



# **City of Kirkland**

## **Request for Proposal**

### **Concession Opportunities for Recreation Services and/or Food Services in Kirkland Parks**

**Job # 44-18-PK**

**Issue Date: November 30, 2018**  
**Due Date: January 7, 2019 5:00 p.m. (Pacific Time)**

## REQUEST FOR PROPOSALS

Notice is hereby given that proposals will be received by the City of Kirkland, Washington, for:

### **Concession Opportunities for Recreation and/or Food Services in Kirkland Parks**

File with Purchasing Agent, Finance Department, 123 - 5<sup>th</sup> Ave, Kirkland WA, 98033

Proposals received later than **5:00 p.m. January 7, 2019 will not** be considered.

A copy of this Request for Proposal (RFP) may be obtained from City's web site at <http://www.kirklandwa.gov/>. Click on the Business tab at the top of the page and then click on the Request for Proposals link found under "Doing Business with the City".

The City of Kirkland reserves the right to reject any and all proposals, and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

A Service Provider response that indicates that any of the requested information in this RFP will only be provided if and when the Service Provider is selected as the apparently successful Service Provider is not acceptable, and, at the City's sole discretion, may disqualify the proposal from consideration.

The City of Kirkland assures that no person shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City of Kirkland further assures that every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs are federally funded or not.

In addition to nondiscrimination compliance requirements, the Service Provider(s) ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

**Dated this 30<sup>th</sup> Day of November, 2018**

Greg Piland  
Purchasing Agent  
425-587-3123

## **Background Information**

The City of Kirkland is located on the eastern shore of Lake Washington. It is a suburban city, surrounded by other suburban cities and pockets of unincorporated King County. The City is near several major transportation routes including Interstate 405, State Route 520, and Interstate 5. These routes connect the City economically and socially to the greater Seattle area.

At the time of incorporation in 1905, the City of Kirkland's population was approximately 530. The current estimated population is 87,240. Kirkland is the thirteenth largest city in the State of Washington and the sixth largest in King County.

Since its incorporation, Kirkland has grown in geographic size to eighteen square miles - approximately twenty times its original size. This growth occurred primarily through the consolidation of the cities of Houghton and Kirkland in 1968, the annexations of Rose Hill and Juanita in 1988 and the annexation of North Juanita, Finn Hill, and Kingsgate areas in 2011.

## **Purpose and Background**

This REQUEST FOR PROPOSAL (RFP) represents a publicly advertised and competitively awarded solicitation by the City of Kirkland, Department of Parks and Community Services, for seasonal recreation services and/or food services within Kirkland's parks. The City will also consider proposals for other City of Kirkland parks not listed, but the City maintains the discretion to accept or reject submittals for locations not listed within.

The City is seeking, and will select concessionaire(s) that best demonstrate the ability to provide innovative, affordable and reliable products and services to park patrons. Applicants are encouraged to offer products and services that would be complimentary to existing park uses, but the City also encourages applicants to propose new and unique offerings that would enhance a park.

Opportunities vary by park, with some sites appropriate for carts, food trucks, and other self-contained businesses.

## **Performance Schedule**

Concession Agreement award(s) will be for 2019 season(s), with an option by the City to extend the agreement with the concessionaire(s) on an annual basis for a potential total of three years (through 2021). The Department reserves the right to approve or disapprove any proposed business activity. The City of Kirkland will not be liable for any expense or cost associated with the preparation and/or submittal of a Vendor's response to this RFP.

If you are awarded an Agreement for Concessions, concession rights may NOT be sold, transferred or given to anyone else without full disclosure to the City of Kirkland Parks and Community Services Department and without obtaining prior written permitting from the City of Kirkland Parks and Community Services Director or their designee. You must operate the concession awarded to you.

**Scope of Work**

Concession service opportunities are offered at the City of Kirkland parks listed below, with concession operations possible as early as April 1<sup>st</sup> through as late as October 31<sup>st</sup>. The City will also consider proposals for other City of Kirkland parks not listed, however the City maintains discretion to accept or reject such submittals.

<b>Park</b>	<b>Address</b>
Houghton Beach Park	5811 Lake Washington Blvd, Kirkland
Juanita Beach Park*	9703 NE Juanita Drive, Kirkland
Marina Park	25 Lakeshore Plaza Drive, Kirkland
Peter Kirk Park / Lee Johnson Field	202 3 <sup>rd</sup> Street, Kirkland
Everest Park	500 8 <sup>th</sup> St. South, Kirkland
Mobile – Park to Park**	Varies

\*Juanita Beach Park Bathhouse construction may occur fall 2019, which will impact all Juanita Beach concession areas for the duration of construction. As of this publication, the construction timeline is uncertain. Concessionaire(s) will be apprised of construction timeline once confirmed. Juanita Beach location Concession Agreement(s) will be placed on-hold during construction, with potential to be resumed, if appropriate, and the park is reopened within the 2020 or 2021 season.

\*\*Any City of Kirkland park is a potential site for mobile sales except Marina Park. Marina Park is excluded from mobile concession opportunities. Duplication of proposed on-site concessions and mobile services will be determined and addressed through the RFP and contracting selection process.

Opportunities at each location are as follows, with all locations flexible to accommodate either food and/or recreation services. Proposals are encouraged for traditional and creative, unique services alike:

<b>Location</b>	<b>Indoor Spaces</b>	<b>Food Truck Spaces*</b>	<b>Outdoor Mobile Cart/Trailer Spaces**</b>	<b>Mobile Spaces***</b>	<b>Total Opportunities</b>
Houghton Beach Park	1		1		2
Juanita Beach Park	1	1	1		3
Marina Park			2		2
Peter Kirk Park / Lee Johnson Field	1				1
Everest Park	1				1
Mobile – Park to Park				1+	1+

\*Food Truck to be provided by concessionaire

\*\*Cart/Trailer to be provided by concessionaire

\*\*\*Vehicle to be provided by concessionaire

It is the responsibility of the applicant to visit each site and verify that adequate water and electrical service is available to support the equipment and service they intend to operate. Any suggested modifications or improvements to concession areas shall be at the sole expense of the successful bidder and will require advance written approval from the City of Kirkland Parks and Community Services Department.

In consideration for the right and privilege to conduct business within a City of Kirkland park, the vendor must compensate the City of Kirkland a Concession Fee an amount to be proposed in the RFP application process. Possible examples:

- a flat Concession Fee payment
- or a monthly Concession Fee payment of a percentage of gross monthly receipts
- other

Suggested payment amount and timeline details need to be defined within the concessionaire's submitted RFP.

**Note: A Concessions Agreement provides an on-site vendor (not a mobile vendor) the right to be included in all Special Events held at their assigned park location, although Special Event involvement may not necessarily be in the routine location within the park. The location may be modified for the duration of the event to accommodate Special Event footprint needs of the event organizer.**

### **Contract Requirements and Fees**

If your proposal is accepted, the following fees and requirements will be due upon award, prior to issuance of your concession agreement:

1. ***City of Kirkland Business License***

- The concessionaire/contractor shall obtain and maintain for the duration of the agreement, a City of Kirkland Business License.

2. ***Insurance Coverage and Proof of Policy***

- The concessionaire/contractor shall obtain and maintain for the duration of the agreement, policies of comprehensive general liability insurance with combined single limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington.
- If concessionaire is offering water based activities (paddleboard rentals, boat rentals, etc.), the limits the concessionaire/contractor shall obtain and maintain for the duration of the agreement, policies of comprehensive general liability insurance with combined single limits of not less than \$1,000,000 per occurrence, \$3,000,000 general aggregate with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington.
- A \$2,000,000 products/completed operations aggregate is also required for contractors that prepare food.
- The insurance policy shall be written on an occurrence basis.
- The City of Kirkland shall be named as Additional Insured and a copy of the Additional Insured Endorsement naming the City as Additional Insurance shall be attached to the Certificate of Insurance.

- The Certificate of Insurance and Additional Insured Endorsement shall be filed with the City a minimum of two weeks prior to the contractor providing services.
3. **Health Permit**
    - It will be the contractor's responsibility to contact, arrange and comply with specific Seattle-King County Health Department requirements for proposed concession site(s). A copy of a current Seattle-King County Health Department permit must be provided prior to opening. It is the responsibility of the Vendor to verify adequate water, restroom and electrical service is accessible to support the equipment they intend to operate at a particular location. Any modifications or improvements to concession area(s) shall be at the sole expense of the successful vendor and will require advance written approval from the City of Kirkland Parks and Community Services Department.
  4. **Contract Agreement (Not Lease)**
    - The contractor understands and agrees City of Kirkland Parks and Community Services will only grant concessions by contract and not by lease. Concession Agreement(s) will only confer permission to occupy and use the premises described for concession purposes. A successful contractor's expenditure of capital and/or labor in the course of use and occupancy will not confer any interest or estate in the premises by virtue of said use, occupancy and / or expenditure of money thereon. City of Kirkland Parks and Community Services will only grant successful contractors an individual, revocable and non-transferable privilege of use in the premises for the concession granted. A sample, "Agreement for Concessions" is included for review.
  5. **Concession Fee and Utility Fee (if applicable)**
    - Concession Fee is required, with an amount and payment schedule to be determined through the RFP process. Past concession agreements have had a concession fee structure of: payments twice per season, due the 1<sup>st</sup> day of the contract and mid-season; and others have been a monthly percentage of all sales and services, paid monthly.
    - Utility Fee per season may be required, with the amount to be determined. If a Utility Fee is applicable, it will be due the first day of the contract season.

### **Submittal Requirements**

Proposals should be prepared simply, providing straight forward, concise descriptions of the applicant's capabilities to satisfy the requirements of the request.

Proposals must include the following:

1. A list of location(s) applying for and a description of the proposed location(s) within the park;
2. A description of the proposed equipment to be used for operation;
3. A complete list and description of all product(s) and services you intend to offer;
4. Visual aids/pictures describing business operations, mobile cart and service equipment;
5. Detailed information on the prices proposed for each service or product and any variation for non-routine services inclusive of Washington State sales tax and any other applicable governmental charges;
6. Season opening and closing dates;
7. Days and hours of operation;

8. A brief overview of bidders' professional history that conveys their expertise and experience with the activity or service proposed;
  9. A minimum of three references each for the following categories: business operations; financial stability; and customer satisfaction;
  10. A statement outlining proposed compensation to the City of Kirkland and how the payment schedule will be structured, and the company's documentation and reporting process for revenues and expenditures. Standard percentage based remittance ranges from 15-40% of gross receipts, before sales tax;
  11. Tenant improvements – list any and all desired improvements. Include items such as power, water, security, and restroom needs, service area enhancements, customer seating, signage, storage, etc.;
    - It is to be understood any modifications or improvements desired by the bidder shall be installed at the sole expense of the bidder and requires advance written approval from the City of Kirkland Parks and Community Services Department. All improvements shall become the property of the City of Kirkland upon completion of installation; provided the vendor shall be entitled to utilize the modifications and improvements in accordance with this Agreement while this agreement is in effect.
  12. A definition of parking needs for owner and/or staff;
  13. A description of on-site storage needs, if any.
  14. A written confirmation business operations are to be directly conducted by the applicant as subletting is not allowed without full disclosure to the City and without obtaining prior written permission from the City of Kirkland Parks and Community Services Director or their designee.
- Food services and recreational services (i.e. kayak rentals, stand-up paddle board rentals) are highly desirable, as are self-contained, independent units (i.e. mobile carts or food truck), where indoor facilities are not provided. Applicants are encouraged to offer products and services that would be complimentary to existing park uses, but the City also encourages applicants to propose new and unique offerings that would enhance the park
  - An additional utility fee may apply in addition to the Concession fees outlined within for concessionaires that require the use of park utilities.
  - The Agreement will require mobile units be removed from the park at the end of each business day.
  - Contracts will be awarded for one 2019 season. If operations prove to be satisfactory to the City of Kirkland Parks and Community Services, the contract may be renewed on an annual basis for a total of three years, through 2021.
  - Applicants are encouraged to visit desired site(s) prior to submitting a proposal. Sites vary by location and in on-site amenities. Guided tours will be provided only:
    - December 13, 2018
      - 1:30 p.m. to 2:00 p.m. at Houghton Beach Park at the Restroom Building
      - 2:15 p.m. to 2:45 p.m. at Everest Park at the Concession Stand at Field 1
      - 3:15 p.m. to 3:45 p.m. at Peter Kirk Park, Lee Johnson Field Concession Stand
    - December 14, 2018
      - 10:00 a.m. to 10:30 a.m. at Juanita Beach Park at the Bathhouse Building
      - 11:00 a.m. to 11:30 a.m. at Marina Park at the Restroom Building

- The successful bidder will be expected to abide by all State laws, King County laws, City of Kirkland ordinances, and all business licensing requirements, City of Kirkland insurance requirements, and Washington State Department of Public Health Food Service requirements.
- The City of Kirkland reserves the right to reject any and all proposals and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.
- All proposals become the property of the City of Kirkland.

### **Proposal Submittal Instructions**

Please note: The following general requirements are mandatory for all proposals. Proposals submitted after the deadline date and time or lacking one or more of the following requirements will not be accepted.

1. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed 20MB.
2. If paper proposals are being submitted, they must consist of one original and one copy.
3. Please include your name, business name, business address, email address, phone number and fax number.
4. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principle place of business, phone numbers and primary contact person.
5. The proposal must be signed by an official who is legally authorized to bind the organization.
6. Complete, sign and submit all RFP forms provided by the Department.
7. To be evaluated, a proposal must address all requirements and instructions contained within.
8. Provide all references and materials required by the RFP instructions within.

**Questions:** Questions regarding the scope of work or evaluation process must be submitted in writing and should be addressed to Nicci Osborn, Program Coordinator, at [nosborn@kirklandwa.gov](mailto:nosborn@kirklandwa.gov). Questions regarding the RFP process should be addressed to Greg Piland, Purchasing Agent, at [gpiland@kirklandwa.gov](mailto:gpiland@kirklandwa.gov) or by phone at 425.587.3123.

**Submittal Instructions:** Proposals must be received by no later than 5:00 p.m. on January, 7, 2019.

We encourage proposals to be submitted by email. Emailed proposals should include, "2019 Concession Opportunities for Recreation Services and/or Food Services in Kirkland Parks" in the subject line and be addressed to [purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov). Emailed proposals must be in MS Word or PDF format and cannot exceed 20MB.

As an alternate to email, proposals (original and one copy) can be mailed or delivered to:

City of Kirkland  
 ATTN: Greg Piland – 44-18-PK  
 123 5<sup>th</sup> Avenue  
 Kirkland, WA 98033

## **Submittal Deadlines**

The department's proposed schedule for review of the RFP's submittals and final selection of the contractor is as follows:

November 30, 2018	RFP Packages Available
December 13 and 14, 2018	Guided Tour of Sites (see schedule above)
December 17, 2018	Deadline for Questions: 5:00 p.m.
January 7, 2019	RFP Submittal Deadline: 5:00 p.m.
February 1, 2019	Contracts Awarded

## **Selection Criteria**

A panel of City staff will review the qualified bids and qualifications as submitted in this RFP process. The panel will score the RFP submittals, determine the highest qualified applicants, conduct interviews as necessary, and make a final recommendation to the Parks and Community Services Director regarding the award for each site.

The criteria contained within the Submittal Requirements section above will be used to evaluate RFP submittals. Evaluation/review will be of proposals which:

1. Answer and complete the requirements detailed within;
2. Provide the longest duration of business season(s);
3. Provide the best and most days and hours of operation;
4. Provide the best products and services to be offered to the public – prices, quality and nutritional value;
5. Provide products and services which are complimentary to the existing uses of the park and its business neighbors;
6. Provide the most concession experience and meet or exceed the minimum number of positive business references required;
7. Meet professional appearance, quality of unit/business, and character/theme attributes;
8. Meet licensing and insurance requirements;
9. Provides satisfactory concession fee to be paid to the City of Kirkland for the proposed business operations.
10. Confirm operations are to be conducted by the applicant, as subletting is not permissible without full disclosure and without prior written consent from the City of Kirkland Parks and Community Services Director or their designee.

## **Selection Process**

A selection committee will review all proposals, select finalists and may conduct interviews prior to making the final selection of the consultant. The City reserves the right not to award any portion or all of the project if it finds that none of the proposals submitted meets the specific needs of the project.

Prior to the commencement of work, the City and the selected vendor will meet to settle contract details. A letter notifying the vendor of the City's award will constitute notice to

proceed. The City is not responsible for any costs incurred by the vendor in the preparation of the proposal. Once submitted to the City, all proposals will become public information.

### **Contract**

The Vendor and the City will execute a standard City of Kirkland *Agreement for Concessions (Attachment A)*.

### **Cooperative Purchasing**

Chapter 39.34 RCW allows cooperative purchasing between public agencies in the State of Washington. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City may purchase from City contracts, provided that the consultant agrees to participate. The City does not accept any responsibility for contracts issued by other public agencies, however.

### **Public Disclosure**

Once submitted to the City, proposals shall become the property of the City, and all proposals shall be deemed a public record as defined in "The Public Records Act," chapter 42 section 56 of the RCW. Any proposal containing language which copyrights the proposal, declares the entire proposal to be confidential, declares that the document is the exclusive property of the proposer, or is any way contrary to state public disclosure laws or this RFP, could be removed from consideration. The City will not accept the liability of determining what the proposer considers proprietary or not. Therefore, any information in the proposal that the proposer claims as proprietary and exempt from disclosure under the provisions of RCW 42.56.270 must be clearly designated as described in the "Proprietary Material Submitted" section above. It must also include the exemption(s) from disclosure upon which the proposer is making the claim, and the page it is found on must be identified. With the exception of lists of prospective proposers, the City will not disclose RFP proposals until a bid selection is made. At that time, all information about the competitive procurement will be available with the exception of: proprietary/confidential portion(s) of the proposal(s), until the proposer has an adequate opportunity to seek a court order preventing disclosure. The City will consider a proposer's request for exemption from disclosure; however, the City will make a decision predicated upon RCW 42.56.

# **Attachment A**

## **SAMPLE AGREEMENT FOR CONCESSIONS**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by and between the CITY OF KIRKLAND, a municipal corporation, hereinafter referred to as "City," and \_\_\_\_\_, hereinafter referred to as "Concessionaire."

### **WITNESSETH:**

The City hereby grants to the Concessionaire the right, license and privilege to operate a *(recreation service and/or food service)* concession at \_\_\_\_\_ in the manner and for the purpose hereinafter specified.

The following terms, conditions and covenants shall govern this Agreement:

### **GRANT OF CONCESSION**

Concessionaire is granted the right to operate a *(recreation service and/or food service)* concession. The concession shall be operated within the agreed concessions area of \_\_\_\_\_ *(tbd)* Park. Concessionaire's use of the designated area shall not be exclusive; such areas shall remain and be available for use by the City and public.

Concessionaire shall engage in the business of providing *(recreation service and/or food)* concessions. Any other items must be approved by the City with at least two business day notice. Concessionaire shall not engage in any other business activity. Prices charged for items must be comparable and competitive with those generally charged in the area for similar items.

### **TERM OF AGREEMENT**

The terms of this agreement shall be for the period beginning \_\_\_\_\_, 2019 and ending \_\_\_\_\_, 2019, with an option by the City to extend this agreement once per year for one year increments through 2021. Each notice of extension must be given in writing not less than 30 days before the beginning of the renewal term. Outside of those dates concessionaire must remove all equipment including, but not limited to, \_\_\_\_\_ *(tbd)*, etc. from the premises.

### **LICENSING AND PERMIT REQUIREMENTS**

Concessionaire shall, at its own expense, obtain all necessary licenses and permits for the operation hereunder from appropriate local, regional, state and federal agencies. Concessionaire must obtain a City of Kirkland Business License or otherwise comply with Kirkland Municipal Code Chapter 7.02. Any modifications or improvements to concession areas required by King County Public Health or the City of Kirkland Building Department or any modifications or improvements desired by the Concessionaire shall be installed at the sole expense of the Concessionaire and requires advance written approval from the City. It is the responsibility of the Concessionaire to obtain all applicable permits needed to install the modifications or improvements. The modifications and improvements shall become the property of the City of Kirkland upon completion of installation; provided the Concessionaire shall be entitled to utilize the modifications and improvements in accordance with this Agreement while this Agreement is in effect.

### **PAYMENT FOR CONCESSION**

Concessionaire shall pay to the City on or before the 10<sup>th</sup> of each month an amount of \_\_\_\_% of gross monthly receipts, before sales tax, on sales amounts of \$\_\_\_\_\_ or less. Sales of \$\_\_\_\_\_ or more in the month will be remitted at \_\_\_\_%. Monthly receipts include all operations of \_\_\_\_\_ and related equipment from the preceding month for all operations hereunder. The term "receipts" means entire receipts from concessions of every kind, whether on credit or cash, from the business hereunder, not to include sales tax.

The Utility Fee is \$\_\_\_\_\_. The Utility Fee is a single payment per season. The Utility Fee is due on or before the 10<sup>th</sup> day of the month of the beginning of this Agreement.

Should payment not be received on or before the 10<sup>th</sup> of each month, concessionaire agrees to pay a late fee equal to Twenty-Five and No/100 dollars (\$25.00) for each day late after the 10<sup>th</sup> of the month.

Concessionaire shall maintain an adequate set of bookkeeping records, from which the City may readily determine whether Concessionaire is making payments required hereunder. City may inspect and audit the books of account and records at all reasonable times; the time of such inspections and audit to be at the discretion of the City.

### **INDEPENDENT CONTRACTOR**

It is understood and agreed this is not a contract of employment and the concessionaire is an independent entity with respect to the business hereunder. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Any assistants or other help used by Concessionaire are and shall be deemed the employees of concessionaire and in no manner employees of the City. The Concessionaire shall be responsible in full for any payment due its employees, including workers compensation and related costs.

### **INSURANCE**

The concessionaire/contractor shall obtain and maintain consistently for the duration of the agreement, policies of comprehensive general liability insurance with combined single limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington. A \$2,000,000 products/completed operations aggregate is also required for contractors that prepare food. The insurance policy shall be written on an occurrence basis. The City of Kirkland shall be named as Additional Insured and a copy of the Additional Insured Endorsement naming the City as Additional Insurance shall be attached to the Certificate of Insurance. The Certificate of Insurance and Additional Insured Endorsement shall be filed with the City a minimum of two weeks prior to the contractor providing services.

If concessionaire is offering water based activities (paddleboard rentals, boat rentals, etc.), the limits the concessionaire/contractor shall obtain and maintain for the duration of the agreement, policies of comprehensive general liability insurance with combined single limits of not less than \$1,000,000 per occurrence, \$3,000,000 general aggregate with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington.

## **HOLD HARMLESS/INDEMNIFICATION**

Concessionaire shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from its negligence or breach of any of its obligations in performance of this Agreement.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Concessionaire and the City, its officers, officials, employees, and volunteers, the Concessionaire's liability hereunder shall be only to the extent of the Concessionaire's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Concessionaire's waiver of immunity under Industrial Insurance, Title 51, RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **RULES GOVERNING CONCESSION OPERATION**

Access to any park concession area/facility owned by the City of Kirkland must be fully available and consistently provided to the City. Access to the City cannot be delayed or denied at any time. The concessionaire is responsible for providing the City with the tools/information needed to access the concession area (for example, combinations to locks, keys to locks, etc.).

Concessionaire may operate 7:00 a.m. to 10:00 p.m. or during posted open park hours April 1, 2019 through October 31, 2019 only. During all hours of operation, Concessionaire shall maintain on duty adequate personnel to comply with all terms and conditions of this agreement.

Concessionaire is responsible for providing a clean, organized, safe, attractive, professional business. A preliminary/first inspection by the City will occur within one week of the opening date and will be conducted a minimum of monthly thereafter. If the location/equipment does not meet the City's standards of clean, organized, safe, attractive and professional, the Agreement may be terminated immediately upon verbal notice of termination to whomever is operating the concession at the time of the inspection. Alternatively, at the City's discretion, also upon verbal notice to whomever is operating concession operations at the time of inspection, Concessionaire may be given an opportunity to correct the deficiency in the time allowed by the inspector to achieve such standards. At the end of that time, if the standards still are not met, the Concession Agreement may be fully terminated as provided in this paragraph.

Concessionaire shall at all times keep area free of clutter and litter and messes (spills) related to business. Allowing debris, trash and spilled fluids to accumulate will not be permitted. All trash generated by Concessionaire's operation shall be collected and disposed of by Concessionaire daily. The area underneath and around must be swept/hosed off on a daily basis. Concession stand operator is responsible for safely securing all equipment, furniture and props.

Concessionaire is responsible for following and complying with all City of Kirkland Fat, Oils and Grease requirements per City of Kirkland Municipal Code Section 15.36.

Concessionaire shall not place any type of signage or advertisement of their activity without prior written permission from the Kirkland Parks and Community Services Department and only after appropriate permits are issued for such (if necessary). All signage must be preapproved by

Kirkland Parks and Community Services for quality, content and placement, and the location on site of signage must meet the City's Kirkland Zoning Code, Sign Code requirements (Kirkland Zoning Code, Chapter 100). Any expense for such signage or advertisement will be at the Concessionaire's sole expense.

Daily on-site storage is not available to mobile unit or food truck concessionaires. Vendors are responsible for removing from the park all carts, vehicles, trucks, equipment, and portable signage on a daily basis by the end of each business day.

Event/picnic rental spaces and fields within a park are offered to the public to rent at a fee through the City of Kirkland and cannot be utilized or rented to customers by the concessionaire. Concessionaires or individuals seeking rental options of park space must reach out to the Parks Department directly to rent park space.

Special Events (larger community events open to the public) are possible within any Kirkland park. City vendors are encouraged to participate and take advantage of the opportunities Special Events provide. Special Event Organizers are required to provide space for City vendors under contract at the park where an event will take place. Organizers are not required to provide space for mobile vendors that make stops at multiple parks. During Special Events, adequate space to accommodate a City vendor's standard setup is required – no fees nor application shall be required by the Event Organizer for this benefit. Should additional space be desired, City vendors must apply directly to the Event Organizer to be an authorized event vendor and pay the going rate for additional space to the event organizer. City vendors are expected to adhere to the guidelines and rules for participation as outlined by the Event Organizer. City vendors must be flexible as the assigned location within the park will vary from event to event. Special Event Organizers have the authority to determine the layout and location of each vendor participating in the event and as a result City vendors are expected to move to the location assigned by the Event Organizer if so requested for the duration of the event. Special Event organizers are not restricted from bringing in competing vendors, including selling similar products/services. A list of current Special Events is provided on the City's website:

[http://www.kirklandwa.gov/depart/parks/Permits\\_and\\_Reservations/SpecialEvents.htm](http://www.kirklandwa.gov/depart/parks/Permits_and_Reservations/SpecialEvents.htm). Event Organizers will contact City vendors directly to discuss location and event day logistics. If you haven't heard from an organizer at least one week prior to an event, please contact the Program Coordinator.

All non-City owned concession equipment must be removed seasonally by the last day of the agreement. During the off season, nothing can be stored outdoors and indoor locations are not guaranteed to be available but where they are, the fees being paid the City for the seasonal use also allow for such off season storage. If the indoor area is needed during the off season for storage, each season written permission from the City must be obtained. If permission is granted, all perishables must be removed, all equipment must be unplugged, the space must be safely organized within with sufficient/safe walking space provided throughout, fully cleaned and winterized and the area must pass an inspection by the City by the last day of this Agreement.

**SAFETY EQUIPMENT** – *Applicable to water recreational activity concessionaires.*

Concessionaire shall comply with all Washington State and U.S. Coast Guard water safety laws by requiring riders (staff or customers using water equipment) to wear Personal Floatation Devices and whistles while using (*water equipment*) in the open waters. In addition, the Concessionaire shall require riders to be attached to the (*water equipment*) by using a “leash” or tether to bind riders to the equipment in the event riders may fall into the open water.

**TOBACCO-FREE PARKS POLICY**

To help protect the health, safety and welfare of the citizens of our city, the use of tobacco or other unapproved nicotine delivery products is discouraged in all city parks and outdoor recreational facilities at all times. Concessionaire and Concessionaires will refrain from the use of any form of tobacco at or on any City-owned or operated outdoor park or facility, which includes, but is not limited to, any park, playground, athletic fields, skate park, aquatic areas, shelters, restrooms, trails and parking lot areas.

**TERMINATION OF AGREEMENT**

In the event Concessionaire breaches any term of this Agreement, or in the event Concessionaire violates any local, City, County, State or Federal laws applicable to its operations hereunder, the City may terminate this Agreement upon 10 days written notice to Concessionaire. However, the Parks and Community Services Director may order Concessionaire to cease operations immediately at any time should the Parks and Community Services Director determine operations detrimental to public safety, health or welfare. In the event of termination, Concessionaire agrees the City shall have the right to dispose of all property used by Concessionaire in its operations not removed by Concessionaire before the termination date.

**EXTENT OF AGREEMENT/MODIFICATION**

This Agreement is the final and completely integrated Agreement between the parties regarding its subject matter and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended by written instrument properly signed by both parties.

**SUCCESSORS AND ASSIGNS**

The Concessionaire shall not assign, transfer or otherwise dispose of this Agreement or any part of this Agreement without the written prior consent of the Director of the City of Kirkland Parks and Community Services Department or their designee.

**NONDISCRIMINATION**

Concessionaire shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

**CONCESSIONAIRE**

**CITY OF KIRKLAND**