

Request for Proposals Parks Concession Services



City of Othello Parks and Recreation

111 North Broadway Avenue
Othello, Washington 99344

Telephone (509) 488-6997 | Fax (509) 488-3701



**Due by 2:00 PM
March 28, 2019**

I. INTRODUCTION

The City of Othello (“City”) is seeking proposals from qualified vendors to evaluate the feasibility of contracting the seasonal operation and management of the City’s two concession stands, located at the Othello Community Pool and the Lions Park Athletic Complex.

Copies of the 2019 City of Othello Parks Concession RFP may be obtained at the Parks and Recreation office, 111 North Broadway Avenue, Othello, Washington 99344, or downloaded from the City’s website, www.othellowa.gov.

II. OVERVIEW

This Request for Proposals (“RFP”) is intended to encourage vendors to clearly demonstrate the ability to provide food and beverage service in a consistent and revenue positive manner for one (1) year. Each proposer must clearly identify their knowledge of concession operations, food safety practices, contract relations, and demonstrate financial stability. City of Othello proposal requirements are outlined in this packet. All proposals meeting the minimum qualifications of this RFP will be reviewed and evaluated based on pre-determined evaluation criteria, as listed in Section IX of this RFP.

The selected proposer will have access to the concession stand facilities listed below to sell and store approved food and beverage items during scheduled events.

A. Concession Stand Facilities

- i. Othello Community Pool; 1135 East Pine Street Othello, WA 99344.

This concession stand is located inside the City’s only public swimming pool facility. The facility generally operates June through Labor Day for open swim, swim lessons, private parties, and is also home to the Othello Barracudas Swim Team. The Othello Community Pool concession stand is a permanent facility, with existing concession equipment available for use. Water and hot water are also available. Water, power, sewer, and garbage provided by City.

- ii. Lions Park Athletic Complex; 815 East Pine Street Othello, WA 99344.

This concession stand is located within the Lions Park Athletic Complex, which is comprised of four (4) softball/baseball fields and one soccer field. The facility generally operates April through September. Softball/baseball games and/or practices occur on weeknights and Saturdays, with occasional Sunday use. Softball/baseball tournaments are hosted on various weekends throughout the season. Soccer field is scheduled for intermittent use. The Lions Park Athletic Complex concession stand is a permanent facility with minimal existing concession equipment available for use. Water and hot water are available. Water, power, sewer, and

garbage provided by City.

III. TERMS AND CONDITIONS

- A. This RFP represents a solicitation by the City for services and does not commit the City to award a contract. The City reserves the right to reject any or all proposals, and to re-advertise and award the contract in the regular manner or to waive any informality, irregularity, mistake, error, or omission in any proposal received and to accept any proposal deemed to be most favorable to the interests of the City.
- B. This RFP and the RFP process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. All proposals become the property of the City and will not be returned to the proposer. Proposers should be aware the City is a “public entity” defined by and subject to the Public Records Act.
- C. Proposers are solely responsible for their own expenses in preparing, and submitting proposals, and for any meetings, negotiations, or discussions with the City or its representatives and proposers, relating to or arising from this RFP. The City and its representatives, agents, and advisors will not be liable to any proposer for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, in preparing and submitting a proposal, or participating in negotiations for a contract, or other activity relating to or arising out of this RFP.
- D. It shall be the proposer’s responsibility to review and verify the completeness of its proposal. The City may request additional information from any proposer at any time. The City may request to contact clients referenced in the proposer’s proposal. The City also reserves the right to conduct investigations with respect to the qualifications of a proposer.
- E. By submitting a proposal, the proposer agrees to be governed by the terms and conditions set forth in this document. No change or deviation from the terms set forth in this document is permitted without prior approval from the City.
- F. The selected proposer will be required to meet all state and local regulations in regards to food preparation and distribution.
- G. It will be the proposer’s responsibility to contact, arrange and comply with specific Adams County Health Department requirements for proposed concession site(s). It is the responsibility of the proposer to verify that adequate water and electrical service is available to support the equipment they intend to operate at a particular location. Any modifications or improvements to concession areas shall be at the sole expense of the successful proposer, and will require advance written approval from the City.

H. The proposer understands and agrees that the City will only grant concessions by the contract, and not lease. Concession contract(s) will only confer permission to occupy and use the premises described for concession purposes. A successful proposer's expenditure of capital and/or labor in the course of use and occupancy will not confer any interest or estate in the premises by virtue of said use, occupancy and/or expenditure of money thereon. The City will only grant successful proposers ("Contractors") an individual, revocable and non-transferable privilege of use in the premises for the concession granted.

IV. DUE DATE AND TIMELINE

- A. The City of Othello must receive proposals no later than **2:00 PM (local time) on Thursday, March 28, 2019**. Responses shall be mailed or hand delivered to the City of Othello Parks and Recreation, 111 North Broadway Avenue, Othello, WA 99344.
- B. Proposals shall be submitted in a sealed package, clearly marked on the outside with the proposer's name and "City of Othello Parks Concession Services RFP".
- C. Proposer shall submit three (3) signed and completed proposal copies and one (1) PDF copy. PDF copies may be delivered on a USB drive or CD with the hard copies.
- D. Proposals received after the due date and time will not be accepted or considered. Delays caused by any delivery, courier, or mail services(s) will not be grounds for an extension of the due date.
- E. Incomplete proposals and/or conditional proposals, and proposals not provided on the forms included in this RFP will not be accepted.
- F. The timeline for the advertisement and review is as follows. Please note the below timeline is subject to change and approvals.

March 13, 2019	RFP packages become available
March 28, 2019	RFP submittal deadline at 2:00 PM
April 1-5, 2019	Committee RFP submittal review, discussion, and possible recommendation

If recommended to move ahead with award of contract, then:

April 8, 2019	City Council review and contract award
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V. SCOPE OF SERVICES

The selected proposer will be required to satisfy the following conditions as part of the concession operations.

A. Right and Responsibility

It is intended that the selected concessionaire will have the right and responsibility to provide concession services at the sites stated in this RFP. Vendor is required to operate the stationary concession facilities at the designated site(s).

B. Personnel and Equipment

The selected concessionaire shall furnish all staffing, equipment (beyond the existing equipment provided within the respective concession area listed in Attachment A) and supplies necessary to provide food/non-alcoholic beverage “self-contained” concession services to the public. Existing equipment is property of the City and available for use by the concessionaire. The concessionaire shall install and maintain sufficient auxiliary equipment to meet the public need as electrical capacity allows. All auxiliary equipment shall remain property of the concessionaire. The selected concessionaire will comply with all federal, state, and local laws related to minimum wage, social security, nondiscrimination, unemployment, compensation, and workers’ compensation.

C. Menu Items

The selected concessionaire is expected to serve quality food and drinks at a competitive price to meet the needs of the visiting public. All menu items and pricing must be submitted to the City for approval prior to product sales.

D. Concession Sites and Hours of Operation

The selected concessionaire shall provide services of the highest quality and dependability, at the locations listed below and during the days and hours scheduled for use. Specific hours of operation vary, and are determined by a number of factors including event schedules, reserved use by facility user groups, and weather. Concession stands are expected to be operational seven (7) days per week, while facilities are in use. Below is an estimate of concession stand hours and dates of operation based upon 2014 scheduling. A schedule of events will be provided upon availability.

Concession Site: Othello Community Pool
Location: 1135 East Pine Street Othello, WA 99344
Dates of Operation: June – September 2019 (approximately)
Schedule:

Monday:	12:00 PM to 7:00 PM (Pool rental, as requested: 8:00 PM to 10:00 PM)
Tuesday:	12:300 PM to 7:00 PM (Pool rental, as requested: 8:00 PM to 10:00 PM)
Wednesday:	12:00 PM to 9:30 PM

Thursday: (Pool rental, as requested: 8:00 PM to 10:00 PM)
12:00 PM to 7:00 PM

Friday: (Pool rental, as requested: 8:00 PM to 10:00 PM)
12:00 PM to 7:00 PM

Saturday: (Pool rental, as requested: 8:00 PM to 10:00 PM)
12:00 PM to 7:00 PM

Sunday: (Pool rental, as requested: 10:00 AM to 12:00 PM, 7:00 PM to 9:00 PM)
12:00 PM to 7:00 PM
(Pool rental, as requested: 10:00 AM to 12:00 PM, 5:30 PM to 7:30 PM)

In addition, concessionaire agrees to provide services for the duration of Mid-Valley Swim League home meets, hosted by the Othello Barracudas swim team. Below is an estimate of swim meet dates and times, based upon 2019 scheduling. A 2019 Mid-Valley Swim League schedule will be provided upon availability.

June: One meet per week (Tuesday or Thursday)
5:30 PM to 10:00 PM

July: One meet per week (Tuesday or Thursday)
5:30 PM to 10:00 PM

Concession Site: Lions Park Athletic Complex
Location: 815 East Pine Street Othello, WA 99344
Schedule: Dates of Operation: April – June, 2019 (approximately)

Monday: 5:00 PM to 8:00 PM (approx.)
Tuesday: 5:00 PM to 8:00 PM (approx.)
Wednesday: 5:00 PM to 8:00 PM (approx.)
Thursday: 5:00 PM to 8:00 PM (approx.)
Friday: 5:00 PM to 8:00 PM (approx.)
Saturday: As requested (tournament play)
Sunday: As requested (tournament play)

VI. SITE TOURS

All proposers are encouraged to visit the concession sites prior to submitting a proposal and to fully acquaint themselves with all existing conditions reasonably inferable from examination of the facilities and their surroundings in order to make allowance for such conditions in the proposal.

Concession site tours will be provided by City of Othello Parks and Recreation staff Monday through Friday, between the hours of 8:00 AM and 4:00 PM, and must be scheduled no later than

two business days prior to the requested tour date. To schedule a concession site tour, please contact:

City of Othello Parks and Recreation
Amy Hurlbut, Parks and Recreation Coordinator
111 North Broadway Avenue
Othello, WA 99344
(509) 488-6997
ahurlbut@othellowa.gov

By submitting a proposal, the proposer represents that they have examined the facilities fully as to all conditions, contingencies, risks and circumstances, local or otherwise, which might influence or affect the performance or the cost of the work, including but not limited to: location of concession stands, adjacent properties, existing uses and programs, access and all other conditions that a competent proposer experienced in work similar to the requested services would consider and take into account, and is further deemed to have included in the proposal price all costs occasioned thereby.

VII. PROPOSAL REQUIREMENTS

The purpose of this RFP is to evaluate the feasibility of contracting the seasonal operation and management of the Othello Community Pool concession stand and the Lions Park Athletic Complex concession stand. Proposals should be prepared simply, providing straightforward and concise descriptions of the applicants' capabilities to satisfy the requirements of the request.

A. All proposals must include the following information:

1. Cover Letter and Contact Information

A narrative background of the proposer's ability and experience in providing concession services to the public. The following contact information must also be included for the proposer:

- Primary contact for submittal
- Physical mailing address
- Telephone number
- Fax number
- E-mail address
- Web address (if applicable)

2. Equipment and Products Available for Sale

A list and explanation of additional equipment the proposer intends to provide at the concession sites. A menu must be included for all products intended to be made available for sale, including the following information:

- Concession products intended to be offered for sale.
- Size of concession products intended to be offered for sale.

- Unit price list of all concession items to be offered for sale. Washington State sales tax, if applicable, should be listed for each applicable item separately.

3. Staffing and Customer Service

List of positions and/or individuals who will be working on the project and their areas of responsibility. A short narrative and/or description of how the proposer intends to promote customer service and quality (i.e. description of employee training program) must also be included.

4. Income and Compensation

An estimate of income and expense for the first year of operations.

Describe, in detail, the percentage of gross revenue to be paid to the City (the standard percentage is 15% gross, not to include applicable Leasehold Excise Tax). In addition, provide a statement outlining how proposer will document and report revenues and expenditures.

5. References

At least three (3) client references for related governmental, institutional, or similarly contracted organizations that will support, document and/or verify performance in providing concession services and/or operating a business. Letters of support and/or commitment from such agencies are encouraged, but not required. The City may contact references during any part of the RFP process. Client references must include the following information:

- Name of organization
- Address
- Telephone number
- Contact person most involved in the contract

6. Evidence of Insurance

Evidence of the following insurance minimums:

- Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;
- Comprehensive general liability with combined single limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington. A \$2,000,000 products/completed operations aggregate is required for concessionaires that prepare food.

Proposer's insurance must be primary to, and non-contributory with, the City's insurance.

- The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverage.
- A copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance.

7. A valid City of Othello Business License or evidence of non-profit status from the Internal Revenue Service (IRS).

8. A valid Adams County Health Department Food Service Permit.

VIII. CONTRACT

A. The draft contract attached to this packet as Attachment B, "Agreement for Concession Services", is subject to review and acceptance by City legal staff. The contract may be modified prior to award to accommodate legal requirements.

B. The contract shall be effective for one (1) year, and may be renewed up to three (3) years, upon mutual written agreement of the City and the selected proposer. The one (1) year agreement is expected to commence on March 1, 2019, and conclude on November 1, 2019.

IX. PROPOSAL EVALUATION AND SELECTION

The evaluation of proposals will be undertaken on behalf of the City by an evaluation committee. The evaluation committee may consult with others including City staff members, third party consultants and references, as the City deems necessary. The evaluation committee may elect to provide a written recommendation to the Othello City Council to award a contract to one or more of the proposers. The Othello City Council will ultimately determine the feasibility of the contract award.

The evaluation committee will compare and evaluate all proposals using the following criteria. These criteria represent the primary factors for consideration. Selection of the proposal that is most advantageous to the City will be based on a number of factors including, but not limited to:

1. Demonstrated experience in concession and/or food operations.
2. Qualifications of the applicant.
3. Anticipated revenue proposed to City.
4. Ability to deliver a high quality concession menu on ongoing basis.

The evaluation committee will not be limited to the criteria referred to above, and may consider other criteria that the committee identifies as relevant during the evaluation process. The evaluation committee may apply the evaluation criteria on a comparative basis, evaluating the proposals by comparing one proposal to another proposal to determine the best value to the City

and service for residents and visitors. All criteria considered will be applied evenly and fairly to all proposals.

The evaluation committee may, at its discretion, request clarifications or additional information from a proposer with respect to any proposal, and the evaluation committee may make such requests only to selected proposers. The evaluation committee may consider such clarifications or additional information in evaluating a proposal.

The City reserves the right to reject any or all proposals, and to waive any irregularities or information in the evaluation process. The final decision is the sole decision of the City, and the proposers to this formal request have no appeal rights or procedures guaranteed to them.

X. QUESTIONS AND INQUIRIES

- A. Questions regarding the meaning or intent of this RFP must be made in writing and submitted to the City representative listed below no later than 2:00 PM (local time) on Monday, March 25, 2019. Any and all questions will be responded to in writing. No other City official or employee is empowered to speak for the City with respect to this solicitation. Any information obtained from any non-approved source shall not be binding and may disqualify the proposal.
- B. Proposers finding discrepancies or omissions in the RFP or contract, or having doubts as to the meaning or intent of any provision, should immediately notify the City representative. If the City determines that an amendment is required to this RFP, the City representative will issue an addendum. No oral conversation will affect or modify the terms of this RFP or may be relied upon by any proposer.
- C. All inquiries related to the status of this RFP, including whether or not a contract has been awarded, should be directed to the City Representative.

City of Othello Parks and Recreation
Amy Hurlbut, Parks and Recreation Coordinator
111 North Broadway Avenue
Othello, WA 99344
(509) 488-6997
ahurlbut@othellowa.gov

ATTACHMENT A

CONCESSION SITES AND EXISTING EQUIPMENT

City concession sites and existing equipment respective to each facility are listed below. Existing concession equipment is property of the City and available for use by the selected concessionaire. The selected concessionaire shall install and maintain sufficient auxiliary equipment to meet the public need as electrical capacity allows. All auxiliary equipment shall remain property of the concessionaire.

Concession Site: Othello Community Pool
Location: 1135 East Pine Street Othello, WA 99344

Existing Equipment:

Item:	Count:
Pepsi (bottle) refrigerator	1
Freezer	1
Sno-cone machine	1
Gehl's nacho cheese/chili dispenser	1
Microwave	3
Hot dog and bun warmer	1
Hot water kettle	1
Crock pot	1

Concession Site: Lions Park Athletic Complex
Location: 815 East Pine Street Othello, WA 99344

Existing Equipment:

Item:	Count:
(bottle) refrigerator	1
Freezer/Refrigerator	1
Chest Freezer	1
Crock Pot	1
Microwave	1
Hot Dog Roller Grill	1

ATTACHMENT A
CONCESSION SITES AND EXISTING EQUIPMENT

AGREEMENT FOR CITY PARK CONCESSION SERVICES

This Professional Services Agreement ("Agreement") is dated effective this [date] day of [month], [year]. The parties ("Parties") to this Agreement are the City of Othello, a Washington City ("City"), and [Contractor], a Washington partnership.

A. The City seeks the professional services of a skilled independent contractor capable of working without direct supervision, to provide food and beverage services to the general public at the Lions Park Athletic Complex and the Othello Community Pool concession stands; and

B. The Concessionaire has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Concessionaire shall provide services as set forth in Exhibit "A" attached hereto and incorporated by this reference, at the Lions Park Athletic Complex and the Othello Community Pool concession stands ("Concession Stands") located, in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Administrator or his designee.

1.1 Customer Service. Concessionaire and all of its employees, agents, or representatives shall provide the highest quality of customer service and shall treat all customers with courtesy and respect. Concessionaire shall honor all reasonable request for refunds including requests from customers that are dissatisfied with any food, beverage or other product sold by Concessionaire or from customers who have lost money in any vending machine owned by Concessionaire.

1.2 Employee Appearance. All of Concessionaire's employees, agents, representatives or licensees shall have a neat, clean and sanitary personal appearance and those who come in direct contact with the public shall wear clothing or identification, which distinguishes them as employees of Concessionaire.

1.3 Employee Training. Concessionaire shall provide a training program for its employees, agents, or representatives for the development of the skills and techniques necessary to perform its obligations under this Agreement including but not limited to promoting customer service, product and service presentation, cleanliness, positive attitude and promoting the City's philosophy and policy.

1.4 Staffing. The Concession Stands shall be properly staffed in order to prevent undue delay to the public. Concessionaire shall plan its staffing in advance and anticipate to the best of its ability any events, such as holidays or special events, which may require additional staffing. In the event the City determines in its sole discretion that Concessionaire is not adequately staffing the Concession Stands, it may notify Concessionaire of that fact and Concessionaire shall endeavor to immediately increase its staffing to meet the City's recommendation.

Concessionaire understands that the services authorized under this Agreement may involve concessionaire's personnel having unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults as those terms are defined in RCW 43.43.830. Concessionaire warrants and certifies that none of its personnel who will or may be given such access shall have:

- a. Been convicted of any offense against children or other persons, as defined in RCW 43.43.830; or
- b. Been convicted of any crimes related to financial exploitation, where the victim was a vulnerable adult, as defined in RCW 43.43.830; or
- c. Been adjudicated in any civil action to have committed child abuse, as defined in RCW 43.43.830, or
- d. Had a disciplinary board final decision rendered against them or has been convicted of criminal charges associated with a disciplinary board final decision, as defined in RCW 43.43.830.

Concessionaire shall be responsible for obtaining any necessary background checks of personnel or volunteers in accordance with applicable provisions of state law, including but not limited to those persons with unsupervised access to children or vulnerable persons (RCW 43.43.830 et seq.)

1.5 Hours and Areas of Operation. The Concession Stands shall remain open during the hours of operation set forth in Exhibit "B", unless the City notifies the Concessionaire of other hours of operation, and such hours of operation shall be posted in a conspicuous place on the Concession Stands.

Concessionaire shall operate only at the locations identified herein, and shall not sell, advertise, display or promote their products beyond these areas.

1.6 Pricing. All pricing of any food, beverage or other product as set forth in Exhibit "C" attached hereto and incorporated by this reference, must be competitive and must be approved in writing by the City. Concessionaire may not change any pricing without the City's prior written consent, which consent may not be unreasonably withheld. Concessionaire

shall display a price list of goods sold in full view of the public at all times during the operation.

1.7 Products. All food, beverage or other products offered for sale by Concessionaire to the public shall be approved in writing by the City prior to distribution or sale of any such products. Concessionaire shall comply with any reasonable requests made by the City to either add or eliminate certain types of food, beverage or other products. Concessionaire shall comply with the City's existing, exclusive soft drink agreement. Concessionaire shall be contractually obligated to sell exclusive product during all hours of operation.

Concessionaire shall not sell any items in glass containers, nor shall Concessionaire sell, display or distribute tobacco products or alcoholic beverages of any kind. Concessionaire shall not sell, advertise, or distribute any non-food items.

2. Concession Equipment,

2.1 Delivery. The City agrees to allow Concessionaire the use of existing concession equipment, as set forth in Exhibit "D," located in each concession location. Concessionaire shall be responsible for the maintenance, repair and/or replacement of the Concession Equipment at Concessionaire's sole cost and expense. Concessionaire shall comply with all applicable regulations regarding the inspection and maintenance of the commercial hood vents and suppression systems, and all required inspections and cleanings shall be at Concessionaire's sole cost and expense.

2.2 Alterations. Concessionaire shall not make any alterations, additions or improvements to the Concession Stands or to the Concession Equipment without the City's prior ~~written~~ consent. In the event the City consents to the making of any alterations, additions or improvements to the Concession Stands and/or Concession Equipment, the same shall be made at Concessionaire's sole cost and expense, and in the event such alterations, additions or improvements are made to a structure, building or other improvement attached to the real property, the same will become a part of the real property and be surrendered to the City upon the termination of this Agreement. The City has no obligation to alter, remodel, improve, repair, decorate or paint the Concession Stands.

2.3 Removal of Equipment. In the event the City notifies Concessionaire that it desires the removal of any concession equipment installed by and belonging to Concessionaire, at any time, Concessionaire shall, at its sole cost and expense, remove such concession equipment and repair any damage to the real property caused by such removal within thirty (30) days.

2.4 Maintenance. Concessionaire shall, at its sole cost and expense, maintain the Concession Stands and Concession Equipment and the surrounding real property in good condition and repair, including, but not limited to, maintaining the Concession Stands

and the area within a 100' radius from the Concession Stands, in a neat, clean and sanitary condition and removing all garbage, trash or other debris on a regular basis pursuant to the City's instructions. Concessionaire shall provide for the regular janitorial cleaning of the Concession Stands. Concessionaire shall not use any of the trash receptacles or containers located in the City parks for the disposal of its trash, garbage and/or debris. Upon expiration and/or termination of this Agreement, Concessionaire shall cause the grease traps to be emptied and cleaned at Concessionaire's sole cost and expense.

Upon termination and/or expiration of this Agreement, Concessionaire shall leave the Concession Stands and Concession Equipment in the same or better condition as existed on the date of commencement of this Agreement.

2.5 Damage to Concession Stands. If the Concession Stands or any part thereof is damaged by any cause other than the sole negligence of the City, its employees or agents, Concessionaire shall, at its sole cost and expense, restore the Concession Stands to a condition equivalent to or better than its condition immediately prior to such damage.

2.6 City Reimbursement. In the event Concessionaire fails to remove the Concession Equipment pursuant to paragraph 2.3, maintain the Concession Stands or Equipment pursuant to paragraph 2.4, or repair the Concession Stands pursuant to paragraph 2.5, the City may, but in no event is the City obligated to, remove the Concession Equipment or perform the maintenance or repair and the Concessionaire shall, upon demand, immediately pay the City the costs and expenses of such removal, maintenance or repair. In the event Concessionaire fails to comply with the terms of this paragraph, the City may confiscate the Concession Equipment or any part thereof and sell the same, the proceeds of which sale will be credited against any costs or expenses incurred by the City. The sale of the Concession Equipment shall not constitute an election of remedies by the City but will be in addition to any remedies available to the City at law, in equity, by statute or under this Agreement.

2.7 Utilities, Taxes and Expenses. Concessionaire shall pay all costs and expenses associated with the operation of the Concession Stands other than utility expenses for water and power, which will be paid by the City. Concessionaire shall pay directly, before delinquency, any and all taxes levied or assessed upon its leasehold improvements, equipment, furniture, fixtures and personal property located on the City's property.

3. Terms.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than November 1, 2019, ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Concessionaire.

4. Termination.

Prior to the expiration of the Term, the City may terminate this Agreement immediately, with or without cause and with a thirty (30) day notice.

5. Compensation.

5.1 Total Compensation. The Concessionaire agrees to pay the City an amount equal to 15% of the Concessionaire's gross monthly revenue plus the applicable Leasehold Excise Tax referenced in section 5.6, excluding state sales tax ("Percentage Payment").

The term "Gross Monthly Revenue" shall mean the total amount charged by Concessionaire, its employees, agents, or licensees, for all goods and merchandise sold or services performed, whether for cash or other consideration or on credit, and regardless of collections, including but not limited to orders taken at the Concession Stands but filled elsewhere and orders taken elsewhere but filled at the Concession Stands.

5.2 Payment Due Date. Concessionaire shall deliver the Percentage Payment to the City on or before the 10th day of each month for Gross Monthly Revenue received during the preceding month ("Due Date").

5.3 Access to Records. Concessionaire shall provide a written statement to the City on the Due Date showing the total Gross Monthly Revenue for the preceding month ("Statement"). Concessionaire will provide the City or the City's agents or representative's reasonable access to the books and records of Concessionaire for the purposes of auditing and inspecting the same to verify the Statement. The records shall include documents from which the original transaction entry was made, including sales slips, cash register tapes, and/or purchase invoices. Concessionaire hereby authorizes the Tax Division of the State of Washington to release to the City, a statement of receipts from sales and services made at this concession as filed during the period of this contract.

5.4 Cash Register. All sales, other than sales from vending machines, shall be recorded by a cash register, which display to the customer the amount of the sale and automatically issue receipts certifying the transaction amount. The cash register shall be equipped with devices which lock in sales totals, transaction records, produce duplicate audit tape, contain counters which cannot be reset and which record the transaction numbers and sales details on such tape. Any errors shall be noted by Concessionaire on the audit tape with an explanation. Cash register readings shall be recorded by Concessionaire at the beginning and the end of each business day.

5.5 Late Fee. Concessionaire acknowledges that late payment to the City of the Percentage Payment will cause the City to incur costs not contemplated by this Agreement, the exact amount of which will be difficult to ascertain. Accordingly, if the Percentage Payment is not received by the City on the Due Date, Concessionaire agrees to pay a late fee equal to Twenty-Five and No/100 Dollars (\$25.00) per day.

5.6 Concessionaire Responsible for Taxes. The Concessionaire shall be solely responsible for the payment and reporting of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement; including, but not limited to, sales tax and Leasehold Excise Tax, currently at a rate of 12.84 % of the percentage paid to the City.

6. Compliance with Laws.

Concessionaire shall comply with and perform the Services in accordance with all applicable Federal, State, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or including but not limited to the following:

- (i) Federal, State and local health, safety and licensing laws relating to the sale of concession goods; and
- (ii) City code provisions requiring any person or entity doing business in the City to obtain a business license.
- (iii) Concessionaire shall hold a valid permit from the Adams County Health District if food and/or beverages requiring such a permit are to be sold.
- (iv) Concessionaire shall display the official Adams County Health District permit in full view of the public at all times during the operation.

7. Warranty.

The Concessionaire warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Othello by obtaining a City of Othello Business License.

8. Independent Contractor/Conflict of Interest.

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 as due. Industrial or any other insurance, which 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 or will 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.

9. Indemnification.

*Request for Proposals for Parks Concession Services
City of Othello
Dated: March 13, 2019*

9.1 Contractor Indemnification. The Concessionaire agrees to indemnify, defend, and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the Concessionaire, its partners, shareholders, agents, employees, or by the Concessionaire's breach of this Agreement. Concessionaire waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. 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.

9.2 City Indemnification. The City agrees to indemnify defend, and hold the Concessionaire, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

9.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

10. Equal Opportunity Employer.

In all Concessionaire's activities, including the performance of the Services and all hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Concessionaire or by Concessionaire's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment,. 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 49.60RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 21973 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.

11. Confidentiality.

All information regarding the City obtained by Concessionaire in performance of this Agreement shall be considered confidential. Breach of confidentiality by Concessionaire will be grounds for immediate termination.

12. Insurance.

The Concessionaire agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating, which is satisfactory to the City:

12.1 Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

12.2 Commercial general liability insurance with combined single limits of liability not less than \$1,000,000 and a \$2,000,000 aggregate. For bodily injury, including personal injury or death, products liability and property damage.

12.3 Automobile liability insurance with combined single limits of liability not less than \$1,000,000. For bodily injury, including personal injury or death and property damage.

The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverage, and all policies shall be in excess of, and noncontributory with, any insurance maintained by the City. Concessionaire shall provide certificates of insurance, concurrent with the execution of this Agreement, evidencing such coverage on an occurrence (and not claims made) basis, and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement except after thirty (30) days prior written notice to the City. Concessionaire's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

13. Non-Exclusive Right. This Agreement does not grant Concessionaire an exclusive right to distribute its products. The City reserves the right to grant to other persons or entities any of the rights contained herein or otherwise.

14. Signs. Concessionaire shall be limited to placing a sign on the Concession Stands only. Concessionaire shall not place any sign, notice or advertising matter in or about the City's real property, without the City's prior consent, which consent may be withheld for any reason. If required by city code, Concessionaire shall obtain all necessary permits in connection with any such signs.

15. General Provisions.

15.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

15.2 Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

15.3 Full force and Effect. Any provision of this Agreement, which is declared invalid or illegal shall in no way, affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

15.4 Neither the Concessionaire nor the City shall have the right to transfer, sublease, or in whole or in part, any or all of its obligation and rights hereunder without the prior written consent of the other Party.

15.5 Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

15.6 Applicable Law/Construction/Venue. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in Adams County. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in Adams County. In any litigation to enforce any term of this Agreement, the prevailing party shall be entitled to recover their reasonable attorney fees and costs

15.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

15.8 Authority. Each individual executing this Agreement on behalf of the City and concessionaire represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Concessionaire or the City.

15.9 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage repaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

15.10 Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

15.11 Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Concessionaire's performance of this Agreement.

15.12 Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

15.13 Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

15.14 Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

DATED the day and year set forth above.

[CONTRACTOR]

By: _____
[NAME, TITLE]

By: _____
[NAME, TITLE]

(Contractor) On this ____ day of _____, _____, before me personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed the same as his/her own free and voluntary act and deed, for the purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

Notary Public in and for the State of Washington, residing

Request for Proposals for Parks Concession Services
City of Othello
Dated: March 13, 2019

_____. My commission expires _____.

CITY OF OTHELLO

By: _____
Shawn Logan, Mayor

(CITY) On this ____ day of _____, _____, before me personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he/she signed the same as his/her own free and voluntary act and deed, for the purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

Notary Public in and for the State of Washington, residing
_____. My commission expires _____.

Exhibit A

In support of Agreement for City Park Concession Services

City of Othello

Concessionaire: [CONTRACTOR]

Locations: Lions Park Athletic Complex, 815 E Pine St

Othello Community Pool, 1135 E Pine St

Services to be Provided

Food and beverage services including but not limited to:

Pepsi branded non-alcoholic beverages, waters, etc.

Assorted hot and cold food items

Exhibit B

Hours and Areas of Operation

ConcessionSite:

Othello Community Pool

Location:

1135 East Pine Street Othello, WA 99344

Dates of Operation: June – September, 2019

Schedule:

(approximately)

Monday: 12:00 PM to 7:00 PM
(Pool rental, as requested: 8:00 PM to 10:00 PM)

Tuesday: 12:300 PM to 7:00 PM
(Pool rental, as requested: 8:00 PM to 10:00 PM)

Wednesday: 12:00 PM to 9:30 PM
(Pool rental, as requested: 8:00 PM to 10:00 PM)

Thursday: 12:00 PM to 7:00 PM
(Pool rental, as requested: 8:00 PM to 10:00 PM)

Friday: 12:00 PM to 7:00 PM
(Pool rental, as requested: 8:00 PM to 10:00 PM)

Saturday: 12:00 PM to 7:00 PM
(Pool rental, as requested: 10:00 AM to 12:00 PM,
7:30 PM to 9:30 PM)

Sunday: 12:00 PM to 7:00 PM
(Pool rental, as requested: 10:00 AM to 12:00 PM,
7:30 PM to 9:30 PM)

In addition, concessionaire agrees to provide services for the duration of Mid-Valley Swim League home meets, hosted by the Othello Barracudas swim team. Below is an estimate of swim meet dates and times, based upon 2019 scheduling. A 2019 Mid-Valley Swim League schedule will be provided upon availability.

June-July: One meet per week (Tuesday or Thursday)
5:30 PM to 10:00 PM

Concession Site: Lions Park Athletic Complex

Location: 815 East Pine Street Othello, WA 99344

Schedule: Dates of Operation: April – June, 2019 (approximately)

Monday: 5:00 PM to 9:00 PM (approx.)
Tuesday: 5:00 PM to 9:00 PM (approx.)
Wednesday: 5:00 PM to 9:00 PM (approx.)
Thursday: 5:00 PM to 9:00 PM (approx.)
Friday: 5:00 PM to 9:00 PM (approx.)
Saturday: As requested (tournament play)
Sunday: As requested (tournament play)

Exhibit D

In support of Agreement for City Park Concession Services

Concession Equipment Inventory

Concession Site: Othello Community Pool

Location: 1135 East Pine Street Othello, WA 99344

Existing Equipment:

Item:	Count:
Pepsi (bottle) refrigerator	1
Freezer	1
Sno-cone machine	1
Gehl's nacho cheese/chili dispenser	1
Microwave	3
Hot dog and bun warmer	1
Hot water kettle	1
Crock pot	1

Concession Site: Lions Park Athletic Complex

Location: 815 East Pine Street Othello, WA 99344

Existing Equipment:

Item:	Count:
(bottle) refrigerator	1
Freezer/Refrigerator	1
Chest Freezer	1
Crock Pot	1
Microwave	1
Hot Dog Roller Grill	1