

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/8/2014

Action Requested By:
Recreation Services

Agenda Item Type
Resolution

Subject Matter:

A license Agreement between the City of Huntsville and Norman Stoddart d/b/a Iceworks Shaved Ice and More.

Exact Wording for the Agenda:

A license Agreement between the City of Huntsville and Norman Stoddart d/b/a Iceworks Shaved Ice and More.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Norman Stoddart d/b/a Iceworks Shaved Ice and More is requesting to be a vendor and concessionaire at Brahan Spring Park.

Associated Cost: N/A

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Greg Patterson

Date: 5/8/2014

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, and Norman Stoddart d/b/a Iceworks Shaved Ice and More, which said agreement is substantially in words similar to that certain document attached hereto and identified as "Agreement between the City of Huntsville and Norman Stoddart d/b/a Iceworks Shaved Ice and More, consisting of eight (8) pages and the date of May 8, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro-Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 8th day of May, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 8th day of May, 2014.

Mayor of the City of Huntsville

LICENSE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE, ALABAMA
AND NORMAN STODDARD
d/b/a ICEWORKS SHAVED ICE AND MORE

LICENSE AGREEMENT BETWEEN THE CITY OF
HUNTSVILLE, ALABAMA AND NORMAN STODDARD
d/b/a ICEWORKS SHAVED ICE AND MORE

This License Agreement ("License") is made and entered into on the ____ day of May, 2014, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as "Licensor", and Norman Stoddart d/b/a Iceworks Shaved Ice and More, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, the City of Huntsville has solicited and received proposals to provide food and vending services for Brahan Spring Park located at 500 Drake Avenue, Huntsville, Alabama 35801 during the months of ____ through ____; and

WHEREAS, the said Request for Proposals # 23-2014-72-3 is attached hereto and incorporated herein as "Exhibit A"; and

WHEREAS, the Proposal submitted by Licensee is attached hereto and incorporated herein as "Exhibit B"; and

WHEREAS, Licensor will grant Licensee a non-exclusive license to provide food and vending services at Brahan Spring Park for a period of one year; and

WHEREAS, the parties may by mutual agreement extend said license for two one-year periods.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City hereby licenses to Norman Stoddart d/b/a Iceworks Shaved Ice and More and Norman Stoddart d/b/a Iceworks Shaved Ice and More hereby licenses from the City for the use of the Concession Space located at Brahan Spring Park, further described in paragraph 1, according to the terms, covenants, conditions and agreements as hereinafter stated, to-wit:

1. **DESCRIPTION OF THE PREMISES:** A space inside Brahan Spring Park to be designated by the City's Director of Parks and Recreation (the Director), with said space being large enough to accommodate Licensee's concession trailer described in Exhibit B.

The Licensed Premises may be moved to a different location inside Brahan Spring Park at the discretion of the Director.

2. TERM OF THE LICENSE:

The initial term of the license shall be for a period of one year period commencing from the date of execution of the last party to sign this lease. The parties may by mutual agreement in writing renew the term of the License for two additional one-year terms. The license shall be in effect during the months of March, April, May, September and October during the term of this license. The license shall be in effect for a minimum of five days per week (to include Saturday and Sunday) during the months of June, July and August during the term of this license.

3. RENT:

The Licensee agrees to pay the Licensor for the use and occupancy of said Licensed Premises a total annual rental amount of One Hundred Dollars (\$100.00) due and payable at the beginning of each License Term.

5. USE OF PREMISES:

The premises shall be used and occupied by the Licensee to provide concession services to the participants and spectators at the Brahan Spring Park. Licensee shall sell the following products at the following prices:

Shaved Ice:	8 oz. kids cup	\$2.00
	Small (12 oz.)	\$3.00
	Medium (16 oz.)	\$4.00
	Large (32 oz.)	\$5.00
Lemonade:	Medium (16 oz.)	\$3.00
	Large (32 oz.)	\$5.00
	16 oz. souvenir cup	\$2.00 (includes \$1.00 refills all season long)
Soft Drinks (12 oz.)		\$1.00
Bottled Water (16 oz.)		\$1.00
Chobani Greek Yogurt		\$2.00

The Licensee may add other menu items as approved by the Director. Licensee may increase prices up to 5% at the beginning of each term of the License, with the express written consent of the Director.

7. INSURANCE:

Licensee shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. Licensee shall procure and maintain for the duration of the job until final acceptance by

the City, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Licensee, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval. General Liability Coverage and City's Contractors Protective Insurance should be written by the same insurance company.

Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury
Broad Form Property Damage

2. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

3. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

4. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit
\$ 1,000,000 Products - Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence

2. Professional Liability:

Insurance may be made on a "claims-made" basis:

\$ 100,000 Per Claim - Land Surveyors
\$ 250,000 Per Claim - Other Professionals

3. Automobile Liability:

\$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

4. Workers' Compensation:

As Required by the State of Alabama Statute

5. Employers Liability:

\$ 100,000 Bodily Injury by Accident or Disease
\$ 500,000 Policy Limit by Disease

C. OTHER INSURANCE PROVISIONS:

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Licensee for products used by and completed operations of Licensee; or automobiles owned, leased, hired or borrowed by Licensee. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. Licensee's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their

interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Licensee's insurance and shall not contribute to it.

c. Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. Licensee is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and Licensee shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE CONTRACTOR:

Licensee shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. HOLD HARMLESS AGREEMENT:

Licensee, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of Licensee or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

8. ALTERATIONS, IMPROVEMENTS, MODIFICATIONS, EQUIPMENT, AND FIXTURE INSTALLATION:

Any additions, modifications, (including electrical and plumbing modifications, alterations, or improvements to the Premises) shall not be performed without the prior consent of the City. Such improvements will become the property of the City of Huntsville. Licensee shall display no signs unless said signs have been approved by the City Parks and Recreation Director prior to the installation of said signs.

9. ACCESS TO PREMISES:

The Licensee shall have access to the Licensed Premises during the days covered by the License Agreement.

10. COMPLIANCE WITH LAWS:

The Licensee shall comply with all applicable federal, state and local laws, ordinances and regulations and have all licenses and permits required for the operation of its business.

11. ASSIGNMENTS OR SUBLETTING:

The Licensee may not assign, sublet, or transfer the Licensed Premises or any portion thereof.

12. ORDER OF PREFERENCE OF CONTRACT DOCUMENTS:

In the event any conflict, discrepancy, or inconsistency among any of the documents which make up this contract, the following shall control. Interpretations shall be based upon the following order of precedence: 1) this Agreement; 2) City of Huntsville Request for Proposals No. 23-2014-72-3; and 3) the Licensee's response to the said Request for Proposals.

13. IMMIGRATION:

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for

employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision, shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

IN WITNESS WHEREOF, the parties hereto have entered into this lease agreement on the _____ the day of _____, 2014.

ATTEST:

CITY OF HUNTSVILLE,
ALABAMA,
A MUNICIPAL CORPORATION

BY: _____
Charles E. Hagood
Clerk-Treasurer

By: _____
Tommy Battle
Its Mayor

ATTEST:

NORMAN STODDART d/b/a
ICEWORKS SHAVED ICE
AND MORE

By: Barbara A. Bess

Norman Stoddart
Norman Stoddart

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in the State, hereby certify that Tommy Battle and Charles E. Hagood whose names as Mayor and City Clerk-Treasurer of The City of Huntsville, a municipal corporation, are signed to the foregoing instrument, and who are know to me, acknowledge before me on this day that, being informed on the contents of the instrument, they, in their capacity as such officers, executed the same wit full authority for and as the act of said corporation on the day the same bears day.

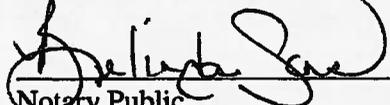
GIVEN under my hand and official seal this the _____ the day of May, 2014

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in the State, hereby certify that Norman Stoddart whose name is signed to the foregoing instrument, and who is known to me, acknowledge before me on this day that, being informed on the contents of the instrument, he executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 6TH day of May, 2014.



Notary Public
My Commission Expires: 8-1-2016