



**CITY OF RICHLAND**  
**CONCESSIONAIRE AGREEMENT**

THIS AGREEMENT is entered into on this **day** of **month**, **year**, by and between the **City of Richland**, a Washington municipal corporation located at 625 Swift Blvd., Richland, Washington (“City”), and **vendor**, a **business entity type**, with service at **registered address** (“Concessionaire”). City and Concessionaire are referred to collectively as the “Parties.”

**WITNESSETH:**

1. **Term.** The term of this Agreement is **date** through **date**; provided, however, that Concessionaire is only authorized to operate from **date** to **date** of every year that this Agreement is in effect.
2. **Use of Premises.** Concessionaire is hereby granted the non-exclusive right to operate as a concessionaire in **city park/location** during the timeframe identified in Section 1 and at the location identified in **Exhibit A** (the “Premises”), except as limited by Section 2.a herein. Concessionaire shall provide vendor services as identified in **Exhibit B**, including hours of operation, products and prices. **Exhibit A** and **Exhibit B** are attached hereto and incorporated herein by this reference.
3. **Restrictions.** Concessionaire shall not operate during any special event impacting the Premises at **city park/location** unless express permission is received from the event owner. Known special events during which Concessionaire shall not operate unless express permission is granted include: **list known special events here**. City will provide written notice of additional **list years here** event dates not known as of the execution of this Agreement. If permission is not obtained from the event owner, Concessionaire must remove all property, including trailer(s) and equipment from **city park/location** during the entire private special event reservation period.
4. **Rent.** For the rental period, Concessionaire will pay to the City **\$xx.xx** per month for the months of **list months here**, plus leasehold excise tax as determined by the state of Washington, which is currently 12.84%. Concessionaire shall also pay \$20.00 per month for electrical usage at **city park/location**. The electrical usage fee is not subject to leasehold excise tax. The total payment (rent plus excise tax plus electrical fee) will be submitted by Concessionaire to the City of Richland at 625 Swift Boulevard, Richland, WA 99352. Payment is due by 1600 hours (4:00 p.m.) on the first business day of each month identified in this Section 4. A business day is defined as any day the City of Richland is open to the public for business transactions.
5. **Licenses, Permits & Taxes.** Before commencing the performance of any activity under this Agreement, Concessionaire shall procure all necessary permits and licenses as may be necessary, and comply with all laws, ordinances, codes, regulations and orders now or hereafter in effect

promulgated by any federal, state, or local governmental agency or official relating to the performance of work under this Agreement. All sales tax shall be coded to the City.

6. Responsibility for the Premises. City shall furnish the Premises in its existing condition. By taking possession, Concessionaire warrants that it has inspected the Premises and confirms it to be acceptable for Concessionaire's use, noting any existing defects or other objections at the time of taking possession. Concessionaire shall maintain the Premises in a clean, orderly and inviting condition satisfactory to the City. All trash including packaging boxes, containers, and other business-related refuse generated by Concessionaire's operation shall be collected and disposed of by Concessionaire and not placed in City garbage cans. Concessionaire shall provide all equipment necessary to operate the concession.
7. Damage. Concessionaire shall be responsible for all costs associated with any property damage resulting from the actions of Concessionaire while utilizing City property under this Agreement. In the event Concessionaire causes damage to City property, the City shall utilize a vendor of the City's selection to make necessary repairs to return the area to pre-use condition. Concessionaire shall pay the full cost of the repair, including overhead, within thirty (30) days of receipt of an invoice from the City. This section is not intended, nor shall it be construed, to limit Concessionaire's liability for any other negligent or intentional acts or omissions that may occur during the course of this Agreement.
8. Right of Entry. Upon providing reasonable notice to Concessionaire, City may enter the Premises at any reasonable time for the purposes of inspecting the Premises or performing any work which the City elects to undertake. In case of emergency, the City may enter the Premises at any time without notice to the Concessionaire.
9. Indemnification and Hold Harmless. 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 for loss or damage to property, which arises out of this Agreement or from any activity, work or thing done, permitted, or suffered by Concessionaire, its employees, contractors and volunteers in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.
10. Disclaimer of Liability. At all times during this Agreement, Concessionaire assumes sole responsibility for adequately securing Concessionaire's property on the Premises. The City is not responsible for providing adequate security or safekeeping of Concessionaire's property while located on the Premises. The City makes no representations, express or implied, related to the security of the Premises.
11. Limitation of Damages. Under no circumstance shall the City be liable for any damages whatsoever stemming from the City's determination to temporarily or permanently close, for any reason, any part of Howard Amon Park during the term of this Agreement.
12. Insurance.
  - a. Insurance Term. For the duration of this Agreement, Concessionaire shall procure and

maintain insurance against claims for injuries to persons or damage to property which may arise from or in connection with Concessionaire's operation and use of the Premises.

- b. No Limitation. Concessionaire's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Concessionaire to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.
- c. Minimum Scope of Insurance. Concessionaire shall obtain insurance of the types and coverage described below:
- (i) Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. City shall be named as additional an insured on Concessionaire's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.
  - (ii) Property insurance shall be written on an all risk basis.
- d. Minimum Amounts of Insurance. Concessionaire shall maintain the following insurance limits:
- (i) Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
  - (ii) Property insurance shall be written covering the full value of Concessionaire's property and improvements with no coinsurance provisions.
- e. Other Insurance Provisions. Concessionaire's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to City. Any insurance, self-insurance, or self-insured pool coverage maintained by City shall be excess of the Concessionaire's insurance and shall not contribute with it.
- f. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- g. Verification of Coverage. Upon execution of this Agreement, Concessionaire shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Concessionaire. For every year after year, proof of coverage will be provided by Concessionaire before operations commence in month.
- h. Waiver of Subrogation. Concessionaire and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by

property insurance on or in connection with the Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

- i. Notice of Cancellation. Concessionaire shall provide City with written notice of any policy cancellation within two (2) business days of their receipt of such notice.
  - j. Failure to Maintain Insurance. Failure on the part of Concessionaire to maintain the insurance as required shall constitute a material breach of this Agreement, upon which City may, after giving five (5) business days' notice to Concessionaire to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to City on demand.
  - k. City Full Availability of Concessionaire Limits. If Concessionaire maintains higher insurance limits than the minimums shown above, City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by Concessionaire, irrespective of whether such limits maintained by Concessionaire are greater than those required by this Lease or whether any certificate of insurance furnished to City evidences limits of liability lower than those maintained by Concessionaire.
13. Termination. This Agreement may be terminated by either party upon thirty (30) days' written notice given as provided under Section 14 below. Any failure by Concessionaire to comply with any part of this Agreement may result in the immediate termination of this Agreement at City's election and without notice. Any waiver by the City of a violation of this Agreement shall not be deemed to become a waiver of any other violation which may occur.
14. Notification. Whenever either party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission if acceptable to both parties) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

**City of Richland**  
Parks & Public Facilities Director  
625 Swift Blvd., MS-13  
Richland, Washington 99352  
Phone: 509-942-7664

**Vendor Name**  
Attn: **Name**  
**Address**  
**City, State, Zip**  
**Phone or Email**

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

15. Severability. If any provision of this Agreement conflicts with applicable law, or its application is found to be invalid, the remainder of this Agreement shall not be affected, and to this end, the terms of this Agreement are declared to be severable.

16. Entire Agreement. This Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither party shall be liable to the other for any representations made by any person concerning the Premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.
17. Assignment/Successors. Concessionaire may not assign any rights under this Agreement without City's written consent. Any assignment made without City's consent is null and void, and does not relieve Concessionaire of any liability or obligation hereunder.
18. Modification. This Agreement may be modified only in writing executed by the duly-authorized representative of each party.
19. Construction of Agreement; Governing Law; Attorney's Fees. Each party has had a full and complete opportunity to review this Agreement, and has been given the opportunity to have legal counsel review it. Accordingly, the parties agree that the common law principle of construing ambiguities against the drafter shall have no application to this Agreement. The parties agree that, should legal action become necessary to enforce any of the provisions of this Agreement, the substantially prevailing party will be awarded its reasonable attorney's fees and costs in action. The laws of the State of Washington shall control the interpretation of this Agreement, and the venue of any suit regarding this Agreement shall be in the Benton County Superior Court. Concessionaire expressly agrees to submit to personal jurisdiction in Benton County, Washington.
20. Independent Contractor. The parties agree that this is not a contract of employment. Concessionaire is an independent entity with respect to the business hereunder. Nothing in the Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Any assistants or other resources used by Concessionaire are and shall be deemed the employees of Concessionaire and in no manner employees of the City.
21. Environmental Compliance and Hazardous Material.
  - a. Definitions: The following definitions apply to Section 21 of this Agreement:
    - i. "Hazardous Materials" as used herein shall mean any toxic substances or waste, sewage, petroleum products, radioactive substances, medical, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances or any dangerous waste or hazardous waste as defined in Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105) or as defined in Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or
    - ii. "Hazardous Substance" as used herein shall mean any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection,

contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”) as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.) and Washington’s Model Toxics Control Act (“MTCA”) as now existing or hereafter amended (RCW Ch. 70.105); or

- iii. Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.
- b. Concessionaire covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, or above City property, except in accordance with all applicable laws.
- c. Concessionaire shall, at Concessionaire’s own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter affecting City’s business, property, or any activity or condition on or about City’s property, including, without limitation, all laws, ordinances and regulations related to Hazardous Materials and all other environmental laws relating to the improvements on City property, soil and groundwater, storm water discharges, or the air in and around City property, as well as such rules as may be formulated by the City (“the Laws”). Concessionaire warrants that its business and all activities to be conducted or performed in, on, or about City property shall comply with all the Laws. Concessionaire agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations may be necessary at any time during the term of this Agreement to comply with the Laws.
- d. Concessionaire shall not cause or permit to occur any violation of the Laws on, under, or about City property, or arising from contractor’s use or occupancy of City property, including, but not limited to, soil and water conditions.
- e. Concessionaire shall promptly notify City and provide all information regarding any activity of Concessionaire related to Hazardous Materials on or about City property that is requested by the City. If Concessionaire fails to fulfill any duty imposed under this section within a reasonable time, City may do so at the cost of Concessionaire; and in such case, Concessionaire shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the applicability of the Laws to City property and Concessionaire’s use thereof, and for all compliance therewith, and Concessionaire shall execute all documents promptly upon City’s request. No such action by City and no attempt made by City to mitigate damages shall constitute a waiver of any Concessionaire’s obligations under this paragraph.
- f. Concessionaire shall, at Concessionaire’s own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (“the Authorities”) under the Laws.

- g. Should any Authority demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Agreement and which arises at any time from Concessionaire's use of occupancy of City property, then Concessionaire shall, at Concessionaire's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Concessionaire shall carry out all such cleanup plans. Any such plans and cleanup are subject to city's prior written approval.
- h. If a release of Hazardous Substances occurs in, on, under, or above City property, or other's property arising out of any action, inaction, or event described or referred to in this document, Concessionaire shall at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substance. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed with all applicable laws, rules, ordinances, and permits. Concessionaire shall be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in this document.
22. Improvements. All improvements proposed by Concessionaire shall be submitted to the City for review and approval, which shall be given in City's sole discretion. Concessionaire acknowledges that all improvements to the property shall become the property of, and owned by, the City of Richland, and that Concessionaire does not acquire any ownership interest in said improvements under any equitable or legal theory, including, but not limited to the theory of laches or adverse possession. The City may, at its own expense, construct, repair or improve City-owned utility infrastructure affecting City property. The City shall provide advance notice to Concessionaire when constructing or repairing said utilities, and will fully restore any damage.
23. Special Conditions. The following conditions shall be honored by Concessionaire at all times during the hours of operation.
- a. No signs are allowed in the park or on City right-of-way unless permitted by the City's Development Services Office and the Parks & Public Facilities Department.
  - b. Concessionaire shall not solicit customers from outside the structure. Music, loud noises, lights, and similar tactics shall not be used to solicit customers.
  - c. On a daily basis, Concessionaire is responsible for removing litter within twenty-five (25) feet around the perimeter of each vending facility. The City will remove garbage from the existing city-owned garbage cans once per day. Concessionaire is responsible for any additional garbage containers and pick-up outside standard City maintenance.
  - d. Concessionaire shall acquire all necessary health department permits related to selling and distributing food and beverage products.

- e. Concessionaire shall not engage in the rental of any merchandise or engage in any other business activity outside the scope of this Agreement.
- f. Grease and other cooking by-products shall not be disposed of in City garbage cans or recreational sewer dump stations, and must be removed offsite for proper disposal.

24. Authority to Execute. Each person executing this Agreement on behalf of another person, corporation, partnership, company, or other organization or entity represents and warrants that he or she is fully authorized to so execute and deliver this agreement on behalf of the entity or party for which he or she is signing. The parties hereby warrant to each other that each has full power and authority to enter into this agreement and to undertake the actions contemplated herein, and that this agreement is enforceable in accordance with its terms.
25. Counterpart Originals. Execution of this Agreement and any amendment or other document related to this Agreement may be by electronic signature and in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one whole agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF RICHLAND**

**VENDOR**

\_\_\_\_\_  
Jon Amundson, ICMA-CM  
City Manager

\_\_\_\_\_  
Signature

Attest:

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Jennifer Rogers, City Clerk

Approved as to form:

\_\_\_\_\_  
Heather Kintzley, City Attorney

**EXHIBIT A**  
**Identification of Premises**

Enter Exhibit A information here.

EXAMPLE

**EXHIBIT B**  
**Vendor Services**

Enter Exhibit B information here.

EXAMPLE