



CITY OF RAPID CITY

DEPARTMENT OF PARKS AND RECREATION
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RAPID CITY, SOUTH DAKOTA 57701

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Date: December 3, 2009

To: Legal & Finance Committee Members

From: Doug Lowe, Recreation Division Manager

Subject: Golf Course Food & Beverage Concession Agreement

Summary: The current contract with Barbescul, Inc. for concession services at Meadowbrook and Executive Golf Courses expires on December 31, 2008.

Recommendation: The Recreation Division is requesting that the Mayor and Finance Officer sign a contract with Barbescul Inc., who will provide the food and beverage concessions at Meadowbrook and Executive Golf Courses, effective January 1, 2009.

Analysis/Background:

The Recreation Division is submitting the attached contract for Golf Course Food & Beverage concession services for the Council's consideration. Currently Barbescul Inc. has a contract to provide food and beverage concession services at the municipal golf courses. It is staff's recommendation that the contract renewal be approved. We feel this contract will serve the customers and the operations of both golf courses.

**GOLF COURSE
FOOD AND BEVERAGE
CONCESSION AGREEMENT**

1. **Parties.** This agreement is made and entered into between, **BARBECSUL, Inc.**, a South Dakota corporation, of **4160 Parkridge Place, Rapid City, SD 57702** herein after referred to as “Concessionaire,” and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the “City” residing at 300 Sixth Street Rapid City, SD 57701.

2. **Purpose.** The purpose of this agreement is to establish the rights and conditions under which the City leases the Meadowbrook Golf Course and the Executive Golf Course Concessions to the Concessionaire for the limited purpose of conducting food and beverage concessions. This agreement shall be for all food and beverages (including beer and wine) sold at Meadowbrook and the Executive Golf Course by the Concessionaire.

3. **Lease.** This lease is for the sole purpose of a food and beverage concession. The City hereby leases to the Concessionaire the property commonly known as the Meadowbrook Golf Course Concession. The legal description of the property is:

Tract 4 of Rapid City Greenway Tract, Rapid City, Pennington County,
South Dakota.

Additionally, the City hereby leases to the Concessionaire appropriate space at the Executive Golf Course. The legal description of the property is:

Tract 18B of Rapid City Greenway Tract, Section 35, T2N, R7E, Rapid
City, Pennington County, South Dakota.

The Concessionaire shall engage in no other business on said premises except the sale of food and beverage and related items. The Concessionaire shall be under the direct supervision of the Park & Recreation Director or his designee.

Concessionaire must timely provide to the Director a menu for each facility including pricing for each item. Said menu must be approved by the Park & Recreation Director.

4. **Beer License.** The Concessionaire shall at all times maintain a current and valid license for the purpose of selling malt beverages and wine at Meadowbrook and malt beverages at Executive. The failure to maintain such license shall constitute a default of this agreement and be grounds for termination by the City. The Concessionaire further agrees that the malt beverage/wine licenses will be transferred back to the city or its designee at the end of the lease with no compensation paid by the City to Concessionaire for the license.

5. **Maintenance and Sanitation.** Concessionaire shall at all times maintain the leased premises, including equipment, in a neat, clean, and sanitary condition and in good repair, and shall comply with all federal, state, and municipal rules, statutes, ordinances and regulatory measures and laws of any kind applicable to the operation of the Concession.

Concessionaire shall be responsible for all interior finishes, light bulbs, restroom supplies, and other similar maintenance items. Concessionaire shall also be responsible for maintenance, cleaning and custodial of restrooms at Meadowbrook Golf Course. Specifically, Concessionaire shall be responsible for any blockage of the sewer system unless such blockage is determined to have resulted from a cause other than Concessionaire's occupancy of the premises.

The City shall be responsible for maintaining the exterior of the premises, structural integrity of the premises, building electrical, plumbing, heating, air conditioning, and similar items. Additionally, the City shall be responsible for the snow removal of the parking lots and the bike path. Snow removal shall be completed before 7:00 a.m. unless extraordinary circumstances occur such as more than 10 inches of snow and drifts that occur because of wind, subject to the previously stated obligations of the Concessionaire.

6. **Term.** The term of the lease shall be from January 1, 2009 to March 20, 2013. The Concessionaire agrees to pay to the City One Thousand Four Hundred Dollars (\$1,400.00) on the first day of each month beginning January 1, 2009 through December

31, 2009. The Concessionaire agrees to pay the City One Thousand Five Hundred Dollars (\$1,500.00) on the first day of each month from January 1, 2010 through December 31, 2011. The Concessionaire agrees to pay the City One Thousand Six Hundred Dollars (\$1,600.00) on the first day of each month from January 1, 2012 through March 20, 2013.

7. **Hours.** The hours of operation shall be submitted to the Parks & Recreation Director for approval prior to the concession opening its operations. Modifications in the hours of operation must be approved by the Park & Recreation Director upon receiving from the Concessionaire documentation of a seasonal lack of business.

Concessionaire shall adequately staff the leased premises during all times that the leased premises are open to the public for business. Concessionaire shall require all employees who work directly with the public to wear an appropriate uniform or dress in a manner that is complimentary and consistent with the décor of the leased premises, or mandated by law.

In addition to the food and beverage services provided above, Concessionaire is also required to provide such service from on-course carts, at the sole cost to the Concessionaire, unless the Parks & Recreation Director or his designee and Concessionaire mutually agree that they are not needed. The food and beverages served must be of quality found in other Golf Course Concessions. The Park & Recreation Director or his designee must approve of the cart appearance, manner of operation, and location, subject also to the approval of Concessionaire's maintenance, cleaning, and custodial duties in such areas adjacent to the use of such cart. Hours of operation for the restaurant will coincide with the open of the pro shop. Hours can vary longer but not shorter than the pro shop hours. On-course cart service hours can vary but must be approved by the Parks and Recreation Director or his/her designee. Hours for the Bar and Grill as well as the on-course cart service must be posted in locations visible to the public. An employee who is 21 years or older must be managing any on-course beverage cart, if alcohol is on the beverage cart. In most instances, at least one beverage cart is to have alcohol available for purchase, and only a person 21 years or older may manage said

cart. A person under 21 years of age may manage a beverage cart, not containing alcoholic beverages, if it is an additional beverage cart, or there is a tournament where alcohol is not being sold on the course. An example of when there would not be a beverage cart with alcohol on the course is when a high school golf tournament is being played and no alcohol is being sold on the course during the tournament.

The concessionaire will be billed for gas for the beverage cart on the 31st of each month.

Golf course employees at the Executive Golf Course will handle the sale of food and beverage items for the concessionaire, with the concessionaire paying Five Percent (5%) of gross sales to the City each month.

8. **Exclusive Right.** Concessionaire shall have the exclusive right regarding all food and beverage concessions at the golf courses and no other entity or person shall be allowed to sell or give away any food or beverage without the prior written consent of the Concessionaire with the exception of food and beverages for South Dakota Golf Association (SDGA) or Pro Golf Association (PGA) Demo Days and Parks and Recreation events. Every effort will be made by the Meadowbrook Staff to purchase food and beverage from the lessee for the above mentioned activities. Meadowbrook Golf Course also retains the right to oversee all on course vending machines including the ones that are located next to the starters shack. This does not prohibit an individual from bringing his own non-alcoholic beverage, food or snacks for his own personal use onto the course. All alcoholic beverages will be prohibited unless furnished by the Concessionaire. The Park & Recreation Director or his designee may, in his/her discretion, prohibit alcoholic beverages outside the clubhouse at such times as he/she may determine. Concessionaire agrees to work closely with other organizations on an individual basis to provide catering during golf tournaments at the golf course if so requested by the Recreation Coordinator/Specialist.

9. Utilities

Meadowbrook Golf Course utilities:

Gas: The Concessionaire shall pay two thirds (2/3) of all gas costs between October 1st and May 30th of each year. The Concessionaire shall pay all the gas costs between June 1st and September 30th of each year.

(The City will be responsible for paying the remaining one third (1/3) of all gas costs between October 1st and May 30th of each year)

Water, Sewer and Electric: The Concessionaire shall pay two thirds (2/3) of all water, sewer, and electric costs each year.

(The City will be responsible for paying the remaining one third (1/3) of all water, sewer, and electric costs.)

Executive Golf Course utilities:

No utility charges shall be assessed to the Concessionaire at the Executive Golf Course.

Garbage Removal: The City shall be responsible for the collection in a central location on the two golf course premises of all garbage, trash, and debris arising out of the operation of all concessions granted under this Agreement.

10. Cable TV. Concessionaire shall be responsible for providing its own cable television service.

11. Telephone. Concessionaire shall be responsible for providing its own telephone service.

12. Signs. Concessionaire shall not place sign(s) on sidewalks, in public right of ways, or on the exterior of the building premises, except those signs approved by the City of Rapid City as to size and location prior to the execution of this agreement.

13. Public Accounting. The Concessionaire agrees to make available to the Parks and Recreation Director or his designee its financial transactions within thirty (30) days of a written request by the Director. The Concessionaire agrees to make available to the Parks and Recreation Director or his designee its financial transactions within sixty (60)

days after the close of its operating year. Such accounting shall be in the form of a report of income and expense and balance sheet of its assets and liabilities.

14. Liability and Indemnity. The Concessionaire agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct or management of the business conducted by the Concessionaire. City shall not be liable and the Concessionaire waives all claims for damages to person(s) or property sustained by the Concessionaire, its agents, servants, invitees, and customers resulting from the condition of the building in which the leased premises are situated or resulting from any accident in or about said building or said leased premises.

15. Insurance. Concessionaire shall purchase and maintain at a minimum the following insurance during the term of this agreement:

A. Worker's Compensation coverage as required by law, including Employer's Liability Insurance of not less than:

Bodily Injury by Accident	\$100,000.00 Each Accident
Bodily Injury by Disease	\$100,000.00 Each Employee
Bodily Injury by Disease	\$500,000.00 Policy Limit

B. Commercial General Liability Insurance with a Combined Single Limit of Liability of not less than:

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	\$1,000,000.00
Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

C. Commercial Automobile Insurance for owned autos, hired and non-owned automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000.00) each person and One Million Dollars (\$1,000,000.00) aggregate.

D. Commercial Umbrella Insurance providing excess liability over primary coverage of Employer's Liability Commercial General Liability, and Commercial Automobile

Liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate.

E. Additional insurance regulations. Each Insurance policy shall include the following conditions by endorsement to the policy:

(i) Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to City by certified mail to: City Finance Officer, 300 Sixth Street, Rapid City, South Dakota, 57701, or to such address as the City may designate in writing. The Concessionaire shall also notify City in a like manner within ten (10) days of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Concessionaire.

(ii) Companies issuing the insurance policy or policies shall have no recourse against the City for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Concessionaire.

(iii) The Term "City" shall include all elected officials, boards, commissions, divisions, departments, and officers of the City and individual members and employees thereof in their official capacities, and while acting on behalf of the City.

(iv) The City shall be endorsed to the required policy or policies as an additional insured.

(v) The policy clause "Other Insurance" shall not apply to any insurance policy coverage currently held by the City, to any future coverage, or to the City's self-insured retentions of whatever nature. Concessionaire and City each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for the loss of or damage to such waiving party or its property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Concessionaire and City shall give noticed to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

16. Waiver of Subrogation. Each of the parties hereby waives and relinquishes any and all rights which it may have against the other party on account of any claims for damages resulting from a loss to property owned by said party caused by the alleged negligence of the other party or its agents or employees or persons on the within described premises by permission of such other party, whether or not the property of such other party is insured

against such loss in the amount of its full insurable value. Each of the parties hereto will use good faith efforts to procure from the carrier of the insurance on its property an endorsement on all its policies of insurance in substantially the following language:

It is hereby stipulated that this insurance shall not be invalidated should the insured waive in writing prior to loss any or all right of recovery against any party for loss occurring to the property described herein or attached thereby.

17. **Non-Discrimination.** Concessionaire shall provide food service to the general public without discrimination as to race, color, creed, national origin, disability, age, or sex. Concessionaire agrees that in the operation and use of the premises, he will not on the grounds of race, color, creed, national origin, disability, age, or sex, discriminate or permit discrimination against any person or group of persons in any manner. The prices charged by Concessionaire shall be reasonable and shall not be in excess of prices prevailing elsewhere for the same kind and quality of service.
18. **Binding Upon Heirs, Successors, and Assignors.** This agreement is binding upon the parties, their heirs, beneficiaries, successors, administrators, executors and assignors.
19. **Assignment and Sublease.** Concessionaire agrees not to assign, lease, or sublease the premises as described in paragraph 3 of this Lease, or any part thereof, without the expressed written permission of the City.
20. **Fixtures.** The city has in it's inventory and will allow the use of the following equipment and fixtures:
Meadowbrook Golf Course:
17 tables
60 interior chairs
9 bar stools
6 deck tables
22 deck chairs
11 storage racks
1 ice machine

Executive Golf Course:
1 36" gas griddle
1 three-compartment sink

Concessionaire shall be responsible for providing all other equipment for use in any of the concession areas granted by this agreement. All fixtures placed on the premises by the Concessionaire shall remain the property of the Concessionaire; improvements to the property, including wiring and structural improvements, shall become the property of the City.

21. **Surrender of Possession.** At the expiration of the tenancy hereunder, whether by lapse of time or otherwise, Concessionaire shall quit and surrender the leased premises in good condition and repair, reasonable wear and tear excepted.

In the event Concessionaire remains in possession of the leased premises after the expiration of the tenancy hereunder and without the execution of a new lease, he shall be deemed to be occupying said premises as Lessee from month to month subject to all other conditions, provisions, and obligations of this lease insofar as the same are applicable to a month to month tenancy.

22. **Default.** If either party to this lease is in default under any provision of this lease and such default shall continue to exist after receipt by the defaulting party of a thirty (30) day written notice, except for nonpayment of rent which shall be a ten (10) day written notice, the other party may terminate this lease and if the City is the defaulting party, the Concessionaire may surrender possession of the leased premises to the City and if the Concessionaire is the defaulting party, the City may take possession of the leased premises. Such termination of this lease shall be without prejudice to the right of recovering damages against the defaulting party for breach of this lease.

23. **Termination.** The lease granted by this agreement shall be terminable for cause by either party upon a thirty (30) day written notice. It is specifically agreed that failure to operate

the food and beverage concession for a period contrary to the minimum hours of operation required, shall be grounds for termination without notice of default.

24. **Damage or Destruction of Premises.** If the premises are damaged or destroyed by fire or other causes, the City shall be under no obligation to repair or replace. Should the City reconstruct the damaged or destroyed premises within two (2) years of the execution of this lease and agree to again lease the premises, Concessionaire shall be provided the right of first refusal on a new lease. If the premises become unusable for the use intended for a period to exceed thirty (30) days, this lease or any renewal thereof shall terminate unless otherwise agreed to by the parties.
25. **Alterations, Repairs, or Improvements.** Concessionaire shall not make any alterations, repairs, or improvements to the structure or the area immediately surrounding said structure without obtaining the prior written consent of the Parks & Recreation Director of the City of Rapid City, or his designee. Requests to make any alterations, repairs, or adjustments shall be in writing. Any alterations or improvements shall become the property of the City.
26. **Liens.** The Concessionaire shall not allow the premises to become subject to liens of any kind, and the attachment of a lien to the premises shall constitute a default of this agreement.
27. **Promotional.** The Concessionaire will receive one season pass and (2) 20 punch passes to Meadowbrook for promotional purposes.

Dated this _____ day of _____, 2008.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

CONCESSIONAIRE

BARBECSUL, Inc.

Arthur J. (Jeff) Barrett
President

Frances R. Becker
Secretary

State of South Dakota)
 SS.
County of Pennington)

On this the ____ day of _____, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the ____ day of _____, 2008, before me, the undersigned officer, personally appeared Arthur J. (Jeff) Barrett and Frances R. Becker, who acknowledged themselves to the President and Secretary, respectively, of BARBECSUL, Inc., a South Dakota Corporation, and as such officers, being authorized to do executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by his/herself as Officers of said Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)