

REQUEST FOR PROPOSAL EQUESTRIAN ACTIVITIES

The Charter Township of Commerce is currently accepting bid proposals for a concessionaire agreement for the purpose of providing the general public a recreational and/or educational opportunity to learn about, interact with, and ride horses, whereby concessionaire shall operate a public use horse stable and riding facility on a year-round basis.

Property is located at:

2552 Wixom Rd
Commerce Twp, MI 48382

The property includes a horse stable, riding area, various buildings, outbuildings, and fenced pasture.

General Bid Information may be viewed at the Office of the Township Clerk: 2009 Township Drive., Monday –Thursday 7:15 a.m. to 5:30 p.m.

Timeline of events:

- **Site visits are scheduled for Monday, March 7th from 9am-12pm and Monday, March 14th from 2pm-5pm.**
- **Pre-Bid information conference shall be held at 3:30pm on Monday, March 21st, at the Township Hall, Commerce Township.** All bidders are strongly encouraged to attend. Those who cannot attend may submit questions in writing.
- **Sealed bids will be received by the Office of the Township Clerk until 2:00p.m., Thursday, March 31st** proposals shall be addressed as follows:

**CHARTER TOWNSHIP OF COMMERCE
C/O THE CLERK'S OFFICE
2009 TOWNHSIP DRIVE
COMMERCE TOWNSHIP, MI 48390**

- All bids received by the deadline will undergo review, with successful concessionaire to be determined on **April 5th**.

Questions regarding specifications are to be directed to Emily England at 248-926-0063, or by email to: eengland@commercetwp.com.

All bids must be signed by a legally authorized agent of the firm making a proposal. Envelopes must be plainly marked: **Equestrian Activities Proposal**.

The Charter Township of Commerce reserves the right to accept or reject any or all proposals and to waive any irregularities in the best interest of the Charter Township of Commerce.

Melissa Creech, MiPMC

General Bid Information:

1. The successful concessionaire will be required to sign a contract. The terms and conditions stated in the enclosed sample contract are to be considered as requirements for this Invitation to Bid
2. It is recommended that applicants make a personal visit to the site to determine the conditions to be encountered, plus any factors affecting the operation. Site visits will be Monday, March 7th from 9am-12pm and Monday, March 14th from 2pm-5pm.
3. Bidders must accept the property in its present condition
4. Awarded concessionaire shall provide services by appointment a minimum of 5 days a week
5. Awarded Concessionaire shall develop public use programs and practical instruction in horsemanship benefitting the general public and shall offer such programs to citizens and residents of the Township at a discounted rate. Significant weight will be given to the focus on creative ideas that focus on improving awareness and participation of Commerce Township residents, and a willingness and ability to maintain a website and/or social media for informational and promotional purposes.
6. Awarded concessionaire shall also, at the request of the Commerce Township Parks and Recreation Committee, be able to make horses available at special events in Township parks to promote the equestrian activities program.

Concession Fees:

For the period of time that this Agreement shall be in effect, the concessionaire shall pay to the Township a concession fee for the exclusive right to operate the public use riding stable and equine facility at the Property, in the amount of \$16,800 annually. A Payment schedule can be setup with the Township upon execution of Agreement. Any payments returned due to insufficient funds will be charged a \$27.50 NSF fee.

The Township will require a security deposit of \$2,800.00; the deposit shall be maintained by the Township to secure Concessionaire's performance of the signed agreement.

Insurance:

Concessionaire shall maintain active coverage of insurance meeting the standards of the Charter Township of Commerce Mandatory Insurance and Indemnification Rider.

Concessionaire shall show proof of the required insurance to the Township upon execution of this Agreement.

Release of Claims. Each bidder submitting its proposal releases the Township from any and all claims arising out of, and related to, the RFP process and the selection of a firm. The Michigan Freedom of Information Act ("FOIA") requires the disclosure, upon request, of all public records that are not exempt

from disclosure under Section 13 of the Act. Therefore, confidentiality of information submitted in response to this RFP after bid opening is not assured.

Collusive Bidding and Relationship Disclosure.

The bidder certifies that their proposal is made without any previous understanding, agreement or connection with any person, firm, or company making a proposal for the same project and is in all respects fair and without outside control, collusion, fraud, or other illegal action.

The bidder shall submit an Iran Economic Sanctions Act Certification in substantially the form attached hereto as **Attachment A**.

CONCESSION BIDDER QUALIFICATION STATEMENT

Check One: An Individual A Co-Partnership A Corporation

Submitted by: _____

With principal office at: _____

The completion and submission of this questionnaire and the required attachments reflects accurate and truthful statements of the signatory. Attach additional pages if necessary.

BUSINESS EXPERIENCE:

1. Describe the experience you/your organization has had in businesses related to the one being bid.

2. If you plan to use a manager, describe the manager’s experience and qualifications.

3. Do you plan to sublet or assign any portion or the entire contract to another party? If yes, explain.

4. Please describe your staff plan.

5. Describe your marketing, advertising, and sales promotion plans including the annual budget specifically for each activity.

6. Describe the services that you would offer.

7. Please explain your transition plan to the property.

8. Describe your plans for maintenance and repair of the property.

9. List names, address, phone number, and contact person of insurance carrier who will provide your required insurance.

10. List a minimum of two (2) personal and two (2) business references, with addresses and telephone numbers.

11. You may, if you desire, provide a narrative that would include anything you feel might assist the Department in evaluating your experience or plan of operation. If appropriate, describe plans you may have for refurbishing, including projected expenditures. Attach additional sheets if necessary.

BIDDER: _____

(signature)

(printed name)

(title)

(date)

Attachment A – Iran Economic Sanctions Act Certification

I am the _____ (title) _____ of _____ (bidder) _____, or I am bidding in my individual capacity (“Bidder”), with authority to submit a binding bid for the provision of owner’s representative services to Charter Township of Commerce. I have personal knowledge of the matters described in this Certification, and I am familiar with the Iran Economic Sanctions Act, MCL 129.311, et seq. (“Act”). I am fully aware that the Township will rely on my representations in evaluating bids.

I certify that Bidder is not an Iran-linked business, as that term is defined in the Act. I understand that submission of a false certification may result in contract termination, ineligibility to bid for three (3) years, and a civil penalty of \$250,000 or twice the bid amount, whichever is greater, plus related investigation and legal costs.

(signature)

(printed name)

(date)

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (the "Agreement") made and entered into as of the _____ day of _____ 20____, by and between the **CHARTER TOWNSHIP OF COMMERCE**, a Michigan municipal corporation, whose address is 2009 Township Drive, Commerce Township, Michigan 48390 (hereinafter referred to as the "Township"), and _____, whose address is _____ (hereinafter referred to as "Concessionaire").

RECITALS

A. The Township, as a part of its parks program, desires to make available equestrian activities to citizens of the Township and the surrounding communities. The Township and Concessionaire are entering into this agreement for the purpose of providing the general public a recreational and/or educational opportunity to learn about, interact with, and ride horses, whereby Concessionaire shall operate a public use horse stable and riding facility on a year-round basis as described in this Agreement.

B. The Township is the owner of property situated in the Township of Commerce, County of Oakland and State of Michigan and described as:

T2N, R8E, SEC 19 PART OF NW ¼ BEG AT PT DIST E 1313.50 FT FROM W ¼ COR, TH N 00-13-00 E 1282.00 FT, TH E 329.02 FT, TH S 00-54-00 E 641.00 FT, TH E 33.00 FT, TH S 01-04-24 W 641.00 FT, TH S 88-01-36 W 33.00 FT, TH W 354 FT TO BEG EXC THAT PART LYING ELY OF LI DESC AS BEG AT PT DIST E 1667.50 FT FROM W ¼ COR, TH N 00-54-00 W 647 FT TO PT OF ENDING 10.07 A 11-6-98 FR019
Parcel Number: E 17-19-100-067

T2N, R8E, SEC 19 PART OF NW ¼ BEG AT PT DIST E 659.67 FT FROM W ¼ COR, TH N 00-16-53 E 1341.89 FT, TH S 89-59-21 E 555.12 FT, TH S 00-16-53 W 1341.78 FT, TH W 555.12 FT TO BEG 17.10 A
Parcel Number: E 17-19-100-044

T2N, R8E, SEC 19 PART OF NW ¼ BEG AT PT DIST E 1213.50 FT FROM W ¼ COR, TH E 100.00 FT, TH N 00-13-00 E 1341.00 FT, TH W 100.00 FT, TH S 00-13-00 W 1341.00 FT TO BEG 3.08 A
Parcel Number: E 17-19-100-031

(the "Property").

C. The Property includes a horse stable, various buildings, outbuilding, and fenced pasture.

D. The management of Concessionaire represents itself to have experience in the

operation of a public use horse stable and equine activities facility and desires to enter into this Agreement with the Township, recognizing the type of operation that the Township desires.

AGREEMENT

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Township agrees to grant to Concessionaire the right to engage in the following activities on the Property under the following provisions:

1. Description of the Concession.

Subject to the terms of this Agreement, Concessionaire shall have the right to operate a public use riding stable and equine activities facility on the Property, which function will be served by the Concessionaire at the pleasure and will of the Township in accordance with the following guidelines and terms:

- a. The facility shall be open to the general public.
- b. No membership shall be required to use the facilities or services and no membership fees shall be charged.
- c. Concessionaire shall provide the services described in the attached Rate Tables (**See Exhibit A**).
- d. Concessionaire shall charge for services as provided in the attached Rate Tables (**See Exhibit A**).
- e. Concessionaire shall provide services by appointment, at a minimum, 5 days per week. The dates and times of regular lessons and team training shall be provided by Concessionaire to the Parks & Recreation Committee. The parties understand that fixed hours for such operations are not customary.
- f. Concessionaire shall promote equine activities and market the horse farm operation to the public, and the availability of the riding stable and equine activities on the Property and shall seek to increase the number of local participants. At the request of the Township and its Parks & Recreation Committee, Concessionaire shall develop public use programs and practical instruction in horsemanship benefitting the citizens and residents of the Township and shall offer such programs to citizens and residents of the Township. Discounted rates for such programs shall be as more particularly set forth on **Exhibit A**.

- g. At the request of the Township and its Parks & Recreation Committee, Concessionaire shall make horses available at special events in Township parks to promote the equestrian activities program. Concessionaire shall not be obligated to provide ponies or offer pony rides at said special events.

- h. Concessionaire shall maintain the Property and all structures located thereon in a suitable condition for the intended purpose and in a manner meeting generally accepted safety and agricultural standards.
- i. Concessionaire shall be responsible for the routine maintenance of the pasture on the Property including the removal of manure from the Property every 90 days. Concessionaire shall immediately notify the Parks & Recreation Director of any issues due to weather or other constraints that compromises Concessionaire's ability to comply with this 90-day requirement.
- j. Concessionaire shall be responsible for the monitoring and control of rodents and insects that could adversely affect the public health, the health of the horses, and the environment.
- k. Concessionaire shall immediately report maintenance issues affecting the structural soundness or safety of any building or structure on the Property to the Township Supervisor and Parks and Recreation Director.
- l. Concessionaire shall comply with all State laws for maintaining records relating to each horse allowed on the Property (e.g., Coggins Test).
- m. Concessionaire shall develop and submit to the Township, with appropriate updates as made thereafter, a site plan showing the areas of the Property that will be used for training, tack room, washing and grooming area, offices, manure storage, feed storage, parking, restrooms, and other uses related to the operation.
- n. Concessionaire shall maintain a separate area for sick horses or horses that are being rehabilitated.
- o. Concessionaire shall post all rules in two conspicuous places on the Property, together with the required signage as required by this Agreement. Signage should designate public areas and notify of areas restricted to program participants, employees of Concessionaire and others directly involved in the programs offered or operation of the facility.
- p. Concessionaire shall develop and post an emergency evacuation procedure at all points of ingress and egress from structures on the Property.

Concession Agreement

Page 4

- q. Concessionaire shall provide the Township with the name, phone number, and e mail address of a "contact person" who will be responsible for the operations at the Property.
- r. Concessionaire shall not hold riding events, contests, shows, or performances without first notifying the Parks & Recreation Committee in writing of the nature of the

event, the date and hours of the event, and number of participants at least 90 days in advance or immediately for events scheduled within 90 days.

- s. Concessionaire shall not keep or permit to be kept more than 59 horses on the Property, except that up to 15 additional horses may be temporarily kept on the Property for no more than 72 hours (this exception to reflect a limited number of special events with visiting horses).
- t. Concessionaire shall not permit horses or other animals to breach the fences along the boundary of the Property and shall be responsible for all loss or damage to third parties that may occur as a result of any such breach.
- u. Concessionaire shall not bury animals, rubbish, garbage, litter, or debris on the Property, but shall promptly and properly dispose of such items off-Property. Horses and animals that become deceased shall be removed from the premises and lawfully disposed of outside of the Township.
- v. Concessionaire shall provide the Township with access to its books and records upon 48 hours' advance notice. Concessionaire shall report all accidents requiring medical attention to the Parks & Recreation Director in writing within 24 hours of the accident.
- w. To the extent that Concessionaire has overseen the background check and insurance coverage requirements for additional Service Providers, Concessionaire may allow additional Service Providers onto the Property to operate their business and/or vend goods and/or services, to the public and/or invitees.
- x. The following definitions shall apply to this Agreement:
 - 1. "Equine Activity" means riding, training, driving, breeding, being a passenger upon, or providing or assisting in veterinary treatment of an equine, whether mounted or unmounted. Other examples of equine activity shall include, but are not limited to: visiting, touring, or utilizing an equine facility as part of an organized event or activity including the breeding of equines, or assisting a Participant or show management. Engaging in equine activity does not include spectating at an equine activity unless the spectator places himself or herself in an unauthorized area and in immediate proximity to the equine activity.

Concession Agreement

Page 5

- 2. "Equine Professional" shall mean the Concessionaire, or a person or entity, retained, hired, or invited by the Concessionaire, to engage in any of the following on the Property: instructing a Participant in an equine activity; renting an equine, equipment, or tack to a Participant; providing daily care of horses boarded at the Property; training an equine; or breeding of equines for resale or stock replenishment. This definition of Equine Professional is

applicable to this Agreement and neither modifies nor replaces the definition of such term as set forth in the Concessionaire's insurance.

3. "Equine Program Service Provider" includes, but is not limited to, any third party equine professional retained or hired by the Concessionaire, or invited to the Property by the Concessionaire, to engage in equine activity on the Property, or assist the Concessionaire with equine activity.
4. "Event of Default" shall mean a breach of any term or condition of this Agreement.
5. "Non-equine Service Provider" shall mean a third-party individual or entity who is not an equine professional or Participant, whom the Concessionaire retains, hires, or invites to the Property to perform a function in connection with the operation of the horse farm that is not an equine activity. Examples might include, but are not limited to, the performance of janitorial duties, secretarial duties, food and drink vendors, or maintenance workers.
6. "Participant" shall mean an individual, whether amateur or professional, engaged in an equine activity, whether or not a fee is paid.
7. "Service Provider" shall include both Equine Program Service Providers and Non-equine Service Providers.

y. Concessionaire shall duly maintain and provide the Township proof of active policies of liability insurance as described in this Agreement and the Rider attached hereto at **Exhibit B**. These policies shall be maintained by the Concessionaire as well as other Equine Program Service Providers who give lessons and provide services to the public as described herein.

2. Term of Agreement.

Concessionaire shall operate the public use riding stable and equine activities facility at the Property for a term commencing effective _____ and continuing until the 31st day of December, 20____, provided that Concessionaire shall not be in default of any term or condition of this Agreement and provided that Concessionaire operates the public use riding stable and equine activities facility in compliance with the conditions and intent of this

Concession Agreement

Page 6

Agreement. The Township and Concessionaire may mutually agree to extend the term of this Agreement for an additional one (1) year period expiring December 31, 20____, providing Concessionaire shall not be in default under the terms and conditions of this Agreement.

3. Concession Fees.

For the period of time that this Agreement shall be in effect, Concessionaire shall pay to the Township a concession fee for the exclusive right to operate the public use riding stable and

equine activities facility at the Property, in the amount of \$16,800 annually, with payments to be made according to a mutually agreed upon schedule, to be attached as **Exhibit C**, upon execution of this Agreement. Any payments returned due to insufficient funds will be charged a \$27.50 NSF fee.

4. Security Deposit.

The Township requires Concessionaire to pay a \$2,800.00 security deposit to the Township. The security deposit shall be maintained by the Township to secure Concessionaire's performance of this Agreement. The Township may, at its option, commingle the security deposit with its own funds. The Township may, at its option, apply all or part of the security deposit toward curing any Event of Default after providing the Concessionaire notice of default and a ten (10) day opportunity to cure. If the Township uses all or part of the security deposit, Concessionaire is obligated, upon the Township providing ten (10) days' notice, to repay the Township sufficient funds to restore the security deposit to its original amount. Any unused portion of the security deposit shall be returned to Concessionaire, without interest (a) upon termination of this Agreement as set forth below, (b) Concessionaire's surrender and vacating of the Property, and (c) the return of the keys to the Township, and/or by judgment of possession if required or reasonably necessary. The Township's rights under this section are in addition to any other rights or remedies the Township may have under the terms of this Agreement or under Michigan law.

5. Condition of Property.

Concessionaire acknowledges that it has had an opportunity to inspect the Property, including the land and structures thereon, prior to execution of this Agreement. Concessionaire further acknowledges that the condition of the Property is fully satisfactory for Concessionaire's purposes hereunder and Concessionaire accepts the Property in its existing condition, "as is" "where is" and "what is" and without any representation or warranty of the Township as to condition or suitability for use as a public riding stable and equine activities facility or other purpose whatsoever and Concessionaire hereby releases the Township from any liability in connection therewith. The house located on the Property will be removed by the Township.

Concession Agreement

Page 7

Concessionaire shall limit access to the hip roof barn and house located on the Property to only employees of Concessionaire and maintenance/repair personnel; public and Participant access to these structures shall be prohibited.

6. Expenses Paid by Concessionaire Management.

Concessionaire shall bear all expenses of operating its business and this concession at the Property, including all repairs, maintenance, insurance, utility, and other operating expenses as provided herein. Concessionaire shall put all utilities in its name and shall pay same before they are overdue, furnishing proof of payment, upon request, to the Township. Concessionaire shall supply the following at its sole cost and expense:

- a. Office equipment and supplies; and
- b. Any other item typically associated with the operation of a public use stable and equine activities facility.

From time to time, the Concessionaire might desire to make certain reasonable and/or necessary improvements to the Property, in which case, the Township may opt to credit Concessionaire for all or part of said improvement made. The Township will credit Concessionaire on the condition that Concessionaire secures the Township's prior written approval for said improvement and also the Township's expressed written agreement to provide said credit. If an event occurs outside normal working hours of the Township, threatening the immediate health and safety of the Concessionaire or program Participants, or the buildings are at risk without an immediate repair, and the Concessionaire is unable to reach Township personnel; the Concessionaire may retain a local contractor to remedy the situation (e.g. furnace fails on a weekend and there is a risk that water pipes may freeze). The Concessionaire must contact the Parks & Recreation Director the next working morning to notify of the event and must document repair costs.

7. No Structural Changes.

Concessionaire shall not complete any structural or material physical changes to any structure on the Property without the prior written approval of the Township.

8. Duty of Care.

Concessionaire acknowledges and agrees to uphold a basic duty of care to employees, volunteers, invitees, and horse-riding Participants, and shall not commit any act or omission, or allow any by employees or agents, that constitutes a willful or wanton disregard for the safety of the Participants. Concessionaire shall not knowingly provide faulty equipment or tack, nor allow employees and agents to do so. Reasonable steps shall be made to determine whether horse riding Participants can engage and manage the horse in a safe manner. Concessionaire agrees to

Concession Agreement

Page 8

indemnify the Township against claims for any injuries arising out of a failure to comply with this provision.

9. Posting of Signage.

Any and all new exterior signage must be reviewed and approved by the Township prior to construction and installation by Concessionaire and shall be at the expense of Concessionaire. It shall be the responsibility of Concessionaire to obtain any and all licenses and/or permits for exterior signage at the expense of Concessionaire.

Concessionaire agrees to post and/or maintain signage that complies with Public Act 351 of 1994, (known as the Equine Activity Liability Act, or "EALA"), which posting shall contain the following warning:

WARNING

Under the Michigan equine activity liability act, an equine professional is not liable for an injury to or the death of a participant in an equine activity resulting from an inherent risk of the equine activity

The signs shall be placed in a clearly visible location in close proximity to the equine activity. The warning notice shall appear on the sign in conspicuous letters no less than 1 inch in height.

Further, Concessionaire is required to post any other warning signs of any dangerous latent condition(s) of the land or facilities known by the Concessionaire, and which dangerous conditions could be a foreseeable cause of injury to Concessionaire's agents, assigns, volunteers, employees, or invitees.

Concessionaire shall post signs on the hip roof barn and house located on the Property indicating entry by the public or Participants into those structures is prohibited.

10. Participant Agreements and Waiver.

Concessionaire shall require signed agreements and waivers from all Participants and invitees of the equine activities being provided ("Participation Agreements"). Participation Agreements and Waivers are to be signed before participation in any equine activities is permitted and must be signed on a yearly basis. Participation Agreements for services provided to minor children shall be signed by the Participant's parent or lawful guardian.

Concession Agreement

Page 9

Said Participation Agreements must contain the following language:

Under the Michigan Equine Activity Liability Act, an equine professional is not liable for an injury to or a death of a participant in an equine activity resulting from an inherent risk of the equine activity.

I, the undersigned, understand that equine activities are risky by nature. It is mutually understood and agreed that this release constitutes a waiver of liability beyond the provisions of the Michigan Equine Activity Liability Act (1994 P.A. 351).

I _____ [name of participant, or name of participant's parent or legal guardian on behalf of said participant], do hereby release and forever discharge _____ [Concessionaire], its agents and assigns, together with the Charter Township of Commerce, its elected and appointed officials, all employees, attorneys, agents and/or authorities from any and all claims and demands of every kind, nature, and character which I may hereafter acquire or have accrued to me for any and all property damages, losses, and injuries which

may be suffered or sustained by me while I am present on the aforesaid land or participating in any activity originating from said property or any further events for which I may qualify. All such claims and demands are hereby waived and released, and I further covenant not to sue therefrom.

Concessionaire shall forward copies of all Participation Agreements and Waivers to the Parks and Recreation Director.

11. Maintenance of Stable and Equipment.

A. Maintenance. Concessionaire agrees, at all times, to maintain and keep in good operating condition, at Concessionaire's sole cost and expense, the public use riding stable and equine activities facility during the term of this Agreement. All maintenance, upkeep, cleaning, painting, and repairs including but not limited to, vacuuming, dusting, floor mopping, interior and exterior window cleaning, light bulb replacement, restroom cleaning, insect and rodent extermination in the stable, shall be the responsibility of Concessionaire.

B. Equipment. Any equipment installed by Concessionaire shall be at Concessionaire's sole cost and expense and shall be installed pursuant to all applicable laws, rules, regulations, building codes, health rules and ordinances. The person and/or entity installing the equipment must be licensed and insured. Approval of the Township is required prior to the installation of any equipment. Any added equipment which constitutes a fixture under the law shall remain and become property of the Township. All equipment and personal property of the Concessionaire currently located at the Property shall remain the property of the Concessionaire.

Concession Agreement

Page 10

12. Maintenance of Grounds.

All exterior maintenance including, but not limited to, landscape maintenance, parking lot repair and snow removal shall be the responsibility of Concessionaire. The person and/or entity performing the service must be licensed and insured and said insurance shall satisfy the Township's insurance requirements. Prior approval of the Township shall be obtained for services that are major services, such as parking lot repairs. Township approval is not required for ordinary annual services, such as lawn mowing and snow plowing. It shall also be the responsibility of Concessionaire to package all trash and debris as set forth in this Agreement.

13. Repairs and Improvements to Stable and other Structures.

A. Repairs. Repairs or replacements of all kinds and nature, including but not limited to, roof, outer walls, windows, heating, ventilating, air conditioning and cooling equipment, plumbing and electrical systems, shall be the responsibility of Concessionaire. The person and/or entity performing the service must be licensed and insured and said insurance shall satisfy the Township's insurance requirements. Said repairs and replacements shall require the prior written approval of the Township.

B. Improvements. The review, approval and written consent of the Township will be required prior to any and all renovations, improvements and/or changes proposed to be made by Concessionaire to the Property or any structures located thereon. Any and all licenses and/or permits required for any interior renovations, improvements and/or changes performed by Concessionaire shall be obtained by, and shall be at the expense of, Concessionaire. Prior approval by the Township Board is required if improvement costs are intended to be applied to the concession agreement payments.

14. Quality of Concession Services.

Concessionaire shall furnish good, prompt, and efficient service adequate to meet all the demands for its service as a public use stable and equine activities facility. Concessionaire shall, at all times, comply with all Federal, State, and local laws, regulations, and ordinances.

Concessionaire shall furnish said services on a fair, equal and nondiscriminatory basis to all users of the public use stable and equine activities facility. Concessionaire will not, on the grounds of race, sex, religion, or national origin discriminate or permit discrimination against any person or group of persons.

15. Prices.

Services offered by Concessionaire shall be as provided in the Rate Tables attached as

Exhibit A.

Concession Agreement

Page 11

16. Services and Hours of Operation.

Concessionaire shall provide prompt, courteous and efficient services, with personnel sufficient to safely and properly operate the stable and pastures on the Property at a standard equal to that maintained by comparable high-quality public use stables and equine activity facilities operations.

The specific days of operation as established and provided in paragraph one above shall be subject to change upon the recommendation of the Parks & Recreation Committee and subject to approval by the Township Board.

Concessionaire shall undertake efforts to promote equestrian activities and increase the number of participants being provided a recreational and/or educational opportunity to learn about, interact with, and ride horses at the Property, which efforts shall include, but is not limited to:

- Preparing and implementing a marketing plan to advertise and promote the horse farm operation to local citizens and residents of the Township, and local school districts and organizations;
- Maintaining a website or other social media that provides information about hours,

events, contact information, photographs, and other general information about the horse farm operation at the Property;

- Maintaining and publishing a calendar of events; and
- Promoting and holding equestrian events, activities, and programs.

Content on websites and social media are subject to Township approval and shall be removed or modified at the Township's request. All promotional material related to the horse farm operation at the Property must recognize the Township as owner.

17. Employees and Supervision.

Concessionaire shall at all times provide an active, qualified, and competent supervisor at the Property whenever Concessionaire provides services. The supervisor shall be authorized to represent and act for it in matters pertaining to the day to day operation of the business. Additionally, Concessionaire shall provide a management contact representative for emergencies who shall be available at all hours any day.

All employees of Concessionaire shall be clean, courteous, efficient, and commercially reasonable in appearance. Concessionaire shall not employ any person or persons in or about any facility who shall use improper language or act in a loud or boisterous or otherwise improper manner. Concessionaire shall comply with all employment laws, rules and/or regulations

Concession Agreement

Page 12

pertaining to such employees and indemnify and hold harmless the Township in connection therewith as hereinafter provided.

Concessionaire shall perform a background check using the Michigan Internet Criminal History Access Tool ("ICHAT") on all employees of Concessionaire and all Service Providers who will interact with the public or Participants. Employees and Service Providers with felony convictions or a history of assaultive behavior or crimes of moral turpitude are strictly prohibited.

18. Trash and Garbage.

Except as otherwise provided in this section, Concessionaire shall provide at its sole expense, suitable procedures for the adequate sanitary handling and disposal of all trash, garbage and other refuse caused as a result of its operation at the Property.

Township shall maintain three 95-gallon trash cans and one 64-gallon recycling can at the Property, and the Township shall pay for the costs associated with emptying the same. The carcasses of horses and animals that become deceased shall not be disposed of in any trash receptacle but shall be removed from the Property within twenty-four (24) hours and be lawfully disposed of outside of the Township. Manure shall not be placed in any trash receptacle but shall be removed from the Property and disposed of consistent with state and local laws.

19. Insurance and Indemnity.

A. Concessionaire.

Concessionaire shall maintain active coverage of insurance as required by, and meeting the standards of, the Charter Township of Commerce Mandatory Insurance and Indemnification Rider ("Rider"). Concessionaire shall execute and abide by the Rider attached hereto as **Exhibit B** and made a part hereof.

Concessionaire shall show proof of the required insurance to the Township upon execution of this Agreement, and periodically thereafter as shall be demanded by the Township and within forty-eight (48) hours of said demand. If any of the required coverage is to expire during the term of this Agreement, Concessionaire shall deliver renewal certificates and policies to the Township at least thirty (30) days prior to the expiration date.

Concession Agreement

Page 13

B. Service Providers.

- i) Additional Equine Program Service Providers. Concessionaire shall oversee additional Equine Program Service Providers to ensure their active coverage of their own commercial general liability insurance, and worker's compensation insurance if applicable, with minimum coverage consistent with the Rider, and show proof of same to the Township within ten (10) days of when demanded by Township. Said insurance maintained by the Additional Program Services Providers should be a standard form of policy or policies of insurance protecting said program Service Providers against public liability, products liability, and personal property damage. In the alternative, Concessionaire must include said Equine Program Service Provider as a named insured.
- ii) Additional Non-equine Service Providers. To the extent not already covered under the general liability insurance as a covered class, Concessionaire must ensure the active coverage of Non-equine Service Providers in their own commercial general liability insurance, or else include Non-equine Service Providers as named insureds.

Failure by Concessionaire to maintain active policies of the required insurance or furnish evidence of same to the Township within two (2) traditional business days of its demand, shall constitute an Event of Default, for which the Township has the right to immediately terminate this Agreement and/or exercise further remedies as permitted pursuant to this Agreement or under law. Traditional business days are those between and including Monday through Friday.

In the event that the Township becomes aware that the Property is not covered by any active policies of general liability insurance as required above, the Township has the right, but not the obligation, to purchase its own policy or policies of insurance, the cost of which shall be

the responsibility of Concessionaire to bear, or reimburse, to the Township as a condition for curing default.

20. Inspection and Access.

The Township shall have the right to access the Property and all structures located thereon at a reasonable time or during the traditional business hours of Monday through Friday 9:00 a.m. to 5:00 p.m. with 24 hours' notice to Concessionaire (if not operating) and during any hours of operation by Concessionaire, with or without prior notice to Concessionaire. No advance notice shall be required in cases of an emergency, but reasonably prompt notice to Concessionaire shall be provided post entry. All access shall be at the Township's or the Township's authorized representative's risk, for the purpose of examining and inspecting said Property, and for purposes necessary, incidental to or connected with this Agreement, or in the exercise of its governmental or quasi-governmental functions. Notwithstanding the foregoing,

Concession Agreement

Page 14

Concessionaire or Concessionaire's representative shall be permitted to accompany a visiting Township representative into any stall, pen, or pasture occupied by livestock.

Concessionaire agrees that the Parks & Recreation Director is authorized, at a reasonable time or during Concessionaire's hours of operation, or upon appointment, to inspect Concessionaire's operation for cleanliness, condition of equipment, services, and hours of operation. If not satisfactory, the Parks & Recreation Director shall notify Concessionaire, in writing, to correct any unsatisfactory conditions. Such written notice shall contain specific particulars so as to adequately advise Concessionaire of the conditions deemed unsatisfactory and the reasons and grounds for such conclusion. Concessionaire shall take immediate steps to correct any such unsatisfactory condition. If Concessionaire is of the opinion that the notification by the Parks & Recreation Director is unwarranted, unreasonable, or based upon erroneous facts or information, Concessionaire shall call the same to the attention of the Parks & Recreation Committee within 30 days of receiving notice, and thereafter the parties shall use best efforts to resolve said dispute to their mutual satisfaction. If no resolution can be made to either party's satisfaction, the Township Board may intervene to continue efforts toward dispute resolution or terminate the Agreement.

Access to the hip roof barn shall be locked at all times. Concessionaire agrees to provide a key to the barn to the Township Supervisor and Parks & Recreation Director. Due to safety concerns associated with this structure, the Township agrees, except in the cases of emergency, not to enter this structure without notice to Concessionaire and consent therefrom which consent shall not be unreasonably withheld.

21. Non-Assignment.

It is understood that the Township is entering into this Agreement in part because of the experience of Concessionaire in the operation of this type of establishment. Therefore, this Agreement shall not be assignable, or sublet, or transferred to any other person, entity, corporation, or organization by Concessionaire without the prior written consent of the

Township.

Any assignment, sublet, or transfer of this Agreement to any other person, entity, corporation, or organization without the prior written consent of the Township shall, at the sole and exclusive option of the Township, subject this Agreement to cancellation and terminate the rights of Concessionaire under this Agreement.

22. Damages to Property.

Concessionaire shall be responsible for damage to the Property caused by any animals and/or the intentional or negligent acts of Concessionaire, or its agents, employees, patrons, or other persons, including any Service Provider, under their direction and control and parties claiming by, through or under each of them. If the Property is partially damaged by fire,

Concession Agreement

Page 15

explosion, the elements, or other casualty, but not rendered unusable, the same shall be repaired with due diligence out of and up to the proceeds of casualty insurance. If the damage shall be so extensive as to render such Property uninhabitable, or if the proceeds of insurance shall not be sufficient to restore the Property, the Township shall be under no obligation to repair and reconstruct the Property and may, in its sole discretion terminate this Agreement. In such event, any amounts payable hereunder shall be proportionately paid up to the time of such damage or destruction.

23. Redelivery.

Concessionaire will make no unlawful or offensive use of the Property and will at the expiration of the term of this Agreement, or upon any earlier termination as otherwise provided herein, quit and deliver the Property to the Township in as good order and condition as of the date of this Agreement, reasonable wear and tear excepted.

24. Property Tax Issues.

It is the understanding of the parties hereto that, since the Property was owned by and in the possession of the Township for public purposes as of December 31, 2013, the Property will not be subject to real or personal property taxes and is tax-exempt real property as provided by Act 189 of Public Acts of 1953 (the "Lessee Tax"). Therefore no Real or Personal Property taxes will be levied on the Property owned by the Township for the 20____ and subsequent tax years and further, as the Township is a public body and is utilizing the Property for public use, benefit and purposes and, under the terms of this Agreement the Property is available for use by the general public, no tax on the use of the Property will be imposed by the Lessee Tax. Concessionaire agrees to provide the Township with a detailed list of all personal property applicable to this Agreement. If it is determined that the Property, by virtue of its use by Concessionaire, is not tax exempt, then the Township shall have the right to terminate this Agreement following 30 days written notice of an opportunity to cure and, after failure to cure, Concessionaire shall cease operations and have 90 days to vacate the Property.

25. Monthly Updates.

Concessionaire, or a representative designated by Concessionaire, shall appear before the Township Parks & Recreation Committee at its regularly scheduled monthly meeting to update the Committee on activities on the Property and receive feedback from the Committee.

26. Default.

Breach of any term or condition in this Agreement shall be deemed an Event of Default. In such event by any party, after a ten (10) day notice and opportunity to cure, the non-defaulting party shall have available to it any and all remedies available, at law or in equity. If Concessionaire shall neglect or fail to promptly pay monthly concession fees or perform any other covenant term

Concession Agreement

Page 16

or condition as specified in this Agreement, for a period in excess of ten (10) days after notice, this Agreement shall be subject to immediate cancellation and become void and the rights of Concessionaire terminated hereunder, at the sole and exclusive option of the Township. As a condition for curing any Event of Default, Concessionaire shall be liable for reasonable costs and necessary disbursements made by the Township as a result of Concessionaire's default, including the cost of any insurance coverage purchased by the Township under Paragraph 19, and attorneys' fees incurred by the Township as part of its remedies in enforcing this Agreement.

A. Monetary Default.

Notwithstanding the foregoing, it is agreed that should Concessionaire become bankrupt or be unable to pay debts as they become due, or if Concessionaire shall neglect or fail to promptly pay any monthly concession fees, Concessionaire shall have 90 days to vacate the Property following an uncured monetary Event of Default.

B. Non-Monetary Default.

Provided Concessionaire is not in bankruptcy and is current and remains current in payment of required Concession Fees, Concessionaire shall have no fewer than 90 days to vacate the Property following an uncured non-monetary Event of Default not otherwise covered elsewhere in this Agreement. The Township Board has discretion to provide more time to vacate based upon consideration of factors that might facilitate safe relocation of the horses.

27. Termination of the Agreement.

Either Party has the right to cancel and terminate the Agreement as

follows: A. Termination by Concessionaire.

Concessionaire may terminate this Agreement upon no fewer than thirty (30) days written notice to the Township Parks & Recreation Director and the Township Board advising of

Concessionaire's intention to terminate. Said notice shall include Concessionaire's contact information, phone number, and a forwarding address where it can receive mail or reasonably be located. Said notice shall also indicate Concessionaire's last date for occupying the Property, together with Concessionaire's last payment of concession fees, prorated through said last date for occupying the Property. Concessionaire's obligation to pay concession fees shall continue thereafter until the Property is fully vacated. Vacating the Property shall include the removal of all horses and other domesticated animals from the Property that are under the Concessionaire's ownership or control, together with removal of all of the Concessionaire's personal property and non-fixture equipment, and upon return of possession to the Township by return of the keys, and/or by judgment of possession if required or reasonably necessary. Concessionaire shall also make the appropriate notifications to its clientele, including appropriate notifications to any websites and social media (Facebook, Twitter, Instagram, Tumbler, etc.) that Concessionaire

Concession Agreement

Page 17

controls or maintains with respect to its operation of the horse farm on the Property, to advise said clientele and public that Concessionaire's horse farm operation at the Property has ceased.

B. Termination by Township.

The Township Board may terminate this Agreement upon an Event of Default, or for any reason at its discretion, by providing written notice of termination to the Concessionaire. Should termination arise from an Event of Default, Concessionaire shall vacate the Property pursuant to the preceding paragraph governing Defaults. Otherwise, for the Township's termination arising for reasons other than an Event of Default, Concessionaire shall have no fewer than ninety (90) days from the date of said written notice to vacate the Property. Vacating the Property shall include the removal of all horses and other domesticated animals from the Property that are under the Concessionaire's ownership or control, together with removal of all of the Concessionaire's personal property and non-fixture equipment, and upon return of possession to the Township by return of the keys, and/or by judgment of possession if required or reasonably necessary. Concessionaire shall also make the appropriate notifications to its clientele, including appropriate notifications to any websites and social media (Facebook, Twitter, Instagram, Tumbler, etc.) that it controls or maintains with respect to its operation of the horse farm on the Property, to advise said clientele and public that Concessionaire's horse farm operation at the Property has ceased.

28. Non-Waiver.

Any waiver of any breach of covenants herein contained to be kept and performed by Concessionaire shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Township from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

29. Notices.

Notices as provided for in this Agreement shall be sufficient if in writing and mailed,

postage prepaid, certified mail, return receipt requested, addressed to the following:

TO THE TOWNSHIP: Supervisor

Charter Township of Commerce
2009 Township Drive
Commerce Township, Michigan 48390

and

Parks & Recreation Director
Charter Township of Commerce
2009 Township Drive
Commerce Township, Michigan 48390

Concession Agreement
Page 18

TO CONCESSIONAIRE: [Name/Title]

[Company]
[Address]
[City/State]

30. Paragraph Headings.

The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

31. Severability.

Whenever possible, each provision of this Agreement will be interpreted in such a way as to be effective and valid under applicable law. If a provision is prohibited by or invalid under applicable law, it will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

32. No Third-Party Beneficiaries.

Nothing in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub consultant, or sub-contractor, of Concessionaire. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

33. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan. The parties agree that venue shall lie in Oakland County.

34. Entire Agreement.

This Agreement constitutes the entire agreement between the parties hereto and

supersedes all other negotiations, understandings and representations made by and between the parties, their agents and employees.

35. Amendments.

This Agreement shall not be modified, altered, or amended except by written agreement duly executed by the parties.

Concession Agreement

Page 19

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first indicated above.

CHARTER TOWNSHIP OF COMMERCE, a
Michigan municipal corporation,

Date: By:

[printed name]

Its: Supervisor

CHARTER TOWNSHIP OF COMMERCE, a
Michigan municipal corporation,

Date: By:

[printed name]

Its: Parks & Recreation Director

Concession Agreement

Page 20

CONCESSIONAIRE:

Dated: By:

(Signature)

Its: *(Printed Name)*
(Title)

m:\ctc\horse farm\docs\2022-02-24 concession agt (final revised form - clean).docx

EXHIBIT A

[See attached Rate Table]

EXHIBIT B

**Charter Township of Commerce
Mandatory Insurance and Indemnification Rider**

WHEREAS, the Charter Township of Commerce, a Michigan municipal corporation (“Township”), and _____, (“Contractor/Licensee”), have entered into a Concession Agreement (the “Agreement”); and

WHEREAS, the Contractor/Licensee has agreed, as a principal inducement to the Township to

enter into the Agreement, to provide certain insurance coverage for the Township with respect to any claims, liabilities, actions, or losses incurred by, or asserted against, the Township related to or arising from the Agreement; and

WHEREAS, the Contractor/Licensee has agreed, as a principal inducement to the Township to enter into the Agreement, to indemnify the Township, its Trustees, officers, agents, and employees, for and against any claims, liabilities, actions, or losses incurred by, or asserted against, the Township related to or arising from the Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and in the Agreement to which this Rider is attached, the parties agree as follows:

I. Insurance Certificate. The Contractor/Licensee shall provide, prior to execution of the Agreement to which this Rider is attached, a certificate of insurance issued directly to the Township by an insurer with an A.M. Best rating of "A" or better, and evidencing the following:

- a. Coverage of the Township, its trustees, officers, agents, and employees as additional insureds;
- b. That the insurance certified thereunder shall be primary insurance and that any insurance carried by the Township shall be excess and not contributing.
- c. A requirement that the insurer provide that at least thirty (30) day prior notice of cancellation or material change to the coverage be provided to the Township;
- d. Coverage in the following amounts:
 - i. Worker's Compensation and Employers Liability coverage covering the statutory requirements of the State of Michigan and insuring the contractor or user with an Employer's Liability limit of at least \$500,000;
 - ii. Occurrence based Commercial General Liability, including Equine Commercial General Liability, coverage covering liability arising out of the operations of the contractor, with an endorsement applying the policy's aggregate limits by location or project, and having minimum liability limits of \$1,000,000 combined single limit per occurrence, a general aggregate limit of at least \$2,000,000 and a products completed operations aggregate of at least \$2,000,000;
 - iii. Fire and Extended Coverage Insurance. Contractor/Licensee shall procure and keep in force, fire and extended coverage insurance including vandalism, upon all buildings, structures and improvements to the Property, business fixtures, equipment, furniture, and furnishings, to the full insurable value thereof and shall furnish the Township with evidence that such coverage has been procured and is being maintained in full force and effect.
 - iv. Equine Professional Liability coverage covering damages arising from liability resulting from any negligent act, error, or omissions arising out of

Contractor/Licensee's professional equine activities.

- e. For all Agreements involving or related to products provided by or installed by, or operations completed by the Contractor/Licensee - products and completed operations insurance, which shall be maintained for at least three years after final payment on the Agreement; and
- f. Coverage of all contractual liability assumed by the Contractor/Licensee pursuant to the Agreement to Defend, Indemnify and Hold Harmless.

II. Agreement to Defend, Indemnify and Hold Harmless. The Contractor/Licensee hereby covenants and agrees to defend, indemnify and hold harmless the Charter Township of Commerce from all liability, claims, actions, causes of action, lawsuits and demands including attorney's fees and costs, fines and/or penalties for personal injury, bodily injury or death (including personal injury, bodily injury or death of the Contractor's/Licensee's own employees or the employees of any independent contractor) and/or property damage arising out of or in any way related to the Contractor's/Licensee's work or operations on or about the Township's property, or for or on behalf of the Charter Township of Commerce about or away from the Township's property, or associated with the breach of the agreement or arising out of the Contractor's/Licensee's work or work of subcontractors employed by the Contractor.

III. Conflicts. In the event, and to the extent, of a conflict between the provisions of this Rider, and the contract or agreement to which it is attached or appended, the terms of this Rider supersede and control any inconsistent provisions contained in the contract or agreement.

Contractor/Licensee:

_____ Dated: _____ By:

Its:

The Charter Township of Commerce:

_____ Dated: _____ By:

Its: Supervisor

EXHIBIT C

[See attached Payment Schedule, if applicable]