

CONCESSION AGREEMENT AND ADDENDUM

THIS AGREEMENT and Addendum* is entered into by and between **THE BIG SHOW, LTD**, c/o Melissa Nelson, 635 Miller Road, Avon Lake, Ohio 44012 ("Contractor") and the **CITY OF AVON**, 36080 Chester Road, Avon, Ohio, 44011, (hereinafter designated the ("CITY"));

WITNESSETH, that in consideration of the City choosing to extend the existing contract and addendum with the Contractor for outdoor food concession services for the Avon Aquatic Facility, for the summer seasons of 2017 and 2018, and for the money considerations provided herein, the parties covenant and agree as follows:

1. A food concession service operation of good quality will be furnished exclusively by Contractor at the Avon Aquatic Facility for the 2017 and 2018 summer seasons. The food concession for other City parks is covered in the attached Addendum which is incorporated herein by this reference.
2. The Contractor shall operate the concessions stand daily during pool hours and be available for private parties and special events held at the pool facility. (See attached Exhibit A) All private parties must be approved by the City and shall be booked through the Contractor and Pool Management. The days and hours of private parties shall be agreed to by the City and the Contractor. Private parties properly booked shall take priority over any other use of the pool pavilion. Persons interested in booking private parties should also refer to attached Exhibit A. **Applying a standard of reasonableness, Pool Management and the Contractor must permit individuals in private parties to bring in food and beverages such as specially decorated cakes/pastries and/or specially prepared foods for persons with dietary restrictions.** Weather permitting, concessions stand shall be opened throughout public swim hours and specials events. (See the attached Schedule for 2017. Schedule for 2018, once completed, will be provided). The day to day decision to open or close shall be made by Pool Management. This agreement shall take effect on the date it is signed by Contractor (The Big Show) and approved by City Council and shall run through the last day the pool is open for the 2018 season.
3. The Contractor shall be responsible for hiring, staffing, having properly credentialed supervision, paying, ordering and receiving food supplies. In addition, the Contractor shall maintain staffing and inventory at appropriate levels to accommodate daily attendance ranging from an average of seven hundred (700) to a peak of one thousand four hundred (1,400) people per day.
4. The Contractor shall pay the City five percent (5%) of net sales at the end of the 2017 and 2018 summer seasons. Gross sales means the total of all sales conducted at the site (concessions stand or food truck). Net sales refers to Gross Sales less sales taxes paid to Lorain County.

* The Addendum to this Agreement is attached hereto as "Addendum to Concessions Contract" and incorporated herein and covers concessions at Veterans Park, Schwartz Road Park and Little League Park.

5. The Contractor shall also furnish the City Finance Director with monthly and seasonal reports of gross and net sales not later than ten (10) days following the end of the month and season on forms approved by the Finance Director. Payment of the agreed percentage of net sales to the City shall accompany the end of month/season report.
6. The City and the Contractor agree to provide equipment and supplies as set forth in the attached Exhibit B. Equipment purchased by the Contractor remains the property of the Contractor. Equipment purchased by the City remains the property of the City.
7. These items are being provided "as is" in their existing, used condition. The City will be responsible for repair and/or replacement of its own equipment unless misuse is found to have occurred. The Contractor shall also be required to provide, at the Contractor's cost, additional needed equipment.
8. The City shall be entitled to cancel or implement penalties in this Contract upon giving written notice to the Contractor of its failure to comply with any of the provisions of this Contract or to furnish satisfactory service in such concession operation. The Contractor shall be given seven (7) days to cure any breach upon receipt of said written notice.
9. The Contractor shall be responsible for the maintenance and cleanliness of the concession kitchen, concession eating area and the rented pavilion area, including tables and waste containers in accordance with all State and local laws and regulations governing the sale and service of food to the general public. During extremely busy times, the Contractor may request assistance from the pool staff in keeping the area clean. Contractor shall not be responsible for emptying trash cans or general clean-up in areas outside their immediate control, i.e., the concessions area or the pavilion when they are catering a function therein.
10. The Contractor shall keep the concession area open during pool public swim hours and special events, unless otherwise approved by the Pool Management or his/her designee.
11. No pool staff or City employees (with the exception of Police, Fire, and the Recreation/Pool Supervisors) will be permitted to have a key or codes to the concession area. Extra keys will be available for Contractor's use during the pool season. All keys will be returned to the City at the end of the pool season. Except for emergency or health/safety inspections, no City employees will be permitted to enter the concession stand without prior permission from the Contractor once the stand has been stocked with product and equipment. Access to allow unanticipated product delivery is permissible. Nothing in this Agreement shall limit or condition the City in its enforcement of Health, Fire and Building Codes and any other laws.
12. The City agrees to be responsible for spraying the concession stand for bugs and rodents prior to occupancy by the Contractor.
13. Using 2016 menu and pricing as a bench mark, the Contractor may charge a reasonable mark-up over cost. It is the intention of the City to make available to the public the

highest quality service with a reasonable profit to the Contractor which will justify the Contractor's investment and expenses. All prices of all items for sale shall be posted in full and open view of the public. Prior to publicly posting the menu offerings and pricing, the contractor will provide the City with same for its acceptance. The current menu for the 2017 season is attached as Exhibit C. No intoxicating beverages or tobacco products of any kind shall be kept, sold, gifted or used in or about the premises.

14. The Contractor will personally supervise the operation on-site with adults over the age of eighteen (18). Concession employees will be sixteen (16) years of age or older. The Contractor shall comply with all federal, state and local laws, as well as with department policies, relating to supervision, food operations and the employment of minors.
15. The Contractor shall protect, indemnify and save the CITY harmless from and against all liabilities, damages, losses, claims, actions, costs and expenses of any nature resulting from injuries or damages to persons or property on or about the Premises arising from the sale of food or operation of the food concession service in any manner connected with the use, condition or occupancy of the concessions area by the Contractor or any act or omission of the Contractor, its agents or employees. Unless waived or modified by the Law Director, the Contractor shall furnish to the City's Finance Director proof of a comprehensive general liability insurance policy and products liability or completed operations insurance in at least the amount of One Million Dollars (\$1,000,000.00), and shall cause the City to be named as an additional insured on the policy. Contractor shall provide renewal certificates of same to appropriate Pool Management personnel, the City's Finance Director and the City's Law Director.
16. Contractor's Food trucks. With consent of pool management regarding days, times, truck location and pool access, the Contractor's food trucks may be used to supplement the service at the Avon Aquatic Facility. All terms of this agreement apply to this portion of the operation.
17. The Contractor shall be responsible for and pay the Lorain County General Health Department fees for the 2017 and 2018 seasons.
18. The City shall have an option to renew this Contract on a one, two or three year basis based upon satisfactory performance by the Contractor.
19. This Contract shall be deemed made and entered into in the City of Avon, Lorain County, State of Ohio and shall be governed by and construed in accordance with the laws of the State of Ohio, Avon Codified Ordinances and Regulations of the Lorain County Board of Health. Any controversy or claim, whether based upon Contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Contract, whether between the parties, or of either of the parties' employees, agents or affiliated businesses, will be resolved in the appropriate court in Lorain County, Ohio.

20. All notices or requests between City and Contractor shall be in writing. Any such notices or requests to City shall be made to the Pool Management, 36380 Chester Road, Avon, Ohio 44011, or at such other address as City may from time to time designate in writing to Contractor, and all notices or requests to Contractor shall be made to Melissa Nelson dba, The Big Show, Ltd., 635 Miller Road, Avon Lake, Ohio 44012.
21. Non Performance Clause. For unapproved early closing, late opening, missed days of service provision (non-opening) or inadequate staffing, the contractor may be charged the cost of lost revenue. Calculations based on average daily revenue from previous year or in the case of non-executed pool parties the published rates.

IN WITNESS WHEREOF, the parties have set their hand to this Contract on the dates next to their respective signatures.

Signed in the presence of:

Witnesses:

VENDOR: THE BIG SHOW, LTD.

By: _____

Printed Name: _____

Title: _____

Tax ID No.: _____

Date: _____

CITY OF AVON

By: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

Date
