



# CITY of NOVI CITY COUNCIL

**Agenda Item 1**  
**June 16, 2014**

**SUBJECT:** Approval of the concession stand food services contract for Lakeshore Park to Guernsey Farms Dairy, 21300 Novi Road, Northville, MI 48167.

**SUBMITTING DEPARTMENT:** Parks, Recreation and Cultural Services

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

The City of Novi currently has an existing contract with a vendor (Coaches LLC) for Lakeshore Park and for Ella Mae Power Park. The vendor has elected, and provided written confirmation, not to provide concessions at the Lakeshore Park this year.

Parks Recreation and Cultural Services (PRCS) staff was approached in May by Guernsey Farms Dairy regarding operation of a concession stand at Lakeshore Park. PRCS believe this would be a very valuable addition to the offerings at Lakeshore Park. It has the potential to attract new visitors to the park and enhance the visitor experience while potentially providing additional revenue source(s) for the City.

Parks, Recreation and Cultural Services has negotiated a formal agreement with Guernsey Farms Dairy for City Council consideration. Guernsey Farms Dairy has requested waiver of a security deposit due to their projected initial investment in the stand which is estimated at \$10,000. The City will receive a Base Rent for the Premises consisting of either \$400 or 10% of net sales from the Premises commencing 90 days from the date of occupancy. It is the intent of Guernsey Farms Dairy to operate the stand on a seasonal basis from May-October (weather dependent). If approved, the terms of the contract would be from June 21, 2014 expiring December 31, 2014, with date of occupancy on or about the June 21<sup>st</sup> date.

**RECOMMENDED ACTION:** Approval of the concession stand food services contract for Lakeshore Park to Guernsey Farms Dairy, 21300 Novi Road, Northville, MI 48167.

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|------------------------|---|---|---|---|
| Mayor Gatt             |   |   |   |   |
| Mayor Pro Tem Staudt   |   |   |   |   |
| Council Member Casey   |   |   |   |   |
| Council Member Fischer |   |   |   |   |

|                        | 1 | 2 | Y | N |
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| Council Member Markham |   |   |   |   |
| Council Member Mutch   |   |   |   |   |
| Council Member Wrobel  |   |   |   |   |

## CONCESSION LEASE

This lease (the Lease) is entered into on \_\_\_\_\_, between the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 (Lessor), and Guernsey Dairy Stores, Inc., whose address is 21300 Novi Road, Northville, Michigan 48167 (Lessee), on the following terms and conditions.

1. **Premises.** Lessor hereby agrees to lease to Lessee an existing concession (the "Building") stand located within Lakeshore Park, in the City of Novi, County of Oakland, State of Michigan, in the location more particularly described as:

{See the attached and Incorporated Exhibit A}

excluding parking lot and land surrounding the Building.

2. **Term.** The term of this Lease shall be 6 months commencing days from date of occupancy on or about June 21, 2014, and expiring on December 31, 2014.

3. **Rent.**

- a. **Base Rent.** For the term of the Lease, Lessee shall pay Lessor a Base Rent for the Premises consisting of either \$400 or 10% of net sales from the Premises, commencing 90 days from the date of occupancy on a seasonal basis. Rent shall be due only for those months in which Lessee occupies the premises during the spring/summer/fall seasons (May – October). Monthly installments of rent shall be due and payable for the prior month on the first day of each calendar month. Rent payments shall be made to Lessor at its address shown above or any other place designated in writing by Lessor. Lessor shall have access to Lessee's sales records for purposes of confirmation of gross sales for each month.

- b. **Additional Rent.** Lessee shall not be charged for utilities or property taxes relating to use of the Premises, but shall be responsible for the payment of all insurance for the Building on the Premises, including any increase in insurance premiums for the Premises relating to Lessee's use and occupancy of the Building. Utilities shall include water and sewer, gas, electricity, and other services delivered to the Building. All other services contracted for by Lessee shall be paid for by Lessee immediately on presentation of the invoice so that no past due accounts arise. Lessee shall pay any personal property taxes and assessments levied and made against the Building or Lessee's possessions. All taxes levied on the personal property owned or leased by Lessee shall be the sole responsibility of Lessee.

4. **Right of first refusal.** Lessor shall not terminate the lease or re-let the Building on the Premises within the first 90-days of the lease, subject to Paragraph 25, below. Lessee shall have a right of first refusal with respect to the re-letting of the Building on the Premises to another concessionaire upon the expiration of this Lease. For the next lease term following

the above expiration date, if at any time Lessor receives a bona fide written offer from an unrelated third party to lease the Premises, Lessor shall give notice to Lessee of the terms of the proposed contract and of Lessor's intention to accept the offer. Lessee shall then have five business days to accept in writing the terms of the contract to lease the Premises on the terms specified in the notice. If Lessee fails to elect to renew its lease based on terms substantially similar to the bona fide written offer, Lessor may then lease on the terms and conditions disclosed to Lessee.

**5. Redevelopment by Lessor.** In the event that Lessor intends to redevelop the Premises itself for a different use, Lessor shall notify Lessee of Lessor's intent. Lessor shall not seek to redevelop the Premises within the first 90-day term of the Lease. Upon receipt of the notification, Lessee shall either agree to terminate and Lessee shall have thirty (30) days to vacate the Premises in accordance with Paragraph 15, below.

**6. Security Deposit.** Lessee shall pay a security deposit of \$0.00. The security deposit shall secure the performance of Lessee's obligations under this Lease. The Lessor may, but shall not be obligated to, apply all or a portion of the deposit to the payment of Lessee's obligations under this Lease. Any balance remaining on termination shall be returned to Lessee. Lessee shall not have the right to apply the security deposit in payment of the last month's rent. Lessor may commingle the security deposit with any other funds of Lessor and shall not pay any interest on the deposit held.

**7. Signs.** Lessor reserves the exclusive right to the exterior of the building, and Lessee shall not construct, place, or paint any sign or awning or other improvement or apparatus on the exterior of the building without the prior written approval of Lessor, which will not be unreasonably withheld. Lessee shall be permitted to place a temporary sign at the entrance of Lakeshore Park, near the toll booths. Any signage shall be in compliance with applicable laws, regulations and ordinances, and shall be approved by the City prior to installation.

**8. Acceptance of Occupancy.** Lessee shall commence occupancy of the Premises on the commencement date and begin payment of rent as called for by this Lease 90-days thereafter. Lessee has inspected the Premises and common areas, finds them in good order and repair, acceptable for Lessee's intended use of the Premises, and accepts the Premises and common areas as is, subject to Lessee's right to make improvements in accordance with the terms and conditions of this Lease. With prior approval of Lessor, Lessee shall dispose of any unwanted equipment and furnishings on the Premises at the Commencement of the Lease at its own expense.

**9. Option to Renew.** Lessee shall have an option to renew this Lease on the expiration of the initial term of the Lease for an additional terms of one year by giving written notice of renewal to Lessor 90 days before this Lease expires. The renewal shall be on terms and conditions, mutually agreeable to both parties. If the parties cannot agree on the Base Rent by a date 30 days before the existing term of the Lease expires, this option to renew shall terminate and the Lease shall expire at the end of the existing term.

**10. Vacation of Premises.** If Lessee abandons or vacates the Premises or is dispossessed by process of law or otherwise, Lessor shall have the right to rent, redevelop or modify, and reuse the Premises for any purpose for the remaining term of the lease. Any personal property belonging to Lessee left on the Premises shall be deemed abandoned, at the option of Lessor. Lessor may also take possession of any personal property left by Lessee on the Premises and charge Lessee a monthly fee for the storage of that personal property. Any fee charged by Lessor for this purpose shall be deemed to be additional rent under this Lease and payable immediately.

**11. Use.** The Premises are to be used and occupied by Lessee for the operation of a "Guernsey Farms Dairy" concession stand and for no other purpose without the prior written consent of Lessor. Additionally, Lessee shall not be permitted to sublet the Premises without prior written approval from Lessor. No activity shall be conducted on the Premises that does not comply with local laws, ordinances, and regulations.

**12. Expenses.** Lessee shall pay all costs and expenses it incurs in operating and managing the Premises.

**13. Landlord's Lien.** Lessee grants a lien to Lessor on all Lessee's property on the Premises to secure the performance of Lessee's obligations under this Lease. Lessee also agrees to sign any financing statements Lessor requests to perfect this lien.

**14. Repairs and Maintenance.** Lessor shall be responsible for the initial correction of any code violations existing with respect to the Building on the Premises prior to occupancy. Upon occupancy, Lessee shall be solely responsible for maintenance and repair of the interior and exterior of the Building located on the Premises, including but not limited to maintenance and repair of foundation, walls, roof, windows, doors, subsurface walls, and floor, painting, structural maintenance, repair of the HVAC system and hot water heater, and without limitation, maintenance and repair of the plumbing, mechanical and electrical systems. Lessee shall be obligated to repair and maintain the Premises at Lessee's expense. The Premises shall be kept in good and safe condition, including the windows, the electrical fixtures, the plumbing fixtures, and any other system or equipment within the Premises. Lessee shall regularly sweep that area and pick up any trash or debris in the area.

**15. Surrender of Premises.** Lessee shall surrender the Premises to Lessor at the expiration of this Lease broom clean and in the same condition as at the Commencement Date, excepting normal wear and tear AND except that all improvements made to the Premises by Lessor and/or Lessee shall become the property of Lessor at no expense to Lessor.

**16. Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter on the Premises at reasonable times and on reasonable notice for the purpose of inspection of the Premises.

**17. Alterations.** Lessee shall remodel and make improvements to the Premises in accordance with plans approved by Lessor, including alterations to the interior and exterior of the Building. The remodeling shall consist of installation of equipment necessary to

operate the Guernsey Farms Dairy concession stand, including but not limited to soft serve machine and coolers. Lessee will also replace the existing counter tops, sinks, beverage lines, and exterior signage, all in accordance with plans approved by Lessor. Lessee will also install a portable ATM machine that will be secured in the building each night. Lessee shall provide an itemized list of improvements with cost estimate. The work shall be completed without injury to any structural portion of the Building. Lessee shall post a performance bond, in the amount equal to the estimated cost of improvements, in a format acceptable to Lessor, to guarantee completion or restoration of the Premises in the event Lessee ceases completion of the remodeling prior to completion. Lessor shall be entitled to use the bond for completion or restoration of the Premises in the event Lessee fails to complete improvements. Any improvements constructed pursuant to this paragraph shall become the property of Lessor on the termination of this Lease. Lessee shall apply for and receive all permits necessary to complete the alterations, and shall comply with all applicable laws and ordinances in this regard. Lessee shall be responsible for the cost of any and all permits required by all necessary governmental authorities. All plans submitted by Lessee shall be in compliance with all applicable zoning, building, health and safety regulations. Subject to approval of the plans by Lessor, Lessor shall participate in preparation and execution of applications for permits and certificates as required by applicable laws and ordinances. Lessee shall obtain a certificate of occupancy.

**18. Assignment and Subletting.** Lessee may not assign, sublet, or otherwise transfer or convey its interest, or any portion of its interest in the Premises without the prior written consent of Lessor. Lessor shall have total discretion regarding its approval of proposed assignments or subleases.

**19. Trade Fixtures.** All trade fixtures and moveable equipment installed by Lessee in connection with the business conducted by it on the Premises shall remain the property of Lessee and shall be removed by it at the expiration of this Lease. Lessee shall repair any damage caused by such removal and restore the Premises to their original condition.

**20. Insurance.** Lessor shall, at its expense, insure the Building on the Premises against loss or damage under a policy or policies of fire and extended coverage insurance, including additional perils. Lessee shall obtain and maintain in full force general liability and property damage insurance, with both Lessee and Lessor as named insured parties, covering any and all claims for injuries to persons occurring in, on, or about the Building on the Premises, in an amount and issued by a company approved by Lessor. The insurance shall also contain a waiver of subrogation clause exempting Lessor from any liability for any insured loss. Policies for general liability shall be primary and non-contributory over any insurance held by Lessor. Lessee shall deliver to Lessor customary insurance certifications evidencing that the insurance is in effect at all times during the term of the Lease. The policy must further provide for notice by the insurance company to Lessor of any termination or cancellation of the policy at least 30 days in advance of that event.

**21. Lessee's Liability.** All Lessee's personal property, including trade fixtures, on the Premises shall be kept at Lessee's sole risk. Lessor shall not be responsible or liable to Lessee for any loss of business or other loss or damage that may be occasioned by or through

the acts or omissions of persons occupying the Premises for any loss or damage resulting to Lessee or its business or property from water, gas, sewer, or steam pipes that burst, overflow, stop, or leak; from heating, cooling, or plumbing fixtures; or from electric wires or gas odors within the leased Premises from any cause, except as may result from and be directly caused by the gross negligence or recklessness of Lessor. The provisions of this section shall not be interpreted to prevent Lessee from recovering any losses under the coverage provided by Lessor's fire and extended coverage insurance policy, if any losses of Lessee are covered by that policy. Lessee shall indemnify and hold harmless the Lessor, its City Council and all City agents, officials, employees, volunteers and representatives from any and all claims for bodily injury, illness, death and personal injury and property damage arising out of Lessee's use of the Premises during the term of the Lease. Lessee shall have no duty to indemnify and hold harmless the Lessor or the City of Novi for any loss, claim or other liability that is the result of the Lessor's sole negligence or wrongful act.

**22. Destruction of Premises.** If the Building on the Premises is partially damaged or destroyed through no fault of Lessee, Lessor shall, at its own expense, promptly repair and restore the Premises. Rent shall abate in whole or in part during the period of restoration according to the amount of destruction, if the destruction was not caused by Lessee. If the Premises are totally destroyed through no fault of Lessee or if the Premises cannot be repaired and restored within 90 days after the event of destruction, either party shall have the right to terminate this Lease, effective as of the date of the event, by giving the other party written notice of termination within 10 calendar days after the occurrence of the event. If the notice is given within that time period, this Lease shall terminate and rent shall be adjusted between the parties to the date of the occurrence of the event. If the notice is not given within the required period, this Lease shall continue and Lessor shall repair the Premises.

**23. Mutual Releases.** Lessor and Lessee shall each cause appropriate clauses to be included in their respective insurance policies covering the Premises waiving subrogation against the other party consistent with the mutual release in this paragraph.

**24. Condemnation.** If the Premises or any part of them are taken for any public or quasipublic purpose pursuant to any power of eminent domain, or by private sale in lieu of eminent domain, this Lease shall terminate at the option of either Lessor or Lessee, effective as of the date the public authority takes possession. All damages for the condemnation of the Premises or Building that is awarded for the taking shall be payable to and be the sole property of Lessor.

**25. Default and Reentry.** If Lessee neglects or fails to perform its obligation to pay rent when due; if Lessee neglects or fails to perform any other covenants in this Lease to be observed and performed on its part for 10 days after written notice by Lessor of the default; if Lessee makes any assignment for the benefit of creditors or a receiver is appointed for Lessee or its property; or if any proceedings are instituted by or against Lessee in bankruptcy (including reorganization) or under any insolvency laws, Lessor may reenter the Premises and seek to relet the Premises on any terms that Lessor, in its sole discretion, deems advisable. Lessee shall not continue to be liable to Lessor for rent owed under this Lease for

the remaining lease term, and/or any rent deficiency that results from a reletting of the Premises during the term of this Lease, and/or the cost of reletting the Premises.

**26. Notices.** Any notice required under this Lease shall be in writing and sent by registered or certified mail, return receipt requested, to the addresses of the parties set forth in this Lease or to another address that a party substitutes by written notice; and notice shall be effective as of the date of first attempted delivery.

**27. Lessee's Possession and Enjoyment.** Lessee, on payment the rent at the time and in the manner stated above and on performance of all the foregoing covenants, shall and may peacefully and quietly have, hold, and enjoy the Building on the Premises for the term of this Lease.

**28. Holding Over.** If Lessee does not vacate the Premises at the end of the term specified in this Lease, such holding over shall constitute a month-to-month tenancy at 200 percent of the then existing rental rate.

**29. Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to its subject matter, and this Agreement may not be amended or modified except by a written instrument executed by the parties to this Lease.

**30. Waiver.** The failure of the Lessor to enforce any covenant or condition of this Lease shall not be deemed a waiver of its right to enforce each and every covenant and condition of this Lease. No provision of this Lease shall be deemed to have been waived unless the waiver is in writing.

**31. Lessor's Fees and Expenses.** Any fees, costs, or expenses incurred by a prevailing party enforcing the other party's obligations under this Lease, including reasonable attorney fees, shall be due and payable immediately under the Lease.

**32. Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties to this Lease and their respective successors and permitted assigns.

**33. Time of the Essence.** Time shall be deemed to be of the essence in the performance of this Lease.

**34. Contingencies.** This Lease is contingent upon Lessor's receipt, review and approval of three (3) years of Lessee's financial data, and upon Lessor's satisfaction with the results of a background check of Lessee and its controlling shareholders. Lessor shall be responsible for the cost of review and analysis of the financial data and the cost of the background check.

**35. Effective Date.** This Lease shall be effective as of the date first stated above.

**LESSOR**

THE CITY OF NOVI, a  
Michigan municipal corporation

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Robert J. Gatt, Mayor

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Maryanne Cornelius, Clerk



**LESSEE**

GUERNSEY DAIRY STORES, INC., a  
Michigan corporation



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A handwritten signature in black ink, appearing to be "M. J. [unclear]", is written above a horizontal line.