



CITY OF POCATELLO
Parks & Recreation Department
Executive Summary

Date: April 4, 2024

To: Mayor Blad and Council Members

From: Anne Butler, Parks & Recreation Director

Re: Recommendation to award Concessionaire Agreement at Ross Park Aquatics Complex (RPAC) to Jeris Jumbo Café LLC

It is my recommendation the City of Pocatello enter into a concessionaire agreement with Jeris Jumbo Café LLC (mailing address: 3122 Pole Line Road, Pocatello, Idaho 83201) for food services to be provided at Ross Park Aquatics Complex (RPAC), 2901 S. 2nd Avenue. We received five (5) proposals in response to our solicitation, which have been evaluated to determine responsiveness, food service experience and menu offerings.

We are excited for the opportunity to work with a local, small family-owned business to provide food offerings within the RPAC. Jeris Jumbo Café has been an eatery in our community for over 55 years who prides themselves on serving an affordable home cooked meal. Their owner, Heidi Hunsaker, is thrilled about the challenge and the variety of food they will be able to offer patrons of the facility.

The relevant documentation is attached hereto for Mayor and Council approval. The Council may wish to authorize Mayor Blad to sign and execute the paperwork required to effectuate this procurement.

MEMORANDUM

TO: Brian C. Blad, Mayor; Members of the City Council
FROM: Ian Johnson, Deputy City Attorney
RE: Concessionaire Contract with Jeri's Jumbo Café
DATE: March 29, 2024

I have reviewed the above-referenced Concessionaire Contract with Jeri's Jumbo Café to run concessions at Ross Park Aquatic Complex and it meets with my approval for the Mayor's signature once so authorized by the City Council.

If you have any questions, please feel free to contact me.

CONCESSION LICENSE AGREEMENT

THIS CONCESSION LICENSE AGREEMENT is made and entered into this _____ day of _____ 2024, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as “City”, and Jeris Jumbo Café LLC, an Idaho limited liability company, hereinafter referred to as “Concessionaire”.

WITNESSETH:

WHEREAS, the City owns and operates the Ross Park Aquatics Complex within Lower Ross Park in Pocatello, hereinafter referred to as “RPAC”; and

WHEREAS, the City also owns and in past years has operated a Concession Stand within the Ross Park Aquatics Complex, hereinafter referred to as “RPAC Concession Stand”; and

WHEREAS, the Jeris Jumbo Cafe LLC restaurant is owned and operated by the Concessionaire at 3122 Pole Line Road, in Pocatello; and

WHEREAS, the parties will enter into one-year Concession License Agreement for the 2024 season for Jeris Jumbo Cafe to provide food and beverage concession services for the convenience and welfare of the users of the RPAC facilities; and

WHEREAS, the City has constructed a Concession Building facility at RPAC, and City and Concessionaire desire that Concessionaire provide food and beverage concession services at the new RPAC Concession Stand on an on-going basis;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Concession. The City does grant to the Concessionaire the right, and the Concessionaire does accept from the City the right, to operate food and beverage concessions at

the site known as RPAC Concession Stand, 2901 South 2nd Avenue, Pocatello, Idaho. Concessionaire shall have right at this location.

2. Purpose. The Concessionaire agrees to sell at the concession site food, beverages, candy, ice cream, and other such refreshments. Specific food, beverage, candy, ice cream, and other such refreshment items sold shall be at the discretion of the Concessionaire.

3. Term. This Agreement shall be effective on the 25th day of May, 2024, and shall expire on the 18th day of August 2024. This Agreement may be renewed for an additional four (4) one (1) year terms effective on the Saturday of Memorial Day weekend, and expiring on the last Sunday in August, unless sooner terminated by either Party. The termination of this Agreement may be made by providing notice as hereinafter provided on or before February 1 of each year.

City grants Concessionaire permission, at Concessionaire's discretion, to enter the RPAC Concession Stand beginning up to thirty (30) days prior to the term effective date each year to prepare the RPAC Concession Stand for Concession. Concessionaire shall have thirty (30) days at the end of each term year to clean the premises and remove any of its inventory or other property.

4. Compensation to be paid to the City. Concessionaire agrees to pay to the City seventeen percent (17%) of gross sales at the RPAC Concession Stand. Payment is due no later than September 15 of each year, and shall be accompanied with a profit-and-loss statement in such detail as may be required by the City. For the purposes of this Agreement "sales" shall include receipts from food, beverage, candy, ice cream, and other such refreshment items sold at the RPAC Concession Stand. Except as provided hereinabove, the City and Concessionaire also agree that the Concessionaire will not be assessed a rental or lease fee during their operation of the RPAC Concession Stand. Concessionaire will be granted a \$3,500 credit by

the City for initial equipment purchases for the 2024 season to be credited at the time of the final payment.

5. Fixtures, Furnishings, and Equipment. The License granted hereunder includes the right to manage and use the RPAC Concession Stand facilities, fixtures, furnishings, and equipment owned by the City and currently located on the premises. Said furnishings and equipment are listed in Exhibit "A" attached hereto and incorporated herein. The City and RPAC Staff shall retain the right and ability to access the RPAC Concession Stand ice machine, as needed, for RPAC patron first aid and/or other Staff needs, as deemed necessary by RPAC Staff. The Concessionaire shall provide all additional fixtures, furnishings, equipment, or personal property it feels is necessary for the operation of the concession not set out on Exhibit "A." The Concessionaire agrees to return the premises and fixtures, furnishings, and equipment not owned by the Concessionaire to the City in a condition as good as, or better than, when accepted by the Concessionaire, reasonable wear and tear excepted therefrom.

6. Sanitation. The Concessionaire shall keep the RPAC Concession Stand areas in a clean, sanitary, and orderly condition and conduct the concession strictly in accordance with the requirements of the Health Department of the State of Idaho. All janitorial services necessary in the RPAC Concession Stand area shall be the responsibility of the Concessionaire. The City Sanitation Department will dispose of trash collected by the Concessionaire from RPAC Concession Stand areas and deposited in containers as designated by the City. The Concessionaire will maintain, order, and pay the Sanitation Department for one (1) 3-yard container for use near the exit of the concession stand. The City will maintain and pay for two other 3-yard containers on site at the RPAC for all parties use.

7. City's Right to Maintain Premises. The City reserves the right to enter upon the RPAC Concession Stand premises at any reasonable time in order to ensure compliance with

the terms of this Concession License. The City reserves the right to inspect, investigate, and survey the Concession premises as deemed necessary, and reserves the right to do any and all work of any nature necessary for preservation, maintenance, and operation of the premises. The Concessionaire shall be liable for all expenses incurred by the City for work done by the City in order to preserve, maintain, and operate the Concession premises when such work is the result of the Concessionaire's negligence or non-compliance with the terms of this Concession License.

8. Utility Service Payments. The City shall pay all charges for electricity, gas, water, and sewer service provided to the RPAC Concession Stand premises. The Concessionaire shall pay all charges for business telephones, telephone answering services, and propane fuel for grill operating. Concessionaire further agrees to pay for the annual maintenance of any grill or grills used on the premises in conjunction with RPAC Concession Stand operations by Concessionaire. The City shall pay for annual cleaning of the hood apparatus inside the concession stand.

9. Compliance with Laws. The Concessionaire shall strictly comply with all federal, state, and local laws, rules, regulations, and ordinances.

10. Indemnification and Hold Harmless. The Concessionaire agrees to fully indemnify and hold harmless, and agrees to protect and defend at their own cost and expense, the City, its officers, employees, agents, and successors from and against any and all risks, suits, judgments, expenses, claims, settlements, or liabilities which the City, its officers, employees, agents, and successors may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with activities of the Concessionaire granted herein, or by any of the Concessionaire's employees, agents, invitees, or any other person acting on behalf of the Concessionaire. The City hereby

agrees to fully indemnify and hold harmless, and agrees to protect and defend at their own cost and expense, the Concessionaire from and against any and all risks, suits, damages, judgments, expenses, claims, settlements or liabilities which the Concessionaire may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with the City's operations not otherwise granted to Concessionaire herein.

11. Insurance. In order to effectuate the foregoing indemnification provisions, Concessionaire shall maintain insurance coverage as follows:

A. Concessionaire shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify the City from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. The City shall be named as an additional insured or be acknowledged by Concessionaire's insurance carrier as a covered entity under the terms of said policy. Moreover, Concessionaire is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with Concessionaire without first giving the City of Pocatello, at least thirty (30) days written notice.

B. Concessionaire shall purchase personal property insurance in an amount sufficient to insure any and all Concessionaire's personal property which might be used in Concessionaire's operation of the business or which might be present at the RPAC Concession Stand within Lower Ross Park. Concessionaire understands that the City does not provide insurance coverage for Concessionaire's personal property or equipment.

C. If applicable, the USER shall provide Worker's Compensation insurance in accordance with the applicable provisions of Idaho Code for his employees and furnish the City

Clerk with satisfactory proof that such insurance is in effect.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section 10 “Indemnification and Hold Harmless.” Concessionaire’s failure to maintain insurance shall be a basis for immediate termination of this Agreement.

12. Destruction of Premises. In the event the structures and facilities are destroyed, this Concession License Agreement shall be deemed to be terminated.

13. Operating Hours. The Concessionaire shall, at a minimum, operate the RPAC Concession Stand Mondays - Sundays during the hours of 12:00noon – 6:00pm, during all regular RPAC days of operation, and during annual seasonal special events as scheduled, which schedule shall be provided to the Concessionaire at least four (4) weeks in advance. Inclement weather would allow the Concessionaire to close as needed as long as there is reasonable notice to RPAC management.

14. Staffing. The Concessionaire shall operate this concession personally or shall employ sufficient and qualified personnel to operate the concession in a businesslike manner. Hiring, compensation, insurance, training and other costs and responsibilities associated with the hiring of RPAC Concession staff shall be the sole responsibility of the Concessionaire. Said staff shall report to and have their duties directed solely by the Concessionaire.

15. Outside Food or Beverages Allowed. The Concessionaire understands and agrees that, as has been the long-term and traditional operating policy at the RPAC, and in continued recognition of financial limitations of some RPAC patrons, the City shall allow RPAC patrons the ability to bring outside food or beverage into the RPAC, should those patrons so desire.

16. Concessionaire's Independent Contractor Status. It is understood and acknowledged by the parties that the relationship of the Concessionaire to the City is that of an independent contractor. The Concessionaire shall have no authority to employ any person as an employee or agent for or on behalf of the City for any purpose. Neither the Concessionaire nor any person engaging in any work relating to this concession at the request of or with the consent of the Concessionaire shall be deemed an employee or agent of the City, nor shall any such person or persons represent himself, herself, or themselves to others as an employee or agent of the City.

When ordering any goods or services for the RPAC Concession Stand, the Concessionaire shall place such order in its own name or business name and not in the name of the City. The Concessionaire shall notify its vendors of the independent relationship between the parties to this Concession License and shall advise its vendors that the Concessionaire is solely responsible for the goods or services purchased.

17. Inspection of Records. Concessionaire shall keep accurate records of all sales and receipts in accordance with such bookkeeping systems as the City may approve. The City shall have the right to inspect the books, records, and inventories of the Concessionaire at any reasonable time.

18. Non-Assignment. This Concession License Agreement shall not be assigned in whole or in part nor shall the concession premises or any part thereof be sublicensed, nor shall any right or privilege herein granted to the Concessionaire be sold, transferred or assigned.

19. Modifications of License. This Concession License Agreement sets forth all of the agreements between the parties hereto, and no change, modification, or amendment thereof shall be valid and binding unless set forth in writing and signed by the City and by the Concessionaire.

20. Termination for Breach or Default.

A. If, in the judgment of the City, the Concessionaire breaches or is in default of any term of this Concession License Agreement, the City shall give the Concessionaire written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the Concessionaire fails or refuses to remedy such unsatisfactory performance or default within fifteen (15) days after receipt of said notice, the City may terminate this Concession License Agreement. If such breach or default is incapable of being remedied, the City may terminate the Concession License Agreement granted herein upon written notice to Concessionaire of the breach or default.

B. If, in the judgment of the Concessionaire, the City breaches or is in default of any term of this Concession License Agreement, the Concessionaire shall give the City written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the City fails or refuses to remedy such unsatisfactory performance or default within fifteen (15) days after receipt of said notice, the Concessionaire may terminate this Agreement upon written notice to the City or may seek whatever remedy is available at law or in equity.

21. Non-Waiver of Breach. The waiver by either party of any breach by the other party of any provision contained in this Concession License Agreement shall not be deemed to be a waiver of such provision or any subsequent breach of the same. The acceptance of any payment by the City shall not be deemed to be a waiver of any prior occurring breach by the Concessionaire regardless of knowledge by the City of such prior existing breach at the time of accepting such payment.

22. Notice. All notices required under this Agreement shall be made in writing and shall be deemed served when delivered personally or when deposited in the United States Mail with adequate postage to the following addressees:

TO THE CITY:

Director of Parks and Recreation
City of Pocatello
P.O. Box 4169
Pocatello, ID 83205-4169

TO THE CONCESSIONAIRE:

Jeris Jumbo Cafe, LLC
Heidi Hunsaker, Owner
3122 Pole Line Road
Pocatello, ID 83201
Phone: 208-406-3065
Email: jumboscafe1966@gmail.com

23. Renovations and Improvement. Concessionaire shall not undertake any renovations, modifications, or improvements to the concession facilities without the prior written consent of the Parks & Recreation Director. In the event Concessionaire makes improvements or renovates the existing concession premises, such renovations and improvements shall become the property of the City upon the termination of this Concession License Agreement. In the event Concessionaire chooses to purchase and incorporate or attach additional concession equipment or fixtures into the existing concession premises, such additional concession equipment or fixtures shall be and remain the property of the Concessionaire upon the termination of this Concession License Agreement, and the cost for removal of said additional concession equipment or fixtures upon the termination of this Concession License Agreement shall be the responsibility of the Concessionaire.

24. Writing is Entire Agreement. This Concession License Agreement constitutes the entire agreement between the parties. No evidence of any prior or contemporaneous agreements, written or oral, may be used to modify the express terms of this writing.

25. Captions for Convenience Only. The captions herein are for convenience only, and do not limit or amplify the language of the sections following.

26. Severability. That if any provision or portion of any provision of this Concession License Agreement shall be deemed illegal or unenforceable by a court of competent jurisdiction, the unaffected provisions or portions thereof shall remain in full force and effect.

27. Corporate Authority. Any individual or individuals executing the within document on behalf of any corporation which is a party hereto, hereby acknowledge and represent that he, she, or they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this document on such corporation's behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

28. Attorney's Fees Upon Breach. In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$150.00 per hour.

IN WITNESS WHEREOF, the parties hereto have executed this Concession License Agreement by and through their authorized representatives the day and year first above written.

CITY OF POCA TELLO, a
municipal corporation of Idaho

BRIAN C. BLAD, Mayor

EXHIBIT "A"

Existing City Equipment

Chest Freezer

Upright Freezer

Clear, flat-top ice cream freezer (approximately 60")

Two (2) Clear, flat-top ice cream freezers (approximately 30" each)

Four (4) display racks

Countertop gas griddle (36")

Microwave

Commercial Sinks

Water heater

Two (2) air-conditioning units

Hot dog steamer