



Item: Mansfield Theater Lobby Exclusive Concessions Agreement

From: Park and Recreation/Mansfield Center for the Performing Arts

Initiated By: Dona Hughes, Events Supervisor

Presented By: Patty Rearden, Deputy Park & Recreation Director

Action Requested: Approve the Mansfield Theater Lobby Exclusive Concessions Agreement with the Sparkettes of Montana.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/disapprove) the Mansfield Theater Lobby Exclusive Concessions Agreement with the Sparkettes of Montana and authorize the City Manager to execute the agreement.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

Staff Recommendation: Staff recommends that the City Commission approve the Mansfield Theater Lobby Exclusive Concessions Agreement with the Sparkettes of Montana.

Background: The City of Great Falls Park and Recreation Department/Mansfield Center for the Performing Arts (The Mansfield) requested proposals for a two (2) year, ten (10) month exclusive concession agreement for the Mansfield Theater lobby, and Gibson Room when used as a second lobby during events, at the Great Falls Civic Center. The Sparkettes of Montana has provided the service for the past three years; their current agreement expired October 31, 2012.

Two proposals were received; Sparkettes of Montana and University of Great Falls Performing Arts. Both organizations submitted viable proposals and met the requirements set forth in the Request for Proposals. After review by a committee comprised of staff and the Mansfield Center for the Performing Arts Advisory Board members, the Sparkettes of Montana garnered 277 of the 300 possible points and University of Great Falls Performing Arts garnered 270 of the 300 possible points.

The Sparkettes will provide adult and teen staff and purchase and sell City/County Health approved foods and beverages pre-show and at intermission. Price of items will be \$2 each. Review of menu, product and prices will be made annually. The Sparkettes will pay a fee of 20%

of gross sales to The Mansfield Center post show. The Mansfield will provide a reasonable amount of tables, chairs, linens and ice as well as lobby space, storage and preparation space. Total revenue to be realized by The Mansfield is estimated at \$6,850 over the three-year period.

Staff feels concessions are part of the amenities a patron may expect when attending a performance at the Mansfield Theater. City staff also feels that there is a value to the storefront space provided to the concessionaire. The proposal is beneficial to the Mansfield Events Center as Park and Recreation continues to look towards alternate revenue sources.

Concurrences: At the September 21, 2012, meeting, The Mansfield Advisory Board voted unanimously to recommend the renewing the current contract with the Sparkettes of Montana.

Fiscal Impact: \$6,850 over the three-year period

Alternatives: Reject all Proposals and repeat the Request for Proposals process, or no longer provide concessions services for events in the Mansfield Theater.

Attachments/Exhibits: Mansfield Theater Lobby Exclusive Concessions Agreement

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the **CITY OF GREAT FALLS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 5021, Great Falls, Montana 59403, hereinafter referred to as "City," and Sparkettes of Montana, a non-profit corporation, 4800 10th Avenue South, Great Falls, Montana 59405, hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to allow Contractor as an independent contractor to use the Mansfield Theater Lobby and Gibson Room, when used as a second lobby, in the Civic Center to provide exclusive concession services for performances at the Mansfield Theater. The concession services are described in the Scope of Services attached hereto as Exhibit "A" and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the 31st day of August, 2015. The parties may extend this agreement in writing prior to its termination.

3. **Scope of Work:** Contractor will perform the work and provide the services in accordance with the specifications and requirements of the Scope of Services.

4. **Payment:** Contractor as exclusive concessionaire agrees to pay City 20% of its gross sales for each event. This payment is payable to the City no later than on the next working day following the event, with an accounting record report, cash register tape or other written or electronic record of gross sales and amount due to the City.

5. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and neither it nor any of its members or volunteers is to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law.

6. **Indemnity and Insurance:** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. For this purpose, Contractor shall provide City with proof of Contractor's liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$1.0 million per occurrence. The insurance must name the City as an additional insured and be in a form suitable to City.

7. **Compliance with Laws:** Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the food safety rules and codes.

8. **Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

9. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. **Liaison:** City's designated liaison with Contractor is Laura Goulet and Contractor's designated liaisons with City is Dona Hughes and Mandi Ross.

13. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF GREAT FALLS

By _____
Gregory T. Doyon, City Manager

Sparkettes of Montana

CONTRACTOR (Type Name Above)

LAURA Goulet

By *Laura Goulet*

Print Name *LAURA Goulet*

Print Title *Treasurer / Director*

APPROVED AS TO FORM:

By _____
David L. Nielsen, Interim City Attorney

EXHIBIT "A"

The Contractor is responsible for procuring, supplying and posting all permits and licenses necessary to offer and sell concessions. The contractor shall pay all taxes annexed or levied against the business or merchandise, and agrees to comply with all applicable laws, ordinances and City/County Health Department codes. Any questions on these policies should be made to the City County Health Department at (406) 454-6950.

Contractor shall provide to City a list of food items and prices to be sold (note: all food items and handling must comply with City/County Health codes; no chewing gum).

Contractor agrees that no display signs, menus or advertising materials of any kind shall be used or placed on the exterior of the building. Signage may be used at the designated concession sales area(s) with approved methods of hanging or displaying signage. Any damages incurred using anything other than the approved method will be charged to the Contractor. Other decoration requests may be considered with prior approval from Mansfield staff. There is absolutely no use of any "open flame" which includes but is not limited to candles, lighters, lanterns or lamps. Contractor is responsible for any damage caused by volunteers and/or staff.

Contractor will not block any building exit or handicap access.

Contractor will provide trained staff for all set up, sales and clean up, product, change bank, signage, cleaning supplies and any other equipment needed for lobby concessions for all Mansfield Theater activities. The Mansfield Center for the Performing Arts (The Mansfield) staff and Contractor may agree that concession service is not necessary for a particular event. Staff must wear business-casual attire. Aprons and other Sparkettes logo wear and uniforms would also be acceptable and is encouraged by the Mansfield Center for the Performing Arts Advisory Board. When appropriate, costumes consistent with the theme of the production would also be acceptable. No bare feet or open-toed shoes are allowed at any time.

Contractor agrees to display (and let patrons verbally know) venue policy signage that alerts patrons to the "No food or drink, except for bottled water, in Theater."

Should the Contractor want to sell alcoholic beverages, prior written approval shall be obtained from the City. Contractor agrees to secure a permit and abide by all federal, state, and local laws pertaining to the sales, distribution or consumption of alcoholic beverages. For more information or questions, please contact the State of Montana, Department of Revenue, Liquor Division, Helena, Montana, (406) 444-6900. A City of Great Falls License Certificate is also required to sell alcohol (OCCGF 5.3.4.430(A)). For information on a City of Great Falls License call 406-455-8414. Contractor must provide City with proof of Liquor Liability Insurance coverage in the amount of \$1,000,000 and name the City of Great Falls as an additional insured evidenced by a certificate of insurance and additional insured endorsement presented to the City.

Fees are calculated on gross sales. Contractor shall pay 20% of gross sales to the City's liaison or designee on the day the sales are made, along with an accounting, cash register tape or some other agreed upon record of sales with the gross and percentage noted.

The City agrees to:

- Designate a space and provide tables, linens and chairs
- Provide a schedule of upcoming events
- Provide access to running water
- Provide a small storage space
- Provide a staff person (City's liaison or designee) to receive the revenue at the conclusion of sales and receipt for the percentage

Sparkettes of Montana
4800 10th Avenue South
Great Falls, MT 59405

The Sparkettes of Montana is an all-volunteer staffed, non-profit organization. It does not have any employees or any members that receive compensation. Therefore, worker's compensation is not applicable

CONTRACTOR (Type Name Above)

Sparkettes of Montana
By *Laurea Goulet*
Print Name LAUREA Goulet
Print Title Treasurer/Director