

**AGREEMENT FOR EQUIPMENT RENTAL/SALES
AND CONCESSION SERVICES AT
FLOYD ROAD STATION ON THE SILVER COMET TRAIL
BETWEEN
COMET TRAIL CYCLES, LLC AND COBB COUNTY, GEORGIA**

This Agreement ("Agreement") made by and between Comet Trail Cycles, LLC), a Georgia Limited Liability Company whose address is 4342 Floyd Road SW, Mableton, Georgia (hereafter "CTC") and Cobb County, a political subdivision of the State of Georgia, whose address is 100 Cherokee Street, Marietta, Georgia (hereafter "the County") is for the provision of Bicycle/Roller Blade/Equipment Rental and Sales Concession Services to be provided by CTC to Cobb County, Georgia.

WHEREAS, the County advertised and requested proposals (hereinafter "the RFP") to provide Equipment Rental/Sales and Concession Services at Floyd Road Station on the Silver Comet Trail; and

WHEREAS, CTC submitted a proposal to provide Equipment Rental/Sales and Concession Services at Floyd Road Station on the Silver Comet Trail in response to a Request for Proposals, Sealed Bid Number 18-6348, said proposal and response collectively referred to as RFP Package ("RFP") issued through the Cobb County Purchasing Department; and

WHEREAS, CTC responded to such request for proposals and was determined to be a responsible, responsive offeror; and

WHEREAS, the County desires to have CTC perform such services under certain conditions and at certain locations, upon the terms and conditions as set forth in this Agreement; and

WHEREAS, CTC agrees to operate the Floyd Road Trailhead Building and other temporary locations on the Cobb County portion of the Silver Comet Trail as approved by the County.

NOW THEREFORE, in consideration of the foregoing recitals, the premises, agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

A. SCOPE AND MANNER OF SERVICES – CTC OBLIGATIONS

1. All terms and conditions, as included in the RFP, are incorporated by reference and made a part of this Agreement.
2. CTC shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise

from or in connection with performance of the work hereunder by CTC, its agents, representatives, employees or subcontractors.

3. CTC shall provide appropriate and acceptable rental and sales/concession services for the Floyd Road Station and any other temporary location approved by the County. Services shall include, but not be limited to, providing food, non-alcoholic beverages and equipment for jogging, roller blading, bicycling and/or any permissible activity (non-motorized) on the Silver Comet Trail. The County shall have the right to approve all merchandise and equipment, which shall be maintained by CTC with due regard to the safety of users and patrons of the Silver Comet Trail.
4. CTC will hire and manage all personnel who shall be CTC's employees. CTC shall be responsible for continuous staffing to provide efficient service. All local and state laws, codes and regulations regarding personnel shall be adhered to. All personnel shall maintain a clean and neat appearance.
5. The interior of the site and facilities shall be maintained in a clean, organized, and fashionable manner. CTC shall provide furnishings, equipment, and supplies for the interior of the facility. CTC shall also provide its own storage.
6. CTC will hire and/or appoint a full-time qualified and experienced manager who will be on the premises or available to personally resolve problems during operating hours.
7. CTC shall timely pay all sales and use taxes and other taxes and fees of whatever nature applicable to the operation of the services hereunder.
8. CTC will keep current all municipal, county, state and/or federal licenses required to perform services hereunder, and provide current copies of the same to the P.A.R.K.S. Department within thirty (30) days of the effective date of this Agreement.
9. CTC shall abide by the terms of this Agreement.
10. CTC shall submit to the P.A.R.K.S. Department within thirty (30) days of the effective date of this Agreement a list of products CTC intends to sell/lease for P.A.R.K.S. approval.
11. CTC shall submit all fees identified in Section C of this Agreement to the P.A.R.K.S. Department on or before the tenth (10th) day following the end of each calendar month.
12. CTC will assume financial responsibility for all improvements/modifications requested by CTC. Any and all such improvements shall meet all applicable codes and shall be of a temporary nature. Any improvements shall be erected and removed by CTC at the expiration of this Agreement, unless prior

arrangements have been made. Any and all such improvements must be approved by P.A.R.K.S. in advance.

B. SCOPE AND MANNER OF SERVICES – COUNTY OBLIGATIONS

1. The County may make periodic inspections of the premises and equipment .
2. Provide utilities, including electricity, solid waste disposal, water, sewer, two (2) telephone lines, security alarm and utility services.
3. The County will be responsible for the routine structural maintenance of the facility unless such maintenance is required as a result of damage caused by CTC, its employees, agents or representatives.
4. The County will purchase and erect a sign posting the days, dates and hours of operation.
5. The County shall assume responsibility for cleaning the restrooms and exterior of the building.
6. The County will allow CTC full use of the Silver Comet Trail logo for merchandising for the length of the Contract.
7. The County reserves the right to secure additional services for special events held on the trail. CTC will be given the first opportunity to provide a written proposal/quotation for such additional services.

C. FEES AND REPORTS

1. CTC shall submit to the County on or before the tenth (10th) day of each month a fee made payable to the County in the amount of seven point thirty five (7.35%) percent of the gross receipts earned during the preceding calendar month. "Gross Receipts" are defined as all transactions for cash or credit, less applicable sales tax and added gratuities, if any. Fees are not contingent on profitability of the concessions. If payment is not timely received, a 1.5% per month interest shall be assessed.
2. Along with and accompanying the fee, CTC shall submit a report of gross receipts earned during the preceding month on forms provided by the County. CTC will submit a copy of their income tax return annually. In addition, upon reasonable notice by the County to CTC, CTC shall provide to the County, its attorneys and/or agents the right to examine and make copies of the books and records relating to this Agreement, provided such examination is conducted during normal business hours and with as little disruption to the business of CTC as possible.
3. CTC shall submit all payments of percentage fees, plus any other payments to:

Cobb County P.A.R.K.S. Department
1792 County Services Parkway
Marietta, Georgia 30008

Checks must be made payable to "Cobb County Board of Commissioners."

D. TERM AND TERMINATION

1. Term. The County shall lease the site to CTC for an initial three (3) years, commencing on the date of execution below (the "Effective Date"). At the close of the initial term, the Agreement shall automatically renew for one (1) twelve (12) month term unless the County provides notice to CTC thirty (30) days prior to the end of the then current term of its intent to terminate. Upon completion of the first renewal term, the Agreement shall automatically renew for another one (1) twelve (12) month term with the same stipulations mentioned herein. However, the total duration of this Agreement, including the renewal terms, shall not exceed six (6) years (basic three (3) years term and three (3), twelve (12) month options). In compliance with the terms of O.C.G.A. § 36-60-13, this Agreement shall be deemed to terminate absolutely and without further obligation on the part of the County at the close of the calendar year in which it may be renewed and/or at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the County.
2. County Termination. The County reserves the right to terminate this Agreement should any of the following occur:
 - A. Institution of proceedings in voluntary bankruptcy by CTC.
 - B. Institution of proceedings of involuntary bankruptcy by CTC if such proceedings continue for a period of ninety (90) days.
 - C. Assignment by CTC for the benefit of creditors.
 - D. Abandonment by CTC for a period of seven (7) consecutive days, excluding acts of God.
 - E. The assumption by the Government or any agency thereof, or any other governmental agency, of the operation, control or use of the concessions or any substantial part thereof in such manner as to substantially restrict operations.
 - F. Inaccessibility or destruction to the building for any reason; total or partial destruction of premises by fire or any other act of God.

G. Failure of CTC to follow requirements of this Agreement, including payment of sums due.

Upon the occurrence of any of the foregoing, the County may provide CTC with thirty (30) days written notice of its intent to terminate. If CTC is able to cure the reason for termination to the satisfaction of the County within such thirty (30) day period, termination will not result. If CTC persistently fails to abide by the terms of the Agreement (i.e., two (2) termination proposals in one twelve (12) month period), the County may terminate the Agreement immediately with no right of CTC to cure.

3. CTC Termination. CTC shall have the right to terminate this Agreement upon thirty (30) days written notice sent to the County via registered mail, upon occurrence of any of the following:

A. Issuance by a court of competent jurisdiction of any permanent injunction substantially restricting the use of the facilities for commercial purposes, with the injunction remaining in force for ninety (90) calendar days or more.

B. A breach by the County of any of the terms or conditions of the Agreement, and failure of the County to remedy such breach during a period of thirty (30) calendar days after receipt of written notice sent via registered mail of existence of such breach.

C. The assumption by the United States Government or any agency thereof, or any other governmental agency, of the operation, control or use of the concessions or any substantial part thereof in such manner as to substantially restrict CTC's operations for a period of ninety (90) calendar days or more.

E. LICENSING

CTC shall be responsible for securing all necessary permits and licenses for operation of the sales/rental facility. These shall include, but not be limited to, building permits, health permits, food service inspections, and Cobb County occupational licenses.

F. INSURANCE

1. CTC shall maintain, during the term of this Agreement, the following insurance and provide copies of insurance policies in the form and amounts as stated in the RFP of the County and being a part of the Agreement documents:

A. Workers' Compensation insurance as required by law and Employers Liability limits of \$1,000,000 per accident;

- B. General liability insurance against all hazards arising from the performance of the services on County's premises, with limit of liability for personal injury, including death resulting therefrom, on an occurrence basis of \$1,00,000 per occurrence and in the aggregate, and with a minimum limit of liability for property damage on an occurrence basis of \$2,000,000 in the aggregate, and including premises/operations, products/completed operations contractual liability independent contractors, and broad-form property damage coverage; and
- C. Umbrella coverage of \$5,000,000 combined single limits per occurrence. Company shall upon execution of this Agreement provide County with original certificates of insurance and endorsements to such policies of insurance (a) evidencing the coverages required hereunder (b) except for the insurance required under paragraph (1) herein, naming County, its elected officials, officers, employees and volunteers as additional insureds to the extent of Company's insurance and indemnification obligations under this Agreement (c) providing that Company's insurance coverage shall be primary insurance as respects to such additional insureds and any self-insurance of such additional insured shall be in excess of Company's insurance and not contribute to it; however, the primary and non-contributory nature of Company's insurance shall only apply to the extent of County's status as an additional insured (d) providing that Company's insurance shall apply separately to each insured against whom a claim or suit is brought, except with respect to the limits of the insurer's liability (e) providing that the insurer agrees to waive all rights of subrogation against such additional insureds for losses arising out of the services or work performed by Company for County (f) provide that the failure to comply with reporting provisions of the policies shall not affect coverage provided to such additional insureds and (g) provide that each insurance policy required hereunder and the coverage thereunder shall not be suspended, voided, canceled reduced in coverage or in limits except after thirty (30) days, (or 10 days for cancellation due to non-payment of premiums) prior written notice by mail, has been given to and received by County. The certificates and endorsement submitted must be approved by County before the services commence, which approval shall not be unreasonably withheld. County reserves the right to require complete, certified copies of all required insurance policies at any time.
- D. Commercial automobile liability (owned, non-owned, and hired) \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

2. Waiver of Subrogation. The insurers shall agree under each policy of insurance required by this Agreement to waive all rights of subrogation against the Insured Parties for losses arising from work performed by CTC for County.

G. INDEMNIFICATION

1. CTC shall defend, indemnify and hold harmless County and County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, expenses, and liability for property damage and personal injury (including death), including but not limited to attorney's fees and other legal expenses ("Liabilities") which may arise from or be the result of willful, negligent or tortious conduct arising out of the performance of contracted services or operations by CTC, any subcontractors, anyone directly or indirectly employed by CTC or subcontractor or anyone for whose acts CTC or subcontractor may be liable, regardless of whether or not the negligent act or omission is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party.
2. In any and all claims against an Indemnified Party or Indemnified Parties by an employee of CTC, its subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section G shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for CTC or its subcontractors, under the Workers' Compensation acts, disability benefit acts or other employee benefit acts.

This obligation to indemnify, defend and hold harmless the Indemnified Party and Indemnified parties shall survive the expiration or termination of this Agreement provided that the claims are based upon or arise out of acts or omissions that occurred during the performance of this Agreement.

H. HOURS OF OPERATION

CTC agrees to use and operate the County provided facility on a daily basis and for special events. Vendor service will be required seven (7) days a week, including holidays. Sufficient attendants shall be available to provide service. CTC shall provide the County with a schedule of intended hours of operation. The proposed staff schedule shall be made available for review and approval by the County. CTC shall submit to the County each month a schedule of intended hours of operation for the next month. CTC will be notified promptly of approval or disapproval.

I. ASSIGNMENT

CTC shall not sub-lease the premises in whole or part, assign the Agreement or any rights or obligations thereunder to any other person, or change ownership or name without first obtaining the County's written approval.

J. FORCE MAJEURE

Except with respect to any obligation or covenant regarding the payment of any sums due and payable under this Agreement, County and CTC shall each be excused for the period of delay and shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Agreement when prevented from doing so by cause or causes beyond their reasonable control, which shall include, labor disputes, civil commotion, governmental regulations or controls, fire or other casualty, or acts of God.

K. ORDER OF PRECEDENCE

The Agreement Documents consist of this Agreement, the Request for Proposal Number 18-6348 and CTC's bid. Should there be any discrepancy among the documents, the above order of priority will prevail.

L. GOVERNING LAW AND VENUE

The provisions of the Agreement Documents shall be governed by the laws of the State of Georgia and exclusive venue shall lie in Cobb County, Georgia.

M. SEVERABILITY

Should any portion of this Agreement be deemed unconstitutional or otherwise unenforceable by a Court or body of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.

N. EXHIBITS AND ATTACHMENTS

The documents listed below have been attached hereto and are incorporated herein as a part of this Agreement:

Exhibit #	Document Title
1.	County's Request for Proposal #18-6348
2.	Comet Trail Cycles, LLC sealed bid #18-6348

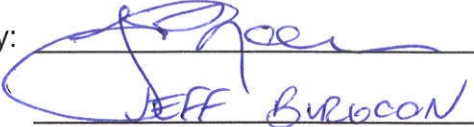
[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement.

Cobb County, Georgia
("Owner")

Comet Trail Cycles, LLC

By: _____
Michael H. Boyce, Chairman
Board of Commissioners

By: 
Name (Print)

Date: _____

Title: OWNER / MANAGER

Attest: _____
County Clerk

Date: JULY 15, 2018

Attest:  _____

Approved as to Form:

County Attorney's Office