

**KITSAP COUNTY
DEPARTMENT OF ADMINISTRATIVE SERVICES**



**KITSAP COUNTY
CONCESSIONAIRE SERVICES
RFP 2021-133**

**DEPARTMENT OF ADMINISTRATIVE SERVICES
CONCESSIONAIRE SERVICES
2021-133**

RESPONSE DUE: Tuesday September 14, 2021 @ 2:00 PM

Kitsap County Purchasing Office is soliciting proposals from qualified Concessionaires for the operation of an espresso stand located in the Kitsap County Administration Building, 619 Division Street, Port Orchard, Washington 98366.

Space Description:

This space is located on the third floor of the County Administration Building, and measures approximately 224 square feet (16 x 14). Expected hours of operation are 7:00 a.m. to 4:00 p.m., Monday through Friday. The concessionaire may choose to extend the hours and/or remain open for night meetings. Any closures prior to the established hours of operation will be posted at least 24 hours in advance.

Additional Requirements:

1. All food and beverages, and preparation thereof, shall be provided by the Concessionaire.
2. All Concessionaires personnel must have and maintain a Food Handler's permit issued by the Kitsap County Health District, and any other licenses or permits required to operate a business within the city limits of Port Orchard.
3. The Concessionaire shall be responsible for maintaining the leased space in compliance with local health codes and to a standard approved by Kitsap County.
4. The Concessionaire understands and agrees that no frying, grilling or broiling will be done in the facility.
5. The Concessionaire is required to provide a Certificate of Liability Insurance endorsing the County as required by the contract prior to award of Contract.
6. The Vendor shall maintain adequate records which will be open to audit by the County if requested.
7. The Concessionaire shall pay to Kitsap County Department of Administrative Services at 614 Division Street, MS-7, Port Orchard, WA 98366, **3%** of the gross sales, excluding Washington State sales tax, on a quarterly basis January 10, April 10, July 10, and October 10, of each year beginning October 10 of 2021. Financial statements will be submitted with each payment made to the County.

Pursuant to RCW 74.18.200, 74.18.210, 74.18.220, priority shall be given to proposals of blind persons licensed by Randolph-Sheppard Act, 20 U.S.C sec 107 et seq. If no blind persons so licensed submit proposals, concessionaires will be evaluated based set selection criteria.

Competitive Solicitation Deadlines

The following table identifies important dates for this Competitive Solicitation:

COMPETITIVE SOLICITATION DEADLINES	
ITEM	DATE
Competitive Solicitation Posting Date:	Thursday August 26th, 2021
Deadline for submitting Bids:	Tuesday September 14, 2021 @2:00 PM
Anticipated Announcement of Apparent Successful Bidder:	Tuesday September 21, 2021
Anticipated Award of Contract:	Tuesday September 28, 2021

Selection Criteria

The following criteria will be used in evaluating the proposals:

1. Previous experience in similar operations
2. Management experience, operating efficiency, and profitability
3. Creativity
4. Specialized qualifications of Bidder.

Submittals

For hand delivery, express, proposal must be submitted with the Request for Proposal (RFP) number and the name and address of the respondent clearly stated on the outside of the envelope. The proposal should include the following information:

- Resume with three (3) references
- Sample Menu including prices (Limit of 2 pages).
- Operating Plan (Limit of 3 pages).

Bid Evaluation point allocation:

Step	Item	Points
1	Bid Responsiveness	Pass/Fail
2	Bid Evaluation	
	Operating Plan	50
	Resume/References	25
	Sample Menu (including prices)	25

Step	Item	Points
Total:		
3	Bidder Responsibility Analysis	Pass/Fail
Total:		100

Bid Evaluation Process

Bid Responsiveness (Step 1)

Kitsap County will review bids – on a pass/fail basis – to determine whether the bid is ‘responsive’ to this Competitive Solicitation. This means that Kitsap County will review each bid to determine whether the bid is complete – i.e., does the bid include each of the required bid submittals, are the submittals complete, signed, legible. Kitsap County reserves the right – in its sole discretion – to determine whether a bid is responsive – i.e., to determine a bidder’s compliance with the requirements specified in this Competitive Solicitation and to waive informalities in a bid. An informality is an immaterial variation from the exact requirements of the Competitive Solicitation, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the goods or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial, to bidders. Responsive bids will be evaluated as set forth herein.

Operating Plan (Step 2).

Bidder’s will submit an operation plan that outlines a history of operations in similar business ventures, expertise, Management experience, operating efficiency and profitability. Kitsap County will evaluate each bid to ensure that each bidder’s service(s) meet the criteria set forth herein. Kitsap County reserves the right to request additional information or perform tests and measurements before selecting the Apparent Successful Bidder. A bidder’s failure to provide requested information to Kitsap County within ten (10) business days may result in disqualification. (Three (3) pages maximum length)

Resume/References (Step 2A)

Bidder’s will submit a Resume including Three (3) references that details experience and ability of the vendor relating to the operation of an espresso stand. Please include contract information for all references. (two (2) pages Maximum length)

Sample Menu (Step 2B)

Bidders will submit a sample menu, including prices. Kitsap County will evaluate menus based on creativity and overall options that are included.

Bidder Responsibility Analysis (Step 3).

For responsive bids, Kitsap County must determine whether the bidder is a ‘responsible bidder.’ Accordingly, Kitsap County will make reasonable inquiry to determine bidder responsibility on a pass/fail basis. In determining bidder responsibility, Kitsap County will consider the following statutory elements:

- The bidder’s ability, capacity, and skill to perform the contract or provide the service required;
- The bidder’s character, integrity, reputation, judgment, experience, and efficiency;

- Whether the bidder can perform the contract within the time specified;
- The bidder’s performance quality pertaining to previous contracts or services;
- The bidder’s compliance with laws relating to the contract or services;
- Whether, within the three-year period immediately preceding the date of the Competitive Solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the Washington State Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and
- Such other information as may be secured having a bearing on the decision to award the Contract.

Insurance

For the duration of the contract and until all service specified in the contract is completed, the Vendor shall maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. The contractor’s insurer shall have a minimum A.M. Best’s rating of A-VII. Vendor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the County before work commences. If for any reason, any material change occurs in the coverage during the course of the contract; such changes shall not become effective until 30 days after Kitsap County has received written notice of such changes. The policy shall be endorsed and certificate shall reflect that Kitsap County is an additional insured on the vendor’s general liability policy with respect to activities under the contract. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom a claim is made or a suit is brought except with respect to the limits of the company’s liability. The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by the County shall be excess and not contributory insurance to that provided by the Vendor. The limits required are as follows:

Type	Occurrence (Not less than)	Aggregate (Not less than)
Workers’ Compensation	Statutory	
Business Auto Policy (CA 00 01) Or Equivalent Non-owned & hired Owned	\$1,000,000 CSL	\$2,000,000
Commercial General Liability (CG 00 01) Premises/operations Products/completed operations Personal Injury Explosion, collapse & underground Contractual liability	\$1,000,000	\$2,000,000

Please submit proposal documents to the Kitsap County Purchasing Office

<p><u>Submit by email to:</u> Glen McNeill Purchasing Program Supervisor Purchasing@co.kitsap.wa.us</p>	<p><u>For hand delivery, express, or courier:</u> Glen McNeill Purchasing Program Supervisor Kitsap County Administration Building Fourth Floor 614 Division Street, MS-7 Port Orchard, WA 98366</p>
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Any questions regarding the above project should be directed to Glen McNeill, Purchasing Program Supervisor, (360) 337- 4789 or gsmcneill@co.kitsap.wa.us

Proposals received after 2:00p.m, Thursday August 19, 2021 will not be considered.

ADDENDA ACKNOWLEDGEMENT RECEIPT

Receipt of the following addenda to the solicitation documents is hereby acknowledged:

Addendum Number	Date of Receipt of Addendum	Signed Acknowledgement
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
.		

(Note: Failure to acknowledge receipt of the addendum may be considered an irregularity in the proposal.)

KC-xxx-21
SAMPLE
CONCESSION SERVICES AGREEMENT

This Concession Services Agreement (“Agreement”) is made and executed by and between Kitsap County, a Washington state political subdivision (“County”) and _____, a _____ (“Concessionaire”).

In consideration of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

SECTION 1. EFFECTIVE DATE, TERM AND COMPENSATION

- 1.1 The Agreement will become effective on _____ and terminate on _____. In not event will the Agreement become effective unless and until it is approved and executed by a duly authorized representative of Kitsap County.
- 1.2 Concessionaire shall pay to Kitsap County Department of Administrative Services 3% of the gross sales, excluding Washington State sales tax. Kitsap County will calculate the leasehold excise tax from the 3% gross sales received quarterly (using the current leasehold excise tax rate as determined by the Department of Revenue). Payments are due on a quarterly basis January 10, April 10, July 10, and October 10, of each year. Please submit financial statements with each payment made to the County (See Exhibit B: Compensation).
- 1.3 Remittance of Payment. All remittances shall be made payable to “Kitsap County” and forwarded to:

Kitsap County Department of Administrative Services
614 Division Street, MS-7
Port Orchard, WA 98366

SECTION 2. CONCESSION DESCRIPTION, PURPOSE AND USE

- 2.1 Concessionaire will provide and operate a concessions to provide food service and espresso within the Kitsap County Courthouse campus (“Premises”) as set forth in Exhibit A: Description of Services, which is incorporated in this Agreement by reference. Concessionaire will operate the food/espresso service from the third floor of the County Administration Building, 619 Division St, Port Orchard WA 98366.
- 2.2 All services performed under this Agreement shall be conducted under the general supervision of the Kitsap County Director of Administrative Services (“Director”), or an authorized representative, and shall be performed in such a way as to not interfere with or adversely affect the operation or maintenance of the

Administration Building and in compliance with all applicable laws. Concessionaire will not make any unlawful, improper, or offensive use of the Premises.

- 2.3 Concession sales shall be conducted at the locations designated and no vendors will be permitted to circulate about the building or property promoting the sale of any type of merchandise except when specifically authorized by the Director. County retains the right of ingress and egress over, through and across the Premises at any time.
- 2.4 The Concessionaire shall provide espresso, breakfast items, lunch and snack items to the general public and employees of the County. Espresso stand hours will be, but not limited to, as follows: Espresso 7:00 a.m. till 4:00 p.m. Monday through Friday. The Concessionaire may choose to extend the hours and/or remain open for the Board of Commissioners public night meetings. If, on rare occasions, early closure is necessary, the Concessionaire will post signs to such effect throughout the Courthouse and Administration Building in advance of early closure.
- 2.5 Equipment/Access. It is understood and agreed that the Concessionaire shall have the sole and exclusive right to the kitchen facilities and County-owned appliances located in the Espresso area of the Administration Building. Concessionaire shall be responsible for maintaining the premises and equipment in good repair. County warrants that all equipment is in good working order and fit for the purpose intended at the time the Concessionaire takes possession of the initial designated areas. Concessionaire will repair equipment as necessary from normal wear and tear of doing business. County will replace equipment as necessary due to normal daily wear and tear. At the termination of the agreement, the Concessionaire may remove its own equipment but will be responsible for leaving the premises in the same condition as existed at the inception of this Agreement, reasonable wear and tear expected. Concessionaire will reimburse the County for damage to the premises or equipment missing at the end of the Agreement. Performance of this section shall be conducted to the satisfaction of the County as a condition to releasing the Concessionaire or its surety from further obligation.
- 2.6 Condition of the Premises/Inspection. Concessionaire shall be responsible for maintaining the premises and the service area in a clean and sanitary condition at all times and shall control access to the concession site and facilities at the concession site to ensure safe and responsible use. Concessionaire shall maintain the premises in accordance with all County and State regulations, public health and sanitation standards, applicable fire code and safety standards and any and all other applicable ordinances, laws, codes or regulations. The County reserves the right, but not the obligation, to inspect the concession and concession site at all reasonable times to assure and verify compliance with all laws and regulations and conformity with the terms or conditions of this Agreement. Concessionaire shall at all times be responsible for ensuring the concession conforms to the

Agreement's terms even if County or representative designated by the County conducts any inspection of the same.

- 2.7 Recycle. Concessionaire shall be solely responsible for proper disposal of recyclable items and trash in bins that are provided by the County. Recyclable items shall include aluminum beverage cans, plastic #1 soda bottles, plastic #2 mil jugs, and flattened corrugated cardboard, with jugs rinsed prior to placement in the recycle bins. Kitsap County reserves the right to add or eliminate commodities.
- 2.8 Clothing. All employees of the Concessionaire shall be neatly attired in clean appropriate clothing, use proper hygiene, and wear identification indicating the individual is an employee of the Concessionaire. All employees will have and maintain current Kitsap County Food Handler Permits as a requirement of employment.
- 2.9 Limitations. Concessionaire shall not conduct any frying, grilling, or broiling on the premises.
- 2.10 Signage/Construction. No signs, advertising displays, or exterior decorations shall be painted on or erected in any manner upon the Premises without the prior written approval of the Director and such approval shall not be unreasonably withheld. All such signs shall conform to reasonable standards established by the County with respect to type, size, design, color and location.
- 2.11 Pricing of Goods and Services. The parties agree that the prices of goods and services shall be set by the Concessionaire. Washington State Sales tax shall be added to all goods and services that are required by law. Any change in prices will be negotiated with the Director. In the event the parties cannot agree on the applicable pricing, the price of the Concessionaire shall be adopted for a period of three months, or one rental period. If such pricing reduces the quarterly revenue payable to the County under this Agreement, the parties agree to renegotiate the pricing to further increase sales and revenue to the County.
- 2.12 Deliveries. Deliveries of all supplies, goods, wares, merchandise and equipment shall be made so as not to interfere with operation of the Courthouse and/or Administration Building. Concessionaire will have the right to use the public areas as reasonably required for access to and from the premises, provided its agents, employees, suppliers, or guests abide by the County rules, applicable laws and County policies as may be amended from time to time.
- 2.13 Right of Entry. The Director and his/her designee shall have the unrestricted right to be on the premises at all times.
- 2.14 Utilities. Utilities associated with use of the leased space shall be paid by the County.

- 2.15 Deny Service. Concessionaire reserves the right to remove any person from the premises who disrupts services, accosts patrons or guests or employees in any way or damages or attempts to damage the premises.
- 2.16 Hocking. No undue pressure, persuasion, or hocking shall be done in an attempt to influence the public to use the concession and food services of the Concessionaire.

SECTION 3. TERMINATION

- 3.1 Termination for Convenience. Either party may terminate this Agreement for convenience by providing at least 30 days' advance written notice to the other party.
- 3.2 Termination for Default. In the event of a default of this Agreement by either party to this Agreement, the non-defaulting party may give written notice to the defaulting party that it intends to terminate this Agreement if the default is not cured within 10 days of the date of the notice. If the default is not cured within that time, the non-defaulting party may then notify the defaulting party in writing that this Agreement is terminated. In the event of such termination, the non-defaulting party shall have all rights and remedies available to it under general law.
- 3.3 Disposition of Property. On the date of termination of this Agreement, Concessionaire shall have the right to remove from the concession site all personal property, fixtures, and equipment not a part of the real estate, installed by and title to which Concessionaire retains, subject, however, to any valid lien or claim which County may have for unpaid monies due, and if such removal causes any damage to the real estate, Concessionaire will repair the same in a proper and satisfactory manner at its own expense.

SECTION 4. REPRESENTATIVES AND NOTICES

- 4.1 Each party to this Agreement shall have a representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

- 4.2 Notices. Any notices will be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in this Section. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the

date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.

SECTION 5. INDEMNIFICATION

- 5.1 To the fullest extent permitted by law, Concessionaire shall indemnify, defend and hold harmless Kitsap County and its elected and appointed officials, officers, employees and agents (“Indemnitees”) from and against all Claims resulting from or arising out of the performance of the Agreement, whether such Claims arise from the acts, errors or omissions of Concessionaire, its employees, subcontractors, agents (collectively “Personnel”), third parties or Kitsap County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors or omissions any of them may be liable. It is the specific intent of the parties that the indemnitee shall, in all instances, except Claims arising from the sole negligence or willful misconduct of the Indemnitee, be indemnified by Concessionaire from and against any and all Claims.
- 5.2 With regard to any Claim against any Indemnitee by any of Concessionaire’s Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, Concessionaire’s indemnification obligation will not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Concessionaire or Concessionaire’s Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, Concessionaire expressly waives its immunity under Title 51 (Industrial Insurance) RCW and acknowledges this waiver was mutually negotiated by the parties.
- 5.3 Claim. “Claim” means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys’ fees, consequential damages and punitive damages, for any personal or bodily injury, sickness, disease, disability or death, or loss or damage to tangible or intangible business or property, including the loss of use, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Concessionaire or its Personnel. Claim includes any infringement of copyright, patent, trademark, or other proprietary rights of any third parties arising out of contract performance or use by the County of materials furnished or work performed under the Agreement.
- 5.4 Obligations/Notice of Claim. County will provide the Concessionaire notice of the assertion of liability by a third party that may give rise to a Claim by County against the Concessionaire based on the indemnity contained herein. Concessionaire shall promptly advise County in writing, which shall in no event exceed 14 calendar days from the notice date, whether Concessionaire accepts or denies tender of the claim. County may in its discretion withhold all or part of any payment due Concessionaire under the Agreement until Concessionaire responds to such notice. Concessionaire shall reimburse County for all fees and costs of defense

whether incurred before or after the notice of claim. Concessionaire shall keep County timely and fully informed through all stages of the defense and promptly respond to and comply with County's requests for information. The County at all times reserves the right, but not the obligation, to participate in the defense of any Claim and such participate shall not constitute a waiver of Concessionaire's indemnity and defense obligations under the Agreement. Violation of any provisions of this Section, including improper refusal to accept tender, is a material breach.

SECTION 6. INSURANCE

- 6.1 Minimum Insurance Required. Concessionaire and Subcontractors shall procure and maintain, until all of Agreement obligations have been discharged, including any warranty period, all insurance required in this Section with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A-VII and a category rating of not less than "8", with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from the County. Coverage limits shall be at minimum the limits identified in this section, or the limits available under the policies maintained by Concessionaire without regard to the Agreement, whichever is greater.
- 6.2 Commercial General Liability. \$1,000,000 per occurrence, \$2,000,000 annual aggregate. Coverage shall include personal injury, bodily injury and property damage for Premise-Operations Liability, Products/Completed Operations, Personal-Advertising Injury, Contractual Liability, Independent Contractor Liability, and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations required by the Agreement.
- 6.3 Automobile Liability. \$1,000,000 per occurrence; \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired and non-owned vehicles. Coverage may be satisfied by way of endorsement to the General Commercial Liability policy.
- 6.4 Umbrella or Excess Liability. Contactor may satisfy the minimum liability limits required for Commercial General Liability and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Automobile Liability. Concessionaire agrees to an endorsement naming the County as an additional insured as provided herein, unless the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- 6.5 Workers' Compensation and Employer Liability. If applicable, Concessionaire shall maintain Workers' Compensation as required under the Washington State

Industrial Insurance Act, Title 51 RCW, for all Concessionaire's employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act. If the Agreement is for over \$50,000 then the Concessionaire will also maintain employer liability coverage with a limit of not less than \$1 million.

- 6.6 Primary, Non-Contributory Insurance. All Concessionaire's and Concessionaire's Subcontractors' insurance policies and additional named insured endorsements shall provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County shall be excess and not contributory to such insurance policies. All Concessionaire's and its Subcontractors' liability insurance policies must be endorsed to show as primary coverage.
- 6.7 Review of Policy Provisions. Upon request, Concessionaire shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right without limitation, but not the obligation, to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Agreement. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- 6.8 Waiver of Subrogation. In consideration of the contract award, Concessionaire agrees to waive all rights of subrogation against the County, its elected and appointed officials, officers, employees, and agents. This requirement shall not apply to any policy that includes a condition expressly prohibiting waiver of subrogation by the insured or that voids coverage should the Concessionaire enter into such a waiver of subrogation on a pre-loss basis.
- 6.9 Additional Insured, Endorsement and Certificate of Insurance. The County, its departments, elected and appointed officials, employees, agents and volunteers shall be specifically named as additional insureds on Concessionaire's and its Subcontractors insurance policies by way of endorsement for the full available limits of coverage maintained by Concessionaire and its Subcontractors, and all coverage shall be primary and non-contributory. A statement of additional insured status on a Certificate of Insurance shall not satisfy this requirement.
- 6.10 Concessionaire shall provide a Certificate of Insurance, evidencing all required coverages, limits, deductibles, self-insured retentions, and additional insured endorsements, and which are conditioned upon the County receiving thirty (30) days prior written notice of reduction in coverages, cancellation, or non-renewal. Each Certificate of Insurance, endorsement and all insurance notices shall be provided to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS-7, Port Orchard, WA 98366
- 6.11 No Limitation on Liability. The coverage limits identified in this Section are minimum requirements and shall not in any manner limit or qualify the liabilities or obligations of the Concessionaire under the Agreement. All insurance policy

deductibles and self-insured retentions for policies maintained under the Agreement shall be paid by the Concessionaire. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees or agents. Concessionaire's insurance will apply separately to each insured against whom a claim is made or suit is brought, subject to the limits of the insurer's liability.

- 6.12 Subcontractors. The Concessionaire will include all Subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each Subcontractor. All Subcontractors shall comply with all insurance and indemnification requirements in the Agreement.
- 6.13 Claims-Made. If Concessionaire's liability coverage is written as a claims-made policy, Concessionaire shall purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the Services or expiration of warranty, if any, whichever is greater.

SECTION 7. CONTRACT CHANGES, SUBCONTRACTING, INDEPENDENT CONTRACTOR

- 7.1 Amendment. The Agreement may not be amended or modified without the prior written consent of the parties.
- 7.2 Successors and Assigns. To the extent permitted by law, the parties bind themselves, and their partners, successors, executors, administrators and assigns to the other party to the Agreement and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Agreement.
- 7.3 Assignments/Delegation. Concessionaire shall not assign any right nor delegation any duty under the Agreement without the prior written consent of the County. Any purported assignment or delegation in violation of this subsection is void.
- 7.4 Independent Contractor. Each party under the Agreement shall be for all purposes an independent contractor. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent, or employer and employee between the parties. Concessionaire will have complete responsibility and control over its Personnel. Neither Concessionaire nor its employees, agents or subcontractors will be, or be deemed to be, or act or purport to act, as an employee, agent or representative of the County. Concessionaire and its employees shall have no claim for any County benefits of any kind whatsoever, including without limitation: vacation/holiday/sick leave pay, insurance benefits, or other right or privilege afforded to County employees.

SECTION 8. REPRESENTATIONS, WARRANTIES

- 8.1 Licenses, Permits and Taxes. Concessionaire shall, at its own expense, have and maintain all licenses, food handler permits, registrations, permits and approvals

necessary for the performance of the Agreement, including without limitation, registration with the Washington State Department of Revenue. Concessionaire will pay all fees (including licensing fees) and applicable federal, state and local taxes.

- 8.2 Compliance with Laws. Concessionaire and its employees, subcontractors and agents and Services provided under the Agreement shall comply with all applicable federal, state and local laws, codes, and standards (collectively “Laws”), regardless as to whether such Laws are referred to by the County.
- 8.3 Nondiscrimination. Concessionaire and its employees, subcontractors and agents shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88 354 and Americans with Disabilities Act of 1990 in the performance of the Agreement.
- 8.4 Public Records. Concessionaire acknowledges the Contact and all records related to the Agreement are public records and subject to disclosure pursuant to Public Records Act, chapter 42.56 RCW. Concessionaire shall promptly provide County, at no cost, any and all records related to the Agreement as requested by the County.
- 8.5 Advertising, Logo, Marks. Concessionaire and its Personnel shall not use, advertise or promote information for commercial benefit concerning the Agreement or use any trade name, trademark, or logo of the County, without the prior written consent of the Director.
- 8.6 Audit and Record Retention. Concessionaire shall retain and contractually require its Personnel to retain all books, documents and records relating to acquisition and performance of the Agreement for six years after completion of the Agreement. All records shall be subject to inspection and audit by the County at reasonable time. Upon request, Concessionaire shall promptly make available to the County, a legible copy of all records at no cost to the County.
- 8.7 No Waiver. Either party’s failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

SECTION 9. GOVERNING LAW, DISPUTES

- 9.1 Governing Law; Venue. The Agreement shall be governed in all respects by the laws of Washington State as they apply to agreements entered into and to be performed entirely within Washington between Washington residents, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted and maintained only in a court of

competent jurisdiction in Kitsap County, Washington or as provided by RCW 36.01.050.

- 9.2 Disputes. Conflicts, disputes and disagreements between the parties arising under or out of the Agreement will be brought to the attention of the County at the earliest possible time so the matter may be settled, or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance, or compensation due the Concessionaire will be decided by the Director. All instructions and decisions of the Director are considered final; however, nothing herein prohibits either party from seeking judicial relief.

SECTION 10. GENERAL PROVISIONS

- 10.1 Implied Contract Terms. Each provision of law and any terms required by law to be in the Agreement are made a part of the Agreement as if fully stated in it.
- 10.2 Headings/Captions. Headings and captions used are for convenience only and are not a part of the Agreement and do not in any way limit or amplify the terms and provisions hereof.
- 10.3 No Party the Drafter. The Agreement is the product of negotiation between the parties, and no party is deemed the drafter of the Agreement.
- 10.4 No Third Party Beneficiary. No provision of the Agreement is intended to, nor shall it be construed to, create any third party beneficiary or provide any rights or benefits to any person or entity other than the County and Concessionaire.
- 10.5 Severability. The provisions of the Agreement are severable. Any term or condition of the Agreement or application thereof deemed to be illegal, invalid or unenforceable, in whole or in part, shall not affect any other term or condition of the Agreement and the parties' rights and obligations will be construed and enforced as if the Agreement did not contain the particular provision.
- 10.6 Counterparts. The Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
- 10.7 Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include, without limitation: Sections 5 (Indemnification), 6.13, 7.14 (Independent Contractor), 9 (Governing Law, Disputes), and 10 (General Provisions).
- 10.8 Entire Agreement. The parties acknowledge the Agreement is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previously agreements and representations,

whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by the Agreement.

10.9 Authorization. Each party warrants and represents to the other that it has full power and authority to enter into and perform this Agreement and the person executing this Agreement has been properly authorized and empowered to execute this Agreement on behalf of the party for whom they sign.

In witness whereof, the parties hereto have caused this Agreement to be executed.

CONCESSIONAIRE

**KITSAP COUNTY
PORT ORCHARD, WASHINGTON**

Insert Vendor

Amber D'Amato, Director
Department of Administrative Services

Date

Date

EXHIBIT A
DESCRIPTION OF SERVICES

EXHIBIT B COMPENSATION

The (insert vendor) will pay Kitsap County 3% of the gross sales, excluding Washington State Sales Tax. Payments are due quarterly; January 10, April 10, July 10, and October 10, of each year beginning October 10 of 2013.

Please submit financial statements with each payment made to the County.