

**AN AGREEMENT BETWEEN  
THE CITY OF NAPERVILLE AND HARRY’S CATERING  
FOR THE PROVISION OF ELECTRICITY AND USE OF PROPERTY AT THE  
DOWNTOWN COMMUTER STATION**

THIS AGREEMENT, (“Agreement”), entered into on this \_\_\_\_ day of \_\_\_\_, 2019, by and between the City of Naperville, an Illinois municipal corporation in DuPage and Will Counties, with offices located at 400 S. Eagle Street, Naperville, Illinois 60540 (“the City”) and Harry’s Catering, Inc. an Illinois corporation, having its principal office located at 10 S 533 Curtis Lane, Naperville, IL, (“Harry’s”), sometimes referred to collectively as the Parties or individually as “Party”.

**RECITALS**

**WHEREAS**, the City leases the Downtown Commuter Station (“Commuter Station”) and surrounding station property from the Burlington Northern and Santa Fe Railway Company (“BNSF”); and

**WHEREAS**, Harry’s is a local business that operates a limited service mobile food vending operation at the Downtown Commuter Station in Naperville and has done so for a number or years; and

**WHEREAS**, the City leases the Downtown Commuter Station (“Commuter Station) and surrounding station property from the Burlington Northern and Santa Fe Railway Company (“BNSF”); and

**WHEREAS**, BNSF has approved the operation of a limited service mobile food vending operation at the Commuter Station; and

**WHEREAS**, Harry’s desires to have limited electric service at the Commuter Station in order to facilitate its food vending business and is willing to pay for the cost of receiving electric service; and

**WHEREAS**, in exchange for the continued operation of the mobile food vending service located at the Commuter Station, the City will receive a \$600.00 annual payment for the use of the public property for the catering or vending business.

**1.0 TERM OF THIS AGREEMENT**

- 1.1. All recitals set forth above, shall be incorporated into this Agreement.
- 1.2. This Agreement shall be effective from the date on which it is executed by the parties and will remain in effect for two (2) years from the date of execution and shall automatically renew for three one-year periods unless either party terminates this agreement by sending written notice 90 days prior to the renewal date.

**2.0 CITY’S RESPONSIBILITIES**

- 2.1. The City shall bill Harry’s for electrical service usage on a quarterly basis, based upon his estimated electrical usage.
- 2.2. The City shall allow Harry’s to park its mobile food vending truck at the Commuter Station in the following locations:
  - 2.2.1. The south side of the downtown Commuter Station partially under the overhang of the station and parallel to 4<sup>th</sup> avenue; or
  - 2.2.2. A location established by the Director of the Department of Public Works, or his designee, in close proximity to the Commuter Station as may be needed for temporary conditions such as construction.

**3.0 HARRY’S RESPONSIBILITIES**

- 3.1. Harry’s shall promptly pay all utility bills issued by the City. As there will be no electric meter attached to the electrical outlet, electrical billing shall be quarterly and shall be based upon estimated usage of 4Kw x 4.5 hours a day, five days a week, for an estimated monthly cost of

\$36.70/month. This cost may be adjusted in accordance with citywide electric rate increases implemented by the City and increases and decreases in electric load required by Harry's Catering.

- 3.2. When using the electric outlet installed by the City, any power cords or extension cords shall be covered by an ADA compliant cable protection ramp so as to not to constitute a trip hazard or impede access by commuters.
- 3.3. Harry's shall operate its mobile food vending business at the Commuter Station Monday through Friday 4:00 a.m. through 9:00 a.m. only. Additional hours or days must be approved by the City.
- 3.4. Harry's shall be responsible for ensuring the area around the truck is free from food and debris each day before departing the site.
- 3.5. Harry's shall be responsible for obtaining all necessary permits to operate a mobile food vending business in the City of Naperville and County of DuPage.
- 3.6. Harry's shall provide the City a certificate of insurance, in an amount acceptable to the City, naming the City and BNSF as an additional insured.
- 3.7. Harry's shall pay to the City \$600.00 annually, due on October 1<sup>st</sup>, for the ability to operate a mobile food vending truck on City property at the train station.
- 3.8. Harry's shall, during the term of this Agreement, indemnify and hold the City harmless against any liability, judgements, expenses, attorney's fees, or claims, including personal injury, death and property damage, arising out of Harry's use of the Commuter Station or use of electric service at the Commuter Station; provided, however, no such indemnification shall be required with respect to losses or liabilities caused by the negligent acts or omissions of the City.

**4.0 ENTIRE AGREEMENT**

4.1. This Agreement constitutes the entire Agreement and there are no representations, conditions, warranties or collateral agreements, express or implied, statutory or otherwise, with respect to this Agreement other than as contained herein.

4.2. This Agreement may not be modified, omitted, or changed in any way except by written agreement duly signed by persons authorized to sign agreements on behalf of the City and Harry's.

**5.0 APPLICABLE LAW**

5.1. This Agreement shall be governed by the laws of the State of Illinois.

**6.0 VENUE**

6.1. Venue for any action taken by either City or Harry's, whether in law or in equity, to enforce the terms of this Agreement shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

**7.0 SEVERABILITY**

7.1. If any of the provisions of this Agreement shall be deemed illegal, invalid, unconstitutional or unenforceable by any court of law having competent jurisdiction, such decisions shall not invalidate or negate the other remaining provisions of this Agreement.

**8.0 SECTION HEADINGS**

8.1. The section headings provided in this Agreement are for convenience only and shall not be deemed part of this Agreement.

**9.0 TERMINATION**

9.1. This Agreement may be terminated at any time by either party by the submission to the other party of written 90 days advance notice to the following addresses:

FOR THE CITY  
City Manager  
City of Naperville  
400 S. Eagle Street  
Naperville IL. 60540

FOR HARRY'S  
Harry Buenger  
10 S.533 Curtis Lane  
Naperville IL 60564

Mailing of the notice specified in this section shall constitute personal notice and shall be deemed to have been given at the time of mailing.

**THE PARTIES TO THIS AGREEMENT BY THEIR SIGNATURES  
ACKNOWLEDGE THEY HAVE READ AND UNDERSTAND THEI AGREEMENT  
AND INTEND TO BE BOUND BY ITS TERMS.**

**CITY OF NAPERVILLE  
INC.**

**HARRY'S CATERING,**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

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

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
Pam Gallahue  
City Clerk

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_