

LICENSE OF OCCUPATION
HOT OR NOT VENDING
238 Leon Avenue Concession License
(2016 - 2018)

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

(the "City")

OF THE FIRST PART

AND:

HOT OR NOT VENDING
640 Cawston Avenue
Kelowna, British Columbia V1Y 6Z4

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Mobile Concession services (the "Services") at 238 Leon Avenue, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services for the Works on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Exclusive Supplier Agreement
- Appendix E - Premise
- Appendix F - Fire Dept. Requirements
- Appendix G - 238 Leon Avenue Mobile Food Vending Concession Bid

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

“Agreement” means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“Agreement Administrator” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“G.S.T.” means any Goods & Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this agreement;

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;
- (b) “Determination” shall mean the written documentation of a decision of the City’s Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word “including”, when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with

respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;

- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of Contractor, to the City in connection with this Agreement is materially correct and accurate;
- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;

- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Mobile Concession services, as set out in the Scope of Services attached as Appendix “B”;
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Mobile Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Mobile Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City’s Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Mobile Food Vending Concession Bid Package submitted by Hot or Not Vending dated March 18, 2016, and attached as Appendix G and cooperate fully with the various departments and act in good faith towards the City;
- (f) comply with the terms of Fire Department requirements as set out in Appendix F;
- (g) maintain clear communication lines with staff in order to offer the best customer service;
- (h) comply with all laws; and
- (i) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the “Term”.

5.2 Initial Term

The term of the “Agreement” shall be for three (3) years commencing June 1st, 2016 and will expire no later than May 31st, 2019, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of two (2), one (1)-year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (**May 15th, 2019**), the City may exercise an option to renew for an additional season in 2020, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues unremedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.
- (c) For the purposes hereof, "Event of Default" shall mean any one or more of the following:
 - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;

- (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Mobile Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor's performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement ("Dispute") using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

- 8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. **The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.**

9.0 Independent Contractor

- 9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the

obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

- 9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

- 10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor's Representative; and
- The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative.

- 10.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be

deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

- 14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.
- 14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

- 22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.
- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all

assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.

- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will

not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.

- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

- 29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

31.0 Service of Notices

- 31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted

by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Mike Olson
Manager, Property Management
City of Kelowna
1435 Water Street, Kelowna, British Columbia V1Y 1J4
Telephone: 250-469-8740 Fax No.: 250-862-3349
E-mail: molson@kelowna.ca

(Contractor Representative)

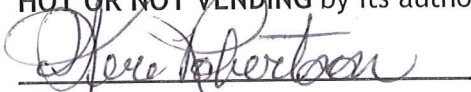
Keri Robertson
Hot or Not Vending
640 Cawson Avenue, Kelowna, British Columbia V1Y 6Z4
Telephone: 250-864-5536
E-mail: dmarsden@live.com (Dean Marsden ph: 778-484-2906)

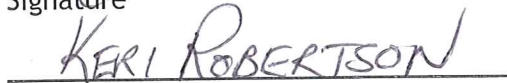
- 31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted on behalf of:

HOT OR NOT VENDING by its authorized signatory:


Signature


Print Name

CITY OF KELOWNA by its authorized signatories:

Date Executed: _____

Appendix A - Insurance Requirements

1.1 Insurance Requirements

1. Contractor to Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with this lease agreement, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of this lease agreement until the date of termination of the lease agreement or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

2.1 Comprehensive General Liability Insurance

- (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
- (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this lease agreement;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
- (iv) Including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.

3. The City Named as Additional Insured

The policies required by section 2.1 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. Certificates of Insurance

The Contractor agrees to submit a Certificate of Insurance, in the form of Schedule B-1, attached hereto and made a part hereof, to the Risk Management Department of the City prior to the commencement date of this lease agreement. Such a Certificate shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellation of any such policy or policies.

5. Additional Insurance

The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

6. Insurance Companies

All insurance, which the Contractor is required to obtain with respect to this lease agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

7. Failure to Provide

If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

8. Nonpayment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor shall not be held to waive or release the Contractor from any of the provisions of the Insurance Requirements or this lease agreement, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 7.

9. Hold Harmless and Indemnification

The Contractor shall be responsible for all loss, costs, damages, and expenses whatsoever incurred or suffered by the city, its elected officials, officers, employees and agents (the indemnities) including but not limited to or loss of property and loss of use thereof, and injury to, or death of a person or persons resulting from or in conjunction with the performance, purported performance, or non-performance of this contract, excepting only where such loss, cost, damages and expenses are as a result of the sole negligence of the indemnities.

The Contractor shall defend, indemnify and hold harmless the indemnities from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this contract, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the indemnities.

APPENDIX A-1

City staff to complete prior to circulation

City Dept.: _____

Dept. Contact: _____

Project/Contract/Event: _____

This Certificate is issued to:

CERTIFICATE OF INSURANCE

The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

Insured

Name: _____

Address: _____

Broker

Name: _____

Address: _____

Location and nature of operation or contract to which this Certificate applies:

--

• <i>Type of Insurance</i>	Company & Policy Number	Policy Dates		• Limits of Liability/Amounts
		• <i>Effective</i>	• <i>Expiry</i>	
Section 1 Comprehensive General Liability including: • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause.				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name

Title

Company (Insurer or Broker)

Signature of Authorized Signatory

Date

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a mobile food concession within the designated area of the Premises during the period June 1st to May 31st of each contract year, from 9:00pm to 2:00am, Wednesday to Saturday, weather permitting.

The Contractor is to supply this service for a three (3) year period with the option of extending for two additional (2) one (1) year terms at the sole discretion of the City.

1. The vehicle(s) must be fully self-contained.
2. There is no access to water or power at these locations.
3. The Contractor will pay all permits, taxes and licenses
4. The Contractor will pay utility charges, if any.
5. The Contractor will provide a menu of items that will be offered for sale at their concession. The Contractor must supply healthy food choices as outlined in Appendix B-1.
6. The Contractor will clean and maintain the area surrounding the mobile unit to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the mobile concession unit.) All paper products used shall be clearly identifiable with the contractor's operation. The Contractor is responsible for the removal of all garbage associated with the concession.
7. The Contractor shall comply with all regulations regarding fire, traffic, safety and sanitation and shall acquire all necessary permits.
8. The Contractor will remove the vehicle from the site each day.
9. The Contractor shall move the vehicle when requested by City staff.
10. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
11. No outside advertising will be permitted without the consent of the City.
12. The use of individual packaged condiments is prohibited.
13. The Contractor will have the exclusive right to operate a food concession within the designated sites, subject only to the City maintaining the right to lease or otherwise permit operation of "other concessions" within the individual sites for a maximum of five (5) days each season in conjunction with special events.
14. The Contractor must seek to minimize any conflict with adjacent property owners.
15. The Contractor may not sublet, nor assign the contract without the written consent of the City which shall be at the City's sole discretion. The minimum amount for such assignment shall be \$500.00 payable from the Contractor to the City.
16. The Contractor is required to supply a bid deposit in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of

the successful Contractor will be retained as a “performance deposit” and the City will place it into an interest bearing account with the interest accruing to the depositor.

17. The Contractor must sign the License of Occupation Agreement.
18. Rent shall be received in monthly instalments due and payable in advance of the 15th day of each month of the said season.
19. The Contractor shall provide complete annual financial reports to the City, within 45 days of the end of the season and no later than December 1st of each contract year. The statements will reflect the entire operating season, and a payment in the amount of 5% of the gross profits of the concession will accompany the statements by December 1st of each contract year.
20. The Contractor will be responsible to communicate with the City of Kelowna outdoor Events Committee and review the Outdoor Events Calendar to determine the dates the park will be closed for special events, and as a result will also be closed for the concession operation, unless agreement can be reached with the event organizer.
21. In the event that the City of Kelowna enters into an Exclusive Supplier Agreement with a third party for the provision of “Cold Beverage Products”, as described in Appendix D, in the City of Kelowna, the Contractor must, following a minimum of 60 day’s notice from the City of Kelowna, ensure compliance with the conditions of said agreement. In the event that the contractor is unable to comply with the conditions of the Exclusive Supplier Agreement, the contractor may choose to cancel this agreement without penalty.
22. All electrical equipment utilized in the Province of British Columbia must bear a recognized electrical certification prior to use. Application for approval may be made to the BC Safety Authority. All mobile food vendors must conform to the requirements of the Kelowna Fire Dept. Mobile Food Vending Requirements as set out in Appendix F.
23. Sale of alcoholic beverages is strictly prohibited.

Appendix B-1

Healthy Food Choices - Check mark system

Choose Most ✓✓	Choose Sometimes ✓	Choose Least	Not Recommended
Beverages 50% Foods 70% ¹		Beverages 50% Foods 30% ²	
These items, including whole grain breads and fresh vegetables, tend to be the highest in nutrients, the lowest in unhealthy components, and the least processed.	These items include such things as fruit canned in light syrup, represent choices that are moderately salted, sweetened or processed.	These items including such things as fries tend to be low in key nutrients such as iron and calcium and highly salted, sweetened or processed.	These items, including candies and drinks where sugar is the first ingredient, or the second ingredient after water, tend to be highly processed, or have very high amounts of sweeteners, salt, fat, trans fat or calories relative to their nutritional value.

City of Kelowna staff will work closely with current concessionaires to achieve the above product proportions for packaged products as minimum standards. Percentages are based on BC School Guidelines for Healthy Food and Beverages and the Vancouver Coastal Health Policy.

¹ 70% of product choices from these categories with no more than 35% from the Choose Sometimes category

² 30% of products choices from these categories with no more than 15% from the Not Recommended category

APPENDIX C - FEE SCHEDULE

Initial Term

June 1st 2016 to May 31st 2018

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$2,400.00 plus GST per annum. Payment will be monthly on or before as follows:

June 1, 2016 to May 31, 2018	\$200.00 GST	Total Instalment
December 1, 2016, 2017 & 2018	5% of Gross Profits + GST	= \$210.00

APPENDIX D

Exclusive Supplier Agreement - Cold Beverage Products

For the purpose of this package, “Cold Beverage Products” means all carbonated and non-carbonated, natural or artificially-flavoured, non-alcoholic beverages, whether meant to be served at room temperature or colder, consumed independently or used as a mixer, including but not limited to: non-alcoholic beverages with nutritive or non-nutritive sweeteners; flavoured and / or sweetened water, naturally or artificially flavoured fruit juices; fruit juice-containing drinks, fruit-flavoured drinks (sweetened or unsweetened); fruit punches and aides; hypertonic, hypotonic and isotonic energy fluid replacement drinks (sometimes referred to as “sports drinks”), frozen carbonated beverages; bottled / canned carbonated and non-carbonated waters, and packaged cold teas and coffees; and all drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which drinks and beverages are prepared:

BUT DOES NOT INCLUDE:

Dairy and dairy-like beverages including, without limitation, milk, milkshakes, flavoured milk, hot chocolate and cocoa and coffee beverages which are primarily (that is, more than 50% by volume) dairy based;
Cold brewed unpackaged coffee or tea, hot coffee, hot tea, tea bags, loose tea, loose coffee grains, or beans, water packaged in bulk or water drawn from public water supply;

APPENDIX E - PREMISE



APPENDIX F - Kelowna Fire Department Requirements

The following is a list of local requirements for all mobile food vendors who wish to operate in the City of Kelowna. Vendors who are non-compliant with the following requirements will not be permitted to continue operation and are subject to the requirements of the Fire and Life Safety Bylaw, 10760. Vendors are subject to an annual inspection from the Kelowna Fire Department. Upon completion of the annual inspection, an inspection decal will be provided.

All vendors are subject to routine inspections from the Kelowna Fire Department.

1. The mobile vendor must have a valid City of Kelowna Business License or be approved by the inter community mobile license program or be a vendor at an event approved by the City of Kelowna Outdoor Events Committee.
2. The mobile vendor must be approved by the BC Safety Authority and ensure that all decals are visible.
3. All tents being in conjunction with the mobile vending must conform to NFPA 705 requirements. The tent must have a visible tag stating that it complies with this requirement.
4. Cooking and/or grilling shall not be conducted under tents. All cooking appliances must be at least 1 meter away from tent. Cooking is not permitted under tents.
5. Cooking appliances must be a minimum of 3 meters from any building.
6. A guard/barrier, not less than 1 meter high, must be provided to act as a barrier between the public and cooking appliances. This would not apply if the cooking appliances are located within an enclosed trailer.
7. All deep fryers must be approved commercial appliances. Residential grade deep fryers will not be accepted.
8. Minimum of one 2A10BC rated extinguisher shall be provided and shall be mounted in an acceptable location.
9. A type K fire extinguisher must be provided for all deep frying and/or hot oil cooking.
10. Fire extinguishers must be up to date. The extinguishers are required to be inspected annually by an approved agency. The cylinder must be pressurized and the safety pin must be in secured in place.
11. Enclosed cooking units, creating grease laden vapors, require a kitchen canopy and suppression system conforming to NFPA 96.
12. Enclosed cooking units with a kitchen canopy require a fixed suppression system to be installed within the unit. The fixed suppression system shall be serviced bi-annually by an approved technician.
13. Kitchen canopy has been cleaned from filter to fan in conformance with NFPA 96 requirements.
14. All spare propane bottles must be secured 3 meters from any cooking appliances or open flame.
15. All propane connections must be soap tested to ensure there are no leaks in conformance with BC Gas Code requirements.
16. Wood burning appliances are prohibited within the City of Kelowna.
17. All mobile vendors with trailers must provide wheel chocks to prevent trailer movement.

18. A current inspection decal from the Kelowna Fire Department must be displayed in a visible location.

If you have any questions pertaining to the Fire Department requirements, please contact the City of Kelowna Fire Prevention Officer at 250-469-8801.

KELOWNA FIRE DEPARTMENT STATION 1, 2255 Enterprise Way, Kelowna BC V1Y 8B

APPENDIX G - HOT OR NOT VENDING (238 LEON AVENUE)

Hot or Not Vending

Keri Robertson

250.864.5596

City of Kelowna

275 Leon Avenue Proposal

(2016 - 2018)

1.0 Overview

2.0 Objective

3.0 Personal Profile

4.0 Company History

5.0 Equipment

6.0 Menu

Supporting Documents:

Appendix B: Cart Photos

1.0 Overview

I have been born and raised in Kelowna . I've owned and operated Hot or Not Vending for the past 5years have built a solid reputation with Kelowna's Community

I have three completely self contained mobile vending carts that run on propane and batteries that will have a variety of healthy Hot or Not food choices.

I am prepared to accept all the terms and conditions outlined in the City of Kelowna Mobie Food Vendor or Concession Bid Package. I have already paid \$1000 certified cheque damage deposit for each spot x3.

I have paid the licenses, permits and taxes up to date and are good for the year as well I have included the menu items at the end of this proposal.

2.0 Objective

I would like to obtain the three evening spots in Kelowna. Please accept this proposal for the two locations on Leon and one on Lawrence Avenue.

I am willing to pay \$275 for spot A liquid zoo and \$200 for spot B Sapphire. Spot C \$200 Level.

3.0 Personal Profile

I am part of the CF Foundation as a Volunteer; I have participated in many community events such as The Fat Cat Festival, Mardi Gras, Canada Day, Boyd's Auto Body Charity Events, Father's Day Car Show and more.

Volunteered as an Ambassador for Kelowna.

I have had three successful spots downtown Kelowna for the last 8 years which have allowed me to expand my business. I am a Kelowna home owner I live only a couple short blocks away from each location at 640 Cawston Ave.

Hot or not Vending Employs locally and offers local products

I will be donating \$700 and challenging others to match or beat me to find a cure for Cystic Fibrosis.

I am also working with Designated Dads which is an organization that helps prevent people from driving while under the influence.

Working with the John Howard Society and the local homeless people giving out food and swimming passes for helping to keep the streets clean around the carts.

We have completed a Work BC program for employment opportunities

Prior to running hot or not vending I have worked for the Ok Coral for two and a half years

4.0 Company History

I have been in business in Kelowna for over eight years and have built a solid reputation with Kelowna's business community. I also have made many new friends along the way and gained a lot of experience and knowledge in order to be able to succeed.

Prior to running Hot or Not vending, I have worked for the Ok Coral for two and a half years, Cheetahs for six months, the Superstore for four years as their hotdog vender (Hot or Not vending). As well as four years at Roses pub

Working these locations has taken years of practice, training and experience, it can be a very high paced, environment dealing with many different types of people under the influence of alcohol or drugs, being a humanitarian is part of the professional work ethic it takes to be a downtown bar scene vendor.

Working closely with the staff of the local nightclubs the Kelowna R.C.M.P and designated drivers, we are all working together to keep the city clean and safe.

The fully self contained concession carts are helpful safety feature in the crowded last call closing time which can be very chaotic and dangerous.

I have fully trained food safe staff that will help to accommodate all situations.

Over the last 10 years of running Hot or Not vendors we have poured everything into our business including relocating downtown as a home owner and proud longstanding member of the community, being so close to these nighttime locations has been an essential growth and development process.

Certificates

- Food Safe
- Serving it right
- Hosting it right
- Health Approval for each cart / Food Insurance / Insurance for each cart
- Most Enthusiastic Player Award (BC Summer Games)

- Work BC Employment training
- Level 1st aid + CPR

5.0 Equipment

- Five fully enclosed self contained carts
- Dump trailer
- 1996 mini van to tow the carts
- Professional Ice machine
- Storage shed
- Pressure washer
- 3 fridges
- 2 deep freezers
- 10 coolers / 10 umbrella / 20 propane tanks / 10 storage bins
- Office and supply room
- Generous parking / loading zones

6.0 Menu

All of our quality food choices come from locally owned and operated business Bonanza meats, Illichmans deli, Quality greens produce and Winfield bakery, these food products contain no animal bi-products, no MSG and no GMO.

- All food is choose most

Hot dogs are 100% all beef include fried onions, grated cheese and all condiments \$5

Smokies are 100% all beef include fried onions, grated cheese and all condiments \$6

Buns are nine grains

Perogies (vegetarian option) Include fried onions, grated cheese and all condiments \$7

Wraps (Vegetarian option) Include fried onions, grated cheese and all condiments \$5

Toppings Fried onions, Sauerkraut, grated cheese, lettuce, onions, black forest ham, sour cream,
plain yogourt,

Fruit & Nut bars \$1

H2O / Pop \$1



