



City of Kirkland

Request for Proposal

Business Opportunities for Recreation and Food Service Concessions in Kirkland's Parks

Job # 03-23-PCS

Issue Date: February 9, 2023
Due Date: February 23, 2023, 4:00 p.m. (Pacific Time)

REQUEST FOR PROPOSALS

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

**Business Opportunities for Recreation and
Food Service Concessions in Kirkland's Parks
Job # 03-23-PCS**

File with Purchasing Agent, Finance Department, 123 - 5th Ave, Kirkland WA, 98033

Proposals received later than **4:00 p.m. February 23, 2023, 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 "Doing Business with the City" and look under the "Opportunities" tab.

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 requires that no person shall, on the grounds of race, religion, color, national origin, sex, age, marital status, political affiliation, sexual orientation, or the presence of any sensory, mental, or physical disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City 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 9th Day of February, 2023.

Jay Gewin
Purchasing Agent
(425) 587-3123

Published in the Daily Journal of Commerce on February 9th and 16th, 2023

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 93,570. 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.

Kirkland operates under a Council-Manager form of government. The City Council is the policy-making branch of Kirkland's government and consists of seven members elected at large to staggered, four-year terms. The Mayor is elected from within the Council. The City Council is supported by several advisory boards and commissions and the City Manager. The City Manager is appointed by the City Council and serves as the professional administrator of the organization, coordinating its day-to-day activities.

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 (PCS), for seasonal recreation and food service concessions within Kirkland's parks. A list of parks where the City would most like concession services to be offered to the public is provided in the next section, however, PCS will also consider proposals for any other Kirkland park and will consider proposals for mobile concessions that travel park to park as well.

On-site concession options vary by park, with some sites more appropriate for just one type of service (recreation or food), and others that can accommodate multiple concessions on-site. Some parks require services be provided by concession owned food trucks or mobile cars, while others offer access to indoor City facilities for concession use.

The City is seeking and will select concessionaires that best demonstrate the ability to provide innovative, affordable, and reliable products and services to park patrons. Applicants are encouraged to offer services that would enhance a park visitor's experience, however, the City also encourages unique proposals that may boost a visitor's experience beyond the ordinary.

The City maintains the discretion to accept or reject any submittal.

Performance Schedule

Proposals accepted will be awarded an Agreement for Concessions for the 2023 season(s), with a potential option by the City to extend the agreement on an annual basis for a total of three years (through 2025). The City reserves the right to approve or disapprove any proposed business activity or proposed site. The City 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. Applicants awarded concessions must operate the concession services contracted by the City.

Scope of Work

Definitions

1. **Concessions:** A small business or shop where products and/or services are sold in a public place.
2. **Mobile concessions:** Traveling sales of products and/or services, park to park, via concessionaire independently owned vehicles (i.e., ice cream trucks).
3. **Recreation concessions:** The offering of temporary access to specific recreational activities, like kayak rentals, stand-up paddleboard rentals, etc.
4. **Food concessions:** The offering of specific food and/or beverages, like hamburgers, pizza, smoothies, coffee, ice cream, bottled water, snacks, etc.
5. **Product concessions:** The offering of specific products, like sunscreen, sweatshirts, hats, towels, etc.
6. **Food truck:** A self-contained, large vehicle, with equipment installed within the truck cabin used to prepare, produce, and sell products.
7. **Mobile cart:** A pushcart readily moveable by a person and not motorized by an engine or pedal from which food/services are dispensed.
8. **Trailer:** A unit, fully contained, which provides storage for products, services, and equipment, that is not mobile without the connection to and aid of a vehicle or truck.

City of Kirkland parks have potential for either static or mobile concessions or both. Concessions services have been awarded by the City in the past at the parks listed below:

- Houghton Beach Park, 5811 Lake Washington Boulevard, Kirkland
- Juanita Beach Park, 9703 NE Juanita Drive, Kirkland
- Marina Park, 25 Lakeshore Plaza Drive, Kirkland
- Peter Kirk Park, Lee Johnson Field, 202 3rd Street, Kirkland
- Everest Park, 500 8th Street South, Kirkland
- Mobile Park to Park Services, Multiple Parks

The type of concession operations possible on-site for the parks listed within are provided on the next page, however, the City continues to maintain the discretion to accept or reject any

proposal. Note: mobile units will also be required to be removed from the park by the end of each business day.

Park	Number of and Type of Space	Maximum Opportunity
Houghton Beach Park	1 - Outdoor Mobile Cart / Trailer	1
Juanita Beach Park	1 – Indoor 1 – Food Truck 1 – Outdoor Mobile Cart/Trailer	3
Marina Park	2 – Outdoor Mobile Carts	3
Peter Kirk Park, Lee Johnson Field	1 – Food Truck or Outdoor Mobile Cart / Trailer	1
Everest Park	1 – Indoor	1
Mobile Park-to-Park	1+ - Mobile park-to-park service	1+

The size of potential concession areas and utilities accessible vary by the park (Wi-Fi, power, water, restrooms, etc.). All equipment and services necessary to operate must be provided by the concessionaire and at their own expense. It is the responsibility of the applicant to independently visit each site to verify each park is adequate to operate their proposed concessions. Any park or facility modifications needed for the concessionaire to successfully operate are to be proposed by the concessionaire within their RFP. Improvements and modifications to parks and park facilities will require advance written approval from the City of Kirkland Parks and Community Services Department and shall be the responsibility of the bidder to achieve properly and at their own expense.

Proposals for concession services are expected to be for traditional services which enhance a park visitor’s experience and encouraged for unique services that expand a visitor’s experience beyond the norm. The duplicating of similar products and services, however, amongst concessionaires and park brick-and-mortar neighboring businesses, will be eliminated during the RFP review process. Past park concession services awarded have included kayak and stand-up paddleboard rentals, on-site cooking and selling of hamburgers, frozen confections, prepackaged beverages and snacks, carts providing snow cone and hotdog sales, and mobile sales of ice cream. The City maintains the discretion to accept or reject any submittal.

Concession services are most often contracted to operate seasonally, from April 1st through October 31st. Proposals that include year-round services or alternative seasons of operation will be considered, however, the City maintains the discretion to accept or reject any submittal. PCS also winterizes many parks with restrooms and irrigation by shutting off access to water and closing restrooms from November thru March. Contracts will be awarded for one 2023 season. If operations prove to be satisfactory to the City of Kirkland Parks and Community Services, the contract may be renewed by the City on an annual basis for a total of three years, through 2025.

Note: A Concessions Agreement provides an on-site vendor (not a mobile vendor) the right to be included in all permitted Special Events produced by non-City organizers which occur at their awarded park. Special Events draw a significant crowd and provide a wonderful economic opportunity for concessionaires to increase sales. Examples of Special Events are Kirkland Uncorked, Summerfest, Oktoberfest, 5k runs, marathons/triathlons, etc. The concessionaire,

however, may not be able to operate on the day of a Special Event in the exact space operations are normally conducted. The concessionaire's location may need to be altered for the duration of the event to accommodate the footprint needs of a Special Event. However, if relocating is necessary, organizers are required to work with concessionaires to determine an alternative space within the same park to operate during the event. The City of Kirkland also hosts several community events throughout the calendar year, like outdoor movies, Harvest Fest, See Spot Splash, Halloween Bingo, etc. City staff will communicate event occurrence and event needs to on-site contracted park concessionaires and may request their participation, however, the City is not required to include on-site concessionaires as vendors for any City event. Based on footprint needs of a City event, staff may require a contracted concessionaire temporarily relocate within the same park, or a decision may be made by the City or the concessionaire that closing operations for the event term is best. The City may also choose to hire additional or alternative vendors to provide services within the same park during City of Kirkland hosted community events.

Concession Fee Requirement

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 exact amount proposed by the vendor. The suggested payment amount and suggested payment timeline will need to be defined within the concessionaire's RFP with the proposal to be reviewed by the City.

Concession Fee examples include:

- A flat Concession Fee payment.
- A monthly Concession Fee payment of a percentage of gross monthly receipts.
- Other

Contract Requirements and Fees

If your proposal is accepted, the following fees and requirements will be due upon award, prior to issuance of a 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 \$2,000,000 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.
 - For concessionaires offering water-based activities (paddleboard rentals, boat rentals, etc.), the general aggregate requirement increases to \$3,000,000.
 - 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.

- A copy of the concessionaire’s Certificate of Insurance and Additional Insured Endorsement naming the City as Additional Insured 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, electrical, and Wi-Fi 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” and applicable contract requirements are included for review.
 5. ***Successful Passage of Criminal Background Check***
 - The contractor must complete an application for a National Background Check with the City’s service provider and have a “successful passage” as defined by the contract and will be required to conduct a criminal background check for any employee, agent, or other person performing services on behalf of the Concessionaire. Contract specifics and successful passage information are included below for review.
 6. ***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 1st day of the contract and mid-season; and others have been a monthly payment of a percentage of all sales and services.
 - Utility Fee per season may be required, with the amount required to be determined by the City and paid by the concessionaire. If a Utility Fee is applicable, it will be due on the first day of the contract season.

Submittal Requirements

Proposals should be prepared simply, providing straightforward, concise descriptions of the applicant’s capabilities to satisfy the requirements of the request.

Proposals must include the following:

1. A description and complete list of all proposed products and/or services intended to be offered.
 2. A list of proposed concession park location(s), their address, and the specific service area proposed within the park. If necessary, please attach a rough site plan to identify the proposed area within a park.
 3. A description of all equipment concessionaire will use on-site to provide services.
 4. A list of any utilities needed to operate and confirmation if utility access will be provided by the concessionaire or if the concessionaire is requesting access to on-site utilities. Note utility fees may apply, in addition to the Concession fees outlined within, for concessionaires that require the use of park utilities.
 5. Visual aids/pictures that describe business operations, mobile carts, food trucks, and any other service equipment.
 6. A complete list of 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.
 7. Proposed dates to move into and out of concession space (dates to be used for setting up and tearing down operations).
 8. Proposed dates concession services will be open seasonally to the public.
 9. Proposed days and hours services will be open for business.
 10. A brief overview of bidders' professional history that conveys their expertise and experience with the activity or service proposed.
 11. A minimum of three references each for business operations; financial stability; and customer satisfaction.
 12. 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 to be used to record revenues and expenditures. Standard percentage-based remittance ranges from 25-40% of gross receipts, before sales tax.
 13. A list of any and all desired tenant improvements for the site. Include items such as power, water, security, restroom, Wi-Fi 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.
 14. A description of staff and related site needs, such as the volume of staff and their parking needs.
 15. A description of storage needs. Note: All equipment on-site must be removed between seasons of service, off-season storage is not available.
 16. Written confirmation business operations will be conducted directly by the applicant as subletting is not allowed without full disclosure to the City and without obtaining written permission from 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 trucks), where indoor facilities are not available. Applicants are encouraged to offer services

that would complement park use, however, the City also encourages proposals of new and unique offerings that could further enhance a park visitors' experience.

- Applicants are encouraged to visit the desired site(s) before submitting a proposal. Sites vary by location and on-site amenities. Staff-guided tours will be provided only on:

February 15, 2023

- 2:00 p.m. to 2:30 p.m. P.S.T. at Everest Park Concession Stand at Field 1
- 3:00 p.m. to 3:30 p.m. P.S.T. at Peter Kirk Park, Lee Johnson Field

February 16, 2023

- 2:00 p.m. to 2:30 p.m. P.S.T. at Juanita Beach Park Bathhouse Building
- 3:00 p.m. to 3:30 p.m. P.S.T. at Marina Park Restroom Building

- Contracts will be awarded for one 2023 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 2025.
- The successful bidder will be expected to abide by all State laws, King County laws, City of Kirkland ordinances, 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. Proposals must be received no later than 4:00 PM on February 23, 2023 (Pacific Time).**
2. Emailed proposals should include, "Recreation and Food Concessions – Job #03-23-PCS" in the subject line and be addressed to purchasing@kirklandwa.gov.
3. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed 20MB.
4. If paper proposals are being submitted, they must consist of one original and one copy in a sealed envelope or box. The City must receive any paper submittal by 4:00 PM on February 23, 2023, and any delivery received after the deadline may be rejected. These can be mailed or delivered to:
City of Kirkland
ATTN: Purchasing staff – Job # 03-23-PCS
123 5th Avenue
Kirkland, WA 98033
5. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principal place of business, mailing address, phone numbers, emails, fax number (if one exists) and primary contact person.

6. The proposal must be signed by an official who is legally authorized to bind the organization.
7. Complete, sign, and submit all RFP forms provided by the Department.
8. To be evaluated, a proposal must address all requirements and instructions contained within.

Questions: Questions regarding the scope of work or evaluation process, in order to be considered, must be submitted in writing, to Nicci Osborn, Program Coordinator, at nosborn@kirklandwa.gov by 12:00 p.m. PST on February 17, 2023. Questions regarding the RFP process should be addressed to Jay Gewin, Purchasing Agent, at jgewin@kirklandwa.gov or by phone at (425) 587-3123.

Answers will be posted on City website by February 21, 2023. The answers will be posted here:

<https://www.kirklandwa.gov/Government/Departments/Finance-and-Administration/Purchasing-Services/Doing-Business-with-the-City>

Submittal Deadlines

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

February 9, 2023	RFP Packages Available
February 15 and 16, 2023	Guided Tour of Sites (see schedule above)
February 17, 2023	Deadline for Questions: 12:00 p.m. PST
February 21, 2023	Answers posted to City website
February 23, 2023	RFP Submittal Deadline: 4:00 p.m. PST
March 3, 2023	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. Answers and complete the requirements detailed within.
2. Provide the longest duration of the 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 the best products and services that complement and/or enhance 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. Provide complete details regarding any lacking park amenities necessary to operate and proposed solutions, including details of any proposed tenant improvements necessary.
9. Meet licensing and insurance requirements.
10. Provide satisfactory concession fee to be paid to the City of Kirkland for the proposed business operations.
11. Provide confirm operations are to be conducted by the applicant, as subletting is not permissible without full disclosure and prior written consent from the City of Kirkland Parks and Community Services Director or their designee.
12. Have the best business operations, financial stability, and customer satisfaction references.

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)*.

Terms and Conditions

- A. The City reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. Proposers responding to this RFP must follow the procedures and requirements stated in the RFP document. Adherence to the procedures and requirements of this RFP will ensure a fair and objective analysis of your proposal. Failure to comply with or complete any part of this RFP may result in rejection of your proposal.
- C. The City reserves the right to request clarification of information submitted, and to request additional information on any proposal.
- D. The City reserves the right to award any contract to the next most qualified agency, if the successful agency does not execute a contract within 30 days of being notified of selection.
- E. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of one hundred and twenty (120) days to sell to the City the

services described in the attached specifications, or until one or more of the proposals have been approved by the City administration, whichever occurs first.

- F. The contract resulting from acceptance of a proposal by the City shall be in a form supplied or approved by the City and shall reflect the specifications in this RFP. A copy of the City's standard Professional Services Agreement is available for review (see attachment A). The City reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP and which is not approved by the City Attorney's office.
- G. The City shall not be responsible for any costs incurred by the agency in preparing, submitting or presenting its response to the RFP.
- H. Any material submitted by a proposer shall become the property of the City. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.
- I. 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. The City reserves the right to modify the scope of work and award portions of this RFP to the selected vendor. The City reserves the right to award this work to multiple vendors if the scope of work would be best completed by multiple vendors and their associated experience.

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.

DBE Participation

The City encourages DBE firms to submit qualifications and encourages all firms to team with DBE firms in their pursuit of this project.

Federal Debarment

The Bidder shall not currently be debarred or suspended by the Federal government. The Bidder shall not be listed as having an "active exclusion" on the U.S. government's "System for Award Management" database (www.sam.gov).

Attachment A

SAMPLE AGREEMENT FOR CONCESSIONS

THIS AGREEMENT made and entered into this _____ of _____, 2023, 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 food and beverage or recreation rental service concession at _____ Park 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 food and beverage or recreation rental service concession providing describe concession items concessions. The concession shall be operated within the authorized concessions area of _____ Park (attach site plan and reference "(see Attachment A)", if necessary). 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 may engage only in the business of providing concession sales of repeat concession items. Concessionaire shall not engage in any other business activity, including business events, classes, camps and/or private or group lessons without prior written approval from the City. A request to provide any other services must be submitted to the City with at least five business days' notice. 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 _____ and ending _____, with an option by the City to extend this agreement once per year for one-year increments through _____. Each notice of extension must be given in writing not less than 30 days before the beginning of the renewal term. Outside of these dates Concessionaire must remove all uninstalled equipment from the premises.

PAYMENT FOR CONCESSION

For one set Concession Fee per season: For the opportunity to conduct concession services, Concessionaire shall pay to the City a Concession Fee. The Concession Fee is \$ _____ per season, a set amount to be paid in one installment, with the Concession Fee due on or before _____.

Should payment(s) not be received as indicated by _____, Concessionaire agrees to pay a late fee equal to Twenty-Five and No/100 dollars (\$25.00) for each day late.

For multiple payment Concession Fee per season: For the opportunity to conduct concession services, Concessionaire shall pay to the City a Concession Fee. The Concession Fee is \$_____ per season, a set amount to be paid in _____ installments with _____% of the Concession Fee (\$_____) due on or before _____, 2021 and the remaining _____% of the Concession Fee (\$_____) due on or before _____, 2021.

Should payment(s) not be received as indicated by _____ and _____, Concessionaire agrees to pay a late fee equal to Twenty-Five and No/100 dollars (\$25.00) for each day late.

For percentage-based concessions only: For the opportunity to conduct concession services, Concessionaire shall pay to the City a Concession Fee, on the 10th of each month, in the amount of _____% of all gross monthly receipts, before sales tax, on *rentals and sales* for the previous month. Monthly receipts include (*indicate all services or products here*) sales from the preceding month for all operations hereunder. The term "receipts" means entire receipts from concessions of every kind, whether cash or credit, from the business hereunder, not to include sales tax.

Should payment not be received by the City by the 10th of each month, the Concessionaire agrees to pay a late fee equal to twenty-five and no/100 dollars (\$25.00) for each day delinquent after the 10th of the month.

If Utility Fees are due: The Utility Fee is \$_____. The Utility Fee is a single payment per season. The Utility Fee is also due on or before _____.

Should payment(s) not be received as indicated by _____, Concessionaire agrees to pay a late fee equal to Twenty-Five and No/100 dollars (\$25.00) for each day late.

To include for percentage-based Concessions Only: 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.

CRIMINAL BACKGROUND CHECK

Concessionaire must complete an application for a National Background Check with the City's service provider and have a "successful passage" as defined in this section. Concessionaire hereby warrants that it has conducted a criminal background check for any employee, agent or other person performing services on behalf of the Concessionaire pursuant to this Agreement, and Concessionaire hereby warrants the successful passage of said criminal background check by the employee, agent or other person. The criminal background check required hereby shall occur no earlier than thirty (30) days prior to the first provision of said services by the employee, agent or other person. For purposes of this section, "successful passage" means that Concessionaire's criminal background check of the employee, agent or other person has revealed no conviction or other adverse disposition for any crime against persons, including but not limited to murder, kidnapping, manslaughter, assault, battery, rape, arson, robbery, burglary, child molestation, indecent liberties, harassment or stalking. In addition, "successful passage" means that the Concessionaire's criminal background check of the employee, agent or other person reveals no findings against the employee, agent or other person in a civil adjudication proceeding as defined in Revised Code of Washington (RCW) 43.43.830. An employee, agent, or other person must cease performing services authorized by this Agreement if that person, subsequent to successfully passing a criminal background check, later engages in actions considered a crime against persons or subsequently becomes the subject of a RCW 43.43.830 civil adjudication proceeding.

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.

INSURANCE

Concessionaire shall obtain and maintain consistently for the duration of this agreement, with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington, policies of comprehensive general liability insurance coverage with combined singles limits of not less than:

- \$2,000,000 per occurrence; and
- \$2,000,000 general aggregate *or \$3,000,000 general aggregate for Concessionaire providing aquatic services*; and

- \$2,000,000 products/completed operations aggregate is required for a Concessionaire that prepares food

The insurance policies shall be written on an occurrence basis. The insurance policy shall contain, or be endorsed to contain, that the Concessionaire's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Concessionaire's insurance and shall not contribute with it. If the Concessionaire maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of liability coverage maintained by the Concessionaire, irrespective of whether such limits maintained by the Concessionaire are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidence limits of liability lower than those maintained by the Concessionaire.

The City shall be named as an Additional Insured and a copy of the Additional Insured Endorsement naming the City as Additional Insured shall be attached to the Certificate of Insurance. Certificate of Insurance and Additional Insured Endorsement shall be filed a minimum of two weeks prior to opening with the City, prior to the vendor providing services.

Concessionaire's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Concessionaire to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

HOLD HARMLESS/INDEMNIFICATION

Concessionaire shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits actions, or liabilities for injury or death of any person or loss or damage to property arising out of or resulting from Concessionaire's use of City property to provide concession services or from any activity, work, or thing done, permitted, or suffered by Concessionaire in providing services authorized by this Agreement, excepting any injury or damage occasioned by the sole negligence of the City.

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.).

Where applicable for Concessionaires providing aquatic services, Concessionaires will promptly notify the City of Kirkland if Concessionaire observes or is reasonably notified about any potentially or actual dangerous or hazardous conditions existing or being conducted by others on the property.

Concessionaire may operate [list hours permissible](#) or during posted open park hours [list first date of season](#) through [last date of season](#) 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 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, and for applicable concession locations, conducting a professional cleaning of the cooking range, hood and vent on an annual basis.

Concessionaire is responsible for complying with City of Kirkland Municipal Code Section 14.36, City Floats, Moorages and Tour Boat Facility.

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 daily. Concession stand operator is responsible for safely securing all equipment, furniture and props.

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 KPCS 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 without prior written approval from the City. Concessionaires are responsible for removing from the park all carts, vehicles, trucks, equipment, and portable signage daily by the end of each business day.

Concessionaire is responsible for removing from the pier and park all portable carts, portable equipment, and portable signage on a daily basis by the end of each business day except with prior written approval from the City. Daily on-site storage is not available to Concessionaire without prior written approval from the City.

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 large group accommodations of 20 people or more and/or rental options of park space associated with Concessionaire's services must contact the Parks Department directly to rent park space.

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.

SPECIAL EVENTS AND COMMUNITY EVENTS WITHIN PARKS

The City of Kirkland permits private parties to hold Special Events within Kirkland parks. Typically, Special Event Organizers are required to provide space for City Concessionaires under contract at the park where an event will take place, but Organizers are not required to provide space for mobile Concessionaires that make stops at multiple parks. During Special Events, adequate space to accommodate a City Concessionaires' standard setup is required – no fees or application can be required by the Event Organizer for this benefit. Should additional space at the Special Event be desired by a City Concessionaire, City Concessionaire 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 Concessionaires are expected to adhere to the guidelines and rules for participation as outlined by the Event Organizer. City Concessionaires must be flexible as the location assigned to the Concessionaire being entitled to their typical location. Special Event Organizers have the authority to determine the layout and location of each vendor participating in the event and as a result City Concessionaires 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. Event Organizers will contact City Concessionaires directly to discuss location and event day logistics. If Concessionaire hasn't been contacted at least one week prior to an event, please contact the Program Coordinator. A list of current Special Events is provided on the City's website: <https://www.kirklandwa.gov/Government/Departments/Parks-and-Community-Services/Special-Event-Services>, although this list is not comprehensive of the events that may be held.

The City of Kirkland also hosts several community events a year within Kirkland parks. For City hosted events at parks where Concessionaire's services are typically contracted, at the City's discretion, the City could opt to:

- request participation of contracted Concessionaires.
- require contracted Concessionaires relocate to an alternative area within a park to accommodate event footprint needs.
- not provide any vending services for an event.
- hire additional or alternative vendors to provide event services, even concessionaires providing similar services to those on-site.
- not include Concessionaire as a service provider.
- request Concessionaire to close operations for the duration the event impacts the park.

The City will provide reasonable notice to Concessionaire of events impacting on-site Concessionaire's operations. If Concessionaire isn't contacted within a reasonable period prior to, please contact the Program Coordinator.

SAFE OPERATIONS REQUIREMENTS

Aquatic service 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 equipment in the open waters. In addition, the Concessionaire shall require riders to be attached to the equipment by using a "leash" or tether to bind riders to the equipment in the event riders may fall into the open water.

Boating Concessions: Concessionaire shall comply with current Washington State and U.S. Coast Guard water safety laws. Concessionaire is required to provide in each vessel a U.S. Coast Guard Approved life jacket for each person on board and one Type IV throwable device for vessels 16 feet and over. Life jackets must be the proper size for the intended wearer.

Boating Concessions: Per the Clean Water Act (CWA): All spills of oil or hazardous substance into navigable waters as defined by the Clean Water Act (CWA) and all spills of a reportable quantity of hazardous substances (40 CFR Part 302) must be immediately reported by the spiller to the National Response Center (NRC). The NRC will contact appropriate local US Coast Guard (USCG) or Environmental Protection Agency (EPA) offices. Notifying state offices does not relieve the spiller from federal requirements to notify the NRC nor vice versa. National Response Center (NRC) (800) 424-8802 Toll Free All spills of oil into Washington State Waters must be immediately reported to the Washington State Emergency Management Division. Marine casualties, disabled

vessels or near-miss incidents should also be reported. The City of Kirkland Public Works water pollution division ((425)-587-3900) and Parks and Community Services Departments must also be immediately notified.

SAFE AIR QUALITY, WATER QUALITY, AND PUBLIC HEALTH REQUIREMENTS

Concessionaire is required to mirror the City's air and water quality recreation program cancellations and cease water activities during public health water and air quality closures of the park area defined within. In these circumstances, Concessionaire's activities are required to remain ceased until notified by the City.

Concessionaire agrees to conduct operations in accordance with all public health orders of the Centers for Disease Control (CDC), Public Health of Seattle and King County, the Washington State Department of Health (DOH), the Washington State Governor and Legislature. Concessionaire agrees to immediately cease or modify operations during public health closures and restrictions until notified by the City. The City is not responsible for Concessionaire's financial loss or any other losses or claims resulting from public health closure(s) or restrictions.

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 Concessionaire's employees, volunteers, and customers 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 City.

NONDISCRIMINATION

In employment made possible or resulting from this Agreement, Concessionaire shall 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