



City of Saginaw

City of Saginaw

Meeting Date: 5/08/2018

Staff Contact: Kim Quin
Finance Director

Agenda Item: 4c
(CC-0518-03)

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SUBJECT: Action regarding agreement for the operation of the concession stand at Willow Creek Park

BACKGROUND/DISCUSSION:

The proposed agreement is essentially the same as an agreement approved in 2014 with another individual (only changes in names and dates). Mr. Steve Holleman (Holleman Enterprises, LLC) has expressed an interest in operating the concession stand at Willow Creek Park on all nights that the City of Saginaw has softball league play and other City sponsored special events. He will pay the City a fee of \$100 per month. Additional information is included in the attachments.

FINANCIAL IMPACT:

The financial impact will be \$100.00 per month in revenues.

RECOMMENDATION:

Staff recommends approval of the agreement with Steve Holleman (Holleman Enterprises, LLC) for the operation of the concession stand at Willow Creek Park

Attachments

Report from Keith Rinehart
Proposed Agreement



City of Saginaw

Council Agenda Background

To: Gabe Reaume, City Manager

From: Keith C. Rinehart, Director of Community Services

Date: City Council Meeting – May 1, 2018

PRESENTER:

Keith C. Rinehart, Director of Recreation & Community Services

ITEM:

Consideration and approval of a contractual agreement for the operation of a concession stand at Willow Creek Park.

DISCUSSION:

A few months ago, staff began discussions with Steve Holleman (Kona Ice) about a potential opportunity to manage the concession stand at the Willow Creek Park ballfield. During discussions, Mr. Holleman wished to sell drinks (only specific brand drinks thru the City of Saginaw contract with our official drink provider), pre-packaged concession items, and other concession stand favorites. He would also sell Kona Ice snow-cones to the public. It was also discussed that the Mr. Holleman would also pay the City of Saginaw \$100.00 per month. Also, Mr. Holleman would operate the concession stand on all nights the City of Saginaw has softball league play, City sponsored special events in the park and potentially other nights of the week at this location.

A few years ago, we entered into a contract with different individuals to manage the concession stand at the Willow Creek Ball fields. Currently, we do not have one as the previous operator cancelled operations. The same contract was written and approved by the City Attorney (Bryn Meredith) in 2011, 2013 and 2014 will be used at this time with only the dates and names changed.

RECOMMENDATION

Approval of a contractual agreement with Steve Holleman (Holleman Enterprises-LLC) for the operation of a concession stand at Willow Creek Park

FISCAL IMPACT:

⇒ \$100.00 per month in revenues

ATTACHMENTS:

⇒ Proposed Contractual Agreement with Holleman Enterprises LLC

If you have any questions, please contact me at 817-230-0351.

Thank you,



Keith C. Rinehart
Director of Community Services
City of Saginaw

**CONCESSION STAND AGREEMENT & CONTRACT
EXHIBIT A**

THE STATE OF TEXAS

KNOW BY ALL THESE PRESENTS:

COUNTY OF TARRANT

This Contract ("**Contract**") is entered into by and between the City of Saginaw, ("**City**"), Holleman Enterprises, LLC ("**Concessionaire**");

WHEREAS; City owns Willow Creek Park and desires to have a concession stand (food and/or drink) vendor assigned to concession stand facility for the benefit of Park visitors; and

WHEREAS; Concessionaire wishes to operate a concession selling food and/or drinks to visitors in Willow Creek Park;

NOW THEREFORE; City and Concessionaire in consideration of the mutual covenants herein agree as follows:

1. **Term.** The term of this Contract shall begin upon mutual execution hereof and shall terminate one year hence on May 1, 2019, subject to the provisions concerning termination as stated herein.
2. **Location.** City grants a Contract for the location Willow Creek Park Concession Stand (Northwest corner of McLeroy Blvd. and Knowles ("**Premises**").
3. **Rent.** The monthly rental fee shall be: \$100.00, due on the first day of each month. No rental paid by Concessionaire will be refunded if Contract is terminated prior to its full term.
4. **Commencement of Operations.** Concessionaire must commence operations within 45 days after the effective date of Contract. Failure to commence operations within 45 days constitutes a material breach of Contract.
5. **Concession Rights.** In consideration of the rent hereby provided to be paid by Concessionaire, and the covenants herein, City grants Concessionaire the right to use the designated concession location, including the usual utilities at Willow Creek Park to make direct sales to the public of food and drinks.

Concessionaire may use vending machines in selling drinks, snacks and other merchandise customarily handled by a concessionaire.

City expressly retains the right to:

- (a) Make final decisions on matters which may arise, not specifically covered in Contract.
- (b) Contract does not include the right for Concessionaire to sell space for either temporary or permanent signs. City reserves this right to itself.
- (c) Approve the form and price of products to be sold and to require disposable containers (paper or plastic) to be suitable for consumption of the products on Premises immediately after the sale. Bottles shall not be contracted. Under no circumstances shall there be any reuse of these containers by Concessionaire after initial sale or use.
- (d) Approve the sale of products other than those listed above, and the form and price of such additional products.

- (e) Determine that the drinks shall be purchased from Coca-Cola (the City of Saginaw's official drink sponsor/contract) and only from Coca-Cola.
- (f) Supply the cooling equipment (glass front cooler) required by the concession operation.

6. **Concessionaire Responsibilities.** Concessionaire will be responsible to City as follows:

- (a) Concessionaire shall furnish, install, service and maintain in good working order all equipment, including exhaust hood, and supplies required to properly execute Contract. Concessionaire shall furnish all cooking, dispensing and cooling equipment required by the concession operation. Vending equipment shall remain the sole and exclusive property of Concessionaire except for the glass front cooler supplied by the City of Saginaw.
- (b) Concessionaire will operate the concession in accordance with all federal, state, and local laws and all relevant rules and regulations that may be promulgated by the City's Director of Community Services, or his designee ("**Director**").
- (c) The food and drink shall be dispensed by attendants furnished by Concessionaire at Concessionaire's expense. Minor cleanup duties shall consist of keeping tables clean (if any), cleaning up of spilled food and drink, frequent cleaning of windows and floors and removal of all trash within a 50-foot circumference around the food concession.
- (d) Concessionaire shall furnish as part of Contract, all related supplies and condiments.
- (e) Director shall approve the quality, quantity and price schedule of all concession merchandise. Selling price shall exclude all applicable state and local sales tax.
- (f) It is understood that Concessionaire will establish good public relations and promote this concession service to all citizens of Saginaw and its visitors. Concessionaire will establish hours of operation as mandated by Director. Concessionaire will post hours of operation in a conspicuous place for the benefit of the public.
- (g) Concessionaire may provide for the sale of various sundry items (i.e., softball and softball related equipment, etc.). A list of such items being offered for sale and their price must be approved in writing by Director prior to sale.
- (h) Concessionaire may not use Premises for any purposes other than those listed herein.

7. **General Provisions.**

- (a) Concessionaire must not discriminate or Contract discrimination against any person or group of persons in any manner on the basis of handicap, race, color or national origin.
- (b) Concessionaire will refrain from any unlawful employment practices and comply with all lawfully adopted regulations related thereto.
- (c) Concessionaire will furnish service on a fair, equal, and non-discriminatory basis to all users thereof, and will charge fair, reasonable, and non-discriminatory prices for each unit of service.

- (d) Concessionaire must not make additions or alterations to Premises without Director's prior written approval. All additions or alterations must be made at Concessionaire's expense. All additions or alterations installed by Concessionaire must be repaired and/or replaced at Concessionaire's expense, and may be removed by Concessionaire at the expiration or termination of Contract if they may be removed without damaging Premises. All additions and alterations made by Concessionaire which are not removed at the expiration or termination of Contract become property of City without necessity of any legal action.
 - (e) Noncompliance with the terms herein may result in termination of Contract and repossession of Premises by City or its agents. If City undertakes legal action to enforce compliance or collect damages resulting from noncompliance, Concessionaire shall pay all City's court costs and expenses, including reasonable attorneys' fees.
 - (f) Concessionaire covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other related taxes according to circular E Employer's Tax Guide, publication 15, as it may be amended. Concessionaire shall provide proof of payment of these taxes within ten days of delivery of Director's written request therefore.
 - (g) Concessionaire must comply with all applicable City, State and Federal Government laws and regulations. All actions brought to enforce compliance will be brought in Tarrant County where Contract was executed and will be performed. Concessionaire will be obligated to conform to any and all changes in City Ordinances and Recreation & Community Services Department policies that occur during the term of Contract.
8. **Accounting.** Concessionaire shall provide Director with an annual financial statement. This shall be submitted not later than sixty (60) days after the termination date of Contract.
9. **Termination.** Concessionaire or City may cancel Contract at any time without cause by notifying a duly authorized representative of the other party, in writing, at least one (1) month prior to such cancellation.
- City may immediately terminate Contract for cause if Concessionaire:
- (a) fails to commence operations within forty-five days after the effective date of Contract;
 - (b) fails to consistently maintain insurance levels as specified herein;
 - (c) possesses or Contracts alcohol, tobacco or controlled substances on Premises;
 - (d) abandons Premises;
 - (e) fails to maintain at all time, the performance bond or other guarantee, as mandated herein;
 - (f) Fails to maintain a valid Health Contract.
10. **Inspection.** Director reserves the right to enter Premises at any time during regular business hours in order to determine whether the terms of Contract are being observed and carried out. Failure to meet Health requirements will result in immediate closure of the concession operation until such time as the discrepancies are corrected and the operation has passed re-inspection.

11. **Contractual Lien.** In the event that Concessionaire willfully holds-over without Director's consent, the property on Premises belonging to Concessionaire shall become subject to a Contractual Landlord's Lien in addition to any applicable statutory liens available in order to secure amounts owed by Concessionaire including the reasonable rental value of Premises.
12. **Abandoned Property.** In the event that Concessionaire abandons Premises, Director may enter and remove and store all property found thereon. Director may also impose reasonable charges for storing such abandoned or seized property, and may sell same at public sale. Concessionaire hereby agrees that any such re-entry or taking of possession of Concessionaire's property after a default by Concessionaire shall not constitute any trespass, act of conversion, or other tort on City's part or in anywise render City liable to Concessionaire.
13. **Relocation.** As a condition of Contract, Concessionaire can be required to relinquish his/her assigned space (Premises) upon request by Director. Concessionaire may be reassigned a space within the designated Willow Creek Park during that period by Director, or Concessionaire may elect to remove his/her concession business from the Park for the period of non-availability. Should the concession be removed, credit will be given for the period of time the space was not available. The non-availability may be for reasons of repair, maintenance, construction, and general upgrading or special activities.
14. **Assignment.** No assignment of Contract or any right or interest therein by either party is effective without the prior written consent of a duly authorized representative of the other party.
15. **Force Majeure.** The parties will exercise every reasonable effort to meet their respective obligations but are not liable for delays resulting from force majeure or other causes beyond their reasonable control for reasons including, without limitation, the following: acts of God, or delays of suppliers, subcontractors, utility companies or other carriers.
16. **INDEMNITY.** CONCESSIONAIRE COVENANTS TO FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF SAGINAW, ITS OFFICERS, EMPLOYEES, OR AGENTS ("INDEMNITIES") FROM, AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSSES, COSTS, LIABILITIES, EXPENSES, AND JUDGEMENTS RECOVERED FROM OR ASSERTED AGAINST CITY ON ACCOUNT OF INJURY OR DAMAGE TO PERSON (INCLUDING, WITHOUT LIMITATION ON THE FOREGOING WORKER'S COMPENSATION AND DEATH CLAIMS), OR PROPERTY LOSS OR DAMAGE OF ANY KIND WHATSOEVER, TO THE EXTENT ANY DAMAGE OR INJURY MAY BE INCIDENT TO, ARISE OUT OF, BE CAUSED BY, OR BE IN ANY WAY CONNECTED WITH, EITHER PROXIMATELY OR REMOTELY, ANY ACTIVITY ASSOCIATED WITH CONCESSIONAIRE'S BUSINESS INCLUDING BUT NOT LIMITED TO: THE QUALITY AND SALE OF FOOD AND/OR DRINKS TO CONCESSIONAIRE PATRONS, THE USE OF FOOD PREPARATION DEVICES, THE OPERATION OF A MOTORIZED OR NON-MOTORIZED CONCESSION STAND; THE EXERCISE OF RIGHTS UNDER THIS CONTRACT; AN ACT OR OMISSION, NEGLIGENCE, OR MISCONDUCT ON THE PART OF CONCESSIONAIRE OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES, PATRONS, GUESTS, LICENSEES, INVITEES, OR OTHER PERSONS HAVING INVOLVEMENT IN, PARTICIPATION WITH, OR BUSINESS WITH CONCESSIONAIRE, WHETHER AUTHORIZED WITH THE EXPRESS OR IMPLIED INVITATION OR PERMISSION OF CONCESSIONAIRE (COLLECTIVELY "CONCESSIONAIRE'S INVITEES"); INCLUDING ANY INJURY OR DAMAGE RESULTING, PROXIMATELY OR REMOTELY, FROM THE VIOLATION BY CONCESSIONAIRE, OR CONCESSIONAIRE'S INVITEES OF ANY LAW, ORDINANCE, OR GOVERNMENT ORDER OF ANY KIND; INCLUDING ANY INJURY OR DAMAGE IN ANY OTHER WAY ARISING FROM OR OUT OF CONCESSIONAIRE'S EXERCISE OF

RIGHTS UNDER THE CONTRACT; AND INCLUDING INJURY, LOSS, OR DAMAGE CAUSED BY THE **SOLE OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES.**

CONCESSIONAIRE COVENANTS AND AGREES THAT IF CITY IS MADE A PARTY TO ANY LITIGATION AGAINST CONCESSIONAIRE OR IN ANY LITIGATION COMMENCED BY ANY PARTY, OTHER THAN CONCESSIONAIRE RELATING TO THIS CONTRACT, CONCESSIONAIRE SHALL, AT ITS OWN EXPENSE, UPON RECEIPT OF REASONABLE NOTICE REGARDING COMMENCEMENT OF LITIGATION, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND CITY IN ALL ACTIONS, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, AND ACTIONS.

17. **Insurance.** Concessionaire must secure and maintain at Concessionaire's expense during the term of Contract, a Commercial General Liability insurance policy with the limits and requirements shown on the attached and incorporated Exhibit A. The Certificate of Insurance must be sent to the Director and must provide 30 days written notice of cancellation, intent to not renew or material change of any coverage required herein. Concessionaire will provide copies of all insurance policies to the City Attorney upon the City Manager's written request.

The amount of all required insurance policies is not deemed to be a limitation on Concessionaire's agreement to indemnify and hold harmless Indemnities, and in the event Concessionaire or Indemnities become liable in an amount in excess of the amount or amounts of the policies, then Concessionaire must save Indemnities harmless from the whole liability.

18. **No Debts.** Concessionaire must incur no debts or obligations on the credit of City.

19. **Notices.** All notices, demands, requests or replies provided for or Contracted by Concessionaire must be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service; (3) by prepaid telegram; or (4) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. All such communications must only be made to the following:

If to City:

City of Saginaw
Attn: Director of Community Services
333 West McLeroy Blvd.
Saginaw, TX 76179
817-230-0351

If to Concessionaire:

Holleman Enterprises
Attn: Steve Holleman
8304 Juniper Dr.
North Richland Hills, TX 76182
817-657-7407

Change of address must be made by sending notice as set out above.

20. **Waiver.** No waiver of any breach of any term or condition of Contract waives any subsequent breach of the same.
21. **Severability.** If any clause or provision of Contract is illegal, invalid or unenforceable under present or future law effective during the term of Contract, then the remainder of Contract is not affected thereby, and in lieu of each such clause or provision, a clause or provision (as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable) will be added to Contract automatically.

