

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** February 21, 2018  
**SUBJECT:** Etowah Lions Club Concession Memorandum of Understanding  
**PRESENTER:** Laura Rice, Parks & Recreation  
**ATTACHMENTS:** 1) Memorandum of Understanding  
2) Concessions Use Agreement  
3) Etowah Park Concessions Building Map

**SUMMARY OF REQUEST:**

Following Board instructions representatives of the Etowah Lions Club, Parks & Recreation, and the Recreation Advisory Board have developed a formal Memorandum of Understanding between Henderson County and the Etowah Lions Club granting operation of the Etowah Concession Stand to the Club with profits to be utilized for park and community benefit.

**BOARD ACTION REQUESTED:**

The Board is requested to accept the Memorandum of Understanding.

**Suggested Motion:**

*I move the Henderson County Board of Commissioners authorize staff to accept the Memorandum of Understanding between the Etowah Lions Club and Henderson County for the operation of the Concession Stand at Etowah Park.*

**Memorandum of Understanding between  
Henderson County and Etowah Lions Club  
for use of the concessions area at Etowah Park**

- I. **Purpose:** The purpose of this Memorandum of Understanding (MOU) is to memorialize the partnership between Henderson County (Henderson County) and Etowah Lions Club (Club), in order to establish an agreement for the use of the concessions area at Etowah Park. HENDERSON COUNTY and ETOWAH LIONS CLUB are the only parties to this MOU (hereinafter “Party” or “Parties”).
  
- II. **Background:** Henderson County is a North Carolina county formed in 1838. The Etowah Lions Club is a North Carolina civic group with the mission of serving the community and furthering the works of the Lions Club International. In 1997, Club purchased 18 acres, more or less, located off of Etowah School Road on the west side of Henderson County (the Property). The Property was donated to Henderson County and was developed in partnership. The Property was purchased to develop a park in the Etowah community. Since 1997, Henderson County has and continues to manage, maintain and enhance Etowah Park. This MOU encompasses the agreement in principle shared between the Club and Henderson County and sets out the Parties’ roles and aspirations for the use of the concessions area at the Property.
  
- III. **Stipulations of use:** The partners acknowledge and agree that the stipulations of use include:
  - a. Henderson County will agree to permit the Etowah Lions Club to operate the concessions area at Etowah Park.
  - b. Etowah Lions Club will agree to operate the concessions area in the manner beneficial to the users of the park.
  - c. Henderson County will meet with Etowah Lions Club representatives annually to discuss park projects, maintenance, and improvement plans.
  - d. Henderson County will designate an employee liaison to attend Etowah Lions Club meetings on a quarterly basis.
  
- IV. **Responsibilities of the Parties:** The Parties acknowledge their intent to perform the following responsibilities in order to attain the foregoing stipulations of use:
  - a. The Club may use profits from concession revenue to fund community programs that are in alignment with the mission of the Etowah Lions Club and provide documentation that profits are spent for non-profit purposes as required by the concessions agreement.

- b. The Parks and Recreation Department will allow the Etowah Lions Club the exclusive right to provide concession services in Etowah Park for the duration of the MOU.
- c. The Parks and Recreation Department will provide the Etowah Lions Club with right of first refusal to operate during Parks and Recreation Department special events held in Etowah Park.

**V. Principal Contacts:** The principal contacts for the Parties are:

John Mitchell  
Business and Community Director Henderson County  
100 N. King Street  
Hendersonville, NC 28792  
[johnmitchell@hendersoncountync.org](mailto:johnmitchell@hendersoncountync.org)

(828) 697-4819 (office)

Ken Wise  
Etowah Lions Club President  
P. O. Box 234  
Hendersonville, NC 28739

(828) 891-3071 (office)

**VI. Limitations:**

- a. This MOU does not create an obligation for funding or budgeting for ongoing maintenance or property management. All responsibilities of the Parties are subject to the availability of funds.
- b. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not a Party to this agreement against CC, Henderson County, or their partners. This MOU does not apply to any person not directly associated with a Party.

**VII. Proprietary Information:** To carry out the joint work resulting from this MOU, Henderson County and the Club may need to disclose to each other confidential information. The Parties agree to clearly identify confidential information disclosed to each other in written form, and to memorialize in writing, within a reasonable time, confidential oral communications. The Parties agree not to disclose information identified as confidential.

**VIII. Commencement/Duration/Modification/Termination:** This MOU takes effect when signed by all Parties and will remain in effect for a period of five years or until either

Party terminates the MOU by providing written notice to the other. This MOU may be extended or modified at any time per the mutual written consent of the Parties.

**IX.** Upon receipt of the termination notice, all Parties will take all reasonable actions to cancel outstanding commitments.

**X.** **Financial Provisions:** All commitments made by Henderson County and the Club in this MOU are subject to the availability of funds. Nothing in this MOU, in and of itself, obligates Henderson County to expend funds or to enter into any contract or incur financial obligations that would be inconsistent with County budget priorities.

**XI.** **Compliance with Laws:** The Parties will observe all applicable laws and regulations during the term described in this MOU. The Parties agree and acknowledge that all parties to this agreement are regulated by the federal and state laws and regulations governing governmental and nonprofit corporations as applicable. Neither Party shall engage in any transaction that is illegal or fraudulent.

**XII.** **Approval:** This MOU takes effect upon the date of the last signature below.

**FOR HENDERSON COUNTY:**

\_\_\_\_\_  
John Mitchell, Business and Community Director

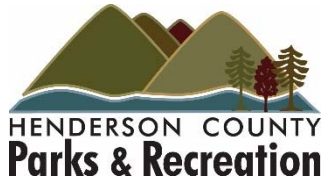
\_\_\_\_\_  
Date

**FOR ETOWAH LIONS CLUB:**

\_\_\_\_\_  
Ken Wise, Etowah Lions Club President 2017-2018

\_\_\_\_\_  
Date

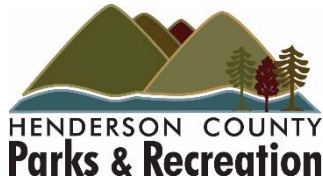
Attachment 2. Concessions Vending Application and Agreement.



Henderson County Parks & Recreation Department  
 708 SOUTH GROVE ST, HENDERSONVILLE, NC 28792  
 Phone: 828-697-4884 • Fax: 828-697-5599  
[www.hendersoncountync.org/recreation/vending](http://www.hendersoncountync.org/recreation/vending)

## Concessions Stand Vending Application 2017

BUSINESS INFORMATION		
Name of Company/Organization:		
DBA (if different):		
Address:		
City:	State:	ZIP Code:
Phone:	E-mail:	
Business Website:		
OWNER/REPRESENTATIVE INFORMATION		
Name:	Phone:	Cell:
Email:		
Name:	Phone:	Cell:
Email:		
REQUESTED PARK		
IF YOU ARE REQUESTING A VENDING PERMIT FOR MORE THAN ONE LOCATION A SEPARATE APPLICATION IS REQUIRED.		
Park	Location	Proposed Days and Times
REQUIRED DOCUMENTS TO SUBMIT WITH APPLICATION		
<input type="checkbox"/> Henderson County Health Department Permit. <a href="http://www.hendersoncountync.org/health/web_pages/environmental_health/environmental_health.html">http://www.hendersoncountync.org/health/web_pages/environmental_health/environmental_health.html</a>		
<input type="checkbox"/> Business license, health department grade, food service certifications, and non-profit certification, as well as additional documents at the discretion of the County.		
<input type="checkbox"/> Operation plan to include days and times of operation for each location requested.		
<input type="checkbox"/> Proposed menu with prices for each item.		
<input type="checkbox"/> Signed concessions agreement.		
The Vendor/Operator agrees to pay Henderson County based on the following fee schedule: <ol style="list-style-type: none"> <li>a) Commercial: 20% of concession revenue for the use of the concession stand from July 1, 2017 to June 31, 2018. This sum is due on or before September 1, 2017.</li> <li>b) Organizations with a 501 c(3) status: demonstrated use of profit use spent on non-profit activities will waive concessions usage fee.</li> </ol>		
OFFICE USE ONLY		
Permit Issued: _____ Permit Expires: _____		
Annual Statement(s) Received Year 1: _____ Year 2: _____ Year 3: _____		



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## CONCESSIONS AGREEMENT

This concession agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ by and between Henderson County and \_\_\_\_\_ . This Agreement is in addition to any existing agreements between Henderson County and the Club concerning use of County owned facilities.

The Henderson County Parks & Recreation Department (HCPRD) agrees to provide with a permit to allow \_\_\_\_\_ to operate concessions utilizing county concession facilities and equipment operations for the period \_\_\_\_\_ to \_\_\_\_\_ (weather permitting) with the following conditions and terms.

1. Concession space must be organized, clean and attractive.
2. All concessions must be kept neat and clean with the Vendor/Operator responsible for cleaning up at the end of the day and leaving concession space in the same condition as on delivery. Any expenses for damage to concession equipment shall be the responsibility of the Vendor/Operator. The Vendor/Operator shall be liable for delivery, handling, set-up and removal of its own displays and materials at the end of the contract.
3. An inspection and inventory of the concession space and equipment will be completed by Henderson County and Etowah Lions Club prior to and at the closing of the agreed upon use by the Vendor/Operator.
4. The Vendor/Operator shall conduct business in accordance with all laws and highest standards of business ethics.
5. Nothing shall be nailed or stapled to any Park property.
6. The Vendor/Operator must comply with all Health Department Regulations. The Vendor/Operator is required to obtain a Food Establishment License from Henderson County Health Department. This permit must be displayed while the stand is in operation.
7. The Vendor/Operator shall be substantially present at the concession for the designated schedule and shall have qualified, experienced and responsible staff (volunteers) at all times. All Vendor/Operator staff, volunteers, employees, agents, representatives or licensees shall have a neat, clean and sanitary personal appearance.
8. All staff (volunteers) shall be required to sign document stating no health issues that can be transmitted to anyone. This document is keep in the concession stand for Health inspector to view.
9. Henderson County reserves the right to ask a Vendor/Operator to leave, when in its opinion the Vendor/Operator is found to be disruptive to the premises.
10. The Vendor/Operator shall not increase prices once the season opens to the public.
11. The Vendor shall obey all fire regulations and County, State and other applicable laws.
12. The Vendor/Operator shall not consume nor permit his/her staff (volunteers) to consume alcoholic beverages in the food service area.
13. Henderson County and Etowah Lions Club reserves the right to establish such additional rules and regulations, as it deems necessary for the safe and successful operation of the concession.
14. The Vendor/Operator is required to bring their own signage. This sign must be presentable and professional. Henderson County reserves the right to remove a sign if it is not presentable.
15. Fire regulations require that a fire extinguisher be present while the concession is operating.
16. Any concession stand permit will be invalid for any day designated a special event by the Parks and Recreation Director (or designee). Permission to operate a concession facility on such a day must be requested in advance and approved by the Parks and Recreation Director (or designee).
17. Any organization wishing to operate a concession stand, other than within Henderson County permanent concession buildings (i.e., a portable, self-contained unit such as a food truck) on park property must obtain a separate permit, in accordance with this policy, from the Parks and Recreation Director (or designee), and shall comply with all Federal, State and local laws, rules, regulations, ordinances, codes, directives and guidelines. Location of such a facility will be specified on the permit.
18. The Vendor/Operator agrees to indemnify and hold harmless Henderson County from all suits, claims, damages, and actions of any kind or nature arising directly or indirectly on the part of the Vendor/Operator, its agents, servants, employees, contractors, volunteers, licensee and invitees arising out of its operation under this agreement.
19. The Vendor/Operator shall and hereby does release Henderson County from all liability for the loss or damage of merchandise, goods, equipment or any other property whatsoever kind or any other reason and any of his suppliers caused by fire, theft, storm, or any other reason arising from its operation under this Agreement.

20. The County shall be named as additional insured on all such insurance policies. The Vendor/Operator shall provide certificates of insurance, concurrent with this agreement, evidencing such coverage.
21. The Vendor/Operator shall provide the County with a seasonal financial statement for the concession operation on an annual basis.
22. The Vendor/Operator shall provide the County with copies of business license, health department grade, food service certifications, and non-profit certification, as well as additional documents at the discretion of the County.
23. The Vendor/Operator will provide the Henderson County Auditor or Finance Director reasonable access to the books and records of the Vendor/Operator for the purposes of auditing and inspecting the same to verify the statement.
24. The Vendor/Operator agrees to pay Henderson County based on the following fee schedule:
  - a. Commercial: 20% of concession revenue for the use of the concession stand from July 1, 2017 to June 31, 2018. This sum is due on or before September 1, 2017.
  - b. Organizations with a 501 c(3) status: demonstrated use of profit use spent on non-profit activities will waive concessions usage fee.
25. This agreement does not grant the Vendor/Operator an exclusive right to distribute its products. The County reserves the right to grant to other persons or entities any of the rights contained herein or otherwise.
26. The Vendor/Operator agrees not to engage in or permit any unlawful or offensive actions, and agrees, in the use and occupancy of the premises, to abide by all regulations of the County, local laws and ordinances, and laws of the State of North Carolina and of the United States Government.
27. Both parties understand \_\_\_\_\_ will operate the concession stand at \_\_\_\_\_ Park
28. The length of the operation contract will be for three (3) years: July 1, 2017-June 30, 2020.

The undersigned agrees to abide by the rules set forth in this agreement. I also agree to assume the risk of loss of my merchandise and other property of myself and my staff, whether from breakage, damage, loss, theft, disappearance or any other cause, for the duration of the season, including set-up and closing. Further, I agree to indemnify and save Henderson County harmless from and against any and all claims, actions, damages, liability and expense, including attorney's fees, in connection with loss of life, personal injury and/or damage to property that may be done or suffered by reason of my fault of negligence in the performance of this letter and attached Rules and Regulations, or occasioned all or in part by any act or omission by myself, my agents or employees.

Permit issued this \_\_\_\_\_ day of \_\_\_\_\_. Permit will expire the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Vendor/Operator Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director  
Henderson County Parks and Recreation Department

\_\_\_\_\_  
Date



Attachment 3.

