

ORDINANCE NO. 2006-45

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A
CONTRACT WITH HOMEMADE DREAMS FOR CONCESSIONS
SERVICES**

WHEREAS, the City of Mason has advertised and received proposals for the provision of concessions services for the City's Parks and Recreation Department; and

WHEREAS, Homemade Dreams was determined to have submitted the best proposal for the provision of said concessions services for the Lou Eves Municipal Pool and the City of Mason ball fields that are part of the City recreation system.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. That the City of Mason accepts the terms of the proposal and agrees that Homemade Dreams submitted the best proposal with respect to the provision of concessions services for the Lou Eves Municipal Pool and for the City of Mason ball fields that are part of the City recreation system.

Section 2. That the City Manager is hereby authorized to enter into a contract with Homemade Dreams for the provision of concessions services for the Lou Eves Municipal Pool and for the City of Mason ball fields that are part of the City recreation system consistent with the terms of the contract attached hereto as Exhibit "A" and incorporated herein by reference.

Section 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 10th day of April, 2006

Attest:


Clerk of Council


Mayor

Mason Parks & Recreation Department
Use Agreement

This use agreement is entered into, by and between the City of Mason Parks and Recreation Department (hereafter referred to as "Department") and Homemade Dream's Coffeehouse (hereafter referred to as "Contractor") on this 10th day of April, 2006.

1. The Contractor shall provide the following services for the Department: Full service food & beverage concessions operations at Conwin M. Nixon Ball fields and Lou Eve's Municipal Pool; located at Conwin M. Nixon Park, 6249 Mason-Montgomery Rd., Mason, OH 45040.

2. Term

- Except as otherwise provided hereunder, the term of this agreement shall begin upon the execution of this agreement and continue until the last scheduled performance provided by the Contractor, not to exceed one year from April 24th 2006. Either party has the right to terminate this agreement for any reason upon ninety (90) days written notice.
 - The Department will also have the right to terminate this agreement upon immediate written notice after the occurrence of any of the following events: The Contractor's performance under this agreement is deemed unsatisfactory or unsafe to the Department.
 - The Contractor shall have four additional one-year options to renew this agreement at the end of the initial term of one year. To exercise these options to renew, Contractor shall notify the Department of its intention to exercise such one-year option by giving written notice at least three months prior to the expiration of the initial use agreement or each subsequent use agreement.
3. Concessions Fees
- The Contractor and Department agree that concession fees will be set at 15% (fifteen percent) of gross concession revenues, after applicable sales taxes are paid by the Contractor, collected by the Contractor, to be paid to the Department.
 - In a monthly statement the Department will be supplied a detailed list containing revenues by date and location, as well as the total collected for each machine for the month. This monthly statement shall also include any revenue/commission due to the City for the statement cycle.
 - All concession fees will be paid in full by the Contractor to the Department by the fifteenth (15th) of the month following the month in which the revenue was received.

- Payment shall be made to:
City of Mason Parks & Recreation
Attn: Facilities Manager
6050 Mason-Montgomery Rd. •
Mason, OH 45040

4. Utilities

- The Department assumes responsibility for all utilities (electric, gas, trash service) for approved vending locations as part of this agreement.

5. Construction/Building Maintenance

- Before implementation, the Department must approve any capital improvements, changes to structure and/or existing equipment, service to existing equipment, or addition of new equipment. The Contractor assumes all costs associated with any of the listed actions for the duration of the agreement and all extensions.

6. Equipment Usage & Repairs

- The Department will provide some existing equipment for the use of the Contractor at each location for the length of the awarded agreement. Ownership of said equipment will reside with the Department at the end of any awarded agreement and all extensions.
- Before implementation, the Department must approve any changes to existing equipment, service to existing equipment, or addition of new equipment. The

APPROVED BY:
MASON PARKS & RECREATION DEPARTMENT
MAY 1 2006

The City assumes all maintenance costs associated with city-provided equipment for the first year of this agreement; any costs associated with said equipment will be shared 50% City and 50% Contractor for any approved extensions of this agreement. The Contractor assumes all costs associated with any of the listed actions for the duration of the agreement and all extensions for any Contractor provided equipment.

- If new equipment is added and causes changes to the structure and or utility service of any listed site, the Contractor agrees that said added equipment becomes property of the Department at the end of the initial agreement or any extension thereof.
- The Contractor will have access to the use of the food preparation equipment at the Mason Community Center, 6050 Mason-Montgomery Rd., Mason, OH 45040 for the duration of this agreement or any extension thereof, to the extent that there is no interference of current operations or changes of equipment within the Mason Community Center. In addition, if said areas are awarded or otherwise utilized for future operations by the Department for it's own use or to outside parties the usage may be ended by 30 (thirty) days written notice to the Contractor.

7. The Contractor agrees to follow these Department guidelines:

- The Contractor agrees to be subject to a criminal background check paid for and performed by the Department.
- Vending machines are located in locations throughout areas of the parks & recreation Department. These vending machines will stay in place and not be considered a part of this agreement.
- Unless otherwise noted the Contractor will be responsible for supplying all supplies and materials necessary for the operations. All such supplies should be appropriate to the operations and are subject to approval by the Department.
- Concession operational closures or cancellations will be done by the Department for inclement weather reasons, holidays, and any other reasonable circumstance as judged by the Department. The Department will make all reasonable efforts to notify the Contractor of any operational closures.
- The Department must approve any change of scheduled operating hours before the change is made.
- The City has a standing beverage agreement with Coca-Cola, and all beverage resale items sold by the Contractor pursuant to this agreement with the city must be purchased from Tri-State Coca-Cola as part of the agreement. The Contractor shall purchase the product under the city agreement and will be responsible for paying Tri-State Coca-Cola for product. The Contractor has no rights to any sponsorships and/or reimbursements made to the City by Tri-State Coca-Cola as part of the existing agreement between Tri-State Coca-Cola and the City of Mason.
- Alcoholic beverages are not allowed to be possessed or sold in any parks & recreation facility and will not be considered as part of any this contract.
- If changeover to a new Contractor is required, it must be completed within fourteen days after the date of the execution of the changeover contract. Changeover is to include at a minimum the same number of locations presently covered under this Agreement. Upgrades of equipment and /or menus may be required if needed after review with the Contractor.
- The Department hereby grants to Contractor the exclusive right to advertise concession products at the Department locations at the Contractor's sole expense. The Contractor assumes all cost for any advertising efforts undertaken. Both parties will mutually agree on the size and location of any Contractor and/or product signage.
- The Department will grant to the Contractor the exclusive concession operations at the Department locations, with the exception of Department or city sponsored special events.

- The Contractor will be solely responsible for collecting all applicable sales tax and distributing said tax to the proper taxing authorities.
 - The Contractor assumes responsibility for purchasing of all cleaning supplies, product, approved signage, and any other operational items necessary for the operation of awarded concession locations.
 - The Contractor must provide adequate trained staff for the operation of each awarded location. The Contractor assumes responsibility for all payroll obligations and must obey all local, state, and federal employment laws that are applicable.
 - The Contractor must maintain the awarded locations in a clean and safe manner. The Department reserves the right to inspect operations at anytime, without notice, and ask for corrective actions to be implemented immediately for any sub-standard items found.
 - The Contractor must coordinate and receive any necessary health inspections and maintain the county health license under the Contractor's name. In addition, any food-handling or other certifications necessary for operations become the responsibility of the Contractor. The Contractor will provide copies to the City upon request. In addition, said certificates must be displayed in a mutually agreed upon area within public view.
 - The Contractor must provide proof and maintain annual liability coverage that names the City of Mason and the Mason School District as additional insureds and shall indemnify, hold harmless and defend the City of Mason, Ohio, its elected and appointed officials, all employees, agents, all boards, commissions, and all volunteers against any and all liability, loss, costs, damages, expenses, claims or actions, including any attorney fees which the City of Mason, Ohio, its officers, employees, agents, all boards, commissions, and volunteers may incur or be required to pay, arising out of or by any act or omission on the part of the Contractor, while occupying any City of Mason facility/property during the terms of this Agreement and all extensions.
 - The Contractor must also sign a release and indemnity agreement provided by the Department that is given in consideration of the use of certain facilities owned by the City of Mason and shall include any and all expenses incurred by the City of Mason as a result of any such liability claims, actions, demands, and/or judgments, etc., including but not limited to attorney's fees and any costs associated herewith.
 - The Department reserves the right to perform Contractor and/or participant evaluations and/or surveys for future management purposes.
 - The Department also reserves the right to request the removal of any of products offered by the Contractor for resale.
 - The Department also must approve all menus and prices and any adjustments or changes to menus or prices.
 - The Contractor will be responsible for all maintenance and cleaning of all machinery, stocking of product, and collection of monies for products offered. Contractor will be responsible for all expenses incurred in the maintenance of equipment used in concession operations.
8. It is understood and acknowledged that the Contractor is an independent contractor of the Department and is not an employee or agent of the City of Mason. Contractor shall pay and report all taxes applicable to independent contractors, including, without limitation, Federal, State, and Local taxes, social security taxes and unemployment insurance. Contractor shall not be entitled to participate in any benefits offered by the City of Mason to its employees, including but not limited to any health or disability benefits, retirement benefits or other benefits to which the employees of the City of Mason should be entitled.
9. Contractor agrees to abide by present rules and regulations and future rules and regulations of the City of Mason Parks and Recreation Department and the City of Mason.

10. Special Considerations:

Contractor Signature (as appears on social security card):

Brian Nolan

Contractor Name Printed (as appears on social security card):

BRIAN NOLAN

Date: JUNE 9 2006 Street Address: 6377 TRACT PARK

City/State/Zip Code: MASSON OH 45040 Home Phone: _____

(513) 573-3455 h

(513) 378-4165 c

Work Phone: _____ Mobile Phone: _____

Fax: _____ n.s. Email: HONORABLE DREAMS @ CINCINNATI.COM

Social Security Number: 021-58-3514

City of Mason Representative Signature: _____

Brian Nolan

Title: City Manager Date: 6/19/06