

LETTER OF AGREEMENT

This is a Letter of Agreement between the City of Killeen (referred to herein as “City”) and Mama’s Soul Catering and Concession, LLC (referred to herein as “Contractor.”) This Agreement is made this 23rd day of February 2016.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the parties hereby agree as follows:

Definitions

City is identified as the City of Killeen.

Contractor is identified as Mama’s Soul Catering and Concession, LLC. Under no circumstances shall the Contractor be deemed an employee, agent, or representative of the City.

The parties intend that the Contractor, in performing services specified in this agreement, shall act as an independent contractor and shall have control of his work and the manner in which it is performed. Contractor shall be free to contract for similar services to be performed for other employers while he is under contract with the City. Contractor is not entitled to participate in any benefits that the City provides for its employees.

Scope of Agreement

The purpose of this Agreement is to provide food and beverage concessionaire services at city-owned athletic facilities and the Family Aquatic Center.

Contractor agrees to perform according to duties and responsibilities, including, but not limited to the following:

- A. The Contractor agrees to operate four (4) city owned concession stands at Lions Club Park, and one (1) city owned concession stand at the Killeen Athletic Complex. Food and drink items sold at the concession will include, but not limited to bottled water, sports drinks, carbonated beverages, popcorn, nachos, hot dogs and prepackaged potato chips. The Contractor agrees not to sell the merchandise in glass containers or in such other containers that may pose a risk or hazard to the safety of the customers, participants or spectators at the facility.
- B. Contractor agrees to provide all equipment, supplies, and qualified personnel necessary for the operation of said concession stand during all regularly scheduled events / activities. Equipment may include grills, vent hoods and suppression systems, ice machines and refrigeration equipment, sinks and other equipment necessary to provide complete operation of said concession stands.

- C. The city is not responsible for the loss of product due to electrical outages or equipment failure.
- D. Contractor is responsible for the maintenance of said concession. Furthermore, Contractor agrees to undertake any and all repairs necessary for the safe and continued operation of said concession stands. The Contractor shall not make any structural alternatives, repairs, or improvements to the premises, without written permission from the Executive Director of Community Services.
- E. Contractor agrees to be responsible for any equipment, inventory or other personal property left in the concession area.
- F. Trash – Concession Contractor shall be responsible for all trash within 25 feet of the concession facility and such trash/debris must be removed on a daily basis by the concession Contractor. Trash is to be placed in trash bags and placed in the site dumpsters on a daily basis. No trash is to be left over night in the concession facility or in bags sitting outside the facility.
- G. Delivery trucks/vehicles – No delivery trucks/vehicles will be permitted within the complex after 4:00 p.m. Monday – Friday for league game days and not after 6:00 a.m. on weekend game days. For special events held Thursday – Sunday, no delivery truck/vehicles will be permitted in the complex after 6:00 a.m.
- H. Contractor agrees and understands to operate the concession stands during all scheduled events during the term of the agreement. It is also understood that some events may be postponed or canceled due to weather or other unforeseen circumstances; and some events may last longer than scheduled. The Contractor agrees to have the concession stand facility open 30 minutes prior to the first scheduled event of the day. The Contractor agrees to keep the concession stand facility open to the public until the conclusion of the last event of the day.
- I. The estimated annual amount of activities to be scheduled at Lion’s Club Sports Complexes and Aquatic Facility, and Killeen Athletic Complex is as follows:
 - 1. Lions Club Sports Complex – Youth Soccer (February – March and May - July) games will be played on 5 multipurpose fields. Games will be scheduled on 2-4 weekdays (5:30 p.m. – 8:30 p.m.) and Saturdays (8:00 a.m. – 2:00 p.m.). The league is comprised of roughly 600 participants.
 - 2. Lions Club Sports Complex and Killeen Athletic Complex – Youth baseball/softball (April - July) games will be played on 10 fields. Eight fields at Lions Club Sports Complex and 2 fields and Killeen Athletic Complex. Games will be scheduled 4-6 days a week, excluding Sunday. Weekday games will be played during the hours of 5:30 p.m. – 10:00 p.m. Saturday games will be 8:30 a.m. to 3:00 p.m. The league is comprised of roughly 1750 participants / 125 teams.

3. Lions Club Sports Complex – Youth Flag Football (October 1 – December 1) – games will be played on 5 multi-purpose fields. Games will be scheduled on 2-3 weekdays (5:00 p.m. – 9:00 p.m.) and Saturdays (8:00 a.m. to 3:00 p.m.). The league is comprised of roughly 285 participants / 24 teams.
 4. Killeen Athletic Complex – Adult Softball League (mid February – Mid November) games will be played Monday through Thursday (6:00 p.m. – 10:00 p.m.) This play will be broken down into two leagues; either Spring, Summer or Fall. Leagues are comprised of roughly 45 teams per league.
 5. Killeen Athletic Complex / Lions Club Park – Tournaments (March - October) during these months the potential exists that the city will be hosting various state and national tournaments. The service provider can expect 2-4 tournaments to be conducted during this time period. These events will take place Thursday - Monday. However, in most cases, these events will be Friday through Sunday.
 6. Family Aquatic Center – Normal hours of operation (mid May – mid September, Monday – Friday 11:00 a.m. – 6:30 p.m., Saturday 10:00 a.m.- 6:30 p.m., Sunday 1:00 p.m. – 6:30 p.m.). Special events (mid May – mid September, Friday and Saturday (7:00 p.m. – 11:00 p.m.)).
- J. The Contractor understands that inclement weather may force the rescheduling of activities to alternate date and times.
- K. The Contractor understands that proposed dates of activities are an estimate and may be altered.
- L. The Contractor understands that the aforementioned playing / activity dates and number of participants / attendees are based on previous year's totals and may be significantly higher or lower.
- M. Contractor agrees and understands that the City may schedule games or tournaments for nonprofit groups. Said groups may make an arrangement with the Contractor to receive a percentage of sales for use in defraying operating costs of said tournaments.
- N. The City of Killeen will have the exclusive right to contract with various vendors to set up and provide additional food services in addition to what the designated service provider is providing. This will be reviewed with the concession Contractor prior to contracts being executed.
- O. The Contractor shall not provide concession services outside of the actual concession stand structure without written consent from the Executive Director of Community Services.

- P. Contractor will place a personal lock on the concession stand and provide a minimum of two (2) keys to the Executive Director of Community Services. The City retains the privilege of access to the structures for routine maintenance, inspection and emergencies.
- Q. A pre- and post-inspection of the facilities shall be performed by the Contractor and a Parks and Recreation Department supervisor. All building discrepancies and deficiencies shall be recorded during this inspection. Parks and Recreation Department personnel will conduct a monthly inspection of the concession stand facilities on or about the 15th of each month.
- R. Interruption of service clause – The Executive Director of Community Services may at any time for just cause order the entire concession or any portion of the concession closed down. Just cause shall include, but not be limited to the protection of the public; conflict with approved Killeen Parks and Recreation sponsored or co-sponsored special events. Written notice of such mandatory closing shall be provided by the Executive Director of Community Services to the service provider 72 hours prior to the effective mandatory period of cease in services.
- S. Contractor agrees to secure any necessary permits or consents required by virtue of its activities, and that all service and preparation areas shall conform with relevant standards established by the Texas Department of Health, the Bell County Health Department and the City of Killeen.
- T. Contractor agrees that alcoholic beverages shall not be sold in or upon the concession stands of public park and recreation areas.
- U. The City agrees to pay all utilities.
- V. All concession signage will be professionally prepared and provided by the Contractor. All signage shall be approved by the City. No hand written signs or banners will be hung from the concession facility or displayed in the complex.
- W. Price of product after initial price scale is approved by the city shall not increase by more than 10% in the first two years combined. No price increases can be made in the first year after the initial contract is implemented. However, if there is a significant increase in product price, the service provider may appeal to the Executive Director of Community Services for a price increase.
- X. This contract may be cancelled, without penalty, by either party by providing sixty (60) days written notice to the other party. Termination under this paragraph shall not relieve the Contractor of any obligation or liability that has occurred prior to cancellation. Upon receipt of the written notice of cancellation of this

contract, the Contractor will need to fully vacate all facilities covered under this contract, to include all equipment and product, within 60 days.

Term of Agreement

This Agreement shall commence on February 23, 2016, and shall terminate February 23, 2018. The City will have the option for renewing the contract for three additional one year terms.

Consideration

Contractor will pay a flat rate to the city for each month of operation as listed below. Monthly payments will be due on the 15th of each month.

Financial records for all purchases, sales, and revenue shall be maintained by the Contractor and shall be subject to examination and audit by City officials at any time. The City will give reasonable notice prior to inspection of said records.

Fixed monthly rates:

Monthly Rental Rates for Parks and Recreation Concession Facilities

January	\$0
February	\$500
March	\$1,000
April	\$1,000
May	\$2,300
June	\$5,550
July	\$5,550
August	\$5,550
September	\$2,300
October	\$500
November	\$500
December	\$0

Insurance

Contractor shall take out and maintain during the life of the Contract such Comprehensive General Liability and Property Damage Insurance as shall protect the City from claims for damages or personal injury, including accidental death, as well as from claims for property damages which may arise from delivering the item under the contract, whether such operations be by the Contractor or by a subcontractor or by

anyone directly or indirectly employed by either of them, and the minimum amounts of such insurance shall be as follows:

Bodily Injury.

- (1) Each Occurrence - \$500,000
- (2) Annual Aggregate - \$1,000,000

Property Damage Insurance.

- (1) Each Occurrence - \$500,000
- (2) Annual Aggregate - \$1,000,000

Comprehensive Automobile Liability.

Bodily Injury

- (1) Each Person - \$500,000
- (2) Each Accident - \$1,000,000

Property Damage

- (1) Each Occurrence - \$1,000,000

Texas Law

This Agreement shall be subject to and governed by the laws of the State of Texas. The parties agree that for any and all lawsuits, disputes, or causes of action, venue shall be in Bell County, Texas.

Severability

If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Subcontracts and Assignments

Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Authority

Those executing this Agreement, as duly appointed representatives of each party, each represent that they have the necessary authority to execute this Agreement.

Entire Agreement

This Agreement, together with the attached exhibits, shall represent the entire agreement by and between the parties. This agreement shall supersede and replace in its entirety any prior agreement or understanding, either written or oral. This agreement may not be changed except by written amendment duly executed by all parties. The RFQ, including any addenda, all bid forms and contractor's proposal are incorporated by reference.

SIGNED, ACCEPTED, AND AGREED TO this 23rd day of February, 2016, by the undersigned parties who acknowledge that they have read and understand this Agreement and hereby execute this legal document voluntarily and of their own free will.

Dated this the 23rd day of February, 2016.

City Of Killeen,

Contractor,

Glenn Morrison,
City Manager

Mama's Soul Catering & Concession