

**CITY OF FEDERAL WAY
REQUEST FOR PROPOSAL**

I. PURPOSE OF REQUEST.

The City of Federal Way (“City”) is requesting proposals for the purpose of Catering Services at the Dumas Bay Centre. The City’s needs are outlined in the following Request for Proposal (“RFP”).

II. TIME SCHEDULE.

The City will follow the following timetable:

Issue RFP	February 24, 2022
Deadline for Submittal of Proposals	March 10, 2022, 2:00pm
Preliminary Selection of Firm	March 11, 2022
Notify Firm Chosen	March 23, 2022

III. INSTRUCTIONS TO PROPOSERS.

A. All proposals should be sent to:

Sherri Nelson
City of Federal Way
33325 8th Ave S
Federal Way, WA 98003-6325
(253) 835-2527
Sherri.nelson@cityoffederalway.com

B. If submitted on paper, all proposals must be in a sealed envelope and clearly labeled in the lower left-hand corner. If submitted by email, all proposals must be clearly labeled in the subject line. The label shall identify the contents as “RFP Catering Services at the Dumas Bay Centre”

C. All proposals must be received by the Deadline for Submittal of Proposals detailed in II. Time Schedule, at which time they will be opened. Three (3) copies of the proposal must be presented. Faxed or telephone proposals will not be accepted.

D. Proposals should be prepared simply and economically, providing a straight forward, concise description of provider capabilities to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc. are not desired. Emphasis should be on completeness and clarity of content. Use of recycled paper for requests and any printed or photocopied material created pursuant to a contract with the City is desirable whenever practicable. Use of both

sides of paper sheets for any submittals to the City is desirable whenever practicable.

E. The Contract Administrator, Autumn Gressett, or representative will notify the firm selected by the date stated in II. Time Schedule.

F. All proposals must include the following information:

- The names of individuals from those firms who will be working on the project and their areas of responsibility.
- Specific experience of individuals relative to the proposed project.
- A proposed outline of tasks, products and project schedule, including the number of hours required to complete each task or product.
- A proposed budget based on the above outline of tasks, products and schedules.
- Exhibit A - Questionnaire
- References.

IV. SELECTION CRITERIA.

<u>Factor</u>	<u>Weight Given</u>
1. Responsiveness of the written proposal to the purpose and scope of service.	30%
2. Price.	35%
3. Ability and history of successfully completing contracts of this type, meeting projected deadlines and experience in similar work.	35%
<u>Total Criteria Weight</u>	100%

Each proposal will be independently evaluated on factors one through three.

V. TERMS AND CONDITIONS.

- A. The City reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. The City reserves the right to request clarification of information submitted, and to request additional information from any proposer.
- C. The City reserves the right to award any contract to the next most qualified contractor, if the successful contractor does not execute a contract within thirty (30) days after the award of the proposal.
- D. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days to sell to the City, the services described in the attached specifications, or until one or more of the proposals have been approved by the City administration, whichever occurs first.
- E. The contract resulting from acceptance of a proposal by the City shall be in a form supplied or approved by the City, and shall reflect the specifications in this RFP. A copy of the contract is available for review and shall include requirements to comply with ADA, Civil Rights Act, and EEO requirements. The City reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP, and which is not approved by the City Attorney's office.
- F. The City, as a recipient of federal funding, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.
- G. The City shall not be responsible for any costs incurred by the firm in preparing, submitting or presenting its response to the RFP.

VI. SCOPE OF SERVICES.

- A. Provide catering services as are reasonably requested by the client or Dumas Bay Centre manager; and make Concessionaire's best possible effort to provide quality service to Dumas Bay Centre patrons and maximize gross receipts.

- B. Develop a standard agreement to be used for all events for which the Concessionaire shall exercise its catering rights. Unless the client authorizes otherwise, the agreement shall be between the Concessionaire and the client and must be signed by those parties prior to Concessionaire beginning work on that event. The form of the standard agreement must be approved by the City, and any event-specific changes to the standard agreement must be approved by the City prior to its execution. Fully executed copies of the agreement must be delivered to the Dumas Bay Centre Manager prior to the event. The agreement must include the details on pricing and quantities.
- C. Ensure that all requests for services between or among Concessionaire or its employees, agents, and subcontractors and any client desiring services at the Dumas Bay Centre are coordinated through the Dumas Bay Centre Manager.
- D. Deal courteously and professionally with all clients.
- E. Designate a manager for program and sales who shall be responsible, at a minimum, for the following activities:
 - 1. Supervise all Concessionaires' on-site employees, agents and/or subcontractors who are working at the event.
 - 2. Serve as Concessionaire's representative and have the authority necessary to work with Dumas Bay Centre management and clients for event coordination and staffing requirements.
 - 3. Be on site during events for which catering services are provided, and be available by phone and email at other times for event planning and coordination.
- F. Ensure that competent, courteous, well trained, appropriately-attired, and efficient employees, agents, or subcontractors appear at the event reasonably prior to the start time as specified by the event agreement, together with all equipment, security service, merchandise and supplies needed to fully perform the services desired by Dumas Bay Centre or the client. Following each event which Concessionaire provides services, ensure that equipment, merchandise and supplies are removed from Concessionaire's authorized locations, and that all unsold merchandise is disposed of in a manner that is separately agreed upon by Concessionaire and the client. Upon receipt of notice from the City of any reasonable and significant objection to any of Concessionaire's employees, including Concessionaire's representative, the use of such employee in connection with this Agreement shall be discontinued and a suitable person shall be promptly substituted; provided however, that the City's right to require replacement of any Concessionaire employee, and Concessionaire's obligation to comply with any such request, shall be subject to restrictions imposed upon Concessionaire by any federal, state or local statute, law, code, regulation or ordinance or by any collective bargaining agreement or other contract affecting such employee.

- G. Prior to each event, provide the Dumas Bay Centre representative assigned to the event with the names of the on-site managers and of all employees, agents and approved subcontractors performing catering services in connection with a client's event.
- H. Coordinate with the Dumas Bay Centre representative assigned to be the liaison with any client regarding the exact location at which catering service is to be installed in connection with such event, and install at the locations authorized by the Dumas Bay Centre Representative in the Premises.
- I. Ensure that Concessionaire, and its representatives, only serve products or services authorized by the event client at the event.
- J. Ensure that the portion of all adjusted gross receipts from catering sales agreed upon by Dumas Bay Centre are remitted to the City in the designated time frame.
- K. Internal catering (catering paid for by City) shall be provided at discounted prices. The Concessionaire will suggest a discount level in their proposal. Costs specifically excluded are any allocations for administrative and general overhead or for corporate-level supervision. Internal events that are discounted are not commissionable. Discounted staffing rates for internal catering shall not be provided as part of the proposal.
- L. All marketing and public relations materials must be reviewed and approved by the Dumas Bay Centre.
- M. Concessionaire shall be required to provide all items that may be needed for a requested event. Such items include but are not limited to, small wares, chafing dishes, napkins, tablecloths, serving utensils, etc.

VII. COMPENSATION AND TERM.

- A. The City's preferred compensation is listed in Exhibit B "Sample Concessionaire Agreement". The City will entertain other compensation arrangements or proposed combinations of compensation arrangements.
 - 1. Please present detailed information on the firm's proposed fee schedule for the specifications proposed and for any variation for non-routine services. Please provide specifics as to the percentage of gross sales to be returned to the City.
- B. The contract term shall be two years, with three one-year extensions allowed at the option of the City.

VIII. PUBLICATION.

Name of Publication:

Dates:

Federal Way Mirror

February 25, 2022

Federal Way Mirror

March 4, 2022

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Rev. 10/19

EXHIBIT A
Questionnaire

Proposers must provide the following information about their company so that the City can evaluate the proposer's stability and ability to support commitments set forth in the response to the RFP.

Please describe the company's background and experience including, but not limited to the following information:

- a) Length of time the company has been in business.
- b) A brief description of the company, including history, present status, future, etc.
- c) Include a profile of the business location, staff, and services that will be assigned to the City's account.
- d) A brief description of the company's plans to keep pace with changing catering business techniques.
- e) Company size and organization. Please break down number of employees, including positions and employee type, specifying how many are full time, part time, and subcontractors.
- f) What percentage of staff turn-over does the company experience annually on average?
- g) Has your company ever been sued by a customer? If so, please explain each incident and outcome(s).
- h) Are there any lawsuits currently outstanding against your company? If any, please explain.
- i) If you have had any contract(s) terminated for default during the past six years, describe all incidents. Termination for default is defined as notice to stop work due to the vendor's nonperformance or poor performance and the issue was either: 1) not litigated; or 2) litigated and litigation determined the vendor to be in default. Elaborate as needed. (If the vendor has experienced no terminations as described, please indicate so.)
- j) If you have had ANY contract(s) terminated during the past six years for any other reason than the above stated 'termination for default', please describe all such terminations fully.
- k) Please list and describe in detail the most unique features of your company's catering services.

RETURN THIS FORM WITH PROPOSAL
USE OF ADDITIONAL PAGES IF NEEDED IS OK

EXHIBIT B
Sample Concessionaire Agreement

CONCESSIONAIRE AGREEMENT
FOR
INSERT NAME OF PARK OR VENUE

This Concessionaire Agreement (“Agreement”) is made between the City of Federal Way, a Washington municipal corporation (“City”), and Insert Contractor’s Co. Name, a Insert type of organization and State where organized, i.e. “Washington corporation” or “a sole proprietor” (“Contractor”). The City and Contractor (together “Parties”) are located and do business at the below addresses which shall be valid for any notice required under this Agreement:

INSERT CONTRACTOR’S CO. NAME:	CITY OF FEDERAL WAY:
Insert Contact Name	Insert City Contract Administrator’s Name
Insert Contractor’s Address	33325 8 th Ave. S.
Address - Continued	Federal Way, WA 98003-6325
Insert Telephone Number (telephone)	(253) Insert Telephone Number (telephone)
Insert Fax Number (facsimile)	(253) Insert Fax Number (facsimile)
Insert email address	Insert email address

The Parties agree as follows:

1. **TERM.** The term of this Agreement shall commence upon the effective date of this Agreement, which shall be the date of mutual execution, and shall continue until the completion of the Services, or any event no later than Insert specific date (“Term”).

2. **WORK.**

2.1 **Work.** The Contractor shall provide goods, materials or services and otherwise perform the work more specifically described in Exhibit “A,” attached hereto and incorporated by this reference (“Work”), performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the Mayor or his or her designee.

2.2 **Warranties.** The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Work and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to obtaining a City of Federal Way business registration. The Contractor warrants it will provide services in a manner consistent with the accepted practices for other similar services within the Puget Sound region in effect at the time those services are performed. The Contractor warrants goods are merchantable, are fit for the particular purpose for which they were obtained, and will perform in accordance with their specifications and Contractor’s representations to City. The Contractor shall, at its sole

cost and expense, correct all Work performed which the City deems to have defects in workmanship and material discovered within one (1) year after the City's final acceptance of the Work. This Agreement is subject to all warranty provisions established under the Uniform Commercial Code, Title 62A RCW. In the event any part of the goods are repaired, only original replacement parts shall be used; rebuilt or used parts are not acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

2.3 Time, Documentation, and Inspection. Work shall begin immediately upon the effective date of this Agreement. Work shall be subject, at all times, to observation and inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery.

2.4 Clean Up. At any time ordered by the City and immediately after completion of the Work, the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

3. TERMINATION. Either party may terminate this Agreement, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Agreement. The City may terminate this Agreement immediately if the Contractor fails to maintain required insurance policies, breaches confidentiality, or materially violates Section 12 and such may result in ineligibility for further City agreements.

4. COMPENSATION.

4.1 Amount. The Contractor agrees to pay the City a certain percentage of the Contractor's gross monthly revenue, excluding state sales tax ("Percentage Payment") according to a rate or method as delineated in Exhibit "B," attached hereto and incorporated by this reference. The Contractor agrees that any percentage rate or method used to calculate the compensation to the City shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Agreement. Except as otherwise provided in Exhibit "B," the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

4.2 Method of Payment. On a monthly basis, the Contractor shall submit its Percentage Payment to the City as outlined in Exhibit "B."

5. INDEMNIFICATION.

5.1 Contractor Indemnification. The Contractor agrees to release indemnify, defend, and hold the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers harmless from any and all claims, demands, actions, suits, causes of action, arbitrations, mediations, proceedings, judgments, awards, injuries, damages, liabilities, taxes, losses, fines, fees, penalties expenses, attorney's fees, costs, and/or litigation expenses to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or in connection with this Agreement or the performance of this Agreement, except for that portion of the claims caused by the City's sole negligence. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. Contractor shall ensure that each sub-contractor shall agree to defend and indemnify the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph. The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

5.2 Industrial Insurance Act Waiver. It is specifically and expressly understood that the Contractor waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or for by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. The Parties further acknowledge that they have mutually negotiated this waiver.

5.3 City Indemnification. The City agrees to release, indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, agents, representatives, and sub-contractors harmless from any and all claims, demands, actions, suits, causes of action, arbitrations, mediations, proceedings, judgments, awards, injuries, damages, liabilities, losses, fines, fees, penalties expenses, attorney's fees, costs, and/or litigation expenses to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City.

5.4 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

6. INSURANCE. The Contractor agrees to carry insurance for liability which may arise from or in connection with the performance of the services or work by the Contractor, their agents, representatives, employees or subcontractors for the duration of the Agreement and thereafter with respect to any event occurring prior to such expiration or termination as follows:

6.1. Minimum Limits. The Contractor agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating that is satisfactory to the City:

a. Commercial general liability insurance covering liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury, bodily injury, death, property damage, products liability, advertising injury, and liability assumed under an insured contract with limits no less than \$2,000,000 for each occurrence and \$2,000,000 general aggregate.

b. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

c. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles with a minimum combined single limits in the minimum amounts required to drive under Washington State law per accident for bodily injury, including personal injury or death, and property damage.

6.2. No Limit of Liability. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to all remedies available at law or in equity. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

6.3. Additional Insured, Verification. The City shall be named as additional insured on all commercial general liability insurance policies. Concurrent with the execution of this Agreement, Contractor shall provide certificates of insurance for all commercial general liability policies attached hereto as Exhibit "C" and incorporated by this reference. At City's request, Contractor shall furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. If Contractor's insurance policies are "claims made," Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated or upon project completion and acceptance by the City.

6.4. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement.

7. CONFIDENTIALITY. All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential subject to applicable laws. Breach of confidentiality by the Contractor may be grounds for immediate termination. All records submitted by the City to the Contractor will be safeguarded by the Contractor. The Contractor will fully cooperate with the City in identifying, assembling, and providing records in case of any public records disclosure request.

8. WORK PRODUCT. All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Work shall belong to the City upon delivery. The Contractor shall make such data, documents, and files available to the City and shall deliver all needed or contracted for work product upon the City's request. At the expiration or termination of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

9. BOOKS AND RECORDS. The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Work and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

10. INDEPENDENT CONTRACTOR / EMPLOYEE CONDITIONS.

10.1 Independence. The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security, income, or other tax which may arise as an incident of employment, except as specifically provided in Section 4 Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

10.2 Safety. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors at the work site and in the performance of the contract work and shall utilize all protection necessary for that purpose. Contractor shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the site for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the performance of the Work. The Contractor shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same

10.3 Risk of Work. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. Even though Contractor is an independent contractor, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion

11. CONFLICT OF INTEREST. It is recognized that Contractor may or will be performing professional services during the Term for other parties; however, such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City. Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor's selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

12. EQUAL OPPORTUNITY EMPLOYER. In all services, programs, activities, hiring, and employment made possible by or resulting from this Agreement or any subcontract, there shall be no discrimination by Contractor or its subcontractors of any level, or any of those entities' employees, agents, subcontractors, or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply to, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall comply with and shall not violate any of the terms of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, 49 CFR Part 21, 21.5 and 26, or any other applicable federal, state, or local law or regulation regarding non-discrimination.

13. GENERAL PROVISIONS.

13.1 Termination and Modification. This Agreement, together with any attached Exhibits, contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior statements or agreements, whether oral or written, shall be effective for any purpose. Should any language in any Exhibits to this Agreement conflict with any language in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Any act done by either Party prior to the effective date of the Agreement that is consistent with the authority of the Agreement and compliant with the terms of the Agreement, is hereby ratified as having been performed under the Agreement. No provision of this Agreement, including this provision, may be amended, waived, or modified except by written agreement signed by duly authorized representatives of the Parties.

13.2 Assignment and Beneficiaries. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective

successors in interest, heirs and assigns. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

13.3 Compliance with Laws. The Contractor shall comply with and perform the Services in accordance with all applicable federal, state, local, and city laws including, without limitation, all City codes, ordinances, resolutions, regulations, rules, standards and policies, as now existing or hereafter amended, adopted, or made effective. If a violation of the City's Ethics Resolution No. 91-54, as amended, occurs as a result of the formation or performance of this Agreement, this Agreement may be rendered null and void, at the City's option.

13.4 Enforcement. Time is of the essence in this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any notices required to be given by the Parties shall be delivered at the addresses set forth at the beginning of this Agreement. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default. This Agreement shall be made in, governed by, and interpreted in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from this Agreement, the exclusive means of resolving that dispute, difference, or claim, shall be by filing suit under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative process. If the King County Superior Court does not have jurisdiction over such a suit, then suit may be filed in any other appropriate court in King County, Washington. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, however nothing in this paragraph shall be construed to limit the Parties' rights to indemnification under Section 5 of this Agreement.

13.5 Execution. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individual is duly authorized to execute and deliver this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and with the same effect as if all Parties hereto had signed the same

document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The signature and acknowledgment pages from such counterparts may be assembled together to form a single instrument comprised of all pages of this Agreement and a complete set of all signature and acknowledgment pages. The date upon which the last of all of the Parties have executed a counterpart of this Agreement shall be the “date of mutual execution” hereof.

[Signature page follows]

SAMPLE

IN WITNESS, the Parties execute this Agreement below, effective the last date written below.

CITY OF FEDERAL WAY:

ATTEST:

Jim Ferrell, Mayor

Stephanie Courtney, CMC, City Clerk

DATE: _____

APPROVED AS TO FORM:

J. Ryan Call, City Attorney

INSERT CONTRACTOR'S CO. NAME:

By: _____

Printed Name: _____

Title: _____

DATE: _____

PICK APPROPRIATE NOTARY AND DELETE THE OTHER ONE:

Corporate:

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the
_____ of _____ that executed the
foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and
deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that
he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate
seal of said corporation.

GIVEN my hand and official seal this _____ day of _____, 20__.

Notary's

signature

Notary's printed name

Notary Public in and for the State of
Washington.

My commission
expires _____

LLC:

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the
_____ of _____ that executed the
foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and
deed of said limited liability company, for the uses and purposes therein mentioned, and on oath
stated that he/she was authorized to execute said instrument.

GIVEN my hand and official seal this _____ day of _____, 20__.

Notary's

signature

Notary's printed name

Notary Public in and for the State of
Washington.

My commission
expires _____

Individual:

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me, _____, to me
known to be the individual described in and who executed the foregoing instrument, and on oath
swore that he/she/they executed the foregoing instrument as his/her/their free and voluntary act
and deed for the uses and purposes therein mentioned.

GIVEN my hand and official seal this _____ day of _____, 20__.

- _____
- _____

(typed/printed name of notary)
Notary Public in and for the State of
Washington.

My _____ commission
expires _____

SAMPLE

EXHIBIT "A"

CONCESSIONAIRE SERVICES

1. Contractor shall provide concession services at concession stands ("Concession Stands") located at the below listed parks, in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the Mayor or his or her designee.

a. Concessions services shall include:

[Fill in description of Services or Work]

b. Locations:

(Name of Park/Venue)

(Address of Park/Venue)

c. Equipment list:

[Fill in Equipment list]

d. Pricing. All pricing on any food, beverage or other product as set forth in Exhibit "A" must be competitive and must be approved in writing by the City. Contractor may not change any pricing without the City's prior written consent, which consent may be withheld for any reason.

(Catering price list)

2. Products. All food, beverage or other products offered for sale by Contractor to the public shall be approved in writing by the City prior to distribution or sale of any such products. Contractor shall comply with any reasonable requests made by the City to either add or eliminate certain types of food, beverage or other products.

3. Customer Service. Contractor and all of its employees, agents, or representatives shall provide the highest quality of customer service and shall treat all customers with courtesy and respect. Contractor shall honor all reasonable requests for refunds including requests from customers that are dissatisfied with any food, beverage or other product sold by Contractor or from customers who have lost money in any vending machine owned by Contractor.

4. Employee Appearance. All of Contractor's employees, agents, representatives or licensees shall have a neat, clean and sanitary personal appearance and those who come in direct contact

with the public shall wear clothing or identification, which distinguishes them as employees of Contractor.

5. Employee Training. Contractor shall provide a training program for its employees, agents, or representatives for the development of the skills and techniques necessary to perform its obligations under this Agreement including but not limited to promoting customer service, produce and service presentation, cleanliness, positive attitude and promoting the City Parks and Recreation Department's philosophy and policy.

6. Staffing. The Concession Stands shall be properly staffed in order to prevent undue delay to the public. Contractor shall plan its staffing in advance and anticipate to the best of its ability any events, such as holidays or special events, which may require additional staffing. In the event the City determines in its sole discretion that Contractor is not adequately staffing the Concession Stands, it may notify Contractor of that fact and Contractor shall immediately increase its staffing to meet the City's recommendation.

7. Concession Equipment.

a. Delivery. Contractor agrees to deliver and/or install, within (number of weeks) from the execution of this Agreement at its sole cost and expense, the concession facilities, machines and equipment described below ("Concession Equipment").

b. Alterations. Contractor shall not make any alterations, additions or improvements to the Concession Stands or to the Concession Equipment without the City's prior written consent, which consent may be withheld for any reason. In the event the City consents to the making of any alterations, additions or improvements to the Concession Stands and/or Concession Equipment, the same shall be made at Contractor's sole cost and expense, and in the event such alterations, additions or improvements are made to a structure, building or other improvement attached to the real property, the same will become a part of the real property and be surrendered to the City upon the termination of this Agreement. The City has no obligation to alter, remodel, improve, repair, decorate or paint the Concession Stands.

c. Removal.

i. (Name of park/venue): On or before (date), or in the event the City notifies Contractor that it desires the removal of the Concession Equipment at any time, Contractor shall, at its sole cost and expense, remove the Concession Equipment and repair any damage to the real property caused by such removal within the time period prescribed by the City.

d. Maintenance. Contractor shall, at its sole cost and expense, maintain the Concession Stands and Concession Equipment and the surrounding real property in good condition and repair, including, but not limited to, maintaining the Concession Stands in a neat, clean and

sanitary condition and removing all garbage, trash or other debris on a regular basis pursuant to the City's instructions.

e. **Damage to Concession Stands.** If the Concession Stands or any part thereof are damaged by any cause other than the sole negligence of the City, its employees or agents, Contractor shall, at its sole cost and expense, restore the Concession Stands to a condition equivalent to or better than their condition immediately prior to such damage.

f. **City Reimbursement.** In the event Contractor fails to remove the Concession Equipment, maintain the Concession Stands or Equipment, or repair the Concession Stands, the City may, but in no event is the City obligated to, remove the Concession Equipment or perform the maintenance or repair and the Contractor shall, upon demand, immediately pay the City the costs and expenses of such removal, maintenance or repair. In the event Contractor fails to comply with the terms of this paragraph, the City may confiscate the Concession Equipment or any part thereof and sell the same, the proceeds of which sale will be credited against any costs or expenses incurred by the City. The sale of the Concession Equipment shall not constitute an election of remedies by the City but will be in addition to any remedies available to the City at law, in equity, by statute or under this Agreement.

8. **Compliance with laws**

Contractor shall comply with and perform the Work in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended, including but not limited to the following:

- (i) Federal, state and local health, safety and licensing laws relating to the sale of concession goods;
- (ii) City code provisions requiring any person or entity doing business in the City to obtain a business registration; and
- (iii) City Parks and Recreation Department policies, including, but not limited to, its concession policy.

EXHIBIT "B"

COMPENSATION

1. Compensation. The Contractor agrees to pay the City an amount equal to (percentage (%)) of the Contractor's gross monthly revenue, excluding state sales tax ("Percentage Payment"). The term "Gross Monthly Revenue" shall mean the total amount charged by Contractor, its employees, agents, or licensees, for all goods and merchandise sold or services performed, whether for cash or other consideration or on credit, and regardless of collections, including but not limited to orders taken at the Concession Stand but filled elsewhere and orders taken elsewhere but filled at the Concession Stands.
2. Payment Due Date. Contractor shall deliver the Percentage Payment to the City on or before the ____ day of each month for Gross Monthly Revenue received during the preceding month ("Due Date").
3. Access to Records. Contractor shall provide a written statement to the City on the Due Date showing the total Gross Monthly Revenue for the preceding month ("Statement"). Contractor will provide the City or the City's agents or representatives reasonable access to the books and records of Contractor for the purposes of auditing and inspecting the same to verify the Statement. The records shall include documents on which the original transaction entry was made, including sales slips, cash register tapes, and/or purchase invoices.
4. Late Fee. Contractor acknowledges that late payment to the City of the Percentage Payment will cause the City incur costs not contemplated by this Agreement, the exact amount of which will be difficult to ascertain. Accordingly, if the Percentage Payment is not received by the City on the Due Date, Contractor agrees to pay a late fee equal to Twenty-Five and No/100 Dollars (\$25.00).
5. Contractor Responsible for Taxes. The Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement; including, but not limited to, Leasehold Excise Tax, currently at a rate not to exceed 12.84%.
6. Utilities, Taxes and Expenses. Contractor shall pay all costs and expenses associated with the operation of the Concession Stands other than utility expenses for water and power, which will be paid by the City. Contractor shall pay directly, before delinquency, any and all taxes levied or assessed upon its leasehold improvements, equipment, furniture, fixtures and personal property located on the City's property.