



CITY COUNCIL ACTION REPORT

March 2, 2010

TO: John Szerlag, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance and Administration
Susan A. Leirstein, Purchasing Director
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Standard Purchasing Resolution 3: Exercise Renewal Option –
Concession Stand Operations

Background

- On April 19, 2004, Troy City Council approved a six-year contract for Concession Stand Operations with an option to renew for five (5) additional seasons. CC Res #2004-03-153.
- This contract is to provide concession stand operations at the Troy Family Aquatic Center, Firefighters Park, Flynn Park, and Boulan Park.
- Russell Chavaux of Troy has agreed to renew the current contract for five (5) additional seasons under the same terms, conditions and return schedule as the original contract.
- The Purchasing department conducted a market survey and determined no benefit would be derived from soliciting additional sealed bids at this time, as gross revenue is dropping and expenses rising.

Financial Considerations

- The current agreement stipulates that the Concessionaire pay the City for the use of premises @ 12% of the gross receipts from all funds derived from the operation of said concessions less Michigan Sales Tax (6%) with a minimum \$12,000.00 per year payable in five payments due June 1, July 1, August 1, September 1, and October 1.

Legal Considerations

- In 2004, the Concession Stand Operations was competitively bid, in accordance with City Charter and Code.
- In accordance with the Agreement Extension authorized and executed by the Mayor and City Clerk.
- In the event of termination for convenience with thirty (30) days notice by either party, Concessionaire agrees to pay the City a prorated amount due under this contract prior to the date of cancellation.

Recommendation

- City management and the Parks and Recreation department recommend exercising the Concession Stand Operations agreement extension with Russell Chavaux of Troy under the same financial return, terms, and conditions for five (5) additional seasons to expire November 15, 2014.

APPROVED AS TO FORM AND LEGALITY

BY: _____
Lori Grigg Bluhm, City Attorney

Concession Operations Final Reports

	Russell Chavaux 2009	Russell Chavaux 2008	Russell Chavaux 2007	Russell Chavaux 2006	Russell Chavaux 2005	Russell Chavaux 2004	Sport Orion Express ## 2003	Russell Chavaux 2002
Total Gross	\$ 87,854.56	\$ 108,055.96	\$ 112,011.01	\$ 113,794.95	\$ 126,871.79	\$ 84,425.35	\$ 58,535.05	\$ 139,235.67
Total Gross less tax	\$ 82,881.66	\$ 101,939.58	\$ 105,670.79	\$ 107,353.73	\$ 119,690.36	\$ 79,359.83	\$ 55,311.10	\$ 131,354.40
Guarantee % or Money Guarantee (whichever is higher)	x 12% \$ 9,945.79 \$ 12,000.00	x 12% \$ 12,232.75 \$ 12,000.00	x 12% \$ 12,680.49 \$ 12,000.00	x 12% \$ 12,882.45 \$ 12,000.00	x 12% \$ 14,362.84 \$ 12,000.00	x 12% \$ 9,523.18 \$ 12,000.00	x 10% \$ 5,531.11 \$ 10,000.00	x 15% \$ 19,703.16 \$ 15,000.00
Aquatic Center Total (71% average)	\$ 9,720.00 81%	\$ 8,807.59 (72%)	\$ 9,358.20 (74%)	\$ 9,146.53 (71%)	\$ 10,082.71 (70%)	\$ 8,160.00 (68%)	\$ 7,800.00	\$ 13,723.39
Parks Total	\$ 2,280.00	\$ 3,425.16	\$ 3,322.29	\$ 3,735.92	\$ 4,280.13	\$ 3,840.00	\$ 2,200.00	\$ 5,979.77
TFAC Attendance	48,146	53,521	54,519	50,240	55,348	36,047	38,578	53,542
TFAC Closed Days	12	14.5 #	11	6	7	21	23	15
Evaluation Score*	203	265	243.5	226.5	245	266	294.5	No official evaluation tool

* NOTE: Maximum possible score is 350; 70% is 245.

NOTE: Includes closed at city parks and TFAC for four days due to power outages.

Due to new contractor, many improvements were required by the health department, which delayed the opening at all sites.

	2009	2008	2007	2006	2005	2004	2003	2002
TFAC Attendance	48,146	53,521	54,519	50,240	55,348	36,047	38,578	53,542
TFAC Closed Days	12	14.5 #	11	6	7	21	23	15

NOTE: Includes closed at city parks and TFAC for four days due to power outages.

2009 Monthly Concession Reports - Russ Chavaux

Site	Gross Sales by month							2009 TOTALS	2008 TOTALS	2007 TOTALS	2006 Totals	2005 Totals	2004 Totals	2003 Totals
	April	May	June	July	August	September	Oct-Nov							
Aquatic Center		\$ 2,797.59	\$ 15,495.25	\$ 19,358.50	\$ 24,041.60	\$ 4,200.50		\$ 65,893.44	\$ 71,122.40	\$74,282.50	\$ 72,598.60	\$ 82,993.71	\$53,400.42	\$41,559.00
TFAC-Birthday's								\$ 2,275.00	\$ 3,528.00	\$3,542.00	\$ 2,270.00	\$ 1,680.00	\$ 360.00	\$ 1,215.00
TFAC-Jamfest								\$ 3,432.00	\$ 3,624.00	\$4,800.00	\$ 5,901.00	\$ 4,401.00	\$ 3,537.00	\$ 3,588.00
Flynn Park		\$ 2,947.09	\$ 4,840.57	\$ 4,078.85	\$ 354.50	\$ 233.75	\$ -	\$ 12,454.76	\$ 18,464.45	\$16,882.90	\$ 19,418.42	\$ 19,141.49	\$10,477.27	\$ 7,010.75
Firefighters Park		\$ 443.57	\$ 140.32	\$ 72.00	\$ 137.50	\$ 240.52	\$ 221.00	\$ 1,254.91	\$ 8,520.36	\$4,387.36	\$ 7,093.18	\$ 12,213.09	\$10,331.80	\$ 1,330.25
Boulan Park		\$ 427.50	\$ 709.25	\$ 768.00	\$ 212.50	\$ 411.20	\$ 16.00	\$ 2,544.45	\$ 2,795.75	\$7,654.75	\$ 6,513.75	\$ 6,442.50	\$ 6,318.86	\$ 3,832.05
JC, Raintree Vend		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$461.50	\$ -	\$ -	\$ -	\$ -
TOTALS		\$ 6,615.75	\$ 21,185.39	\$ 24,277.35	\$ 24,746.10	\$ 5,085.97	\$ 237.00	\$ 87,854.56	\$108,055.71	\$112,011.01	\$113,794.95	\$126,871.79	\$84,425.35	\$58,535.05
2009 Y T D Totals						\$ 87,854.56		No Soccer Tournament at FF Park		No Soccer Tourn. (Rain) at FF Park		No Soccer Tourn @ FF		
2008 Y T D			\$26,600.89	\$65,509.48	\$97,673.71	\$100,740.96								
2008 Monthly Totals		\$6,878.84	\$19,722.05	\$38,908.59	\$32,164.23	\$3,067.25	\$163.00							



December 15, 2009

Russell Chavaux
1516 McManus
Troy, MI 48084

Dear Mr. Chavaux:

On April 19, 2004, the City of Troy entered into an Agreement with you, Russell Chavaux to provide Concession Stand Operations, which expired November 15, 2009. It is now time to determine your interest in renewing the contract for five (5) additional seasons under the same terms, conditions and return schedule as the original contract.

Please return this letter back to the Troy Parks and Recreation department no later than December 21, 2009 indicating your preference in renewing this contract through November 15, 2014 (the fax number is 248.689.6497). It should be understood that this request to renew the contract is subject to a favorable market survey and Troy City Council approval. A request by City staff to determine the successful bidder's interest in renewing the contract in no way obligates the City.

If you have any questions please call me at 248.524.3484.

CHECK ONE:

Russell Chavaux is interested in renewing the contract under the same terms, conditions and return schedule:


Signed: Authorized Company Representative

248/43-6200

Russell Chavaux is not interested in renewing the contract:

Signed: Authorized Company Representative

Date: 12-21-09

Respectfully,


Stuart J. Alderman
Superintendent of Recreation

F-3 Concession Stand Operations

Resolution

Moved by Howrylak

Seconded by Broomfield

RESOLVED, That a contract to provide five (5) seasonal requirements of Concession Stand Operations with an option to renew the contract for five (5) additional seasons for the Troy Family Aquatic Center, Boulan Park, Firefighters Park, and Flynn Park is hereby **AWARDED** to Russell Chavaux, for an annual guarantee of 12% of gross sales or a minimum of \$12,000.00 whichever is greater as contained in the attached bid tabulation opened March 3, 2004; a copy of which shall be **ATTACHED** to the original Minutes of this meeting; and

BE IT FURTHER RESOLVED, That the award is **CONTINGENT** upon vendor submission of proper contract and bid documents, including insurance certificates and all specified requirements with the exclusion of Item 17 from the contract.

Vote on Resolution to Amend

Resolution #2003-03-152

Moved by Lambert

Seconded by Beltramini

RESOLVED, That the Resolution for *Concession Stand Operations* be **AMENDED** by **STRIKING**, “with the exclusion of Item 17 from the contract” and **INSERTING**, “with the amendment of Contract Item 17 to reflect a Parks rate of \$25.00 per hour and a maximum amount of \$100.00 per day.”

Yes: Lambert, Beltramini

No: Howrylak, Stine, Pryor, Broomfield, Eisenbacher

MOTION FAILED**Vote on Resolution as Submitted**

Resolution #2004-03-153

Moved by Howrylak

Seconded by Broomfield

RESOLVED, That a contract to provide five (5) seasonal requirements of Concession Stand Operations with an option to renew the contract for five (5) additional seasons for the Troy Family Aquatic Center, Boulan Park, Firefighters Park, and Flynn Park is hereby **AWARDED** to Russell Chavaux, for an annual guarantee of 12% of gross sales or a minimum of \$12,000.00 whichever is greater as contained in the attached bid tabulation opened March 3, 2004; a copy of which shall be **ATTACHED** to the original Minutes of this meeting; and

BE IT FURTHER RESOLVED, That the award is **CONTINGENT** upon vendor submission of proper contract and bid documents, including insurance certificates and all specified requirements with the exclusion of Item 17 from the contract.

Yes: Pryor, Broomfield, Eisenbacher, Howrylak

No: Lambert, Stine, Beltramini

MOTION CARRIED

F-5 Reconsideration of Approved Minutes of February 18, 2004

Vote on Reconsideration of Resolutions #2004-02-078, #2004-02-080 and #2004-02-081:

Resolution #2004-03-154

Motion by Eisenbacher

Seconded by Broomfield

RESOLVED, That Resolutions #2004-02-078, #2004-02-080 and #2004-02-081 be
RECONSIDERED.

Yes: All-7

RESOLUTIONS #2004-02-078 and #2004-02-081 **AS ADOPTED.**

(a) Alibi Lounge of Troy, Inc. (dba: Alibi Lounge)

Resolution #2004-02-078

Moved by Stine

Seconded by Beltramini

WHEREAS, The City Council of the City of Troy has reviewed the following infractions of liquor control codes and regulations and/or ordinances of the State of Michigan and/or the City of Troy respectively; and

WHEREAS, The City Council has given public notice that it will deliberate and determine whether to adopt a resolution to recommend to the Michigan Liquor Control Commission that the license not be renewed after a Public Hearing on Wednesday, February 18, 2004, for the following licensed establishment:

Name: Alibi Lounge of Troy, Inc. (dba: Alibi Lounge)
Address: 6700 Rochester Road
License No.: Class C (858-2002)

and, having found violation for the following codes and/or regulations: SALE TO MINOR (Compliance Test) on October 28, 2003; and

WHEREAS, This Licensee had a prior violation dated October 11, 2002 – Sale to Minor (Compliance Test); and

WHEREAS, After due notice the Licensee was given opportunity to review these cited infractions, and opportunity to confront witnesses and/or statements by accusers while in the presence of this City Council, sitting as a hearing body on Wednesday, February 18, 2004;

AGREEMENT EXTENSION
CONCESSION STAND OPERATIONS

THIS AGREEMENT EXTENTION is entered into between the CITY OF TROY, 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as the CITY, and RUSSELL CHAUAUX, 1516 McManus Troy, Michigan 48084, hereinafter referred to as CONCESSIONAIRE.

The CITY and CONCESSIONAIRE agree to extend the Agreement – Concession Stand Operations to provide Concession Stand Operations for the Aquatic Center and designated Parks for a period of five (5) seasons as follows:

WITNESSETH:

The Agreement – Concession Stand Operations - dated April 19, 2004 including Contract Addendum I entered into between the City of Troy, 500 W Big Beaver Road Troy, Michigan and the Bid Documents ITB-COT 04-11, which describe the terms and conditions of the Agreement are incorporated as though fully set out herein; including, but not limited to the return schedule and all necessary licenses and certifications.

Both parties hereby mutually agree to exercise the option to renew the entire contract for an additional five (5) seasons to provide Concession Stand Operations as described through November 15, 2014, unless canceled in whole or in part, by either party upon provision of thirty (30) days written notice. In the event of cancellation, Concessionaire agrees to pay the City a prorated amount due under this contract prior to the date of cancellation.

IN WITNESS WHEREOF, the City and Concessionaire have executed this Agreement on this _____ day of March 2010.

WITNESSES:

[Signature]

[Signature]
Russell Chavaux

[Signature]

OWNER
(Title)

CITY OF TROY

BY: Mayor Louise E. Schilling

John Szerlag, City Manager

RESOLUTION NUMBER: _____

APPROVED AS TO FORM AND LEGALITY:

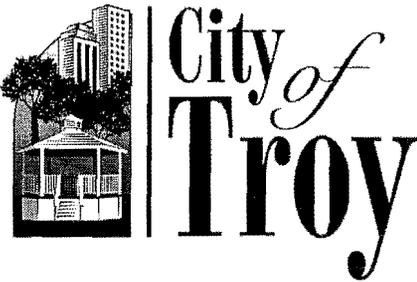
BY: _____

Lori Grigg Bluhm, City Attorney

ATTEST: Tonni Bartholomew, City Clerk

ORIGINAL

PURCHASING DEPARTMENT
CITY OF TROY
500 W BIG BEAVER RD
TROY MI 48084
PHONE: (248) 524-3576
FAX: (248) 619-7267



Contract Addendum 1

Russell Chavaux
1516 McManus
Troy, MI 48084

Dear Mr. Chavaux

Pursuant to the award of the contract to provide Concession Stand Operations for the Aquatic Center and Designated Parks, you agreed to obtain all necessary Oakland County Health requirements including all necessary licenses and certifications prior to opening of the various locations. Therefore, this addendum to the contract requires that you meet Oakland County Health requirements such as site licensing and provisions delineated in Article IV (Revised), Section 4.1 of the Oakland County Sanitary Code established in 1999 which includes a regulation to provide staff certifications prior to the following opening dates:

Flynn and Boulan Parks - Week of April 19th 2004
Firefighters Park – by April 26th 2004
Aquatic Center – May 28th 2004

COMPANY:

Russell Chavaux

Name of Authorized Representative:

Russell Chavaux

Signature:

A handwritten signature in black ink that reads "Russell Chavaux". The signature is written in a cursive style and is positioned above the printed name and address.

1516 McManus
Troy, MI 48084

AGREEMENT

CONCESSION STAND OPERATIONS

THIS AGREEMENT entered into on ~~March~~ ^{April} 19, 2004, between the CITY OF TROY, 500 W, Big Beaver, Troy, Michigan, hereinafter referred to as the City, and Russell Chavaux, hereinafter referred to as Concessionaire,

WITNESSETH:

In consideration of the City granting to the Concessionaire the exclusive privilege and right, except as set out in paragraph 16, of conducting the sale of food, drinks, and other sundry articles in Boulan, Firefighters and Flynn Parks, from April through November 15, and the Family Aquatic Center, Memorial Day through Labor Day, Concessionaire agrees as follows:

1. Concessionaire agrees to pay to the City for the use of premises, 12% of the gross receipts from all funds derived from the operation of said concessions, less Michigan Sales Tax (6% on date hereof) with a minimum \$12,000.00 per year payable in five payments due June 1, July 1, August 1, September 1, and October 1.
2. Concessionaire shall keep accurate records of all sales and receipts through the use of electronic cash registers that provide daily tapes and reports. The Concessionaire will prepare a monthly report to the City and attach copies of the daily tapes to each report. The report will separate each park stand and the Aquatic Center. An annual report, summarizing the monthly report, shall be submitted by November 15. The City shall have the right to inspect the books, records and inventories of the Concessionaire at any time.
3. Concessionaire shall not sell, assign, sublet, or transfer this Agreement or any duties, responsibilities, rights, privileges, or interest under this Agreement without obtaining prior written permission from the City.
4. Concessionaire or his agents or employees shall not sell or permit intoxicating liquors to be consumed on the concession premises.

5. Concessionaire will provide all necessary equipment, supplies, building modifications, and personnel to operate the stands. Building modifications and additions, including but not limited to fixtures, must be approved in advance by the City and become the property of the City at the conclusion of the Agreement. Equipment brought in must also be approved in advance by the City.

Any corrections to any of the facilities required by the Oakland County Health Department, whether related to the structure, fixtures, personal property or equipment, and whether owned by the City or the Concessionaire, shall be the responsibility of the Concessionaire and as set out herein shall be approved by the City before work begins.

6. Concessionaire will maintain the interior of the stands, the service windows and the area immediately in front of the service windows in a clean and neat manner and in compliance with all City ordinances, State law and applicable health standards. The Concessionaire will maintain the concession deck including tables and trash receptacles at the Aquatic Center. This includes the removal of trash to the proper containers and the cleanliness of the tables and surrounding area.

A power washer and any other cleaning equipment must be provided by the Concessionaire for the cleaning of the Aquatic Center Concession Area. All areas should be clean at all times, including when not open to the public (i.e. swim lessons at the Aquatic Center, programs in the parks, etc.)

7. Products sold or marketed, the prices charged, and the operation schedules are subject to regulation by the City, and no change may be made without approval of the Director of Parks and Recreation or designee.
8. Concessionaire agrees to comply with all federal, state and local laws, rules and regulations, and ordinances and with all Oakland County Health Department regulations.
9. Concessionaire agrees to operate under hours and conditions as stated by the City in the bid documents and bidding process.

10. The City shall have the right to enter said premises or inspect any operation at any reasonable time and make such repairs and improvements as it deems necessary. Notice will be given to Concessionaire if non-City employees are allowed to enter premises.
11. Concessionaire will provide uniforms and name badges for its employees, and shall require the uniforms to be maintained in a clean and neat appearing manner.
12. Concessionaire shall carry liability insurance in accordance with the sample insurance certificate provided with the bid proposal (attached hereto) for any actions, claims, liability or damages caused to others arising out of the operation and maintenance of premises including product liability and workmen's compensation. All insurance policies must be approved as to form and amount by the City and copies of certificates of insurance furnished to the City. All policies, except workmen's compensation, must name the City as an additional insured, and the cancellation provision shall read as indicated on the sample insurance certificate. All insurance carriers shall be licensed and admitted to do business in the State of Michigan. Insurance shall be in effect for the entire duration of this Agreement and failure to do so shall be considered a breach of the Agreement.
13. To the fullest extent permitted by law, Concessionaire agrees to defend, pay on behalf of, indemnify and hold harmless, the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or losses, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of the services performed by the Concessionaire's employees, volunteers or agents and/or the operation, maintenance or management of the concession stands.

14. Concessionaire shall be liable for any personal property taxes assessed against his/her equipment.
15. Concessionaire is responsible for any property that is stolen or damaged.
16. City special events such as Troy Daze held in mid-September, Family Festival held on one weekday evening in July, Fourth of July Picnic and other Council approved special events are exempt from the exclusivity stipulation of the contract.
17. Concessionaire will ensure all staff relates professionally to patrons and City staff in a professional manner, and following communication guidelines as outlined by the City in the bid documents and bidding processes.
18. Copies of all damage or accident reports submitted to insurance companies dealing with any damage or accident that may occur, must also be sent to the City.
19. The Concessionaire has the additional opportunity of providing vending machines that are pre-approved by the City, at City pre-approved locations. The vending machines are to be kept in working order, and in good condition. The City may at any time terminate this option of the contract without cause by written notice sent by first class mail to the Concessionaire's last known address.
20. The bid documents of the City and the bid documents of the Concessionaire are incorporated by reference into this Agreement as part of the contract. If there is a conflict between the bid documents of either party and the Agreement, the Agreement shall control.
21. This Agreement shall terminate on November 15, 2009, and shall include an option to renew the contract for five (5) additional seasons upon mutual consent of both parties unless cancelled by either party upon provision of 30 days written notice.

WITNESS:

1. Barbara Myers
2. Elizabeth Campbell

Concession Operator:

Karen Chaney
 (Name)

 (Title)

CITY OF TROY:

By Matt Pryor
 Matt Pryor, Mayor

Tonni L. Bartholomew
 Tonni L. Bartholomew, City Clerk

John Szerlag
 John Szerlag, City Manager or Designee

Resolution Number: **2004-03-153**

APPROVED AS TO FORM AND LEGALITY:

By Lori Grigg Bluhm
 Lori Grigg Bluhm, City Attorney