

CITY OF LONGVIEW
Parks and Recreation Department

AMENDED
AGREEMENT GOVERNING THE OPERATION OF CONCESSION IN
LAKE SACAJAWEA PARK
LONGVIEW, WASHINGTON

THIS AGREEMENT is between the City of Longview, Washington, hereinafter referred to as "CITY," and "Big Kahuna Shave Ice", hereinafter referred to as "CONCESSIONAIRE,"

WHEREAS, The CITY has a need for an independent contractor to operate concessions in Lake Sacajawea Park; and

WHEREAS, CONCESSIONAIRE warrants that it has the necessary qualifications to operate such concessions and has provided a proposal acceptable to the CITY.

NOW, THEREFORE, the CITY and CONCESSIONAIRE agree as follows.

1. GRANT OF USE: The CITY grants to the CONCESSIONAIRE a permit for the use during the term of this Agreement to operate food and beverage sales and service at Lake Sacajawea Park.
 - A. The Concessionaire will also be responsible for the following services:
 1. Trash and rubbish picked up in and around the immediate concession area.
 2. Removal of all concession garbage to the trash tub at the conclusion of each day.
 3. Assure concession unit and equipment are free of graffiti.
 4. Provide recycling containers for plastic and cans in and around the premises. It will be the responsibility of the Concessionaire to empty the recycling containers into a recycling tub.
 5. Recycle cardboard, metal, and plastic containers used in the concession operation.
 6. Maintain equipment in good appearance and working condition and repair at no cost to the City.
 7. Make available for purchase shaved ice, bottled water, other drinks, and packaged snacks. Concessionaire will provide a pre-approved menu and may request menu items to be added by written approval of the Director of Parks & Recreation. .
 8. Non food and drink item sales are not allowed. Concession privileges shall not include the right to sell souvenirs, toys, pictures and other merchandise or novelties.
 - B. The Concessionaire will comply with the following requirements:
 1. No gas, coal, charcoal or similar portable cooking equipment is permitted inside or outside the concession unless:
 - a. The prior written approval by the Parks and Recreation Department has been obtained.
 - b. The City of Longview Fire Department has issued a fire permit.
 - c. Cowlitz County Health Department approval has been obtained.
 2. The Concessionaire is required to check the existing electrical capacity of the

concession site to ensure there is sufficient electrical capacity for equipment. Any modifications or improvements to the concession area shall be at the sole expense of the Concessionaire, and will require advance written approval from the Parks and Recreation Department.

3. The Concessionaire must supply the appropriate fire extinguisher for the concession operation and comply with all fire codes.
4. The Concessionaire shall be responsible for cost of repair or replacement for any damage to park property resulting from concession activities.
5. No vending machines may be installed by the Concessionaire under this permit.
6. No tobacco or alcoholic beverages may be sold or used/consumed in the park.
7. No signage is to be posted in or around the park without prior written approval from the Director.
8. No Styrofoam containers maybe used; ~~containers must be biodegradable.~~
9. No items in glass containers maybe sold.
10. All condiments must be in plastic squeeze or pump containers
11. Vendor advertising is permitted on self-contained unit only.
12. The self-contained food unit must not exceed approximately 20 feet in length and 8.5 feet in width.
13. The self-contained unit must remain in the designated location while in operation; no roving of the park is permitted.

C. The City Parks & Recreation Department will:

1. Establish location for mobile concession unit in the Hemlock Plaza area of Lake Sacajawea Park.
2. Provide access for to electrical power for concessionaire; ~~with the intent to recover costs through concession fees.~~
3. Provide access to city water ~~to for~~ concessionaire; ~~with the intent to recover costs through concession fees.~~
4. Maintain access to and service of restrooms in accordance with standards and schedules established by the Parks & Recreation Department.
5. Provide picnic table(s) in the concession area if requested by the Concessionaire.
6. Maintain trash and recycling receptacles and empty containers in accordance with established maintenance standards and schedule.

2. PRICES

Rates charged must be reasonable and commensurate with prices charged for similar concessions offered in the Longview area. The Concessionaire will propose a reasonable unit cost sale price and menu for food and beverages for the same or superior quality as those offered by competitors to the Parks & Recreation Director for approval. At no time shall any alcohol or tobacco products be offered for sale at the concession facility.

3. USE OF PREMISES/EQUIPMENT/UTILITIES

The CITY shall designate a concession area within the park for the operation of food and beverage concessions from a self- contained portable vending unit. The Concessionaire shall operate out of a mobile unit as shown in Exhibit A; that shall be removed from the park nightly. The mobile unit shall be placed in the Hemlock Plaza area of Lake Sacajawea Park with the specific location to be determined by the City Park and Recreation Department. The City reserves the right to move the location during special or community events. All lighting,

music and advertising in the Park shall be submitted to the City for approval.

4. FEES DUE TO CITY

In addition to the concession fees provided for in Section 14 of this agreement, CONCESSIONAIRE shall make the following deposits:

A. OPERATIONS DEPOSIT

The Concessionaire will be required to pay a \$200 refundable operations deposit. The operations deposit is to ensure the City that the Concessionaire is willing and able to provide the services set forth in this agreement. Forfeiture of the operations deposit will occur if the concessionaire has a:

- 1) Failure to open within 15 days of the contract start date
- 2) Failure to open at mutually agreed upon special events
- 3) Failure to open on scheduled days and hours.

Written permission may be granted on a case by case basis by the Parks and Recreation Department to allow for operating day or hours schedule modification.

B. CLEANING DEPOSIT

The Concessionaire will be required to pay a \$100 refundable cleaning deposit. The Concessionaire will be required to clean the concession area and remove all supplies and equipment within one (1) day of the final day of operation. The Parks and Recreation Department staff will conduct an inspection of the area to determine compliance. Any cleaning, disposal or repair deemed necessary by the Parks and Recreation staff would be completed by Parks and Recreation employees at the Concessionaire's sole expense. The Concessionaire will be required to reimburse the Longview Parks and Recreation Department for any such cleaning, disposal or repair expense within seven (7) days of notification. Further, the Longview Parks and Recreation Department may retain the Concessionaire's cleaning deposit to offset any such expense.

C. UTILITIES PAYMENT

The Concessionaire agrees to pay the City \$100 each month, or portion of a month, of operation from July 6 through September 30 to reimburse the cost of providing trash receptacles, water and electrical utilities, and exclusive use of restroom facilities. The Concessionaire will be required to pay the utilities payment to the City on or before the 10th day of each succeeding month during the term of the permit.

5. MAINTENANCE OF EQUIPMENT, PREMISES AND PARK GROUNDS

The CONCESSIONAIRE shall at all times keep the ~~p~~Premises and CONCESSIONAIRE's equipment clean and maintained in good working order, at the sole expense of CONCESSIONAIRE. At the close of each day of concessions, CONCESSIONAIRE shall collect all litter and garbage incident to the operation of the concession that has been left on park grounds.

6. TERM/TERMINATION

The term of this Agreement is from **June 12, 2015** through **September 30, 2015**. During the term, this Agreement may be terminated with thirty (30) days written notice, with or without cause by either party. However, if the CITY determines that CONCESSIONAIRE is in violation of any provision of this Agreement, the CITY may terminate the Agreement immediately. The CONCESSIONAIRE may request the Parks & Recreation Director extend the agreement through the end of the October, 2015.

7. CONCESSION EMPLOYEES

CONCESSIONAIRE shall employ sufficient staff to properly serve park patrons. CONCESSIONAIRE shall furnish to the Director of the Parks and Recreation Department a complete list of all employees assigned to work at the Premises. Such list must include each employee's name, telephone contact and address. CONCESSIONAIRE shall require that employees dress appropriately to provide food and beverage service to park patrons and shall ensure that its employees are courteous and respectful to park patrons at all times. CONCESSIONAIRE will provide an active training program for the development of the necessary skills and techniques to all concession operator employees. These sessions shall stress work performance and include customer service, cleanliness and public service philosophies. Performance should be indicative of proper training. CONCESSIONAIRE will ensure that all employees have the necessary food handling permits.

8. SUSPENSION OF OPERATIONS

In the event of a dispute, whether between the operator and the public or the operator and the City, the City reserves the right to immediately suspend concession operations for up to 48 hours for investigative purposes. A written suspension notice stating just cause for suspension and suspension term must be presented to the operator at time of suspension. Within the 48 hours, the City must provide the operator with a written recommended course of action or corrective measures.

9. HOURS OF OPERATION

A. REGULAR OPERATING HOURS

CONCESSIONAIRE shall keep the concession unit open and use it to transact business with the public Monday through Sunday, 11:00 a.m. to sunset. The hours of operation may be modified by a request from the CONCESSIONAIRE and approval by the Parks & Recreation Director. Hours shall be posted on the concession stand premises unit so as to be easily viewed by the public at all times.

B. SPECIAL EVENT HOURS

The Concession operator will be open by mutual agreement of the CONCESSIONAIRE and CITY when there is a special event, or other times as requested by the Parks and Recreation Department. When park attendance at a special event is expected to reach high numbers, in the best interest of both the CITY and the park patrons, the City reserves the right to contract additional Concessionaires to accommodate the number of patrons. The City reserves the right to restrict a concessionaire and not allow sales during a park special event, based on the type and nature of the event.

C. EXCLUSION OF PERMIT

The Concession operator shall not be present in the Park during the Go-4th Festival unless arrangements are made through the Go 4th Festival Organization. Concessionaire shall not be present during the Summer Concert Series or other events where nonprofit organizations have been granted the exclusive right to sell food and beverages without prior written approval from Longview City Council.

10. STAFFING

All facilities and services must be properly staffed so as to prevent undue customer service delay. In determining what constitutes undue delay, consideration shall be given to the kinds and types of service rendered, 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. Concessionaire will complete a Washington State Patrol background check for each employee used by the operator to perform this agreement; and will not employ a staff member if such person has been convicted of crimes against vulnerable persons, such as children, the elderly or the disabled; crimes of dishonesty; or crimes using or threatening violence including, but not limited to the use, display or threat of a weapon.

11. QUALIFICATIONS/COMPLIANCE WITH LAWS & REGULATIONS

CONCESSIONAIRE warrants that he/she has the requisite training, skill, and experience necessary to operate and properly provide concession services. CONCESSIONAIRE shall comply with all applicable codes, laws and regulations applicable to operation of such business. This expressly includes, but is not limited to, the proper storage, preparation, and handling of food for service to the public.

A compliance review shall be done monthly to assure Concessionaire is complying with all contract terms. Items covered shall include, but are not limited to:

- a. Fees Remitted
- b. Accounting Report
- c. Insurance
- d. Permits/Licensing
- e. Facility Interior
- f. Operating Hours
- g. Rates
- h. Complaints or Issues
- i. Exterior appearance of the unit and surrounding grounds

12. REGISTRATION/LICENSE FEES/TAXES

CONCESSIONAIRE shall be registered to do business in the City of Longview. CONCESSIONAIRE shall pay business and occupation taxes, collect and pay state and local sales taxes, and pay all other licenses, fees, and taxes imposed by the city, county, state and federal authorities on such businesses. CONCESSIONAIRE shall be responsible for payment of any interest and/or penalty charges assessed by any local, state, or federal agency.

13. LICENSING AND REGULATIONS

The Concession operator will be responsible for securing, maintaining, and displaying where applicable, all licenses required by the City, and/or other applicable authorities to operate concessions. Concession operator will be responsible for the total cost of such licenses. Concession operator agrees to comply with all applicable federal, state, county and city rules, regulations and codes. These include, but are not limited to, the following:

- A. Federal, state and local health, safety and licensing laws and/or regulations relating to sales of concession goods and mobile concession; and
- B. Longview Municipal Code, including, but not limited to, all requirements set forth in Municipal Code; and
- C. State of Washington Business licenses, Department of Revenue account and/or unified business identifier numbers as required by RCW 50.04.104 and 51.08.192 and RCW 74.18.220; and

D. Parks and Recreation Department policies, including, but not limited to, policy relating to concessions.

14. PAYMENT TO CITY

The Concessionaire agrees to pay the City in consideration for a concession permit rights and privileges, a monthly payment equal to at least 10% of gross monthly receipts. Should Concessionaire operate during mutually agreed upon City sponsored community events or summer concert series the percentage of gross sales payable to the City shall be 15% for one hour prior until one hour after the duration of the event. The Concessionaire will be required to pay the City on or before the 10th day of each succeeding month during the term of the permit. The Concessionaire will also be required to submit with each payment a signed statement attesting to the total gross receipts for said month. These statements must be made on a form provided by the Longview Parks and Recreation Department. Gross monthly receipts are defined as total revenue, excluding Washington State Sales Tax. The City reserves the right to conduct audits and inspections without advance notice. The Concessionaire must also agree to provide copies of all receipts and relevant documents if requested.

15. LATE FEE

A late fee of \$25 will be assessed for payments not received by the 10th of the month. Multiple late payments may result in suspension of permit.

16. CONCESSIONAIRE'S BOOKS AND RECORDS

CONCESSIONAIRE shall keep and maintain proper and adequate books, records and accounts in a form acceptable for tax purposes for a six (6) year period. Said books, records and accounts shall be available for inspection at the City of Longview by any duly authorized agent of the CITY during the CITY's regular working hours, upon request.

17. INDEPENDENT CONTRACTOR

It is the intention and understanding of the Parties that the CONCESSIONAIRE shall be an independent contractor and that the CITY shall be neither liable nor obligated to pay CONCESSIONAIRE sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The CONCESSIONAIRE shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the CITY, regardless of whether such may provide a secondary or incidental benefit to the CONCESSIONAIRE, shall not be deemed to convert this Agreement to an employment contract. It is recognized that CONCESSIONAIRE may be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with CONCESSIONAIRE's ability to perform the Services. CONCESSIONAIRE agrees to resolve any such conflicts of interest in favor of the CITY.

18. ASSIGNMENT OF AGREEMENT

This agreement shall not be assigned by the CONCESSIONAIRE in whole or in part nor any portion of the premises sublet without the prior written consent of the CITY.

19. INDEMNIFICATION

The 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 from the use of the Premises or from providing concession sales and services by CONCESSIONAIRE, its employees, volunteers, or agents, except such injury, loss or damage caused by the sole negligence of the CITY. CONCESSIONAIRE waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, CONCESSIONAIRE's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs, and the indemnification and agreement to defend and hold harmless contained herein expressly includes any and all claims by employees, subcontractors, and assignees of CONCESSIONAIRE or for which CONCESSIONAIRE would otherwise have immunity under the Worker's Compensation Act or any similar law in the absence of CONCESSIONAIRE's waiver of such immunity herein. By executing the Agreement, the CONCESSIONAIRE acknowledges that the foregoing waiver has been mutually negotiated by the parties.

20. LIABILITY INSURANCE

The CONCESSIONAIRE shall, for the term of this agreement, maintain Commercial general liability insurance with limits of liability not less than \$1,000,000 per occurrence, and \$2,000,000 in the general aggregate, for bodily injury, including personal injury or death, products liability and property damage. The CITY must be designated as an additional named insured and the CONCESSIONAIRE shall submit to the CITY every year during the term of this agreement a certificate from its insurance carrier showing proof of coverage for the term of the Agreement. The CITY reserves its right to require higher coverage limits than those specified above. Business Auto Liability Insurance in an amount no less than \$1,000,000 per occurrence will be required.

21. NON-DISCRIMINATION/EQUAL OPPORTUNITY

- A. In all CONCESSIONAIRE's services, and all CONCESSIONAIRE hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by CONCESSIONAIRE or by CONCESSIONAIRE's employees, or agents, against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, sexual orientation or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONCESSIONAIRE shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the CITY and, in the case of the CONCESSIONAIRE's breach, may result in ineligibility for further CITY agreements.
- B. In the event of CONCESSIONAIRE's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled, or terminated

in whole or in part, and the CONCESSIONAIRE may be declared ineligible for further contracts with the CITY. The CONCESSIONAIRE, shall, however, be given a reasonable time in which to correct this noncompliance.

22. SEVERABILITY

If any provision of this agreement is held invalid for any reason, such invalidity shall not affect the remaining provisions herein.

23. MOTORIZED VEHICLES

One motor vehicle is allowed in the park for equipment and mobile food unit to be moved into the designated park area each day or time used. No other motorized vehicles are allowed in the park.

24. IMPROVEMENTS

The Concessionaire is not to make any improvements, alterations or additions to the park or city property without City approval.

25. STORAGE OF CONCESSIONAIRE'S PROPERTY

If the Concessionaire fails to remove all property required to be removed each day or time used, the City may, but is not required to, remove and store such property, at the Concessionaire's expense. If the City removes or stores such property, the City shall be reimbursed for any costs incurred, including any administrative costs.

26. NOTICES AND DELIVERABLE MATERIALS

All notices required under this Agreement shall be in writing. Except as specified in this Agreement, all notices and other material to be delivered under this Agreement shall be delivered or mailed, by first class mail, to the following addresses, or such other address as either party may designate in writing:

To City: Director of Park and Recreation
 City of Longview
 2920 Douglas Street
 Longview, WA 98632

To Concessionaire: Big Kahuna Shave Ice
 115 E. Canyonview Drive
 Longview, WA 98632

27. AMENDMENTS

No modifications or amendment of the terms of this Agreement shall be effective unless in writing and signed by the parties. The parties expressly reserve the right to modify this Agreement by mutual written agreement.

28. LAW AND VENUE

This agreement is governed by the law of Washington. All lawsuits or other legal actions whatsoever with regard to this agreement shall be brought in Cowlitz County, Washington, Superior Court.

| IN WITNESS WHEREOF, the parties hereto have executed this amended Agreement by affixing their signatures below:

CITY OF LONGVIEW

By: _____ Date: _____
(Signature)

David Campbell, City Manager
P.O. Box 128
Longview WA 98632
(360) 442-5001

I certify that I am authorized to execute this Agreement on behalf of the CONCESSIONAIRE.

CONCESSIONAIRE

By: _____ Date: _____
(Signature)

Business Name: Big Kahuna Shave Ice
Business Owner: Jonathon Rodeback
Address: 115 E. Canyonview Drive
Longview, WA 98632
Email: jonathonrodeback@gmail.com
Phone: (801) 318-6238

APPROVED AS TO FORM:

City Attorney

Date: _____

Exhibit B
**STATEMENT OF COMPLIANCE WITH
NON-DISCRIMINATION REQUIREMENT**

The Longview City Council has made compliance with the City's *Non-Discrimination in Delivery of City Services or Resources* ordinance a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies and their employees understand and carry out the City's non-discrimination policy. Accordingly, each City contract for services contains language that requires an agency to agree that it shall not discriminate against an employee or client on the grounds of race, creed, color, national origin, age, sex, marital status, veteran status, sexual orientation, or the presence of any disability. Indicate below the methods you will employ to ensure that this policy is communicated to employees and clients.

_____ affirms compliance with the City of Longview's
(Print Agency Name)
non-discrimination ordinance and contract provision by **two or more of the following actions:**

☐ Text of non-discrimination contract provision is posted on printed material with broad distribution (newsletters, brochures, etc.).

■ What type, and how often? _____

☐ Text of non-discrimination contract provision is posted on each application for service.

☐ Text of non-discrimination contract provision is posted on the agency's web page.

☐ Text of non-discrimination contract provision is included in human resource materials provided to job applicants and new employees.

☐ Text of non-discrimination contract provision is shared during meetings.

■ What type of meeting, and how often? _____

☐ If, in addition to two of the above methods, you use other methods of providing notice of non-discrimination, please list:

By signing, I acknowledge compliance with the City of Longview's non-discrimination ordinance.

Failure to implement the measures specified above constitutes a breach of contract

(Signature)

(Date)

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees hired, on the grounds of race, creed, color, national origin, age, sex, marital status, veteran status, sexual orientation, or the presence of any disability.

(Sole Proprietor Signature)

(Date)