

**CONCESSION MANAGEMENT & OPERATION AGREEMENT
FOR SCHOOLHOUSE SLOUGH CONVENIENCE STORE AND FUEL SYSTEM**

This Management and Operation Agreement (the “Agreement”) is made this the 1st day of May, 2024, by and between the Lawton Water Authority (the “Authority”) for the benefit of the City of Lawton (hereinafter referred to as “City”) and Schoolhouse Slough Convenience Store, LLC (hereinafter referred to as “Concessionaire”).

**ARTICLE I
Interest and Term**

Section 1.1 Interest of Parties. Authority, for and in consideration of the mutual covenants, conditions, agreements and payments hereinafter required to be well and truly kept and performed by Concessionaire, grants Concessionaire the privilege of operating concessions at the Schoolhouse Slough Convenient Store, to include fuel pumps, located at the southeast end of Lake Lawtonka (195 Slough House Road, Lawton, OK 73507), all as described in attached Exhibit A (the “Property” or the “Premises”) all for the benefit of the Authority.

Section 1.2 Concession Term. The term of the concession shall commence on the 1st day of May, 2024, and terminate on the 31st Day of December 2029, unless sooner terminated as herein provided. So long as Concessionaire is not in default under the terms of this Agreement as of the end of the term, Concessionaire shall have the right and option to extend the term of this Agreement upon terms and conditions upon agreement and approval of the parties for an additional five (5) year term.

Section 1.3 Terms and Conditions. This Agreement is made upon the terms and conditions set out herein. Concessionaire shall be responsible for obtaining all applicable health permits required for selling or serving any concession items. Concessionaire shall be responsible for paying all electrical costs, water costs, janitorial services, grounds keeping, as well as any other required utilities.

Concessionaire shall provide to the Authority quarterly financial reports, to include but not limited to monthly gross sales. Concessionaire agrees to allow the Authority or its agents to audit financial records at any requested time. Concessionaire shall also be required to maintain at its sole expense insurance coverage for the Property and its concession operations as provided herein.

Concessionaire agrees that all rates and fees charged for use of the Property must be reasonable and customary as may be specifically determined by an independent third party.

Concessionaire shall provide to the Authority by January 1st of each year of this Agreement a proposed annual budget for the Property for said same year, including the maximum amounts for any capital expenditures requested with respect to the Property. The Authority maintains control over the approval of this budget and any capital expenditures made with respect to the Property under either said budget or this Agreement.

ARTICLE II Monetary Consideration

Section 2.1. Compensation. Compensation to the Concessionaire as the service provider shall be ninety-five percent (95%) of all gross sales, excluding fuel, collected quarterly, throughout the term of the Agreement. With regard to fuel, Concessionaire will retain 100% of revenue from fuel sales as compensation for management of the fuel system.

Additionally, five percent (5%) of all gross sales, excluding fuel, shall be paid quarterly to the Authority, throughout the term of the Agreement, with the payment due on or before the 15th of each month following the end of the quarter, unless applied otherwise as provided for in Article V. For purposes of this Agreement, quarters shall be as follows: July – September (payment due on or before October 15th), October – December (payment due on or before January 15th), January – March (payment due on or before April 15th), and April – June (payment due on or before July 15th).

Section 2.2. Place of Payment. Concessionaire's quarterly payments shall be made payable to the Authority at the place or address designated for notice to Authority as hereinafter set out.

Section 2.3. Demand for Payment Unnecessary. Concessionaire will pay its quarterly payments to the Authority in accordance with Section 2.1 hereof. In the event of any non-payment thereof, the Authority shall have all the rights and remedies provided for herein or by law in the case of non-payment or other breach of this Agreement. Non-payment shall constitute a breach of this Agreement and the Authority shall have the right to declare the same breach, remove Concessionaire from the Property, and assume concession operations through the City.

Section 2.4. Parties not Joint Ventures, Partners, Agents or Employees. Concessionaire is an independent contractor under this Agreement. It is specifically understood and expressly agreed that any payments made by Concessionaire shall not be deemed or construed to constitute the Authority as a partner or an associate in business with, or that the Authority is in any way responsible for Concessionaire's business obligations, liabilities, or responsibilities of any nature whatsoever. The parties hereto further agree that they are not partners or joint ventures with one another and that they do not stand in a fiduciary relationship one to another.

ARTICLE III Compliance with Laws, Ordinances, Etc.

Section 3.1. Compliance Required. At all times during the term of this Agreement, Concessionaire, at Concessionaire's sole cost and expense, shall comply promptly with all applicable state and local laws, ordinances, orders, rules and regulations concerning the Property or any part thereof, the use or manner of use of the Property or any part thereof, the concession operations, and the personnel who will operate the concession, including but not limited to state laws on worker's compensation coverage, and state and federal rules, regulations, and statutes relating to the environment. Concessionaire shall also ensure that all concession operations comply with the requirements of the Americans with Disabilities Act and its implementing regulations. The Authority shall have the right to audit Concessionaire's records and inspect its operations at any time during the term of the Agreement.

ARTICLE IV Use and Occupancy

Section 4.1. Use of Premises. Concessionaire shall use the Property described in Exhibit A for the purpose of serving or providing concessions such as food, beverages, fuel and other designated concessions services as may be deemed appropriate for selling solely for concession operations and services made available to the public.

Section 4.2. Other Uses Prohibited. Concessionaire shall not use or permit the Property to be used for any purposes inconsistent with Section 4.1, or as will cause or apt to cause injury to the Property or any part thereof, or will be likely to cause any environmental damage or change to any wetlands or habitats located on or surrounding the Property.

ARTICLE V Ownership, Alterations, Maintenance

Section 5.1 Maintenance of Property. All maintenance of the Property shall be the responsibility of and be performed by Concessionaire, including but not limited to, exterior and interior maintenance associated with the existing store and all other Property.

All repairs costing \$1,000.00 or less shall be the sole responsibility of the Concessionaire. For repair costs related to fixed components i.e., plumbing, HVAC and electrical, exceeding \$1,000.00, Concessionaire shall be responsible for the initial \$1,000.00 and the Authority will be responsible for the remaining amount. Provided that it is understood that repairs requiring the Authority to pay a portion, must be approved by the Authority by written consent, which includes email. Any repairs over \$12,000.00 must have three written quotes provided and express written consent from the Authority, which includes email approval, prior to any repairs being made.

Section 5.2 Alterations/Improvements. Concessionaire shall not have the right at any time whatsoever to make any alteration/improvement to the Property without the express written consent of the Authority or City via the Lawton Parks and Recreation Director. Any

alterations/improvements undertaken by Concessionaire shall become the property of the City of Lawton at the expiration or termination of this Agreement.

Initial agreed upon improvements include the installation of a griddle, vent hood, and fryer. These initial improvements shall be deducted from the concessionaire's quarterly payment owed to the Authority. Receipts of these agreed upon improvements will be provided in lieu of payments, until such time improvements have been paid for in full. Once improvements have been paid in full, all quarterly gross sales payments owed to the Authority are to immediately resume.

ARTICLE VI

Events of Default; Termination

Section 6.1. Default. The following events are hereby defined as "Events of Default" under the terms of this Agreement:

(a) If Concessionaire shall fail to pay the quarterly gross sales amount in full when due; or

(b) If Concessionaire shall fail to pay any sums or charges payable by Concessionaire to any agent or vendor contracted to provide food, beverages, supplies, furnishings and a sundry of items as approved for sale as concessions by the terms of this Agreement when the same becomes due and payable, and such failure shall continue for a period of twenty (20) days after the due date; provided that withheld payment is without justifiable reason or

(c) If Concessionaire shall fail to perform or comply with any other term or covenant as provided for or required by this Agreement, and such failure shall continue for a period of ten (10) days after written notice thereof from the Authority to Concessionaire; or

(d) If Concessionaire shall make a general assignment for the benefit of creditors, or shall admit in writing Concessionaire's continuing inability to pay Concessionaire's debts as they become due, or shall file a petition for bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law, or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against Concessionaire in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Concessionaire or any material part of Concessionaire's properties; or

(e) If within ten (10) days after the commencement of any proceeding against Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, and such proceeding shall not have been dismissed, or if, within ten (10) days after the appointment without the consent or acquiescence of such Concessionaire or any trustee, receiver or liquidator or of any material part of Concessionaire's properties, such appointment shall not have been vacated;

THEN in such event, the Authority at any time thereafter (but prior to the curing of all such Events of Default) may give notice to Concessionaire specifying such Event of Default or Events of Default and stating that this Agreement shall be terminated on the date specified in such notice, which shall be at least twenty (20) days after giving of such notice, and on such date, unless all such Events of Default shall have been cured and there shall not exist any other Event of Default, all of the interests of Concessionaire under this Agreement shall terminate and Concessionaire shall remain liable as herein provided.

Section 6.2. Concessionaire's Obligations Continue. No termination of this Agreement pursuant to this Article shall relieve Concessionaire of Concessionaire's obligations and liabilities under this Agreement, all of which shall survive any such termination, including any environmental issues that may result due to Concessionaire's operations.

Section 6.3. Failure to Enforce Performance is Not a Waiver. No failure by the Authority to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term.

Section 6.4. Rights Cumulative. The various rights, powers, and remedies herein contained and reserved to the Authority shall not be considered as exclusive of any other right, power or remedy; but the same shall be construed as cumulative and shall in addition to every other right, power or remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the Authority to exercise any right, power or remedy shall be construed as a waiver of any such default or acquiescence therein.

Section 6.5. Authority May Enjoin Breach. In the event of any breach or threatened breach by Concessionaire of any of the terms contained in this Agreement, the Authority shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise, except that this Agreement shall be terminated only in the manner set forth herein.

Section 6.6 Authority May use Funds as Offset. Notwithstanding any other provision in this Agreement, or if this Agreement shall terminate, any funds then held by the Authority in which Concessionaire has an interest, and any funds which otherwise would be payable to Concessionaire from any source, may be applied, at the option of the Authority, to cure such default or to damages payable by Concessionaire (whether provided for herein or by law) as a result of any subsequent termination resulting from the Event of Default, and the balance remaining, if any, shall be paid to Concessionaire only if this Agreement does not terminate as a result of such Event of Default when and if Concessionaire would be entitled to receive the same but for such Event of Default, but not otherwise.

Section 6.7. Termination Upon 90 Days Notice. Notwithstanding any other provision of this Agreement, this Agreement may be terminated, with cause, by any of the parties upon the giving of a ninety (90) day written notice from one party to the other.

**ARTICLE VII
Days and Hours of Operation**

Section 7.1. Days and Hours of Operation. Concessionaire shall provide an operations schedule to the Director of Lawton Parks and Recreation for the City of Lawton. Concessionaire agrees to maintain regular hours of business. Said operations schedule to be posted for public information through the Parks and Recreation Department.

**ARTICLE VIII
Notices**

Section 8.1. Notices to be In Writing. All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other shall be in writing and shall be deemed to be sufficient for all purposes and to have been properly given or sent:

(a). If intended for Concessionaire, when placed in the mail properly addressed to Juan Rodriguez, 601 S 8th Street, P.O. Box 878, Cache, OK 73527.

(b). If intended for Authority/City, when placed in the mail properly addressed to the City of Lawton, c/o Lakes Supervisor, 212 SW 9th Street Lawton, Oklahoma 73501.

Each party may designate by notice in writing a new address, to which any notice, demand, request or communication may thereafter be so given, served or sent.

**ARTICLE IX
Miscellaneous Provisions**

Section 9.1. No Authority to Bind Authority. Whether under the provisions of this Agreement or otherwise, Concessionaire, or any agent, employee, representative, contractor, subcontractor, or volunteer of Concessionaire, shall not have any power or authority to bind the City of Lawton by any act or omission to act, or to make any contract or agreement whatsoever that can bind the City.

Section 9.2. No Authority to Allow Liens or Mortgages. Concessionaire is not authorized to allow, and shall not allow any liens or mortgages to be placed on or against the Property or on or against any improvements to the Property.

Section 9.3. Other. The parties further expressly agree as follows:

(a). The acts or omissions of the employees, servants, agents, or volunteers of Concessionaire shall be construed solely to be the acts or omissions of Concessionaire. Concessionaire acknowledges it will be an independent contractor, and not an employee, agent, or

representative of the Authority or the City for purposes of liability, worker's compensation coverage, unemployment insurance benefits, etc.

(b). It shall not be necessary that Authority or the City demand the performance of this Agreement by Concessionaire.

(c). Time shall be construed to be of the essence hereof, wherever any act hereunder is required to be done at a certain time, or within a prescribed period of time.

(d). This Agreement, and any amendments which the parties may execute hereto, sets forth all promises, agreements, conditions and understandings between the Authority and Concessionaire, and there are no other promises, agreements, conditions, or understandings, either oral or written, between them.

(e). No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Authority or Concessionaire unless same shall have been reduced to writing and executed by the Authority and Concessionaire.

(f). This agreement shall be governed by the laws of the State of Oklahoma.

(g). Any waiver of any breach of covenants herein contained shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Authority from enforcing this Agreement for any succeeding breach or other default either of the same kind or condition or otherwise.

(h). The covenants, agreements, terms, provisions, and conditions of this Agreement shall be binding upon an inure to the benefit of the successors and assigns of the Authority and, except as otherwise provided herein, the successors and assigns of Concessionaire.

(i). Concessionaire may not assign or sub-contract its obligations under this Agreement without the approval of the Authority. The Authority has the absolute right to either approve or disapprove any assignment or sub-contract.

Section 9.4. Severability of Provisions. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 9.5. Gender Inclusive. Words of any gender used in this Agreement shall be held to include any other gender, and words in this singular number shall be held to include the plural, when the sense requires.

Section 9.6. Structural Casualty Damage. In the event said Property is damaged, partially destroyed or rendered unfit for accustomed use by fire, storms, tornado, earthquake,

accident, or any other structural casualty, the Authority or the City shall have the discretion to restore the Property to substantially the condition in which it was prior to such structural casualty. Any other form of structural casualty shall be covered by the Concessionaire's policy. From the date of Authority's or the City's covered structural casualty until said Property is restored, payments shall abate in such proportion as the part of said Property thus destroyed or rendered unfit bears to total Property. In the event the Property is destroyed or rendered wholly unfit for their accustomed uses by any structural casualty, Authority or the City may, at its option, elect to restore said Property to substantially the condition they were in prior to such structural casualty. If the Authority or City does not commence such restoration within one (1) month after such structural casualty, this Agreement shall terminate, and Concessionaire shall be liable for payments only to the time of such structural casualty. The Property shall be deemed destroyed if the cost of restoration exceeds 50% of the fair market value of the improvements thereon prior to such structural casualty. Concessionaire shall receive a pro rata refund of any sum paid in advance for the period during which the Property is unfit for use.

Section 9.7. Entry by Authority or City. The Authority or City, its agents and representatives shall have the right to enter the Property during reasonable hours and after reasonable notice to Concessionaire to view and inspect the Property, to make repairs or improvements as deemed necessary and proper by the Authority or City. Authority or City shall have the right to enter without notice or consent of Concessionaire to handle emergency situations which Authority or City reasonable believes might cause loss of life or property damage.

Section 9.8. Signage. Concessionaire shall not place or erect any sign of any nature on any part of the building outside of the Property without Authority's or City's written permission. Concessionaire shall have the right to place signs bearing the Concessionaire's name and logo on the exterior of the Property. All signs erected shall be at the sole cost and expense of the Concessionaire and shall be removed at the time of termination or expiration of this Agreement. Concessionaire shall repair all damage to the building or Property caused by said removal.

Section 9.9. Camper Site. Concessionaire will be provided one camper site, free of charge, near the convenience store, during the time this Agreement is in effect. This provision is no longer in effect at the termination or expiration of this Agreement. Concessionaire shall provide proof of insurance, as is required of those who rent camper sites.

Section 9.10. Outside Vendors. Authority through City delegates to Concessionaire the authority and the responsibility of permitting outside vendors to operate from the Schoolhouse Slough area to the Day Use area and all City owned campground areas in between with said authority to include any fees associated with vendor set up in said areas.

Section 9.11 No Inconsistent Tax Position. Concessionaire agrees that it is not entitled to nor will take any tax position that is inconsistent with being a service provider to the Authority or City with respect to the Property. This provision does not include Concessionaire's use of the Property that is functionally related and subordinate to performance of its services under this Agreement (e.g., use of storage areas to store equipment to perform activities required under this Agreement will not result in private business use).

ARTICLE X
Insurance and Indemnification Requirements

Section 10.1. Insurance. Concessionaire during the entire term of the Agreement shall maintain public liability insurance with the minimum amounts as set out in the Oklahoma Governmental Tort Claims Act as it now exists or as it may hereafter be amended, and which currently requires that Concessionaire shall maintain public liability insurance in the following minimum amounts:

\$1,000,000.00 per accident;
\$125,000.00 bodily injury; and
\$25,000.00 property damage.

The policy of insurance, a copy of which shall be provided to the Authority and City, shall name the Authority and City as co-insured.

For all vehicles owned and/or used in concession operations, Concessionaire shall maintain vehicle insurance. Concessionaire shall also provide Workmen's Compensation insurance for any employee employed by the Concessionaire in accordance with state law.

Section 10.2. Indemnification Clause. The Concessionaire shall hold the Authority and City harmless against any and all claims, damages or cause of action for damages arising after the commencement of this Agreement and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of life sustained while on or about the Property, or any part thereof, including sidewalks adjacent thereto, by any person or persons whatsoever. It is the intention and agreement that the Authority and City shall not be liable for any personal injuries or damage to Concessionaire or its officers, agents, employees, invitees and all persons having business with Concessionaire, or to any other persons or to any occupant of any part of the Property, or for any injury or damage to any goods, wares, merchandise or property of the Concessionaire or of any occupant of any part of the said Property, irrespective of how the same may be caused, whether from action of the elements or acts of negligence of the owner or occupants of the adjacent properties, excepting however, the negligence of the Authority and City, its officers, employees, or agents.

Concessionaire shall and will indemnify and save harmless the Authority and City, its officers, employees, or agents of and from any and all liability, loss, damage or expense, causes of action, suits, claims and judgment, including reasonable legal expenses in connection with defending against any such action, suit or claim arising from injury to persons or property of any and every nature and for any matter or thing growing out of the use or occupation of the Property, or any part thereof, including sidewalks adjacent thereto, occasioned by the Concessionaire, its agents, employees, assigns or occupants of any part of the Property, or by their agents, or employees, respectively, or which may be occasioned by any person or thing whatsoever at any time during the term of this Agreement.

Section 10.3. Risk of Loss. Except for such funds as may be applied from insurance proceeds for as set forth above in Section 10.1 of this Agreement or from indemnification as set forth above in Section 10.2 of this Agreement, the Authority and City shall bear the risk of loss upon damage or destruction of the managed Property.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year first above written.

THE LAWTON WATER AUTHORITY
a municipal body

BY: _____
STANLEY BOOKER, Chairman

ATTEST:

DONALYNN BLAZEK-SCHERLER, City Clerk

Schoolhouse Slough Convenience Store, LLC

BY: _____
Juan Rodriquez

ACCEPTED AND ACKNOWLEDGED on behalf of the City of Lawton this ____ day of _____, 2024.

STANLEY BOOKER, MAYOR

APPROVED as to form and legality on behalf of the City of Lawton this ____ day of _____, 2024.

GREGORY GIBSON
ASSISTANT CITY ATTORNEY

EXHIBIT A



fuel pump



School House Slough
Temporarily closed



Fuel pump