



MONROE CITY COUNCIL

Agenda Bill No. 20-040

SUBJECT:	Authorize Mayor to Sign 2020 Concessionaire Agreement
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
03/10/2020	Parks & Recreation	Mike Farrell	Mike Farrell	Consent Agenda #5

Discussion: 03/10/2020
Attachments: 1. Proposed Agreement

REQUESTED ACTION: Move to authorize the Mayor to sign the 2020 Concessionaire Agreement with Ken Fulcher to provide concession services at Sky River and Lake Tye Parks; and expressly authorize further minor revisions to the extent deemed necessary or appropriate.

POLICY CONSIDERATIONS

RCW 35.23.440§20 gives the City Council authority to lease City property for the use and or purposes of the City. This contract would lease the City's concession's stand at Lake Tye to offer limited food services to those that visit this park.

DESCRIPTION/BACKGROUND

The City requested proposals for food and beverage concession services at Lake Tye and Sky River Parks for 2019. The City received a proposal and executed an agreement to provide concession services for both park locations from Ken Fulcher, an established local business owner. Staff are satisfied with the services Mr. Fulcher has provided and have received no complaints of service issues.

Mr. Fulcher proposes to continue to provide food and drink concessions at Lake Tye and Sky River Parks; including menu items such as hot dogs, soups, healthy snacks and pastries, soft drinks, coffee and espresso drinks, candy, ice cream, and other food and drink items for scheduled athletic and community events.

The concessionaire will provide important support of various community events such as the Egg Hunt, Movies Under the Moon, and National Night Out Against Crime; and also schedules regular hours at the Lake Tye facility to capture park patrons and grow the facility to become more of a destination for the community.

The Agreement provides for one-year renewal periods upon the mutual agreement of the parties. Mr. Fulcher has agreed to continue concessions service at the parks.

FISCAL IMPACTS

The agreement states that the Concessionaire shall pay five percent of gross sales each month to the City of Monroe.

TIME CONSTRAINTS

It is the desire of the Parks and Recreation Department to have concession services ready as soon as possible for this season's scheduled events and park patrons.

ALTERNATIVES

Reject renewal of Agreement and ask Mayor to direct staff to request proposals for concessions services at City parks. Concessions service delivery to park patrons would be significantly delayed until a qualified vendor submits a proposal and an agreement is executed.

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CONCESSIONAIRE AGREEMENT
SKY RIVER PARK/LAKE TYE PARK**

THIS AGREEMENT made this 10th day of March, 2020, by and between the City of Monroe, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and Ken Fulcher, hereinafter referred to as Concessionaire.

WHEREAS, the City of Monroe desires to have concession services provided for the general public at certain City parks from March 10, 2020, through December 31, 2020; and

WHEREAS, Concessionaire is in the business of providing concession services and is agreeable to providing such services in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the agreements contained herein, the City and Concessionaire agree as follows:

1. Services. Concessionaire agrees to provide concession service to the City of Monroe at Skykomish River Park and Lake Tye Park from March 10, 2020, through December 31, 2020. Concessionaire further agrees to install all necessary equipment such as signage, refrigerator/freezer/cooking/warming equipment, food preparation and display equipment. Concessionaire equipment shall be listed by the National Sanitation Foundation (NSF) or equivalent for its intended use. Concessionaire understands that this is not an exclusive contract excluding other concession services from any City park.
2. Duration. This Agreement shall become effective as of the date first shown above written through December 31, 2020, provided, however, that either party may terminate said Agreement at any time with or without cause by giving seven days written notice of said termination and specifying the effective date. This Agreement may be renewed for additional one year periods upon the mutual agreement of the parties under such terms and conditions as the parties may determine.
3. Compensation. Concessionaire agrees to pay the City of Monroe five percent of the Reportable Revenue generated from the sale of goods at the concessions by Concessionaire and its subcontractors and agents as authorized by this Agreement. "Reportable Revenues" shall mean the total revenues received from selling goods before any deductions are made for returns, allowances, or discounts, less Sales Tax collected (9.3 percent). Concessionaire shall be responsible for collection and reporting of all Reportable Revenues generated by itself and its subcontractors or agents. Monthly payments to the City shall be due and payable by the tenth of the following month. Concessionaire shall provide the City with any and all financial records documenting its gross revenue on a monthly basis for audit. Forms and procedures will be provided by the City of Monroe Finance Department for daily and monthly reporting. All transactions shall be completed utilizing City of Monroe cash registers at Skykomish River Park and Lake Tye Park or other point of sale system approved by the City of Monroe Finance Department.

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4. Regulations. Concessionaire agrees that Concessionaire and its subcontractors and agents shall comply with applicable federal, state and City laws, rules, and/or regulations. The aforementioned include, but are not limited to the following:
 - a. Federal, state and local health, safety and licensing laws and/or regulations related to sale(s) of concession goods; and
 - b. Monroe Municipal Code.

5. Products. Concessionaire agrees that items and services sold by Concessionaire and its subcontractors and agents shall be sold on a competitive level. Concessionaire shall submit all proposed prices to the Monroe Parks and Recreation Department for prior written approval. Certain products are occasionally deemed desirable to be available and certain others cause maintenance problems. Concessionaire agrees that Concessionaire, its subcontractors and agents shall comply with prior written requests by the City to supply certain products, or not to supply certain products, provided that any such request shall not be unreasonable.

6. Operating Hours. Concessionaire, its subcontractors and agents shall keep the concession units open and use it to transact business with the public daily during days and hours mutually agreed upon and approved in writing by the Director from the Monroe Parks & Recreation Department. From March 10, 2020, through December 31, 2020, the concession units will be open, with days and hours of operation varying according to scheduled field and event activities, weather conditions and park attendance as agreed by both parties. Concessionaire acknowledges that Special Events and Tournaments may extend past ten hours per day. The City of Monroe shall provide Concessionaire updated weekly facility use schedules.

7. Indemnification Clause. The Concessionaire shall defend, indemnify and hold the City, its officers, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with Concessionaire's operations, Concessionaire's use of the City's premises, or otherwise arising out of the performance of this Agreement, including those arising out of the negligence or malfeasance of its subcontractors and agents, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Concessionaire and the City, its officers, officials, employees, and volunteers, the liability hereunder shall be only to the extent of the Concessionaire's negligence and that of Concessionaire's subcontractors and agents. It is further specifically and expressly understood that the indemnification provided herein constitutes the Concessionaire's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance. The Concessionaire shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Concessionaire, its agents, representatives, employees, or subcontractors.

The Concessionaire shall provide a Certificate of Insurance evidencing Commercial General Liability insurance written on an occurrence basis with limits of no less than \$1,000,000 combined single limit per occurrence for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: premises; blanket contractual; products/completed operations; broad form property damage; and employer's liability.

The insurance policy required hereunder shall contain, or be endorsed to contain, that the Concessionaire's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Concessionaire's insurance and shall not contribute with it.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Concessionaire.

The City shall be named as an additional insured under the Concessionaire's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all required insurance policies.

The Concessionaire's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

The insurance policy required hereunder is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

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

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9. Concession Facilities. As except as expressly provided under this Agreement, the City of Monroe shall be responsible for all utilities, repairs and maintenance of City-owned facility units. Concessionaire shall be solely responsible for protecting the concession equipment against loss or destruction due to all perils, including but not limited to, theft, vandalism, and fire. All maintenance and service performed thereon shall be performed by employees of Concessionaire or authorized independent contractors only. All employees used by Concessionaire, its subcontractors and agents hereunder, shall comply with applicable rules and regulations of the City relating to the management of said premises. It will be the responsibility of the Concessionaire to clean the immediate surrounding exterior of the service areas (a radius of 50 feet). Furthermore, Concessionaire shall not make any alterations, additions or improvements to the facility units or concession equipment without the City's prior written consent, which consent may not be unreasonably withheld. All of the activity described in this section must take place during normal operating hours as specified in proposed agreement.
10. Customer Service. The Concessionaire understands the City's concern with providing high quality and effective customer service. The Concessionaire, its subcontractors and agents shall honor all requests for refunds from customers who have lost money in a vending machine if such machines are installed. Concessionaire, its employees, subcontractors and agents shall treat customers with courtesy.
11. Employee Performance. The Concessionaire shall provide an active training program for the development of the necessary skills and techniques for all of Concessionaire's employees, subcontractors and agents. These sessions shall stress work performance and also include product and service presentation, cleanliness, and employee attitude.
12. Background Check. The Concessioner warrants and represents that Concessionaire and every employee, subcontractor and agent of Concessionaire performing work or otherwise using the City's premises under this Agreement shall have successfully passed a background check pursuant to RCW 43.43.830 -.845. For purposes of this section, "successfully passed" shall mean that the background check has not revealed any "crime against children or other persons" as defined by RCW 43.43.830.
13. Employee Attitude. Each employee, subcontractor and agent is to project a hospitable, friendly, helpful, positive attitude and be capable and willing to answer visitor's questions about both concessionaire and general park information.
14. Employee Appearance. The Concessionaire, its subcontractors and agents will be required to have employees who come in direct contact with the public wear identification, by which they may be known and distinguished as the employees of the Concessionaire. The Concessionaire shall require all such employees to

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exercise courtesy and consideration in their relations with the public and present a neat, clean, and otherwise attractive personal appearance.

15. Staffing. All facilities and services must be properly staffed so as to prevent undue delay to customers. In determining what constitutes undue delay, consideration shall be given to the kinds and types of service being rendered and situations or conditions beyond the control of the concessionaire, such as unanticipated influxes of visitors, facility or equipment breakdowns, or sudden weather changes. The reasonableness of the delay, based on the above, should be the determining factor.
16. Assignability. Concessionaire shall not assign any interest in this Agreement and shall not transfer any interest in the same; provided, however, that Concessionaire may employ subcontractors upon prior written approval by City to provide certain portions of its concessions services provided that Concessionaire shall remain responsibility for its subcontractors' and agents' compliance with this Agreement.
17. Relationship. Nothing contained in this Agreement shall establish an employee-employer relationship between the City and Concessionaire or its employees, agents, subcontractors, or independent contractors. Concessionaire shall be solely responsible and shall assume exclusive liability for the payment, actions, conduct, supervision, and instruction of its employees, subcontractors or independent contractors. Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between the City and Concessionaire.
18. Content and Understanding. This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein; provided, however, that any charge(s) hereto duly executed by both parties shall be incorporated in written amendments to this Agreement.
19. Severability. If any provision of this Agreement or its application to any person or circumstances is held invalid, the remainder of the Agreement, or the application of the provision to other persons or circumstances shall not be affected.
20. Receipt Statement. Concessionaire shall sign a statement permitting representatives of the City of Monroe to contact the Tax Division of the State of Washington to release to the City a statement of receipts from sales and services made at the concessions as filed during or for the period of any awarded contract.
21. Business License. Concessionaire shall sign a statement acknowledging that in the event a contract is awarded, the Concessionaire, its subcontractors and agents shall have obtained a valid City of Monroe business license prior to

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commencement of work, as well as all other Snohomish County Health District and other licenses or permits required of Concessionaires.

22. Contract Compliance Management. Concessionaire shall submit a written Contract Compliance Report, which shall be done monthly to assure Concessionaire is complying with this Agreement. Items to be covered shall include, but not be limited to:
- a. Fees due to the City, if required.
 - b. Accounting Report.
 - c. Insurance.
 - d. Facility Interior and Surrounding Area.
 - e. Operating Hours.
 - f. Rates.
 - g. Staffing/Performance.
23. Leasehold Excise Tax. The parties acknowledge that this Agreement is subject to leasehold excise taxes pursuant to Chapter 82.29A RCW and Chapter 3.16 MMC in the total amount of 12.84 percent of the compensation amount set forth in Section 3.
24. Governing Law; Venue; Attorneys' Fees. This Agreement shall be governed by the laws of the State of Washington. The exclusive venue for any litigation arising under this Agreement shall be the Superior Court for Snohomish County, Washington. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees.

IN WITNESS WHEREOF, the City and Concessionaire have executed this Agreement as of the date first above written.

CITY OF MONROE

CONCESSIONAIRE

Geoffrey Thomas, Mayor

Ken Fulcher, Concessionaire