

AGREEMENT FOR SERVICES



Holmes Aquatic Center

City of University Park

This Agreement ("Agreement") is made by and between the City of University Park, Texas, (hereinafter referred to as "City"), and MD Executive, LLC hereinafter referred to as the "Contractor").

WHEREAS, the City desires to engage the services of the Contractor as an independent Contractor, and not as an employee, to provide food and beverage services for the Holmes Aquatic Center swimming pool, on the terms and conditions provided in this Agreement and in RFP #2016-02.

WHEREAS, Contractor is qualified to provide these services;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

Article I

Term

This Agreement shall commence on _____ ("Effective Date") and continue until _____, and shall be automatically renewed for additional terms of one (1) year each, unless otherwise terminated by one of the parties on or before October 15th prior to the next renewal term. This agreement allows for four (4) optional annual renewals.

Article II

Scope of Services

2.1 The Contractor agrees to provide the following services in accordance with the terms and conditions of this Agreement:

- a. Contractor is granted the right and agrees to furnish food and beverage services at the Holmes Aquatic Center for the term listed herein;
- b. Items for sale in the pool shall not include any alcoholic beverages;
- c. Contractor will furnish and maintain insurance as provided by this Agreement;

UP Note: Pp 2 - 4 of this agreement were sent and agreed to by the vendor but did not require a signature.

February 15, 2017

- d. Contractor agrees to pay the City a commission of ten percent (10%) of the gross sales for each calendar month. Payment shall be made via check to the Parks Department on or before the 15th day of the following month. All payments will be accompanied by a report detailing the items sold and the gross sales for the month.
 - e. Contractor shall operate the concession stand during the same hours as the pool is open for operations unless inclement weather or other acts of God prevent normal business operations and pool management is notified.
- 2.2 The Contractor shall provide the required services in accordance with all the policies and procedures of the Parks Department of the City.
- 2.3 The Contractor agrees to obtain a Food Establishment Permit from the Dallas County Health Department within ten (10) business days after notification of award. Contractor further agrees to ensure that this permit remains valid throughout the life of this contract.

Article III

If Contractor fails to perform his obligations under this Agreement, the City may terminate this Agreement upon ten (10) days' written notice.

Article IV

Devotion of Time; Personnel; and Equipment

- 4.1 The Contractor shall devote such time as is reasonably necessary for the satisfactory performance of the duties under this Agreement. Should the City require additional services not included under this Agreement, the Contractor shall make a reasonable effort to fit such additional services into the time schedule without decreasing the effectiveness of performance of duties required under this Agreement. The City and the Contractor shall discuss any additional fees that the Contractor requires for additional services. The City will approve such fees before any additional services commence.
- 4.2 The Contractor shall furnish the tools, equipment, and supplies necessary to perform the services required under this Agreement unless otherwise agreed by the parties in writing.
- 4.3 The Contractor shall be responsible for screening, hiring, and training all personnel. Personnel will be trained to handle cash and credit cards and in proper food handling methods. Contractor shall not assign any employee to this contract if said employee has been convicted of any crime involving improper conduct with a child. The City may request the dismissal of any employee at any time.
- 4.4. The Contractor shall ensure that its employees are courteous to all pool patrons and to other individuals they encounter while on City property. Employees shall be well groomed and must report to work sober and on time.
- 4.5 The Contractor will not make any modifications to the City's facilities without written permission from the Parks Director.

Article V
Miscellaneous

- 5.1 Entire Agreement. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter.
- 5.2 Assignment. Neither this Agreement nor any duties or obligations under it shall be assignable by the Contractor without the prior written consent of the City. In the event of an assignment by the Contractor to which the City has consented, the assignee or the assignee's legal representative shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, obligations, and agreements contained in this Agreement.
- 5.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- 5.4 Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Dallas County, Texas.
- 5.5 Amendment. This Agreement may be amended by the mutual agreement of the parties to it, in a writing to be attached to and incorporated in this Agreement.
- 5.6 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained in it.
- 5.7 Personal Services of the Contractor. It is the intent of this Agreement to secure the personal services of the Contractor or a duly authorized and competent representative or representatives acceptable to the City. Failure of the Contractor for any reason to make the personal service of such a person available to the City to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of the Agreement.
- 5.8 Taxes. The Contractor is responsible for all taxes related to the operation of the concession business.

- 5.9 Indemnification. THE SUCCESSFUL PROPOSER ("CONTRACTOR") AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OF ITS OWN ENTIRE DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

- 5.10 Independent Contractor. It is understood and agreed by and between the parties that the Contractor in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of his services and shall be entitled to control the manner and means by which his services are to be performed, subject to the terms of this Agreement, City and Contractor understand that Contractor shall not be entitled to life or health insurance, sick leave, vacation, longevity or other employee benefits, such as participation in the Texas Municipal Retirement System, which may be afforded to employees of City. City and Contractor agree that Contractor shall be liable for any income taxes or FICA due to the Federal or State Government.

- 5.11 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If Intended for City:

Gerry Bradley, Parks Director
City of University Park
3800 University Blvd.
University Park, TX 75205

If intended for Contractor:

Mark Kelcher
MD Executive, LLC
5303 Challenger Dr. #100
Dallas, TX 75237

- 5.11 Insurance. Unless specifically waived by the parties, the following shall apply:

- a. Contractor shall during the term hereof provide and maintain in full force and effect a policy of comprehensive commercial general liability insurance, business auto liability, and Workers' Compensation & Employers' liability insurance as specified in "Exhibit E – City of University Park Insurance Requirements".
- b. Contractor shall provide the City with certificates of Insurance within ten (10) business days after notice of intent to award.
- c. Work will not commence until the City has reviewed the Contractor's insurance certificates and has deemed them to be compliant with the requirements of this solicitation.

EXECUTED this 14th day of February, 2017.

CITY OF UNIVERSITY PARK, TEXAS

By: _____
Gerry Bradley, Parks Director

CONTRACTOR

Breiane Cage
Breiane Cage, MD Executive LLC