

City of Seward, NE

Tuesday, April 19, 2016

Regular Session

Item G5

CONSIDERATION OF AN AGREEMENT WITH SNOWMOTION TO OPERATE A CONCESSION STAND AT THE SEWARD MUNICIPAL SWIMMING POOL - Bruce Smith

Administrative Report: Suzanne Gligorevic approached the City about operating the Concession Stand at the Dowding Pool this summer. The Park and Rec Board approved the operation of the concession stand by a contract company. The City advertised for others who may be interested in operating a concession stand and received no responses. The agreement is for the current 2016 pool season only.

Following review and discussion, a motion to approve the agreement would be in order.

Staff Contact:

AGREEMENT TO OPERATE CONCESSION STAND

THIS AGREEMENT is made this ____ day of April, 2016 by and between the CITY OF SEWARD, NEBRASKA a municipal corporation (“CITY”) and SUZANNE GLIGOREVIC, doing business as SNOWMOTION, (“SNOWMOTION”), and

WITNESSETH:

WHEREAS, CITY owns a concession stand at the Dowding Municipal Pool located at 167 North 14th Street, Seward, NE 68434, and

WHEREAS, CITY desires to have the Dowding Municipal Pool stand operated for the sale of food, candy and beverages to users of the Dowding Municipal Pool; and

WHEREAS, SNOWMOTION desires to operate the concession stand at the Dowding Municipal Pool for the 2016 pool season.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. CITY hereby awards to SNOWMOTION, and SNOWMOTION hereby accepts, a revocable license to operate the Dowding Municipal Pool concession stand for the 2016 pool season.
2. SNOWMOTION shall install and equip, at no expense to CITY, all of the equipment necessary for the operation of the concession stand for the sale of food, candy, beverages, and other consumables. No popcorn will be sold at the concession stand.
3. SNOWMOTION agrees that the equipment to be installed, as well as the items to be served and the prices to be charged shall be subject to the approval of the Parks and Recreation Director of CITY, who shall make such approval in writing. SNOWMOTION shall have the option to develop package pricing for parties and special events to partner with the Dowding Pool offerings, subject to the approval of the Parks and Recreation Director of CITY. The Parks and Recreation Director may also require that a price list be posted for the benefit of the public in such a place on the premises as may be designated by him. It is further agreed that SNOWMOTION shall retain the ownership to all items of equipment installed in the concession stand and reserves the right to remove the same at the termination of this Agreement, provided that the concession stand is left in its original condition, reasonable wear and tear excepted.
4. Except as otherwise provided herein, upon termination of this Agreement, all permanent

improvements made and fixtures installed by CITY or SNOWMOTION to the concession stand shall be the property of CITY, and CITY shall be in no way liable to SNOWMOTION for the cost of any of the improvements or fixtures.

5. SNOWMOTION shall pay CITY the sum of fifteen percent (15%) of the amount of revenues from all sources received at the concession stand at Dowding Municipal Pool after deducting any applicable city and state sales taxes payable on concession sales. The payment shall be made on a monthly basis to CITY within ten (10) days after the close of each month.

6. The term of this Agreement shall be from the date of this Agreement to the end of the 2016 pool season as determined by the CITY and provided that both CITY and SNOWMOTION shall have the right to terminate this Agreement without cause and without penalty upon thirty (30) days' written notice to the other party.

7. CITY reserves the right to cancel this Agreement for violation of any of the terms hereof, or any violation of any law or ordinance, provided, however, that ten (10) days' written notice shall be given the SNOWMOTION to correct the condition prior to the cancellation. Failure to correct a violation within ten (10) days after notice shall result in automatic termination without any further notice.

8. SNOWMOTION shall pay all of the concession stand bills within ten (10) days after the due date thereof.

9. No merchandise sold by the SNOWMOTION shall be given to the customers in glass bottles, and no vending machine shall be permitted on the premises without the written approval of the Parks and Recreation Director.

10. The area in which the concession stand is located, including the building and the equipment used therein, shall be maintained by SNOWMOTION in a safe, neat, clean, and orderly condition in accordance with the instructions of the Parks and Recreation Director and meet with his approval. The disposal of papers, towels, and other burnable goods plus food scraps will be the responsibility of the SNOWMOTION.

11. CITY agrees to pay all utility expenses incurred in connection with the operation of the concession stand, including water, sewer, garbage and electricity.

12. SNOWMOTION shall not sell, lease, assign or sublet any rights under this Agreement without the advance permission in writing of CITY.

13. SNOWMOTION shall defend, indemnify, save and hold harmless CITY, its officers, agents and employees, from any claims or lawsuits arising out of injury to, or death of, any person or damage to any

property caused by or alleged to have been caused by any negligent act or omission of SNOWMOTION, its officers, agents, employees, volunteers, assignees, lessors or subcontractors, in carrying out the terms of this Agreement.

14. SNOWMOTION, at its sole expense, shall maintain in full force and effect throughout the term of this Agreement the following described insurance coverage, insuring not only SNOWMOTION, its officers, agents, employees, volunteers, assignees, lessees and subcontractors, if any, but also, with the exception of Workers' Compensation, CITY, its officers, agents and employees:

15. A certificate of such insurance evidencing such coverage shall be filed by SNOWMOTION concurrently with the execution of this Agreement in a form satisfactory to the City Administrator for the CITY naming the CITY as an additional insured.

16. SNOWMOTION shall be available and shall the concession stand in operation at all times during the operating hours as specified by the Parks and Recreation Director.

17. SNOWMOTION shall install and maintain an adequate set of bookkeeping records from which statements of profit and loss and a balance sheet can be readily prepared and agrees to make the books available to CITY for examination upon request for the purposes of calculating payments under this Agreement. SNOWMOTION shall maintain a record for all items sold and the original invoices for all goods purchased during the term of this Agreement, and make such available to CITY for its inspection.

18. SNOWMOTION shall obtain at its own expense any and all permits and licenses that may be required by law or ordinance in the conduct of the concession and shall pay any and all taxes that may be assessed against it for whatever purposes in the operation of the concession. SNOWMOTION shall contact and meet with and obtain the consent of the State of Nebraska Health Department before and during the operation of the concession stand.

19. No alcoholic beverages shall be consumed at or sold at the concession stand.

20. SNOWMOTION shall make no alterations, additions, or changes, to any portion of the concession stand or to any CITY equipment without first securing in writing the approval of the Parks and Recreation Director of CITY to such alteration, addition or change. Any such alterations, additions or changes, if approved, shall be made at the expense of the SNOWMOTION.

21. This Agreement constitutes the whole and integrated understanding of the parties hereto. It may be amended only in writing.

22. Notices to the parties shall be sent by first-class United States mail, postage prepaid, or delivered to

the following addresses:

SNOWMOTION:

Suzanne Gligorevic
77 Langworthy Lane
Seward, NE 68434

CITY OF SEWARD:

Bruce Smith
City Administrator
537 Main Street
Seward, NE 68434

Either party may change the address for notification by sending the other party notice of such change.

THIS AGREEMENT TO OPERATE CONCESSION STAND is entered into effective as of the ____ day of April, 2016.

SNOWMOTION

By: Suzanne Gligorevic

CITY OF SEWARD

By: Joshua Eickmeier, Mayor

COUNTY OF SEWARD) ss.
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Notary Public

Notary Public