



SEATTLE CITY COUNCIL

Legislative Summary

CB 119223

Record No.: CB 119223

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125570

In Control: City Clerk

File Created: 03/15/2018

Final Action: 04/27/2018

Title: AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute for and on behalf of the City a Concession Agreement granting Miri's Seattle LLC the right to exclusive use and occupancy of the Golden Gardens Bathhouse Concession Premises for the purpose of providing food and concessions for park patrons at Golden Gardens Park.

Notes:	Filed with City Clerk:
Sponsors: Juarez	Mayor's Signature:
	Vetoed by Mayor:
	Veto Overridden:
	Veto Sustained:

Attachments: Att 1 – Golden Gardens Bathhouse Concession Agreement

Drafter: Teresa Burns

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: Yes No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	03/19/2018	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	03/20/2018	sent for review	Council President's Office			
1	Council President's Office	03/23/2018	sent for review	Civic Development, Public Assets, and Native Communities Committee			

Action Text: The Council Bill (CB) was sent for review. to the Civic Development, Public Assets, and Native Communities Committee

Notes:

- 1 Full Council 04/02/2018 referred Civic Development, Public Assets, and Native Communities Committee
- 1 Civic Development, Public Assets, and Native Communities Committee 04/18/2018 pass Pass
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:
In Favor: 3 Chair Juarez, Vice Chair Bagshaw, Member González
Opposed: 0
- 1 Full Council 04/23/2018 passed Pass
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
In Favor: 9 Councilmember Bagshaw, Councilmember González, Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember Mosqueda, Councilmember O'Brien, Councilmember Sawant
Opposed: 0
- 1 City Clerk 04/25/2018 submitted for Mayor Mayor's signature
Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:
- 1 Mayor 04/27/2018 Signed
- 1 Mayor 04/27/2018 returned City Clerk
- 1 City Clerk 04/27/2018 attested by City Clerk
Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:
-

CITY OF SEATTLE

ORDINANCE 125570

COUNCIL BILL 119 223

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute for and on behalf of the City a Concession Agreement granting Miri's Seattle LLC the right to exclusive use and occupancy of the Golden Gardens Bathhouse Concession Premises for the purpose of providing food and concessions for park patrons at Golden Gardens Park.

WHEREAS, the Department of Parks and Recreation ("DPR") has historically provided food service at Golden Gardens Park through concession agreements to the public from the south area of the Golden Gardens Park Bathhouse ("Bathhouse"); and

WHEREAS, in August 2016, DPR conducted a publicly advertised request for proposal process to find a vendor to operate a food concession at the Bathhouse; and

WHEREAS, following a thorough review process of the submitted proposals, the Superintendent of Parks and Recreation ("Superintendent") determined that Miri's Seattle LLC submitted the strongest proposal; and

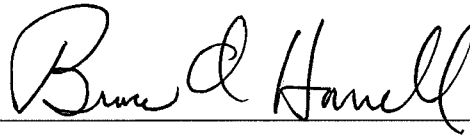
WHEREAS, DPR desires to continue to offer food services to park patrons at Golden Gardens Park; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent"), or the Superintendent's designee, is hereby authorized on behalf of The City of Seattle to execute a five-year Concession Agreement, substantially in the form of Attachment 1 to this ordinance, with Miri's Seattle LLC. The Concession Agreement further authorizes the Superintendent to extend the term of the Concession Agreement for up to two five-year periods.

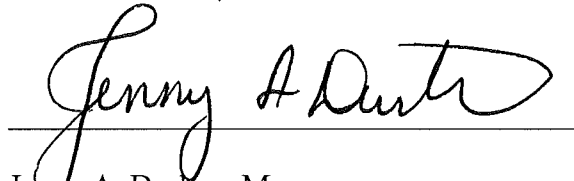
1 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 23rd day of April, 2018,
5 and signed by me in open session in authentication of its passage this 23rd day of
6 April, 2018.

7 

8 President _____ of the City Council

9 Approved by me this 27th day of April, 2018.

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11 Jenny A. Durkan, Mayor

12 Filed by me this 27th day of April, 2018.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)
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21 Attachments:
22 Attachment 1 – Golden Gardens Concession Agreement

GOLDEN GARDENS BATHHOUSE CONCESSIONS AGREEMENT

Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
MIRI'S SEATTLE LLC

THIS CONCESSION AGREEMENT (“Agreement”) is entered into between **the City of Seattle**, a municipal corporation of the State of Washington (“City”), by and through its **Department of Parks and Recreation (“DPR”)** and its Superintendent, and **Miri’s Seattle LLC**, a Washington limited liability company (“Concessionaire”). The City and Concessionaire may sometimes be referred to in this Agreement together as “the Parties” or individually as “Party.”

PART A - SPECIAL CONDITIONS AND COVENANTS OF AGREEMENT

A-1 CONCESSION PREMISES

1.1

Description. As used in this Agreement, the “Concession Premises” means the following portions of City-owned property referred to as Golden Gardens Bathhouse, located at 8398 Seaview Place N.W., Seattle, King County, Washington 98117 (“Building”):

The rentable area of approximately 480 square feet is located at the south end of the Building as outlined in the floor plan of the Building attached as Exhibit A (“Floor Plan”) to this Agreement.

1.2

Grant of Right to Use the Concession Premises. Throughout the Term, Concessionaire shall have the right to exclusive use and occupancy of the Concession Premises for the purpose of operating the Concession granted under this Agreement. Concessionaire accepts the Concession Premises in AS-IS condition as of the Commencement Date, and City makes no representation about the fitness of the Concession Premises for the intended purpose.

1.3

Grants of Right to use Patio Area. Throughout the Term, Concessionaire shall have the rights to use the patio area to the south of the concession area (“Patio Area”) to place tables, chairs, potted plants and signage. Any item that Concessionaire would like to use in the Patio Area must be approved in writing in advance by DPR and Concessionaire assumes all liability for any damage or loss.

A-2 GRANT OF CONCESSION RIGHTS

2.1

DPR hereby grants to the Concessionaire, subject to the terms herein, the exclusive right and privilege to operate a year-round food and beverage restaurant business at the Concession Premises during the Term of this Agreement in a manner that is compatible with this Agreement and DPR’s purpose and use of Golden Gardens. No other food concessions will be granted by DPR to a third party during the term of this Agreement; EXCEPT, DPR may grant to third party a temporary food concessions along with the use of the Park through a Special Event

Permit at Golden Gardens Park periodically during the term of this Agreement. Concessionaire shall provide restaurant food and beverage services. Concessionaire shall provide menu items and healthy options to patrons that are consistent with the menu shown on Exhibit B that has been approved by DPR and which may be amended by mutual agreement of both parties in writing. The menu may not include alcohol. Concessionaire shall sell nothing in a glass container.

A-3 TERM OF AGREEMENT

3.1

Initial Term. This Agreement shall be effective when signed by an authorized representative of both parties (“Commencement Date”) following an authorizing ordinance of Seattle City Council, and shall be for an initial term of five (5) years (“Term”).

3.2

Extended Term. At the Superintendent’s discretion, this Agreement may be extended for two additional terms of up to five years each on such terms and conditions as the Superintendent may determine. DPR shall give the Concessionaire written notice of its intention to extend or not extend at least six (6) months prior to the expiration of the initial Term. Concessionaire shall have three (3) months following the date of the Superintendent’s notice to accept the extension or to renegotiate the extension with DPR in writing, otherwise Concessionaire’s right to accept the Superintendent’s offer to extend shall automatically expire and DPR may issue a request for proposals or take any other action the Superintendent deems in City’s best interest with respect to the Concession Premises. When used in this Agreement, the word "Term" includes both the Initial and the Extended Terms unless the context clearly indicates otherwise.

A-4 CONSIDERATION

4.1

DPR grants the Concession rights herein in exchange for the Concessionaire's performance of the following:

- a. Making timely payments of the monthly Concession Fee in A-5.
- b. Providing all equipment and services to operate the Concession in the manner required under Section A-7.

A-5 CONCESSION FEE

5.1

Monthly Concession Fee and Leasehold Excise Tax.

Concessionaire shall commence paying rent on or before the 10th day of the first full month following the Commencement Date (“Rent Commencement Date”), and thereafter rent shall be paid by installments every month for the duration of the Term. On or before the 10th day of each month, Concessionaire shall pay to City at the address and to the account specified by City, without notice or demand of any setoff or deduction whatsoever, in lawful money of the United States the following:

- a. An installment of the annual rent in the amount to a percentage of the Gross Receipts received by Concessionaire at the Concession Premises during the preceding month or

the monthly required minimum (the “Concession Fee”), whichever is greater. Beginning with Commencement Date the concessionaire fee shall be 12.6% of adjusted Gross Sales or \$250 per month for November to April whichever is greater or \$1,000 per month for May through October or 12.6% whichever is greater.

See Monthly Concession Fee Table below.

Monthly Concession Fee Table

Month	Percentage	Monthly Min
January	12.6%	\$250.00
February	12.6%	\$250.00
March	12.6%	\$250.00
April	12.6%	\$250.00
May	12.6%	\$1000.00
June	12.6%	\$1000.00
July	12.6%	\$1000.00
August	12.6%	\$1000.00
September	12.6%	\$1000.00
October	12.6%	\$1000.00
November	12.6%	\$250.00
December	12.6%	\$250.00
Minimum needed Annually	\$7,500.00	\$7,500.00

- b. Monthly amount of applicable Leasehold Excise Tax required under B-7.
- c. Concessionaire 2018 percentage or monthly minimum payment for January – March, 2018 will not be required due to initial improvement. Total minimum due for 2018 will be \$6,750.00.

5.2

Place and Manner of Payment.

All payments to City shall be paid to:

Department of Parks and Recreation
Contracts Administration and Support Office
Attention: Theresa Burns,
Parks Concessions Coordinator,
800 Maynard Ave S., 3 floor, Seattle, WA 98134.

All Concession Fee payments shall be accompanied by a written statement prepared by Concessionaire on a monthly report form approved by the Superintendent and reflecting Gross Receipts, hours of operation, including any amounts excluded from Gross Receipts as provided under Part B-1. See Exhibit C for required form.

A-6 FINANCIAL RECORDS/ AUDIT

6.1

Concessionaire's Records. The Concessionaire shall maintain at the Concession Premises a clear and documented set of books, records, documents, and other evidence reflecting all business activity conducted at the Concession Premises, including cash register tapes, credit card charge records, and any other data relating to the determination of Gross Receipts and the calculation of the Concession Fee.

6.2

Audit. Concessionaire shall permit its records to be inspected by City, with reasonable notice, and Concessionaire's records shall be subject to copying and audit by DPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. The Concessionaire shall ensure that this right of inspection, audit, and copying is a condition of any sub-concession agreement or other arrangement under which any person or entity other than Concessionaire is permitted to carry on a business activity in, on, or from the Concession Premises. The Concessionaire shall not be required to staff City's audit of Concessionaire's financial records, and City shall solely bear the costs associated with its inspection of Concessionaire's financial activity under this Agreement.

6.3

Retention. Concessionaire shall retain all financial books, records, documents, cash register tapes, credit card records and other material relevant to the financial activity under this agreement for six (6) years after the expiration or termination of any calendar year under the Agreement. The obligations in Section A-6 shall survive termination or expiration of the Agreement for the applicable duration of any statute of limitations.

6.4

Cash Register. The Concessionaire shall enter all sales on a type of cash register or Point of Sale ("POS") System that records and identifies the date, type of sale, and the amount of each transaction and that is equipped with a cumulative, non-alterable accounting control mechanism.

6.5

Record Keeping Subject to Approval. Concessionaire shall not change record keeping methods or change or discontinue use of the cash register or POS System without the Superintendent's written authorization.

A-7 OPERATION AND SERVICES

7.1

Unless otherwise approved by the Superintendent, Concessionaire shall be open for business year round and should provide service for the minimum number of hours as shown in the Chart below during the following hours:

Minimum hours of operation of the Premises are as follows

Month	Weekend (minimum total hours required for the weekend)	Mon-Fri (minimum total hours required for the week)
January thru February	4 hours	No Requirements
March thru April	8 hours	No Requirements
May thru June	12 hours	10 Hours
July Thru August	16 hours	40 Hours
September	12 hours	10 Hours
October thru November	8 Hours	No Requirements
December	4 hours	No Requirements

All City holidays are at concessionaire’s discretion to open. No minimum holiday hours required.

If Golden Garden Park remains open but access to the concession stand is fully restricted due to a natural catastrophe, DPR may consider rent adjustment to minimum amount due.

7.2

Park Hours: 4 a.m. – 11:30 p.m.

7.3

Food Service Hours: Operator can be open the minimum hours during those windows or if desired, any additional times during all park open hours.

7.4

Hours of Operation Signage: Concessionaire shall post its hours of operation in writing at a conspicuous place in the vicinity of the public entry on the Golden Garden Bathhouse, visible from the outside.

7.5

Reporting Hours required: Concessionaire shall report on a monthly basis the number of hour in operating on the on a monthly report form approved by the Superintendent. See Exhibit C for required form.

A-8 ENTIRE AGREEMENT

This Agreement, including Part A, Part B, and all exhibits, represent the entire agreement, between the parties with respect to the subject matter herein. No other understanding, oral or otherwise, may

modify the text or an attachment to this Agreement. The following exhibits are hereby incorporated and made a part of this agreement:

- Exhibit A - Golden Gardens Park Map and Bathhouse Floor Plan
- Exhibit B - Approved Menu
- Exhibit C - Concession Monthly Report of Gross Receipts Form
- Exhibit D - Insurance Requirements

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

PART B - GENERAL TERMS AND CONDITIONS

B-1 DEFINITION OF GROSS RECEIPTS

1.1

As used in this Agreement, "Gross Receipts" means and includes the total income of the Concessionaire from conducting business in, on or from the Concession Premises, including but not limited to the proceeds from all retail and wholesale sales of food, beverages, merchandise, and services of any kind whatsoever, for cash, barter, exchange, or credit, regardless of collections; all sub-concession fees and payments to Concessionaire; sales from vending devices; rental of any merchandise or equipment; mail or telephone orders received or filled on or from the Concession Premises; all deposits not refunded to purchasers; orders taken at the Concession Premises although filled elsewhere; fees; commissions; catalog sales; and rental receipts. An installment or credit sale shall be deemed to have been made for the full price on the date of sale regardless of when payment is received. Subject only to the exclusions specified in the immediately following paragraph, the full amount received by Concessionaire shall be included in "Gross Receipts," regardless of whether (a) Concessionaire was acting as a consignee, trustee, or agent for a third party in connection with such sale or rental, or (b) Concessionaire is entitled to retain the full amount received on such sale as Concessionaire's own property.

The term "Gross Receipts" does not mean or include the amount of money refunded to and not merely credited to the account of customers who return or do not accept food, beverages, merchandise, or services sold or rented; any exchange of merchandise between stores or the central warehouses of Concessionaire where such exchange is made solely for the convenient operation of the business and not for the purpose of consummating a sale made in, on, or from the Concession Premises; returns to shippers or manufacturers; any discount allowed to customers; or the Washington State Sales Tax and any other tax imposed by any government agency directly on sales. Business and occupation taxes are not taxes imposed directly on sales and shall not be deducted from the amount of "Gross Receipts".

B-2 ACCOUNTING MONTHS AND YEAR

2.1

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

B-3 INTEREST CHARGES DUE TO LATE PAYMENT

3.1

If Concessionaire fails to pay City any sum when due under this Agreement, the fee will be \$25.00 and an interest rate of one percent on the amount due per month (12 percent per annum) from the date when due until the date paid.

B-4 SECURITY DEPOSIT

4.1

Within ten (10) days after this Agreement has been executed by both parties, Concessionaire shall deposit with DPR Two Thousand Five Hundred Dollars (\$2,500.00) as a security for the faithful performance of and compliance with all the terms and conditions of this Agreement. If Concessionaire fails to fulfill any of its obligations under this Agreement, DPR may, but is not required to, use the deposit to remedy Concessionaire's default and Concessionaire shall be required to deposit additional funds with Parks in order to restore the deposit to the amount required herein. The deposit shall not in any manner release the Concessionaire from any of the obligations herein. If Concessionaire complies with all terms and conditions under this Agreement, then City shall return the security deposit to the Concessionaire within sixty (60) days of the termination or expiration of this Agreement.

B-5 PRICE LIST

5.1

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

A copy of the Concessionaire's current price list for each item of service, food, or merchandise offered for sale or rent at the Concession Premises shall be conspicuously displayed in full view of the public at all times on the Concession Premises.

B-6 UTILITIES AND SERVICES

6.1

The Concessionaire shall obtain separated accounts for and shall pay before delinquency, all charges for utilities that are separately metered at the Concession Premises. If any utility services are furnished to the Concession Premises in combination with utility services provided to adjacent DPR property Concessionaire shall reimburse DPR for Concessionaire's pro rata share of any consolidated charge paid by the DPR within thirty (30) days of invoice by DPR. Concessionaire shall pay all charges for utility connections, installations, and disconnections, and for service calls for any utility serving the Concession Premises. Concessionaire shall be solely responsible for and shall pay when due and directly to the appropriate company all bills for natural gas, electricity, telephone and communication services due to its occupancy and use of the premises. All other utilities to the Premises shall be paid by the DPR. Utilities include water, sewer, electricity, heat, air conditioning, natural gas, and landscape maintenance. DPR shall not be liable to Concessionaire for failure or interruption of any utility services. The Concessionaire shall obtain a business telephone having at least one telephone line, the telephone number for which shall be publicly displayed at the Concession Premises, and shall be the same number published in all promotional advertising and telephone listings.

6.2

Refuse Collection. Concessionaire shall provide at the Concession Premises and Patio Area a minimum of two 50-gallon trash cans for use by Concessionaire's customers. Concessionaire shall each day remove and dispose of the contents of all Concessionaires' trash cans in a legal manner and at its sole cost and expense. DPR may on occasion, but is not obligated to, provide dumpsters into which Concessionaire may empty its trash cans. On any day that DPR provides dumpsters, DPR will on that day remove the contents of the dumpsters at its sole cost.

6.3

Recycling. Concessionaire shall provide its customers with receptacles for recycling. Concessionaire, at no cost to DPR, shall collect, sort and separate into such categories as may be legally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by DPR, which receptacles shall be dumped or removed from the Premises at such minimum frequency as shall be specified by DPR.

6.4

Security Systems. DPR may supply the building with a security system operated by a company of its choosing. In such event, DPR shall provide Concessionaire the security code to access the Premises, and Concessionaire shall arm the system at the close of business each day. DPR shall not be responsible for any failure of the security system.

B-7 TAXES

7.1

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

B-8 CARE OF CONCESSION PREMISES

8.1

General Obligation. Concessionaire shall at its own expense keep the Concession Premises and adjacent areas in a neat, clean, safe, and sanitary condition acceptable to the Superintendent. Concessionaire shall reimburse City for all damage done to the Concession Premises that results from any act or omission of Concessionaire or its contractors, agents, invitees, licensees, or employees, including, but not limited to, cracking or breaking of glass.

8.2

Hazardous Substances. Concessionaire shall not, without the Superintendent's prior written consent, keep on or about the Concession Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful, and/or subject to regulation under any federal, state, or local law, regulation, or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning, and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with Superintendent's consent, Concessionaire shall comply with all governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances, including

but not limited to all governmental requirements for reporting and record keeping. Concessionaire shall submit to City true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; and within five (5) days after City's request therefor, provide evidence satisfactory to City of Concessionaire's compliance with all applicable governmental rules, regulations and requirements. Any and all costs incurred by City and associated with City's inspections of the Concession Premises and City's monitoring of compliance with this Subsection B-8.2, including City's attorneys' fees and costs, shall be due and payable by Concessionaire within ten (10) days after City's demand. Concessionaire shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Concessionaire's use, disposal, transportation, generation' and/or sale of Hazardous Substances in or about the Concession Premises.

8.3

Prohibited Equipment. No gas, coal, charcoal, or similar portable cooking equipment is permitted inside or outside the Concession Premises unless prior written approval is obtained from the Superintendent of Parks and Recreation, and unless all required permits are obtained by Concessionaire. Vending machines are prohibited on or about the Concession Premises.

8.4

Prohibition Against Installation or Integration of Any Work of Visual Art Without City's Consent. Concessionaire shall not install or integrate into the Concession Premises any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, without the prior written approval of the Superintendent, which approval may be conditioned or withheld in the Superintendent's sole discretion.

8.5

Routine and Major Maintenance Obligation. During the Term, Concessionaire shall be responsible for all routine maintenance and repair of the Concession Premises, including but not limited to maintenance and routine repairs of any improvements, cracked or broken glass, minor plumbing and electrical repairs (replacing light bulbs, wall sockets, faucets, valves, etc.), and regular interior painting. The foregoing sentence does not extend to maintenance occasioned by an act or omission of City or its officers, agents, employees, or contractors, for which City shall be responsible. If City provides Concessionaire with written notice of Concessionaire's failure to comply with this Section and Concessionaire fails to take good care of the Concession Premises as provided in the notice, City, may, but is not required to, make such repairs and Concessionaire shall pay within thirty (30) days of invoice the entire actual and reasonable cost thereof. City shall have the right to enter the Premises for such purposes, and City shall not be liable for interference with light, air, or view. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of Rent arising by reason of City's making of repairs, alterations, or improvements to the Concession Premises.

City shall be responsible for major maintenance of the infrastructure of the Concession Premises during the Term of this Agreement, including structural maintenance, masonry maintenance, roof, electrical, plumbing system, and HVAC system repair and replacement; provided that City's obligation for major maintenance shall not extend to any maintenance or repair necessitated by an act or omission of Concessionaire, or its officers, agents, employees, sub-concessionaires, contractors, licensees, or invitees. City shall maintain the parking areas and Park common areas to the standard typical of other, similar park properties.

B-9 EQUIPMENT

9.1

All equipment not attached to the building structure and other personal property used by Concessionaire at the Concession Premises shall remain the property of Concessionaire. All equipment and personal property of Concessionaire that is kept at the Concession Premises or Patio Area shall be at the sole risk of Concessionaire and Concessionaire hereby releases City from any liability or responsibility for loss or damage thereto. Any equipment or personal property belonging to City in the building of the Concession Premises that has malfunctioned or requires major repair and maintenance is the responsibility of City. Concessionaire will submit an equipment list to City no later than 30 days after executing this agreement and will submit an updated list to City on the anniversary date of the executed agreement.

B-10 COMPLIANCE WITH LAWS; NONDISCRIMINATION; EQUALITY OF TREATMENT

10.1

General Obligation. Concessionaire shall not use or permit the Concession Premises or any part thereof to be used for any purpose in violation of any municipal, county, state, or federal law, ordinance or regulation, or for any purpose offensive to the standards of the local community. Concessionaire shall promptly comply, at its sole cost and expense, with all laws, ordinances, and regulations now in force or hereafter adopted relating to or affecting the condition, use, or occupancy of the Concession Premises and operation of the Concession granted under this Agreement.

10.2

Nondiscrimination. Without limiting the generality of Section 10-1, Concessionaire agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers. Failure to comply with any of the terms of these provisions shall be a material breach of the Agreement.

10.3

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

B-11 INDEMNIFICATION

11.1

Concessionaire shall defend, indemnify, and hold City, its elected officials, and employees harmless from any and all liabilities, claims, demands, losses, and costs (including reasonable attorney's fees) arising from (i) Concessionaire's operation of the Concession, including operation of Concession services by any sub concessionaire, (ii) the use and occupancy of the Concession Premises by Concessionaire, or any of its employees, agents, licensees, invitees, contractors, and sub concessionaires, or (iii) any breach of this Agreement by Concessionaire or any sub concessionaire. If any suit is brought against City, Concessionaire shall appear and defend the same, and shall satisfy any

judgment that may be rendered against City. Notwithstanding the foregoing, City reserves the right to appear and defend any action without impairing City's right to indemnification under this Section where City determines that it is in the best interest of City. Concessionaire's obligation to defend and indemnify shall not include any claims arising as a result of the sole negligence of City, its employees and agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Concessionaire's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to City and to the extent necessary to provide City with a full and complete indemnity from claims made by Concessionaire's employees. Concessionaire shall promptly notify City of casualties or accidents occurring in or about the Concession Premises. Concessionaire's obligations under Section B-11 shall survive termination or expiration of this Agreement for the statute of limitations applicable to any claim or liability to which this section applies.

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

INITIALS: _____ City of Seattle Representative
 _____ Concessionaire Representative

B-12 INSURANCE

12.1

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

B-13 IMPROVEMENTS AND ALTERATIONS

13.1

Concessionaire's Responsibilities. Except for cosmetic, non-structural alterations made by Concessionaire in connection with its repair and maintenance obligations under Section B-8.5 above, Concessionaire shall not make any improvements, alterations, or modifications to the Concession Premises without obtaining the Superintendent's prior written approval. Concessionaire covenants that it will cause all alterations, additions, and improvements to the Concession Premises to be completed at Concessionaire's sole cost and expense by a contractor approved by the Superintendent and in a manner that (a) is consistent with the Superintendent-approved plans and specifications; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the building where the Concession Premises are located or any of the building's systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the building. Concessionaire shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions, including but not limited to, applicable building codes and the Americans with Disabilities Act; and reimburse City for any and all expenses incurred in connection therewith.

13.2

Prevailing Wages. In any contract for improvements, Concessionaire shall require its contractors to pay a wage commensurate with prevailing wages as described in RCW 39.12.

13.3

Liens. Concessionaire shall keep the Concession Premises free and clear of, and shall indemnify, defend, and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Agreement or Concessionaire's use, improvement, or occupancy of the Concession Premises, or any of its principals, officers, employees, contractors, agents, or sub concessionaires. If any lien is so filed against the Concession Premises, Concessionaire shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefore or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1 ½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

B-14 SUBCONTRACTING, SUBCONCESSIONS, AND ASSIGNMENT OF AGREEMENT

14.1

Concessionaire shall not subcontract, assign or transfer this Agreement, in whole or in part, or otherwise convey any concession right or privilege granted hereunder or any part of the Premises without the prior written approval of the Superintendent, which may be granted, withheld, or conditioned in the Superintendent's sole discretion. The Superintendent's approval of any subcontract, sub concession, or assignment shall not relieve Concessionaire from any of the requirements of this Agreement.

B-15 STANDARDS

15.1

Concessionaire, its agents and employees, shall render courteous service to the public with a view of adding to the public use and enjoyment of the Concession Premises. Concessionaire shall operate and conduct the facilities on the Concession Premises in a businesslike manner, and will not permit any acts or conduct on the part of Concessionaire's employees that would be detrimental to the operation of the Concession Premises.

B-16 TEMPORARY CLOSURE OF CONCESSION PREMISES

16.1

DPR reserves the right to temporarily close the Concession Premises and suspend Concessionaire's operation of any portion thereof without liability for making of repairs or the convenience of DPR upon a twenty-one (21)-day notice to Concessionaire and to close the Concession Premises or any portion thereof without notice to meet any emergency as determined by the Superintendent. In the event of any temporary DPR-required closure, DPR shall post a sign notifying the public of the impending or effective closure. For any DPR-designated closure DPR will prorate any minimum rent due.

B-17 ENTRY

17.1

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

17.2

Keys: Each key will need to be assigned and checked out by Concessionaire to whom they will be issued. All cost associated with replacing any keys for Golden Garden Bathhouse will be the responsibility of Concessionaire including if DPR deems necessary lock core replacement.

B-18 NOTICES

18.1

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

Department of Parks and Recreation
Contracts Administration and Support Office
Attention: Theresa Burns, Parks Concessions Coordinator
RDA Building, 3rd floor
800 Maynard Ave. S
Seattle, WA 98134
(206) 684-8008

And to Concessionaire at the following address:

Miri Plowman, Miri's Seattle LLC
PO Box 31363
Seattle, WA 98103
info@mirisseattle.com
360-317-8530 (Business)

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

B-19 DEFAULT

19.1

Definition. The following actions will constitute default ("Default") by Concessionaire:

- a. Concessionaire's failure to pay the Concession Fee or any additional charge herein within ten (10) days of the date required by this Agreement;
- b. Concessionaire's breach of any obligation under this Agreement or failure to keep or perform any term, covenant, or obligation herein; or
- c. Concessionaire's filing of a petition in bankruptcy, or if a trustee or receiver is appointed for Concessionaire's assets or if Concessionaire makes an assignment for the benefit of creditors, or is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; or
- d. Concessionaire's receipt of two or more notices of Default under Section B-19.2, whether or not remedied in the time period allowed.

19.2

DPR Remedies. If Concessionaire has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within ten (10) days of demand for any monetary payment due or within thirty (30) days after written notice of any other Default, then DPR shall have the following nonexclusive rights and remedies at its option: (i) to cure the Default on Concessionaire's behalf and to charge Concessionaire for all actual and reasonable costs and expenses incurred by DPR in effecting such cure; (ii) to re-take the Concession Premises and grant the Concession rights herein to another party; (iii) to exercise any other right or remedy allowed at law or equity. However, if the nature of Concessionaire's obligation is such that more than thirty (30) days is required for performance, then Concessionaire shall not be in Default if it commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion; provided, that the foregoing extended cure period shall not apply to Concessionaire's Default relating to monetary obligations or Concessionaire's vacation or abandonment of the Concession Premises.

19.3

DPR Default and Concessionaire Remedies. DPR shall be in default thirty (30) days after DPR's receipt of notice of nonperformance from Concessionaire if DPR fails to provide major maintenance of the infrastructure of the Concession Premises as required by Section 8.5 of this Agreement and such failure to maintain prevents Concessionaire from operating Concessionaire's business in the Premises for eight or more consecutive days; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30)-day period and thereafter diligently pursues such cure to completion. Upon City's default, Concessionaire may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington. If Concessionaire provides City with written notice of default under this Section, and City fails to either i) commence a cure within thirty days or ii) provide Concessionaire written notice that the Superintendent disputes City's obligation, then Concessionaire may, but is not required to, terminate this Agreement without further liability to Concessionaire.

B-20 TERMINATION FOR CONVENIENCE

20.1

In addition to termination for cause and termination on expiration of the term hereof, this Agreement may be terminated by either party for convenience, by the giving of advance written notice to the other party. No such termination shall be effective earlier than sixty (60) days after the receipt of the termination notice by the receiving party. Termination under this provision shall not relieve either party of any duty or obligation owed under the terms of this Agreement prior to the termination date. If this Agreement is terminated by City under this Section B-20, within thirty (30) days of the effective date of termination, City shall reimburse Concessionaire for any remaining unamortized interest Concessionaire may have in the Concession Premises measured by Concessionaire's investment in approved capital improvements to the Concession Premises, less accrued amortization and depreciation as set forth in an amortization schedule typically applied to similar improvements. Notwithstanding the foregoing, City shall not reimburse Concessionaire for City's termination of this Agreement following damage or casualty to the Concession Premises.

B-21 FORCE MAJEURE

21.1

Neither party shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if and for such time period that the failure is due to any cause beyond a party's reasonable control, including, but not limited to an act of nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war.

B-22 TIME

22.1

If the last day for the performance of any obligation under this Agreement falls upon a non- business day, including Saturday, Sunday, or official state legal holiday, the final day for performance shall be City next business day.

B-23 WAIVER

23.1

Absent a specific written waiver signed by the Superintendent, DPR shall not be deemed to have waived any right DPR has under the terms of this Agreement or by operation of law with respect to any breach or default by Concessionaire. Such a written waiver shall be confined to its specific terms. Waiver of any obligation arising under the Agreement shall not be deemed a waiver of any other provision of the Agreement or of the Concessionaire's full compliance with the terms and conditions of the Agreement. No waiver will be implied from any knowledge DPR may have of any breach, default, or non-compliance by Concessionaire. DPR failure to enforce any provision of this Agreement shall not be deemed as waiver or consent.

B-24 CAPTIONS

24.1

Captions are for convenient reference only, and do not limit or amplify the language of the paragraph(s) contained in this Agreement.

B-25 SIGNS AND ADVERTISING

25.1

City's written approval shall be required for all signs and advertisements on the Concession Premises; and such approval must be obtained prior to posting of any signs. Concessionaire shall be solely responsible for obtaining any permit required under the laws of City of Seattle, for any sign or advertising erected at the Concession Premises.

B-26 CHANGES AND MODIFICATIONS

26.1

The parties hereto reserve the right to amend this Agreement from time to time by mutual agreement in writing. No amendment hereto shall be effective unless in writing and signed by an authorized representative of each of the parties.

B-27 APPROVALS BY THE CITY OR SUPERINTENDENT

27.1

The granting of approval or consent by the Superintendent to any action of Concessionaire does not constitute the taking of any official action, including the granting of approval, by any other City department or official, where other department's or official's action is required by law, ordinance, resolution, or rule or regulation.

B-28 SEVERABILITY

28.1

Should any term, provision, condition or other portion of this Agreement or any provision of any document incorporated by reference be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the remainder shall continue in full force and effect.

B-29 SUCCESSORS IN INTEREST

29.1

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

B-30 NO RELATIONSHIP ESTABLISHED

30.1

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

B-31 CONSENT

31.1

Any time consent is required of a party to this Agreement, unless otherwise specifically stated, such consent shall not be unreasonably withheld, conditioned, or delayed.

To memorialize the agreements made, both parties hereby have caused this Concession Agreement to be executed by their respective representative(s) by signing below:

FOR THE CONCESSIONAIRE, MIRI'S SEATTLE LLC

By: _____
Miri Plowman, Co-Owner

Date: _____

] _____
Gabriel Skoda, Co-Owner

Date: _____

FOR DEPARTMENT OF PARKS AND RECREATION

By: _____
Christopher Williams, Interim Superintendent

Date: _____

NOTARY – MIRI'S SEATTLE LLC

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know of or have satisfactory evidence that _____ signed this instrument, on oath stated he/she was authorized to execute the instrument and acknowledged it as the Owners of Miri's Seattle LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

(Signature of Notary Public)

(Printed name)

Residing at: _____
My appointment expires: _____

NOTARY - THE CITY OF SEATTLE
Department of Parks and Recreation

Christopher Williams, Interim Superintendent, Parks and Recreation

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Jesús Aguirre signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Superintendent of the Department of Parks and Recreation of the City of Seattle to be the free and voluntary act of The City of Seattle for the uses and purposes mentioned in this instrument.

(Signature of Notary Public)

(Printed name)

Residing at: _____
My appointment expires: _____

Golden Gardens Concession Agreement

EXHIBIT A – Golden Gardens Park Map and Bathhouse Floor Plan



Golden Gardens Concession Agreement

EXHIBIT B - Approved Menu

Miri's Seattle LLC Menu and Pricing

Our intention is to have balance between prepackaged convenience foods and fresh in-house prepared foods. As both of our resumes display, our food philosophy is rooted in the bounty of the Northwest. We believe good food can be simple, flavorful, and nutritious all at once. As we developed this menu, we asked ourselves what can be both accessible, healthy, and easily modified for varying dietary restrictions. What are things not already offered in the area? How to we make our food unique but also more enticing to EVERYONE?

When the concession is staffed with more than one person, during the busier months, we will have more fresh prepared food offerings available (May-Sept). In addition, we intend to explore what works. Panini sandwiches may take off, and gyros may not get any traction, in which case we will adjust. Lastly, in the busy season we will make lunch and dinner specials on weekends.

Freshly Prepared Foods

- **Poffertjes** (Mini Dutch Pancakes) Available year round, topping will rotate seasonally. These treats are a small yeast-leavened pancake made with buckwheat. Each order of Poffertjes are served in a compostable paper tray and come with 12-15 pancakes to an order. Toppings will vary seasonally.
 - Example menu options:
 - Classic - \$5 – with butter/powdered sugar
 - Sweet - \$7 to \$9 – fresh berries or seasonal fruit with whipped cream.
 - Fresh - \$8 to \$10 –Fresh Summer Tomato and Zucchini and homemade basil pesto.
- **Panini Sandwiches** – (Available year round) Individual Sandwiches would be premade and then heated/toasted up on an electric Panini grill to order. The sandwich flavors would change and rotate from week to week. One vegetarian sandwich, a meat selection, and basic grilled cheese for kids.
 - Example menu options:
 - Roast Beef, Pepper jack cheese, caramelized onions, black pepper aioli. (\$10)
 - Fire Roasted Peppers, Goat Cheese, Basil & sunflower seed pesto. (\$8)
 - Grilled Ham & Cheese for kids (\$4)
- **Gyros/Kebab** – (Available during summer and fall) \$9
 - Pita sandwich made with Washington-grown lamb, or Chickpea Falafel (vegetarian), herbed garlic tahini sauce, sliced onion, tomato, and herb/lettuce salad.
 - Can be served as a salad
- **Loki Salmon Sandwiches** (Summer only) (\$7)
 - Brioche Bun, Roasted Pepper Aioli, Arugula
 - Can be served as salad

Golden Gardens Concession Agreement

EXHIBIT B - Approved Menu (cont.)

- **Rotating Soup/Salads** – (Available year-round)
 - A rotating Selection of fresh made pasta, grain or green salads. Two different options will be available at one time. Will be served in a compostable deli container 8oz (\$4) or 16oz. (\$7)
 - Examples:
 - Soups (Shoulder and Winter Season) Tomatillo Chicken Soup, Winter Squash and Thyme Soup, Matzoh Ball Soup
 - Cracked wheat salad, tomato, cucumber, feta, fresh herbs.
 - Quinoa salad, black beans, roasted peppers, cilantro vinaigrette
 - Roasted Root Vegetable Salad
 - Kale Salad
 - Spicy Cabbage Slaw
 - Picnic Potato Salad
- **Acai Bowl w/ Fresh Seasonal Fruit, house-made granola, Bee Pollen, and Toasted Coconut \$9**
- **Washington Sweet Corn** (summer only, upon local availability) w/ butter, cotija cheese, chili-lime salt
- **Fresh Popcorn w/ real butter (year round) - \$3**

Prepackaged Foods

- Various Frito Lay Chips – individual bag – (\$1.50)
- Tim's Cascade Kettle Potato Chips – individual bag (\$1.50)
- Corn Nuts – individual bag (\$1.50)
- Lara Bars, Zing Bars, Kind Bars Assorted flavors – (\$2.25)
- Various Candy & Chocolate Bars (emphasis on local candy such as Theo's, and Seattle Chocolates – individually wrapped – (\$1.50-\$2.25)
- Full Tilt Ice Cream – Individual ½ pint container – (\$3.50)
- Magnum Ice Cream Bars (various Flavors) (\$3.50)
- Klondike Bars (\$3)
- Fresh fruit Popsicles and palates (will use a local purveyor such as Six Strawberries for these as well) – various (\$2)

Beverages

- Canned Cola Products (made with real cane sugar)– 12oz can - \$1.50
- Bottled Water – 16oz bottle – \$1.50
- Rotating on tap Root Beer, Kombucha, or Ginger Beer (from local purveyors) \$4.50
- Coconut Water – 12oz can - \$3.50
- San Pellegrino various flavors – 12oz can - \$1.50
- Fresh Fruit Slushies – two rotating flavors. Base will be made with real fruit purees such as Virgin Strawberry Daiquiri and Cucumber-Lime. Served in a 16oz compostable cup. \$3.50
- Hot Cocoa (seasonal) 12oz \$3.00
- Hot Apple Cider (seasonal) 12oz \$3.00
- Drip Lighthouse Roasters coffee 12oz \$2.50

Att 1 – Golden Gardens Bathhouse Concession Agreement

D2a

- Coffee Lighthouse Roasters Cold Brew 16oz \$4.00

Golden Gardens Concession Agreement

EXHIBIT C - Concession Monthly Report of Gross Receipts Form

Concessionaire Name: **Miri's Seattle LLC**
For Month of: _____ Year: _____
Concession Location: Golden Garden Park

Total Gross Sales Listed on Page 2:	\$ _____	“A”
Less Sales Tax Collected:	\$ _____	“B”
Equals Net Sales (A minus B):	\$ _____	“C”
Concession Fee Dollar Amount from Your Permit:	\$ _____	“D”
State Leasehold Excise Tax (12.84% times of D):	\$ _____	“E”
TOTAL REMITTED (F=D + E) to Parks:	\$ _____	“F”

Make your check payable to “Seattle Parks” and mail your check and this Monthly Report to reach Seattle Parks by the 10th day of the month following the month being reported.

Mail total Payment (“F”) to: The City of Seattle Parks and Recreation, Attn:
Theresa Burns, Concessions Coordinator, 800 Maynard Ave. S. Suite 300, Seattle, WA 98134

I, the undersigned, do hereby certify, under penalty of perjury, that the above gross sales statement is true and correct.

Signed: _____ Date: _____, ____ 201__
(month) (day)

Golden Gardens Concession Agreement

EXHIBIT C - Concession Monthly Report of Gross Receipts Form

Concessionaire Name: _____

For Month: _____, 20____

Day of Month	Time Opened and Closed	# of hours	Daily Gross Sales
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
24			
25			
26			
27			
28			
29			
30			
31			
		Total Gross	
		Net Tax Collected	
		Net Sales	\$

Golden Gardens Concession Agreement

EXHIBIT D - Insurance Requirement

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

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

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

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

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

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

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

- B. Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.
- C. Workers' Compensation insurance securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

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

2. Terms and Conditions for Concessionaire's Insurance.

- A.** The City of Seattle as Additional Insured: The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Concessionaire's insurance shall be primary and non-contributory to any insurance maintained by or available to City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.
- B.** Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited: Concessionaire's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Concessionaire's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Concessionaire's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Concessionaire's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), (b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Concessionaire's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Concessionaire or reduced and/or offset against the Agreement.

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

3. City’s Property Insurance Coverage and Limits.

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

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

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

- 4.** Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, City and Concessionaire waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by City or the Concessionaire or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged
- 5.** Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Concessionaire:
- A.** Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and
 - B.** A copy of the policy’s declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
 - C.** A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

- D.** Pending receipt of the documentation specified in this Exhibit D – Insurance Requirements. Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

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

The certificate holder shall be:
The City of Seattle c/o Seattle Parks and Recreation
800 Maynard Avenue South, #300
Seattle, WA 98134

with an electronic copy to terri.burns@seattle.gov

- 6.** Assumption of Property Risk. The placement and storage of Concessionaire's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Concessionaire.
- 7.** Adjustments of Claims: The Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Concessionaire under this Agreement.
- 8.** Concessionaire's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Concessionaire's liability hereunder. Notwithstanding said insurance, the Concessionaire shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Concessionaire, or any of its agents, officers and employees or through use or occupancy of the Premises.