

Mason Parks & Recreation City  
Use Agreement

This Use Agreement is entered into, by and between the City of Mason (hereafter referred to as "City") and Comets Pizza/Denise Smith (hereafter referred to as "Contractor") on this 28 day of March, 2011.

1. The Contractor shall provide the following services for the City: Full service food & beverage concessions operations at the following locations: Lou Eves Municipal Pool, 6249 Mason Montgomery Rd. and Mason Sports Park Concessions, 3400 Mason-Morrow-Milgrove Rd., Mason, OH.
2. Term and Termination
  - 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 4, 2011.
  - The City shall have three additional one-year options to renew this agreement at the end of the initial term of one year. To exercise these options to renew, City shall notify the Contractor 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. Such extension is at the sole discretion of the City.
  - The City reserves the right to conduct annual market price surveys to determine current competitive pricing and terminate the contract, with sixty (60) days written notice if the vendor's product prices increases are not considered competitive to that of the local market.
  - If any federal, state, or local law, rule, regulation or order prohibits, restricts, or in any manner interferes with the sale or advertising of beverages at any time during the term of the contract or if for any reason the use of the City locations declines, then at its option and not as sole remedy, vendor may terminate the contract, and the city may retain any or all equipment.
  - The city represents and warrants that it has full right and authority to enter into a contract and to grant and convey to vendor the right set forth. Vendor may terminate the contract, with a ninety (90) days written notice to the city and the city may retain any or all equipment.
  - If the vendor breaches any obligations set forth in the contract or fails to perform standard services necessary for the operation of the City locations, then at its option and not as sole remedy, the city may terminate the contract with a sixty (60) days written notice to the vendor and may retain some of the equipment.
3. Concessions Fees
  - The Contractor and City agree that concession fees will be 15% of net sales. Fees will be collected by the Contractor to be paid to the City.

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- In a monthly statement the City will be supplied a detailed list containing revenues by date and location, as well as the total collected for each location 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 City by the fifteenth (15<sup>th</sup>) of the month following the month in which the revenue was received.
- Failure to make timely payment by the fifteenth (15<sup>th</sup>) of each month will result in penalties being assessed to the Contractor of 5% per month of the concession fee due until the amount is paid in full. Contractor agrees to reimburse any legal or collection fees incurred by the City to collect the concession fee and penalties.
- Payment shall be made to:  
City of Mason Parks & Recreation  
Attn: Facilities Manager  
6050 Mason-Montgomery Rd.  
Mason, OH 45040

#### 4. Utilities

- The City 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 City 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 City 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 City at the end of any awarded agreement and all extensions.
- Before implementation, the City must approve any changes to existing equipment, service to existing equipment, or addition of new equipment. The Contractor assumes all maintenance costs associated with city-provided equipment for the duration of this agreement and any extensions. 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 City at the end of the initial agreement or any extension thereof.

- If awarded operational areas are utilized for future operations by the City for its 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 City guidelines:

- The Contractor agrees to be subject to a criminal background check paid for and performed by the City.
- 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 City.
- Concession operational closures or cancellations will be done by the City for inclement weather reasons, holidays, and any other reasonable circumstance as judged by the City. The City will make all reasonable efforts to notify the Contractor of any operational closures.
- The City must approve any change of scheduled operating hours before the change is made.
- The City has a standing beverage agreement with a beverage provider, and all beverage resale items sold by the Contractor pursuant to this agreement with the City must be purchased from this provider as part of the agreement. The Contractor shall purchase the product under the City agreement and will be solely responsible for paying the provider. The Contractor has no rights to any sponsorships and/or reimbursements made to the City by the beverage provider as part of the existing beverage agreement.
- 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 City hereby grants to Contractor the non-exclusive right to advertise concession products at the City 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 City will grant to the Contractor the non-exclusive concession operations at the City locations, with the exception of City sponsored special events, or outside groups paying for event usage of park areas for short-term tournament or special event usage.
- The Contractor will be solely responsible for collecting all applicable sales tax and distributing said tax to the proper taxing authorities.

- The City may at anytime during the active period of the contract request an audit of Contractors financial records related to the concessions operations; including receipt and expense reports.
- 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 City 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 agrees to remove all supplies from concession areas by a date designated by the City at the end of each operating season/period. The City reserves the right to dispose of supplies left after the set deadline for each operating season/period.
- The Contractor must provide proof and maintain annual liability coverage that names the City of Mason 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 City 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 City reserves the right to perform Contractor and/or participant evaluations and/or surveys for future management purposes.
- The City also reserves the right to request the removal of any of products offered by the Contractor for resale.

- The City also must approve all menus and prices and any adjustments or changes to menus or prices.
- The Contractor agrees to provide discounts to specific parties or groups at the request of the City. Such discounts will be a mutually agreed upon amount.
- 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.
- The City must approve all operating hours for concessions operations.
- The City will provide the Contractor with any necessary key and/or proximity card. The Contractor is responsible for replacement of such keys and proximity cards at a cost of \$200 per key and \$20 per proximity card.
- The Contractor agrees to establish practices necessary to maintain customer service standards as established by the City. Contractor's failure to respond to and address customer service issues, to the satisfaction of the City, shall be considered a breach of Contractor's obligations under this Agreement and shall be grounds for termination.

8. It is understood and acknowledged that the Contractor is an independent contractor of the City 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:

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Contractor Signature (as appears on social security card):

Denise Christine Smith

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

Denise Christine Smith

Date: 3/30/11

Street Address: 124 E. Main Street

City/State/Zip Code: Mason, Ohio 45040

Home Phone: 513-234-0678

Work Phone: 513-398-2675

Mobile Phone: 513-410-2844

Fax: —

Email: denise.smith@cometspizza.com

Social Security Number/Tax Identification Number:

298-62-1365

City of Mason Representative Signature:

[Signature]

Title: CITY MANAGER

Date: APRIL 13, 2011