



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

January 23, 2013

Ordinance 17512

Proposed No. 2012-0408.2

Sponsors Phillips

1 AN ORDINANCE authorizing the King County executive
2 to execute a ten-year concession agreement with Wash Spot
3 LLC, doing business as Wash Spot Express, for a dog wash
4 and grooming concession at Marymoor park.

5 STATEMENT OF FACTS:

6 1. The Parks Business Plan directs the parks and recreation division of the
7 department of natural resources and parks to work in partnership with
8 organizations to provide new recreational amenities that generate revenues
9 for parks.

10 2. Wash Spot LLC, has operated a dog wash and grooming concession at
11 Marymoor park since 2007, providing dog grooming services, dog toys,
12 snacks and grooming aids, which are valued amenities to park users.

13 3. King County and Wash Spot LLC desire to enter into a new concession
14 agreement that will allow Wash Spot LLC to operate Wash Spot Express
15 at Marymoor park through 2022, which will provide the parks and
16 recreation division with long-term revenue.

17 4. Wash Spot LLC will be authorized to provide specific goods and
18 services at prices specified in the concession agreement, and will pay King
19 County a base rent fee and a percentage of gross receipts.

1 5. The Wash Spot LLC concession at Marymoor park benefits the public
2 by generating revenue to support the county's parks and recreation
3 division as outlined in K.C.C. 4.75.020.

4 6. Under K.C.C. 4.75.020, any proposed concession agreement with an
5 original term that exceeds five years must be approved by the King
6 County council.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. The King County executive is hereby authorized to sign a

1 concession agreement, substantially in the form of Attachment A to this ordinance, with
2 Wash Spot LLC for a dog wash and dog grooming concession at Marymoor park.
3

Ordinance 17512 was introduced on 10/8/2012 and passed by the Metropolitan King
County Council on 1/22/2013, by the following vote:

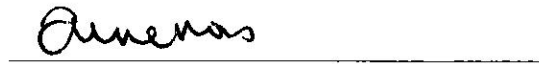
Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Dunn and Mr. McDermott
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



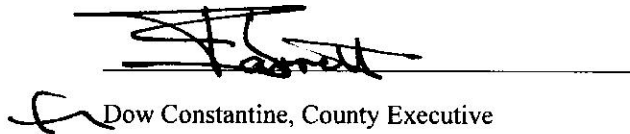
Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 1 day of February, 2013.



Dow Constantine, County Executive

Attachments: A. Concession Agreement (Revised January 11, 2013)

RECEIVED
KING COUNTY CLERK
JAN 23 4 11 PM '13

CONCESSION AGREEMENT
Between
King County Parks and Recreation Division
And
Wash Spot LLC
Revised January 11, 2013

THIS CONCESSION AGREEMENT (“Agreement”), is made and entered into by and between King County (“the County”), a home rule charter county and political subdivision of the State of Washington, and **Wash Spot LLC dba Wash Spot Express** (“Concessionaire”) (collectively, the “Parties”), a limited liability corporation organized under the laws of the State of Washington and having its usual place of business on the grounds of Marymoor Park, King County, Redmond, Washington.

Recitals

- A. The County is the owner and operator of Marymoor Park, located at 6046 W. Lake Sammamish Parkway NE, Redmond, Washington, 98052.
- B. On May 7, 2007, the Concessionaire and the County entered into an agreement (the “2007 Agreement”) specifying the terms and conditions under which the Concessionaire would construct and operate a dog wash business for the purpose of selling dog grooming services and approved dog toys, dog snacks, and dog grooming aids at Marymoor Park. The business location is adjacent to the west parking lot serving the Marymoor Park Off-Leash Dog Area.
- C. The County anticipates the continued regular operation of the Off-Leash Dog Area, and also anticipates the continued availability of, and access to, the approximately 200 space parking lot adjacent to the Concessionaire's proposed business location.
- D. The County and the Concessionaire contemplated extending their business relationship beyond the original 2007 Agreement and perhaps expanding the business to provide the Concessionaire the opportunity to recoup the capital investment outlay required to develop the facility, provided that the Concessionaire’s continued operation proved successful and profitable for both the County and the Concessionaire.
- E. Given the considerable patronage of the Off-Leash Dog Area combined with the Concessionaire's successful business operation during the term of the 2007 Agreement, the County and the Concessionaire desire to enter into a new agreement specifying the terms and conditions under which the Concessionaire will continue to operate a dog wash business at Marymoor Park through the end of 2022.
- F. Pursuant to Chapter 4.57 KCC, the King County Parks and Recreation Division of the Department of Natural Resources and Parks, an agency of King County, is authorized to enter into concession agreements on behalf of the County.
- G. The County and the Concessionaire may choose to discuss expanding the operation and business during the Term of the Agreement provided that the Concessionaire’s continued operation proves successful and profitable for both the County and the Concessionaire.

- H. The Concessionaire acknowledges and agrees that by entering into this Agreement that the one-year Concession Agreement, executed in 2012, is hereby terminated and replaced by this Agreement.

THEREFORE, in consideration of the mutual agreements herein contained, the Parties do hereby agree as follows:

1. PARK. The County is the owner and operator of Marymoor Park ("Park"), as shown in *Exhibit A*, where the Concessionaire's business is currently located.
2. GROUNDS. "Grounds" means the real property, personal property, parking lot(s), and landscape owned and operated by the County and adjacent to the west parking lot serving the Marymoor Park Off-Leash Dog Area, as shown in *Exhibit B*.
3. BUILDING. "Building," means the modular structure owned and operated by the Concessionaire, located at 6046 West Lake Sammamish Parkway NE, Redmond, WA 98052, as shown in *Exhibit C*, including any trade fixtures or personal property listed therein. These items shall be included within the meaning of Building unless specifically excluded.
4. COMMON AREA.
 - A. Common Area Defined. As Shown in *Exhibit B*, "Common Area" means the area outside the Building and within thirty (30) feet of the Building, in which park users, the Concessionaire's customers and employees, and County employees have access.
 - B. Maintenance and Management. The County shall maintain and manage the Common Area. The Concessionaire agrees to conform to the County rules and regulations pertaining to the Common Area.
 - C. Concessionaire's Right to Use. The County hereby grants to the Concessionaire and its authorized representatives and invites the nonexclusive right to use the Common Areas, with others who are entitled to use the Common Areas, subject to the conditions of this Agreement.
5. USE. The Concessionaire shall use the Building to operate a dog wash and grooming business and to sell approved dog toys, snacks, and dog grooming aids during the Park's hours of operation.
6. SCOPE OF CONCESSION AGREEMENT. The Concessionaire is authorized to provide only those goods and services outlined in *Exhibit D*, at the prices specified in *Exhibit D*, and only during the Park's hours of operation, and for no others without prior written consent of the County. The Concessionaire shall have ready for sale all articles shown in *Exhibit D* in sufficient quantity to satisfy the reasonably foreseeable demand of patrons during operating hours and days of operation. For the duration of this Agreement, the Concessionaire may not change or alter any of the goods, services, or prices outlined in *Exhibit D*, including temporary promotions, without the prior written approval of the County. The Concessionaire shall not use the Building for any other purpose, or sell any goods or services at prices different from prices displayed or advertised or at any price greater than that shown on *Exhibit D* without prior written consent of the County's Agreement Manager or On-Site Liaison (defined below).

7. **TERM.** The term ("Term") of this Agreement shall be for ten (10) years beginning on the date this Agreement is fully executed. This Agreement shall remain in effect during the Term unless and until it is modified, amended in writing, or terminated, all as provided herein.
8. **RENT.**
- A. **Rent.** The Concessionaire shall pay to King County minimum base rent of ONE-THOUSAND-AND-FIFTY DOLLARS (\$1,050.00) per month. Additionally, in any month where Gross Monthly Receipts exceed EIGHT-THOUSAND DOLLARS (\$8,000.00), the Concessionaire shall pay County TEN PERCENT (10 percent) of Gross Monthly Receipts that exceed EIGHT-THOUSAND DOLLARS (\$8,000.00). "Gross Monthly Receipts" is defined as the Concessionaire's total revenue from operating the Concession in the Building during the relevant month, excluding only Washington State Sales Tax.
- B. **Leasehold Excise Tax.** A leasehold excise tax, if applicable, is levied pursuant to the Revised Code of Washington Chapter 82.29A. Unless the Concessionaire provides proof of exemption from the Department of Revenue prior to the execution of this Agreement, leasehold excise tax at a rate of 12.84 percent of the taxable rent shall be paid each month. If the State of Washington changes the leasehold excise tax rate, the tax payable shall be correspondingly changed. Unless the Concessionaire is exempt, it agrees to determine the amount of the leasehold excise tax and send it to King County at the same time as the monthly rent payment, as specified in *Section 9*.
9. **TIME OF PAYMENTS.** The Concessionaire's monthly payment, pursuant to *Section 8*, shall be postmarked or delivered to the County on or before the tenth (10th) day of the following month. (By way of example only, the Concessionaire's monthly payment for January of year X is due on or before February 10 of that same year.) The Concessionaire shall also submit with each payment a signed statement, in the form of the reporting form attached hereto as *Exhibit H*, attesting to the Gross Monthly Receipts for the particular month. The Concessionaire shall make the monthly payment of the total rent and tax payable to King County Parks and shall deliver the monthly payment and reporting forms to:
- KING COUNTY PARKS
Attention: Concessions
6046 W. Lake Sammamish Parkway NE (for delivery)
Redmond, Washington 98052
10. **SECURITY AND DAMAGE DEPOSIT.** The Concessionaire shall deposit with the County the sum of FOUR-HUNDRED FIFTY DOLLARS (\$450.00) as a security and damage deposit for the payment of rent and tax and any damages to the Park for which the Concessionaire is responsible and for any restoration or cleaning of the Park that the Concessionaire has not completed when the Concessionaire vacates. The return of the deposit, or any portion of it, shall be conditioned on the performance of all the Concessionaire's duties. Within sixty (60) days after termination of the tenancy and vacation of the Park, the County will return any sum due the Concessionaire from the deposit retained by the County. The Concessionaire understands and agrees that unless paid by the Concessionaire, amounts may be deducted from the deposit for damage and cleaning at the time of the Concessionaire's vacation of the Park in excess of the deposit if any amount

remains in the deposit after subtraction for rent and taxes owing. The deposits need not be held in any special account and no interest will be paid thereon.

11. LATE PAYMENTS. There will be a collection charge of FIFTY DOLLARS (\$50.00) or the maximum rate permitted by law for any late payment. In addition, ONE PERCENT (1.0%) per month interest will be charged for any delinquent payment not delivered to the County by the tenth (10th) of the following month.
12. OTHER CONSIDERATION. Rent may be reduced due to natural disasters beyond the Concessionaire's control, or if the Parties agree that King County has adversely affected or may adversely affect the Concessionaire's ability to operate. No offset, reduction, or credit toward rent or other consideration shall be allowed unless it is in writing and signed by the Director of the King County Parks and Recreation Division.
13. NOTICE OF RENTAL ADJUSTMENT. If and when the County adjusts the minimum base rent due pursuant to this Agreement, the County will give the Concessionaire written notice of the adjusted rent at least thirty (30) days before the next date payment is due.
14. TAXES. The Concessionaire agrees to pay on a current basis all taxes or assessments levied on its activities; PROVIDED, however, that nothing contained herein shall modify the right of the Concessionaire to contest any such tax, and the Concessionaire shall not be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such taxes. The Concessionaire agrees for itself, its successors, and assigns to defend, indemnify and hold harmless the County, its appointed and elected officials, and employees from and against liability for any costs or claims for the Concessionaire's unpaid taxes.
15. MAINTENANCE OF RECORDS AND INSPECTIONS. The Concessionaire shall keep accurate books and accounts of the matters upon the basis of which the rent and other payments are to be computed and ascertained and regarding compliance with nondiscrimination regulations and requirements as referenced in *Sections 44-47*. Such books and records shall be retained, open, and available for inspection by the County upon the official request of the County during the Term of this Agreement and not less than five (5) years after its expiration or termination.
16. CONDITION OF GROUNDS AND BUILDING; CONSTRUCTION DEFECTS. The Concessionaire has inspected and knows the condition of the Grounds and the Building, and it is understood and agreed that the Grounds and Building are taken on an "as is" basis without any obligation on the part of the County to make any changes, improvements, or to incur any expenses whatsoever for the maintenance or repair of the Grounds and Building other than those specifically required by this Agreement. The County shall not be liable to the Concessionaire for claims for damages arising from any defect in the construction of, or the condition of, the Building at the time the Concessionaire assumes occupancy, whether known or unknown, or for damage by storm, rain, or leakage or any other occurrence.
17. CONCESSIONAIRE IMPROVEMENTS AND ALTERATIONS TO THE GROUNDS AND BUILDING. Should the concessionaire desire to make any improvements to the grounds or building during the term of the agreement, the Concessionaire shall submit to the County, for

its approval, detailed plans and specifications of the Concessionaire's proposed improvements to the Grounds and/or Building. Such improvements shall consist of remodeling or altering the modular building used as a dog wash and grooming structure and related features such as landscaping, paving, and so forth. All improvements shall be performed by the Concessionaire at its sole expense. The Concessionaire's duties under this section include, but are not limited to, the specific tasks and obligations set forth in *Exhibit E*. No improvement or construction shall be made unless applicable notice and authorization by ordinance requirements have been satisfied. The current threshold requires prior approval by ordinance for any improvement with a value exceeding \$50,000.

- A. The Concessionaire shall make no alterations or improvements to or upon the exterior part(s) of the Building, or install any exterior fixtures (other than trade fixtures which can be removed without injury to the Building) without first obtaining written approval from the County. The alterations or improvements will be at the Concessionaire's sole cost and approval may be conditioned on inspections and approval of improvements by the County, performance bonds, supplying as-built drawings, and other reasonable requirements imposed by the County.
 - B. Unless otherwise stipulated, all improvements or alterations erected or made on the Building, shall, upon expiration or earlier termination of this Agreement, belong to the Concessionaire, however, the County shall have the option, to be exercised on expiration or earlier termination of the Agreement, to require the Concessionaire, at the Concessionaire's expense, to remove any or all such improvements or alterations.
18. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by the Concessionaire on any part of the outside of the Building without the prior written consent of the County, provided that such consent shall not be unreasonably withheld. If the Concessionaire violates this provision, the County may remove the sign without any liability and may charge the expense incurred by such removal to the Concessionaire provided, however, the County shall give the Concessionaire written notice of Concessionaire's violation of this provision and the Concessionaire shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by the Concessionaire shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.
19. MAINTENANCE.
- A. The Concessionaire shall throughout the term of this Agreement, and without cost or expense to the County, keep and maintain the Building and all improvements, fixtures, and equipment which may now or hereafter exist thereon, in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the Building in good and safe repair.
 - B. If the Concessionaire fails to maintain or repair any part of the Building or any improvement, landscaping, fixtures or equipment thereon, then after thirty (30) days' notice from the County, the County may, but shall not be obligated to, enter upon the Building and perform such maintenance or repair, and the Concessionaire agrees to pay the costs thereof to the County upon receipt of a written demand. Any unpaid sums under this paragraph shall be payable as additional rent on the next rent payment date due following the written

demand and will bear interest at the maximum rate allowed by Washington State Law.

- C. The County shall maintain and manage the Common Area, with assistance from the Concessionaire and its employees to help pick up trash, litter, and animal waste created by the Concessionaire's business within a thirty (30) foot radius of the Building. Common Area is depicted in *Exhibit B*.
20. UTILITIES. The Concessionaire will pay for heat, lights, water, electrical, and for all other public utilities (excluding sewer) used in said business so that the same shall not become a lien against the Building, the Grounds or the Park. The County shall provide a telephone line stub-out upon the Grounds. The Concessionaire shall pay for all direct costs, expenses, fees, services, and charges to connect the Building's phone line(s), if any, with the County's telephone line stub-out. The Concessionaire shall be solely responsible to arrange and to pay for telephone service for the Building. Sewer is provided by the County and will be the County's responsibility.
21. CONCESSIONAIRE'S OPERATING HOURS.
- A. Building Operating Hours. The Concessionaire shall be open for business at times mutually agreed upon by the Parties, as set forth in *Exhibit D* attached to this Agreement. However, the Concessionaire shall agree to be open for business at least six (6) hours per day, Monday - Sunday, except during holidays or Special Events (defined below). The Concessionaire will be allowed into the Building for set-up not less than thirty (30) minutes prior to the Park's operating hours and will be allowed to stay in the building for closing and clean up of the Building not more than thirty (30) minutes after the Park's operating hours. Operating hours shall be posted on or adjacent to the Building.
- B. Concerts. The County hosts a concert series at the Park. The series includes ten (10) to twenty (20) concerts per year. On concert days at Marymoor Park, access to the Concessionaire's business may be limited or restricted because the west parking lot may be closed for security reasons. The County will notify the Concessionaire of the concert schedule each year as soon as that season's concert schedule is formally announced.
- C. Special Events. "Special Events" shall mean those events in the Park that either require a Special Use Agreement or are permitted by existing contractual agreements between the County and third parties. During Special Events, the Concessionaire shall be open for business as negotiated with the County's On-Site Liaison. The Concessionaire will be allowed into the Park for set-up one (1) hour before a Special Event starting time and will be allowed to stay in the Park for closing and clean up of the Building not more than one (1) hour after the conclusion of such Special Event, unless other arrangements have been made with the County's On-Site Liaison.
- D. County Authority to Set Park Operating Hours and Close Park. Notwithstanding any other provision of this Agreement, the County reserves the right to decide, in its sole discretion, the Park's operating hours. The Concessionaire shall adjust its hours of operation accordingly and the County shall not be liable for damages to the Concessionaire, its employees or agents as a result of any change in the Park's

operating hours. The County shall issue an annual schedule of operations for the Park and shall provide that schedule to the Concessionaire thirty (30) days before the start of the subject year. The County shall make reasonable efforts to give the Concessionaire sixty (60) days' notice of any change to the then-current schedule.

The County reserves and retains the right to close the Park for a reasonable period for its convenience upon written notice of not less than seven (7) days and to close the Park or any portion thereof immediately in case of an emergency. The County shall not be liable for damages to the Concessionaire, its employees or agents as a result of such closure.

22. CONTINUOUS OPERATION. The Concessionaire shall keep the Building open and use the Building to transact business with the public daily during the hours listed in *Exhibit D*. The Concessionaire will operate to maximize the revenue derived from the privileges and rights granted hereunder. Subject to the prior written approval of the County, the Concessionaire may close the Building or any portion thereof for a reasonable period for repairs or remodeling, for taking inventory, or to accommodate the construction by the County of public improvements, provided that a written notice of such impending closure is posted by the Concessionaire in a conspicuous place on the Building for at least one (1) week immediately prior to the closure date. The Concessionaire may close the Building or any portion thereof for a reasonable period in an emergency without the approval of the County.
23. ACCESS TO BUILDING DURING NON-OPERATING HOURS. During hours the Park is not open to the public, the County may refuse the Concessionaire, its representatives, agents or employees, access to the Building unless the person seeking access has received permission to enter from the County or its On-site Liaison. The County shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion or any structural damage from any cause whatsoever, the County reserves the right to prevent access to all or part of the Park, the Grounds, the Common Area, or the Building, in order to protect the public health, safety, or welfare. However, nothing in this Agreement shall obligate the County to provide security or to protect the Building or its contents at any time, or to monitor access to it.
24. CONCESSIONAIRE'S CONDUCT
- A. Standards. The Concessionaire recognizes that, although it is operating its business as an independent operator for profit, the County is a provider of park and recreation facilities for the use and enjoyment of the general public. The Concessionaire, its agents and employees will devote their efforts toward rendering courteous service to the public as though they were employees of the County, with a view of enhancing the enjoyment of the patrons of this recreational facility.
- The Concessionaire shall operate and conduct services in the Building in a businesslike manner, and will not permit any acts or conduct on the part of the Concessionaire's employees that would be detrimental to the County's operation of the Park. The Concessionaire employees shall be persons of good moral character and shall be neat and clean in appearance.

- B. Fire and Security Alarm. The County strongly recommends that the Concessionaire invest in a security and fire alarm system to protect their business. Any expense associated with a security and fire alarm will be solely the Concessionaire's. The Concessionaire shall obtain the County's consent and comply with the County's instructions in the installation of any such security or fire alarm system(s).
- C. Emergency Information. The Concessionaire must provide the County with names and telephone numbers to contact in case of emergency. The Concessionaire must fill out an emergency information sheet and return it to the County's On-Site Liaison. The completed emergency information form shall be incorporated into this Agreement as *Exhibit F*.
- D. Access. The halls, passages, exits, entrances, and stairways shall not be obstructed by the Concessionaire or used by them for any purpose other than for ingress to and egress from the Building during business hours. This includes obstructing halls, passages, entrances, exits, stairways, balconies and roof with furniture, trash or deliveries that could be construed as unsightly or unsafe.
- E. Locks and Keys. To provide the Fire Department access to the Building in case of an emergency, the Concessionaire will provide, at their sole expense, a spare key in a Knox Box mounted next to the side entry door on the outside wall of the Building. Expense will be incurred solely by the Concessionaire.
- F. Deliveries and Moving Materials within Building. The Concessionaire's initial move in and subsequent deliveries of bulky items, such as furniture, safes and similar items, unless otherwise agreed to in writing by the County, will be made at times with the least impact on park users. No deliveries shall be made which impede or interfere with other park users. The Concessionaire shall be solely liable for any and all damage resulting from the above activities. The County and the Concessionaire will mutually agree on designating a restricted loading zone for delivery truck access to the Building.
- G. Unapproved Equipment. The Concessionaire shall not install, operate or maintain in, on or around the Building, any electrical equipment which does not pass a State Electrical Inspection, or which would overload the electrical system or any part thereof beyond its capacity for proper, efficient and safe operation, taking into consideration the overall electrical system and the present and future requirements for the Building. The Concessionaire shall not furnish any cooling or heating to the Building, including, without limitation, the use of any electronic or gas heating devices, fans or space heaters, without the County's prior written approval.
- H. Vending Machines. The Concessionaire may provide vending machines in or on the Building, if the Concessionaire first gets prior written approval from the County.
- I. Fire Regulations. The Concessionaire will comply with all applicable fire regulations. The Concessionaire also shall provide the County with the name(s) of a designated responsible employee to represent the Concessionaire in all matters pertaining to fire regulations. The Concessionaire shall supply and have easily accessible at least one (1) fully charged fire extinguisher in the Building, or as may otherwise be required by applicable fire codes, laws, and regulations.
- J. Health Regulations. The Concessionaire will comply with all applicable Federal, State, County and Local Health and Sanitation Department regulations. Further, the

Concessionaire shall fully comply with the King County Food Code, including any requirement to obtain a valid permit to operate a food-service establishment issued to such person by the Seattle-King County Health Department and the requirement to submit properly prepared plans and specifications to the Seattle-King County Health Department for its plan approval. The Concessionaire is responsible to provide the County a copy of all required Health Permits **BEFORE** the Concessionaire begins any operations for which such permit would be required.

- K. Nuisance. The Concessionaire shall not use, keep or permit to be used or kept any noxious gas or substance in the Building, or permit or suffer the Building to be occupied or used in a manner that is offensive or objectionable to the County or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other Concessionaires or those having business in the Building, the Common Area, the Grounds, or the Park. The Concessionaire shall not make or permit to be made any disturbing noises or disturb or interfere with Park users of this or neighboring buildings or premises, or with those having business with such occupants by the use of any musical instruments, radio, phonograph, unusual noise, or in any other way. The Concessionaire shall not throw anything out of doors or down passageways.
- L. Restrooms. Public Restrooms are located in the Park and in the Off-Leash Dog Area and are available to the Concessionaire, employees, and customers.
- M. Janitorial Service. The Concessionaire shall not cause any unnecessary labor by the County by reason of the Concessionaire's carelessness or indifference in the preservation of good order and cleanliness of the Grounds, Common Area or Building. The Concessionaire will provide all cleaning and paper products for operation of the Building.
- N. Trash and Waste. The Concessionaire will provide all trash containers necessary for their operation. The Concessionaire will dispense of all trash, litter, and animal waste created from their operation to the County's trash dumpster. The Concessionaire shall be provided access to the trash dumpster. The Concessionaire and Concessionaire's employees are expected to assist with trash, litter, and animal waste pick up created by their business by picking up trash within a thirty (30) foot radius of the Building.
- O. Broadband Service. The Concessionaire understands and agrees that broadband service may not be available in the vicinity of the Park, and that the Concessionaire would need to secure broadband service through the service provider, in coordination with the County.
- P. Pest Extermination. The Concessionaire shall utilize the termite or pest extermination service designated by the County to control termites and pests in the Building. The Concessionaire shall bear the cost and expense of such extermination services and will schedule and contract for those services as needed.
- Q. Non-Smoking Building. Pursuant to Ordinance 17375, the use of tobacco products shall be prohibited in a high-use area such as the Building. The Building is a non-smoking Building. The Concessionaire shall prohibit smoking in the entirety of the Building.

- R. Time of Repairs and Maintenance. The Concessionaire shall carry out the Concessionaire's permitted repair, maintenance, alterations, and improvements in the Building in a manner which will not interfere with the rights of other users of the Park, including, but not limited to, the County's employees.
 - S. Concessionaire Advertising. The Concessionaire may use the name of the Park in connection with or in promotion or advertising of the Concessionaire's business. Flyers, brochures, and other materials promoting the Concessionaire's business will be allowed at Marymoor Park with prior approval from the County's On-Site Liaison. Advertising in the interior of the Building by the Concessionaire is allowed subject to review and approval by King County On-Site Liaison.
 - T. Soliciting. The Concessionaire shall not canvass Park patrons, or solicit business, or distribute handbills or any other written material in the Park, and peddling in the Building or on the Grounds is prohibited, without the prior written approval from the County.
 - U. Disorderly Conduct. The County reserves the right to exclude or expel from the Park any person who, in the judgment of the County, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Park.
 - V. Building Closure. Upon close of business each day, the Concessionaire shall ensure that the doors of the Building are closed and securely locked before leaving the Building, and shall further ensure that all water faucets, water apparatus and electrical appliances and equipment are entirely shut off before the Concessionaire or Concessionaire's employees leave the Building. The Concessionaire shall be solely responsible for any damage to the Building or other concessionaires' buildings caused by a failure to comply with this paragraph.
 - W. Concessionaire's Compliance. The Concessionaire shall be responsible for the observance of all of the foregoing conditions by the Concessionaire's employees, agents, licensees, assigns, and invitees.
25. REPRESENTATIVES. The Director of the King County Parks and Recreation Division (or designee) shall represent the County and a representative from the Concessionaire shall represent the Concessionaire on all matters related to this Agreement ("The Representatives"). Each Representative shall designate an operational liaison for purposes of day-to-day scheduling and working arrangements. The County Representative (or designee) shall assign a staff member for these operational liaison duties.

The County liaison for this agreement ("Agreement Manager") is:

John Villapudua, Program Manager
 201 South Jackson Street, Suite 700
 Seattle, WA 98104-3855
 Mail Stop – KSC-NR-0700
 206-263-6209 or john.villapudua@kingcounty.gov

The County liaison for day-to-day operation ("On-Site Liaison") is:

Norah Gaynor, Program Manager
 6046 West Lake Sammamish Parkway N.E.
 Redmond, WA 98052

206-296-0673 or norah.Gaynor@metrokc.gov

The Concessionaire's liaison for this agreement is:

Mark Inahara, Co-Owner
Wash Spot LLC
12134 NE 166th Place
Bothell, WA 98011
206-898-8479 or mark.inahara@gmail.com

26. PLANNING AND OPERATIONAL MEETINGS. The County's On-Site Liaison or designee shall be authorized to speak on its behalf with respect to the operation, improvement, planning and development of the Building, Grounds, or Common Area. The County's On-Site Liaison or designee shall meet with the Concessionaire's liaison or designee quarterly or as otherwise agreed, to exchange, review and discuss policies, development plans, levels of scheduled use and operation procedures for the Building.
27. INDEMNITIES AND HOLD HARMLESS.
- A. The Concessionaire agrees to indemnify and hold the County harmless as provided herein to the maximum extent possible under law. Accordingly, the Concessionaire agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to the Concessionaire's exercise of rights and privileges granted by this Agreement, except to the extent of the County's sole negligence. The Concessionaire's obligations under this section shall include:
1. The duty to promptly accept tender of defense and provide defense to the County at the Concessionaire's own expense;
 2. Indemnification of claims made by the Concessionaire's own employees or agents; and,
 3. The Concessionaire expressly and specifically waives the Concessionaire's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to fully indemnify the County, which waiver has been mutually negotiated by the Parties.
- B. In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Concessionaire.
- C. In the event it is determined that R.C.W. 4.24.115 applies to this Agreement, the Concessionaire agrees to defend, hold harmless, and indemnify the County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of the County to the full extent of the Concessionaire's negligence.

- D. A hold harmless provision to protect King County similar to this provision shall be included in all subcontracts entered into by the Concessionaire in conjunction with this Agreement.
28. PROPERTY INSURANCE. The Concessionaire will carry fire and extended coverage insurance with rent interruption endorsement in an amount equal to the full replacement value of all improvements (Building, its subsequent improvements, and the Concessionaire's personal property located in the building) and six (6) months rental interruption. The policy shall include the County as an insured as its interests may appear. A current certificate of insurance must be on file with the County. The County will not carry insurance on the Building or the Concessionaire's personal property. Such policy shall contain a Waiver of Subrogation clause in favor of the County.
29. LIABILITY INSURANCE REQUIREMENTS. By the date of execution of this Agreement, the Concessionaire shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the exercise of the rights and privileges granted by this agreement, by the Concessionaire, its agents, assignees, representatives, employees, or subcontractors. The cost of such insurance shall be paid solely by the Concessionaire, and not by the County.
- A. Commercial General Liability. The Concessionaire shall obtain commercial general liability insurance (to include Products-Completed Operations) against claims for injuries to persons or damages to property that may arise from or in connection with the Concessionaire's use of the Facility at the County Park site. General liability insurance shall be as broad as that provided by Commercial General Liability "occurrence" form CG 00 01 (current edition). The insurance limits shall be no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.
- B. Automobile Liability. Insurance Services form number CA 00 01 (current edition). The Limit of Liability shall be no less than One Million dollars (\$1,000,000) per occurrence.
- C. Workers Compensation/Stop Gap. If the Concessionaire has employees, the Concessionaire shall provide Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than One Million dollars (\$1,000,000).
- D. Endorsements. The required insurance policy(ies) (except Workers Compensation) is/are to be **endorsed to**:
- a. Name King County, its officers, officials, employees and agents as additional insureds;
 - b. State that the Concessionaire's and/or subcontractors' insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability;
 - c. State that coverage shall not be suspended, voided, canceled, reduced in coverage or limits except after thirty (30) days prior written notice to the County; and

- d. State that coverage (General Liability, Auto and Liquor Legal) shall include Products/Completed Operations and be primary and non-contributory as to the County.
- E. Other Insurance Requirements. The Concessionaire's insurance provider must be licensed to do business in the State of Washington and have a Bests' rating of A:VIII or better. Deductible or self-insured retention levels must be declared to and approved by King County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Concessionaire's liability to the County and shall be the sole responsibility of the Concessionaire. If at any time, of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Concessionaire shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.
- F. Proof of Valid Insurance. Current, valid Certificates of Insurance and required policy endorsements shall be provided to the County on or before the date that the Concessionaire executes this Agreement. Certificate(s) of insurance and endorsement(s) shall be attached to this Agreement as *Exhibit G*. Upon written request of the County at any time during the Term or any extension of it, the Concessionaire shall provide a duplicate of the policy as evidence of insurance protection.
- G. Insurance Provisions Material. The Concessionaire understands, acknowledges, and agrees that the insurance provisions of this *Section 29* are material, and that if the Concessionaire fails to comply with any of them, then the County may terminate this Agreement pursuant to and consistent with *Section 31* herein.
30. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, the County and the Concessionaire hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of the County or the Concessionaire.
31. TERMINATION. This Agreement is subject to termination based upon the following:
- A. Necessity. If the County determines that termination of this Concession Agreement is necessary due to closure of the Park, transfer of the Park, or any other reason the County determines justifies termination other than the Concessionaire's breach or default under this Agreement, then the County shall give the Concessionaire one hundred and eighty (180) days' prior written notice of termination of this Agreement. If the County terminates this Agreement pursuant to this *subsection 31.A.*, The Concessionaire shall be entitled to reasonable compensation from King County for capital improvements made by the Concessionaire to the Park with due regard for the funds invested by the Concessionaire, the Concessionaire's debts remaining to be paid relating to the Building, the fair market value of the Building at the time of termination, and the length of time the Concessionaire has had use of the Building. Consistent with *Section 35* of this Agreement, if the Parties cannot agree on the amount of compensation due, then the Parties shall attempt to resolve the dispute

through alternative dispute resolution (ADR) before commencing litigation regarding the amount of compensation due.

- B. Default. If either Party breaches this Agreement, then the other Party may terminate this Agreement; provided, that the dispute resolution procedure set forth in **Section 35** is completed before termination; except the notice and dispute resolution requirements do not apply where protection of the public's health, welfare or safety requires immediate termination by the County.
 - C. If the Concessionaire determines that it cannot reasonably continue to operate the Building, the Concessionaire may terminate this Agreement after giving King County one hundred and eighty (180) days' advance written notice of termination.
 - D. Appropriation. County funding in support of this Agreement beyond the current appropriation year is conditioned upon appropriation by the County Council of sufficient funds to undertake the activities described in this Agreement. The sufficiency of any such appropriation shall be determined by the County in its sole discretion. Should such an appropriation not be approved, this Agreement shall terminate at the close of the current appropriation year.
 - E. Concessionaire's Waiver Of Rights Upon Termination By County. The Concessionaire hereby expressly waives the right to claim or recover against the County and/or any official, employee, or representative thereof for any damages whatsoever incurred due to termination by the County.
32. SURRENDER OF GROUNDS; REMOVAL OF BUILDING. At the expiration or earlier termination of this Agreement, the Concessionaire shall promptly surrender possession of the Grounds to the County. The Grounds shall be surrendered to the County in as good a condition as on the date the Concessionaire took possession, except for the effects of reasonable wear and tear, alteration and repairs made with approval of the County, or property damage by fire or other perils insured in contracts or policies as required herein.
- No later than sixty (60) days after expiration or termination of this Agreement, the Concessionaire shall remove the Building from the Grounds, together with any and all other property, materials, equipment, goods, and effects belonging to the Concessionaire and/or its employees. Before removing the Building from the Grounds the Concessionaire will give the County first right of refusal to purchase the Building for a price determined by an agreed upon appraiser. If the Concessionaire fails to remove any property by the above-stated date, the County shall have the right to remove, store, sell, and/or destroy such property at the sole expense of the Concessionaire and shall have a lien thereon for the cost incurred, which lien may be enforced by sale upon thirty (30) days' written notice.
33. DEFAULTS AND RE-ENTRY. If the County terminates this Agreement based on the Concessionaire's default, and the Concessionaire fails to timely remove the Building as set forth in **Section 32**, above, then the County may re-enter the Building using such force as may be required. Notwithstanding such re-entry by the County, the Concessionaire will remain liable for the rent as provided herein, over the remaining Term of this Agreement. The Concessionaire further covenants and agrees to make good to the County any deficiency arising from a re-entry and reletting of the Building at a lesser rental than agreed

to herein. The Concessionaire shall pay such deficiency each month as the amount thereof is ascertained by the County. If it becomes reasonably necessary to make any changes, alterations, or additions to the Building or any part thereof for the purpose of reletting said Building or any part thereof, the Concessionaire shall also be responsible for such cost. PROVIDED, that the Concessionaire's total liability under this section shall not exceed an amount equal to six (6) months minimum base rent. In no event shall the County seek to accelerate rent upon the Concessionaire's default.

34. ADVANCES BY THE COUNTY FOR CONCESSIONAIRE. If the Concessionaire fails to pay any fees or perform any of its obligations under this Agreement other than payment of rent, the County will mail notice to the Concessionaire of its failure to pay or perform. Twenty (20) days after mailing notice, if the Concessionaire's obligation remains unpaid or unperformed, the County may pay or perform these obligations at the Concessionaire's expense. Upon written notification to the Concessionaire of any costs incurred by the County under this paragraph, the Concessionaire will reimburse the County within twenty (20) days.
35. DISPUTE RESOLUTION. If the County or the Concessionaire claims that the other party has breached any term of this Agreement or is otherwise in default, and if informal communications such as telephone conversations or correspondence fail to satisfy the claiming party, then the Parties shall attempt to resolve the dispute through some mutually acceptable form of alternative dispute resolution (ADR), such as mediation or arbitration. The Parties agree that a good-faith attempt to resolve any dispute through ADR shall be a condition precedent for either party to initiate any civil action or other litigation regarding this Agreement.
36. ACCESS AND BUSINESS INTERRUPTION. The County reserves the right to enter the Building to repair or install utilities or improvements associated with the other portions and uses of the Building, Grounds, Common Area or Park. The County also reserves the right to limit the public's access to the Building, Grounds, Common Area or Park in exercise of its police powers or other legal authority or to allow uses of them that may impede public access to the Common Area. The Concessionaire shall not be entitled to any damages from business interruption caused by these activities of the County. However, the County will consider requests for temporary reduction in rent.
37. TOTAL OR PARTIAL DESTRUCTION OF BUILDING. If at any time during the term of this Agreement the Building or any improvements to the Building subsequently constructed by the Concessionaire are totally or partially destroyed, the Concessionaire shall have the obligation to reconstruct such facilities to their original condition within nine (9) months after their destruction. The County shall not be responsible for any damages suffered by the Concessionaire due to the total or partial destruction of the Building.
38. INSPECTION. The County reserves the right to inspect the Building by the On-Site Liaison and/or Agreement Manager, at any and all reasonable times throughout the term of this Agreement, provided that the County shall not interfere unduly with the Concessionaire's operations. The right of inspection reserved to the County hereunder shall impose no obligation on the County to make inspections to ascertain the condition of the

Building, and shall impose no liability upon the County for failure to make such inspections.

39. NO LIENS. It is understood and agreed that this Agreement is executed and delivered upon the express condition that the Concessionaire will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the County's interest in the Building, Grounds, Common Area, or Park, and the County hereby denies to the Concessionaire any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject those interests of the County to any lien, claim, or demand whatsoever.
40. ASSIGNMENT. The Concessionaire shall not assign any of its rights under this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld. The County will have the right to sell or otherwise transfer or dispose of the Park, or to assign this Agreement or any interest of the County hereunder, provided that in the event of sale or transfer of the Park, the County will arrange for the purchaser or transferee to assume the Agreement and the County's obligations hereunder. The County will not otherwise assign this Agreement or any interest of the County hereunder unless the assignee or purchaser agrees to assume the County's obligations hereunder.
41. COMPLIANCE WITH APPLICABLE LAW. In constructing, outfitting, and using the Building, the Concessionaire shall comply with all applicable laws, ordinances and regulations from any and all authorities having jurisdiction including, to the extent applicable, those related to "public works," payment of prevailing wages and competitive bidding of contracts. The Concessionaire specifically agrees to comply and pay all costs associated with achieving such compliance without notice from the County, and further agrees that the County does not waive this section by giving notice of demand for compliance in any instance. The Concessionaire shall indemnify and defend King County should the County be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement.
42. KING COUNTY PARKS AND RULES AND REGULATIONS. The Concessionaire shall comply with the rules and regulations of King County Parks and with any such rules and regulations which may hereafter be made. If there is any question regarding the interpretation of any King County Parks rule or regulation, the County's interpretation shall be controlling.
43. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE. The Concessionaire shall not, without first obtaining the County's written approval, apply, store, deposit, transport, release or dispose of any hazardous substances, petroleum products, sewage, medicinal, bacteriological, or toxic materials, or pollutants, in the Building. All approved application, storage, deposit, transportation, release and disposal shall be done safely and in compliance with applicable laws. The Concessionaire shall be fully and completely liable for any and all cleanup costs, and any and all other charges, fees, penalties, or orders, civil or criminal, imposed by any authority with respect to the Concessionaire's use, disposal, transportation, generation, release, handling, spillage,

storage, treatment, deposit and/or sale of hazardous substances in or about the Building, Grounds or Park. The Concessionaire promises to fully reimburse the County for any expenses, costs or fees it may incur if the Concessionaire fails to comply with the terms and conditions of this section.

44. NONDISCRIMINATION IN EMPLOYMENT PROVISION OF SERVICES. King County Code Chapters 12.16, 12.17, and 12.18 are incorporated by reference as if fully set forth herein and such requirements apply to this Agreement. Pursuant to K.C.C. Chapter 12.16, during the performance of this Agreement, neither the Concessionaire nor any party subcontracting under the authority of this Agreement shall discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, gender identity or expression, the presence of any sensory, mental, or physical disability, or age except by minimum age and retirement provisions, in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.
45. NONDISCRIMINATION IN SUBCONTRACTING PRACTICES. Pursuant to K.C.C. Chapter 12.17, during the solicitation, award and term of this Agreement, the Concessionaire shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction or services. In considering offers from and doing business with subcontractors or suppliers, the Concessionaire shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.
46. FAIR EMPLOYMENT PRACTICES. Pursuant to K.C.C. Chapter 12.18, during the performance of this Agreement, neither the Concessionaire nor any party subcontracting under the authority of this Agreement shall engage in unfair employment practices.
47. COMPLIANCE WITH LAWS AND REGULATIONS. The Concessionaire shall comply fully with all other applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Restoration Act of 1987.
48. SANCTIONS FOR VIOLATIONS. Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of this Agreement for which the Concessionaire may be subject to damages, withholding payment and any other sanctions provided for by the Agreement and by applicable law.
49. SECTION 504 AND AMERICANS WITH DISABILITIES WITH DISABILITIES ACT. The Concessionaire shall complete a 504/ADA Self-Evaluation Questionnaire for all programs and services offered by the Concessionaire (including any services not subject to this Agreement) and shall evaluate its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504") and the Americans with Disabilities Act of 1990 ("ADA"). The Concessionaire shall complete a 504/ADA Assurance of Compliance, and corrective action plan as needed for structural, programmatic, and/or service changes necessary at each of its Building within the State of

Washington to comply with 504 and the ADA, and it is attached as an exhibit to this Agreement and incorporated herein by reference.

50. INDEMNIFICATION FOR NONDISCRIMINATION VIOLATIONS. See *Section 27*.
51. NON-COMPETITION. During the Term of this Agreement, the County will authorize no other facility to provide dog wash or grooming services offered by the Concessionaire within Marymoor Park.
52. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Agreement pertaining to assignment, the County and the Concessionaire agree that the provisions of this Agreement are intended to bind their heirs, successors, agents and assigns.
53. CAPTIONS. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
54. EVERY PROVISION IS MATERIAL. Each term of this Agreement is material. A breach by the Concessionaire of any one of the terms of this Agreement shall be considered to be a material breach of the entire Agreement and shall be grounds for the County to terminate the entire Agreement.
55. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, and in the event of the failure of the Concessionaire to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Concessionaire shall be in default.
56. CUMULATIVE REMEDIES. No provision of this Agreement precludes the County from pursuing any other remedies for the Concessionaire's failure to perform his obligations.
57. ATTORNEY'S FEES/COLLECTION CHARGES. In the event legal action other than ADR under *Section 35* is brought by either party to enforce any of the terms, conditions, or provisions of this Agreement, the prevailing party shall recover against the other party in addition to the costs allowed by law, such sum as the court may adjudge to be a reasonable attorney's fee.
58. HOLDING OVER. If the Concessionaire holds over after the expiration or earlier termination of the Agreement's term without the express written consent of the County, then Concessionaire shall become a Concessionaire at sufferance only, at a rental rate equal to one hundred-fifty percent (150 percent) of the rent in effect upon the date of such expiration (prorated on a daily basis), and otherwise subject to the terms, covenants, and conditions herein specified so far as applicable. Acceptance by the County of rent after such expiration or earlier termination shall not result in a renewal of this Agreement, nor affect the County's right of re-entry or any rights of the County hereunder or as otherwise provided by law. If the Concessionaire fails to timely remove the Building upon the expiration of this Agreement despite demand to do so by the County, the Concessionaire shall indemnify and hold the County harmless from all loss or liability including, without

limitation, any claim made by any succeeding Concessionaire founded on or resulting from such failure to surrender, and together with interest, attorney's fees, and costs.

59. POWERS OF THE COUNTY. Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the County.
60. IMPOSSIBILITY. The Parties shall not be responsible for their failure to perform their obligations described herein if the County's performance is rendered impossible or impracticable due to strikes, walk-outs, acts of God, inability to obtain labor, materials, or services, government restrictions, enemy action, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the Parties. Furthermore, the County shall not be responsible for any damages arising from its failure to provide the Concessionaire access to or use of the Building available for the Concessionaire's use where such performance is rendered impossible or impracticable due to the County's closure of the Park, Grounds or Building to the public or transfer of the Park or a portion thereof and the Concessionaire shall be entitled to a rent reduction during such period, consistent with *Section 36* above.
61. SEVERABILITY. If any term or provision of this Agreement or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.
62. NON-WAIVER. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be waived, modified or deleted except by an instrument, in writing, signed in advance by the Parties.
63. NO PARTNERSHIP. Nothing contained herein shall make, or be deemed to make, the County and the Concessionaire a partner of one another, and this Agreement shall not be construed as creating a partnership or joint venture.
64. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall create, or be deemed to create, any legal right, obligation, or cause of action in any person or entity not a party to it.
65. AGREEMENT LIMITATIONS. It is understood and agreed that this agreement only grants a concession agreement, and not a lease. This Agreement shall only confer permission to occupy and use the Building described for concession purposes. The Concessionaire's expenditure of capital and/or labor in the course of use and occupancy shall not confer any interest or estate in the Building or park by virtue of said use, occupancy and/or expenditure of money thereon. The sole privilege granted from the County to the Concessionaire is a personal and revocable privilege of use in the Building for the concession described herein. The Concessionaire is responsible for obtaining all other necessary agreements and licenses.
66. PUBLIC DISCLOSURE OF AGREEMENT. This Agreement shall be considered a public document and will be available for inspection and copying by the public. If the

Concessionaire considers any portion of the items delivered to the County to be protected under law, the Concessionaire shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.” If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the law. If the material is not exempt from public disclosure law, the County will notify the Concessionaire of the request and allow the Concessionaire and allow the Concessionaire twenty (20) days to take whatever action it deems necessary to protect its interests.

If the Concessionaire fails or neglects to take such action within said period, the County will release the portions of the Agreement deemed subject to disclosure. By entering into this Agreement, the Concessionaire assents to the procedure outlined in this paragraph and shall have no claim against the County on account of actions taken under such procedure. The Concessionaire’s failure to specifically identify items as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET” will not diminish the Concessionaire’s proprietary rights in its trade secrets and other confidential information identified in this Contract (including all Attachments and Exhibits), or otherwise identified, as trade secrets and/or confidential information; provided, if the Concessionaire fails to specifically label protected items, the County will not be liable to the Concessionaire for inadvertently releasing such items pursuant to a disclosure request.

67. ENTIRE AGREEMENT - AMENDMENTS. This printed Agreement together with the attached exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the Parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid or effective unless evidenced by an agreement in writing signed by the Parties.
68. NOTICES. Required notices except legal notices shall be given in writing to the following respective address:

<u>If to COUNTY:</u>	<u>If to CONCESSIONAIRE:</u>
King County Parks & Recreation Division	Mark Inahara
Division Director	Co-Owner
201 S. Jackson Street, Suite 700	Wash Spot LLC
Mail Stop – KSC-NR- 0700	12134 NE 166 th Place
Seattle, WA 98104-3855	Bothell, WA 98011
206-296-8632	206-898-8479
kevin.brown@kingcounty.gov	mark.inahara@gmail.com

Each party shall revise the designations as needed, including the replacement of the originally named representatives. Revisions shall be delivered to the other party’s representative. All designations shall state the name of the replacement representative, her/his title, mailing address, phone number(s), and email address. Notices sent by mail shall be deemed to have been given when properly mailed.

69. MUTUAL NEGOTIATION; CONSTRUCTION. The County and the Concessionaire have mutually negotiated the terms and conditions of this Agreement. The County and the Concessionaire agree that the Agreement shall not be construed against either of them.

- 70. CHOICE OF LAW; JURISDICTION AND VENUE. The County and the Concessionaire agree that Washington State law will govern this Agreement, including the State's choice of law rules. The County and the Concessionaire agree that the King County Superior Court, in Seattle, Washington, will have jurisdiction to hear any litigation regarding this Agreement; and the County and the Concessionaire further agree that the King County Superior Court in Seattle will be the sole and proper venue in which to bring any litigation regarding this Agreement.

- 71. ATTACHMENTS. The following attachments are exhibits to this Agreement:
 - A. Marymoor Park Map
 - B. Map of Grounds including Common Area where Building is located
 - C. Building Plans and Layout
 - D. Concessionaire's Hours of Operation, Approved List of Goods, Services, and Prices
 - E. Concessionaire Obligations
 - F. Concessionaire and County Emergency Contact Information
 - G. Concessionaire Insurance Certificate(s) and Endorsement(s)
 - H. Monthly Concessionaire Reporting Form

IN WITNESS WHEREOF, the County and the Concessionaire have executed this agreement on the dates specified below.

WASH SPOT LLC

KING COUNTY

 Mark Inahara
 Member and Co-Owner

 Dow Constantine
 King County Executive

 Date

 Date

APPROVED AS TO FORM:

By: _____
 Kimberly Frederick
 Deputy Prosecuting Attorney

17512

STATE OF WASHINGTON)

)ss

COUNTY OF KING)

On this day personally appeared before me _____ to me known to be the _____ of the _____ that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and that he was authorized to execute the said instrument.

GIVEN under my hand and official seal this _____ day of _____, 20____.

NOTARY PUBLIC in and for the State of
Washington residing at _____
My appointment expires _____

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that (he/she) was authorized by the **King County Executive** to execute the instrument, and acknowledged it as the Manager, Property Services of King County, Washington to be the free and voluntary act of said the County for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State of
Washington residing at _____
My appointment expires _____

Exhibit A

Marymoor Park Map



Exhibit B

Map of Grounds including Common Area where Building is located

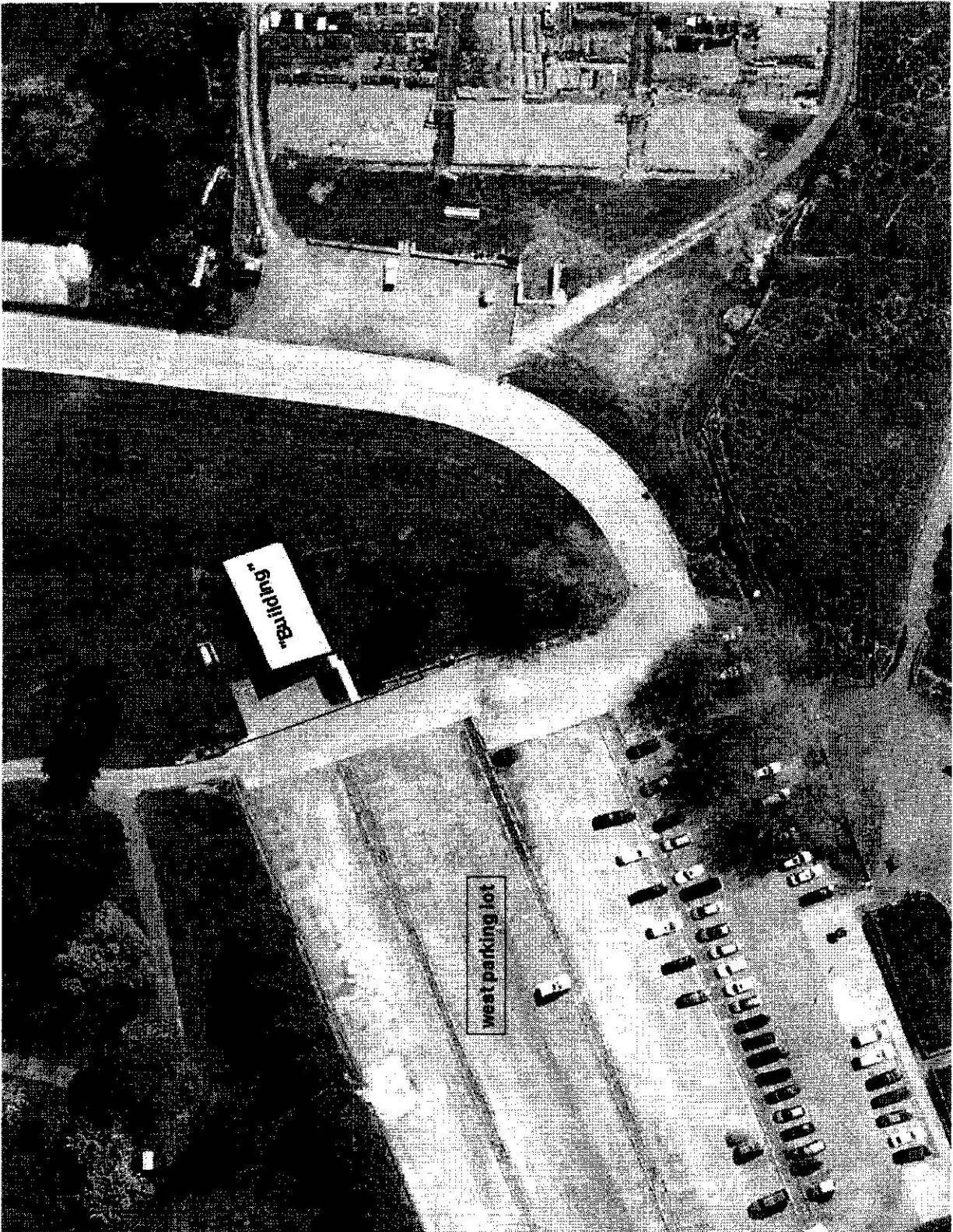


Exhibit C

Building Plans and Layout



Exhibit D**Concessionaire's Hours of Operation, Approved List of Goods, Services, and Prices****Hours of Operation – Standard Time**

<u>Day</u>	<u>Hours</u>
Monday thru Friday	10 am – 4 pm
Saturday	10 am – 4 pm
Sunday	10 am – 4 pm

Hours of Operation – Daylight Time

<u>Day</u>	<u>Hours</u>
Monday thru Friday	Noon – 6 pm
Saturday	10 am – 6 pm
Sunday	10 am – 6 pm

Approved List of Goods and Prices

<u>Goods</u>	<u>Price</u>
Specialty Shampoo up to	\$2
Conditioner up to	\$2

Vending Machine Items

Soft drinks/bottled water	\$1 - \$2
Snack items	\$1 - \$2
Dog treats & accessories	\$1 - \$5

Approved List of Services and Prices

<u>Services</u>	<u>Price</u>
Spot Wash	\$10
Max Wash	\$14

Exhibit E

Concessionaire Obligations

Pursuant to Section 17 of the Concession Contract ("Agreement") between King County and the Concessionaire, should the Concessionaire desire to undertake any improvements to the Building or Grounds, the Concessionaire is obligated to submit to the County, for its approval, detailed plans and specifications of the Concessionaire' proposed improvements to the Building or Grounds. No improvement or construction shall be made unless applicable notice and authorization by ordinance requirements have been satisfied. The current threshold requires prior approval by ordinance for any improvement with a value exceeding \$50,000. The Concessionaire is obligated to provide those plans specifications within forty-five (45) days after execution of the Agreement. This Exhibit E to the Agreement outlines some, but not all, of the specific tasks and obligations that the Concessionaire and the County must execute pursuant to the Agreement.

The Concessionaire's duties under this Agreement include maintaining in good working order the Building, all it appurtenances, fixtures, hardware and the equipment necessary to operate the business. The Concessionaire's maintenance duties and responsibilities shall include, but are not limited to, the following:

- A. Place no load upon any floor of the Building in excess of such floor's designed load per square foot as allowed by law.
- B. Maintain and keep operational the sinks, traps, and plumbing associated with the Building and its facilities.
- C. Apply for Permits and work through the King County Department of Development and Environmental Services (DDES) for any needed permits or approvals.
- D. Consistent with all applicable laws and regulations, install an exterior sign (possibly lit by external light sources) on and/or adjacent to the Building, advertising the Concessionaire's business.
- E. Operate the dog wash business and provide necessary personnel, if any.
- F. Maintain all washing tubs, fixtures, water heater(s), interior plumbing, electrical wiring equipment, and all internal/external finishes.
- G. Maintain all doors and frames; hardware; plumbing; electrical; flooring (concrete slab).
- H. Maintain all interior lighting adequate to operate the concession in a safe manner.
- I. Maintain all interior informational signage in the Building as necessary to assist the public with utilizing the services; exterior signage advertising the concession.

County Obligations

The County's duties under the Agreement include, but are not limited to, the following:

- A. Maintain water, sewer and electrical utilities to the building. The Concessionaire to pay for utilities as specified in *Section 20* of the Agreement.
- B. Maintain adjacent West Parking Lot and maintain drive-in access for Wash Spot customers and employees.
- C. Maintain water supply at a minimum of 60 psi during the Concessionaire's operating hours.
- D. Maintain water meter that will track and calculate the Concessionaire's water usage.
- E. Maintain electrical service of 200 amps or greater and electrical meter to track and calculate the Concessionaire's electrical usage.
- F. Maintain 1-1/4" service water meter.
- G. Provide space for an exterior directional sign on the Parks main entry road.

- H. Inform Wash Spot contacts of scheduled activities which may restrict Wash Spot customer and employee access to West Parking Lot.

Exhibit F

Concessionaire and County Emergency Contact Information

Wash Spot LLC aka Wash Spot Express at Marymoor Park
Emergency Contacts as of May 2012

Mark Inahara	Owners	Mark Hidaka
206-898-8479	Mobile	206-713-3638
206-233-4743	Work	206-682-0320

King County Parks Marymoor Staff
Emergency Contacts as of May 2012

Norah Gaynor, Park Manager	206-255-1804
Karl Kostal, Maintenance Manager	206-255-1812
After-Hours Maintenance/Parking Staff	206-669-8931

Exhibit G

Concessionaire Insurance Certificate(s) and Endorsement(s)

On File

Exhibit H

Monthly Concessionaire Reporting Form

CONCESSIONAIRE: Wash Spot LLC dba Wash Spot Express

NAME: _____ DAY PHONE: _____

MONTH / YEAR of PARK USE: _____

	Example	
1. Base Rent	(\$1,050.00)	\$1,050.00
2. Monthly Gross Sales	(\$15,000.00)	_____
3. Sales Tax Rate	(0.095)	
4. Gross Monthly Receipts less Sales Tax (line 1 <u>divided by</u> 1.095)	(\$13,698.63)	_____
5. Gross Monthly Receipts in excess of \$8,000 (if applicable)	(\$5,698.63)	_____
6. Calculate Percentage Fee (line 5 <u>multiplied by</u> 0.10)	(\$569.86)	_____
7. Rent + Fee Subtotal (line 1 <u>plus</u> line 6)	(\$1,619.86)	_____
8. Calculate Leasehold Excise Tax (line 7 <u>times</u> 0.1284)	(\$207.99)	_____
9. Total Amount Due (line 7 <u>plus</u> line 8)	(\$1,827.85)	_____

Payment is due by the 10th of the following month. Late payment may be assessed a \$50.00 late fee. Please make check payable to King County Parks and delivery or mail with the completed form to:

King County Parks
Marymoor Business Office
PO Box 3517
Redmond, WA 98052

CERTIFICATION

I, the undersigned do hereby certify, that the above Gross Sales Statement has been prepared by me, and all the financial reporting information above is complete and accurate.

Certified By _____ Date _____

Title _____

**This material is available in alternate formats upon request.
www.kingcounty.gov/parks**