

September 4, 1997

Introduced By:

Rob McKenna
Greg Nickels
Christopher Vance

Proposed No.:

97-394

ORDINANCE NO. **12856**

AN ORDINANCE authorizing the King County Executive to enter into a contract extension with Ogden Entertainment Services, Inc. to operate food concessions at the King County Domed Stadium.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings.

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

B. Pursuant to the contract as amended on August 26, 1997, the concessions contract will expire on January 2, 1998, unless King County and Ogden agree by October 1, 1997 to exercise an option to extend the contract.

C. On June 28, 1996, the Council passed Ordinance No. 12356 which authorized the King County Executive to enter into a one (1) year extension of the concessions contract with four additional one-year extension options, each subject to Council approval; provided, however, that any such extension shall include a provision addressing the County's concerns that Ogden comply with all applicable health code provisions and make King County whole for any failure to do so.

D. Given the substantial improvements that Ogden has made in its food service operations at the Kingdome, the Council hereby finds that it is in the best interest of the people of King County to extend the term of the concessions contract through May 31, 2000, subject to a right of early termination; provided, however, that any such extension shall continue to include a provision

1 addressing the County's concerns that Ogden comply with all applicable health code provisions
2 and make King County whole for any failure to do so. At the end of said term, the County may
3 extend the term upon approval of the Council for a period of up to eight (8) months on the same
4 terms and conditions as the initial term.

5 SECTION 2. Concession Contract Extension

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

8 INTRODUCED AND READ for the first time this 7th day of July, 1997.

9 PASSED by a vote of 12 to 0 on this 8th day of September, 19 97

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KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

June Hague
Chair

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14 ATTEST:

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June
Clerk of the Council

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APPROVED this 10 day of September, 19 97.

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David
King County Executive

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Attachment: A. Amendment No. 7 to Concession Operations Contract, dated August 29,
1997.

12856

29 AUGUST 1997

AMENDMENT NO. 7 TO CONCESSION OPERATIONS CONTRACT

THIS AGREEMENT, made and entered into this ____ day of ____ 1997, 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 five (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 five (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, pursuant to the terms of Amendment No. 4 dated June 28, 1996, Article 8 was amended to extend the term for an additional one (1) year with up to four additional one-year extensions; and

WHEREAS, pursuant to the terms of Amendment No. 5 dated June 25, 1997, Article 8 was amended to provide that any agreement to extend such contract for an additional term must be in writing and executed by both parties at least four (4) months prior to the end of the initial term;

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WHEREAS, pursuant to the terms of Amendment No. 6 dated August 26, 1997, Article 8 was amended to provide that any agreement to extend such contract for an additional term must be in writing and executed by both parties as least three(3) months prior to the end of the initial term; and

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

NOW THEREFORE, the parties mutually agree as follows:

1. Percentage Payment

A. Paragraphs (d) and (e) of Article 3 are hereby amended to read in their entirety as follows:

(d). Adjustment of Food and Beverage Concessions Percentage Payment. In the event that either the Seattle Mariners Baseball Club ceases playing its home games in the Kingdome during the term of this Operations Contract, or the Seattle Seahawks Football Club 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.

In the event that both the Seattle Mariners Baseball Club and the Seattle Seahawks Football Club cease playing their home games in the Kingdome during the term of this Operations Contract, the adjusted food and beverage concessions rate shall be immediately subject to renegotiation without any minimum percentage of gross proceeds.

This paragraph (d) shall not affect King County's right to cancel any event in the Kingdome without liability to the Concessionaire pursuant to Article 31.

(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, unless both the Baseball Club and the Seahawks Football Club cease playing home games in the Kingdome. 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.

2. Term

A. The first paragraph of Article 8 is hereby amended to read as follows:

The term of this Operations Contract shall be through May 31, 2000. At the end of said term, the County may extend this Contract upon the approval of the Metropolitan King County Council for a period of up to eight (8) months on the same terms and conditions as the initial term.

Anytime after December 31, 1999, or the last Seattle Seahawks home game of the 1999 National Football League season, whichever occurs first, the County may terminate this Contract, if the County intends either to demolish or undertake a major renovation of the Kingdome. If the County elects to so terminate this Contract, the termination shall be effective the later of (a) ninety (90) days after the County notifies the Concessionaire, or (b) December 31, 1999, or the last Seattle Seahawks home game of the 1999 National Football League season, whichever occurs first. The County shall have no liability, cost or obligation with respect to any such termination. For purposes of this provision, the "County" includes any successor owner or operator of the Kingdome, including any "public stadium authority."

3. Branded Food Program

There shall be added a paragraph (d) to Article 35 which shall read as follows:

(d). Notwithstanding the foregoing, the Concessionaire and the County acknowledge that if the Football Northwest Agreement Closing ("FNW Agreement Closing") has occurred, Football Northwest ("FNW") shall have the right to approve menu and pouring rights for football games through the end of the 1998 Major League Baseball season, which approval shall not be unreasonably withheld. Thereafter, FNW shall have the right to approve menu and pouring rights for all Kingdome events (which approval shall not be unreasonably withheld), subject to: (1) the rights of existing advertisers; (2) the terms of already substantially negotiated advertising agreements; (3) the County's authority to withhold approval of future proposed advertising agreements which have not already been

negotiated; and (4) the right of the Seattle Mariners Baseball Club (the "Baseball Club") to approve menu and pouring rights with respect to baseball games, which shall be subordinate to the rights granted to FNW.

Accordingly, if the FNW Agreement Closing has occurred, FNW and the Concessionaire shall together implement the Branded Food Program for football games in the same manner required of the Concessionaire and the Baseball Club as set forth in paragraphs (a) through (c) above. In the event the Baseball Club ceases to play its regular home games in the Kingdome, but in no event later than the last home game of the 1998 Major League Baseball season, FNW and the Concessionaire shall together implement the Branded Food Program for all Kingdome events in the same manner required of the Concessionaire and the Baseball Club as set forth in paragraphs (a) through (c) above; provided, however, that the Concessionaire shall be under no obligation to make any additional capital improvements to implement Article 35 of this Agreement, except as may otherwise be required under Article 42 (a) (which was added by Amendment No. 4 to this Agreement).

As used herein, "FNW Agreement Closing" means that all terms of the Consent to Assignment and Amendment of Use Agreement (the "FNW Agreement") dated the 7th day of January, 1997, by and between King County and Football Northwest LLC, a Washington limited liability company, shall have become fully effective as provided in Section 1 of the FNW Agreement.

4. Capital Improvements and Equipment Expenditures

Paragraphs (a) and (b), which were added to the end of Article 42 by Amendment No. 4 to this Agreement, are hereby amended to read as follows:

(a). Capital Improvements and New Equipment. 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 reamortized on a straight-line basis for a 3 year life from January 2, 1997. There shall also be added to the aforementioned amortization schedule \$83,000 for new food handling and storage equipment, as listed in attached Exhibit B, effective

January 2, 1998. Accordingly, after December 31, 1999, the County shall be obligated to pay the Concessionaire nothing under this amortization schedule.

Notwithstanding the foregoing, and subject to the approval of the Executive or the Executive's designee in his or her sole discretion, there may be added to the amortization schedule an amount not to exceed \$50,000 per year for any additional food handling and storage equipment installed by the Concessionaire which is necessary to maintain compliance with the provisions of the Code of the King County Board of Health.

(b). Additional Equipment Expenditures. The Concessionaire shall have purchased up to \$185,675.35 in additional concessions equipment at the Kingdome from 1996 through the end of 1997, as listed in attached Exhibit C (which was formerly referred to as Exhibit A in Amendment No. 4 to this Operations Contract). The parties agree that such equipment shall not be subject to amortization under the provisions set forth in subsection (a) above, and that the County shall not be obligated to make any payment to the Concessionaire for such equipment. Accordingly, upon the expiration of this Operations Contract, or its termination under Article 8, title to all such equipment shall vest in King County, at no cost to the County.

5. 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 the 1st day of February, 1991, and the 6th day of October, 1995, and the 28th day of June, 1996, and the 25th day of June, 1997, and the 26th day of August remain in full force and effect.

OGDEN ENTERTAINMENT SERVICES, INC.

KING COUNTY

By _____

Its _____

Its _____

APPROVED AS TO FORM:
KING COUNTY PROSECUTING ATTORNEY

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STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that

signed this instrument, on oath
stated that he/she was authorized to execute this instrument and
acknowledged it as the _____ of _____
_____ to be the free and voluntary act of such
party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 1997.

(seal or stamp)

(Signature of notary public)

(Printed name of notary public)

Title

My appointment expires:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that
_____ signed this instrument, on oath
stated that he/she was authorized to execute this instrument and
acknowledged it as the _____ of _____
_____ to be the free and voluntary act of such
party for the uses and purposes mentioned in the instrument.

DATED this ___ day of _____, 1997.

(seal or stamp)

(Signature of notary public)

(Printed name of notary public)

Title

My appointment expires:

12856

The Concessionaire shall spend at least the following amounts in 1997 on the following items and shall provide written verification to the County that such items have, in fact, been acquired:

a.	One (1) Vulcan gas tilting skillet and pan	\$ 7,367.61
b.	Eight (8) insulating heating cabinets	16,022.00
c.	Eight (8) commercial microwaves	6,134.40
d.	Thirty-six (36) under counter Wells warmers	37,363.68
	Sub Total	\$ 66,887.69
	Tax and Freight	16,111.36
	Total	\$ 82,999.05

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The Concessionaire has spent \$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 warmers	4,828.36
e.	Seven (7) Alto Sham cook and holds	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

The Concessionaire shall spend at least \$33,257.92 during 1997 to acquire the following items in the following amounts and shall provide written verification to the County that such items have, in fact, been acquired:

a.	Nine (9) Perlic 3 keg beer pouring systems	\$ 15,899.49
b.	Two (2) horizontal bottle chillers	1,848.00
c.	Twelve (12) Casio cash registers	10,550.40
	Sub Total	\$ 28,297.89
	Tax and Freight	4,960.03
	Total	\$ 33,257.92

Such expenditures totaling \$185,675.35 shall be separate from the \$2.6 million spent by the Concessionaire on capital improvements to the concession facilities.