

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/9/2014

AGENDA ITEM: Independent Contractor /Concessionaire Agreement with ICE CREAM MOM	
PREPARED BY: Jim Ballew DEPARTMENT: Parks and Recreation	DIRECTOR APPROVAL:
ATTACHMENTS: Independent Contractor Agreement	
BUDGET CODE:	AMOUNT: 400.00

SUMMARY:

The City of Marysville advertised for interested concessionaires to provide food and beverages at Jennings Memorial Park on weekends and for the Sounds of Summer Concert Series and Outdoor Movie Series. The Department received a response from Rhonda Moen DBA, ICE CREAM MOM a sole proprietor. ICE CREAM MOM will support the Sound of Summer Concert Series and Outdoor Movies Series

The attached Independent Contractor Agreement requires the Concessionaire provide service during each concert and outdoor film event scheduled. The Contractor is also required to provide service(s) in Jennings Park on a mutual schedule from July 10, 2014 through August 31, 2014.

At the conclusion of the season the Contractor will provide \$400.00 in payment to the city.

<p>RECOMMENDED ACTION: Staff recommends that Council Authorize the Mayor to sign the Independent Contractor Agreement with Rhonda Moen DBA ICE CREAM MOM for ice cream vending services effective July 10, 2014 through August 31, 2014</p>
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**CITY OF MARYSVILLE
INDEPENDENT CONTRACTOR/CONCESSIONAIRE AGREEMENT**

This agreement, made and entered into this _____ day of _____, 2014 by and between the City of Marysville, State of Washington, a municipal corporation, hereinafter called the “City” and Rhonda Moen, DBA Ice Cream Mom, a sole proprietor and hereinafter called “Contractor/ Concessionaire”.

WITNESETH:

WHEREAS, the City of Marysville desires to provide food and beverages to the patrons attending Jennings Memorial Park and the Sounds of Summer Concert Series and Popcorn in the Park Movie series on facilities owned and operated by the City of Marysville.

WHEREAS, the City desires to enter into a contract with Ice Cream Mom as the provider or portable ice cream novelties sales and services for the City of Marysville with the status of “Independent Contractor”; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. DUTIES:

The City of Marysville hereby contracts with the Contractor to perform all functions and duties of exclusive Ice Cream Concessionaire in Jennings Memorial Park and during the Sounds of Summer Concert and Popcorn in the Park Movie Series and to perform the additional functions and duties:

- a. To operate, manage and maintain a quality portable food and beverage service for the general public during agreed upon operating days and hours not to be less than 2 hours per day or event date(s) from times of 6:00 p.m. to 9:00 pm., during the following dates July 10, 2014 through August 31, 2014 unless inclement weather forces closure or cancellation of the events or activity.
- b. Provide a full range of ice cream novelty items for resale at reasonable prices.
- c. Contractor agrees to provide and maintain all equipment. Improvements and/or additional service connections are the responsibility of the Contractor and shall be done as per city and or State of Washington code(s).
- d. Contractor agrees that the premises will be used as a site to operate concession services for patrons and not as a commissary facility. Contractor agrees not to let or sublet the whole or any part of the

contracted space allocated for ice cream concession services or assign this agreement, or any interest within the property described.

- e. Contractor agrees to pay and provide all governmental licenses, fees and or permits for the operation of described services within this agreement.
- f. Contractor shall pay all taxes wages and other costs associated with the operation of Concessionaire services.
- g. Contractor agrees that all personal property kept at the agreement site shall be at the risk of the Contractor. Contractor further agrees not to hold City liable in any manner or account of any loss or damage sustained by action of fire, water, elements, theft or any third party. All equipment and machinery associated with food sales and production shall be owned exclusively by the Contractor.
- h. Concessionaire agrees to comply with applicable federal, state and City legislation, rules and /or regulations including but not limited to Federal, state and local health, safety and licensing laws and / regulations related to preparation and sale of concession foods and goods, Marysville Municipal Code and Marysville Parks Department Policies.
- i. Concessionaire shall have a valid Marysville business license.

2. TERM

The term of this Contract shall be effective through August 31, 2014.

Upon expiration of the term the City may extend the Agreement for an additional term or seasonal basis. Either Party may terminate this Agreement prior to the end of the agreed term with thirty days written notice. This Agreement shall automatically terminate in the event the Contractor ceases to provide services for any unauthorized reason for a period of ten (10) or more consecutive days of the program or event contracted for. Upon the expiration or early termination of this agreement, the Contractor will surrender the location in good condition as they were at the commencement of the agreement term.

3. PAYMENT

The Contractor agrees to pay the City of Marysville a total of Four Hundred Dollars and no cents (\$400.00) for payment to operate concessions for the aforementioned event(s) and schedule. Payment will be made on the final date of the season or event, or no later than September 5, 2014 payable to the City of Marysville Parks and Recreation Department.

4. INDEPENDENT CONTRACTOR

This Agreement is not intended in any fashion to create the relationship of employer-employee with respect to the City and Contractor. Neither the Contractor nor any person employed by the Contractor is to be considered at any time an employee of the City of Marysville. Neither party to this service agreement is the agent of the other and neither

party shall have the right to bind the other by contract or otherwise, except as herein specifically provided.

5. EMPLOYEE BENEFITS / WITHHOLDING

Contractor agrees to pay any and all withholding taxes, employment security taxes, social security or FICA taxes, Labor and Industry premiums or fees, and otherwise shall pay all other government imposed fees or charges with respect to the business of Contractor if applicable. Contractor shall be solely responsible for all of his own benefits including but not limited to vacation, sick leave, pension, life insurance, medical insurance, paid leave, and such other benefits as he may wish to acquire.

6. INSURANCE

- a. Independent Contractor shall procure and maintain Insurance for the duration of the Agreement. Insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives or employees.
- b. Contractor shall maintain Automobile Liability Insurance with a minimum level of \$ 1,000,000 combined single limit per accident for bodily injury and property damage; and shall cover all owned, non-owned, hired and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- c. Contractor shall maintain Casualty and General Liability for both personal property and individual liability at the following minimum levels:
 - \$1,000,000.00 Each Accident
 - \$1,000,000.00 Each Occurrence
 - \$2,000,000.00 Aggregate
- d. Contractor shall name the City of Marysville as additionally insured on an Endorsement of Insurance and provide the City with said Endorsement before the first event.

7. INDEMNIFICATION / HOLD HARMLESS

CONCESSIONAIRE shall defend, indemnify and hold the City, its officers, officials and employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorneys fees arising of or in connection with the performance of this Agreement, or the Concessionaire's activities, except for injuries and damages caused by the sole negligence of the City.

The City's obligation to hold harmless, indemnify and defend Concessionaire's agents and employees resulting from the concurrent negligence of Concessionaire's and the City or their officers, agents and employees, shall apply only to the extent of the negligence of the City.

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

8. LEGAL RELATIONS/DISPUTES/ATTORNEYS FEES.

- a. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this contract may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.
- b. In the event of any litigation involving the rights or obligation of the City or Contractor hereunder, the prevailing party in such litigation shall be entitled to receive from the other such reasonable attorney's fees and all costs as the court may award.
- c. CONCESSIONAIRE shall comply with all federal, state and local laws and ordinances applicable to work to be done under this agreement. This contract shall be interpreted and construed in accordance with the laws of Washington. Venue for any action commenced relating to the interpretation, breach or enforcement of this agreement shall be in Snohomish County Superior Court.

9. NOTICE

Notices to the City shall be sent to the following address:

CITY OF MARYSVILLE
Jim Ballew, Director
PARKS AND RECREATION DEPARTMENT
6915 Armar Road
Marysville WA 98270

Notices to Contractor shall be sent to the following address

Rhonda Moen
10520 90th Street NE
Lake Stevens WA 98258

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address

10. NONWAIVER.

Waiver by the parties of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

11. ENTIRE AGREEMENT

This Agreement represents the entire integrated Agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral.

12. MODIFICATION

No provision of this Agreement may be amended or modified except by written agreement signed by the parties.

13. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein above first written.

By _____
Rhonda Moen- Contractor

Dated

CITY OF MARYSVILLE

By _____
Jon Nehring - Mayor

Approved as to Form:

Grant K. Weed, City Attorney