

REQUEST FOR PROPOSAL

**CONCESSION SERVICES FOR THE HILLIARD FAMILY AQUATIC CENTER
AND THE HILLIARD EAST AQUATIC CENTER**

CITY OF HILLIARD RECREATION AND PARKS DEPARTMENT

DUE: Friday, March 1, 2019

Deadline: February 18 – 15, 2019
Time and Date Set for Closing: Friday, March 15, 2019 – 5 p.m.
Contract Start Date: May 1, 2019 (negotiable)

The City of Hilliard's Recreation and Parks Department is requesting sealed proposals from qualified companies or individuals to provide concession services for the City of Hilliard's Hilliard Family Aquatic Center and Hilliard East Aquatic Center. More detailed information and copies of the proposal packets may be picked up at Hilliard City Hall, 3800 Municipal Way, Hilliard, Ohio 43026 and Hilliard Department of Recreation and Parks, 3800 Veterans Memorial Drive, Hilliard, Ohio 43026 or viewed on the City's website (www.hilliardohio.gov). Inquiries may be made to Ed Merritt at (614) 334-2590.

Proposals are to be addressed and delivered to: Ed Merritt, Hilliard Recreation and Parks Department, 3800 Veterans Memorial Drive, Hilliard, Ohio 43026, on or before Friday, March 15, 2019 at 5 p.m. A representative of the Hilliard Recreation and Parks Department will announce the names of those firms or individuals submitting proposals. No other public disclosure will be made until after award of the contract.

Ed Merritt, Director
City of Hilliard
Recreation and Parks Department
3800 Veterans Memorial Drive
Hilliard, Ohio 43026

PURPOSE OF THE RFP

Background Information

The City of Hilliard (the "City") operates two municipal aquatic facilities, located at 4450 Scherzinger Road (Hilliard East Aquatic Center; Bathhouse is currently under construction with an opening date concurrent with the pool) and in the City's Roger A. Reynolds Municipal Park located at 3850 Veterans Memorial Drive (Hilliard Family Aquatic Center).

This Request for Proposal is for the provision of concession services at each of those facilities.

For information purposes only, the contract to supply and support cold carbonated soft drinks, non-carbonated soft drinks, sports drinks, fruit-based drinks and water beverage machines is held by Pepsi.

Intent

The City views the concession operations as a service to the community. As a result, the City is requiring the successful Concessionaire to be experienced in concession operations.

The City desires a full-service contract under which the vendor provides all equipment and stock items and pays a commission to the City in accordance with the enclosed agreement. As this contract is viewed as a service to the community, the City and proposer will establish the final sell prices of the various products, based upon suggested prices supplied by the proposers. The City shall have the right to substitute or supplement the list of products supplied, so long as the list is mutually agreed upon between the City and the successful proposer.

The City expects that the successful proposer will provide excellent service and be sophisticated in concessions sales and equipment.

Nothing in this RFP nor the contract to be entered into by the City and the selected vendor, restricts or prohibits the City from entering into one or more agreements with one or more vendors to provide machine vending services in locations at the Hilliard Municipal Pools, and at other locations in the City's Parks.

Term

The term of the agreement will be for one year, subject to the rights of termination and the terms of license for use of the concession stands contained in the agreement. The term may be extended by mutual written agreement for up to two consecutive one-year terms on a year-to-year basis. The potential maximum length of the agreement is a total of three years.

INSTRUCTIONS TO PROPOSERS

1. Proposers must address and deliver proposals to Ed Merritt, Hilliard Recreation and Parks Department, 3800 Veterans Memorial Drive, Hilliard, Ohio 43026. Proposals must be in a sealed envelope marked:

Name of Proposer
City of Hilliard Parks Concession Services 2019

2. No telephone, electronic or facsimile proposals will be considered. Proposals received after the time and date for closing will be returned to the proposer unopened.
3. Proposals should be submitted in an original and one (1) copy.
4. Proposals may be withdrawn at any time prior to the time and date set for the opening of the proposals.
5. The City reserves the right to conduct discussions with proposers, to accept revisions of proposals, and to negotiate price changes. During this discussion period, the City will not disclose any information derived from proposals submitted, or from discussions with other proposers. Once an award is made, the solicitation file, and the proposals contained therein, are in the public record and will be disclosed upon request.
6. Proposers submitting proposals which meet the selection criteria, and which are deemed to be the most advantageous to the City, may be requested to give an oral presentation to the City, which will be scheduled by the City.
7. The award shall be made to the responsible proposer whose proposal is determined to be the most advantageous to the City based on the evaluation factors set forth in this Request for Proposal. Commissions and fees, although a consideration, will not be the sole determining factor. Experience (for at least the past two years) and positive references for other similar services provided will be strongly considered.
8. If information is submitted that is considered to be proprietary, that information must be placed in a separate envelope and marked, "Proprietary Information." If the City concurs, this information will not be considered public information. The City is the final authority as to the extent of material, which is considered proprietary or confidential. Pricing information cannot be considered proprietary.
9. Proposals submitted shall include at least the following information: (i) Statement of Qualifications; (ii) list of 3 references, at least 1 of which is the proposer's largest customer; (iii) suggested products for concessions and suggested pricing for those products; and (iv) percentage of commissions proposed to be paid based upon the City's estimated sales amounts contained in this Request for Proposal. Proposals submitted without the minimum information provided will be considered informal and may be rejected. Proposals must be signed by an individual

authorized to extend a formal proposal. Conditional proposals will not be considered. Unsigned proposals will be rejected.

10. The City reserves the right to reject any or all proposals or any part thereof, or to accept any proposal or any part thereof, or to withhold the award and to waive or decline to waive irregularities in any proposal when it determines that it is in the City's best interest to do so. The City also reserves the right to hold all proposals for a period of 45 days after the opening date.
11. The successful proposer is expected to enter into the standard form of agreement approved by the City and attached to these documents. Proposers may suggest alternatives to the terms and conditions to the agreement. However, proposals that are contingent upon any changes to these terms and conditions will be at a competitive disadvantage in the proposal evaluation process.
12. Unless specifically stated to the contrary, any manufacturer's names, trade names, brand names or catalog numbers used in the specifications of this Request for Proposal are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict an offer by any proposer and is included in order to advise the potential proposer of the requirements for the City. Any offer which proposes like quality, design or performance will be considered.
13. Any person, firm, corporation or association submitting a proposal shall be deemed to have read and understood all the terms, conditions and requirements in the specifications.
14. All responses and accompanying documentation will become the property of the City at the time the proposals are opened.
15. Any proposer who has informal questions about technical information regarding this Request for Proposal, please contact:

Ed Merritt, Director
Hilliard Recreation and Parks Department
3800 Veterans Memorial Drive
Hilliard, Ohio 43026
Tel: (614) 334-2590
Fax: (614) 876-5281
E-mail: emerritt@hilliardohio.gov

Note that the City will answer informal questions orally. The City makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to provide minor clarifications more quickly. Oral statements or instructions shall not constitute an amendment to this Request for Proposal. Proposers shall not rely on any verbal responses from the City.

16. All formal inquiries or requests for significant or material clarification or interpretation, or notification to the City of errors or omissions relating to this Request for Proposal must be direct, in writing or by facsimile, to:

Ed Merritt, Director
Hilliard Recreation and Parks Department

3800 Veterans Memorial Drive
Hilliard, Ohio 43026
Tel: (614) 334-2590
Fax: (614) 876-5281
E-mail: emerritt@hilliardohio.gov

All formal inquiries must be submitted at least 7 calendar days before the time and date set for closing this Request for Proposal. Failure to submit inquiries by this deadline may result in the inquiry not being answered.

17. The City shall not reimburse any proposer the cost of responding to a Request for Proposal.

SPECIFICATIONS / SCOPE OF WORK

The City seeks a company or individual that is experienced in the provision of concession services for the 2 locations described herein.

Note that submitted proposals must meet the City's specifications and scope of work, including but not limited to suggestions for a product and pricing structure. Upon request, proposers may obtain the City's listing of prices for concession services during 2018 to use as a basis for the suggested pricing structure proposed. The City intends to make an award under these specifications and scope of work. Hilliard currently has a contract with Pepsi, so their products will be served exclusively in our facilities and we will have their machines to supplement your offerings.

It is expected that the concessions for the pools shall be open and operating during the normal public operating hours for the pools, as established by the City, subject to inclement weather conditions and sometime changes during days when Hilliard Schools may be in session. Rules and regulations for closing the concession stands due to weather conditions, and reopening if advisable, shall be established by the City, upon consultation with the successful proposer.

Optional hours of operation for the concessions at the pools may include those hours when the pools are open in the mornings only for swim lessons and/or swim team practices. For swim meets and other functions outside of normal operating hours the City will coordinate hours that concessions need to be open. Please be aware that food deliveries are no longer permitted at the facilities, but families may bring food/coolers into the facilities.

All companies/applicants are preferred/required to have their own concessions/food service software, be able to accept credit card payments and provide weekly revenue reports. The City will work with the chosen company to get the connection needed to operate their equipment.

When reviewing proposals, extra credit will be given to those companies that help the City towards its goal of zero waste. Items used like: 100% bio-degradable and recyclable cups for drinks, plastic refillable option cups, no plastic straws or lids, and paper wraps for items like soft pretzels instead of plastic containers. The City would like to do its part to help reduce waste into the environment. Healthy options on the menu and available to patrons is also highly sought after.

PROPOSER QUALIFICATIONS

The City is soliciting proposals from companies or individuals that are in the business of providing services as listed in this Request for Proposal. Proposals shall include, at a minimum, the following information. Failure to include these items may be grounds for rejection of your proposal.

The proposer shall present evidence that the firm or its officers have been engaged for at least the past 2 years in providing services or similar services as listed in this Request for Proposal.

The proposer must submit the name, position, telephone number, facsimile number and the e-mail address of three references, at least one of which must be the proposer’s largest single account.

EVALUATION CRITERIA

It is most important to the City that the company selected is able to demonstrate experience in the business of concession sales and dealing with the general public, including without limitation, professionalism, reliability, dependability and responsibility, all of which will be heavily considered. Thereafter, the quality and brand names of the products to be sold, the ability to keep concession areas stocked and maintained adequately, the condition and quality of the machines provided and their compliance with energy-efficient measures, and the commissions to be paid shall be considered.

DETERMINING ANNUAL EXPECTED COMMISSIONS FROM EACH PROPOSER

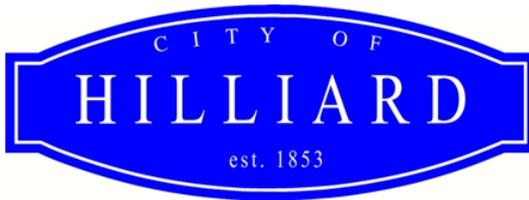
Below is a chart showing estimated sales. Based upon this estimate, proposers must provide the percentage commission proposed to be paid.

<u>Item</u>	<u>Estimated Sales</u>	<u>Percentage Commission</u>	<u>Total Commission</u>
Concessions	\$100,000	_____	_____

PRE-PROPOSAL MEETING AND TOUR

An individual pre-proposal meeting can be scheduled during the first two weeks of March, at the Hilliard Family Aquatic Center, 3850 Veterans Memorial Drive in Hilliard, at which time a tour of the Hilliard Family Aquatic Center will be conducted. The Hilliard East Aquatic Center is currently under construction, however, plans of the layout of that facility can be provided. Not including time for answering questions by prospective proposers, the tour is expected to last no more than one hour.

At this time an evaluation of the equipment available to be used by the successful proposal within the concession stands shall be described. Proposers may make inquiries about available machinery and equipment at any time prior to the pre-proposal meeting. To set up a meeting, please contact Ed Merritt at either (614)334-2590 or by e-mail at emerritt@hilliardohio.gov.



**CITY OF HILLIARD
POOL CONCESSIONS AGREEMENT**

This is an agreement dated _____, 2019, between the City of Hilliard (the “City”), for and on behalf of the Department of Recreation and Parks, and _____ (the “Company”).

The City and the Company mutually agree that the Company shall provide goods and services in accordance with the specifications and terms of this Agreement.

Section 1. Intent. The intent of this Agreement is to establish the terms under which the Company will supply and support food and drink concession services for the Hilliard East Aquatic Center and the Hilliard Family Aquatic Center (collectively referred to herein as the “Premises”), as requested by the City of Hilliard’s Request for Proposal and as offered by the Company’s response thereto, both of which are incorporated herein by reference. In the event of any conflict among these documents, this Agreement will govern, followed by the terms of the Request for Proposal.

Section 2. Term. Unless sooner terminated under the provisions of this Agreement, the term of this Agreement shall be the one-year period beginning on May 1, 2019 (the “Commencement Date”) and ending on October 1, 2019. The term may be extended by mutual agreement for up to two consecutive one-year periods on a year-to-year basis.

Section 3. Premises.

A. License. Subject to all the terms and conditions hereof, the City hereby grants to the Company a license to use and occupy the Premises for the purpose provided herein. The Company accepts the Premises in an, “as is, where is,” condition, based upon its own inspection and investigation, and without any reliance or warranty of the City. The Company’s license for the use of the Premises for concessions shall extend only to the end of the regular municipal pool season. Although this Agreement is effective for a one-year period, the right of the Company to occupy the concession stands is effective only during the applicable recreation season.

B. Use. The Company shall occupy and use the Premises only for the purpose of operating a concession service in accordance with the terms of this Agreement and for no other purpose. The Company, at its expense, shall comply with all applicable laws now or hereafter in force, pertaining to the use, occupancy and possession of the Premises. The Company shall not use or allow the Premises to be used for any unlawful purpose. The Company shall not commit or allow to be committed any waste or nuisance on the Premises. The Company shall not overload the floors or structure of any building which is a part of the Premises or subject the Premises to any use that would damage the Premises or raise or violate any insurance coverage maintained

by the City. The Company shall have access to and use of the facilities. The Company shall exercise prudent control over the facilities to minimize wear and tear on building and fixtures. Repairs necessitated from misuse by the Company shall be paid by the Company. The City shall maintain a master key to the concession stands, to be used only in times of emergency, unless prior arrangements have been made for entry to the concessions stands between the parties. The Company will have access to Hilliard East Aquatic Center at all times; Hilliard Family Aquatic Center is accessible when staff are present or by arrangement late in August (once lessons have been completed).

C. **Alterations.** No alteration shall be made to City owned, leased or controlled buildings or fixtures, or to utility services, by the Company without the prior written consent of the City, who reserves the right to approve or disapprove of the alterations. Any and all such approved alterations shall be constructed with diligence, in a safe and good and workmanlike manner, and in compliance with all applicable laws.

D. **Maintenance and Repairs.** All maintenance to the Premises which are owned, leased or controlled by the City shall be provided by the City. All maintenance to equipment which is the property of the Company shall be provided by the Company.

E. **Condition of the Premises upon Termination.** At the termination of this Agreement, the Company shall surrender the Premises in as good condition as the Premises were in on the Commencement Date, reasonable wear and tear and acts of God excepted.

Section 4. Concession Services.

A. **General.** The Company agrees to operate concession services on the Premises in accordance with the requirements, terms, conditions, information and descriptions contained in this Agreement, including the Company's response to the Request for Proposals. The Company shall always conduct its business on the Premises in a professional and reputable manner. During the terms of this Agreement, the Company shall take all actions as may be reasonably requested by the City in order to carry out the purpose and intent of this Agreement. If, at any time, the City receives complaints from the public about the behavior or professionalism of the Company's employees, which the City believes to be bonafide, the City will notify the Company and the Company shall take immediate steps to rectify the situation to the City's satisfaction. The concession services are viewed as a service to the public and professionalism from the Company's personnel is a top priority to the City. The service employees of the Company must wear identifying uniforms, or some other easily visible item that identifies them as Company employees.

B. **Service to be Rendered.** The Company will provide at least the menu and pricing of the concession services as agreed between the City and the Company on a separate written addendum to this Agreement labeled as Attachment 1. The City shall have the discretion to prohibit certain items should those items prove to be harmful to the operation of the pool or that could create maintenance problems for the City. The prices to be charged are as agreed in this Agreement.

C. **Company Services and Expenses.** The Company understands and agrees that it is responsible for paying the cost of all merchandise, services and other expenses in connection with the operation of its business. The Company indemnifies and holds the City harmless from and against any and all liability or claims arising from the operations of the Company on the

Premises. The Company shall be responsible for, and indemnify and hold the City harmless from, all taxes arising out of the operations, including, without limitation, all payroll taxes, property taxes and equipment, sales and use, or similar taxes.

D. Compliance with Laws. The Company, at its expense, shall at all times during the term of this Agreement, and with respect to all phases of operating its business, comply with all applicable laws now or hereafter in effect at any time during the term of this Agreement, including without limitation, all applicable rules, regulations and policies of the City. The Company shall also obtain and keep current all licenses and permits (whether state, federal, city or other) required to conduct its business at the Premises, and pay promptly when due, all applicable fees. Copies of any inspection reports, notices, etc., from any state, federal, city or other agency shall be forwarded to the City within 1 day of receipt.

E. City Representative. The City shall designate a person who shall be responsible for communicating with the Company, and only through whom changes to this Agreement may be authorized.

Section 5. Commissions. The Company shall pay ____% on the gross receipts for all items sold at the Hilliard Family Aquatic Center as commission to the City. The Company shall pay ____% on the gross receipts for all items sold at the Hilliard East Aquatic Center, as commission to the City. The term “gross receipts” is defined as the total amount received for each item before deducting all cost of sales, licenses, taxes of every kind and description or overhead expense. The Company shall pay all taxes, included but not limited to sales and use taxes, licenses, and other expenses, if any.

Section 6. Reporting. The Company shall submit a monthly report that shows, at a minimum, the concession sales on a weekly basis, total dollar sales for each week and for the month, product inventory and commission for concession service. The Company shall timely provide any additional information requested by the City that shows or substantiates its concession sales under this Contract, including permitting the City to view its financial logs/books and sales receipts, upon reasonable notice to the Company.

Section 7. Accountability.

A. Commission Report. The Company shall submit to the City’s designated representative, within 20 calendar days following the conclusion of each accounting period, a commission report that includes the information in Section 6, accompanied by a check for the commissions earned.

B. Accounting Period. Unless otherwise agreed in writing, the accounting period is defined as a calendar month. If this Agreement is in effect for a partial month, then that partial month shall be considered to be the accounting period.

C. Interest Payments. If monthly commission payments are not received by the City on the due dates prescribed above, the unpaid commissions shall accrue interest at the lesser of 18% per year or the highest contractual interest rate allowed by the State of Ohio. All such amounts shall be calculated on a daily basis and shall be due and owing in the same manner and at the same time as the commission payments.

D. Records. The Company shall retain for inspection and audit by the City, or its agents, all books, accounts, reports, files and records relating to this Agreement for a period of at least 3 years after expiration or termination of this Agreement; provided, however, that records relating to disputes, litigation or the settlement of claims arising out of the performance of this Agreement, shall be retained by the Company, or its agents, until such litigation or claim is fully resolved. The Company shall provide all such records at any office of the City as the City representative may designate. Further, the City has the right, at the Company's expense, to request that the commission statements for the current and any previous Agreement year be examined in accordance with generally accepted auditing standards by an independent certified public accountant. The scope of this examination would be such that an auditor's opinion would be issued. The City may exercise this right no more than once per Agreement year.

E. Internal Controls. The City shall have the right to review the Company's internal controls and accounting procedures relative to the Company's operation at the City. Significant weaknesses shall be rectified as soon as possible, but not later than 30 days after written notice specifically describing such condition is received by the Company from the City. Within 30 days after the Commencement Date, the Company will furnish the City with a statement of how the Company maintains accountability of revenues.

Section 8. Pricing.

A. Price Changes. Any change in the price of the merchandise or in the quality or unit sizes of the products provided, must have the prior written approval of the City representative. Price changes will normally only be considered at the end of the Agreement year and at the beginning of another year. Price change requests should be supported by evidence of increased costs to the Company.

B. Price Schedule. The concession menu and pricing shall be mutually agreed to by the City and the Company.

Section 9. Licenses/Permits and Taxes. The Company shall pay all transaction privilege, sales, and use taxes together with any possessory interest or other taxes levied in connection with the Company's use of the facilities. The Company shall acquire, at its expense, all licenses or permits required by local, state and federal agencies and shall comply with all applicable laws. The Company shall indemnify and hold the City harmless from any and all claims and demands made against it by virtue of the failure of the Company or any subcontractor to comply with the provisions of any or all laws, as amended.

Section 10. Insurance. Without limiting any liabilities or any other obligations of the Company, the Company shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of Ohio, and rated at least a VII in the current A.M. Best's, the minimum insurance coverage below:

A. Commercial General Liability. Minimum limits of \$1,000,000 per occurrence, and an unimpaired product and completed operations aggregate limit and general aggregate limit of \$2,000,000. The policy shall include coverage for: (i) bodily injury; (ii) broad form property damage (including completed operations); (iii) independent contractors' coverage; (iv) personal injury; (v) blanket contractual liability; (vi) products and completed operations coverage (extending for one year past acceptance, cancellation, or termination of the services or work defined in this contract; and (vii) fire legal liability.

B. Business Automobile Liability. Minimum limits of \$1,000,000 per occurrence combined single limit, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance, or use of any auto.

C. Certification of Workers Compensation Insurance. As required by the State of Ohio.

D. Certificates of Insurance. Insurance certificates must be acceptable to the City and shall be issued and delivered prior to the commencement of the work defined in this Agreement and shall identify this Agreement and include certified copies of the endorsements naming the City as an additional insured. The certificates, insurance policies, and endorsements required by this Section 10 shall contain a provision that coverages afforded will not be cancelled until at least 30 days prior written notice has been given to the City. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Agreement.

E. Failure on the part of the Company to meet these requirements shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement or, in its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Company upon demand. Costs for coverages broader than those required or for limits in excess of those required shall not be charged to the City. The Company and its insurer(s) providing the required coverages shall waive their rights of recovery against the City, its departments, boards, commissions, employees, officers and agents.

F. The City reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements during the term of this Agreement. If requested, such copies shall be provided within 10 calendar days.

Section 11. Signs. The Company shall not erect or place on or about the Premises any sign without the City's prior written approval of the location, material, size, design and content.

Section 12. Subcontracts. This Agreement may not be assigned by the Company. The Company shall not subcontract the performance of any part of this Agreement without the prior written approval of each subcontractor by the City, which approval the City may refuse at its discretion and without recourse to the Company. The Company shall be responsible for any subcontractor activities the same as if the Company were furnishing the service.

Section 13. Deliveries. All deliveries to concession areas must be by way of the regular street and service roads. No motor vehicles may be driven in any facility of which the Premises are a part without the prior written approval of the City. All deliveries must be made during normal operating hours of those facilities unless prior written approval of the City is granted. At the times when deliveries are being made to the concession areas, the Company shall have a representative present to receive and sign for the deliveries. The City will not be obligated to provide personnel at those locations for the purpose of receiving deliveries.

Section 14. Inspections. The City Representative shall have the right to inspect any operations of the Company, in the presence of a Company representative at any reasonable time.

Section 15. Utilities. No change or alteration of electric service will be made by the Company without the prior written authorization of the City. In the event that an installation of a machine causes disruption of the electrical service at the Premises, the Company shall immediately discontinue use of the machine and either install a dedicated electrical circuit at the Company's expense, or request approval from the City to relocate the machine. For any machines that require water, the Company must use existing City-provided water sources. No change or alteration of water service will be made by the Company without the prior written authorization of the City. Any permitted changes to either the electric service or water service shall be done by contractors with the applicable commercial license in the State of Ohio.

Section 16. City Logo. The Company shall not use the name of the City or any City sign, logo, symbol, trademark or word mark, etc., for any purpose, without the prior written consent of the City in each instance.

Section 17. News Releases. The Company shall not in any way or in any form publicize or advertise in any manner the fact that it is providing services to the City without the prior written approval of the City, in each instance. However, nothing herein shall preclude the Company from listing the City on its routine client list for matters of reference.

Section 18. Independent Contractor. It is the intention of the City and the Company that the Company shall be deemed to be an independent contractor, and nothing in this Agreement, including the Company's proposal, shall be deemed to create a partnership or joint venture or the relationship of principal and agent between the Company and the City. Nothing herein shall cause the employees, agents or representatives of either the Company or the City to be deemed or construed to be the employee, agent or representative of the other. Any reference in the Company's proposal to a partnership relationship between the Company and the City shall have no legal effect.

Section 19. Personnel.

A. Equal Opportunity Employer. The Company shall operate as an equal opportunity employer.

B. Company Personnel Matters. The Company shall have control over and be responsible for all personnel and employment matters involving its employees including, but not limited to, work schedules and compensation. All employees shall be employed by the Company in its own name at its own expense, and the Company shall pay all salaries, wages and employee benefits payable to or on behalf of its employees. All personnel matters shall be handled in the accordance with applicable law and standard procedures established for all of the Company's locations.

C. Staffing. The Company shall maintain an adequate staff at all times to ensure a high-quality service operation on the Premises. The Company shall identify one manager made known to the City, in writing, by name to routinely review and inspect operations on the Premises.

D. Employee Conduct. The Company shall ensure that its employees engage in appropriate conduct while working at the Premises. All personnel must be subject to City regulations

regarding personal behavior and use of City facilities and shall be dismissed at the request of the City for violations or for conduct unbecoming or offensive to the interest of the City and its staff.

Section 20. Waiver of Subrogation. The Company assumes all risks in connection with the adequacy of any insurance and waives any claim against the City for liability, cost or expense arising out of any uninsured claim, in part or in full, of any nature whatsoever. All policies of insurance obtained by the Company in connection with the services provided under this Agreement shall contain a clause waiving the insurance company's right of subrogation against the City.

Section 21. Bankruptcy; Insolvency. In the event that any proceeding under the Bankruptcy Act or any amendment thereto are commenced by or against the Company and, if against the Company, are not dismissed within 30 days after the commencement thereof, or in the event the Company is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a writ of attachment or execution is levied on the Company's interests under this Agreement and is not released or satisfied within 10 days, any such event shall constitute a breach of this Agreement by the Company, and the City, at the City's option and without notice, may terminate this Agreement and also all rights of the Company under this Agreement.

Section 22. Defaults and Remedies.

A. Company Default. The occurrence of any of the following events or conditions shall constitute, and is hereby defined to be, an, "Event of Default." The Company: (i) fails to comply with or perform under any of the terms, covenants or conditions hereof; (ii) fails to pay any commissions or other sums required by this Agreement within 5 days of the date such payment is due; (iii) abandons the Premises; (iv) files any proceeding under the federal bankruptcy laws now or any other similar statute now or hereafter existing or in effect, enters any order for relief under such laws with respect to the Company, or the appointment of a receiver, trustee, custodian or conservator of all or any part of the assets of the Company. Upon the occurrence of any Event of Default and at the time thereafter while such Event of Default is continuing, the City shall have the following rights and remedies and, at the City's sole and absolute discretion, from time to time may do one or more of the following: (a) notify the Company in writing of such failure and demand that the same be remedied within 20 days, and should the Company fail to remedy the same within such period of time, the City shall then have the right to terminate this Agreement without further notice; and (b) pursue any legal and/or equitable remedy available to the City to prevent removal of property from the Premises by any lawful means it deems necessary to protect its interest. The City may exercise its rights and remedies at any time, to any extent and as often as the City deems desirable to protect its interests. No action of the City shall be construed as an election to terminate this Agreement unless written notice of such intention is given by the City to the Company.

B. City Default. If the City shall fail to observe or perform any of the provisions of this Agreement to be observed or performed by the City, and such failure is not cured within 30 days after notice by the Company to the City, then the City shall be in default hereunder, and the Company may, at any time thereafter either terminate this Agreement or continue this Agreement and recover damages resulting from the City's default. Notwithstanding the foregoing, if a default cannot reasonably be cured within 30 days, the City shall not be in default of this Agreement if it commences to cure the default within the 30 day period and thereafter diligently

and in good faith cures the default. In no event, however, shall the City be liable for any lost income, profits or consequential damages of the Company or any other person or entity.

Section 23. Casualty.

A. Partial – The Company. In the event of any damage or destruction of the Premises caused by the negligence or willful acts or omissions of the Company, its employees, agents, or invitees, then at its sole cost and expense, the Company shall restore, repair and replace the Premises to as good a condition as existed prior to such damage or destruction and this Agreement shall continue in effect without any reduction in commissions payable by the Company hereunder. Such restoration shall be commenced promptly; shall be prosecuted with diligence to completion; and shall be performed in a good and workmanlike manner in accordance with plans and specifications approved by the City and in compliance with all applicable laws, regulations and codes. All restoration work performed by or on behalf of the Company on the Premises shall be performed by the Company as approved the City (or at the City's option, by the City's employees, at the Company's expense), and the City shall have the right to require the Company to provide such insurance and post such payment and performance bonds as the City deems necessary.

B. Partial – The City. In the event of any other damage or destruction of the Premises, at its sole cost and expense, the City may promptly repair and replace the same to as good a condition as existed previously. In respect to any damage or destruction that the City elects to repair or elects to repair under the terms of this Section 23, the Company waives all rights that would authorize the Company to terminate this Agreement by reason of such damage or destruction, and any right to terminate this Agreement under Section 22.B hereof.

Section 24. Exclusivity.

Except as otherwise provided herein, this Agreement gives the Company exclusive rights for food concessions at the Premises, and except to the extent that the City has other agreements with existing vendors to operate upon the Premises. Nothing in this Agreement shall prevent the City from using the Premises when it deems necessary, so long as the Company's products and services are not negatively impacted, and with prior agreement between the City and the Company. The Company acknowledges that during the term of this Agreement, the City has a contract with G&J Pepsi of Columbus, Ohio, the Company will abide by the terms of that agreement as it relates to the sale of products.

To the extent that the Company wishes to participate as a vendor in the sale of food products during City events (i.e., the Fourth of July celebration) outside the terms of this Agreement, then the Company may do so on the same terms and conditions as exist for the participation by other vendors.

Section 25. Liens. The Company shall not suffer or permit to be enforced and shall indemnify and hold the City and the Premises harmless from and against all mechanic's, material supplier's, contractor's, subcontractor's and all other liens, claims, security interest and demands of every kind and nature arising out of any work performed, materials furnished or obligations incurred by or on behalf of the Company. If within 20 days following the filing of any such lien or claim of lien, the Company does not cause such lien to be released in a manner satisfactory to the City, the City shall have the right but not the obligation to cause the same to be released by any means the City elects, and all expenses incurred shall be payable by the Company to the City upon demand, together with interest at the rate of 18% per

annum from the date incurred. The City shall have the right to post on the Premises any notices permitted or required by law or that the City shall deem proper for the protection of the City and the Premises against liens.

Section 26. Liability.

A. Indemnity. The Company shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, suits, liabilities, loss, damage, costs and expenses (including reasonable attorney's fees) that may be brought or made against or incurred by the City on account of (i) the Company's possession, use or occupancy of the Premises, the conduct of its business thereon, or any activity, work or thing done, performed or suffered by the Company, its agents, employees or invitees (including, without limitation, the making of the improvements to the Premises); or (ii) any injury or death to persons or damage to property on or about the Premises from any cause whatsoever during the term hereof; or (iii) any violation by the Company in provision of this Agreement or any breach or default by the Company in the performance of any obligation of the Company under the terms of this Agreement; or (iv) any act, omission or negligence of the Company, or any of its agents, employees or invitees. Notwithstanding the foregoing, the Company shall not be liable for damage or injury occasioned by the sole negligence of the City or its officers, agents or employees unless covered by insurance that the Company is required to provide under this Agreement.

B. Waiver. As a material part of the consideration to the City, the Company hereby assumes all risk of damage to and upon or about the Premises from any cause whatsoever, and the Company hereby waives all claims in respect thereof against the City.

Section 27. Interpretation. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall not affect the validity of any other provision hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, the courts of which state shall have jurisdiction of the subject matter of this Agreement. This Agreement shall bind the parties, their personal representatives, successors and assigns. The paragraph headings in this Agreement are for convenience only and shall not be considered in construing the intent of the parties under this Agreement. All exhibits attached hereto are a part hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 28. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. No prior or contemporaneous agreement or understanding pertaining thereto shall be effective. This Agreement may not be modified or amended except by written instrument signed by the Company and the City.

Section 29. No Assignment. This Agreement, any part hereof, or any right or duty hereunder may not be assigned, delegated, or subcontracted by the Company without the prior written approval of the City, which approval may be granted or withheld in the sole discretion of the City. The Company shall not sublicense any part of the Premises or permit any sublicense or concessionaire to operate on the Premises, without the prior written consent of the City, which consent may be granted or withheld in the sole discretion of the City.

Section 30. Nondiscrimination. In connection with the performance of work under this Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, military status, national origin, disability, age or ancestry. The foregoing sentence shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Company shall conform to all applicable law relating thereto.

Section 31. Waivers. No delay or omission of the City to exercise any right or remedy arising from any default by the Company of the terms hereof shall impair any such right or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. No waiver of a default shall be effective unless it is in writing. The acceptance of any fee, rebate or other payment by the City shall not be a waiver of any preceding breach by the Company of any provision hereof regardless of the City's knowledge of such preceding breach at the time of acceptance.

Section 32. Attorney's Fees. If either party brings an action to enforce the terms hereof or to declare the rights of the parties hereunder or for the interpretation of any part of this Agreement, the prevailing party in any such action, on trial or appeal, shall be entitled to its reasonable attorney's fees to be paid by the losing party as determined by the judge of the court and not by the jury.

Section 33. Release of Information. The City reserves the right to use and/or release for any purpose any data available under the terms of this Agreement.

Section 34. Notices. All statement, notices, and other communications pertaining to this Agreement shall be written, and unless otherwise provided, shall be deemed to have been duly given when delivered in person, when sent by facsimile machine as evidenced by the transmission report generated by a fax machine to indicate that the fax was successfully transmitted, when sent via an express delivery service that provides proof of delivery, or when sent by the U.S. Mail in a manner that provides proof of delivery (e.g., certified return receipt requested or registered), to the address set forth below, or to such other address or addresses as may be designated in writing by notice to the other party pursuant to this Section 34.

If to the City:

Ed Merritt, Director
Hilliard Recreation and Parks Department
3800 Veterans Memorial Drive
Hilliard, Ohio 43026
Tel: (614) 334-2590
Fax: (614) 876-5281
E-mail: emerritt@hilliardohio.gov

With a copy to:

Hilliard Law Director
3800 Municipal Way
Hilliard, Ohio 43026
Tel: (614) 334-2445

Fax: (614) 529-6038
E-mail: tbradford@hilliardohio.gov

If to the Company:

Either party may by notice to the other specify a different address for subsequent notice purposes.

Section 35. Authority. The individual signing below on behalf of the Company hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of the Company and that this Agreement is binding upon the Company in accordance with its terms. This person authorized to act for and bind the City in matters concerning this Agreement shall be the Director of Recreation and Parks or such alternate as the Director of Recreation and Parks may appoint by notice from time to time.

Section 36. Remedies and Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The City and the Company shall have all remedies afforded each by Ohio law.

Section 37. Force Majeure. Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, such party is unable to prevent.

Section 38. Gratuities. The City may, by written notice the Company, cancel this Agreement if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Company or any agent or representative of the Company, to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement. In the event this Agreement is cancelled by the City pursuant to this section, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Company in providing such gratuities.

Section 39. Warranties. In addition to any implied warranties, the Company warrants that the goods and services furnished will conform to the goods and services listed in the Company's proposal.

Section 40. Interpretation. This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

Section 41. Provisions Required by Law. The Company and the City mutually agree that each and every provision of law and clause required by law to be in this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or in not correctly inserted, then upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

Section 42. Labor Disputes. The Company shall give prompt notice to the City of any actual or potential labor dispute which delays or may delay performance of this Agreement.

Section 43. Performance Security. The Company shall provide the City a \$10,000 letter of credit or escrow agreement on or before the Commencement Date. This performance security will be in lieu of a performance bond.

Deleted: ¶

Authorized representatives of the City and the Company have signed this Agreement, effective as of the date first written above.

THE COMPANY

THE CITY

By _____

By _____

Its _____

Its _____

Approved as to form:

Law Director