

**County of Milwaukee
Interoffice Communication**

Date: February 26, 2013

To: Supervisor Gerry Broderick, Chair, Parks Energy and Environment Committee

From: Craig Kammholz, Fiscal and Budget Administrator, Department of Administrative Svcs

Subject: Due Diligence Report for a Vendor Permit Agreement with ABC Estabrook, INC to operate a beer garden and optionally make improvements to the Comfort House at Estabrook Park.

Request

The Department of Parks, Recreation, and Culture (Parks) requests approval to enter into a ten-year agreement with ABC Estabrook, INC (ABC-E) to operate a beer garden at Estabrook Park (located at 4400 N. Estabrook Drive, Milwaukee, Wisconsin).

Background

In January 2012, Parks issued a Request for Proposals (RFP) for the operation of a beer garden concession at various Parks locations. In April 2012, Parks and the ABC-E agreed to a one-year Vendor Permit Agreement to operate a beer garden at the Estabrook Park Comfort House (Premises) which expired on December 31, 2012. Parks received \$80,768 in revenue from ABC-E in 2012¹. Due to the success of the concession, ABC-E seeks to enter into multi-year agreement to operate a beer garden in Estabrook Park and possibly make permanent improvements to County facilities. ABC Estabrook, INC is a private Wisconsin S-Corporation.

Review & Analysis

The Department of Administration - Fiscal Affairs (DAS), Corporation Counsel, Risk Management (Risk), and Community Business Development Partners (CBDP) have reviewed the draft proposal with ABC-E.

The initial term of the proposed agreement is for ten (10) years with a mutual option available for an additional five (5) years. ABC-E may terminate the agreement at any time with 180 days' notice to the County. The County may terminate the agreement if ABC-E fails to comply with any provision of the agreement, or if ABC-E fails to make significant capital improvements to the Premises during the initial three (3) years of the agreement.

Per the terms of the proposed agreement, the County will receive a commission of 20% of the gross revenue on alcoholic beverage sales and 10% of gross revenue on food and non-alcoholic beverage sales. This is the same commission paid to the County for the 2012 agreement. During the first contract year, ABC-E is responsible for a monthly

¹ Based on data from the Milwaukee County Fiscal Intranet for actual revenues (Functional Code VC21; Activity Code KRST; Revenue Source 4098; Agency 900, Fund 001)

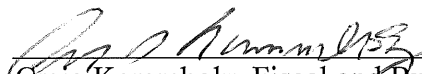
payment to County of \$500 toward the cost of utilities. After the first contract year, the parties are to reevaluate the ABC-E's utility responsibilities based on the actual costs, but no change in reimbursement methodology is required. The concession is to be open daily from 11:00 a.m. to 10:00 p.m., weather permitting.

ABC-E is permitted to make improvements to the Estabrook Park Comfort House. These improvements are subject to approval by DAS-FM, Architecture and Engineering Section and Parks. While not part of the agreement, ABC-E indicates that it intends to address ADA accessibility, restroom upgrades, and food/beverage facilities improvements. Additionally, ABC-E must provide a letter of credit from a financial institution demonstrating to the satisfaction of the County that sufficient resources are available to complete the proposed improvements.

Per the terms of the proposed agreement, the County is responsible for major repairs to existing portions of the facilities while ABC-E is responsible for all repairs or replacements to any improvements ABC-E has caused to be installed or improved on the Premises.

Upon review of available information and changes made to the agreement based on consultation with Corporation Counsel, Risk, Parks, and CBDP staff, DAS recommends approval of the vendor permit agreement.

Note: Exhibit 1 includes a summary of the major agreement terms comparing the 2012 vendor permit agreement, and the proposed ten (10) year vendor permit agreement.



Craig Kammholz, Fiscal and Budget Administrator

cc: Chris Abele, County Executive
Supervisor Marina Dimitrijevic, Chair, County Board of Supervisors
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Jim Keegan, Interim Director, Parks, Recreation and Culture
Don Tyler, Director, Department of Administrative Services
Jessica Janz-McKnight, Research Analyst, County Board
Stephen Cady, Fiscal and Budget Analyst, County Board
Suzanne Carter, Contracts Services Officer, Department of Parks, Recreation, & Culture

Exhibit 1

Below is a summary of major terms in both agreements:

	<u>2012 Agreement</u>	<u>Proposed Agreement</u>
Term:	One Year (Expired on 12/31/2012)	Ten (10) years, with a mutual option for five (5) additional years
Hours of Operation	11 a.m. to 9:00 p.m. No alcohol sales after 8:30 p.m.	11 a.m. to 10:00 p.m. No alcohol sales after 9:00 p.m.
Payment to County	20% of gross revenue on alcoholic beverage sales. 10% of gross revenue on food or non-alcoholic beverage sales	20% of gross revenue on alcoholic beverage sales. 10% of gross revenue on food or non-alcoholic beverage sales
Utilities:	Vendor pays the County \$250 per month of operation	Year 1: Vendor pays the County \$500 per month. After the first year, the parties shall reevaluate Vendor's Utility responsibilities based on actual Utility costs
Building improvements	No provision	Vendor may improve the premises subject to written County approval of specific plans. Improvements become County Property upon termination or expiry of agreement
Termination:	Either party may terminate the agreement at any time for any reason	Vendor may terminate the agreement at any time with 180 days' notice to the County. County may terminate the agreement if Vendor fails to comply with any provision in the agreement or fails to make significant improvements in first three years
Vendor Responsibility for Repairs / Maintenance:	Minor repairs including plumbing, electrical, lighting, door latches and locks, and windows	Majors repairs* to existing facilities if caused by negligence or willful misconduct of vendor or patrons; all repairs or replacement to any improvement the vendor has caused to be installed on the premises
County Responsibility for Repairs / Maintenance:	All items not listed above in "Vendor Responsibility for Repairs / Maintenance"	Major repairs* and maintenance to all structural components of the premises, except components which the vendor has caused to be installed or improved

*Major repairs are defined as any singular repairs or replacements whose cost is Five Hundred Dollars (\$500) or greater for each instance