

CONCESSION STAND CONTRACT BETWEEN
Dandy Candy **AND CITY OF GILLETTE CAMPBELL COUNTY,**
WYOMING

1. **Parties.** The parties to this Contract are Dandy Candy ("Contractor"), whose address is 813 Cherry Ln, and City of Gillette, Campbell County, Wyoming, ("City") whose address is 201 East 5th Street, Gillette, WY 82716.
2. **Purpose of Contract.** Operation of the concession stand at the Gillette Municipal Pool, located at 909 South Gillette Avenue, Gillette, WY 82716 ("Concession Stand").
3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted. The term of the Contract is from June 2, 2018 through August 17, 2018. All services shall be completed during this term. There is no right or expectation of renewal and any renewal will be determined at the discretion of the City.
4. **Payment.** The Contractor agrees to pay the City the amount of \$ 800.00 in four (4) equal installments. Payments shall be made on, or before the following dates: 1) June 29, 2018; 2) July 27, 2018; 3) August 24, 2018; and 4) Sept 21, 2018.
5. **Responsibilities of Contractor.**
 - A. Contractor avers that it is authorized to conduct business in the State of Wyoming.
 - B. Contractor understands and agrees that it is subject to all federal, state, and local health statutes, rules, regulations, and ordinances. Further, the Contractor agrees that it will comply with any health inspection by any federal, state, and/or local health organization.
 - C. Contractor shall not sell food, beverages, or other merchandise in glass containers or in containers that may pose a risk or hazard to the safety of the customers of the Concession Stand, or to participants or spectators at the pool or park.
 - D. Contractor shall not sell any alcoholic beverages.
 - E. Contractor shall keep an area within a radius of 50 feet from the stand free at all times from trash, garbage, and other litter arising out of sales of food, beverages, and any other merchandise from the concession stand.

- F. Contractor shall obtain all permits and licenses, including but not limited to health and business permits or licenses required to operate Concession Stand.
- G. Contractor its agents or its employees shall park vehicles in designated parking areas. Overnight parking of the Concessionaire, agents or employees is not allowed.
- H. Contractor shall remove its vehicles, equipment, supplies, and other personal property from the Concession Stand by 10:00 pm on the last day of the term of this Contract.
- I. Contractor understands and agrees no one under the age of sixteen (16) shall be allowed to work at the Concession Stand, unless supervised by an employee of the Contractor at least eighteen (18) years old.
- J. Contractor at its own expense shall repair any damage or injuries caused by Contractor, its customers, members, invitees, agents, or employees. At the termination of this Contract, the Contractor shall leave all City owned equipment in as good a condition as when Contractor commenced the use thereof, reasonable wear and tear excepted. The degree of damage or excessive wear and tear to the said equipment shall be determined solely by the Water Services Manager ("Manager").
- K. Contractor shall empty trash at the end of the day into the designed City dumpster.
- L. Contractor shall perform all necessary labor and services; furnish all cleaning supplies, and provide all food supplies, including but not limited to: all food, food stuffs, beverages, and containers to operate the Concession Stand.
- M. Contractor shall not order any supplies, food or services on behalf of the City.
- N. Contractor may change the facilities or equipment only with the approval of the Manager.
- O. Contractor shall operate the Concession Stand between the hours of **10:00 A.M.** and **8:00 P.M.** on days the pool is open to the public.

6. **Responsibilities of City.**

- A. The City will furnish one (1) popcorn machine, one (1) three (3) compartment sink, (1) refrigerator, (1) icemaker, (1) hot dog cooker, (1) pretzel cooker, (1) snow cone machine, and (1) cheese & nacho machine.
- B. The City will pay utility costs associated with the operation of the Concession Stand including water, sewer and electricity.
- C. The City will dispose of all trash properly placed in the City dumpsters.

7. **General Provisions**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.
- B. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the City does not waive governmental immunity by entering into this Contract and specifically retains immunity and all defenses available pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.
- C. **Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof for collateral for any financial obligation without the prior written permission of the City.
- D. **Audit/Access to Records.** The City and any of its representatives shall have access to any books, documents, papers, and records of the Contractor which are pertinent to this Contract.
- E. **Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- F. **Entirety of Contract.** This Contract, consisting of seven (7) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

- G. **Extensions/Renewals.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the City and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any amendment to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.
- H. **Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the City does not waive governmental immunity by entering into this Contract and specifically retain immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.
- I. **Indemnification.** The Contractor shall indemnify, defend, and hold harmless the City and its officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Contractor's actions.
- J. **Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the City for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely

responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the City or to incur any obligation of any kind on the behalf of the City. The Contractor agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to City employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

K. **Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

L. **Proof of Insurance.**

(i) **Commercial General Liability Insurance.** The Contractor shall provide coverage, during the entire term of this Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, in an amount not less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate.

(ii) All policies required under this Contract shall be in effect for the duration of this Contract. All policies shall be primary and not contributory. Contractor shall pay the premiums on all insurance policies, and all insurance certificates must include a clause stating that the insurance may not be revoked, canceled, amended, or allowed to lapse until the expiration of at least sixty (60) days advance written notice to the Manager.

(iii) **City as Additional Insured.** All insurance policies required by this Contract, except workers' compensation, shall name the City as an additional insured, and shall contain a waiver of subrogation against the City, its agents and employees. Contractor shall provide, upon request, a copy of an endorsement providing this coverage.

(iv) **City's Right to Reject.** The City reserves the right to reject a certificate of insurance if the Contractor's insurance company is widely regarded in the insurance industry as financially unstable.

M. **Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

- N. **Governmental Immunity.** The City does not waive governmental immunity by entering into this Contract and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. §§ 139101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.
- O. **Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- P. **Termination of Contract.** This Contract may be terminated, without cause, by the City upon ten (10) days written notice. This Contract may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
- Q. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- R. **Titles Not Controlling.** Titles of paragraphs are for reference only and shall not be used to construe the language in this Contract.
- S. **Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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8. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The effective date of this Contract is the date of the signature last affixed to this page.

CITY OF GILLETTE

Louise Carter-King, Mayor

Date

CONTRACTOR

Daniel F Hye

4/18/18

Date

(S E A L)
ATTEST:

Karlene Abelseth, City Clerk