

CONCESSION AGREEMENT

THIS AGREEMENT is entered into by and between **THE BIG SHOW, LTD**, c/o Melissa Nelson, 635 Miller Road, Avon Lake, Ohio 44012 ("Contractor") and the **CITY OF AVON**, 36080 Chester Road, Avon, Ohio, 44011, (hereinafter designated the ("CITY"));

WITNESSETH, that in consideration of the City choosing the Contractor for outdoor pool food concession service for the Avon Aquatic Facility for the summer seasons of 2015 and 2016 and for the money considerations provided herein, the parties covenant and agree as follows:

1. A food concession service operation of good quality will be furnished exclusively by Contractor at the Avon Aquatic Facility for the 2015 and 2016 summer seasons.
2. The Contractor shall operate the concessions stand daily during pool hours and be available for private parties held at the pool facility. All private parties must be approved by the City and shall be booked through the Contractor and Pool Management. The days and hours of private parties shall be agreed to by the City and the Contractor. Private parties properly booked shall take priority over any other use of the pool pavilion. The parties are referred to attached Exhibit A. Concessions stand shall be opened during highlighted pool days and hours, weather permitting. The day to day decision to open or close shall be made by Pool Management. This agreement shall take effect on the date it is signed by The Big Show and approved by City Council (July, 2015) and shall run through the last day the pool is open for the 2016 season.
3. The Contractor shall be responsible for hiring, staffing, paying, ordering and receiving food supplies.
4. The Contractor shall pay the City five percent (5%) of net sales at the end of the 2015 and 2016 summer seasons. Gross sales means the total of all sales conducted at the stand. Net sales refers to Gross Sales less sales taxes paid to Lorain County.
5. The Contractor shall also furnish the City Finance Director with a report of gross and net sales not later than ten (10) days following the end of the season on forms approved by the Finance Director. Payment of the agreed percentage of net sales to the City shall accompany such report.
6. The City and the Contractor agree to provide equipment and supplies as set forth in the attached Exhibit B. Equipment purchased by the Contractor remains the property of the Contractor. Equipment purchased by the City remains the property of the City.
7. These items are being provided "as is" in their existing, used condition. The City will be responsible for repair and/or replacement of its own equipment unless misuse is found to have occurred. The Contractor shall also be required to provide, at the Contractor's cost, additional needed equipment.
8. The City shall be entitled to cancel this Contract upon giving written notice to the Contractor of its failure to comply with any of the provisions of this Contract or to

furnish satisfactory service in such concession operation. The Contractor shall be given thirty (30) days to cure any breach upon receipt of said written notice.

9. The Contractor shall be responsible for the maintenance and cleanliness of the concession area and the rented pavilion area, including tables and waste containers in accordance with all Federal, State and local laws and regulations governing the sale and service of food to the general public. During extremely busy times, the Contractor may request assistance from the pool staff in keeping the area clean. Contractor shall not be responsible for emptying trash cans or general clean-up in areas outside their immediate control, i.e., the concessions area or the pavilion when they are catering a function therein.
10. The Contractor shall keep the concession area open during pool hours, unless otherwise approved by the Pool Management or a designee.
11. No pool staff or City employees (with the exception of Police, Fire, and the Recreation Supervisor) will be permitted to have a key or codes to the concession area. Extra keys will be available for Contractor's use during the pool season. All keys will be returned to the City at the end of the pool season. No City employees, except Safety personnel in the case of emergency, will be permitted to enter the concession stand without prior permission from the Contractor once the stand has been stocked with product and equipment. Nothing in this Agreement shall limit or condition the City in its enforcement of Health, Fire and Building Codes and any other laws.
12. The City agrees to be responsible for spraying the concession stand for bugs and rodents prior to occupancy by the Contractor.
13. The Contractor may charge a reasonable mark-up over cost. It is the intention of the City to make available to the public the highest quality service with a reasonable profit to the Contractor which will justify the Contractor's investment and expenses.
14. The Contractor will personally supervise the operation on-site with adults over the age of 18. Concession employees will be 16 years of age or older. The Contractor shall comply with all federal, state and local laws relating to the employment of minors.
15. The Contractor shall protect, indemnify and save the CITY harmless from and against all liabilities, damages, losses, claims, actions, costs and expenses of any nature resulting from injuries or damages to persons or property on or about the Premises arising from the sale of food or operation of the food concession service in any manner connected with the use, condition or occupancy of the concessions area by the Contractor or any act or omission of the Contractor, its agents or employees. Unless waived or modified by the Law Director, the Contractor shall furnish evidence to the City of a comprehensive general liability insurance policy and products liability or completed operations insurance in at least the amount of One Million Dollars (\$1,000,000.00), and shall cause the City to be named as an additional insured on the policy. Contractor shall provide renewal certificates of same to appropriate Pool Management personnel, the City's Finance Director and the City's Law Director.

16. The Contractor shall be responsible for and pay the health department fees for the 2015 and 2016 seasons.
17. The City shall have an option to renew this Contract on a yearly basis based upon satisfactory performance by the Contractor.
18. This Contract shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the laws of Ohio and the laws of the United States in that order. Any controversy or claim, whether based upon Contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Contract, whether between the parties, or of either of the parties' employees, agents or affiliated businesses, will be resolved in the appropriate court in Lorain County, Ohio.
19. All notices or requests between City and Contractor shall be in writing. Any such notices or requests to City shall be made to the Pool Management, 36380 Chester Road, Avon, Ohio 44011, or at such other address as City may from time to time designate in writing to Contractor, and all notices or requests to Contractor shall be made to Melissa Nelson dba, The Big Show, Ltd., 635 Miller Road, Avon Lake, Ohio 44012.

IN WITNESS WHEREOF, the parties have set their hand to this Contract on the dates next to their respective signatures.

Signed in the presence of:
Witnesses:

VENDOR: THE BIG SHOW, LTD.

By: _____

Printed Name: _____

Title: _____

Tax ID No.: _____

Date: _____

CITY OF AVON

By: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

Date

Date: _____