

## **REQUEST FOR PROPOSALS (RFP)**

### **FOR THE OPERATION OF A RESTAURANT/FOOD SERVICE FACILITY AT THE SEACREST BOATHOUSE (INCLUDING BICYCLE AND BOAT RENTALS)**

The City of Seattle, Department of Parks and Recreation (DPR) is seeking proposals for the operation of a restaurant/food service facility at the boathouse located at Seacrest Park in West Seattle. **DPR is offering a term of five (5) years with an option for one additional five (5) year term at DPR's option for this concession.** This concession will be operated pursuant to a Concession Agreement issued by DPR; no leasehold or other proprietary right is offered.

You can download the RFP documentation package from the DPR Partnerships website at [www.cityofseattle.gov/parks/partnerships/rfp.htm](http://www.cityofseattle.gov/parks/partnerships/rfp.htm); call Rita Hollomon, Parks Concession Coordinator at (206) 684-8008 or email her at [rita.hollomon@seattle.gov](mailto:rita.hollomon@seattle.gov) to request a hard copy of the RFP documents.

All proposals become the property of the Department and are subject to Public Disclosure laws.

### **REQUEST FOR PROPOSALS TIMETABLE**

The following schedule has been established for the Request for Proposals for the operation of a restaurant/food service facility at the Seacrest Boathouse located at 1660 Harbor Avenue SW, Seattle, WA 98126.

<b>Wednesday, August 31, 2011</b>	<b>RFP will be advertised in the 'Daily Journal of Commerce' and available on the DPR website</b>
<b>Friday, Sept. 16, 2011</b>	<b>Questions from Proposers Deadline</b>
<b>Friday, Sept. 23, 2011</b>	<b>Responses to questions posted on DPR website</b>
<b>Friday, Oct 7, 2011</b>	<b>RFP Proposal Due Date by 4:00 pm</b>
<b>Oct. 7-18, 2011</b>	<b>Evaluation period</b>
<b>Oct. -13-14, 2011</b>	<b>Interviews (optional by DPR)</b>
<b>October 19, 2011</b>	<b>Evaluator Recommendation to Superintendent</b>
<b>October 31, 2011</b>	<b>Notification of Award to all respondents</b>
<b>Nov. 2011 – Jan. 2012</b>	<b>Negotiation/Legislation prepared for City Council</b>
<b>February – March 2012</b>	<b>Presentation at City Council</b>
<b>April-June 2012</b>	<b>Transition period</b>

***PLEASE NOTE:** this schedule is subject to change as circumstances warrant and any changes to the schedule and/or additional information such as answers to questions will be posted on the DPR website at [www.cityofseattle.gov/parks/partnerships/rfp.htm](http://www.cityofseattle.gov/parks/partnerships/rfp.htm). Please check the website for the most current information before sending in your proposal.*

## **SITE BACKGROUND/CURRENT SITUATION**

The Seacrest Boathouse operated as a boat rental and retail sales of fishing equipment business for over 30 years and has proven to be popular with park visitors. However, the amount of revenues generated from this line of businesses was insufficient to sustain a profitable operation. DPR publicly advertised a Request for Proposal (RFP) process in 1999 and Alki Crab and Fish Company's response proposed a restaurant at the site in addition to the fishing and boating operation. Alki Crab and Fish Company completed renovation of the kitchen including a fire wall and has been operating since the renovation for ten years. During that time Alki Crab and Fish Company requested to add a license to sell alcohol at the site and DPR granted the request dependent upon all state requirements, permits and additional insurance requirements are met at the sole expense of the concessionaire. The long term agreement that was approved by Seattle City Council in 2001 expired on June 30, 2011. DPR granted an extension with the current concessionaire through June 30, 2012 or until this RFP process is finalized, whichever occurs first.

## **RFP OBJECTIVES AND REQUIREMENTS**

DPR's primary objective in this RFP is to secure a concession operation that will be financially viable, profitable and will be maintained and operated at the highest standards. In addition, another objective is to have an operation that will make a significant improvement to the visual quality and ambience of the park and its community while providing a convenience for the public.

There is a small 26-space parking lot adjacent to the facility. The parking lot will remain public. All utilities and related costs will be the sole responsibility of the concessionaire. Any changes in electrical, plumbing or any other service must be negotiated with DPR's Maintenance Administration Division and effected at the expense of the concessionaire.

Enlargement of the facility may be proposed, but no second story will be considered. Note: all designs and work to be performed on the structure will require prior approval from the DPR.

DPR believes that the continuation of a restaurant service with a Café theme is best suited for this location but will entertain all proposals for food service at this facility, including catering. Proposers should be aware that DPR is requesting proposals in which a restaurant is the **main component**. Therefore, the proposed food service facility may not be exclusively intended for catering.

The concessionaire must submit a menu with the proposal. Items and prices will be subject to DPR's approval. Wine, beer and alcohol may be served in an enclosed area with all state requirements and permits met at the sole expense of the concessionaire. The sale of additional items is subject to DPR approval.

## FINANCIAL HISTORY

### LAST FIVE (5) YEARS GROSS SALES AND EXPENSES

	<u>Gross Sales</u>	<u>Expenses</u>
2006	\$665,972	\$655,790
2007	\$815,672	\$738,632
2008	\$753,319	\$867,700
2009	\$736,159	\$882,900
2010	\$640,536	\$871,000

## LINES OF BUSINESS

The current lines of businesses of the current Concessionaire at Seacrest is as follow:

- Restaurant Food and Beverages – The current concessionaire has met all the requirements to sell liquor on the premises inside the building and also has a small outside area that is roped-off for consumption.
- Fishing Tackle and Supplies
- Shirts and Novelty Items
- Boat Rentals/Kayak Tours/Blade Rentals

## OPERATIONS AND MAINTENANCE

The concessionaire will be required to clean the area surrounding the Concession. This area includes but is not limited to the interior and exterior of the food service building, restroom facilities at the site, and exterior deck area. In addition, the seating must be arranged so that pedestrian traffic around the respective area is not inhibited.

Current Hours of Operations are below:

### Summer

Sunday – Thursday                      9:00am – 9:00pm  
Friday & Saturday                      9:00am – 10:00pm

### Winter

Sunday – Thursday                      9:00am – 8:00pm  
Friday & Saturday                      9:00am – 9:00pm

## **REQUIREMENTS DURING THE TERM OF THE AGREEMENT**

1. The successful proposer will be responsible for obtaining any and all necessary approvals, permits and licenses for any construction and lawful operation of this concession.
2. The concessionaire will be required to carry at least \$1,000,000.00 in general liability insurance coverage and property damage liability insurance coverage, and replacement value in fire and casualty coverage with the City of Seattle named as Additional Insured. Additional coverage may be required if the sale of alcohol is proposed.
3. Proposers should be aware that this concession will be developed and operated pursuant to a concession agreement issued by DPR. In the event that this agreement is terminated for reasons other than licensee's breach of the agreement, DPR will not consider proposals for reimbursement of unamortized capital improvement costs as of the date of termination.
4. The successful proposer will be required to submit plans for the concession, including the tables, chairs and their dimensions for the food service building, and to obtain all required City, state and federal approvals and permits. All plans are subject to the approval of Seattle DPR & Recreation and any other city or state requirement. In the construction and alteration of the Premises, Lessee shall comply with all applicable laws and regulations including, but not limited to, the Americans with Disabilities Act (ADA) and its design standards under both Titles II and III thereof.
5. The food service, bicycle and boat rental concession permit will be awarded to the successful proposer.
6. The concessionaire will be responsible for securing the chairs, tables, umbrellas and any other equipment every evening. Storage will be permitted at the site.
7. The concessionaire will be responsible for any and all utility costs connected with the operation of this concession. This includes but is not limited to installing all necessary utilities, service lines, conduits, water meters, pipes, etc. The concessionaire will be required to remove any unsuitable existing materials as required. DPR & Recreation makes no representations that there are adequate utilities currently in place at the site.
8. The concessionaire will supply all equipment necessary for the operation of this concession. All fixed equipment becomes the property of DPR upon installation, at DPR' option. Should DPR choose not to exercise this option, it will be the responsibility of the concessionaire to remove fixed equipment and return the licensed premises to DPR in a condition as good as or better than that at the commencement of the license term.
9. The concessionaire will submit monthly reports of gross receipts, in a format approved by DPR. At the end of each operating year, the concessionaire will be required to submit a detailed income and expense statement for the past year's operation.
11. The concessionaire will comply with all City, state and federal laws relating to access for persons with disabilities.

12. All prices, fees, and increases for any and all proposed services offered at the concession must be approved by DPR & Recreation. Proposers should submit their proposed menus, price lists, and hours of operation.
13. Pursuant to DPR' policy citywide, the concessionaire will not be permitted to sell any beverages in glass bottles. All beverages sold should be in non-glass, shatter-proof containers. Also, the use of polystyrene packaging or food containers will be prohibited in the operation of the restaurant.
14. The selling or advertisement of cigarettes, cigars, or any other tobacco products is strictly prohibited. It is the concessionaire's responsibility to adhere to and enforce this policy.
15. The concessionaire will remove all rubbish generated by this concession. The concessionaire will be responsible for cleaning the licensed premises and the area within 50 feet of the licensed premises. The concessionaire will provide garbage cans and have these cans emptied on a daily basis. In addition, the concessionaire will keep all signs and structures free of graffiti. The concessionaire must comply with all city, state, and federal regulations regarding recycling. The concessionaire will be responsible for keeping the parking lot clean, neat, and free of litter and debris. Proposers should submit a detailed plan for removal of rubbish generated by this concession.
16. The concessionaire will be obligated to maintain a regular cleaning schedule, as well as a regular extermination service schedule.
17. The concessionaire will be required to make all necessary repairs to the licensed premises during the term of the license.
18. The concessionaire will be responsible for maintaining total security within the licensed premises and the immediate surrounding area.
21. The concessionaire must cooperate with DPR during special events or other unanticipated eventualities and with the King County Water Taxi operation.
22. The concessionaire must pay all taxes applicable to the operation of the concession. With the exception of the City of Seattle Sales Tax on Food, no such applicable taxes may be deducted from gross receipts.
23. In addition to a DPR permit, the concessionaire will have to obtain a Health Department License. The concessionaire will also be required to obtain all necessary city, state and federal permits necessary for the outfitting and operation of this concession.
24. DPR Inspectors may visit the concession site unannounced to inspect operations and determine whether or not the concessionaire is complying with the terms of the permit. If these inspectors find violations, the concessionaire may be assessed a fine for each violation. Concessionaires must also comply with all directives originating from inspections by any other city, state or federal agency having jurisdiction over the operation of this concession, (e.g. Seattle/King County Department of Public Health, Seattle Fire Department).

## PROPOSAL SUBMISSION INSTRUCTIONS

**Each proposal submitted must meet the following requirements. Failure to comply will result in the automatic disqualification of a submission from further consideration.**

1. All proposers must submit a proposal that includes a fee offer.
2. Proposals should be printed or typed on 8 1/2" x 11" paper. There is no page limit for proposals, but proposers are encouraged to use discretion in the amount of information they submit.

The proposal and any additional information should be submitted in a sealed envelope with the following information written on the outside:

- **Your name and address**
- **Seacrest Boathouse RFP**
- **Friday, October 7, 2011 @ 4:00 pm**

No proposals should be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to DPR's approval. Oversized drawings may be submitted but must be accompanied by 8 1/2" x 11" sectionals or reductions to 8 1/2" x 11". No telegraphic or facsimile proposals will be accepted. All proposals become the property of the City of Seattle and are subject to public disclosure laws.

3. All proposals should be submitted in a sealed envelope to the Parks Concession Coordinator, Seattle Parks & Recreation, 6310 NE 74<sup>th</sup> Street #109E, Seattle, WA 98115 **no later than Friday, October 7, 2011 @ 4:00 pm**. No proposals will be accepted after that time; proposals received after the time and date listed above will be returned to the proposer and will not be considered for award. Hand delivery to Magnuson Park, Building 30 before the deadline is recommended to ensure consideration of your proposal.
4. **Questionnaire and Instructions**

Your proposal to the RFP must include written responses to the questions listed on the attached page and be delivered to DPR by the proposal due date. Written proposals may be mailed or hand delivered to the following address by the **October 7, 2011** due date. No faxed or emailed responses will be accepted. The organization's authorized representative must sign the application. **Submit five (5) original, signed proposals to:**

City of Seattle Department of Parks and Recreation  
Attn: Rita Hollomon, Concessions Coordinator  
6310 N.E. 74<sup>th</sup> Street, #109E  
Seattle, WA 98115

Selection of the successful proposer will be made by **October 31, 2011**.

## **5. Protest Procedure**

All Protests against the Request for Proposal (RFP) process must be in writing and signed by the protesting party or its authorized agent(s). Such protest must state all facts and arguments on which the protesting party (ies) is relying as the basis for its action. Protest against the Request for Proposal (RFP) must be received by the Superintendent no later than 5:00 P.M. local time within 5 (Five) days of the award announcement, to be considered.

The Superintendent will review the RFP process and the facts alleged as grounds for the protest. The Superintendent will render a written decision within a reasonable time. The decision of the Superintendent will be final and conclusive.

Protests shall be addressed to:

Christopher Williams, Acting Superintendent  
Department of Parks and Recreation  
100 Dexter Avenue North  
Seattle, WA 98109

## Questionnaire/Proposal

1. Cover sheet on your organization's letterhead that includes all relevant contact information for your organization, including but not limited to, the name of the contact person and their phone and fax numbers; and a brief, concise summary of your proposed management plan.
2. Proposal (no more than ten (10) one-sided, single-spaced pages) that includes the following:
  - A. Describe your qualifications including experience and credentials in administering a restaurant, boat rental and/or other type of public recreation facility? (Detail number of years, description of facilities managed, etc.)
  - B. Describe your strategies to implement your management plan for the facility? (How are you staffing it? What are your proposed hours of operation? How will you pay for ongoing maintenance and operation costs? Etc.)
  - C. What improvements, if any are you proposing to make to the facility to enhance park patron's experience? Will you be securing loans or investments from third parties to finance facility improvements, required maintenance, and payment of utilities at the site? (Detail your financial institution and other funding sources.)
  - D. Describe your goals and objectives for the rental operation (bicycles, skates, boat, fishing and outboard motors) while maintaining the operation of the restaurant? (Describe how they align with DPR's mission statement of: Creating Community through People, Parks and Programs.)
  - E. Describe your proposed menu in detail and explain how it will meet healthy options as part of our Healthy Parks, Healthy You program.
  - F. Describe how you will market the activities and services offered at the site. Describe how you will address public access and create a welcoming space within the facility?
  - G. Describe what in-kind services and contributions in addition to the percentage of your monthly gross sales payment as consideration that you are proposing to DPR?  
Remember that the minimum percentage of gross sales is ten (10%) percent for the operation at Seacrest.
3. Provide background information on your organization including the mission and history, and any other relevant information you would like DPR to know.
4. Provide a detailed budget for your organization in order to operate and maintain the Seacrest Boathouse.

***Sample Concession Agreement  
For RFP***

SEACREST BOATHOUSE CONCESSION AGREEMENT  
Between  
THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION  
And

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THIS CONCESSION AGREEMENT, (hereinafter referred to as the “Agreement”), is entered into between The City of Seattle operating through its Department of Parks and Recreation (hereinafter referred to as the “City”) and its Superintendent, and the \_\_\_\_\_ (hereinafter referred to as the "Concessionaire").

**PART A - SPECIAL CONDITIONS AND COVENANTS OF AGREEMENT**

**A-1 GRANT OF CONCESSION**

The City hereby grants to the Concessionaire for the full term of this Agreement upon the conditions, limitations, reservations and provisions herein, the exclusive concession right and privilege to operate a year-round business to be located at the Seacrest Boathouse and Marina located at 1660 Harbor Avenue S.W., Seattle, Washington 98116. The Concessionaire shall be entitled to operate a business at said location subject to the terms of this Agreement, which shall consist of the renting of fishing boats and outboard motors, the renting of fishing tackle and related equipment; operation of a full service restaurant and seafood market and/or delicatessen food service, the operation of the transient moorage; the selling of live and frozen fish bait and related fishing supplies, merchandise, food, and water recreation related retail goods, all as shall be approved in advance by the Superintendent.

**A-2 CONCESSION PREMISES**

The Concession Premises shall include the buildings known as the "Seacrest Boathouse and Marina", its parking lot, docks and piers. Such property shall hereafter be referred to as the "Concession Premises" or the "Premises". Concessionaire shall have the exclusive right to the use of the Seacrest Boathouse and Marina buildings, and the shared access and rights to the public areas of the parking lots, docks and piers, herewith defined as the “Common Areas” in this Agreement.

**A-3 PERIOD OF PERFORMANCE; TERM OF AGREEMENT**

This Agreement shall commence upon execution by the Superintendent and shall expire at 11:59 p.m. on June 30, 2017, unless terminated earlier pursuant to the provisions of this Agreement or by operation of law. The Agreement also includes a five (5) year extension at the option of the Superintendent.

A-4 CONSIDERATION

The Concession right and privilege granted herein for the term as specified, is given in exchange for the Concessionaire's:

- a. Making monthly payments called for under the terms of this Agreement.
- b. Providing concession equipment and services sufficient to reasonably satisfy the intent of this Agreement that Concessionaire operate a full-time, year-round concession as described above.
- c. Satisfying all other conditions and requirements imposed on the Concessionaire by this Agreement or by operation of law.

A-5 DEFINITIONS

As used throughout this Agreement, the following terms shall have the meanings set forth below unless the context clearly indicates a different meaning is intended:

- a. "City" means The City of Seattle and its Department of Parks and Recreation, any division, section, unit or entity of that Department and any of the officers or other officials lawfully representing the Department.
- b. "Concessionaire" means the party granted exclusive concessionaire rights and privileges under this Agreement.
- c. "Subconcessionaire" shall mean any person(s) or business entity not employed by the Concessionaire, but which assumes or exercises all or part of the Concessionaire's rights and responsibilities under this Agreement pursuant to an agreement with the Concessionaire. The terms "subconcessionaire" and "subconcessionaires" mean subconcessionaire(s) in any tier.
- d. "Superintendent" as used herein in regard to the making of inspections, or interpretations; the granting or acquisition of permission, consent, approval, rights, and acting on discretionary matters, etc., shall mean the City's Superintendent of Parks and Recreation or such official's designee.
- e. "Common Areas" shall mean the parking lot, docks, piers, outdoor restrooms, walkways and public non-restricted seating areas.

A-6 RECORDS BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

- a. The Concessionaire shall maintain at the Concession Premises a separate set of books, records, documents and other evidence reflecting all business activity conducted at the Concession Premises, including cash register tapes, credit card charge records and any other such data which in the sole opinion of the Superintendent sufficiently and properly reflect the receipt of funds by Concessionaire from all sources and applicable taxes collected and remitted. Concessionaire's records shall separately identify the sale of fishing licenses.

Concessionaire's records shall also reflect all expenditures by Concessionaire in the performance of its duties under this Agreement. These records shall be subject to inspection by the City, with or without notice, and to review and audit by the Department, the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. The Concessionaire shall ensure that this right of inspection, audit and copying is a condition of any sub-concession agreement or other arrangement under which any person or entity other than Concessionaire is permitted to carry on a business activity in, on or from the Concession Premises.

- b. Upon the request of the City, the Concessionaire shall promptly provide, at Concessionaire's expense, all data determined by the City to be reasonably necessary to enable the City to fully comply with any and every requirement of the State of Washington or the United States of America for information or reports relating to this Agreement and to the Concessionaire's use of the Concession Premises. Such data shall include, if required, a detailed breakdown of the Concessionaire's receipts and expenses.
- c. The Concessionaire shall retain all books, records, documents, cash register tapes, credit card records and other material relevant to this agreement for six (6) years after the expiration or termination of this Agreement, and make them available for inspection by persons authorized under this provision at such times and on such forms as the City may require furnished periodic reports.
- d. Concessionaire shall not commingle with the records of the Concession business permitted under this Agreement, with records of any business conducted at a location outside the Concession Premises.
- e. The Concessionaire shall enter all sales on a type of cash register that contains a tape that records and identifies the date, type of sale, and the amount of each transaction; that is equipped with a cumulative, non-alterable accounting control mechanism.
- f. Concessionaire shall not change record keeping methods or change or discontinue use of a cash register, without the Superintendent's written authorization.

A-7 FINANCES/PAYMENTS

- a. Monthly Percentage Payment to the City  
On or before the 10th day of each month, the Concessionaire shall remit to the City as a Concession Fee for each month in which the Concessionaire is authorized to engage in business under this Agreement, a sum equal to \_\_\_\_\_ (\_\_\_%) percent of Concessionaire's Net Receipts for the preceding month. Net Receipts are defined as revenues received by Concessionaire from all sources for activities conducted on the Concession Premises pursuant to this Agreement, except revenues derived from the sale of fishing licenses, less any applicable sales taxes collected.

b. Place of Payment

All payments to the City shall be paid to The City of Seattle Department of Parks and Recreation, Contract and Business Resources Office, Attention: Department Concessions Coordinator, 6310 NE 74<sup>th</sup> Street #109E, Seattle, WA 98115. A written statement prepared by Concessionaire on forms approved by the City shall accompany each payment, reflecting receipts received, less sales taxes collected.

A-8 OPERATION AND SERVICES

a. Concession Services - Office/Retail Area

The Concessionaire shall sell retail merchandise, including, but not limited to, t-shirts, sports attire, food, beverages and bait and tackle. The Concessionaire shall offer the rental of fishing tackle, boats and motors from the Concession Premises.

b. Hours of Operation

The Concessionaire shall operate and keep the Concession Premises open to the public at least according to a schedule that has been mutually agreed upon by the Concessionaire and the Superintendent. Concessionaire shall post in writing, its hours of operation in a conspicuous place in the vicinity of the public entry to the Seacrest Marina and Boathouse building, visible from the exterior.

c. Boat Equipment

The Concessionaire shall provide and maintain in safe condition the following:

- (1) A minimum of Ten (10) boats available to the public for rental, each boat equipped with oars or paddles and a floatation seat cushion rated as a Personal Floatation Device by the U.S. Coast Guard.
- (2) The Concessionaire shall have available for rental to the public, a minimum of five (5) outboard motors suitable for use on its rental boats.
- (3) The Concessionaire shall provide each occupant of each rental boat with a US Coast Guard approved Type III or better Personal Flotation Device (PFD).
- (4) The Concessionaire shall demonstrate the correct fitting and use of PFDs to each person occupying a boat rented from the Concessionaire and shall demonstrate the correct use of all equipment so rented.

d. Response Boat

In addition to rental boats and motors, the Concessionaire shall supply and maintain in the water and equipped for immediate use and in good operating order at all times during hours of operation, one (1) engine powered boat equipped to provide assistance to persons renting Concessionaire owned boats, which boat and motor shall be reserved exclusively for the use of Concessionaire.

e. Other Boats

The Concessionaire may rent sailboats and kayaks.

- f. Exclusions from Operation  
The Concessionaire shall not rent or sell any air mattresses or floating chairs, powered personal watercraft or other floatation device, without the written consent of the Superintendent.
- g. Charter Fishing Boat Services  
The Concessionaire may operate a charter boat service for recreational anglers only with the prior written approval of the Superintendent and with insurance coverage in a form acceptable to the City.
- h. Promotion/Advertisement  
The Concessionaire shall promote and advertise the facility in the commercial section of the local telephone directory in a manner subject to the prior approval of the Superintendent.

The Concessionaire shall, at its own expense, promote and encourage seasonal rentals of boats and shall provide and install on the facility a sign that shall first be approved by the Superintendent as to its appearance and location that shall read "Seacrest Boathouse, Boat Rentals, Fishing Supplies and Bait, a City of Seattle Department of Parks and Recreation Facility."

#### A-9 CAPITAL IMPROVEMENTS (Optional)

- a. During the Term of this Agreement, the Concessionaire shall make improvements having costs of at least [REDACTED] thousand (\$ [REDACTED]) dollars, to the buildings and docks located at Concession Premises. Such improvements shall be approved in advance by the Department.
- b. As proof of compliance with this provision, the Concessionaire shall provide to the Department on a monthly basis, a written summary of improvements made, together with supporting documentation in a form satisfactory to the Department. This summary shall accompany the written monthly Concessionaire's revenue payment report.
- c. The Concessionaire shall keep the premises free of any liens and shall provide the City with a bond for the performance and payment of all work undertaken by Concessionaire, in the amount and value of the capital improvement to be made. In addition, during any construction work, Concessionaire shall obtain insurance in an amount acceptable to the Department, naming the City as additional insured and additional loss payee.

#### A-10 ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are attached. No other understandings, oral or otherwise may modify the text or an attachment to this Agreement.

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

## **PART B - GENERAL TERMS AND CONDITIONS**

### **B-1 ACCOUNTING MONTHS AND YEAR**

The Concessionaire shall utilize calendar year accounting year for the business operated at the Concession Premises.

### **B-2 ADMINISTRATIVE CHARGES DUE TO LATE PAYMENT**

If any payment is not paid to the City within ten (10) days after the date due, the Concessionaire shall be in breach of this Agreement. In addition to the other remedies available to the City in the event of breach, the Concessionaire shall pay an administrative late charge of Twenty-Five Dollars (\$25.00) shall be added to any such late monthly payment. Provided, however, that the City's acceptance of a late payment charge shall not be in lieu of its other remedies under this Agreement.

### **B-3 SECURITY DEPOSIT**

The Concessionaire shall, prior to commencing operation and for the full term of operation hereunder, deposit with The City of Seattle Department of Parks and Recreation Five Hundred Dollars (\$500.00), or shall provide in a form acceptable to the City, a contract performance bond payable to The City of Seattle Department of Parks and Recreation, in the amount of Five Hundred Dollars (\$500.00) as a security for the faithful performance of and compliance with all the terms and conditions of this Concession Agreement. In the event that the deposit of security with the City for payment of such costs, disbursements, and expenses shall not in any manner be considered as payment for any concession fees due or to become due under this Agreement, or in any manner release the Concessionaire from any concession fees to be paid, or from any of the obligations herein assumed. If all terms and conditions are fully complied with by the Concessionaire, then any security deposit shall be returned to the Concessionaire at the expiration of this Agreement.

### **B-4 PRICE LIST**

The location of points of sale, methods of sale, and prices charged for commodities sold or business transacted on the Concession Premises shall at all times be subject to the supervision and approval of the Superintendent.

A copy of the Concessionaire's current price list for each item of service, food or merchandise offered for sale or rent at the Concession Premises, on a written schedule that is conspicuously displayed in full view of the public at all times on the Concession Premises. The Concessionaire's price schedule shall be subject to prior written approval by the Department. The Concessionaire shall strictly adhere to the prices established in the Department approved price schedule.

#### B-5 UTILITIES

The Concessionaire shall pay before delinquency, all charges for water, light, heat, garbage collection, sewer, and all other utilities at the Concession Premises. If such utility services are furnished to the Concession Premises together with adjacent City property, the Concessionaire shall reimburse the City for the Concessionaire's pro rata share of any consolidated charge paid by the City. The Concessionaire shall pay all charges for utility hook-ups, connections or installations, disconnections, and service calls for any utility serving the Concession Premises. The Concessionaire shall obtain a business telephone having at least one telephone line, the telephone number for which shall be publicly displayed at the Concession Premises, and shall be the same number published in all promotional advertising and telephone listings.

#### B-6 TAXES

The Concessionaire shall pay before delinquency, all taxes, levies, and assessments of any nature and kind whatsoever arising as an incidence of this Agreement. The Concessionaire shall pay the Washington State Leasehold Taxes due as a result of this Agreement, directly to the Department with each monthly rental payment to the Department. Washington State Leasehold Excise Tax is over and above any Concessionaire Fees paid by the Concessionaire to the Department and shall be separately listed on all monthly documentation sent by the Concessionaire to the Department.

#### B-7 CUSTODIAL/GROUNDS MAINTENANCE OF CONCESSION PREMISES

Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the inside of such areas using a company reasonably approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Lessee's operations.

If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, Lessee fails to take good care of such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Lessee shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view.

All major and minor repairs necessary to maintain the Building (excluding the major structural and infrastructure aspects, and the exterior of the Building), in the Premises, and the Common Areas, including the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Building and the Premises in a reasonably good operating condition, as determined by City, shall be performed by Lessee at its expense.

#### B-8 EQUIPMENT

All equipment and other personal property used by the Concessionaire at the Department's Concession Premises shall remain the property of the Concessionaire under the conditions and provisions of this Agreement.

#### B-9 GENERAL NON-DISCRIMINATION PROVISION

The Concessionaire shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

#### B-10 EQUAL EMPLOYMENT OPPORTUNITY

- A. The Concessionaire shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Concessionaire shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Concessionaire shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause. The Concessionaire will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these provisions; provided, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.
- B. The Concessionaire shall furnish to the Director of Finance (or his/her designee), upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Concessionaire in implementing the requirements of this section, and will permit access to the Concessionaire's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Finance for the purposes of investigation to determine compliance with the requirements of this section.
- C. If, upon investigation, the Director of Finance finds probable cause to believe that the Concessionaire has failed to comply with any of the requirements of this section, the Concessionaire and the Superintendent of the Department of Parks & Recreation ("Superintendent") shall be so notified in writing. The Superintendent shall give the Concessionaire an opportunity to be heard, after ten-calendar days' notice. If the Superintendent concurs in the findings of the Director of Finance, he/she may

suspend or terminate the Agreement and evict the Concessionaire in accordance with law.

D. Failure to comply with any of the terms of these provisions shall be material breach of this Agreement.

E. The foregoing provisions of this section shall be inserted in all subcontracts entered into under this Agreement.

#### B-11 RECORD-KEEPING

The Concessionaire shall maintain a complete, separate set of financial records pertaining to the Concession operated under the terms of this Agreement, during the term hereof and for at least 12 months after completion of this Agreement. In addition, the Concessionaire shall maintain written records in a form acceptable to the Department, which contains information necessary to document level of utilization of WMBEs and other businesses as subcontractors and suppliers in this Agreement and in its overall public and private business activities. The Concessionaire shall also maintain written records of all written quotes, bids, estimates, or proposals obtained by the Concessionaire for all businesses seeking to participate as subcontractors or suppliers to the Concessionaire for all goods and services obtained by Concessionaire for use in operating the Concession permitted by this Agreement. The City shall have the right to inspect and copy any or all of such records as it shall determine. If this Agreement involves federal funds, the Concessionaire shall comply with all record-keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement.

#### B-12 INSURANCE

The Concessionaire shall secure and maintain during the full term of this Agreement, at no expense to the City, insurance by one or more companies authorized to do business in the State of Washington, as follows:

- a. Fire and Extended Coverage Insurance: A policy for fire and extended coverage, vandalism, malicious mischief, and special extended coverage insurance in forms and with insurance companies approved by the City Attorney and City Risk Manager providing coverage of not less than the full replacement value of the Premises, which value shall be determined by an independent appraiser selected by the Concessionaire and the City.

Any loss under such insurance shall be payable to the City, and shall be applied to the cost of rebuilding, repairing, replacing, or restoring the Premises.

- b. General Liability Insurance  
A policy for commercial General Liability insurance, primary to any other insurance, and under which:

- (1) Liability limits shall be in at least the following amount(s):  
\$1,000,000 bodily injury, each occurrence, and \$500,000 property damage, each occurrence, or \$1,000,000 combined single limit bodily injury and property damage; provided, that in the event the Superintendent deems such insurance to be inadequate to fully protect the Concessionaire and the City, the Concessionaire shall increase said liability limits and may increase the maximum deductible, all to such amounts as the Superintendent annually shall deem reasonably adequate to provide said protection, which increase shall be completed within sixty (60) days after the date of notice that the Concessionaire's insurance is deemed to be inadequate.
  - (2) Coverage shall provide against all risk liability for any injury, death, damage and/or loss of any sort sustained by any person, organization or corporation (including the Concessionaire and any of its officers, employees and agents) in connection with any act or omission upon, or use or occupancy of the Premises under this Agreement, and shall include, but need not be limited to the following types (described in insurance industry terminology):
    - (a) Premises operations liability;
    - (b) Blanket contractual liability;
    - (c) Property damage;
    - (d) Independent contractor (O & CP);
    - (e) Automobile liability for owned, leased, hired or non-owned, if there will be any use of vehicles on the Premises by or on behalf of the Concessionaire;
    - (f) Products and/or completed operations; Personal injury, coverages A, B, and C, and
    - (g) Fire legal liability.
- c. City Named as Additional Insured: The City shall be named as an additional insured in the following manner in all policies of insurance to be secured and maintained pursuant to this Agreement.

The City of Seattle shall be added as an additional insured for all coverages provided by this policy of insurance and shall be fully and completely protected by this policy for any claim, suit, injury, death, damage or loss of any sort whatsoever tangible or intangible including consequential damages sustained by any person, organization or corporation in connection with activity upon or use or occupancy of the Premises, as well as any activity performed by the principal insured under an Agreement with the City.

The coverage provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise changed in any respect without providing at least thirty (30) days prior written notice to The City of Seattle, in care of the Department of Parks and Recreation, Magnuson Park and Business Resources, 6310 NE 74<sup>th</sup> Street #109E, Seattle, WA 98115.

- d. **Worker's Compensation:** In addition to the above coverage, the Concessionaire shall provide Worker's Compensation coverage for its employees in accordance with Washington State laws and Department of Labor and Industry rules and regulations.
- e. **Evidence of Insurance:** The Concessionaire shall deliver to the Superintendent, a copy of all policies required under this Agreement hereof, and all endorsements thereto or other evidence to the reasonable satisfaction of the City Risk Manager that the Concessionaire has secured or renewed and is maintaining insurance as required by this Agreement, as follows:
  - 1. On or before the effective date of this Agreement; and
  - 2. Within five (5) City business days prior to the expiration or renewal date of each such policy; and
  - 3. Within five (5) City business days after the Concessionaire's receipt of a written request therefore.
- f. **Assumption of Risk:** The placement and storage of personal property on the Premises shall be the responsibility, and at the sole risk, of the Concessionaire.
- g. **Adjustments of Claims:** The Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Concessionaire under this Agreement. The Concessionaire shall ensure that all such claims, whether processed by the Concessionaire or the Concessionaire's insurer, either directly or by means of an agent, will be handled by a person with a permanent office in the Seattle area.
- h. **Concessionaire's Responsibility:** The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Concessionaire's liability hereunder nor to fulfill the Concessionaire's obligations under this Agreement. Notwithstanding said policies of insurance, the Concessionaire shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Concessionaire, or any of its agents, officers and employees or through use or occupancy of the Concession Premises.
- i. **Termination Upon Failure to Insure:** Notwithstanding any other provision of this Agreement, the failure of the Concessionaire to comply with the above provisions of this section shall subject this Agreement to immediate termination at the discretion of the Superintendent without notice to any party, if it is necessary to protect the public interest.
- j. **Indemnification:** The Concessionaire shall indemnify and hold the City free and harmless from liability from any and all claims, demands, losses, and any death, injury or disability of any person and/or damage to any property or business occurring on or about the Concession Premises during the Concessionaire's use and occupancy thereof or arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of the Concessionaire or any of its officers, employees or contractors or

subconcessionaires. In the event of suit against the City, Concessionaire shall appear and defend the same, provided Concessionaire is notified in a timely manner of the suit. In the event judgment is rendered against the City, the Concessionaire shall cause the same to be satisfied within ninety (90) days after a final determination thereof, including a final determination of any appeals.

Such indemnity shall not include any claims arising as a result of the sole negligence of the City, its employees and agents, but shall include but not be limited to any liability as may arise or occur from concurrent, contributing or joint actions or omissions of the Concessionaire and the City.

**B-13 ASSIGNMENT OF AGREEMENT**

The Concessionaire shall not assign or transfer this Agreement, in whole or in part, or otherwise convey any concession right or privilege granted hereunder or any part of the Premises unless the approval of the Superintendent is first obtained.

**B-14 STANDARDS**

The Concessionaire, its agents and employees, shall render courteous service to the public with a view of adding to the public use and enjoyment of the Concession Premises.

The Concessionaire shall operate and conduct the facilities on the Concession Premises in a businesslike manner, and will not permit any acts or conduct on the part of the Concessionaire's employees that would be detrimental to the operation of the Concession Premises.

**B-15 CLOSURE OF CONCESSION PREMISES**

The City reserves the right to close the Concessionaire's operation or any portion thereof for the convenience of the City upon a seven (7) day notice to the Concessionaire and to close the Concession Premises or any portion thereof without notice to meet any emergency as determined by the Superintendent. In the event of any such closure, the City shall post a sign notifying the public of the impending or effective closure. In the event of such closure, the City shall reimburse the Concessionaire for any remaining interest the Concessionaire may have in the Concession Premises measured by Concessionaire's investment in approved capital improvements made by Concessionaire to the Concession Premises, less accrued amortization and depreciation as set forth in a mutually agreeable amortization schedule.

**B-16 DEMOLITION OF CONCESSION PREMISES**

The City reserves the right to terminate this Agreement in order to demolish the Concession Premises. The City shall notify the Concessionaire of such intent in writing six months in advance. In the event of such termination, the City shall reimburse the Concessionaire for any remaining interest the Concessionaire may have in the Concession Premises measured by Concessionaire's investment in approved capital improvements made by Concessionaire to the Concession Premises, less accrued amortization and depreciation as set forth in a mutually agreeable amortization schedule.

**B-17 SURRENDER OF PREMISES AND REMOVAL OF CONCESSIONAIRE'S PROPERTY**

- a. Upon termination or expiration of this Agreement, the Concessionaire shall surrender the Concession Premises to the City and promptly surrender and deliver to the City all keys that it may have to any and all parts of the Concession Premises.
- b. The Concession Premises shall be surrendered to the City in as good a condition as at the date of execution of this Agreement, except for the effects of reasonable wear and tear, alterations, and repairs made with concurrence of the City, or property damaged or destroyed by an insured peril where insurance proceeds have been paid to the City.
- c. The Concession Premises shall be returned free of all of the personal property of Concessionaire and in a neat, clean and in reasonable repair condition. Capital improvements made pursuant to this Agreement shall not be removed.
- d. In the event that after termination or expiration of this Agreement the Concessionaire has not removed its property and fixtures the City may, but need not, remove Concessionaire's personal property and hold it for the Concessionaire, or place the same in storage, all at the expense and risk of the Concessionaire, and Concessionaire shall reimburse the City for any expense incurred by the City in connection with such removal and storage. The City shall have the right to sell such stored property, without notice to Concessionaire, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first, to the cost of sale; second, to the payment of the charges for storage; and third, to the payment of any other amounts which may then be due from the Concessionaire to the City; the balance, if any, shall be paid to the Concessionaire.

**B-18 LIENS AND ENCUMBRANCES**

The Concessionaire shall keep the Concession Premises free and clear of any liens and encumbrances of any kind. At the City's request, the Concessionaire shall furnish the City written proof of payment of any item which would or might constitute the basis for such a lien on the Concession Premises if not paid.

**B-19 ENTRY**

The City and its agents may enter the Concession Premises at all reasonable times for the purpose of inspecting or repairing the same, but this right shall impose no obligation upon the City to make inspections to ascertain the condition of the Concession Premises or to make repairs.

**B-20 NOTICES**

Unless otherwise directed in writing, notices, reports, and payments shall be delivered to the City at the following address:

Magnuson Park and Business Resources Office  
Attention: Department Concessions Coordinator  
6310 NE 74<sup>th</sup> Street #109E  
Seattle, WA 98115

And to the Concessionaire at the following address:

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Either party may change its address for receipt of reports, notices or payments by giving the other written notice of such change.

**B-21 PHOTOGRAPHS**

Each party hereto may make photographs and motion pictures of the Concession Premises and the activity, people, displays, and exhibits thereon; provided, that in the event such material is to be used for a commercial purpose, prior to making the same the Concessionaire shall obtain the approval of the Superintendent and shall pay to the City a fee therefore in an amount agreed upon by the Concessionaire and the Superintendent in accordance with applicable provisions of the Department's then-current Fees and Charges Schedule; and prior to using the same, the Concessionaire shall obtain the necessary written releases from every individual affected.

**B-22 DEFAULT OR FAILURE OF CONSIDERATION**

The City may terminate this Agreement for cause, and take immediate possession of the Concession Premises in the event that the Concessionaire shall have failed to perform any of the obligations arising under this Agreement and such default or deficiency in performance either:

- a. Was not remedied by the Concessionaire within the time period specified in the City's notice (if any) to correct the default or deficiency or suffer termination, which period, in each instance, shall be reasonable, given the nature of the default or deficiency and the difficulty of remedying the same; or
- b. Was the subject of two written default notices from the City within the previous six (6) months; provided, that the Concessionaire shall not be in default of any requirement hereof where the Concessionaire's failure to perform in a timely manner has been caused, without fault of Concessionaire, by government delay in the issuance of any necessary government permit.

**B-23 TERMINATION FOR CONVENIENCE**

In addition to termination for cause and termination on expiration of the term hereof, this Agreement may be terminated by either party for convenience, by the giving of advance written notice to the other party. No such termination shall be effective earlier than thirty (60) days after the receipt of the termination notice by the receiving party. Termination under this provision shall not relieve Concessionaire for any duty or obligation owed to the City under the terms of this Agreement.

- B-24 TIME**  
If the last day for the performance of any obligation under this Agreement falls upon a non-City business day, including Saturday, Sunday or official state legal holiday, the final day for performance shall be the City next business day.
- B-25 WAIVER**  
Absent a specific written waiver signed by the Superintendent, the City shall not be deemed to have waived any right the City has under the terms of this Agreement or by operation of law with respect to any breach or default by Concessionaire. Such a written waiver shall be confined to its specific terms. Waiver of any obligation arising under the Agreement shall not be deemed a waiver of any other provision of the Agreement or of the Concessionaire's full compliance with the terms and conditions of the Agreement. No waiver will be implied from the any knowledge the City may have of any breach, default, or non-compliance by Concessionaire. The City's failure to enforce any provision of this Agreement shall not be deemed as waiver or consent.
- B-26 CAPTIONS**  
Captions are for convenient reference only, and do not limit or amplify the language of the paragraph(s) following.
- B-27 SIGNS AND ADVERTISING**  
The City's written approval shall be required for all signs and advertisements on the Concession Premises; and such approval must be obtained prior to posting of any signs. Concessionaire shall be solely responsible for obtaining any permit required under the laws of the City of Seattle, for any sign or advertising erected at the Concession Premises.
- B-28 CHANGES AND MODIFICATIONS**  
The parties hereto reserve the right to amend this Agreement from time to time by mutual agreement in writing. No amendment hereto shall be effective unless in writing and signed by an authorized representative of each of the parties.
- B-29 APPROVALS BY THE CITY OR SUPERINTENDENT**  
The granting of approval or consent by the Superintendent to any action of Concessionaire does not constitute the taking of any official action, including the granting of approval, by any other City department or official, where other department's or official's action is required by law, ordinance, resolution or rule or regulation.
- B-30 CONDITION OF PREMISES**  
The City and Concessionaire acknowledge that they have jointly examined the Concession Premises. Concessionaire accepts the Concession Premises in their present condition as of the date of commencement of this Concession Agreement.
- B-31 SEVERABILITY**  
Should any term, provision, condition or other portion of this Agreement or any provision of any document incorporated by reference be held invalid, such invalidity shall not

affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the remainder shall continue in full force and effect.

**B-32 SUCCESSORS IN INTEREST**

Unless otherwise provided, the terms, covenants, and conditions in this Agreement shall apply to and bind the Concessionaire and any and all heirs, successors, executors, administrators, and assigns of the Concessionaire, all of whom shall be jointly and severally liable with the signatory to this Agreement.

**B-33 NO RELATIONSHIP ESTABLISHED**

The City shall in no event be construed to be a partner, associate, or joint venturer of the Concessionaire or any party associated with the Concessionaire. The Concessionaire shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

IN WITNESS WHEREOF, the parties hereto have caused this Concession Agreement to be executed by their respective representative(s):

FOR THE CONCESSIONAIRE:

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF KING

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared \_\_\_\_\_, to me known to be the individuals that executed the foregoing instrument, and acknowledged that the executed said instruments as their free and voluntary act for uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

FOR THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION

By: \_\_\_\_\_  
Christopher Williams, Acting Superintendent  
Seattle Parks and Recreation

STATE OF WASHINGTON

COUNTY OF KING

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared Christopher Williams, to be known to be the Acting Superintendent of The City of Seattle Department of Parks and Recreation, who executed the foregoing instrument on behalf of The City of Seattle for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_