniforms and shall wear badges clearly visible to patrons that include the individual employee's name or identification number. Employee uniforms and identification badges shall be subject to Town's reasonable approval.

8.3 Employment. All persons engaged by Concessionaire to operate Concession Services shall be the sole and exclusive employees of Concessionaire and shall be paid by Concessionaire. In connection with the employment of its employees, Concessionaire shall pay all applicable social security, unemployment, workmen's compensation or other employment taxes or contributions of insurance, and shall comply with all federal, state and local laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance, worker's compensation and immigration (as set forth in more detail in Article 9). Neither Concessionaire nor its employees shall enter into electrical, computer, or mechanical rooms of the Location unless accompanied by Town staff.

8.4 Background Check. Concessionaire shall certify that all employees working at the Location or at Town Events, as defined in Exhibit A, have successfully passed a criminal background check.

8.5 Discrimination. Concessionaire shall not discriminate against any employee or applicant for employment because of race, age, color, religion, handicap, sex, ancestry, national origin, or place of birth; nor shall any person be denied service by Concessionaire nor be prevented from participating in any portion of any public function or activity controlled by Concessionaire because of race, age, color, religion, handicap, sex, ancestry, national origin, or place of birth. All advertisements for hiring of employees by Concessionaire for the Location or Town Events, as defined in Exhibit A, shall state it is an Equal Opportunity Employer, or such other requirements as set forth by local or state agencies in connection with employment.

ARTICLE 9
WORKERS WITHOUT AUTHORIZATION

9.1 Concessionaire hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an worker without authorization who will perform work under this Agreement and that Concessionaire will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

9.2 Prohibited Acts. Concessionaire shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Concessionaire that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

9.3 Verification.

a. If Concessionaire has employees, Concessionaire has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

b. Concessionaire shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

c. If Concessionaire obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an worker without authorization who is performing work under this Agreement, Concessionaire shall: notify the subcontractor and the Town within 3 days that Concessionaire has actual knowledge that the subcontractor is employing or contracting with an worker without authorization who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under this Agreement; except that Concessionaire shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an worker without authorization who is performing work under this Agreement.

9.4 Duty to Comply with Investigations. Concessionaire shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Concessionaire is complying with the terms of this Agreement.

9.5 Affidavits. If Concessionaire does not have employees, Concessionaire shall sign the "No Employee Affidavit" attached hereto. If Concessionaire wishes to verify the lawful

presence of newly hired employees who perform work under the Agreement via the Department Program, Concessionaire shall sign the "Department Program Affidavit" attached hereto.

ARTICLE 10
INSURANCE; INDEMNITY

10.1 Insurance.

a. Throughout and with respect to the term of this Agreement, Concessionaire shall maintain policies of commercial general liability insurance (with contractual indemnity and ownership or operation of motor vehicles coverage), including without limitation severability of interest, primary, property and risk, not contributing coverage, blanket contractual, products/completed operations, broad form property damage, liquor liability and personal liability, naming the Town as additional insured, with the premiums thereon fully paid in advance, issued by and binding upon an insurance company authorized to transact business in the State of Colorado and of good financial standing and rated "A/VII" or better, such insurance to afford minimum protection of not less than \$2,000,000 combined single limit for each occurrence and \$3,000,000 for the aggregate of all occurrences within each policy year, as well as excess liability (umbrella) insurance with limits of at least \$2,000,000 per occurrence.

b. Concessionaire shall maintain workers' compensation coverage as required by law.

c. In addition to other commercially necessary policies and amounts, Concessionaire shall maintain dram shop liquor liability insurance of at least \$2,000,000 for the Location and Town Events, as defined in Exhibit A.

d. The policies of insurance shall only be cancelable following at least 30 days' written notice to the Town. Concessionaire shall furnish evidence of such insurance within 10 days after written request from the Town. The stipulated limits of coverage shall not be construed as a limitation of any potential liability of Concessionaire, and failure to deliver said insurance certificate shall in no way be construed as a waiver of Concessionaire's obligation to provide the insurance coverage specified.

e. All policies of insurance shall provide that the insurance company will have no right to subrogation against the Town or any of its agents or employees or affiliates. Concessionaire waives any claim against the Town for any liability, cost or expense (including attorney fees and disbursements) arising out of any insured claim, in part or in full, of any nature whatsoever.

10.2 Indemnity. Concessionaire agrees to protect, indemnify, hold harmless and defend the Town from any losses, liabilities, costs, expenses, suits and claims that are related to any injury or alleged injury to any person (including death), or to the property or loss thereof of any person, firm or corporation, that may arise, or that may be alleged to have arisen, out of the operations of Concessionaire (specifically including the sale of food and Alcohol Beverage) or out of any act or omission of its agents, employees, representatives, consumers, customers, patrons, clients, or subcontractors whether such loss, claim, etc. shall be made or suffered by an employee of Concessionaire or the Town, or by any third party. Concessionaire shall, at its own cost and

expense, pay all charges of attorneys and all other costs and expenses arising therefrom or incurred by the Town in connection therewith; provided that the Town retains the right to elect the legal counsel of its choice to be paid by Concessionaire.

ARTICLE 11 **ASSIGNMENT**

11.1 By Town. The Town may freely assign its rights and privileges under this Agreement provided that the terms and conditions of this Agreement are fully assumed by the assignee.

11.2 By Concessionaire. This Agreement may not be assigned or sublet by Concessionaire directly or indirectly, unless previously approved in writing by the Town in its sole and absolute discretion.

ARTICLE 12 **DEFAULT**

12.1 By Concessionaire. The Town may at its option terminate this Agreement, without prejudice to any claims which the Town may have against Concessionaire if: (a) Concessionaire fails to pay any sums when due or commits any other breach of any term, condition or covenant contained herein and fails to cure same within 5 days after receipt of written notice from the Town to do so; (b) Concessionaire makes an assignment for the benefit of creditors; (c) a proceeding in bankruptcy, receivership or insolvency is instituted by or against Concessionaire; or (d) a trustee or receiver is appointed for Concessionaire. If Concessionaire commits a breach that has not been cured within the time specified above or commits a breach that creates an emergency situation, the Town, without waiving any of its other rights, powers or privileges, may act to cure the breach and the costs incurred by Town in so doing shall be payable as additional payment immediately upon written notice from the Town or may be deducted by the Town from the security deposit. No failure of the Town to exercise any right, power or privilege shall operate as a waiver thereof, or as a waiver of any other right, power or privilege. It shall also be a default under this Agreement if Concessionaire fails to pay the Town any sums due to the Town on a timely basis more than 2 times in any calendar year.

12.2 By Town. Concessionaire may, at its option, terminate this Agreement if: (a) the Town commits a material breach of any term, condition or covenant contained herein and fails to cure such breach, or (b) the Town makes an assignment for the benefit of creditors, or if a proceeding in bankruptcy, receivership, or insolvency shall be instituted by or against the Town, or if a trustee or receiver shall be appointed for the Town. The Town's liability for damages shall be limited to actual damages only, and the Town shall not be liable for special or punitive damages. No failure of Concessionaire to exercise any right, power or privilege hereunder shall operate as a waiver thereof, or as a waiver of any other right, power or privilege; provided, however, in no event will any employee, official, agent, or attorney of the Town have any personal liability to Concessionaire or to any party claiming by, through, or under Concessionaire.

ARTICLE 13
CASUALTY

13.1 Casualty. If the Location is destroyed and rendered untenable by fire, explosion or other casualty, and the Town fails to rebuild the Location within 180 days, then Concessionaire shall have the right, but not the obligation, to cancel and terminate this Agreement. Notwithstanding the foregoing, if the Town is using its reasonable efforts to rebuild the Location, Concessionaire's right to terminate shall be suspended for an additional 90 days. Notwithstanding anything contained herein to the contrary, the Town shall have the right to terminate this Agreement if it determines, in its sole discretion, that it cannot rebuild the Location.

ARTICLE 14
FINANCIAL REQUIREMENTS

14.1 Records. Concessionaire shall maintain, for a period of 5 years following the end of the term, complete books and records and all related back up materials, which shall be made available to Town on reasonable advance notice for inspection and audit by Town and its representatives.

14.2 Accounting. Concessionaire shall maintain a system of tracking sales and provide monthly reports to the Town, with such reports including units, items and dollar amounts sold. Concessionaire shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be generally acceptable accounting principles, according to the American Institute of Certified Public Accountants, and shall permit inspection of said books and records by the Town as often as deemed necessary including tax reports, Federal and State tax returns, banking records, sales records, cash receipts journals, and other financial records.

14.4 Taxes and Fees. Concessionaire shall pay and disperse, before delinquency, all taxes and similar charges assessed directly against Concessionaire, the Café, the equipment, additional equipment, and its operations by any taxing authority, including without limitation any property or *ad valorem* tax based upon or measured by or assessed against its personal property, including without limitation the Commodities and any additional inventories.

14.5 Annual Report. Concessionaire shall submit at the end of each fiscal year at Concessionaire's sole cost and expense, a certified, audited annual report, or as required a profit and loss statement of operations under the terms of this Agreement, in a form considered to be generally acceptable accounting principles according to the American Institute of Certified Public Accountants and satisfactory to the Town.

ARTICLE 15
MISCELLANEOUS

15.1 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

15.2 No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

15.3 Integration. This Agreement and any attached exhibits constitute the entire agreement between Concessionaire and Town, superseding all prior oral or written communications.

15.4 Third Parties. There are no intended third-party beneficiaries to this Agreement.

15.5 Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the address included on the first page of this Agreement.

15.6 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

15.7 Modification. This Agreement may only be modified upon written agreement of the Parties.

15.8 Governmental Immunity. Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to Town and its officers, attorneys or employees.

15.9 Rights and Remedies. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by Town shall not constitute a waiver of any of the other terms or obligation of this Agreement. The rights and remedies of Town under this Agreement are in addition to any other rights and remedies provided by law.

15.10 Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

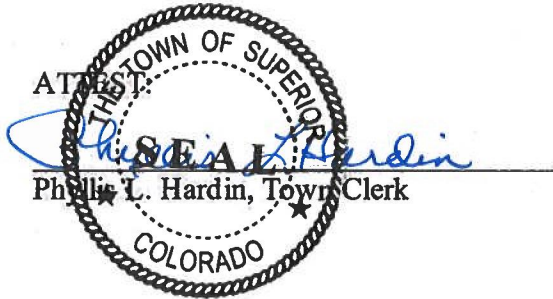
15.11 No Joint Venture. Nothing herein shall create a partnership, joint venture or other fiduciary relationship between the Parties.

15.12 Fees and Costs. In addition to any other relief to which the Town is entitled, if Town is the party prevailing in any litigation arising under or connected with this Agreement, Town shall be entitled to recover its reasonable attorneys' fees and costs incurred therein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO

Clint Folsom
Clint Folsom, Mayor



CONCESSIONAIRE

By: Laura Zaspal
LAURA ZASPA, CEO
SERENDIPITY CATERING

STATE OF COLORADO)
COUNTY OF Jefferson) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this ___ day of 21st May 2021, by Laura Zaspal as CEO of Serendipity Catering

My commission expires:
(S E A L)

[Signature]
Notary Public

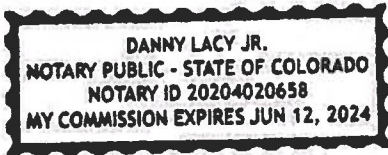


EXHIBIT A SERVICES

Under this Agreement, Concessionaire shall:

- Operate and manage of all in-house, food, drink, and alcohol beverage operations, sales and service at the Café, specifically, and at the Location generally.
- Host monthly events and/or entertainment at the Location for the purpose of building gathering space atmosphere/culture such as movie nights, tasting events, farmers market, themed happy hours, and open mic nights/live music.
- Implement, with Town approval, reasonable traffic control measures for customer pick-up items to avoid congestion due to limited parking at the Location.
- Require its employees to park in most distant area from the Location in a designated employee parking area.
- Follow Town and Boulder County best practices for recycling (single stream recycling guide). Concessionaire shall not dispose of light bulbs, ballasts or any fixtures or equipment containing hazardous substances in any trash dumpster; Concessionaire shall dispose of all such materials in accordance with applicable laws.
- Not enter into any agreements to provide services at the Location, such as food trucks and entertainment, or to provide services at Town Events, as defined below, without prior consultation and approval from the Town Parks, Recreation and Open Space Director. Consultation with the Town includes without limitation the ability for the Town to review and submit comments to Concessionaire on such agreements prior to approval.
- Designate a Senior Event Coordinator staff person for partnership, planning and execution of all Town Events, as defined below, and for all events at the Location. Concessionaire's Senior Event Coordinator shall cooperate and participate in pre-event planning meetings with the Town, as required, to prepare for all events as efficiently and cooperatively as possible.
- Offer for sale food and drink consistent with the menus previously approved by the Town.
- Provide food and beverage service for Town-sponsored events at times and locations specified by the Town ("Town Events") including without limitation Alcohol Beverage sales and service, during which events Concessionaire shall comply with the terms and conditions of the Agreement, to the extent applicable, and with the following additional requirements:
 - At least two weeks prior to the Town Event, submit to the Town for approval all event logistics prepared by Concessionaire including security, parking and traffic plan, trash and recycling, and load-in and load-out procedures.

- Provide, at its sole expense, all items necessary to provide onsite sale of Alcohol Beverages, non-alcoholic beverages and food catering. Concessionaire's responsibilities may include, without limitation, power generators, tables chairs, tents, cups, utensils, napkins, etc. All items purchased by Concessionaire shall remain the property of Concessionaire.
- Sell and serve Alcohol Beverages at the event in compliance with a special event liquor permit issued to the Town or to another organization qualified to hold a special event liquor permit pursuant to C.R.S. § 44-5-102, as amended.
- Setup, tear down and clean-up all equipment used and shall remove said equipment from the event grounds within 24 hours of the conclusion of every Town Event.
- Leave the site the same condition as it existed prior to Town Event.
- Solicit Town Event sponsors in coordination with the Town.
- Print and post all signage at each serving station regarding alcohol selection, food selection and pricing.
- Provide the necessary trained personnel for each Town Event.
- Provide or secure Wi-Fi or cellular connectivity for Concessionaire's sales or other needs. Town does not guarantee internet access at event locations. Concessionaire shall secure Wi-Fi equipment at its own expense.
- Secure the premises with required alcohol fencing and coordinate and hire off-duty Boulder County Sheriff Deputies as required to provide on-site security during events. Town contact information will be shared with the Contractor.
- Maintain a system of tracking sales and provide reports by event to the Town of Superior.
- Require Concessionaire's employees to wear a uniform, festival t-shirt and/or credentials for identification purposes at the Town Event.
- For Town Events, Concessionaire may not be the exclusive provider of food or beverage service, including without limitation Alcohol Beverage sales and service.

N/A

NO EMPLOYEE AFFIDAVIT

[To be completed only if Concessionaire has no employees]

1. Check and complete one:

I, _____, am a sole proprietor doing business as _____. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Superior (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

Concessionaire must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT

[To be completed only if Concessionaire participates in the Department of Labor Lawful Presence Verification Program]

I, Laura Zaspel, as a public contractor under contract with the Town of Superior (the "Town"), hereby affirm that:

- 1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;
- 2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and
- 3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

[Signature]
Signature

21 May 2021
Date

STATE OF COLORADO)
COUNTY OF Jefferson) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 21st day of May, 2021, by Laura Zaspel as CEO of Secundity Catering

My commission expires:

(S E A L)

[Signature]
Notary Public

