

To: Mayor and City Council

From: Brent Walker, Parks and Recreation Director

Date: November 27, 2023

Re: Contract Award for Brook Run Skate Park Concessionaire

Action

Approval of a contract with Action and Adventure to manage concessionaire services and programs such as selling refreshments and merchandise, and offering classes, camps and special events at the Brook Run Skate Park.

Summary

The Brook Run Skate Park has operated under an agreement with Senpaii Skateboarding LLC since 2020. The agreement terminated in October of this year so the City solicited a request for proposals to find a new skate park facility operator.

The RFP Review Team, composed of the Park Operations Manager, Recreation Manager, Facilities Coordinator and Grounds Coordinator reviewed proposals and feel that Action and Adventure will be able provide a level of service that is most beneficial to the City. The combined scores and the scoring criteria are below:

Firm	RW	AJB	DA	GN	Total/400 Possible
PD&Jer LLC	80	70	90	77	317
Essential Grind LLC	84	75	58	74	291
Peachy Corners	76	70	80	67	293
Christian Hannah	86	74	93	87	340
Action and Adventure	82	90	89	85	346

Proposed Management Plan and Scope of Service– 60%

The Proposal shall outline the plan that the firm will use to provide the most effective delivery of the requested services put forth by the City

- Firm's understanding of services requested
- Proposed methodology for providing services
- Proposed deliverables
- Management plan

- Schedule provided

- Proposal is reasonable based on scope of work

Firm Qualifications - 20%

The Proposal must give a detailed report of related experiences that demonstrate the ability of the consultant to perform requested tasks and complete the tasks as outlined in this RFP. The Proposal shall include sufficient information to indicate the abilities, qualifications, and experience of all persons who would be assigned to provide the required services.

- Representative project experience (recent and similar to Dunwoody scope)
- References

Financial Considerations – 20%

The Proposal must include a payment plan that is beneficial to the City and is equitable to the value of the facility use that is provided.

This agreement stipulates that Action and Adventure pay the City of Dunwoody \$350 per month with the option for renewal for five additional 12 month periods beginning January 1st of each subsequent year. The skate park will remain as a free facility but the city will see a significant benefit by not paying for management services and also providing recreational programs and additional oversight of the skate park.

A draft of the agreement with Action and Adventure is attached to this memorandum.

Recommendation

Staff respectfully requests that Council: (1) award a contract to Action and Adventure after legal review (2) authorize the City Manager and Staff to execute the necessary documents.

AGREEMENT BETWEEN THE CITY OF DUNWOODY AND ACTION AND ADVENTURE.

This Agreement (the "Agreement") is made this ____ day of _____, **2023**, by and between Action and Adventure (hereinafter referred to as "Company"), and the City of Dunwoody, Georgia ("Dunwoody").

WITNESSETH:

WHEREAS, Company is engaged in the business of providing skateboarding programs and concessions in parks; and

WHEREAS, the City of Dunwoody is interested in providing a recreational activity for its citizens in Brook Run Park and Company is willing to provide same at the park at its expense and provide the skate park experience to visitors of Brook Run Park; and

WHEREAS, Company is willing and able to render said services pursuant to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties hereto agree as follows:

1. Services.

Company agrees to render services (the "Services") to the City of Dunwoody managing in the City's Brook Run Park, the Skate Park Facility ("City Park") as set forth in Exhibit "A," "Scope of Services." Company agrees to perform the Services as stated in the Scope of Services in exchange for the City's authorizing Company to utilize the City's park for conduct of its business and for further consideration as described in this Agreement.

2. Compensation.

a. Fee. In consideration for use of the City Park, Company shall pay the City of Dunwoody three hundred fifty dollars (\$350) per month to equal four thousand two hundred dollars (\$4,200) per year, as further described and defined in Exhibit "B." The City of Dunwoody shall not be responsible for any cost of its operation. The entirety of the fee arrangement between the City and Company shall be as provided in Exhibit B.

b. Manner of Payment. Company agrees to pay said compensation amount to the City on a monthly basis by submitting the payment on or before the 20th of each month.

3. Relationship of Parties.

a. Independent Contractors. Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between Dunwoody and Company. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between Dunwoody and Company. It is expressly agreed that Company is acting as an independent contractor and not as an employee of the City of Dunwoody in providing the Services under this Agreement.

b. Employee Benefits. Company shall not be eligible for any benefit available to employees of Dunwoody including, but not limited to, workers' compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, or savings plans.

c. Payroll Taxes. Company shall be responsible for all FICA, federal and state withholding taxes and workers' compensation coverage for any individuals assigned to perform the Services in furtherance of this Agreement.

4. Term

This Agreement shall be effective upon its execution (the "Effective Date") and shall terminate on December 31, 2024 ("Initial Term"). This Agreement shall automatically renew for additional one-year terms ("Renewal Terms") unless the City of Dunwoody chooses to terminate this Agreement pursuant to the provisions of this Agreement by giving written notice to Company no later than thirty days prior to the conclusion of the Initial or Renewal Term(s). The total renewable terms of this Agreement shall be no more than five (5) calendar years and if parties wish to renew for additional one-year terms, this Agreement (or as amended) shall be executed by mutual consent of the parties at that time, but in any event no later than thirty (30) days prior to the conclusion of the last Renewal Term under this Agreement.

5. Termination For Cause.

Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within twenty (20) days of receipt of a notice from the other party specifying such default. "Default" shall mean:

- a. If Company fails to make payments when due or fails to perform or observe any of its duties or obligations under the terms of this Agreement;
- b. If Dunwoody fails to perform or observe any of its duties or obligations under the terms of this Agreement;

- c. If either Dunwoody or Company shall have made any warranty or representation in connection with this Agreement which is found to have been false at the time such warranty or representation was made and is materially harmful to the other party.

6. Termination of Services and Return of Property.

Upon the expiration or earlier termination of this Agreement, Company shall immediately terminate the Services hereunder and shall deliver promptly to Dunwoody all property relating to the Services that is owned by Dunwoody. Furthermore, Company shall remove any furnishings or equipment owned by Company and leave that portion that has become a fixture of the Park or cannot be removed without damage to the infrastructure of the City.

7. Standard of Performance and Compliance with Applicable Laws.

Company warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. Company agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the Services required by this Agreement, including the requirements set forth in the Certification of Sponsor Drug Free Workplace Exhibit "C".

Company warrants and represents that it will, at all times, observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the Services to be provided by Company hereunder or which in any manner affect this Agreement.

8. Conflicts of Interest.

Company warrants and represents that:

- a. the Services to be performed hereunder will not create an actual or apparent conflict of interest with any other work it is currently performing; and
- b. Company is not presently subject to any agreement with a competitor or with any other party that will prevent Company from performing in full accord with this Agreement; and
- c. Company is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Agreement. The parties agree that Company shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of Services hereunder.

9. Proprietary Information

Company acknowledges that it may have access to and become acquainted with confidential and other information proprietary to Dunwoody including, but not limited to, information concerning Dunwoody, its operations, customers, citizens, business and financial condition, as well as information with respect to which Dunwoody has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Company agrees not to disclose, directly or indirectly, to anyone or to use or to allow others to use, for any purpose whatsoever, any Proprietary Information of any type, whether or not designated confidential or proprietary, acquired in the course of performing under this Agreement. The obligations of Company under this section shall survive the termination of this Agreement.

10. Indemnification and Insurance.

Company agrees to defend, indemnify and hold harmless the City of Dunwoody, its officers, employees, officials and agents, from and against any and all claims, losses, liabilities or expenses (including, without limitation, attorneys' fees) which may arise, in whole or in part, out of a breach by the Indemnitor of its obligations under this Agreement and as a result of any physical damage to person or property as a result of the Services provided by Company herein. City of Dunwoody shall have no liability over anything occurring as a result of anybody's use of Company's concessions or as a result of Company's management of the Skate Park, which is acknowledged by Company as an assumption of risk on behalf of itself and acceptance of all responsibility therefor. City of Dunwoody further disclaims all liability associated with the Services provided herein as a result of the use of the City's property in any way, and make no warranties as to the safety of the Park for conduct of said services, including the conditions of the ground or the Skate Park utilized in the Services provided herein and Company acknowledges its responsibility to ensure the safety of all persons utilizing said Park during its responsibility. Insurance requirements are attached hereto as Exhibit "D".

11. Assignment.

Company shall not assign this Agreement without the prior express written consent of Dunwoody. Any attempted assignment by Company without the prior express written approval of Dunwoody shall at Dunwoody's sole option terminate this Agreement without any notice to Company of such termination.

12. Notices.

All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally in hand, or when mailed by certified or registered mail, return receipt

requested with proper postage prepaid, addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

If to the City:

With copies to:

City Manager
Dunwoody City Hall
4800 Ashford Dunwoody Rd
Dunwoody, Georgia 30338

City Clerk
Dunwoody City Hall
4800 Ashford Dunwoody Rd
Dunwoody, Georgia 30338

If to the Company:

Action and Adventure
347 Oak Valley Drive
Macon, GA 31217

13. Governing Law and Consent to Jurisdiction.

This Agreement is made and entered into in the State of Georgia and this Agreement and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws. The jurisdiction for resolution of any disputes arising from this Agreement shall be in the State Courts of DeKalb County, Georgia.

14. Waiver of Breach.

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

15. Severability.

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

16. Entire Agreement. This Agreement which includes the exhibits hereto contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives.

CITY OF DUNWOODY, GEORGIA

By: _____
Lynn Deutsch

Title: Mayor

Approved as to form:

City Attorney

Attest:

City Clerk

Action and Adventure

By: _____

Title: _____

Date of Execution _____

EXHIBIT "A"

SCOPE OF SERVICES

Action and Adventure will have access to the area designated in Attachment A within Brook Run Park to operate a Concession/Retail Venue and offer Skateboarding/Bicycle Programs and Events under the terms of this contract. The following provisions will apply for the length of the contract:

City Responsibilities:

- Allow access to the area designated in Attachment A for the Operation of the Brook Run Skate Park and the support structures to operate the amenity
- Provide janitorial services to the public accessible restrooms in the facility and to the skate park amenity
- Provide utilities except phone or internet connectivity.
- Provide a link and logo of Action and Adventure on the City Parks and Recreation website
- Under the direction of the Parks Director or their desigee, allow for the installation of promotional signage and directional signage throughout the park to the amenity.

Action and Adventure Responsibilities:

- Provide concessions and retail amenities to park users.
- Provide Community Programs to include classes, lessons, camps, special events and demonstrations.
- Maintain consistent open hours for the skate shop facility.
- Pressure wash the Skate Park and de-gum the cement of Skate Park on an as needed bases
- Renovate the building reserved for concessions under the direction of the Parks Manager
- Monitor and enforce Skate Park Rules and provide oversight of the skate park amenity and report any issues to the Parks Director or their designee and City of Dunwoody Police Department
- Provide Security System monitoring for retail spaces.

EXHIBIT “B”

FEE STRUCTURE

Enforcement and administration.

(a)

The city Finance Department shall administer and enforce the provisions of this article.

(b)

The city Finance Department, in conjunction with the city finance director, shall have the power and authority to make reasonable rules and regulations not inconsistent with this article or other laws or ordinances for the administration and enforcement of the provisions of this article and the collection of the tax.

Rent imposed; exceptions.

(a)

There is imposed, assessed, and levied, and there shall be paid a rental fee of four thousand two hundred dollars (\$4200.00) per year to the City.

Filing return; payment.

(a)

The rent shall be divided into monthly increments of \$350 and will be due and payable from the occupant on or before the 20th of each month.

Delinquent penalty.

Any operator who fails to pay the rent to the city on or before the due date shall pay a penalty of ten percent of the rent not paid plus interest on the unpaid rent at the rate of one percent per month.

EXHIBIT "C"

CERTIFICATION OF SPONSOR

DRUG-FREE WORKPLACE

I hereby certify that I am a principle and duly authorized representative of _____, ("Contractor"), whose address is

_____, _____, _____, _____, and I further certify that:

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full; and
- (2) A drug-free workplace will be provided for Contractor's employees during the performance of the Agreement; and
- (3) Each Subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace. Contractor shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with Contractor, _____ certifies to Contractor that a drug-free workplace will be provided for the Subcontractor's employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3"; and
- (4) The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Agreement.

CONTRACTOR:

Date: _____ Signature: _____

Title: _____

EXHIBIT "D"**INSURANCE REQUIREMENTS**

Within 10 days of execution of this Agreement, and at all times that this Contract is in force, the Company shall obtain, maintain and furnish the City Certificates of Insurance from licensed companies doing business in the State of Georgia with an A.M. Best Rating A-6 or higher and acceptable to the City covering:

1. Statutory Workers' Compensation Insurance

(a) Employers Liability:

Bodily Injury by Accident - \$1,000,000 each accident

Bodily Injury by Disease - \$1,000,000 policy limit

Bodily Injury by Disease - \$1,000,000 each employee

2. Comprehensive General Liability Insurance

(a) \$2,000,000 limit of liability per occurrence for bodily injury and property damage Owner's and Contractor's Protective

(b) Blanket Contractual Liability

(c) Blanket "X", "C", and "U"

(d) Products/Completed Operations Insurance

(e) Broad Form Property Damage

(f) Personal Injury Coverage

3. Automobile Liability

(a) \$ 500,000 limit of liability

(b) Comprehensive form covering all owned, non-owned and hired vehicles

4. Umbrella Liability Insurance

(a) \$3,000,000 limit of liability

(b) Coverage at least as broad as primary coverage as outlined under Items 1, 2 and 3 above

5. The City of Dunwoody, Georgia, and its subcontractors and affiliated companies, their officers, directors, employees shall be named on the Certificates of Insurance as additional insured and endorsed onto the policies for Comprehensive General Liability, Automobile Liability and Umbrella Liability insurance maintained pursuant to this Contract in connection with liability of the City of Dunwoody and their affiliated companies and their officers, directors and employees arising out of Contractor's operations. Copies of the endorsements shall be furnished to the City

upon execution of this Agreement. Such insurance is primary insurance and shall contain a Severability of Interest clause as respects each insured. Such policies shall be non-cancelable except on thirty (30) days written notice to the City. Any separate insurance maintained in force by the additional insured named above shall not contribute to the insurance extended by Contractor's insurer(s) under this additional insured provision.

Certificate Holder should read: The City of Dunwoody, 41 Perimeter Center East, Suite 250, Dunwoody, Georgia 30346.

***Affidavit Verifying Status
for City Public Benefit Application***

By executing this affidavit under oath, as an applicant for a(n) _____ [type of public benefit], as referenced in O.C.G.A. § 50-36-1, from _____ [name of government entity], the undersigned applicant verifies one of the following with respect to my application for a public benefit:

- 1) _____ I am a United States citizen.
- 2) _____ I am a legal permanent resident of the United States.
- 3) _____ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.

My alien number issued by the Department of Homeland Security or other federal immigration agency is:_____.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:
_____.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in _____ (city), _____(state).

Signature of Applicant

Printed Name of Applicant

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
___ DAY OF _____, 20___

NOTARY PUBLIC

My Commission Expires:

**ACTION & ADVENTURE
PROPOSAL TO RUN THE
BROOK RUN SKATE PARK CONCESSIONAIRE**

Action & Adventure is excited to submit this proposal to run the Brook Run Skate Park Concessionaire to serve the residents in the Dunwoody community. We will expand and enhance the services that have been previously provided. We want to offer additional services for youth and senior citizens. Below is our proposal information.

2.1 SECTION I – Each proposal shall include a cover letter with the company’s address, telephone number, e-mail address. The cover letter should be signed by a legally authorized representative of the company.

PLEASE SEE ATTACHMENT A

2.3 SECTION II – Each proposer should include a summary of their proposed management plan including:

The facility will be managed by Elliott Smith and Anthony Wells

Elliott Smith

Elliott Smith has more than 20 years of working with youth going back to being a counselor at the YMCA to present. I have run summer camps, basketball clubs, senior community events and mentoring groups. He has over 13 years of experience teaching grades k-12.

Anthony Wells

Mr. Wells has coached youth basketball and soccer for 10+ years, He runs summer camps and after-school programs. Mr. Wells believes that in order to support youth and their development, it will take positive youth development and enrichment activities to include academic excellent, recreation and civic engagement.

2.3.1 Proposed monthly rental rate or revenue sharing plan

We are proposing a monthly rental rate of \$350.00 per month for a period of one year; after first year a new contract can be negotiated.

2.3.2 Minimum hours of operation and staffing plan

Generally, the center will be open daily from 8:00 a.m. – 8:00 p.m. There will be specific activities available for youth and senior citizens during the week.

STAFFING PROJECTIONS

Staff pay rate \$12-\$20 per hour
 Part time shifts 4 hours each shift
 Estimate 8-10 employees
 Monthly Staffing Costs 6240

SENIOR PROGRAMS & SERVICES

1 – 2 staff members

BIKE PROGRAMS

2 staff members

AFTERSCHOOL PROGRAMS

2 – 3 staff persons and volunteers

CONCESSIONS

Concessions will be run by one or two staff members.

The age for staff in certain areas will begin at 16 with a strategic goal to hire teenagers from the local community. We want to partner with local community college to offer a free outsource center

2.3.3 The intent, if any, to subcontract implementation personnel.

Currently, there are no intentions to enter into sub-contractual relationships.

2.3.4 Services to be offered such as concessions and/or retail and/or skateboard repair.**Senior Programs & Services**

During day time hours of 10 a.m. – 2:00 p.m., Tuesday, Wednesday, Thursday and Friday, there will be programs and activities for senior citizens. We anticipate offering yoga classes, fitness classes, walking, games and park tours.

Bike Programs

On a weekly basis between the hours of 10:00 a.m. – 8:00 p.m., bike tours and bike training will be available. Kids and adults are all welcome. There will be different bikes to choose from based on preference and skill sets.

Afterschool Programs

On Monday – Friday of each week, we will offer after school skate training, tutoring, leadership development training and positive conflict resolution skills.

Concessions

Concessions will run Sunday – Saturday from 8:00 a.m. – 1:00 p.m.; then resume from 2:00 p.m. – 6:00 p.m. in winter months; and until 8:00 p.m. in spring and summer months.

Party Venue

Saturday and Sunday we will offer to host birthday parties, Special group events, ACT prep workshops once a month, drug awareness workshop once a month. I plan on partnering with park amenities to offer skating and financial planning workshops with local banks.

2.3.5 Plan to promote the facility including any proposed promotional events or classes/programs to be held at the facility. If there are any gaps between what the proposer believes should be the proper scope of the services given all information known at the time this RFP, the proposer should clearly state these gaps in this section and clearly mark these of concerns as such

Mr. Smith and Mr. Wells will promote the facility and the various programs and services they will offer on social media platforms; by visiting the schools in the area and talk with appropriate staff to promote the facility and programs; and will develop flyers to be distributed in strategic locations. Lastly, Mr. Smith and Mr. Wells will coordinate and have a grand opening of the facility to promote the services and programs offered to the entire community.

Elliott Smith and Anthony Wells have experience in working with youth in providing programs and services that exposes youth to opportunities to gain new skills, education and work experience. Specifically, Mr. Wells has experience managing a recreation center.

2.3.6 Discussion of the assumptions relating to the responsibilities and/or commitments the proposer is expecting of the City throughout the life of this project.

The operators of the center see the City as a partner in the provision of recreational, educational and civic activities to be offered at the center. The operators see this as an opportunity to improve the social, health and recreational opportunities of the residents in the area.

2.4 SECTION III – The proposal should present qualifications that demonstrate the proposer’s ability to successfully operate a concession venue and the skate park. Include any previous experience managing other concession venues or similar facilities, personnel qualifications and other supporting documentation. For previous management experience, provide the facility owner’s name and contact information.

Mr. Anthony Wells has many years of experience in working with recreational programs such as skating. He himself is a skateboarder and freestyle bike rider. This experience will prove valuable in managing the Brook Run Skate Park Concessionaire. Additionally, Mr. Wells has coached youth basketball and soccer for 10+ years; has run summer camp and after school programs. He also has experience in hosting events.

2.5 SECTION IV – Each proposer shall provide three references.

PLEASE SEE ATTACHMENT B

2.6 SECTION V – Each proposer may, but is not required to, include additional references, resumes and any other materials deemed necessary but not provided otherwise (such as promotional literature, etc.). Note that these materials may or may not be reviewed by all evaluators and will not be part of the official evaluation except to the extent they support qualifications and experience.

Mr. Elliott Smith is the founder and incorporator of a 501(c)(3) nonprofit organization called the EYTO Foundation, Inc. The EYTO Foundation, Inc. was created to provide opportunities for youth to develop self-realization, positive relationships, effective work ethics and community responsibility. EYTO will provide underprivileged male youth training, mentoring, and extracurricular activities designed to expose them to life outside of their immediate communities.

The mission of EYTO Foundation, Inc. is to provide the avenue and support to underprivileged male youth to achieve success in their pursuits of excellence and positive contributing members of society.

Mr. Smith will be soliciting grants and donations through the EYTO Foundation to support the activities and services that will be offered at the Brook Run Skate Park Concessionaire