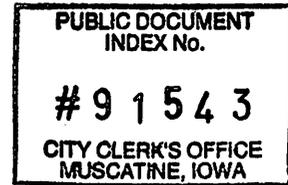


MEMORANDUM



TO: Gregg Mandsager, City Administrator
FROM: Richard Klimes, Director of Parks and Recreation
DATE: January 29, 2011
RE: Proposed Concession Lease Agreement



INTRODUCTION:

Please accept this memo and the attached information as a request for the Muscatine City Council to approve the proposed concession lease agreement for Kent Stein Park, the Muscatine Soccer Complex, and the Muscatine Aquatic Center.

BACKGROUND:

During the first week of January 2011, thirteen request for proposal forms were sent out to prospective concessionaires. Additionally, two (2) legal notices were placed in the Muscatine Journal.

The deadline to submit a proposal was Wednesday, January 26, 2011 at 5:00pm. We received one (1) timely submitted proposal and that was from Plamor Lanes, Muscatine, IA. Their proposal was for 20% and included all three (3) facilities.

An interview and extensive evaluation including reference checks was conducted by City staff for the prospective concessionaire. Plamor Lanes demonstrated that they have the experience, staff, equipment and customer service background to perform the City concession services as requested.

RECOMMENDATION/RATIONALE:

At this time, the City Staff would recommend that the City Council approve the proposed lease agreement with Plamor Lanes, Muscatine, IA for concession services at Kent Stein Park, the Muscatine Soccer Complex, and the Muscatine Aquatic Center.

BACK-UP INFORMATION:

1. Request for proposal
2. Plamor Lanes submittal
3. Proposed lease agreement

Attach:

C: Matt Beatty, Program Supervisor
Nick Gow, Athletic Facilities Manager
Leanna Richardson, Plamor Lanes

CONCESSION AGREEMENT
Muscatine Aquatic Center, Soccer Complex and Kent Stein Park

It is hereby agreed by and between the City of Muscatine, Iowa hereinafter referred to as City, and Plamor Lanes, Muscatine, IA hereinafter referred to as Lessee, as follows:

1. That the City hereby leases to the Lessee the Concession Buildings and rights for food and drink concession at the Muscatine Soccer Complex, Kent Stein Park and the Muscatine Aquatic Center located in the City of Muscatine, Iowa for the period from March 1, 2011 to November 30, 2011, March 1, 2012 to November 30, 2012, March 1, 2013 to November 30, 2013, March 1, 2014 to November 30, 2014 and March 1, 2015 to November 30, 2015.
2. That the Lessee at all times indicated herein shall furnish food and drink over-the-counter or through vending machines to adequately serve the public that may be using the concession buildings and agrees that at all times during the period of this contract Lessee will maintain sufficient equipment and merchandise to adequately serve the public in said concession buildings.
3. The Lessee, in consideration of the leasing of said concession areas, agrees to pay to the City a minimum of 20% of the gross receipts (total sales net of applicable sales tax) from sales at Kent Stein Park, the Muscatine Soccer Complex and the Muscatine Aquatic Center. Lessee shall no later than the tenth (10th) day of each month following any sales, report to the City the total sales for the preceding calendar month and pay the percentage due for such month. Sales are to be reported by facility, by day, on a form provided by the City of agreed to by the City.

The Lessee shall enter all sales into cash registers provided by the City and offer receipts to all concession customers. All cash register tapes are to be retained by the Lessee throughout the term of this agreement and are to be made available to the City upon request. The register tapes are to include a notation as to the facility and the date of the sales. The sales totals on the register tapes should reconcile to the amounts reported on the monthly sales report. Over-rings, if any, on the register tapes should be noted as such with the signature of the individual responsible next to the incorrect entry, and the register totals manually revised with the change(s). Any cashier overages should be noted on the tapes and overages will be subject to the commission rate noted above. Cashier shortages, if any, are the responsibility of the Lessee and are subject to the commission rate.

All cash register tapes are to be submitted to the City with the monthly sales report for review by the City. These tapes will be returned to the Lessee to retain throughout the term of this agreement.

The Lessee will also make available on request, copies of the Lessee's quarterly sales tax reports or other evidence supporting the total sales reported. The City shall have the right to examine the accounting records of the Lessee from time to time and the Lessee agrees to promptly produce said accounting records at the request of the City.

4. That the Lessee agrees to obtain all necessary licenses, permits, and certificates, as required by Federal law, State law, or local Ordinance, at Lessee's expense.
5. That the Lessee agrees to assume full and absolute responsibility for, and to defend, hold harmless and indemnify, the City and its Officers, Employees, and Agents, for any and all claims, damages and losses in any way resulting from the maintenance, operation, or use of the food concession equipment, leased area or buildings covered by this agreement. Such responsibility includes, but is not limited to, losses from the consumption or otherwise of food items; physical damage to property owned by the City, the Lessee, the Lessee's employees, or private individuals; and any and all consequential and economic damages.

Prior to the effective date of the lease, the Lessee shall file a certificate of insurance with the City, with the right of fifteen (15) day notice of cancellation, naming the City as additional insured. The Lessee shall purchase liability insurance in the amount of at least one million (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage claims and shall include product liability.

6. That all items, quantities and prices must be standard for the trade and a complete listing must be provided to the City. The listing and subsequent changes must be approved in writing by the Director of Parks and Recreation of the City. The Lessee must conform to the rules, regulations and ordinances of the City of Muscatine and agrees not to sell or have in said concession any alcoholic beverages or tobacco products.
7. The Lessee agrees to keep all food, equipment, and food service areas in a clean and sanitary condition, according to all appropriate food handling regulations. The City and other authorized sanitary inspectors shall have the right to enter and inspect the premises at any time. Any directives by authorized inspectors of the City shall be complied with immediately. Any violation which is the subject of a written corrective notice, which has not been rectified within seventy-two (72) hours, shall be cause for immediate cancellation of this agreement by the City.
8. That the Lessee agrees to observe all laws of the State of Iowa, all Ordinances of the City of Muscatine, Iowa, and all Federal laws applicable to Lessee on said premises.
9. That the Lessee agrees not to assign this agreement or sublet the premises without the expressed written consent of the City.
10. That the City will furnish the buildings and in-place equipment to the Lessee as is during the lease period. The Lessee must clean, maintain and repair the buildings and in-place equipment during the use periods of this contract. The buildings and all food equipment shall be cleaned and all food removed within five (5) days after closing for the season each year.

11. That the Lessee may not make permanent changes or improvements to the leased premises without the expressed written consent of the City, and said improvement shall become the property of the City upon termination of this agreement without further compensation to the Lessee.
12. That the Lessee shall be responsible for any utility payments and charges which become necessary in the operation of the premises covered by this agreement.
13. That the lessee agrees to keep the concession buildings and surrounding grounds for fifty (50) feet around on all sides of the concession buildings free of debris, papers and trash at all times.
14. That the Lessee agrees to keep said concession buildings open during periods of activity and hours mutually agreed upon. The Parks and Recreation Department office will inform the Lessee of additional scheduled activities. All activities are subject to weather and elements.
15. That the Lessee shall have exclusive concession sales privileges for the Muscatine Soccer Complex, Kent Stein Park and the Muscatine Aquatic Center with the exception of special events which have been or will be approved by the City.
16. That the City shall supply to the Lessee a First Aid Kit which the Lessee shall make available to users of said facilities in the event of injury.
17. That upon failure to pay the monies agreed upon herein, or to comply with any of the stipulations or conditions of this agreement by the said Lessee, the City may elect to declare forfeiture of this agreement and may take possession of the premises within seven (7) days notice at any time and may bring action for forcible entry and detainer as allowed by Law for recovery of possession. Failure of the City to declare the forfeiture of this agreement shall not operate as a waiver of any noncompliance.
18. That the City shall have a lien for all costs, as herein described at any time remaining unpaid upon any and all property of the Lessee, used or kept on or above said premises, during the existence of this agreement whether or not such property is exempt from execution and attachment. No demand for the monies herein described shall be necessary to entitle the City to the right herein agreed upon.
19. The Lessee agrees to pay nine (9) percent per annum on all past due monies payable under this agreement, and pay all reasonable expenses and attorney's fees connected with the enforcement of the provisions of this agreement with which the Lessee has failed to comply.
20. That the City or Lessee may terminate this agreement by providing written notice of said termination to the other at least thirty (30) days prior to the date of termination. The City reserves the right to terminate this agreement within seven (7) calendar days

written notice if the Lessee does not perform the terms and conditions of this agreement.

21. That the Lessee shall not permit any of the following practices:

- a. To discharge from employment or refuse to hire any individual because of their race, creed, color, national origin, religion, age, sex, marital status, political affiliation, or disability.
- b. To discriminate against any individual in the terms, conditions, or privileges of employment because of their race, creed, color, national origin, religion, sex, marital status, political affiliation, or disability.
- c. To discriminate against any individual in the performance of any obligation or the extension of services under this contract because of their race, creed, color, national origin, religion, age, sex, marital status, political affiliation, or disability.

DATED AND EXECUTED AT MUSCATINE, IOWA THIS 17th DAY OF February, 2011.

The City of Muscatine, Iowa

MAYOR:

Richard W. G. Brian

CITY CLERK:

Gary M. Mandy

LESSEE: Plamor Lanes

BY:

Leanna R. Richardson

1411 Grandview Ave

Address

Muscatine IA 52761

City

State

Zip