

June 24, 1996

Introduced By: Ron Sims

Proposed No.: 96-477

ORDINANCE NO. **12356**

1
2 AN ORDINANCE authorizing the King County
3 Executive to enter into a contract
4 extension with Ogden Entertainment
5 Services, Inc. to operate food
6 concessions at the King County Domed
7 Stadium.

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 SECTION 1. Findings.

10 A. Ogden Entertainment Services, Inc. (Ogden) operates
11 approximately 100 fixed and portable food stands at the King
12 County Domed Stadium (Kingdome) under the terms and
13 conditions of a concessions contract with King County that
14 became effective on January 2, 1987.

15 B. That concessions contract will expire on January 2,
16 1997, unless King County and Ogden agree by July 2, 1996 to
17 exercise an option to extend the contract.

18 C. In the past three (3) years, Seattle-King County
19 Department of Public Health inspectors have cited food stands
20 operated by Ogden at the Kingdome for recurring health code
21 violations numerous times.

22 D. Because such health code violations could present a
23 threat to the health, safety, and welfare of the public, and
24 adversely impact the financial health of the Kingdome and its
25 tenants, who by contract share a percentage of the Kingdome's
26 concession revenues, the Council unanimously passed Motion
27 No. 9826 on April 1, 1996, which directed the Executive to
28 (1) correct the recurring food code violations at the

1 Kingdome, (2) improve notification procedures for health code
2 violations in all County-owned or occupied facilities, and
3 (3) initiate a competitive bidding process to select one or
4 more concessionaires to operate Kingdome concessions
5 beginning January 2, 1997.

6 E. Since approval of Motion No. 9826, the Seattle-King
7 County Department of Public Health has continued a heightened
8 level of food inspections at the Kingdome. Based on these
9 inspections, the Health Department has concluded that Ogden
10 has made substantial improvements to its food service
11 operations at the Kingdome. As a result, there has been a
12 dramatic reduction in the frequency and seriousness of food
13 code violations at the facility. There is reasonable
14 confidence to believe that Ogden's improved operations will
15 be sustained.

16 F. The prospective local purchaser of the Seattle
17 Seahawks professional football franchise has also recently
18 requested that King County not enter into a long term
19 concession contract that could constrain the County's
20 flexibility to change the food concession arrangements if
21 such a change is determined to be in the mutual interests of
22 King County and the Seahawks.

23 G. In light of the above recent events, the Council
24 hereby finds that it is in the best interest of the people of
25 King County to enter into a one (1) year extension of the
26 concessions contract with four additional one-year extension
27 options, each subject to Council approval; provided, however,
28 that any such extension shall include a provision addressing
29 the County's concerns that Ogden comply with all applicable

1 health code provisions and make King County whole for any
2 failure to do so.

3 SECTION 2. Concession Contract Extension

4 The Council hereby authorizes the Executive to enter
5 into a contract extension with Ogden which includes
6 provisions substantially in the form of Attachment A.

7 INTRODUCED AND READ for the first time this 3rd
8 day of June, 1996.

9 PASSED by a vote of 13 to 0 this 24th day of
10 June, 1996.

11 KING COUNTY COUNCIL
12 KING COUNTY, WASHINGTON

13 [Signature]
14 Chair

15 ATTEST:

16 [Signature]
17 Clerk of the Council

18 APPROVED this 28th day of June, 1996.

19 [Signature]
20 King County Executive

21 Attachments:

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AMENDMENT NO. 4 TO CONCESSION OPERATIONS CONTRACT

THIS AGREEMENT, made and entered into this ____ day of ____ 1996, by and between King County, a municipal corporation of the State of Washington ("King County") and Ogden Entertainment Services, Inc., formerly known as Ogden Food Service Corporation (the "Concessionaire").

WITNESSETH:

WHEREAS, King County and the Concessionaire entered into a Concessions Operations Contract dated January 21, 1987; and

WHEREAS, the effective date of such contract was January 2, 1987; and

WHEREAS, pursuant to Article 8, the initial term of such contract was for a period of five (5) years, with the prospect that (A) the contract may be extended for an additional five (5) years by written agreement of the parties upon the same terms and conditions as the initial term, and (B) at the end of the second five year term, another additional five (5) year extension may occur upon the same terms; and

WHEREAS, pursuant to the term of Amendment No. 1 dated December 18, 1990, Article 8 was amended to provide that any agreement to extend such contract for an additional (5) years must be in writing and executed by both parties at least eleven (11) months prior to the end of the initial term; and

WHEREAS, pursuant to the terms of Amendment No. 2 dated February 1, 1991, the initial term of such contract was extended an additional five (5) years; and

WHEREAS, pursuant to the terms of Amendment No. 3 dated October 6, 1995, Article 8 was amended to provide that any agreement to extend such contract for an additional (5) years must be in writing and executed by both parties at least six (6) months prior to the end of the initial term; and

WHEREAS, both King County and the Concessionaire would mutually benefit from such an extension in accordance with the terms and conditions set forth herein; and

WHEREAS, the Metropolitan King County Council, by Ordinance dated _____, has authorized the King County Executive to enter into this amendment extending such contract in accordance with the terms and conditions set forth herein;

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NOW THEREFORE, the parties mutually agree as follows:

1. Percentage Payment

A. Article 3 is hereby amended by adding the following new paragraphs at the end of said Article:

(d). Adjustment of Food and Beverage Concessions Percentage Payment. The parties acknowledge that the Kingdome Use Agreement between The Baseball Club of Seattle, L.P., (the "Baseball Club") and King County expires on March 14, 1997. King County anticipates that the Baseball Club and King County will enter into an amendment to that Use Agreement extending its terms as amended at least through the end of the 1998 baseball season. The parties further acknowledge that the enforceability of the Kingdome Use Agreement between Seattle Seahawks, Inc. ("SSI") and King County, which expires on December 31, 2005, is the subject of litigation between SSI and King County in state and federal court, which litigation has been conditionally stayed.

In the event that either 1) the Baseball Club and King County do not enter into an extension of their Use Agreement and the Mariners Baseball Club therefore ceases playing its home games in the Kingdome during the term of this Operations Contract, or 2) the Use Agreement between SSI and King County is terminated and the Seahawks Football Club therefore ceases playing its home games in the Kingdome during the term of this Operations Contract, the Concessionaire may seek an adjustment to the percentage payment due King County under section (a) above; provided, however, that the adjusted food and beverage concessions percentage rate shall be no lower than 45% of gross proceeds; and provided further that the Concessionaire shall not be entitled to seek such an adjustment if it enters into an extension of this Operations Contract pursuant to Article 8 at the current percentage payment rate after being notified that either of the conditions set forth above will occur during the contract year in question; and provided further, that this provision shall not affect the County's right to cancel any event in the Kingdome without liability to the Concessionaire pursuant to Article 31.

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(e). Process for Adjustment of Percentage Payment; Arbitration. In seeking to reach agreement on an adjusted percentage payment pursuant to paragraph (d) above, consideration shall be given to such factors as the anticipated changes, if any, in the Concessionaire's gross revenues, operating costs, and rate of return, the prevailing percentage payment rates in other concession agreements, the rate that King County would likely receive from a different concessionaire with appropriate adjustments for capital outlays and other sunk costs already incurred and amortized by the Concessionaire.

In the event King County and the Concessionaire cannot agree upon an adjusted percentage payment rate, an arbitration panel shall be appointed in the manner set forth below to establish an adjusted rate.

Either party may invoke arbitration by giving written notice to the other, in which notice such party shall name an arbitrator. The other party shall have seven (7) days thereafter in which, by written notice to the first party, it shall name an arbitrator, and if it fails to do so, the arbitrator named by the first party shall be the sole arbitrator. If both parties timely name arbitrators, the two such arbitrators shall, within ten (10) days after the second arbitrator is named, appoint a third arbitrator, who shall be chairman. In making its decision regarding the adjusted percentage payment due King County, the arbitration panel shall consider the same factors enumerated above that are to be considered by the parties seeking to reach an agreed payment rate. In no event shall the arbitration panel establish an adjusted food and beverage concessions rate which is lower than 45% of gross proceeds. The arbitration panel shall reach its decision within fifteen (15) business days of the selection of the third member of the panel. The decision of a majority of the arbitration panel so selected shall be binding upon the parties hereto. Each party shall pay the expenses of its arbitrator and the expenses of the third arbitrator shall be borne equally by the parties.

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2. Term

A. The first paragraph of Article 8 is hereby deleted in its entirety and the following shall be substituted in its place:

The term of this Operations Contract shall be for a period of eleven (11) years from the effective date of this Operations Contract. At the end of said term, this Contract may be extended on a year-to-year basis for a period of up to four (4) years by the mutual consent of King County and the Concessionaire on the same terms and conditions as the initial term. Any written agreement to extend this Contract for an additional one (1) year must be executed by both parties at least six (6) months prior to the terminal date of this Contract and is contingent upon the approval of the Metropolitan King County Council.

3. Additional Capital Improvements and Expenditures

A. Article 42 is hereby amended by adding the following new paragraphs at the end of said Article:

Additional Capital Improvements and Expenditures

(a). Additional Capital Improvements. There shall be added to the \$520,000 remaining under the amortization schedule set forth in the second paragraph of this Article \$100,000 for modifications to existing plumbing at the Kingdome which the Concessionaire has installed through June 1996. The resulting \$620,000 shall be re-amortized on a straight-line basis for a 3 year life from January 2, 1997; such that if this Operations Contract terminates at the end of 1997, the County shall be obligated to pay the Concessionaire \$413,333; and if this Operations Contract terminates at the end of 1998, the County shall be obligated to pay the Concessionaire \$206,667; and if this Operations Contract terminates at the end of 1999, the County shall be obligated to pay the Concessionaire nothing.

(b). Capital Expenditures for New Equipment. As listed in attached Exhibit A, the Concessionaire has purchased \$152,417.43 in new equipment at the Kingdome through June 1996. In the event this Operations Contract is extended for a period of 3 years or more, title to all such equipment shall vest in King County.

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(c). Future Plumbing Improvements Required Per Health Code. King County shall reimburse the Concessionaire for any future plumbing improvements made by the Concessionaire, and approved by the Stadium Director, where such improvements are necessary to achieve compliance with the provisions of the Code of the King County Board of Health.

(d). Other Capital Improvements. Any other capital improvements not specifically referenced herein shall be agreed to in writing in advance.

4. Public Health Code Compliance; Liquidated Damages

A. The Concession Operations Contract is hereby amended by adding Article 43 to read in its entirety as follows:

ARTICLE 43. PUBLIC HEALTH CODE COMPLIANCE

The parties recognize and agree that compliance with all applicable public health laws, ordinances, regulations, programs, standards, and written policies is a material term of this Operations Contract. Any substantial failure by the Concessionaire to so comply shall constitute a default of this Operations Contract and entitle King County to suspend its performance herein, declare an immediate termination, or invoke any other remedy provided for in this agreement.

In addition, the Concessionaire shall at all times comply with the following conditions:

(a) Food and Beverage Service Workers Permits. All employees on the Concessionaire's payroll shall have a current, valid Food and Beverage Service Workers Permits for all tasks which involve the storage, preparation, handling or sale of any food or beverage product on the Kingdome premises. This provision does not apply to charitable volunteers who work at Kingdome events, provided that such volunteers are under the direct supervision of an employee of the Concessionaire.

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(b) Food Safety Training. All employees on the Concessionaire's payroll shall complete a minimum of one (1) hour of training in a food safety program, approved by the Seattle-King County Department of Public Health, for all tasks which involve the storage, preparation, handling or sale of any food or beverage product on the Kingdome premises. This provision does not apply to charitable volunteers who work at Kingdome events, provided that such volunteers are under the direct supervision of an employee of the Concessionaire.

(c) Food Safety Specialist. The Concessionaire shall employ one or more food safety specialists or contract with a third-party acceptable to King County, who shall be on site at all Kingdome events in which at least the Kingdome arena level and either one additional building level or the adjacent pavilion is used, and who shall be exclusively devoted to monitoring the safe storage, preparation and handling of all food and beverage products.

(d) Event Staffing. The Concessionaire agrees to maintain adequate staffing during Kingdome events at all food sales and handling areas to effect compliance with public health code provisions.

(e) Proposed Menu Changes. The Concessionaire shall obtain approval from the Seattle-King County Department of Public Health of any proposed changes in menu items sold on the Kingdome premises prior to presenting such proposed menu changes to the Stadium Director for review and approval under Article 24.

(f) Public Health Violations--Corrective Action. In the event of the issuance of any report by a public health inspection officer setting forth a public health code violation, the Concessionaire shall take immediate corrective action to achieve compliance.

(g) Public Health Violations--Notice to County. The Concessionaire shall notify the Stadium Director in writing within three (3) hours of receiving a public health inspection report indicating noncompliance with any Federal, State or Local food or other public health law, ordinance, regulation, program, standard, or written policy, including any finding of noncompliance related to the storage, preparation, handling or sale

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of any food or beverage product on the Kingdome premises. Such written notice to the Stadium Director shall also include a copy of the public health inspection report and a statement describing the corrective action proposed by the Concessionaire to achieve timely compliance as specified by the public health officer.

(h) Serious Public Health Violations--Liquidated Damages. The Concessionaire agrees that compliance with public health laws is essential to its obligation under this agreement to provide the highest quality concessions on the Kingdome premises and to maintain the health, safety, and welfare of all Kingdome patrons who utilize the Concessionaire's food services. The Concessionaire further agrees that the issuance of any public health inspection report which finds a serious public health violation at the Kingdome has a direct negative impact on the sales of food and beverage products in an amount which is not easily ascertainable.

As an incentive for ensuring the Concessionaire's compliance with all public health laws, and to compensate King County for the reduction in revenues caused by the Concessionaire's noncompliance resulting in a serious health code violation, the Concessionaire agrees that it will pay as liquidated damages to King County the following:

(i) \$400 per point of sale for each reported serious public health violation occurring at a portable concession unit;

(ii) \$400 per point of sale for each reported serious public health violation occurring at an individual concession stand ;
or

(iii) \$4,000 per event day for each reported serious public health violation occurring in a kitchen located on the arena level of the Kingdome.

For the purposes of this Article, the term "point of sale" shall mean a cash register or cash drawer location at a concession facility.

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It is agreed that such liquidated damages are only for purposes of reimbursing King County for immediate revenue losses resulting from serious public health code violations and shall not be construed as a limitation of the Concessionaire's liability for other damages which may be caused by its failure to comply with public health code requirements.

For purposes of this Article, a public health code violation shall be considered "serious" where, because of circumstances under the Concessionaire's control, an individual concession stand, portable concession unit or kitchen is closed, either temporarily or permanently, because of a suspension or revocation of its Food Service Establishment Permit by a public health officer for any reason, including but not limited to, (1) a finding of an imminent or actual health hazard to the public, as defined in Section 5.04.430 of the Code of the King County Board of Health, or (2) the Concessionaire's failure to timely correct a prior public health violation(s), or (3) the accumulation of on-site violations in an amount and quality sufficient under inspection standards to result in immediate closure by the public health officer.

The acceptance of payment of liquidated damages by King County under this Article shall not constitute a waiver of any other remedy available to King County for the Concessionaire's breach, including the right to suspend performance and declare upon written notice a termination of this Operations Contract, or the right to invoke any other remedy provided for herein.

(i) Public Health Inspections--Costs. The Concessionaire shall reimburse the Seattle-King County Department of Public Health for its inspection costs where public health officers perform more than three inspections at the Kingdome in one (1) year to ensure the Concessionaire's compliance with applicable public health laws.

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4. Other Terms and Conditions

A. All other terms and conditions of the Concession Operations Contract executed on the 21st day of January, 1987, and amended on the 18th day of December, 1990 and 1st day of February, 1991, and 6th day of October, 1995, remain in full force and effect.

The effective date of this FOURTH AMENDMENT shall be July _____, 1996.

OGDEN ENTERTAINMENT SERVICES, INC.

KING COUNTY

By _____

Its _____

Its _____

APPROVED AS TO FORM:
KING COUNTY PROSECUTING ATTORNEY

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The stadium concessionaire will spend at least \$152,417.53 during 1996 to acquire the following items in the following amounts:

a.	Shelving units for Suites Kitchen and Concession stands	\$ 9,831.56
b.	Twelve (12) under counter wells warmers	12,456.00
c.	Five (5) commercial microwave ovens	3,618.00
d.	Two (2) Carter Hoffman double door	4,828.36
e.	Seven (7) Alto shaam cook and hold	31,653.72
f.	Nine (9) cold holding carts	28,188.00
g.	Twenty-two (22) insulating heating carts	41,961.26
	Sub Total	\$ 132,536.90
	Tax and Freight	19,880.53
	Total	152,417.43

Such expenditures shall be in addition to the \$2.6 million spent by Ogden on capital improvements to the concession facilities.