

**FOOD AND BEVERAGE VENDING MACHINE SERVICE AGREEMENT**

**Between**

**THE CITY OF SEATTLE**

**DEPARTMENT OF PARKS AND RECREATION**

**and**

**Concessionaire TBD by RFP**

**THIS VENDING SERVICE CONCESSION AGREEMENT** is entered into between the **City of Seattle**, a municipal corporation of the State of Washington (“City”), by and through its **Department of Parks and Recreation** (“SPR”) and its Superintendent (“Superintendent”) and *Concessionaire’s name will be inserted here* (“Concessionaire”). The City and Concessionaire may sometimes be referred to in this Agreement together as “the Parties” or individually as “Party”.

WHEREAS, the City of Seattle, operating through its Department of Parks and Recreation, owns and operates various public parks; and

WHEREAS, the City desires to have consistent food and beverage vending services at park facilities; and

WHEREAS, the City advertised a Request for Proposals for food and beverage vending machine services in the City’s Newspaper of record, List Newspaper postings to solicit Bids from qualified individuals and firms; and

WHEREAS,

WHEREAS,

**THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

**IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:**

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

**1 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.** “City” means The City of Seattle and its Department of Parks and Recreation “SPR”, any division, section, unit, or entity of that Department and any of the officers or other officials lawfully representing the Department.
- B. Concessionaire.** “Concessionaire” means the party granted concessionaire rights and privileges under this Agreement.
- C. Department.** “SPR” shall mean The City of Seattle, Department of Parks and Recreation.
- D. DSB.** “DSB” shall refer to Washington State Department, Services of the Blind.
- E. Vending Products.** As used within this Agreement, “Vending Products” shall include frozen food products, packaged nuts, baked chips, snacks, fruits, vegetables, packaged foods, diet soda, water, various beverages, and popcorn.
- F. Adjusted Gross Sales.** “Adjusted Gross Sales” shall mean all sales and revenue received from all vending machines granted in this agreement reduced only by sales tax collected.
- G. Superintendent.** “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.
- H. Premises.** “Premises” shall mean locations on SPR property and within SPR buildings where the Concessionaire is granted the right to place vending machines.
- I. Energy Star.** “Energy Star” shall mean that government-backed program that helps business and individual protect the environment through superior energy efficiency. Energy Star compliant products meet strict energy efficiency guidelines set by the EPA and US Department of Energy.
- J. VendingMiser.** “VendingMiser” (patented) represents a technology, which significantly reduces energy consumption without compromising the vended product. Utilizing a custom passive infrared sensor, VendingMiser powers down a vending machine when the area surrounding it is unoccupied and automatically repowers the vending machine when the area is reoccupied.
- K. Term.** “Term” when used in this agreement includes both the Initial Term and the Extended Term unless clearly indicates otherwise.

**2 GRANT OF CONCESSION.**

SPR hereby grants to the Concessionaire for the full term of this Agreement upon the conditions, limitations, reservations, and provisions herein, the exclusive right and privilege to operate a business consisting of food and beverage vending machine services approved by SPR at SPR properties in the locations listed in Exhibit A – Vending Locations to this Agreement. SPR reserves to itself the rights to offer or to grant any third party the right to offer Vending Products in locations not listed on Exhibit A – Vending Locations. SPR reserves the right to cancel and remove any locations listed in Exhibit A – Vending Locations by sending written notice to the Concessionaire thirty days in advance of cancellation.

**3 TERM OF AGREEMENT.**

**A. Initial Term:** So long as Concessionaire has executed the agreement(s) required under Section 5 (C) of this Agreement, this Agreement shall commence (**DATE AND TIME**) and shall expire at (**DATE AND TIME**), unless terminated earlier pursuant to the provisions hereof.

**B. Extended Term:** At the Superintendent’s discretion, this agreement may be extended for one additional five-year term. If the Concessionaire would like to extend the existing agreement, Concessionaire must send written notice to the Superintendent 180 days prior to the termination date of this agreement in which the Superintendent has 60 days to notify Concessionaire of the decision to extend. The Concessionaire must be current on all payments and compliant with this agreement to extend.

**4 TERMINATION.**

Either party may terminate this Agreement by giving the other party 60 days written notice of its intention to so terminate

**5 CONCESSIONAIRE RESPONSIBILITIES.**

**A. Healthy Menu Offerings.** The Concessionaire shall always stock all vending machines exclusively with health-conscious food and beverage selections that meet the “Healthiest and/or Healthier” products selection criteria referenced in Exhibit B – Healthy Vending Ordinance and Guidelines. Company will only provide high quality, name brand merchandise that is within its “Best by Date”. Company will remove all merchandise that is beyond its “Best by Date”. Company will not stock low-end or off-brand products in its market.

**B. Vending Service.** Concessionaires shall ensure that vending services must be filled in accordance with customer demand so that no more than 20% of the slots are empty at any one time.

**C. Washington State Department Services for the Blind (DSB).** As a condition precedent to the commencement of this Agreement, Concessionaire must execute a separate commission agreement (“Commission Agreement”) with the State Department of Services for the Blind (DSB), as required by State law currently codified at RCW 74.18.230 and regulations currently codified at WAC 67-35-160. This Commission Agreement will control payments to DSB for all Administrative Vending Service Locations. Current Administrative Vending Service Locations are set out in Exhibit A and are subject to change at any time at SPR’s sole discretion. An increase in Administrative Vending Service Locations would increase the amount Concessionaire owes DSB. The form of this Commission Agreement will be provided by DSB directly to Concessionaire. Concessionaire shall maintain in full force and effect the Concession Agreement, as is may be updated pursuant to DSB requirements or Washington law, throughout the term of this Agreement. Pursuant to Washington law and the terms of the Commission Agreement, **Concessionaire shall pay DSB** directly a concession fee equal to (percentage determined by RFP) of Concessionaire’s total Adjusted Gross Sales for all Administrative Vending Service Locations (as the term is used and listed in Exhibit A). Except as specified in Exhibit A, payment to DSB will be in addition to and does not replace the other payments due to SPR under this Agreement. Concessionaire will provide to SPR the most current copy of the DSB Commission Agreement as well as send SPR monthly sales reports for all Administration Vending Service Locations. Any failure by Concessionaire to provide monthly sales reports or to make all payments required by the DSB Commission Agreement shall be a breach of this Agreement and subject Concessionaire to contractual remedies by City in addition to any remedies that may be available to the State or DSB.

**D. Pay Monthly Concession Fees to SPR** Concessionaire shall pay SPR Concession Fee payments hereinafter be referred to as the “Concession Fee”. Concession Fee payments for all public vending machines shall be sent to SPR.

**1 Public Vending Machine Sale, Concessionaire** shall pay SPR, a concession fee equal to (percentage determined by RFP) of Concessionaire’s total Adjusted Gross Sales or a minimum annual payment of \$25,000 (Twenty-Five Thousand dollars), whichever is greater for all public serving vending machines.

**a. Concession Fee Commencement date and Installments:**

Concessionaire shall pay Concession Fee monthly which will commence the first full month following the Commencement Date “(Rent Commencement Date”) and thereafter Concession Fee shall be paid in monthly installments for the duration of the term. Concessionaire monthly installment payment will be based on the Concessionaire monthly sales report. SPR will prepare and send to Concessionaire a monthly invoice.

**b. Monthly Invoice Amount:** SPR will send to Concessionaire an installment of the annual rent monthly invoice based on the (percentage determined by RFP) of Adjusted Gross Sales.

**c. Annual Minimum Payment:** If the total monthly Concession Fees paid to the City based on the percentage of Adjusted Gross Sales accumulated through December is less than \$25,000, then SPR will invoice Concessionaire the balance due in the December sales invoice sent in January.

- If SPR determines in its sole discretion that the annual minimum sales of \$25,000 were not reached due to partial year's operation caused by system wide SPR facility closures or commencement or expiration of agreement, SPR will adjust the annual minimum of \$25,000 by the percentage of months that SPR determines the Concessionaire was not able to operate.

**2 Reporting Sales:** Concessionaire shall submit a monthly concession fee report ("Monthly Sales Report") that provides income and fee data for each SPR location served by the concessionaire. Monthly Sales Report will list each vending location and sales data in the format required by SPR. Monthly Sales Report shall be due on or before the 5<sup>th</sup> of the months for the previous month sales. The Concessionaire shall include any supporting documentation that may be required. Concession fee calculation shall be shown in the Monthly Sales Report. The Concessionaire will explain in writing monthly all increases or decreases in revenue to the satisfaction of SPR. The Concessionaire shall also provide SPR with information about conditions impacting the vending services, planned marketing activities, changes in Concessionaire's operations, or other factors affecting the vending service and/or sales.

**3 Invoices:** SPR will invoice the concessionaire for the concession fees reported above (section D.2) no later than the 10th day of the month. Invoices will be delivered electronically via email to the concessionaire. Payment is due ten days from the date of the invoice as described below (section D.4).

**4 SPR Public Vending Commission Payment Location:** All City invoices' payments shall be made payable to City of Seattle Treasury and delivered to:

***By mail:***

Treasury Department Accounts Receivable  
PO Box 94626  
Seattle, Washington 98124-6926

**Hand delivered:**

Seattle Municipal Tower

4<sup>th</sup> Floor, Customer Service Center  
700 5<sup>th</sup> Avenue  
Seattle, WA 98124-4127

- 5 Late & Refused Payment:** In the event Concessionaire fails to pay any sum after such amount is due to the City, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid. Additionally, a twenty-dollar (\$20.00) charge shall be paid by Concessionaire to the City for each check refused payment for insufficient funds or any other reason. If any of the aforementioned fees or charges change, SPR shall provide a written explanation to Concessionaire of the amount by which such fees and charges have changed.
- 6 Taxes, Levies And Assessments** The Concessionaire shall be responsible for and pay before delinquency, all taxes, levies, and assessments of any nature and kind whatsoever, that at any time hereafter may be levied, assessed, or otherwise imposed upon the Concession as a result of the Concessionaire's activities that are or become payable during the term of this Agreement including, but not limited to, taxes arising out of the business conducted such as sale of goods; taxes levied on equipment and taxes on the Concessionaire's interest in this Agreement.
- E. Records:** The Concessionaire shall maintain a clear and documented set of books, records, documents, and other evidence reflecting all business activity conducted at the Concession Premises, including vending sales, credit card charge records, and any other data relating to the determination of Gross Sales and the calculation of the Concession Fee.
- F. Audit:** Concessionaire shall permit its records to be inspected by City, with reasonable notice, and Concessionaire's records shall be subject to copying and audit by SPR, 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. The Concessionaire shall not be required to staff City's audit of Concessionaire's financial records, and City shall solely bear the costs associated with its inspection of Concessionaire's financial activity under this Agreement.
- G. Retention:** Concessionaire shall retain all financial books, records, documents, refunds, credit card records and other material relevant to the financial activity under this agreement for six (6) years after the expiration or termination of any calendar year under the Agreement. The obligations in Part A, Section 5-G

Retention shall survive termination or expiration of the Agreement for the applicable duration of any statute of limitations.

- H. Vending Machines:** The Concessionaire shall initially install vending machines at SPR locations listed in **Exhibit A – Vending Locations**. The location of all vending machines on the premises must be approved in advance by the Superintendent or the Superintendent designee.
- 1 Type and Number:** The type and number of vending machines shall be as described in the Concessionaire’s Bid Response attached as **Exhibit C – RFP Bid Response**
  - 2 Condition:** All vending machines installed must be National Sanitation Foundation (NSF) approved and Underwriter Laboratories (UL) certified as well as be modern in design. SPR reserves the right to request replacement of machine that is deemed, in the opinion of SPR, unsuitable and/or unreliable. Should technology advances produce new types of vending machines services or changes in customer or SPR preferences require the addition of new variety of vending services, SPR and the Concessionaire will negotiate agreeable fee structures for these new machines.
  - 3 Energy Efficient:** The vending machines provided by the Concessionaire shall be fully Energy Star compliant and/or equipped with Vending Misers or other conservation technology that is acceptable to SPR.
  - 4 ADA Requirement:** All vending machines and associated parts must meet current ADA standards; including but not limited to the requirement for all operable parts to meet the required reach ranges, between 15" and 48" above finish floor.
  - 5 Electrical Improvements:** The Concessionaire may at its sole expense and with SPR prior approval add or modify electrical services for vending machines. Modifications to the existing electrical service may be performed by a licensed electrician with approval by SPR Park Engineer. Electrical construction projects must be inspected and approved by SPR at the Concessionaire's expense.
  - 6 Service Hours:** The Concessionaire shall service vending machines during the hours that SPR facilities are open to the public. SPR will not furnish the Concessionaire either keys to all facilities or a master key for all facilities.
  - 7 Cleaning and Maintenance:** Concessionaire at its sole expense shall be responsible for cleaning and maintaining all machines. Concessionaire will service and clean its vending machines at least every other week and more frequently if required by SPR.

- 8 Payment Options:** All vending machines will be equipped with multiple way to receive payment to include cash and credit/debit.
- 9 Advertisement on Machines:** Vending machine provided by the Concessionaire shall be generic machines and must not identify a brand or advertise a product, brand, or company, except the button to purchase the product can identify the product being purchased.
- 10 Ownership:** All vending machine and all unsold merchandise, money in vending machine and supplies installed on the premises shall remain the sole property of the Concessionaire. All personal property and machines or the Concessionaire that are placed on the premises are at the Concessionaire sole risk. Concessionaire hereby releases the City from any claims arising from the loss or damages to Concessionaire's property.
- 11 Prohibited Products and Containers.** The Concessionaire shall not offer for sale: tobacco or smoking, vaping, liquor, marijuana, gambling or weapon products, any products that require the purchaser to be over eighteen (18) years of age, any equipment or supplies for use with the above items, any illegal or over-the-counter drugs, or any products in glass containers. At the Superintendent's sole discretion, other products may be prohibited for sale. This AGREEMENT is for vending only of food and beverages for consumption by all ages.
- I. Pricing and Price Adjustments:** Initial prices, portions and/or retail prices shall be as set forth in *Insert Concessionaire's Name* RFP Bid Response as attached as Exhibit C – RFP Bid Response unless modified in writing.
- J. PRICE ADJUSTMENT:**  
Each year by July 1st, the Concessionaire may submit a written request to SPR for price increases to reflect inflationary increases being charged to the Concessionaire. The Concessionaire shall document the economic rationale for the proposed increases to the sole satisfaction of SPR. Price increases should not exceed the inflation rate as posted in the Consumer Price Index for All Urban Consumers (CPI-U) for Seattle–Tacoma–Bellevue for the previous year. Any change to the vending product prices remains subject to the Superintendent's approval.
- K. Signs:** The Concessionaire shall obtain SPR's prior approval for all signs, posters and displays to be used on the Concession Premises.
- L. Concessionaire Operation and Services.**



- 1 Customer Service:** The Concessionaire, its agents, and employees shall render courteous service to the public with a goal of adding to the public use and enjoyment of the Premises. The Concessionaire shall operate and conduct business in the facilities 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 SPR's operation of the park or citizen use of the park.
- 2 Refunds:** The Concessionaire shall reimburse vending customers directly and take appropriate actions to dissolve any and all customer concerns.
- 3 Staffing and Training:** The Concessionaire shall at all times staff the vending service operation with sufficient, well-trained staff to serve the vending machines in a safe and efficient manner.
- 4 Background Investigation:** The Concessionaire shall provide information if requested SPR about the Concessionaire's personnel for the purposes of a background investigation required by law for all Concessionaire staff and subcontractors working on the Premises.

## **6 SPR RESPONSIBILITY.**

- A. Space.** SPR shall provide space on the premises for the Concessionaire's vending equipment. No storage space for Concessionaire supplies, inactive equipment, or vehicles will be provided on SPR property.
- B. Access:** SPR shall provide the Concessionaire with access to the Premises during SPR's usual hours of operation.
- C. Utilities.** SPR agrees to provide Concessionaire access to existing, currently available electrical service to operate the Concessionaire's vending machines. The Concessionaire will not be billed separately for utility usage, as that cost is built into the Concession Fees paid by the Concessionaire to SPR.
- D. Trash Removal.** SPR will provide trash receptacles and recycling bins for vending product cans, single service vending product wrappers, and single service vending product containers discarded by customers. The Concessionaire shall remove all boxes and shipping material from SPR property.
- E. Notification of Malfunction.** SPR will monitor customer treatment of machines and will notify the Concessionaire as soon as possible when the equipment is not performing properly. In the event of burglary of money and/or vandalism the machines, SPR will notify the Concessionaire as soon as possible and the Concessionaire shall complete a SPR incident report. SPR's monitoring and

notification under this section shall not reduce or amend the Concessionaire's assumption of the risk of loss or damages to the machine under Part A, Section 5-H - Ownership.

**F. Janitorial Services.** SPR will perform routine housekeeping and janitorial services in the areas around the vending machines.

**7 COMPLIANCE WITH THE LAW.**

The Concessionaire shall comply with all applicable laws of the United States of America and the State of Washington; the Charter and ordinances of the City of Seattle; and rules and regulations of each of them and with orders and directives of public officials implementing the same.

**8 NON AND AFFIRMATIVE ACTION IN EMPLOYMENT.**

The Concessionaire will 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. Failure to comply with any of the terms of these provisions shall be a material breach of the Agreement.

**9 BINDING EFFECT.**

This Agreement shall be subject to the written approval of the Superintendent of the Department of Parks and Recreation and shall not be binding until so approved.

**10 LICENSES AND PERMITS.**

The Concessionaire shall provide a copy of its current City of Seattle business license to SPR prior to placing any equipment on the Premises. The Concessionaire shall obtain and maintain at its sole expense all required permits and licenses to conduct business in the City of Seattle and the State of Washington. The Concessionaire shall keep all licenses current throughout the term of this Agreement and shall supply copies of these licenses to SPR at the address shown in this Agreement.

**11 SATISFYING ALL CONDITIONS OF THE AGREEMENT.**

The Concessionaire shall satisfy all conditions and requirements imposed on the Concessionaire by this Agreement. This Agreement and Exhibits 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**

### **1 ASSIGNMENT OF AGREEMENT PROHIBITED.**

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

### **2 ACCOUNTING MONTHS AND YEAR**

Concessionaire shall use calendar year accounting for the concessions permitted by this agreement.

### **3 INSURANCE.**

Insurance to be secured by Concessionaire. Prior to the commencement of any activity on the Premises under this Agreement, Concessionaire shall secure and maintain, at no expense to City, a policy or policies of insurance as described in Exhibit D - Insurance.

### **4 INDEMNIFICATION.**

Concessionaire shall defend, indemnify, and hold City, its elected officials, and employees harmless from any and all liabilities, claims, demands, losses, and costs (including reasonable attorney's fees) arising from (i) Concessionaire's operation of the Concession, including operation of Concession services by any sub concessionaire, (ii) the use and occupancy of the Concession Premises by Concessionaire, or any of its employees, agents, licensees, invitees, contractors, and sub concessionaires, or (iii) any breach of this Agreement by Concessionaire or any sub concessionaire. If any suit is brought against City, Concessionaire shall appear and defend the same, and shall satisfy any judgment that may be rendered against City. Notwithstanding the foregoing, City reserves the right to appear and defend any action without impairing City's right to indemnification under this Section where City determines that it is in the best interest of City. Concessionaire's obligation to defend and indemnify shall not include any claims arising as a result of the sole negligence of City, its employees, and agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Concessionaire's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to City and to the extent necessary to provide City with a full and complete indemnity from claims made by Concessionaire's employees. Concessionaire shall promptly notify City of casualties or accidents occurring in or about the Concession Premises. Concessionaire's obligations under Part B, Section 4 shall survive termination or expiration of this Agreement for the statute of limitations applicable to any claim or liability to which this section applies.

City and Concessionaire acknowledge that they mutually negotiated and agreed upon the indemnification provision in this section.

INITIALS: \_\_\_\_\_ City of Seattle Representative  
                  \_\_\_\_\_ Concessionaire Representative

## 5      **DEFAULT**

The following actions will constitute default (“Default”) by Concessionaire:

- A. Concessionaire’s failure to pay the Concession Fee or any additional charge herein within ten (10) days of the date required by this Agreement,
- B. Concessionaire’s breach of any obligation under this Agreement or failure to keep or perform any term, covenant, or obligation herein; or
- C. Concessionaire’s filing of a petition in bankruptcy, or if a trustee or receiver is appointed for Concessionaire’s assets or if Concessionaire makes an assignment for the benefit of creditors, or is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily, or otherwise; or
- D. Concessionaire’s receipt of two or more notices of Default under Part B, Section 5 - D, whether or not remedied in the time period allowed.
  - a. **SPR Remedies.** If Concessionaire has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within ten (10) days of demand for any monetary payment due or within thirty (30) days after written notice of any other Default, then SPR shall have the following nonexclusive rights and remedies at its option: (i) to cure the Default on Concessionaire’s behalf and to charge Concessionaire for all actual and reasonable costs and expenses incurred by SPR in effecting such cure; (ii) to re-take the Concession Premises and grant the Concession rights herein to another party; (iii) to exercise any other right or remedy allowed at law or equity. However, if the nature of Concessionaire’s obligation is such that more than thirty (30) days is required for performance, then Concessionaire shall not be in Default if it commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion; provided, that the foregoing extended cure period shall not apply to Concessionaire’s Default relating to monetary obligations or Concessionaire’s vacation or abandonment of the Concession Premises.

## 6 SURRENDER OF CONCESSION PREMISES AND REMOVAL OF PROPERTY.

- A. At Termination.** Upon termination or expiration of this Agreement, the Concessionaire shall surrender the Concession Premises to SPR.
- B. Condition of Concession Premises.** SPR and Concessionaire acknowledge that they have jointly examined the Premises and the Concessionaire accepts the Premises in their present condition as of the date of commencement of the Concession Agreement. The Concession Premises shall be surrendered to SPR 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 SPR, and property damaged or destroyed by an uninsured peril or an insured peril where insurance proceeds are paid to SPR.
- C. Failure to Perform.** In the event that after termination or expiration of this Agreement the Concessionaire has not removed its property and fixtures within the time allowed, SPR 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. The Concessionaire shall reimburse SPR for any expense incurred by SPR in connection with such removal and storage. SPR 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 SPR; the balance, if any, shall be paid to the Concessionaire.
- D. Termination for Cause.** The City, by written notice, may terminate this Agreement, in whole or in part, for failure of the Concessionaire to perform any provision of this Agreement or any failure of Concessionaire to conform to any health regulation. Such notice shall describe the default, and shall provide a deadline for cure of not less than thirty (30) calendar days, unless the default also involves a health violation as determined by the Seattle King County Department of Health, in which case the City may in the interest of public safety, terminate this Agreement outright, or, in its discretion, specify a shorter period of cure. The City may elect to unilaterally extend any default cure period if in the sole discretion of the Superintendent, the Concessionaire is making suitable progress in curing any default and public health and safety are not at risk.
- a.** Upon expiration of the default notice period and any specified default then remains unremedied, this Agreement shall terminate without further notice and all rights of the Concessionaire in the Concession Premises shall cease. Concessionaire shall forthwith remove all Concessionaire owned materials from the Concession Premises and surrender the premises to the City.

- b. The City's acceptance of Concessionaire's payment or services for any period or periods after a default by the Concessionaire hereunder shall not be deemed a waiver of such default unless the City so advises the Concessionaire in writing. No waiver by the City of any Concessionaire default hereunder shall be construed to be or act as a waiver of any subsequent default by the Concessionaire.
- c. The City's waiver or non-enforcement of any default by Concessionaire shall not be construed as a waiver or acquiescence of any future default by Concessionaire.

**E. Removal of Equipment.** At the expiration of the term of this Agreement, the Concessionaire shall remove from the Premises, at its sole expense, all vending machines, products, and other personal property owned and placed in or on the Premises by the Concessionaire. In removing its personal property, the Concessionaire shall take due care to not damage or injure the Premises. Structural and Capital improvements shall not be removed. In the event of early termination, the Concessionaire shall have 10 days to complete removal of its property from the Concession Premises. In no event shall the Concessionaire make any claim or demand upon the City, nor shall the City be liable, for any inconvenience, annoyance, disturbances, or loss of business or any other damages suffered by the Concessionaire arising out of such removal operation or the required relinquishment of capital improvements in or to the Premises.

**F. Failure to Perform.** In the event after termination or expiration of this Agreement the Concessionaire has not removed its property and fixtures within the time allowed, SPR 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. The Concessionaire shall reimburse SPR for any expenses incurred by SPR in connection with such removal and storage. SPR shall have the right to sell such stored property, without notice to Concessionaire, after it has been stored for a period of thirty 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 SPR; the balance, if any, shall be paid to the Concessionaire.

## **7 CLOSURE OF CONCESSION PREMISES.**

SPR reserves the right to close the Concessionaire's operation or any portion thereof for the convenience of SPR upon a seven-day notice to the Concessionaire and to close the Concession Premises or any portion thereof with our notice to meet any emergency as determined by the Superintendent. In the event of any such closure, SPR may post a sign notifying the public of the impending or effective closure.

**8 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 sixty (60) days after the receipt of the termination notice by the receiving party. Termination under this provision shall not relieve either party of any duty or obligation owed under the terms of this Agreement prior to the termination date. If this Agreement is terminated by City under this Section B-20, within thirty (30) days of the effective date of termination, City shall reimburse Concessionaire for any remaining unamortized interest Concessionaire may have in the Concession Premises measured by Concessionaire's investment in approved capital improvements to the Concession Premises, less accrued amortization and depreciation as set forth in an amortization schedule typically applied to similar improvements. Notwithstanding the foregoing, City shall not reimburse Concessionaire for City's termination of this Agreement following damage or casualty to the Concession Premises.

**9 LIENS AND ENCUMBRANCES.**

The Concessionaire shall keep the Concession Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Concession Premises. At SPR's request, the Concessionaire shall furnish SPR 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.

**10 WAIVER.**

No action other than a written document from SPR so stating shall constitute a waiver by the SPR of any breach or default by Concessionaire nor shall such a document waive the Concessionaire's full compliance with the terms and conditions of the Agreement, irrespective of any knowledge SPR may have of such breach, default, or non-compliance. SPR's failure to insist upon full performance or any provision of this agreement shall not be deemed as consent to or acceptance of such incomplete performance in the future.

**11 PHOTOGRAPHS.**

Each party hereto may make photographs and motion pictures of the premises and the activity, people, displays, and exhibits therein; provided, that in the event such material is to be used for commercial purposes, prior to making the same the Concessionaire shall obtain the approval of the Superintendent and shall pay to SPR a fee therefore in an amount agreed upon by the Concessionaire and the Superintendent in accordance with applicable provision of SPR'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.



**12 CAPTIONS.**

Captions are for convenient references only, and do not limit or amplify the language of the paragraph(s) following.

**13 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.

**14 APPROVALS BY SPR OR SUPERINTENDENT.**

The granting of approval, consent, or permission or the taking of any other action by the Superintendent pursuant to or in connection with this Agreement does not constitute the taking of any official action, including the granting of approval, by any other City Department or official where such action is required by law, ordinance, resolution or rule or regulation, before Concessionaire may rightfully commence, maintain, or terminate any particular undertaking under this Agreement.

**15 NON-DISCRIMINATION.**

The Lessee will 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. Failure to comply with any of the terms of these provisions shall be a material breach of the Agreement.

**16 EQUALITY OF TREATMENT.**

Concessionaire shall conduct its business in a manner which assures fair, equal, and non-discriminatory treatment at all times in all respects to all persons without regard to race, color, religion, sex, age, or national origin. No person shall be refused service, be given discriminatory treatment, or be denied any privilege, use of facilities, or participation in activities on the Premises, not limited to but including, on account of race, color, religion, sex, age, marital status, political ideology, or national origin. Failure to comply with any of the terms of this provision shall be a material breach of this Agreement.

**17 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 that can be given effect without the invalid provision, and to this end, the remainder shall continue in full force and effect.

- 18 SUBCONTRACTING, SUB-CONCESSIONS, AND ASSIGNMENT OF AGREEMENT:**  
Concessionaire shall not subcontract, assign or transfer this agreement, in whole or in part, or convey any concession rights or privileges granted hereunder or any part of the Premises without prior written approval of the Superintendent, which may be granted, withheld, or conditioned in the Superintendents sole discretion. The Superintendent's approval of any subcontract, sub-concession, or assignment shall not relieve Concessionaire from any or the requirements of this agreement.
- 19 FORCE MAJEURE**  
Neither party shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if and for such time period that the failure is due to any cause beyond a party's reasonable control, including, but not limited to an act of nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war. The Parties agree that the COVID-19 state of emergency existing at the time this Agreement is executed shall not constitute a force majeure event. SPR may in its sole discretion adjust Annual Minimum Payments as set out in Section 5(D)(3) of this Agreement.
- 20 STANDARDS**  
Concessionaire, its agents and employees, shall render courteous service to the public and to City employees. Concessionaire shall operate and conduct on concession premises in a business-like manner and will not permit any acts or conduct on the part of Concessionaires employees that would be detrimental to the operation of the Concession Premises.
- 21 SUCCESSORS IN INTEREST.**  
Unless otherwise provided, the terms, covenants, and conditions in this Agreement shall apply to and bind any and all heirs, successors, executors, administrators and assigns of the parties, all of whom shall be jointly and severally liable with the original contracting party.
- 22 NO RELATIONSHIP ESTABLISHED.**  
SPR shall in no event be construed to be a partner, associate or joint venture 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.
- 23 CONSENT.**  
Any time consent is required of a party to this Agreement, unless otherwise specifically stated, such consent shall not be unreasonably withheld, conditioned, or delayed.

**24 NOTICES.**

Unless otherwise directed in writing, request, notices, and report shall be delivered to SPR at the following address:

City of Seattle Department of Parks and Recreation  
Contract Administration and Support Office  
Attention: Theresa Burns, Parks Concessions Coordinator  
300 Elliot Avenue W  
Seattle, WA 98119  
Phone (206) 684-8008

And to the Concessionaire shall be delivered to the following address:

Contact Name: TBD by RFP Process  
Organization: TBD by RFP Process  
Address:  
Phone:

Either party may change its contact name and address for receipt of reports notices and Payments and shall give the other party written notice of such changes not less than fifteen days prior to the effective date thereof.

**25 Entire Agreement.**

This Agreement and Exhibits, if and when fully executed, sets forth the entire agreement of the parties. No other understandings, oral or otherwise may modify the text or an attachment to this Agreement. The following Exhibits are incorporated and made part of this Agreement:

Exhibit A – Vending Locations  
Exhibit B – Healthy Vending Ordinance and Guidelines  
Exhibit C – RFP Bid Response  
Exhibit D – Insurance Requirements

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

**CONCESSIONAIRE (Name)** \_\_\_\_\_

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE CITY OF SEATTLE  
DEPARTMENT OF PARKS AND RECREATION**

By:

\_\_\_\_\_  
Jesús Aguirre  
Parks Superintendent

\_\_\_\_\_  
Date

**ATTACHMENTS:**      AGREEMENT EXHIBIT A – Vending Locations  
                                 AGREEMENT EXHIBIT B – Healthy Vending Ordinance and Guidelines  
                                 AGREEMENT EXHIBIT C – RFP Bid Response  
                                 AGREEMENT EXHIBIT D – Insurance Requirements

## EXHIBIT A –Vending Locations

Public Service Vending Locations	Address	Snack	Bev.
ALKI COMMUNITY CENTER	5817 SW Stevens St, Seattle, WA 98116	1	1
BALLARD COMMUNITY CENTER	6020 28th Ave. NW, Seattle, WA 98107	0	1
BITTERLAKE COMMUNITY CENTER	13035 Linden Ave N, Seattle, WA 98133	1	1
DELRIDGE COMMUNITY CENTER	4501 Delridge Way SW, Seattle, WA 98106	1	1
EVERS POOL	500 23rd Ave, Seattle, WA 98122	1	1
GARFIELD COMMUNITY CENTER	2323 East Cherry St, Seattle, WA 98122	1	1
GARFIELD TEEN LIFE CENTER	428 23rd Ave, Seattle, WA 98122	1	1
GREEN LAKE COMMUNITY CENTER	7201 East Green Lake Dr N, Seattle, WA	1	1
HIAWATHA COMMUNITY CENTER <b>*see note</b>	2700 California Ave SW, Seattle, WA 98116	1	1
HIGH POINT COMMUNITY CENTER	6920 34th Ave SW, Seattle, WA 98126	1	1
INTERNATIONAL DISTRICT COMMUNITY CENTER	719 8th Ave S, Seattle, WA 98104	0	1
JEFFERSON COMMUNITY CENTER <b>*see note</b>	3801 Beacon Ave S, Seattle, WA 98108	1	1
LOYAL HEIGHTS COMMUNITY CENTER	2101 NW 77th St, Seattle, WA 98117	1	1
MAGNOLIA COMMUNITY CENTER	2550 34th Ave W, Seattle, WA 98199	1	1
MEADOWBROOK COMMUNITY CENTER	10517 35th Ave NE, Seattle, WA 98125	1	1
MILLER COMMUNITY CENTER	330 19th Ave E, Seattle, WA 98112	1	1
MONTLAKE COMMUNITY CENTER	1618 E Calhoun St, Seattle, WA 98112	1	0
MOUNGER POOL <b>(Seasonal - Summers only)</b>	2535 32nd Ave W, Seattle, WA 98199	1	0
NORTHGATE COMMUNITY CENTER	10510 5th Ave NE, Seattle, WA 98125	1	1
QUEEN ANNE COMMUNITY CENTER	1901 1st Ave W, Seattle, WA 98119	1	1
QUEEN ANNE POOL	1920 1st Ave W, Seattle, WA 98119	1	1
RAINIER BEACH COMMUNITY CENTER	8825 Rainier Ave S, Seattle, WA 98118	1	1
RAINIER COMMUNITY CENTER	4600 38th Ave S, Seattle, WA 98118	1	1
RAVENNA-ECKSTEIN COMMUNITY CENTER	6535 Ravenna Ave NE, Seattle, WA 98115	1	1
SOUTH PARK COMMUNITY CENTER <b>*see note</b>	8319 8th Ave S, Seattle, WA 98108	1	1
SOUTHWEST COMMUNITY CENTER	2801 SW Thistle St, Seattle, WA 98126	1	1
VAN ASSELT COMMUNITY CENTER	2820 S Myrtle St, Seattle, WA 98108	1	1
YESLER COMMUNITY CENTER	917 E Yesler Way, Seattle, WA 98122	1	1

**\*Hiawatha, Jefferson, and SouthPark Community Center will not be available until Capital Improvement Projects are completed. When the sites reopen, SPR will require these locations to have vending machines installed and serviced.**

Administration Vending Service Locations	Address	Snack	Bev.
ELLIOTT BAY OFFICE PARK	300 Elliott Avenue West, Seattle WA 98119	1	1
GENESSEE ADMINISTRATION	4316 S Genessee St., Seattle, WA 98118	0	1
HORTICULTURE ADMINISTRATION	1600 S Dakota St, Seattle, WA 98108	1	1
SOUTH LAKE UNION MAINTENANCE - BLDG 2	860 Terry Ave N, Seattle, WA 98109	1	1
WEST BRIDGE ADMINISTRATION	4209 W Marginal Wy SW, Seattle, WA 98106	1	1

## EXHIBIT B – Healthy Vending Ordinance and Guidelines

Seattle City Council Ordinance 124128 relating to vending machines operated on City Property; requiring all vending machines on City Property to stock “Healthier” and Healthiest” food and beverage selections as defined by Public Health Seattle and King County “King County Healthy Vending Guidelines.

### “King County Healthy Vending Guidelines”

	<b>HEALTHIEST</b> Foods are nutrient-rich and primarily whole foods that contain low to no added sugar and sodium.	<b>HEALTHIER</b> Foods are more processed or refined with added sugar, sodium, or fat. They contain fewer nutrients for the number of calories they provide.	<b>LIMITED</b> Foods are high in sodium, sugar, fat and refined grains and are less healthy.
<b>Vegetables</b>	<ul style="list-style-type: none"> <li>• Fresh or dehydrated vegetables (e.g. baby carrots, celery, broccoli)</li> <li>• Cup of soup with a quarter cup of vegetables</li> </ul>	<ul style="list-style-type: none"> <li>• Fresh or dehydrated vegetables with added salt, sugar or fat</li> <li>• Baked potato chips</li> </ul>	<ul style="list-style-type: none"> <li>• Fried vegetables</li> <li>• Regular chips</li> </ul>
<b>Fruits</b>	<ul style="list-style-type: none"> <li>• Fresh or dehydrated fruit (e.g. apples, oranges, pears, apricots, avocados, bananas)</li> <li>• Fruit packed in its own juice.</li> <li>• 100% fruit sorbet with no added sweeteners</li> </ul>	<ul style="list-style-type: none"> <li>• 100% frozen fruit juice bars with no added sweetener</li> <li>• Fresh or dehydrated fruit with added salt, sugar, or fat</li> <li>• Fruit packed in “lite” syrup</li> </ul>	<ul style="list-style-type: none"> <li>• Fruit in heavy syrup</li> <li>• Imitation fruit snacks and gummies</li> <li>• Popsicles</li> </ul>
<b>Grains</b>	<ul style="list-style-type: none"> <li>• 100% whole grain crackers, pretzels, rice cakes, pita</li> <li>• 100% whole grain cereals, granola or cereal bars, muffins</li> <li>• Air popped or low-fat popcorn</li> </ul>	<ul style="list-style-type: none"> <li>• Whole grain crackers, pretzels, pita, corn chips, soy crisps†</li> <li>• Whole grain cereals, granola or cereal bars, muffins, fig bars</li> </ul>	<ul style="list-style-type: none"> <li>• Doughnuts, croissants, pastries, cookies, cakes, pies, pop tarts</li> <li>• Full fat granola</li> <li>• Products made with refined grains such as crackers, cereals, and cereal bars</li> </ul>
<b>Nuts &amp; seeds</b>	<ul style="list-style-type: none"> <li>• Unsalted nuts or seeds</li> <li>• Trail mix or fruit nut bars with only unsalted nuts and unsweetened dried fruit</li> </ul>	<ul style="list-style-type: none"> <li>• Salted nuts and seeds (low sodium)</li> <li>• Trail mix or fruit nut bars with salted nuts and added sugar</li> </ul>	<ul style="list-style-type: none"> <li>• Salted nuts and seeds</li> <li>• Trail mix that includes candy</li> </ul>
<b>Dairy</b>	<ul style="list-style-type: none"> <li>• Fat-free or low-fat plain yogurt</li> <li>• Fat-free or low-fat and low sodium cheese</li> <li>• Low-fat and low-sodium cottage cheese</li> </ul>	<ul style="list-style-type: none"> <li>• Fat-free cream cheese</li> <li>• “Lite” string cheese</li> <li>• Pudding, yogurt, frozen yogurt, ice cream made with fat-free or low-fat milk</li> </ul>	<ul style="list-style-type: none"> <li>• Full-fat ice cream</li> <li>• Full-fat yogurt</li> <li>• Full-fat cheese</li> </ul>
<b>Meat, beans &amp; eggs</b>	<ul style="list-style-type: none"> <li>• Low-sodium dried meat (jerky) or tuna</li> <li>• Low-fat, low-sodium bean soup</li> <li>• Hardboiled egg</li> </ul>	<ul style="list-style-type: none"> <li>• Hummus</li> <li>• Low-fat bean soup</li> </ul>	<ul style="list-style-type: none"> <li>• Full-sodium dried meat (jerky)</li> <li>• Full-sodium tuna</li> </ul>
<b>Beverages</b>	<ul style="list-style-type: none"> <li>• Plain water</li> <li>• Plain carbonated water (seltzer)</li> <li>• Unflavored fat-free or 1% milk</li> <li>• Unsweetened tea or coffee</li> </ul>	<ul style="list-style-type: none"> <li>• Fat-free or 1% flavored milk</li> <li>• 100% fruit juice with no added sweeteners</li> <li>• Zero- or low-calorie beverages Non-caloric, artificially sweetened beverages (diet)</li> </ul>	<ul style="list-style-type: none"> <li>• 2% milk, flavored or unflavored</li> <li>• Whole milk, flavored or unflavored</li> <li>• Calorically sweetened soda, teas, coffee drinks, lemonade, fruit drinks, sports drinks and energy drinks that exceed 10 calories per 8 oz</li> </ul>

**“King County Healthy Vending Guidelines”**  
**Nutrient Levels for Healthiest & Healthier Categories**

For food and beverages review the calories, fat, sugar, and sodium content to determine which category they fall into. Below are levels for the Healthiest and Healthier categories; food and beverages from the Limited category would fall outside these levels.

FOOD	
<b>Calories</b>	<p><b>Healthiest and Healthier</b></p> <ul style="list-style-type: none"> <li>•Adults - No more than 250 calories per serving</li> <li>•Children and youth - No more than 200 calories per serving</li> </ul>
<b>Fat</b>	<p><b>Healthiest</b></p> <ul style="list-style-type: none"> <li>•No added fat for vegetables, fruits, nuts, and seeds, dairy and meat, beans and eggs; for grains and soup follow the recommendations below for Healthier.</li> </ul> <p><b>Healthier</b></p> <ul style="list-style-type: none"> <li>•No more than 35% of calories from total fat, excluding nuts, seeds and nut butters as these can be high in fat but are considered a source of healthy fat—make sure these foods fall within acceptable calorie, sugar and sodium levels</li> <li>•No more than 10% of calories from saturated fat</li> <li>•Zero trans fat</li> </ul>
<b>Sugar</b>	<p><b>Healthiest</b></p> <ul style="list-style-type: none"> <li>•No added sugar for all food groups except grains; no more than 6 grams of sugar per serving of grains.</li> </ul> <p><b>Healthier</b></p> <ul style="list-style-type: none"> <li>•No more than 35% of weight from total sugars, excluding whole fruit products or ingredients with no added sweeteners.</li> </ul> <p>Added sweeteners include sucrose, fructose, glucose, corn syrup and high fructose corn syrup, honey, agave syrup, maple syrup, molasses, evaporated cane juice and fruit or fruit juice concentrates.</p> <ul style="list-style-type: none"> <li>•Consideration for dairy products with sugar - Pudding, yogurt, frozen yogurt, or frozen milk desserts are limited to 30 grams total sugar per 8 oz.</li> <li>•Consideration for grains - no more than 10 grams of sugar per serving</li> </ul>
<b>Sodium</b>	<p><b>Healthiest</b></p> <ul style="list-style-type: none"> <li>•No more than 150 mg per serving</li> </ul> <p><b>Healthier</b></p> <ul style="list-style-type: none"> <li>•Adults - No more than 360 mg per serving</li> <li>•Children and youth - No more than 200 mg per serving</li> </ul>
BEVERAGES	
	<p><b>Healthiest</b></p> <ul style="list-style-type: none"> <li>•Beverages should be sugar-free and caffeine-free.</li> <li>•Water.</li> <li>•Unflavored fat-free or 1% milk</li> <li>•100% fruit juice ≤4 oz serving.</li> </ul> <p><b>Healthier</b></p> <ul style="list-style-type: none"> <li>•Fat-free or 1% flavored milk (≤22 grams sugar per 8 oz)</li> <li>•Sugar-free and caffeine-free beverages with artificial sweeteners (diet drinks) should be available only for high school students and only after school. Note: Sports drinks and vitamin drinks should not be available in schools</li> </ul>

**EXHIBIT C – RFP Bid Response**



## EXHIBIT D – Insurance Requirements

1. **Furnished Coverages and Limits of Liability:** Concessionaire shall, at no expense to City, maintain, and cause its subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance, and adhere to all terms and conditions below, at all times beginning on the Commencement Date and ending on the Expiration Date of this Lease:

A. Commercial General Liability (CGL) written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal/Advertising Injury Liability  
\$1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop  
\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described in Exhibit D – Insurance Requirements are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Concessionaire, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Concessionaire regarding this Agreement, nor (2) construed as limiting the liability of any of Concessionaire's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

B. Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

- C. Workers' Compensation insurance securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
- D. Property Insurance under which the Concessionaire's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Concessionaire makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (earthquake optional), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Concessionaire's business. Coverage shall contain a waiver of coinsurance or agreed amount endorsement(s). City shall be named as a loss payee, as its interest may appear, as respects property insurance covering the alterations, additions, and improvements under such policy.
- E. In the event that City deems insurance to be inadequate to protect Concessionaire and City, Concessionaire shall increase coverages and/or liability limits as City shall deem reasonably adequate within sixty (60) days after the date of written notice.

## **2. Terms and Conditions for Concessionaire's Insurance.**

- A. The City of Seattle as Additional Insured: The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Concessionaire's insurance shall be primary and non-contributory to any insurance maintained by or available to City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.
- B. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited: Concessionaire's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Concessionaire's insurance policy shall not contain any provision, exclusion, or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Concessionaire's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Concessionaire's CGL policy shall NOT include any of

the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Concessionaire's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Concessionaire or reduced and/or offset against the Agreement.

- C. Cancellation Notice: Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290 (1) (b), for both liability and property insurance City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."
- D. Umbrella or Excess Liability insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of \$5,000,000 Each Occurrence and be no less broad than coverages described above.
- E. Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this section, and (2) be issued by an insurer rated A-:VIII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).
- F. Deductible or Self-Insured Retention: Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, City. Concessionaire shall cooperate to provide such information as City may reasonably deem to be necessary to assess the risk bearing capacity of the Concessionaire to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Concessionaire. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Concessionaire or a contracted third-party claims administrator, Concessionaire agrees to defend and indemnify City to the same extent as City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

**G. CHANGES IN INSURANCE REQUIREMENTS.** The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to Licensor. Should Licensor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

**3. City's Property Insurance Coverage and Limits.**

**A.** City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Concessionaire's Business Personal Property and Tenant Improvements, are insured throughout the Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a \$250,000 deductible for most claims for which Concessionaire shall be responsible only to the proportional extent to which the loss or damage is attributable to Concessionaire's negligent acts that are, or should be, covered by Concessionaire's Fire/Concessionaire Legal Liability insurance.

**B.** During such time as Concessionaire is engaged in the performance of the Improvements or other renovation of the Premises, the Concessionaire shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than \$50,000 each loss. In the event of a claim under the builder's risk policy, Concessionaire or its contractor(s) shall be responsible for paying any deductible under the policy if Concessionaire or any of its agents, employees, or contractors is responsible for the loss or damage. It shall be Concessionaire's responsibility to properly coordinate with City's Risk Management Division the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

City may change the terms of its insurance in Sections 3.A. and 3.B. at any time based on market conditions, with no compensation due to the Concessionaire.

**4. Waiver of Subrogation.** Unless such waiver would void the property insurance coverage to be provided pursuant to this section, City and Concessionaire waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils

to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by City or the Concessionaire or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

**5. Evidence of Insurance.** On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Concessionaire:

- A. Certification of insurance documenting with the coverage, minimum limits and general requirements specified herein; and
- B. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements.
- C. A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement; ending receipt of the documentation specified in this Exhibit D – Insurance Requirements. Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Evidence of Insurance as set forth above, shall be issued to:

The certificate holder shall be:

**City of Seattle c/o Seattle Parks and Recreation**  
Attention: Contract Administration and Support Office  
300 Elliot Avenue W  
Seattle, WA 98119  
Phone (206) 684-8008

with an electronic copy to [terri.burns@seattle.gov](mailto:terri.burns@seattle.gov)

**6. Assumption of Property Risk.** The placement and storage of Concessionaire's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Concessionaire.

- 7. 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.
- 8. 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. Notwithstanding said 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 Premises.