

0150-09951-0000

TRANSMITTAL

TO The City Council	DATE JUN 28 2013	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 4	

**Proposed Concession Agreement with Rowena Partners, LLC
Relative to the Griffith Park – Fern Dell Refreshment Stand Concession Agreement**

Transmitted for your consideration. The Council has 60 days from the date of the receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a).
See the City Administrative Officer report attached.


MAYOR

MAS:CEA:LGC:08130201t

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

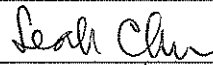
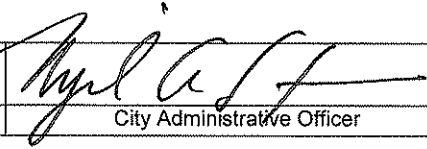
To: The Mayor	Date: 06/27/2013	C.D. No. 4	CAO File No.: 0150-09951-0000																												
Contracting Department/Bureau: Recreation and Parks		Contact: Desiree Guzzetta																													
Reference: Transmittal from the Board of Recreation and Park Commissioners dated March 11, 2013; referred by the Mayor on March 15, 2013																															
Purpose of Contract: Concession agreement for the operation of the Fern Dell Refreshment Stand at Griffith Park.																															
Type of Contract: (X) New contract () Amendment		Contract Term Dates: Five years from date of execution with two five-year renewal options																													
Contract/Amendment Amount: \$0																															
Proposed amount \$0 + Prior award(s) \$0 = Total \$0																															
Source of funds: Not applicable																															
Name of Contractor: Rowena Partners, LLC 2333 Fern Dell Place, Los Angeles, CA 9006																															
	Yes	No	N/A*																												
1. Council has approved the purpose		X																													
2. Appropriated funds are available			X																												
3. Charter Section 1022 findings completed	X																														
4. Proposals have been requested	X																														
5. Risk Management review completed	X																														
6. Standard Provisions for City Contracts included	X																														
7. Workforce that resides in the City: 100%																															
8. Contractor has complied with: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td>Yes</td> <td>No</td> <td>N/A*</td> </tr> <tr> <td>a. Equal Employt. Oppty./Affirm. Action</td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>b. Good Faith Effort Outreach**</td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>c. Equal Benefits Ordinance</td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>d. Contractor Responsibility Ordinance</td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>e. Slavery Disclosure Ordinance</td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>f. Bidder Certification CEC Form 50</td> <td>X</td> <td></td> <td></td> </tr> </table>					Yes	No	N/A*	a. Equal Employt. Oppty./Affirm. Action	X			b. Good Faith Effort Outreach**	X			c. Equal Benefits Ordinance	X			d. Contractor Responsibility Ordinance	X			e. Slavery Disclosure Ordinance	X			f. Bidder Certification CEC Form 50	X		
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*N/A = not applicable ** Contracts over \$100,000																															

COMMENTS

At its meeting of March 6, 2013, the Board of Recreation and Park Commissioners (Board) approved a proposed agreement with Rowena Partners, LLC (Concessionaire) for the operation and maintenance of the Fern Dell Refreshment Stand (Fern Dell Stand) located at 2333 Fern Dell Place. The proposed agreement is for a term of five years with two five-year options to renew. Concessionaire shall pay the Department of Recreation and Parks (Department) the higher of 8 percent of gross receipts or \$56,160 as the revenue sharing fee. The Department reports that the Concessionaire has operated and maintained the Fern Dell Stand on a month-to-month basis since March 2004.

Selection Process

In October 2011, the Department released a Request for Proposal (RFP) for the operation and maintenance of the Fern Dell Stand. The RFP was advertised in the L.A. Daily Journal, and posted on the Los Angeles Business Assistance Virtual Network (BAVN) and on the Department's website. In addition, a letter inviting bids was mailed to over 250 organizations and individuals from a mailing list maintained by the Department's Concession Unit. In November 2011, the Department received three responses to the RFP as follows:

		
LGC	Analyst	08130201
Assistant CAO		City Administrative Officer

- High Rise Goodies Restaurant Group, Inc. dba Trimana (Trimana)
- JJ Management Company (JJ Mgmt)
- Rowena Partners, LLC (Concessionaire)

As stipulated in the RFP, the responses were evaluated on two levels. The first level included a review of the required compliance and submittal documents. The second level included a comprehensive evaluation by a panel of City employees of the submitted proposals.

Trimana, JJ Mgmt, and Concessionaire initially did not pass the first level review for failing to submit or complete one or more required documents on the RFP. Prior to the completion of the first level review, all three proposers were invited to the second level review. An evaluation panel of City employees was used to score and rank all three proposals. Rowena received the highest rank and score, and was recommended by the evaluation panel as the preferred operator for the concession. After conferring with the City Attorney's office and the Bureau of Contract Administration, the Department determined that some of the incomplete documentation can be deemed as an informality and be waived by the Board. However, both Trimana and JJ Mgmt also failed to submit CEC Form 55 along with their proposals as required by Measure H, and was therefore, deemed non-responsive.

Revenue Sharing

In the Concessionaire's RFP, the following items were offered:

- Higher of 8 percent of gross receipts or minimum annual revenue-sharing payment of \$56,160. In Fiscal Year 2010-11, Concessionaire generated \$629,829.33 in gross receipts and paid \$50,386.35 in revenue sharing fees.
- Proposed improvements include storage space, retractable awning, restroom exteriors, service windows and information kiosks to be completed within two years of the date of execution of the Agreement. A timeline for all the proposed improvements shall be submitted to the Department's General Manager for approval. Construction may not proceed until the detailed plans and specifications have been approved by the Department's General Manager in writing.

According to the Department, 90 percent of the revenue receipts will be deposited in the Department's General Fund and 10 percent into the Department's Concession Improvement Account.

In accordance with Charter Section 1022, the Board found that the Department does not have available in its employment, personnel with sufficient time and expertise to undertake the specialized tasks and that it is more feasible to secure the services by contract.

In accordance with Los Angeles Administrative Code Section 10.5, Council approval of the proposed agreement is required because the term exceeds three years. The proposed agreement is also subject to review by the City Attorney as to form.

RECOMMENDATION

That the Council approve and authorize the President and Secretary of the Board of Recreation and Park Commissioners to execute the proposed agreement with Rowena Partners, LLC for the

operation and maintenance of the Fern Dell Refreshment Stand at Griffith Park for a term of five years from contract execution with two five-year renewal options, subject to review and approval by the City Attorney as to form.

FISCAL IMPACT STATEMENT

Rowena Partners, LLC will pay the City 8 percent of Fern Dell Refreshment Stand gross receipts or a minimum of \$56,160, whichever is higher; 90 percent of the revenue receipts will be deposited in the Department's General Fund and 10 percent into the Department's Concession Improvement Account. There is no additional impact on the General Fund. To the extent applicable, the recommendation stated in this report is in compliance with the City Financial Policies in that user charges and fees are set to support the full cost of operations for which the fees are charged.

Attachments

MAS:CEA:LGC:08130201

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

BARRY A. SANDERS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

W. JEROME STANLEY
JILL T. WERNER
JOHNATHAN WILLIAMS

LATONYA D. DEAN
COMMISSION EXECUTIVE ASSISTANT II

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

**DEPARTMENT OF
RECREATION AND PARKS**

221 N. FIGUEROA STREET
SUITE 1510
LOS ANGELES, CA 90012

(213) 202-2640
FAX: (213) 202-2610
RAP.Commissioners@LACity.org

JON KIRK MUKRI
GENERAL MANAGER

March 11, 2013

Hon. Antonio R. Villaraigosa, Mayor
City of Los Angeles
Room 303, City Hall

Attention: Ms. Mandy Morales

Dear Mayor Villaraigosa:

In accordance with Executive Directive No. 3, there are attached herewith three copies of a proposed agreement with Rowena Partners, LLC for the operation and maintenance of the Fern Dell Refreshment Stand Concession.

Also attached for the assistance of your Office in reviewing this proposed agreement is Report No. 13-065, adopted by the Board of Recreation and Park Commissioners at its meeting of March 6, 2013. After review and recommendation by you, the proposed agreement will be submitted to the Board for final action.

If you have any questions with regard to the Proposed Agreement, please contact Desiree Guzzetta at (213) 202-3291.

Very truly yours,

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

LATONYA D. DEAN
Commission Executive Assistant

Attachments

cc: Desiree Guzzetta, Management Analyst II

OFFICE OF THE MAYOR
RECEIVED
2013 MAR 15 AM 11:27
CITY OF LOS ANGELES

2013 MAR 15 AM 11:55
CITY ADMINISTRATION OFFICE



REPORT OF GENERAL MANAGER

APPROVED
MAR 06 2013

NO. 13-065

DATE March 6, 2013

BOARD OF RECREATION
1 PARK COMMISSIONERS

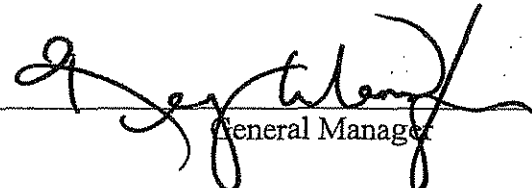
C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK -- FERN DELL REFRESHMENT STAND -- AWARD OF CONCESSION AGREEMENT TO ROWENA PARTNERS, LLC

R. Adams _____
H. Fujita _____
V. Israel _____

K. Regan _____
M. Shull _____
*N. Williams NDW


General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS

That the Board:

1. Award the Fern Dell Refreshment Stand Concession to Rowena Partners, LLC;
2. Find, in accordance with Charter Section 1022, that the Department does not have sufficient personnel available in its employ to undertake these specialized professional tasks and that it is more economical to secure these services by contract;
3. Approve a proposed five (5) year concession agreement, with two (2) five (5) year renewal options exercisable at the General Manager's sole discretion, substantially in the form on file in the Board Office, subject to approval of the Mayor, City Council, and the City Attorney as to form;
4. Direct the Board Secretary to transmit the proposed agreement, concurrently, to the Mayor, in accordance with Executive Directive No. 3, and the City Attorney; and,
5. Authorize the Board President and Secretary to execute the subject agreement upon receipt of the necessary approvals.

SUMMARY:

The Fern Dell Refreshment Stand Concession (Concession) is a snack stand located at 2333 Fern Dell Place, Los Angeles, CA 90068. The Concession provides food and non-alcoholic beverages to patrons of Griffith Park and the surrounding community.

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The Concession has been operated on a month-to-month basis by Rowena Partners, LLC under an interim Concession Agreement since March 12, 2004. The Concession had a "soft opening" in July 2005 and was fully operational by 2006. In 2011, the concession generated \$629,829.33 in gross receipts and paid \$50,386.35 in revenue-sharing fees to the Department.

On June 15, 2011, the Board approved the release of the Request for Proposals (RFP) for the Operation and Maintenance of the Fern Dell Refreshment Stand Concession (Board Report No. 11-188). The RFP was released on September 27, 2011. The RFP was advertised in the Daily Journal; posted on the Los Angeles Business Assistance Virtual Network (BAVN); and posted on the Department's website. A letter inviting bids was mailed to over 250 organizations and individuals from a mailing list maintained by the Concessions Unit.

On October 14, 2011, Addendum No. 1 to the RFP was posted. The Addendum added Exhibit G to the RFP, which detailed instructions to the prospective proposers regarding compliance with Los Angeles City Charter Section 470(c)(12) (Measure H), and added Section 20(N) to the Sample Concession Agreement (Exhibit C to the RFP), also having to do with compliance with Measure H. On October 18, 2011, a revised version of Addendum No. 1 was posted to correct language in the original Addendum, as determined by the Board Office.

On October 24, 2011, a Pre-Proposal Conference was held at the main Conference Room in the Administration Building in the Central Services Yard. A walk-through of the premises was conducted after the conference concluded.

On November 8, 2011, the Questions and Answers document was posted. On November 22, 2011 the following proposals were received:

- High Rise Goodies Restaurant Group, Inc. dba Trimana
- JJ Management Company
- Rowena Partners, LLC.

As stipulated in the RFP, evaluation of the bid proposals was to occur in two levels. Level I was a check and review for required compliance and submittal documents; Level II was a comprehensive evaluation of the proposals by a panel comprised of City employees. Proposers had to successfully pass Level I to proceed to Level II.

Staff performed a Level I review of the following required documents:

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Compliance Documents:

- 1) Proposer's Signature Declaration and Affidavit
- 2) Disposition of Proposals
- 3) Affirmative Action Plan
- 4) Contractor Responsibility Ordinance Statement
- 5) Equal Benefits Ordinance Statement
- 6) Living Wage Ordinance/Service Contractor Worker Retention Ordinance
- 7) Business Inclusion Outreach (BIO)
- 8) CEC Form 50 (Municipal Lobbying Ordinance/Bidder Certification)
- 9) CEC Form 55 (Measure H/Bidder Contributions) (*included in the RFP as Addendum No. 1*)

Submittal Documents:

- a. Cover Letter
- b. Proposal Deposit
- c. Ability to Finance
- d. Background and Experience
- e. Proposed Business Plan For This Concession
- f. Proposed Revenue-Sharing Fee and Payment to City
- g. On-Going Refurbishment, Improvements, and Maintenance
- h. Concession Improvements (Optional)

Proposals are either Responsive (pass) or Non-Responsive (fail). The following is the complete Level I findings. It should be noted that Level I findings were not finalized until after Level II interviews had been conducted pending input from the City Attorney:

- High Rise Goodies Restaurant Group, Inc. dba Trimana (Trimana) was found Non-Responsive in four compliance documents and Responsive in all eight submittal documents (Attachment A-1). Therefore, the entire proposal is deemed Non-Responsive.
- JJ Management Company (JJ Management) was found Non-Responsive in one compliance document and Responsive in all eight submittal documents (Attachment A-2). Therefore, the entire proposal is deemed Non-Responsive.
- Rowena Partners, LLC (Rowena) was found Responsive in all nine compliance documents and all eight submittal documents (Attachment A-3), subject to clarification of non-submission of one document. As noted below, clarification was requested and received, resulting in the proposal being found Responsive.

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Full Level I Findings

Prior to consulting with the Bureau of Contract Administration (BCA) and the City Attorney, the original Level I findings were as follows:

A. Trimana was originally found Non-Responsive in the following categories:

Compliance Documents:

- W • Did not fill out Page A2 ("Total Composition of Workforce") of the Affirmative Action Plan per RFP Section IV.B.4.c;
- W • Did not complete Page 1 of the Contractor Responsibility Ordinance Statement per RFP Section IV.B.4.d (failed to note how many pages were in the Statement);
- Did not submit Schedule A of the BIO per Exhibit B-2 of the RFP;
- NO • Did not submit CEC Form 55 per Addendum No. 1 of the RFP.

Submittal Documents:

- W • Did not submit 12 months of bank statements per RFP Section V.A.1.3.1 (they only submitted 10 months of statements).

B. JJ Management was originally found Non-Responsive in the following category:

Compliance Documents:

- NO • Did not submit CEC Form 55 per Addendum No. 1 of the RFP.

C. Rowena was originally found Non-Responsive in the following category:

Compliance Documents:

- W • Did not submit Schedule A of the BIO per Exhibit B-2 of the RFP.

Upon consulting with the City Attorney, it was determined that Section IV.A of the RFP, which states, "The City may deem a proposer non-responsive if the proposer fails to provide all required documentation and copies," gives the Department room to make a determination about waiving informalities because of the use of the word "may" instead of "shall" or "must."

Therefore, according to the City Attorney, certain items deemed "Non-Responsive" could be waived as follows:

1. Page A2 of the Affirmative Action Plan can be completed at any time prior to contract award, as verified by discussion with BCA;
2. The error on Page 1 of the Contractor Responsibility Ordinance Statement is not substantive; and
3. Ten months of bank statements, coupled with the credit reports submitted by Trimana, is enough information for the evaluation panel to make a determination on "Ability to Finance."

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However, the City Attorney determined that non-submission of CEC Form 55 (Measure H) with the proposal could not be waived because Measure H is an ordinance. Therefore, Trimana's and JJ Management's proposals were deemed Non-Responsive. However, because this determination was not made until after Level II interviews were held, both proposers were allowed to participate in Level II interviews.

Staff also consulted with BCA, the Mayor's Office, and the City Attorney regarding Rowena's non-submission of Schedule A for the BIO. It was determined that staff could request clarification of the documentation omission from Rowena via U.S. mail, but not from Trimana, as Trimana was deemed Non-Responsive because of the non-waivable omission of CEC Form 55.

Staff received documentation from Rowena clarifying the omission of Schedule A, along with a copy of Schedule A. The proposer mistakenly believed that he had completed all BIO requirements via BAVN, and that Schedule A was to be submitted via hard copy only if he were to be awarded the contract for this Concession. The proposer further noted that he had sought out additional subcontractors on work not listed by the Department in its BIO instructions, but which may be of use to the proposer should he be awarded the contract. The proposer noted that these subcontractors are listed in his proposal along with the proposed concession improvements, and included them again as an attachment to Schedule A.

Because Schedule A did not match the previously submitted Summary Sheet on BAVN, the Department sought additional clarification from Rowena regarding the discrepancy in the two documents. The proposer responded in writing that they had attempted to include the vendors on the BAVN Summary Sheet, but that BAVN would not accept the vendors because they were categorized in work areas that had not been selected by the Department in the original BIO requirements and were thus "unavailable" to the proposer.

The clarification provided, along with the proposer's extra step of seeking out additional business enterprises listed on BAVN that were not required in the Department's listed categories, shows that the proposer did negotiate in good faith and thus passes all aspects of the BIO.

Level II – Panel Evaluation

The evaluation panel was assembled from City of Los Angeles staff with diverse backgrounds. The panel consisted of:

- Delilah Puche, Administrative Analyst II, City Administrative Officer
- Joe Salaices, Principal Park Services Attendant, Recreation and Parks
- Dr. Mona Samuels-Sego, Police Performance Auditor, Police Commission/Office of the Inspector General, Los Angeles Police Department (LAPD)

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Ms. Puche has experience in the RFP process, including administering the current RFP for the Los Angeles Zoo. She also has extensive experience working in budget and finance, and has been the assistant to the Recreation and Parks Budget group for six years.

Mr. Salaices is long-time City employee with a diverse background and is the Division Head of the Park Services Unit. He is responsible for the direct oversight of several City-owned entrepreneurial public service operations that include Rental Halls, Pay Tennis courts, Travel Town Museum, and Sherman Oaks Castle Park. He is also very familiar with the needs of the community surrounding the Griffith Park area and those served at the Concession.

Dr. Mona Samuels-Sego possesses 25 years of experience as an Auditor for complex audits and reviews, including reviews of grants and contracts. She has prior experience performing a wide variety of complex audit duties in connection with procurement and contracting activities between the Federal Government and major contractors such as Boeing, Northrop-Grumman, and McDonnell Douglas. She currently provides oversight of the LAPD to ensure that its officers and employees act with honesty, integrity, and respect towards the public, as well as ensuring that the LAPD's responsibilities under the Federal Consent Decree with the United States Department of Justice are being met.

On August 1, 2012, the evaluation panel held proposer interviews. The interviews were intended to provide clarification of the proposals; modifications and/or enhancements of the proposals submitted were not permitted, as stated in the RFP.

The panel reviewed the proposals and the information gathered during the interviews, and was charged with ranking and scoring the proposals in accordance with the RFP, then submitting the information to the RFP Administrator, along with a short summary indicating which proposer was recommended for award and why (Attachment B).

Score and Rank

Rowena was unanimously ranked highest in four criteria: Background and Experience; Proposed Business Plan For This Concession; On-Going Refurbishment, Improvements, and Maintenance; and Concession Improvements. The evaluation panel's final general average score and ranking are as follows:

<u>Proposer</u>	<u>Final Average Score</u>	<u>Rank</u>
Rowena Partners, LLC	94.7	1
JJ Management Company	91.3	2
High Rise Goodies Restaurant Group, Inc. dba Trimana	87.7	3

Rowena had the highest ranking and score (Attachment C), and is therefore recommended by the evaluation panel as the preferred operator for the concession. The panel reported that it

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“considered the needs of the community, the residents and the uniqueness of the concession in evaluating each proposal.” The panel also felt that Rowena “has demonstrated the ability to successfully operate the concession and improve community relations since its opening.”

Ability to Finance

All three proposers were deemed financially able by the panel to provide operational and other costs relating to the Concession. In this category, Trimana was ranked “1” by two panelists and “2” by the other. The panelists felt Trimana’s cash reserves and credit were “strong,” although one panelist felt JJ Management’s cash reserves, which were not tied to other businesses as Trimana’s are, meant it should be ranked “1.” All three panelists unanimously ranked Rowena “3” in this category; although they stated that Rowena has demonstrated the ability to operate the Concession financially, Ms. Puche noted that the proposal “did not demonstrate or provide a clear understanding of available reserves.”

Background and Experience

All three panelists unanimously ranked Rowena “1” in this category. The panelists felt the increase in revenue over the years demonstrated Rowena’s ability to successfully operate the Concession. Additionally, the panelists believed Rowena’s focus on customer service and knowledge of the community was superior to the other proposers.

Proposed Business Plan For This Concession

All three panelists unanimously ranked Rowena “1” in this category. Two panelists remarked positively on Rowena’s community outreach, particularly on Rowena’s promotion of special events for the community. This was a particular interest of the panel, given the community’s high level of involvement with the Concession. The panelists noted that Trimana did not seem familiar with the needs of the community, and that while JJ Management had “some understanding” of the community, they also fell short. The panelists all agreed Rowena also had a better sense of marketing the Concession; the Concession has steadily grown since 2006, when it made \$94,119.83 in gross revenue, to \$629,829.33 in 2011. Rowena’s plan of incremental growth to keep lines at the Concession manageable was considered the best plan by the panel over Trimana’s and JJ Management’s plans to heavily market the Concession, possibly resulting in crowds that would disturb the quiet of the hiking area and the surrounding community. Finally, Rowena’s success as an operator was taken into consideration, having proven its ability to operate and maintain the Concession over the past six years.

Proposed Revenue-Sharing Fee and Payment to City

The panelists were divided over the best revenue-sharing fee proposed. JJ Management edged out Trimana by two points in this category to rank first, with Rowena ranked third. The panel

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agreed that the 11.7% in revenue-sharing fees offered by JJ Management outranked the 8% offered by both Trimana and Rowena (the current fee paid to the Department is 8% of monthly gross revenue), but had reservations that it would be sustainable. JJ Management's fee was based on a comparison of the Concession to the Griffith Park Golf Course Clubhouse (a restaurant) and Sherman Oaks Castle Park Food Service Concession (a café). One panelist also noted that JJ Management's proforma showed less revenue during the tenth year than the Concession is currently generating. Trimana edged out Rowena because its proposal offered 8% or \$4,000 in base rent per month, whichever is higher, and would raise the percentage to 9% if the yearly gross revenue exceeds \$650,000 and 10% if it exceeds \$750,000. Rowena's proposal offers the same 8% it currently pays as the incumbent. The panelists found this percentage "practical," "conservative," and "reasonable."

On-Going Refurbishment, Improvements, and Maintenance

All three panelists unanimously ranked Rowena "1" in this category. The panelists cited the detailed schedule and "appropriate" cost (\$7,000) as factors in their ranking. The panelists noted that both Trimana and JJ Management were "vague" in their details of refurbishment, improvements and maintenance, and that Trimana's projected costs were too low compared to Rowena and JJ Management.

Concession Improvements

All three panelists unanimously ranked Rowena "1" in this category, with JJ Management unanimously ranked "2" and Trimana ranked "3." The panelists found Rowena's proposed optional improvements to be reasonable and practical, with one panelist noting that Rowena "has an understanding of the improvements required to take the facility to the next level." The panelists were concerned that Trimana's idea to add a grill to the facility would not be acceptable to the community, and also that the proposed 60-day down time for improvements would result in too much lost revenue to the City. One panelist stated the work proposed could be done on days the Concession is already closed or after operating hours. The panelists found JJ Management's proposed improvements appropriate for the Concession, but found those by Rowena were more targeted to the needs of the Concession. It should also be noted that JJ Management did not submit a cost for its proposed optional Concession Improvements, as required in Section V.A.6 of the RFP.

Staff Review

Staff continued its analysis of the proposals to determine which represented the best prospective concessionaire for this agreement.

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In analyzing the proformas of each proposer, staff found Rowena's proforma to be sustainable and realistic for the Concession based on Rowena's past performance and conservative estimate of annual growth (5.28%) based on the current growth of the Concession.

For comparison, staff researched the Consumer Price Index (CPI) and found that between July 2011 and July 2012, the CPI rose 1.9% (Attachment D). Rowena projects 4.76% growth annually for Years 2 through 5. It is unknown what percentage growth they are predicting for Year 1; as of July 2012, the Concession has earned \$332,478.13. Assuming the latter half of 2012 mirrors the first, the Concession will earn approximately \$664,956.26, putting growth for Year 1 at 5.28%.

Staff determined that a fair comparison would be between the CPI and the Rowena's projected growth, or 3.5% annual growth. The Department also used the projected gross revenue for 2012 as a basis for its own projections. Attachment E-1 shows the difference between the actual growth and the Department's projections. Attachments E-2, E-3, and E-4 show the proforma projections of Rowena, JJ Management, and Trimana, respectively.

Staff extrapolated data from the proformas and determined that although Rowena's revenue-sharing fee was ranked third by the panel, it would actually return more rent to the City based on the proposer's conservative estimate of growth and the proposer's past performance. Using the numbers provided in the proformas, the difference in the revenue-sharing fees over the five years of the contract would be as follows:

Based on % how can it be higher

Revenue-Sharing Projections (Total For Years 1 through 5)		
Rowena	JJ Management	Difference
\$310,319	\$218,752	\$91,567
Rowena	Trimana	Difference
\$310,319	\$233,236	\$77,083

By awarding to the incumbent, the City stands to make substantially more in revenue-sharing fees.

Staff also conducted a check of the business and financial references provided by Rowena. Staff was able to speak to two of the three business references. Both business references consistently rated Rowena "Exceptional" in terms of overall performance, responsiveness, company knowledge and experience, and quality of services. The references uniformly consider Rowena a "good customer" with whom they enjoy working.

Of the three financial references, one was unable to speak to staff due to client confidentiality. The other two financial references rated Rowena "Above Average" and consider Rowena a "good client." One reference categorized Rowena's financial account as "stable" and stated they are a client "in good standing."

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Staff's review findings support the results and recommendation of the panel. No information was uncovered that would support a different recommendation than that of the panel. Staff therefore concurs with the review panel's findings and staff recommends Rowena Partners, LLC for award of this concession.

Charter Section 1022

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

On May 19, 2010, the Personnel Department completed a Charter Section 1022 review (Attachment F) and determined there was no City classification that "would include food and beverage service as an essential function." Furthermore, although there are some City classifications that could perform some of the work, that work would exceed City staffing availability.

It is, therefore, more economical to contract out the service than to perform in-house with City classifications.

Staff reviewed the panel's ranking and scoring sheets, and Rowena's proposal, and concurs with the recommendation to award the Fern Dell Refreshment Stand Concession to Rowena Partners, LLC.

Rowena Partners, LLC has been the incumbent operator at the Concession since a pilot permit to begin improvements to the existing facility was signed on March 12, 2004, and is deemed to have the necessary background and experience to operate the Concession.

FISCAL IMPACT STATEMENT:

Based on the financial projections provided in Attachment E-2, it is estimated that during the five-year term of the concession agreement, approximately \$310,319 will be paid in rent to the Department. Of that amount, 90% (approximately \$279,287) will be deposited in the Department's General Fund and 10% (approximately \$31,032) will be deposited into the Concession Improvement Account. The contractor will provide any approved optional concession improvements at the contractor's expense.

Report prepared by Désirée Guzzetta, Management Analyst II, Concessions Unit, Administrative Resources Section, Finance Division.

**HIGH RISE GOODIES RESTAURANT GROUP/TRIMANA
FERN DELL REFRESHMENT STAND CONCESSION RFP
LEVEL I EVALUATION**

I. Compliance Documents		Submitted	In Compliance	Comments
1.	Affidavit of Non-Collusion	Yes	Yes	
2.	Disposition of Proposals	Yes	Yes	
3.	Affirmative Action Plan	Yes	Yes	Did not fill out Page 2 (RFP IV.B.4.c); waivable per City Attorney
4.	Contractor Responsibility Questionnaire	Yes	Yes	Did not complete form (RFP IV.B.4.d); waivable per City Attorney
5.	Equal Benefits Ordinance Statement	Yes	Yes	
6.	Worker Retention Ordinance Forms	No	N/A	Optional - Not applying for exemption
7.	BIP Outreach	Yes	No	Did not submit Schedule A per Exhibit B-2; do not need clarification because proposal is Non-Responsive due to lack of CEC Form 55
8.	CEC Form 50	Yes	Yes	
9.	CEC Form 55	No	No	Did not submit; not waivable per City Attorney
II. Submittal Documents		Submitted	In Compliance	Comments
10.	Cover Letter	Yes	Yes	
11.	Proposal Deposit	Yes	Yes	
12.	Ability to Finance	Yes	Yes	Did not submit 12 months of bank statements per RFP Sec. V.A.1.3.1; waivable per City Attorney
13.	Background and Experience	Yes	Yes	
14.	Proposed Business Plan For This Concession	Yes	Yes	
15.	Proposed Revenue-Sharing Fee and Payment to City	Yes	Yes	Did not submit organizational chart per RFP Sec. V.A.2.1.4, but a description is given
16.	On-Going Refurbishment, Improvements, and Maintenance	Yes	Yes	
17.	Concession Improvements	Yes	Yes	This item is optional

**JJ MANAGEMENT COMPANY
FERN DELL REFRESHMENT STAND CONCESSION RFP
LEVEL I EVALUATION**

I. Compliance Documents		Submitted	In Compliance	Comments
1.	Affidavit of Non-Collusion	Yes	Yes	
2.	Disposition of Proposals	Yes	Yes	
3.	Affirmative Action Plan	Yes	Yes	
4.	Contractor Responsibility Questionnaire	Yes	Yes	
5.	Equal Benefits Ordinance Statement	Yes	Yes	
6.	Worker Retention Ordinance Forms	No	N/A	Optional - Not applying for exemption
7.	BIP Outreach	Yes	Yes	
8.	CEC Form 50	Yes	Yes	
9.	CEC Form 55	No	No	Did not submit; not waivable per City Attorney
II. Submittal Documents		Submitted	In Compliance	Comments
10.	Cover Letter	Yes	Yes	
11.	Proposal Deposit	Yes	Yes	
12.	Ability to Finance	Yes	Yes	
13.	Background and Experience	Yes	Yes	Did not give years and months per RFP Sec. V.A.2.1.2, but did give dates
14.	Proposed Business Plan For This Concession	Yes	Yes	
15.	Proposed Revenue-Sharing Fee and Payment to City	Yes	Yes	
16.	On-Going Refurbishment, Improvements, and Maintenance	Yes	Yes	
17.	Concession Improvements	Yes	Yes	This item is optional

**ROWENA PARTNERS LLC
FERN DELL REFRESHMENT STAND CONCESSION RFP
LEVEL I EVALUATION**

I. Compliance Documents		Submitted	In Compliance	Comments
1.	Affidavit of Non-Collusion	Yes	Yes	
2.	Disposition of Proposals	Yes	Yes	
3.	Affirmative Action Plan	Yes	Yes	
4.	Contractor Responsibility Questionnaire	Yes	Yes	
5.	Equal Benefits Ordinance Statement	Yes	Yes	
6.	Living Wage/Service Contract Worker Retention Ordinance Forms	No	N/A	Optional - Not applying for exemption
7.	BIP Outreach	Yes	Yes	Did not submit Schedule A per Exhibit B-2; clarification requested per BCA; received clarification and Schedule A matching BAVN Summary Sheet
8.	CEC Form 50	Yes	Yes	
9.	CEC Form 55	Yes	Yes	
II. Submittal Documents		Submitted	In Compliance	Comments
10.	Cover Letter	Yes	Yes	Incumbent currently uses Concession address as mailing address
11.	Proposal Deposit	Yes	Yes	
12.	Ability to Finance	Yes	Yes	Did not explicitly state amount to be funded per RFP Sec. V.A.1.2; however, only one source of funding provided, thus compliant
13.	Background and Experience	Yes	Yes	
14.	Proposed Business Plan For This Concession	Yes	Yes	
15.	Proposed Revenue-Sharing Fee and Payment to City	Yes	Yes	
16.	On-Going Refurbishment, Improvements, and Maintenance	Yes	Yes	
17.	Concession Improvements	Yes	Yes	This item is optional

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: August 9, 2012

To: Department of Recreation and Parks
Administrative Resources Section - Concessions Unit

Attn: Attn: Désirée Guzzetta, Management Analyst II

From: Delilah Puche, Administrative Analyst, City Administrative Officer
Joe Salasces, Principal Park Services Supervisor, Recreation and Parks
Mona Samuels-Sego, Police Performance Auditor, Los Angeles Police

Subject: **FERN DELL REFRESHMENT STAND CONCESSION – PANEL EVALUATION AND RECOMMENDATION**

The Fern Dell concession is located in a community-based area within Griffith Park. The design of the facility corresponds with the neighboring area and nearby recreational activities, which include hiking, horseback riding, the Greek Theatre, and Griffith Observatory.

On August 1, 2012, a panel consisting of City staff conducted interviews for the operation and maintenance of the Fern Dell Refreshment Stand. Upon completion of the interviews, the panel scored and ranked each of the proposals based on the goals and criteria detailed in the Request for Proposal. The following table reflects the final score by each panel member for each of the proposals:

	Rowena Partners LLC	High Rise Goodies Restaurant Group / Trimana	JJ Management Company
D. Puche	93	91	89
J. Salasces	97	83	92
M. Samuels-Sego	94	89	93

Based on the scoring of the proposals, the panel recommends award of the Fern Dell Concession to Rowena Partners LLC. The recommended proposal was the highest evaluated proposal by all panel members. The panel considered the needs of the community, the residents and the uniqueness of the concession in evaluating each proposal. Rowena Partners LLC has demonstrated the ability to successfully operate the concession and improve community relations since its opening in 2006.

Please let me know if you have questions or need further assistance. On behalf of the panel, I would like to thank you for the opportunity to participate in the Request for Proposal process for Fern Dell concession.

Sincerely,



Delilah Puche

**DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET**

HIGH RISE GOODIES RESTAURANT GROUP/TRIMANA	Max No. of Points (Score)	Score	Rank	Comments
Ability to Finance	10	9	2	Has cash for start up of the concession. Tries not to operate on loans.
Background and Experience	25	24	2	Experienced seemed to focus on office-like eateries or cafes. Has several businesses throughout the City of Los Angeles.
Proposed Business Plan For This Concession	20	19	2	Focused on serving a healthy menu. Has an existing commissary. Plans to market the concession through social media and self advertise or use a mass email distribution. Did not seem familiar or aware of the surrounding community or residents. Submitted two menus depending on the use of the grill.
Proposed Revenue-Sharing Fee and Payment to City	25	25	1	Projections are a conservative estimate. Proposes 8 percent of total net sales. Projections are inline with the existing revenue/rent.
On-Going Refurbishments, Improvements, and Maintenance	10	7	3	The proposer will budget \$200.00 per month for preventive maintenance and increase over the years.
Concession Improvements	10	7	3	Proposer plans to replace tiles and panels in interior, paint to both interior and exterior. Plans to add seating and a new Point of Sale to reduce wait time and congestion at pickup window. Plans to add a grill to the facility if feasible.
TOTAL SCORE and OVERALL RANK	100	91	2	

ROWENA PARTNERS LLC	Max No. of Points (Score)	Score	Rank	Comments
Ability to Finance	10	6	3	Proposal did not demonstrate or provide a clear understanding of available reserves.
Background and Experience	25	25	1	Very experienced with the operation of a unique facility in this setting. Knew the community and surrounding customer relations. Demonstrated the ability to increase revenue over several years.
Proposed Business Plan For This Concession	20	20	1	Knew the limits for advertising and customer capacity. Promotes community outreach and special events for the community.
Proposed Revenue-Sharing Fee and Payment to City	25	22	3	The 8 percent sharing was revised by Recreation and Parks for the past few years. Proposes no changes to the existing rate. Revenue is expected to increase based on prior year data and with the upgrades/improvements.
On-Going Refurbishments, Improvements, and Maintenance	10	10	1	Proposes \$7,000 annually. Regular scheduled maintenance of refrigeration, pest control, landscaping, hood cleaning, water filtration, and routine cleaning. Paints the patio tables, maintains the restrooms, stains wood and planter boxes on a regular basis.
Concession Improvements	10	10	1	The proposer plans to add storage space to the rear of the facility, install a retractable awning, refurbish and paint restroom exterior, and replace the service windows during the first year of the contract. The proposer has an understanding of the improvements required to take the facility to the next level.
TOTAL SCORE and OVERALL RANK	100	93	1	

JJ MANAGEMENT COMPANY	Max No. of Points (Score)	Score	Rank	Comments
Ability to Finance	10	10	1	Has \$500K in cash reserves not tied to other businesses.
Background and Experience	25	21	3	New management company. Owner has experience with two other restaurants.
Proposed Business Plan For This Concession	20	17	3	Focused on providing good food quality and promoting a healthy menu. Will use an accountant for cash register reconciliation.
Proposed Revenue-Sharing Fee and Payment to City	25	24	2	Proposes 11.7 percent of gross receipts. Projections at year ten are less than current year revenues for this concession.
On-Going Refurbishments, Improvements, and Maintenance	10	8	2	Plans to set aside \$22,000 for second through fifth year of contract. Will have funds for paint and moderate upgrades or improvements.

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DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET

Concession Improvements	10	9	2	The proposer plans to add a wooden pergola over the patio area. The proposer also plans to plant trees, install a patio heater, provide fountain bowls for dogs, install a reverse osmosis water purification system, replace front shelf, replace trash cans, install a bike rack, and replace signs.
TOTAL SCORE and OVERALL RANK	100	89		

Delilah Puche

Panelist Name (Print)

Delilah Puche

Signature

August 9, 2012

Date

**DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET**

HIGH RISE GOODIES RESTAURANT GROUP/TRIUMANA	Max No of Points (Score)	Score	Rank	Comments
Ability to Finance	10	10	1	Shows strong ability to finance with available cash and credit line
Background and Experience	25	21	3	Small to medium sized cafes in office setting. Model does not fit the Fern Dell Stand operation
Proposed Business Plan For This Concession	20	19	3	Fair to good ideas on a business plan by improving appliances. Lacks commitment to onsite owner/manager
Proposed Revenue Sharing Fee and Payment to City	25	22	3	Tiered progressive model based on revenue targets. Base is 5% to 10% ceding
On Going Refurbishments, Improvements, and Maintenance	10	7	3	Vague on details. Too little monthly commitment.
Concession Improvements	10	7	3	Mostly interior. Proposer claimed he would not make changes to the exterior except to install phone chargers and Wi-Fi
TOTAL SCORE and OVERALL RANK	100	86	3	

ROWENA PARTNERS LLC	Max No of Points (Score)	Score	Rank	Comments
Ability to Finance	10	7	3	Weak cash reserves according to bank statements
Background and Experience	25	25	1	Incumbent with excellent experience. Revenue increases annually by 24% last 5 years. Good relationship with the community.
Proposed Business Plan For This Concession	20	20	1	Continue to have owner/manager oversight. Community outreach by offering organized programming such as hikes and information kiosk
Proposed Revenue Sharing Fee and Payment to City	25	25	1	8% revenue sharing fee
On Going Refurbishments, Improvements, and Maintenance	10	10	1	\$7000 for annual maintenance. Pest control, painting etc
Concession Improvements	10	10	1	Good list of improvements including an information kiosk, retractable awning and window improvements
TOTAL SCORE and OVERALL RANK	100	97	1	

JJ MANAGEMENT COMPANY	Max No of Points (Score)	Score	Rank	Comments
Ability to Finance	10	4	2	Strong cash reserves available
Background and Experience	25	23	2	Currently operates 2 locations in office building setting. To some degree understands needs of the park patrons
Proposed Business Plan For This Concession	20	19	2	Make improvements to infrastructure. Has some understanding of the patron base
Proposed Revenue Sharing Fee and Payment to City	25	24	2	Offers 11.7 % revenue sharing fee. May be too high to sustain
On Going Refurbishments, Improvements, and Maintenance	10	9	2	Vague description. Not clear on purpose
Concession Improvements	10	9	2	Shows interest in park users by providing pet water fountains and bicycle racks.
TOTAL SCORE and OVERALL RANK	100	92	2	

Joe Salamea

Parkist Name (Print)

Joe Salamea
Signature

8-Aug-12

Date

**DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET**

HIGH RISE GOODIES RESTAURANT GROUP/TRIMANA	Max No. of Points (Score)	Score	Rank	Comments
Ability to Finance	10	10	1	Trimana's upfront investment will be \$72,000 if a grill unit can be installed, \$62,000 if it cannot (includes \$3,000 Performance Deposit). Trimana stated that they will fund with cash reserves; states no other funding sources necessary. I believe Trimana has the ability to successfully operate all aspects of the business.
Background and Experience	25	22	3	Trimana was established in 1985 with one location in downtown Los Angeles and now has 66 locations throughout Los Angeles. The company is based in Los Angeles and the owners, senior managers, and executive corporate chefs live in the Los Angeles area. The company employs more than 270 people at 66 locations and has a main central Commissary for mass-producing entrees, soups, and salads, which enables diversity in menu items; delivers daily to all its locations. Trimana has a vast amount of experience managing concessions in big business buildings however, the Trails is a community based concession catering to an urban wilderness crowd. Trimana's commercial experience may not fit with this community.
Proposed Business Plan For This Concession	20	17	3	Trimana's plan is to staff with one full-time store manager who has 20 years of experience in restaurant management and staff will include 3 full-time and 3 part-time employees, plus one assistant manager. Trimana has a pool of 200 employees at other locations in case extra staffing is required on weekends and holidays. It also has centralized HR will hire and train all employees for concession. This plan meets the objectives of the City because it is very comprehensive and addresses all components staffing, training, marketing, customer service, accounting, food and beverage service, patio decor, equipment, additional services, and estimated gross revenues, however, I have concerns regarding community outreach. It was mentioned during our interviews that the homeowners would prefer not to smell food grilling and Trimana would like to propose a grill combo unit if possible.
Proposed Revenue-Sharing Fee and Payment to City	25	24	2	Trimana has proposed 8% of total net sales or a base rent of \$4,000 per month, whichever is higher and proposes to determine percentage of sales annually and pay any amount due to City by February 15 of following year. If yearly net sales total more than \$650,000, rent percentage will increase to 9%. If yearly net sales total more than \$750,000, rent percentage will increase to 10%. This seems to be sensible.
On-Going Refurbishments, Improvements, and Maintenance	10	9	2	Trimana's plan is to budget approximately \$200 per month for preventative maintenance first year and the budget will increase years 2 - 5, bi-weekly pest control and semi-annual "Hydro Jet" of plumbing, \$200 per month for ongoing refurbishment to the concession stand, increases to \$300 per month in year 3 of contract, and routine maintenance semi-annually or as needed. This detailed schedule and the cost seems appropriate for the proposal.
Concession Improvements	10	7	3	Trimana proposes to replace tiles and panels in interior; paint interior and exterior; install new HVAC, propose that improvements will take approximately 45 days to complete; however, estimated down time is a maximum of 60 days (shorter if work can be completed after hours) and estimated budget for all work is \$15,000. I have a concern with the 60 day down time which results in loss revenues. I believe these repairs can be handled for this small outdoor cafe in a shorter period of time however, part of that time would include the install of the HVAC. The concerns of the community regarding grilling would eliminate the need for this work. In addition, the Trails is open for business 8:00-6:30pm, Tuesday through Sunday and much of this work can be done before and after hours and on Mondays. I'm not sure this was considered.

**DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET**

TOTAL SCORE and OVERALL RANK	100	89	3	The Trails is a very unique concession in the middle of one the biggest city parks in the nation and Upscale Los Feliz community. This outdoor cafe location in the midst of the woods, takes a very creative person to run it. It would be difficult for an entity like Trlmana to run it because they are extremely commercial.
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ROWENA PARTNERS LLC	Max No. of Points (Score)	Score	Rank	Comments
Ability to Finance	10	7	3	Rowena's proposed upfront investment \$6,000 (includes \$3,000 Performance Deposit, \$2,000 for inventory, and \$1,000 for operating supplies) to fund with cash seems reasonable since Rowena is currently running the concession. Rowena's Gross Revenues in 2010 were over 500,000 even though bank statements for the last months of 2010, Sept, Oct, Nov, and Dec showed 3,669, 1,166, 950, 2,120, respectively. I believe Rowena has the ability to successfully operate all aspects of the business.
Background and Experience	25	25	1	Rowena was established in 2006 and has 11 employees, including Mario Petrella (Proprietor) and Jenny Park (Chef/Manager). Mr. Petrella is the sole owner of Rowena Partners LLC. The business is 6 years, 4 months old and started as The Trails and became Rowena in 2006. Mr. Petrella and manager have proven that they can successfully operate a business.
Proposed Business Plan For This Concession	20	20	1	Rowena's Proposed Business Plan for this concession appears to very sound. This plan exceeds the objectives of the City because it is very comprehensive and addresses all components staffing, training, marketing, community outreach, customer service, accounting, food and beverage service, patio decor, equipment, additional services, and estimated gross revenues.
Proposed Revenue-Sharing Fee and Payment to City	25	22	3	Rowena's proposed 8% on gross receipts for all goods sold (food, beverage, other merchandise) was based on revenue-sharing fee paid for past five years. This seems to be reasonable.
On-Going Refurbishments, Improvements, and Maintenance	10	10	1	Rowena is proposing a minimum cost of maintenance of \$7,000 annually which Mr. Petrella states it's currently running. The proposed maintenance schedule is as follows: All refrigeration (including HVAC) serviced once a month; pest control via Western Exterminator twice a month; landscaping/gardening services twice a week; hood cleaning serviced two to three times per year; water filtration system serviced bi-monthly; detailed cleaning of interior, exterior, and restrooms once per week and as-needed; routine cleaning daily; drain maintenance serviced bi-monthly; has plumber and electrician on-call. Paints patio tables regularly (approved by Department); stains wood when it shows wear; stains planter boxes when they show wear; maintains restrooms daily, with weekly and as-needed restocking; replaces equipment that cannot be repaired by Department; stains wood when it shows wear; stains planter boxes when they show wear; maintains restrooms daily, with weekly and as-needed restocking; replaces equipment that cannot be repaired. This detailed schedule and the cost seems most appropriate for the proposal.

**DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET**

Concession Improvements	10	10	1	Rowena is proposing to add storage space to the back of the building during first year of contract; space would be approximately 10' x 13', estimated cost is \$30,000; install retractable awning during first year of contract; awning would be placed at front of building, estimated cost is \$2,700; refurbish and paint restroom exterior during first year of contract estimated cost is \$1,875; replace existing service windows during first year of contract (would like to replace glass with a fixed screen on upper half of glass to enable better communication with customers), estimated cost is \$600; and install information kiosk where old pay phone is located during first year of contract; kiosk could house maps and other literature related to Griffith Park, estimated cost is \$500. Since Mr. Petralla has been running the concession and he has a vision on what is needed at a reasonable cost to address the community. These improvements seem to be sound, practical and sustainable.
TOTAL SCORE and OVERALL RANK	100	94	1	Mr Petralla (Rowena/Tralls) has transformed an empty, vacant space to a popular hot spot in the Griffith Park Community as indicated in the Press and Community writeups. I had the opportunity to view the restaurant, menu, and observe the customers and operations. This is truly a unique concession and location and it takes a very creative person like Mr. Petralla to run it.

JJ MANAGEMENT COMPANY	Max No. of Points (Score)	Score	Rank	Comments
Ability to Finance	10	9	2	JJ Management proposed upfront investment estimated at \$64,785 (includes \$20,000 for "unforeseen" miscellaneous expenses and \$3,000 Performance Deposit) and will fund with cash reserves; states no other funding sources necessary. They also proposed that if more capital is required than anticipated, they have a \$475,000 line of credit at Cit Bank and currently have \$502,000 in cash reserves available. I believe JJ Management has the ability to successfully operate all aspects of the business.
Background and Experience	25	24	2	JJ Management is a new entity established on 10/5/11 for the Fern Dell Concession RFP. This company is based in Industry, CA and Partner Angle Park has managed Crossroads Café since 2007 (Café in business since 1986) and Charley's Grilled Sub since 2007. JJ Management has a great amount of experience managing concessions however, the Tralls café is rustic and caters to an urban crowd and their experience may not fit with this community.
Proposed Business Plan For This Concession	20	19	2	JJ Management's plan is to staff one operation partner (Ms. Park), one managing partner (Mr. Lee), one chef/baker and 10 staff (work crew to be hired if contract awarded); full-time vs. part-time not clarified. This plan exceeds the objectives of the City because it is very comprehensive and addresses all components staffing, training, marketing, community outreach, customer service, accounting, food and beverage service, patio decor, equipment, additional services, and estimated gross revenues.
Proposed Revenue-Sharing Fee and Payment to City	25	25	1	JJ Management is proposing 11.7% of gross receipts on food and beverage and 11.7% of gross receipts on "all other". The numbers are based on comparing the Fern Dell concession to other City concessions (specifically Griffith Park Golf Course Restaurant and Sherman Oaks Casino Park). This seems to be practical.

**DEPARTMENT OF RECREATION AND PARKS
REQUEST FOR PROPOSALS
FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND CONCESSION
RANKING AND SCORING SHEET**

On-Going Refurbishments, Improvements, and Maintenance	10	7	3	JJ Management proposes to set aside \$22,000 for the second through fifth year of contract for refurbishment, improvements, and maintenance. If the first renewal option is exercised they will set aside another \$22,000 for the next five years of the contract. If the second renewal option is exercised, they will set aside another \$22,000 (\$66,000 total for 15 years). They are proposing the funding to come from profits from concession. I'm not clear that if JJ Management has a vision on maintenance costs because there wasn't a detailed list on what specifically needs to be maintained.
Concession Improvements	10	9	2	JJ Management plans to install a wooden pergola over the patio area estimated to take five days to install (plan to install September or October of first year of operation) and they do not anticipate any down time from installation, plant ivy trees or similar plants to grow on pergola, install stainless steel patio heater; estimates it will take one day to assemble; no down time, provide "fountain" bowls for dogs (bowls are small, plug into electrical outlet, provide flowing water for animals), as many people bring their dogs to the Park; estimates it will take two days to assemble all bowls; no down time, install a Reverse Osmosis Water Purification System; estimates it will take one day to install; no down time anticipated (will pick "slowest day" to install, replace stainless steel shelf in front of window with a wider stainless steel shelf; estimates approximately one week for shelf to be manufactured, and one day to install; may need to close for a few hours to complete installation, replace trash cans and recycling bin with wooden barrels to match decor; estimates one week to order and manufacture, and one day to install; no down time, install bike rack for customer use; estimates one day to install; no down time and replace all signs at concession with new wooden signs; estimates one day to install; no down time and no estimated budget/costs included. These improvements seem to be sound, practical and sustainable.
TOTAL SCORE and OVERALL RANK	100	93	2	JJ Management can handle a small venue like the Trails however, this is a unique concession and location and it takes a special blend of an earthy, yet trendy, and creative person and culture to continue to meet the needs of the community. I'm not certain that JJ management can mesh long term with this community.

Mona Samuels-Sego

Panelist Name (Print)



Signature

8/9/2012

Date

**FERN DELL REFRESHMENT STAND CONCESSION
REQUEST FOR PROPOSAL**

Evaluation Panel Scoring and Ranking

The individuals on the panel were as follows:

- Delilah Puche, Administrative Analyst II, City Administrative Officer, who has extensive experience working in budget and finance;
- Joe Salaices, Principal Park Services Attendant, Recreation and Parks, who is the Division Head of the Park Services Unit and deals with the community served by the Concession;
- Dr. Mona Samuels-Sego, Police Performance Auditor, Police Commission/Office of the Inspector General, Los Angeles Police Department (LAPD), who has 25 years of experience doing complex audits and reviews, including reviews of grants and contracts.

The aggregate panel scores are summarized as follows:

Rating Criteria	Rowena Partners LLC		JJ Management Company		High Rise Goodies Restaurant Group/Trimana	
Ability to Finance	R3	20	R2	27	R1	29
Background and Experience	R1	75	R2	68	R3	67
Proposed Business Plan For This Concession	R1	60	R2	55	R3	52
Proposed Revenue-Sharing Fee and Payment to City	R3	69	R1	73	R2	71
On-Going Refurbishment, Improvements, and Maintenance	R1	30	R2	24	R3	23
Concession Improvements	R1	30	R2	27	R3	21
Total	R1	284	R2	274	R3	263

**FERN DELL REFRESHMENT STAND CONCESSION
REQUEST FOR PROPOSALS (CON-M11-002)
RANK BY PROPOSER**

ROWENA PARTNERS LLC	Puche	Salaices	Samuels-Sego	
Ability to Finance	3	3	3	
Background and Experience	1	1	1	
Proposed Business Plan For This Concession	1	1	1	
Proposed Revenue-Sharing Fee and Payment to City	3	1	3	
On-Going Refurbishment, Improvements, and Maintenance	1	1	1	
Concession Improvements	1	1	1	
OVERALL RANK	1	1	1	1

JJ MANAGEMENT COMPANY	Puche	Salaices	Samuels-Sego	
Ability to Finance	1	2	2	
Background and Experience	3	2	2	
Proposed Business Plan For This Concession	3	2	2	
Proposed Revenue-Sharing Fee and Payment to City	2	2	1	
On-Going Refurbishment, Improvements, and Maintenance	2	2	3	
Concession Improvements	2	2	2	
OVERALL RANK	3	2	2	2

HIGH RISE GOODIES RESTAURANT GROUP/TRIMANA	Puche	Salaices	Samuels-Sego	
Ability to Finance	2	1	1	
Background and Experience	2	3	3	
Proposed Business Plan For This Concession	2	3	3	
Proposed Revenue-Sharing Fee and Payment to City	1	3	2	
On-Going Refurbishment, Improvements, and Maintenance	3	3	2	
Concession Improvements	3	3	3	
OVERALL RANK	2	3	3	3

**FERN DELL REFRESHMENT STAND CONCESSION
REQUEST FOR PROPOSALS (CON-M11-002)
TOTAL POINTS (SCORE) BY PROPOSER**

ROWENA PARTNERS LLC	Max No. of Points	Puche	Salaices	Samuels-Sego	TOTAL
Ability to Finance	10	6	7	7	20
Background and Experience	25	25	25	25	
Proposed Business Plan For This Concession	20	20	20	20	
Proposed Revenue-Sharing Fee and Payment to City	25	22	25	22	69
On-Going Refurbishment, Improvements, and Maintenance	10	10	10	10	
Concession Improvements	10	10	10	10	
TOTAL	100	93	97	94	284

JJ MANAGEMENT COMPANY	Max No. of Points	Puche	Salaices	Samuels-Sego	TOTAL
Ability to Finance	10	10	8	9	
Background and Experience	25	21	23	24	
Proposed Business Plan For This Concession	20	17	19	19	
Proposed Revenue-Sharing Fee and Payment to City	25	24	24	25	
On-Going Refurbishment, Improvements, and Maintenance	10	8	9	7	
Concession Improvements	10	9	9	9	
TOTAL	100	89	92	93	274

HIGH RISE GOODIES RESTAURANT GROUP/TRIMANA	Max No. of Points	Puche	Salaices	Samuels-Sego	TOTAL
Ability to Finance	10	9	10	10	
Background and Experience	25	24	21	22	67
Proposed Business Plan For This Concession	20	19	16	17	52
Proposed Revenue-Sharing Fee and Payment to City	25	25	22	24	74
On-Going Refurbishment, Improvements, and Maintenance	10	7	7	9	23
Concession Improvements	10	7	7	7	21
TOTAL	100	91	83	89	263

RANK 3

Databases, Tables & Calculators by Subject

FONT SIZE:

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From: **2002**To: **2012**☒ Include graphs[More Formatting Options](#)

Data extracted on: August 30, 2012 (4:57:25 PM)

Consumer Price Index - All Urban Consumers

Series Id: CUURA421SA0, CUUSA421SA0

Not Seasonally Adjusted

Area: Los Angeles-Riverside-Orange County, CA

Item: All items

Base Period: 1982-84=100

Download: .xls

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2002	178.9	180.1	181.1	182.2	182.6	181.9	182.2	183.0	183.4	183.7	184.0	183.7	182.2	181.1	183.3
2003	185.2	186.5	188.2	187.6	186.4	186.3	186.3	186.9	188.2	187.8	187.1	187.0	187.0	186.7	187.2
2004	188.5	190.1	191.5	191.9	193.3	193.7	193.4	193.1	194.5	196.3	196.9	195.2	193.2	191.5	194.9
2005	195.4	197.4	199.2	201.1	201.5	200.7	201.4	203.1	205.8	206.9	205.6	203.9	201.8	199.2	204.5
2006	206.0	207.5	208.5	210.5	212.4	211.1	211.4	211.9	212.9	211.4	211.1	210.6	210.4	209.3	211.6
2007	212.584	214.760	216.500	217.845	218.596	217.273	217.454	217.330	217.697	218.696	219.943	219.373	217.338	216.260	218.416
2008	220.918	221.431	223.606	224.625	226.651	229.033	229.886	228.484	227.449	226.159	222.229	219.620	225.008	224.377	225.638
2009	220.719	221.439	221.376	221.693	222.522	223.906	224.010	224.507	225.226	225.264	224.317	223.643	223.219	221.943	224.495
2010	224.610	224.620	225.483	225.916	226.438	225.877	225.991	226.373	226.048	226.794	225.941	226.639	225.894	225.491	226.298
2011	228.652	229.729	232.241	233.319	233.367	232.328	231.303	231.833	233.022	233.049	232.731	231.567	231.928	231.606	232.251
2012	233.441	234.537	236.941	236.866	237.032	236.025	235.776							235.807	

$$(235.776 - 231.303) / 231.303 = 1.9\%$$

TOOLS

Areas at a Glance
Industries at a Glance
Economic Releases
Databases & Tables
Maps

CALCULATORS

Inflation
Location Quotient
Injury And Illness

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No Fear Act
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Benefits.gov
Disability.gov

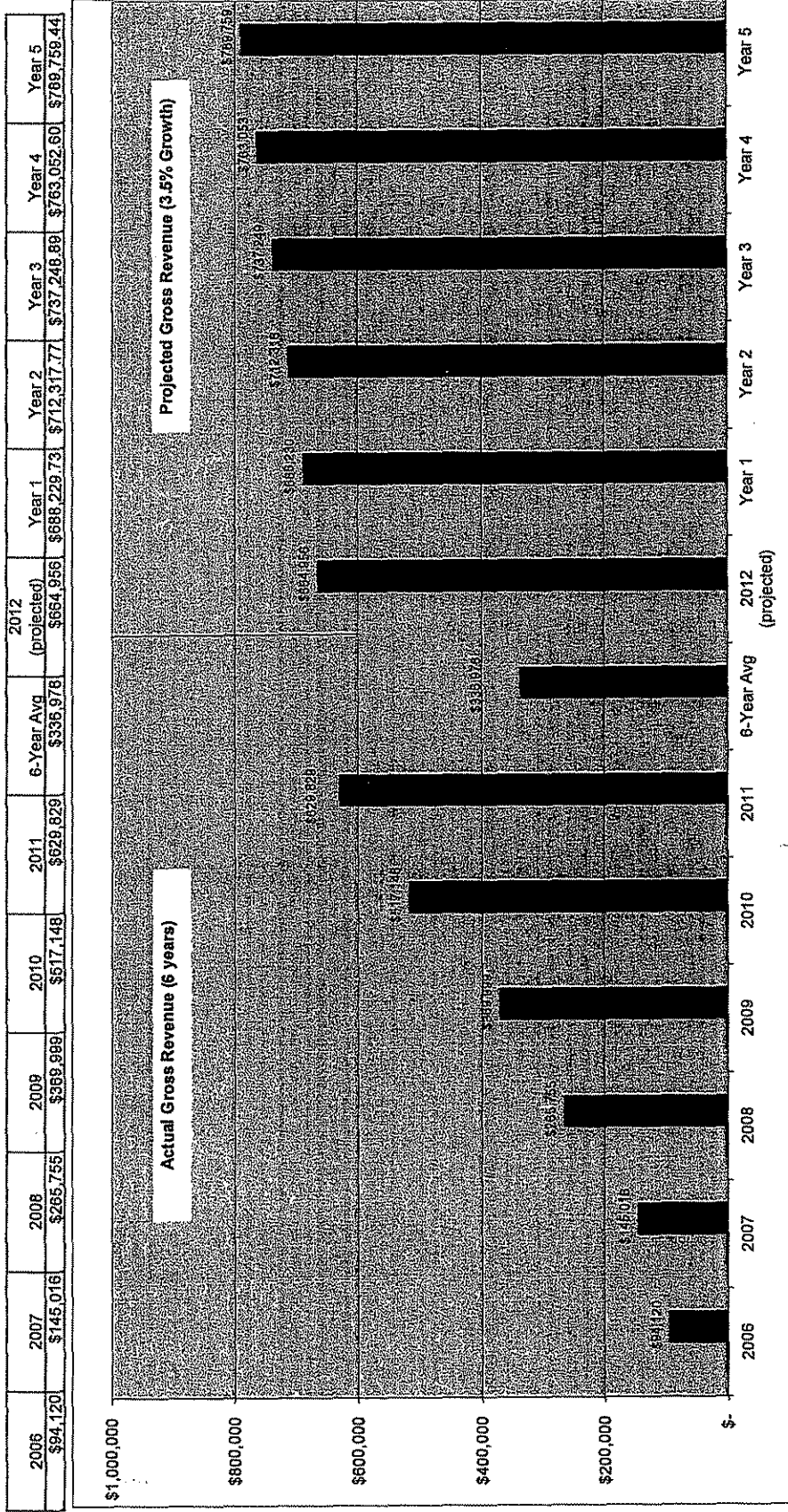
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www.bls.gov | Telephone: 1-202-691-5200 | TDD: 1-800-877-8339 | [Contact Us](#)

FERN DELL REFRESHMENT STAND CONCESSION
 ACTUAL AND PROJECTED GROSS REVENUE
 ROWENA PARTNERS LLC AND DEPARTMENT OF RECREATION AND PARKS

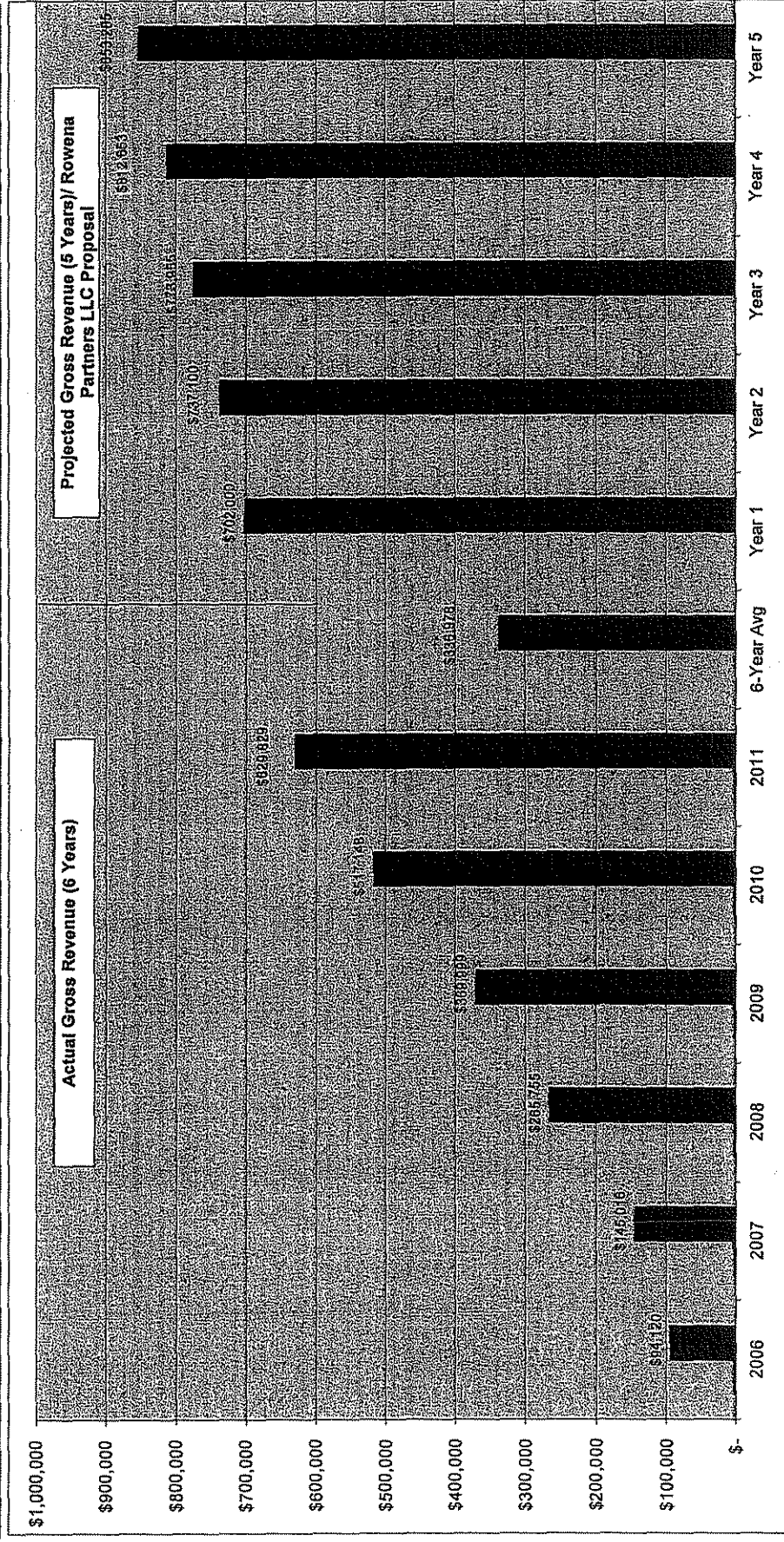
ACTUAL AND PROJECTED GROSS REVENUE (3.5% GROWTH PER YEAR) - FERN DELL REFRESHMENT STAND CONCESSION



FERN DELL REFRESHMENT STAND CONCESSION
6 YEAR ACTUAL GROSS REVENUE COMPARISON WITH
ROWENA PARTNERS LLC'S PROFORMA PROJECTION

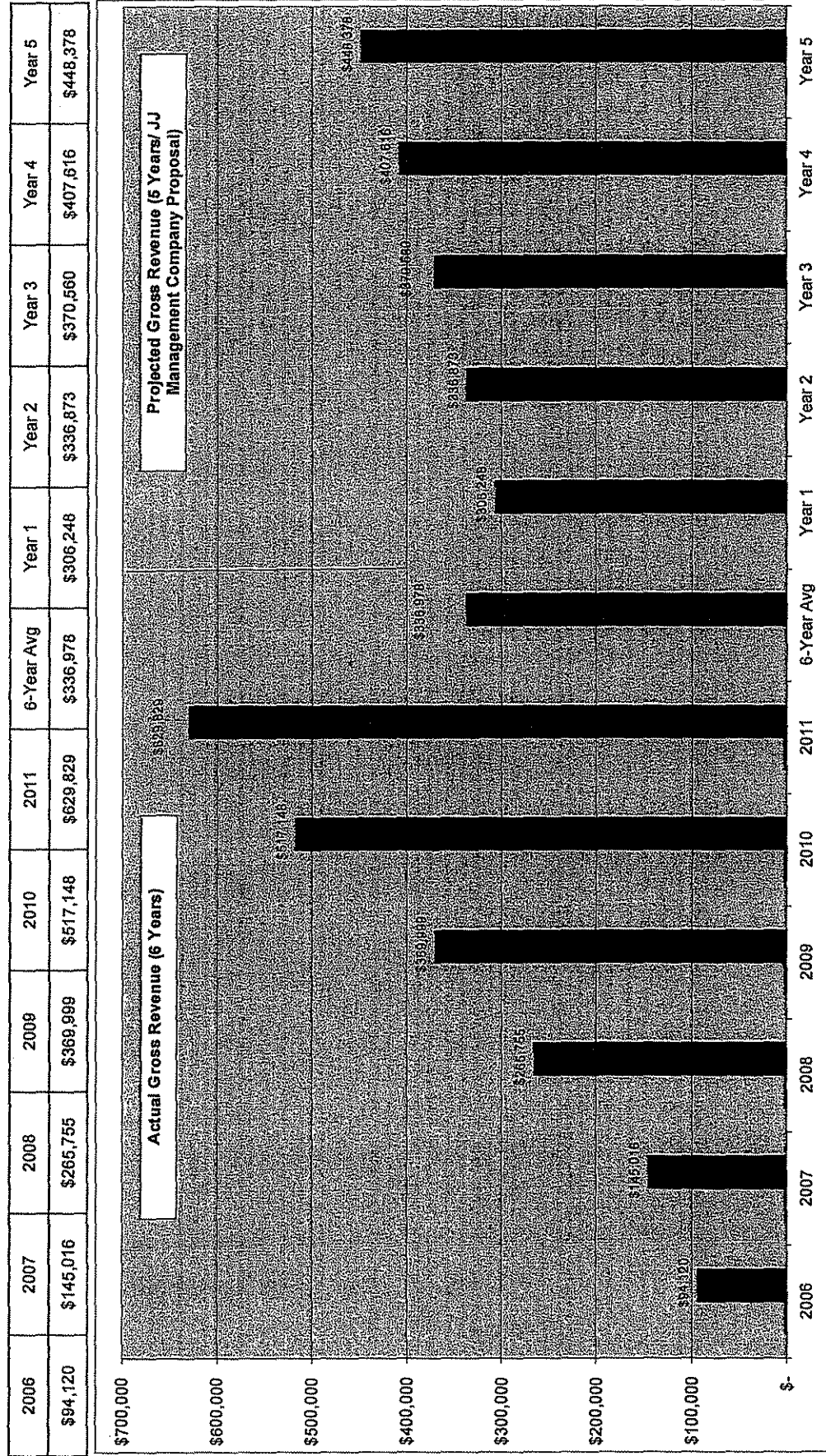
ACTUAL AND PROJECTED GROSS REVENUE (BASED ON SUBMITTED PROFORMA) - FERN DELL REFRESHMENT STAND CONCESSION

2006	2007	2008	2009	2010	2011	6-Year Avg	Year 1	Year 2	Year 3	Year 4	Year 5
\$94,120	\$145,016	\$265,755	\$369,999	\$517,148	\$629,829	\$336,978	\$702,000	\$737,100	\$773,955	\$812,653	\$853,285



**FERN DELL REFRESHMENT STAND CONCESSION
6 YEAR ACTUAL GROSS REVENUE COMPARISON WITH
JJ MANAGEMENT COMPANY'S PROFORMA PROJECTION**

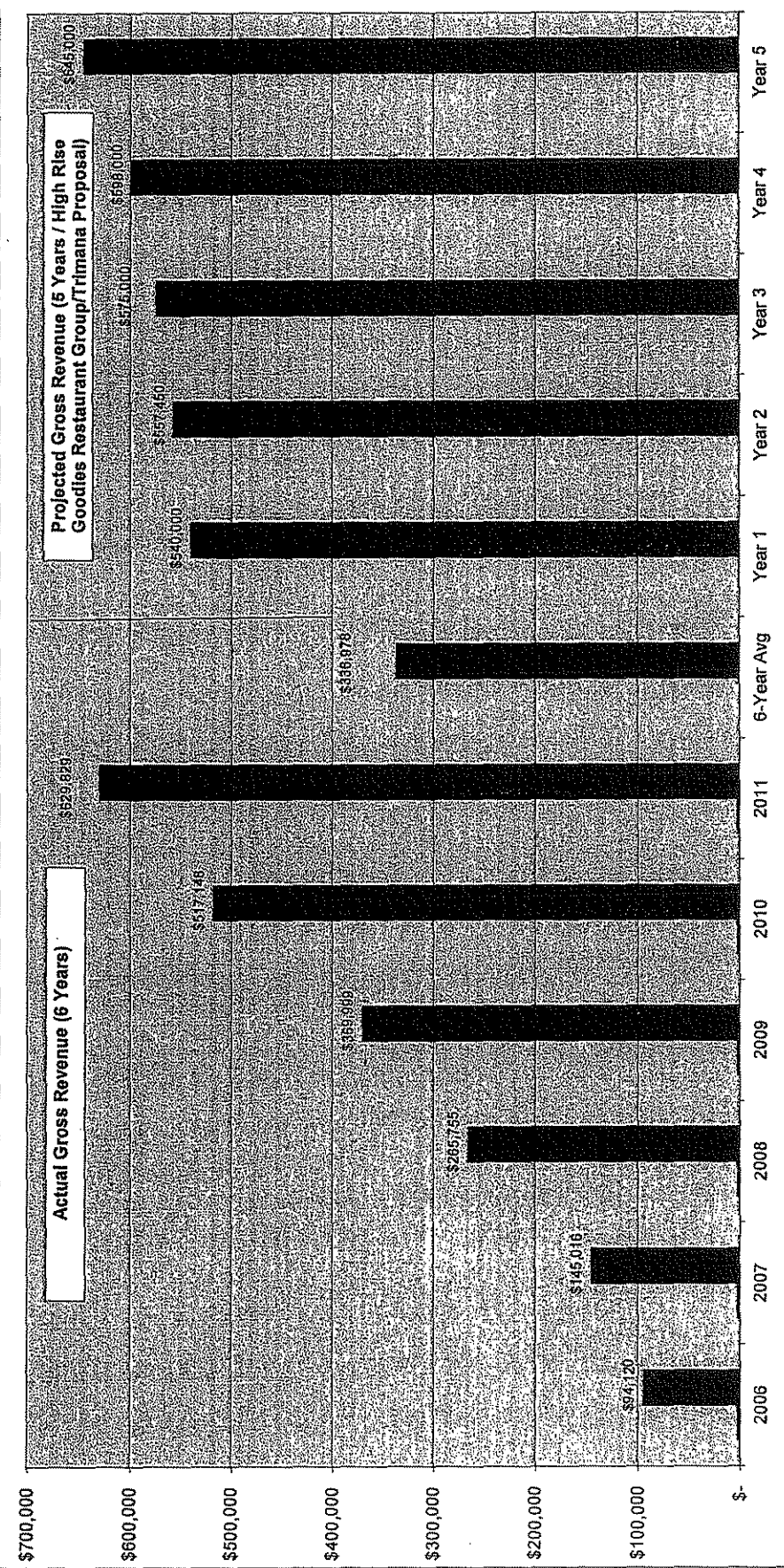
ACTUAL AND PROJECTED GROSS REVENUE (BASED ON SUBMITTED PROFORMA) - FERN DELL REFRESHMENT STAND CONCESSION



FERN DELL REFRESHMENT STAND CONCESSION
6 YEAR ACTUAL GROSS REVENUE COMPARISON WITH
HIGH RISE GOODIES RESTAURANT GROUP/TRIMANA'S PROFORMA PROJECTION

ACTUAL AND PROJECTED GROSS REVENUE (BASED ON SUBMITTED PROFORMA) - FERN DELL REFRESHMENT STAND CONCESSION

2006	2007	2008	2009	2010	2011	6-Year Avg	Year 1	Year 2	Year 3	Year 4	Year 5
\$94,120	\$145,016	\$265,755	\$369,999	\$517,148	\$629,829	\$336,978	\$540,000	\$557,450	\$575,000	\$598,000	\$645,000



PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

1. Requesting Department: Department of Recreation and Parks

2. Contacts:

Department: Désirée Guzzetta Phone No. (818) 243-6488 Fax No. 818-243-6451
 CAO: Veronica Salumbides Phone No. 213-473-7561 Fax No. 213-473-7514

3. Work to be performed:

The Department of Recreation and Parks is seeking a contractor to manage the Fern Dell Refreshment Stand Concession. Job duties include: management and operation of a snack stand providing food and non-alcoholic beverages to the public; maintenance of the refreshment stand facility; customer service; marketing and promotion of business; and community relations with the surrounding neighborhoods.

4. Is this a contract renewal? Yes ☐ No ☒

5. Proposed length of contract: Five years with two five-year options at the discretion of the City.
 Proposed Start Date: First quarter 2011.

6. Proposed cost of contract (if known): Unknown (revenue generating in past years)

7. Name of proposed contractor: Unknown

8. Unique or special qualifications required to perform the work:

The operator must have knowledge and expertise in restaurant management and operations, marketing, and customer service.

9. Are there City employees that can perform some of the work being proposed for contracting?
 Yes ☒ No ☐

Classification	Department(s)	List Expires
Concessions Manager (9247)	Airports	Exempt class
Park Services Attendant	Rec & Parks and Zoo	11/27/2010
Public Relations Specialist	Airports, Animal Services, Cultural Affairs, Convention Center, DWP, Disability, Harbor, Library, Police, PW Sanitation, Zoo	3/23/2011
Senior Clerk Typist	Various	No eligible list

If yes,

- a. Which class(es) and Department(s): Please see above.
 b. Is there sufficient Department staff available to perform the work? Yes ☐ No ☒
 c. Is there a current eligible list for the class(es)? Yes ☐ No ☐ Please see above.

- d. Estimated time to fill position(s) through CSC process? Unknown due to hiring freeze.
e. Can the requesting department continue to employ staff hired for the project after project completion? Yes ☐ No ☒
f. Are there City employees currently performing some of the work? Yes ☒ No ☐

10. Findings

- ☐ City employees DO NOT have the expertise to perform the work
☒ City employees DO have the expertise to perform some of the work

Check if applicable (explanation attached) and send to CAO for further analysis

- ☐ Project of limited duration would have to layoff staff at end of project
☐ Time constraints require immediate staffing of project
☒ Work assignment exceeds staffing availability

SUMMARY:

The Department of Recreation and Parks is seeking a contractor to operate the Fern Dell Refreshment Stand that is located in Griffith Park. The concession stand serves snacks and non-alcoholic drinks. There are several City classifications that may perform some of the duties outlined in the contract. However, there is not any City Classification that would include food and beverage service as an essential function.

Submitted by:

Cathy T. Tanaka
Cathy T. Tanaka

Approved by:

Shelly Del Rosario
Shelly Del Rosario

Date:

5-19-13

**AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF THE
FERN DELL REFRESHMENT STAND CONCESSION**

Between

**THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS**

And

ROWENA PARTNERS, LLC

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AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE
FERN DELL REFRESHMENT STAND

Between

THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

And

ROWENA PARTNERS, LLC

THIS AGREEMENT is made and entered in this _____ day of _____, 201_, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as CITY), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as BOARD), and ROWENA PARTNERS, LLC (hereinafter referred to as CONCESSIONAIRE).

WHEREAS, BOARD, in accordance with Charter Section 371(e)(10) and Los Angeles Administrative Code Section 10.15(a)(10), has found that a competitive bidding process is not practicable or advantageous and has conducted a Request for Proposal (RFP) process instead;

WHEREAS, CONCESSIONAIRE's proposal was deemed to be responsive and the best proposal received as a result of the RFP process;

WHEREAS, CONCESSIONAIRE desires to secure and enter into a Concession Agreement (hereinafter referred to as AGREEMENT) in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at Griffith Park; and

WHEREAS, the principal purpose of CITY entering into this AGREEMENT is to serve the public by providing food and non-alcoholic beverage service to park patrons (hereinafter "CONCESSION");

NOW THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. DEFINITIONS

For the purpose of this AGREEMENT, the following words and phrases are defined and shall be construed as hereinafter set for:

AGREEMENT:	This Concession Agreement consisting of forty-seven (47) pages and seven (7) exhibits (A-G) attached hereto
------------	---

BOARD:	Board of Recreation and Park Commissioners
CITY:	The City of Los Angeles, Acting by and through its Board of Recreation and Park Commissioners
CONCESSION:	The permitted operation granted by this AGREEMENT
CONCESSIONAIRE:	ROWENA PARTNERS, LLC
DEPARTMENT:	The Department of Recreation and Parks, acting through the BOARD
FACILITY:	The Recreation and Parks Department facility at which the concession is permitted to operate.
GENERAL MANAGER:	General Manager of the DEPARTMENT, or that person's authorized representative, acting on behalf of the CITY. All actions of the General Manager are subject to review at the discretion of the BOARD.
LAAC:	The Los Angeles Administrative Code
LAMC:	The Los Angeles Municipal Code
PREMISES:	The geographical area, as defined in Section 3 of this AGREEMENT, in which the concession may be operated

SECTION 2. PERMISSION GRANTED

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, CITY hereby grants to CONCESSIONAIRE, subject to all of the terms and conditions of this AGREEMENT, the exclusive right and obligation within the CONCESSION to provide food service to the public and not for any other purpose without the prior written consent of GENERAL MANAGER.

The concession rights herein granted shall be carried on at the FACILITY solely within the limits and confines of said areas designated as PREMISES (Section 3) in this AGREEMENT. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, and its successors and assigns, that it will not make use of the PREMISES in any manner which might interfere with the recreational uses of the FACILITY.

While the CONCESSIONAIRE is granted the exclusive right to sell food and non-alcoholic beverages to the general public at the CONCESSION, this exclusive right does not prohibit private parties from preparing or bringing their own food to the park, nor prohibit their use of adjacent park/picnic benches.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITY regarding the services to be offered or products to be sold by respective concessionaires or lessees, the GENERAL MANAGER shall meet and confer with all necessary parties to determine the services to be offered or products to be sold by each, and CONCESSIONAIRE hereunder agrees thereafter to be bound by said determination.

CITY reserves the right to further develop or improve the PREMISES as it sees fit, without interference or hindrance, however the CITY shall consider the desires and views of CONCESSIONAIRE. No other activity, service or amenity shall be provided by CONCESSIONAIRE unless related to CONCESSION and without the express written approval of DEPARTMENT.

SECTION 3. PREMISES

The PREMISES subject to this AGREEMENT are located at: 2333 Fern Dell Place, Los Angeles, CA 90068 and consist of the Fern Dell Refreshment Stand, as set forth in Exhibit "A," attached hereto and incorporated herein, for the purpose of providing food and non-alcoholic beverage service to park patrons.

CONCESSIONAIRE shall not use or allow the PREMISES to be used, in whole or in part, during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY, relating to sanitation or the public health, safety or welfare or operations at and use of the PREMISES.

At any time during the term of this AGREEMENT, DEPARTMENT may, by appropriate resolution fully setting forth the reasons therefor, require the CONCESSIONAIRE to surrender any portion of the CONCESSION PREMISES. Should DEPARTMENT impose such a requirement on CONCESSIONAIRE, DEPARTMENT will attempt to provide CONCESSIONAIRE with equivalent, substitute space.

SECTION 4. TERM OF AGREEMENT

The term of the AGREEMENT shall be five (5) years, effective on the date of execution, with two (2) five-year options to renew, at the sole discretion of the GENERAL MANAGER.

Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke, decline to exercise an option or disapprove a renewal of the AGREEMENT.

SECTION 5. TIME OF EXECUTION

Unless otherwise provided, the AGREEMENT shall be considered executed when:

- A. The Office of the City Attorney has indicated in writing of its approval of the AGREEMENT as to form; and,
- B. Said AGREEMENT has been approved by the CITY's Council, BOARD, officer, or employee authorized to give such approval; and,
- C. Said AGREEMENT has been signed on behalf of the CONCESSIONAIRE by the person or persons authorized to bind the CONCESSIONAIRE hereto; and,
- D. Said AGREEMENT has been signed on behalf of the CITY by the person or persons authorized and designated to so sign by the CITY's Council, Board, officer, or employee authorized to enter into the AGREEMENT.

SECTION 6. REVENUE-SHARING FEE AND PAYMENT

Use of the premises for purposes not expressly permitted herein, whether approved in writing by GENERAL MANAGER or not, may result in additional charges; however, any such use without the prior written approval of the GENERAL MANAGER shall also constitute a material breach of this agreement and is prohibited.

- A. As part of the consideration for CITY's granting the concession rights herein above set forth, CONCESSIONAIRE shall pay to CITY a monthly revenue-sharing fee as follows:

Eight percent (8%) of all gross receipts.

The sale of other items must be expressly permitted and approved in writing by the GENERAL MANAGER, or designee. A percentage of gross receipts will apply and will be negotiated prior to approval of said items for sale.

The minimum annual revenue-sharing payment for this concession is Fifty-Six Thousand, One Hundred Sixty Dollars (\$56,160.00) per calendar year. If the minimum annual revenue-sharing payment is not met by December 31 of each calendar year, the difference between the actual revenue-sharing payment received by the City of Los Angeles and the minimum annual revenue-sharing payment will be due to the City of Los Angeles by February 15 of the subsequent year. If the

AGREEMENT has not been in effect a full calendar year, the minimum annual revenue-sharing payment due will be pro-rated accordingly.

B. Revenue Collection

Said payment shall be due and payable by the fifteenth (15th) day of each calendar month based on the gross receipts received in each previous month. The payment and monthly revenue sharing report (Section 6.D – Monthly Remittance Advice Form) shall be addressed to:

DEPARTMENT OF RECREATION AND PARKS
ATTENTION: Concessions Unit
P.O. Box 5385
Glendale, CA 91221-5385

C. Gross Receipts Defined

The term "gross receipts" is defined as the total amount charged for the sale of any goods or services (whether or not such services are performed as a part of or in connection with the sale of goods) provided in connection with this CONCESSION, but not including any of the following:

1. Cash discounts allowed or taken on sales;
2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;
5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by CONCESSIONAIRE;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
7. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
8. Receipts from the sale at cost of uniforms, clothing, or supplies to CONCESSIONAIRE's employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
9. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
10. Fair market trade-in allowance, in the event merchandise is taken in trade;

11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, with the concurrence of both CONCESSIONAIRE and GENERAL MANAGER, including discounts to employees, if concurred by GENERAL MANAGER.

CONCESSIONAIRE shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

13. Any error in cash handling by CONCESSIONAIRE or CONCESSIONAIRE's employees or agents;
14. Any losses resulting from bad checks received from the consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to CONCESSIONAIRE by customer or purchaser;
15. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

D. Monthly Revenue-Sharing Reports:

CONCESSIONAIRE shall transmit with each revenue-sharing payment a Monthly Gross Receipts and Revenue-Sharing Report, also referred to as a Monthly Remittance Advice Form (Exhibit D), for the month for which a payment is submitted.

E. Late Payment Fee:

Failure of CONCESSIONAIRE to pay any of the revenue-sharing payments or any other fees, changes, or payments required herein on time is a breach of the AGREEMENT for which CITY may terminate same or take such other legal action as it deems necessary.

Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments by CONCESSIONAIRE, the latter recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, CONCESSIONAIRE agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charges for late or delinquent payments shall be \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

The acceptance of late revenue-sharing payments by CITY shall not be deemed as a waiver of any other breach by CONCESSIONAIRE of any term or condition of this

AGREEMENT other than the failure of CONCESSIONAIRE to timely make the particular revenue-sharing payment so accepted.

F. Annual Accounting Adjustment:

At the end of calendar year during the term hereof, CONCESSIONAIRE shall prepare and submit to CITY a statement showing the total gross receipts for that calendar year and the monthly revenue-sharing payments paid for the said calendar year. If the sums paid by CONCESSIONAIRE during said period total less than the annual minimum revenue-sharing fee and payment guarantee, CONCESSIONAIRE shall remit to the CITY the underpayment amount with the Annual Accounting Adjustment. Failure to provide the Annual Accounting Adjustment by January 15 of the subsequent calendar year will result in a penalty of \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.

Any breach of this condition for the revenue-sharing fee and payment shall be a material breach of this Concession Agreement.

SECTION 7. ADDITIONAL FEES AND CHARGES

- A. If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants, and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs, (including CITY's 15% administrative overhead cost), damages, and penalties. This amount shall be added to the revenue-sharing payment thereafter due hereunder, and each and every part of the same shall be and become additional revenue-sharing payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic revenue-sharing payment set forth in Section 6 hereof.
- B. The charges for any late or delinquent payments shall be \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.
- C. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against CONCESSIONAIRE that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations, and to charge CONCESSIONAIRE with the cost of same, receipts and timesheets will be used to establish the charges, which shall be

presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE.

SECTION 8. HOURS / DAYS OF OPERATION

- A. CONCESSIONAIRE shall offer PREMISES services to the public from 8 a.m. to 5 p.m. Monday through Sunday. Additional hours of business shall be at CONCESSIONAIRE's discretion, keeping in line with the hours of Griffith Park and the needs of the public.
- B. CONCESSIONAIRE must post the hours of operation in a location visible to the public, and must be open for business during the hours posted. Hours of operation may not be changed without prior written approval of the GENERAL MANAGER. Any deviation from the hours specified shall be subject to prior written approval of the GENERAL MANAGER.

Should CONCESSIONAIRE fail to use the PREMISES for a period of thirty (30) consecutive days, this AGREEMENT shall cease, terminate, and be forfeited.

SECTION 9. OPERATING RESPONSIBILITIES

CONCESSIONAIRE shall, at all times during the term of the AGREEMENT, comply with the following conditions:

- A. Cleanliness:
CONCESSIONAIRE shall, at its own expense, keep the PREMISES and the surrounding area [at least twenty-five (25) feet] clean and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor any material detrimental to the public health, shall be permitted to remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES. If, as determined by the GENERAL MANAGER, the CONCESSION is deemed unclean, unsanitary, or does not meet the standards of the CITY or County Public Health Department, and after giving ten (10) days written notice to correct such deficiencies, CONCESSIONAIRE fails to correct such deficiencies by the end of the ten (10) days, then the GENERAL MANAGER may, in its sole discretion, terminate the AGREEMENT and all terms and conditions contained herein.

CONCESSIONAIRE, at its own expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than twice a week, and disposed of in the main dumpster. CONCESSIONAIRE shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type, and number approved by GENERAL MANAGER. If no trash storage area is made available, CONCESSIONAIRE shall provide at its own expense and with the GENERAL MANAGER'S prior written approval, an enclosed area concealing the trash storage from public view. The DEPARTMENT will incur the cost of all garbage

pick-up from the main dumpster for the PREMISES during the term of this AGREEMENT.

- B. Conduct:
CONCESSIONAIRE and its representatives, agents, servants, and employees shall at all times conduct its business in a quiet and orderly manner to the satisfaction of the GENERAL MANAGER.
- C. Disorderly Persons:
CONCESSIONAIRE shall use its best efforts to permit no intoxicated person(s), profane or indecent language, or boisterous or loud conduct in or about the PREMISES and shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES. CONCESSIONAIRE will call upon peace officers to assist in maintaining peaceful conditions.
- D. Non-Discrimination/ Equal Employment Practices/ Affirmative Action:
1. CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered by the AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination.
 2. CONCESSIONAIRE agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 21, CITY shall have the right to terminate the AGREEMENT and to reenter and repossess said land and the facilities thereon and hold the same as if said AGREEMENT had never been executed.
 3. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall be approved in advance by CITY and shall contain a like provision.

E. Personnel:

1. Freedom from Tuberculosis:

For employees preparing food, and others as required by statute (reference Section 5163 of the California Public Resources Code) or directive of the GENERAL MANAGER, CONCESSIONAIRE shall provide the GENERAL MANAGER with certificates on applicable employees indicating freedom from communicable tuberculosis.

2. Qualified Personnel:

CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by CONCESSIONAIRE, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, the GENERAL MANAGER may direct CONCESSIONAIRE to remove that person from the PREMISES.

3. Concession Manager:

CONCESSIONAIRE shall appoint, subject to written approval by the GENERAL MANAGER, a Concession Manager of CONCESSIONAIRE's operations at the FACILITY. If CONCESSIONAIRE elects to subcontract the management of any or all of the CONCESSION operations to a managing entity or entities, the provisions of this section shall also apply to any such entity.

Such person must be a qualified and experienced food service manager or supervisor of food service operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the CONCESSION, including the quality and prices of CONCESSION goods and services, and the appearance, conduct, and demeanor of CONCESSIONAIRE's agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available. The authority of the Concession Manager is to include, but is not limited to, the ability to: hire, fire, and schedule personnel; order merchandise and materials; oversee inventory control and tracking; oversee food handling and processing; implement a marketing plan; maintain accounting records; book parties and events; oversee operations; train employees (to include such areas as customer service); and have ultimate on-site decision-making responsibility

The Concession Manager shall devote the greater part of his or her working time and attention to the operation of the CONCESSION and shall promote, increase and develop the business. During the days and hours established for the operation of the subject concession, the Concession Manager's personal attention shall not be directed toward the operation of any other business activity.

If, for reasons of ill health, incapacitation, or death, the Concession Manager becomes incapable of performing each and all terms and provisions of the AGREEMENT, the GENERAL MANAGER may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

4. Approval of Employees, Volunteers and Subcontractors:

The DEPARTMENT shall have the right to approve or disapprove all employees, volunteers and subcontractors (including all employees and volunteers for any subcontractor) of CONCESSIONAIRE. Failure of CONCESSIONAIRE to obtain DEPARTMENT's written approval of all persons operating under the authority of this AGREEMENT on the PREMISES shall be a material breach of this AGREEMENT. CONCESSIONAIRE shall submit a list of all persons employed by, or volunteering or subcontracting for, CONCESSIONAIRE at the PREMISES to the GENERAL MANAGER prior to commencing operations pursuant to this AGREEMENT. All changes to the approved list of employees, volunteers and subcontractors shall be submitted to the GENERAL MANAGER for written approval prior to any employee, volunteer or subcontractor commencing work at the PREMISES. CONCESSIONAIRE shall not hire as an employee or volunteer, or subcontract with, any person whom the DEPARTMENT would be prohibited from hiring as an employee or volunteer pursuant to California Public Resources Code Section 5164 to perform work at the PREMISES. Each employee, volunteer or subcontractor (including all employees or volunteers of any subcontractor) shall be required to fill out a form requesting the information required by Section 5164, and the DEPARTMENT reserves the right to fingerprint and conduct a Department of Justice criminal background check on any such person prior to approving their employment, volunteer service or subcontract. Failure to comply with this hiring standard shall be a material breach of this AGREEMENT and CONCESSIONAIRE shall immediately remove any employee, volunteer or subcontractor from the PREMISES at DEPARTMENT's instruction.

F. Merchandise:

1. CONCESSIONAIRE shall offer the public fountain, prepared and/or sealed-container non-alcoholic beverages, along with prepared and packaged food. In addition, CONCESSIONAIRE may offer non-edible, Concession-related merchandise with the prior written approval of the GENERAL MANAGER.

2. All merchandise sold or kept for sale by CONCESSIONAIRE shall be first class in quality and shall conform to all Federal, State and Municipal laws, ordinances and regulations in every respect. No imitation, adulterated, misbranded or impure articles shall be sold or kept for sale by CONCESSIONAIRE and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation. In addition, no substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted. All merchandise kept for sale by the CONCESSIONAIRE shall be kept subject to the approval or rejection of the GENERAL MANAGER and CONCESSIONAIRE shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the consent of the GENERAL MANAGER. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale.
3. CONCESSIONAIRE shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out PREMISES products. CONCESSIONAIRE shall be prohibited from selling merchandise in non-returnable or glass bottles. CONCESSIONAIRE shall not sell or give away or otherwise dispose of any commodity that in the opinion of GENERAL MANAGER will cause undue litter.
4. CONCESSIONAIRE shall offer for sale to the public a variety of healthy choice options for food and beverages. This includes the availability of fresh fruits and fresh vegetables, bottled water, 100% juice, beverages that contain at least 50% fruit juice with no added sweeteners, and providing healthy snacks as defined by Education Code (Part 27, Chapter 9, Article 2.5). CONCESSIONAIRE expressly agrees to comply with all CITY and DEPARTMENT food programs.
5. CONCESSIONAIRE shall not use artificial trans fat (e.g., industrially created partial hydrogenation plant oils) in the preparation of food products. All prepared food items are to be free of artificial trans fat. CONCESSIONAIRE shall attempt to use only artificial trans fat free prepackaged food items.
6. CONCESSIONAIRE shall not sell any:
 - a. Items in glass containers or other materials that pose a serious hazard to park patrons;
 - b. Alcohol or tobacco products; or
 - c. Items in containers manufactured in a process that uses chlorofluorocarbons (e.g. certain Styrofoam products).

G. Price Schedules:

All prices charged for food and non-alcoholic beverages shall be prominently posted and shall not exceed prevailing market prices for the same standard grade of merchandise at similar venues in the surrounding community.

The prices of all merchandise shall be clearly marked and posted in full public view. On or before January 30th of each calendar year and upon request, the CONCESSIONAIRE shall provide the GENERAL MANAGER with a list of prices of all items or services sold.

H. Diversion of Business:

CONCESSIONAIRE shall not divert, cause, allow, or permit to be diverted any business from the PREMISES and shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it under the AGREEMENT.

I. Equipment, Furnishings, and Expendables:

1. All equipment, furnishings, and expendables required for said CONCESSION shall be purchased and installed by CONCESSIONAIRE at its sole expense and shall remain its personal property.
2. As a courtesy, CITY shall at no cost to CONCESSIONAIRE, provide certain equipment (which shall remain the property of the CITY) as specified in the City-Owned Equipment List (Exhibit F). Nothing in said AGREEMENT shall delegate responsibility of providing the necessary equipment to operate the CONCESSION to CITY. CITY reserves the right at any time to replace any and all items of CITY-owned equipment at this Concession with functionally equivalent equipment.
3. If, upon termination of the AGREEMENT, CITY does not renew said AGREEMENT, CONCESSIONAIRE shall have the right to remove its own equipment, furnishings, and expendables, but not improvements, from the PREMISES and shall be allowed a period of thirty (30) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY.
4. CONCESSIONAIRE shall flush all sink drains with hot water at least once a week. Floor sweepings, grease, or debris of any sort shall not be directed down any floor or other sinks. Caustic drain cleaners shall not be used. CITY will remove drain blockages; however, if in the GENERAL MANAGER's opinion, said blockage was caused by CONCESSIONAIRE's failure to observe said procedures, CONCESSIONAIRE will receive a ten (10) days written notice to correct such deficiencies. If CONCESSIONAIRE fails to correct such deficiencies by the end of the ten (10) days, the GENERAL

MANAGER may, in its sole discretion, terminate the AGREEMENT and all terms and conditions contained therein.

J. Maintenance of Equipment:

CONCESSIONAIRE shall, at all times and at its expense, keep and maintain all equipment, whether owned and/or installed by CONCESSIONAIRE or CITY, such as, but not limited to, heat exchangers, fans, controls and electric panels, installed by CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance.

No equipment provided by CITY shall be removed or replaced by CONCESSIONAIRE without the prior written consent of the GENERAL MANAGER, and if consent is secured, such removal and/or replacement shall be at the expense of CONCESSIONAIRE.

K. Claims for Labor and Materials:

The CONCESSIONAIRE shall promptly pay when due all amounts payable for labor and materials furnished in the performance of the AGREEMENT so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible matter produced by the CONCESSIONAIRE hereunder), against the CONCESSIONAIRE's rights hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

L. Signs and Advertisements:

1. CONCESSIONAIRE shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of CITY property without the prior written approval from the GENERAL MANAGER, who may require the removal or refurbishment of any sign previously approved. Certain signs and advertisements may also require the prior written approval of the Cultural Affairs Department or other appropriate agencies.
2. CONCESSIONAIRE shall not permit vendors to display wares inside or outside the building or on said property unless written permission is secured from the GENERAL MANAGER in advance of installation, and such permission shall be subject to revocation at any time.
3. Upon the expiration or termination of the AGREEMENT, CONCESSIONAIRE shall, at its own expense, remove or paint out, as the GENERAL MANAGER may direct, any and all of its signs and displays on the PREMISES and in connection therewith, and shall restore said PREMISES and improvements thereto to the same condition as prior to the placement of any such signs or displays.

4. CONCESSIONAIRE shall place a sign at the FACILITY, in a prominent place, stating that the CONCESSION is operated under a Concession AGREEMENT issued by CITY through the Department of Recreation and Parks.

M. Utilities:

CONCESSIONAIRE shall be responsible for all utility charges. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for electricity, gas, water, heat, air-conditioning, and other utility services to PREMISES, and shall be paid by CONCESSIONAIRE regardless of whether such utility services are furnished by CITY or by other utility service providers. CITY and CONCESSIONAIRE shall each supply their own telephone service. CONCESSIONAIRE'S telephone number shall be placed in the name of the facility and shall not be transferable to any other location.

1. Water shall be utilized by CONCESSIONAIRE in the most efficient manner possible, and CONCESSIONAIRE expressly agrees to comply with all CITY water conservation programs.
2. The CONCESSIONAIRE will for pay electricity, gas, and water directly to the service provider if separate meters are installed at this location. CONCESSIONAIRE assumes full responsibility, financial and otherwise.
3. CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the revenue-sharing payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake, wind, civil commotion, or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.
4. In all instances where damage to any utility service line is caused by CONCESSIONAIRE, its employees, contractors, sub-contractors, suppliers, agents, or invitees, CONCESSIONAIRE shall be responsible for the cost of repairs and any and all damages occasioned thereby.
5. In the event that individual meters are not available, CONCESSIONAIRE shall remit, on a monthly basis in conjunction with the revenue-sharing payments to the DEPARTMENT, the amount of Three Hundred Dollars (\$300.00) as payment for utilities (electricity, gas, and water).

- N. Vending Machines:
CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of the GENERAL MANAGER. The GENERAL MANAGER shall have the right to order the immediate removal of any unauthorized machines.
- O. Safety:
CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or GENERAL MANAGER notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report" (see SECTION 33, "NOTICES," for mailing address) (Exhibit G). If CONCESSIONAIRE fails to correct hazardous conditions specified by the GENERAL MANAGER in a written notice, which have led, or in the opinion of CITY could lead, to injury, the GENERAL MANAGER may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.
- All overhead shelving shall include anchoring devices to prevent toppling or spillage of shelved items in the event of seismic activity
- P. Environmental Sensitivity:
The CONCESSIONAIRE must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY policies regarding protection of the environment. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.
- Q. Fund Raising Activities:
CONCESSIONAIRE will be expected to cooperate with Department personnel on all matters relative to the conduct of fund-raising and/or special events. Where practical, CONCESSIONAIRE will be invited to provide food and/or beverages at Department-sponsored events at or in proximity to the FACILITY/PREMISES defined under this AGREEMENT should menu of the CONCESSIONAIRE be appropriate for the event as determined by the GENERAL MANAGER. However, CONCESSIONAIRE may be instructed to cease operation during an event at the discretion of the GENERAL MANAGER.
- R. Scheduled Events in Griffith Park:
Long-standing annual events (i.e. walk-a-thons, 5K runs, Kid's Day L.A.), as well as new events in Griffith Park, may on occasion increase or decrease the usual amount of business at this concession location due to increased park attendance

and/or limited/restricted traffic access. CONCESSIONAIRE shall endeavor to adjust personnel scheduling and available goods accordingly. Regular hours must be maintained, at a minimum, during scheduled special events.

S. Amplified Sound:

No amplified sound is permitted by CONCESSIONAIRE in its operations on PREMISES.

T. Security:

CONCESSIONAIRE shall be responsible for security of the interior PREMISES. CONCESSIONAIRE may install equipment, approved by the GENERAL MANAGER, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by CONCESSIONAIRE.

U. Resources Supplied by Concessionaire:

CONCESSIONAIRE shall supply resource items that are specifically listed in this section in order to ensure business operations are run effectively and efficiently.

V. Card Payments and Automatic Teller Machines (ATM):

1. CONCESSIONAIRE shall be required to have the ability to accept Visa, MasterCard, American Express, and debit card payments from patrons (customers).
2. CONCESSIONAIRE may, upon written approval of the GENERAL MANAGER, install and operate an ATM to accommodate all patrons (customers). Operation of ATMs shall not be exclusive to these PREMISES.
3. CONCESSIONAIRE shall not charge an amount exceeding three dollars (\$3.00) as any type of service charge for the use of an ATM. Such service charge will be included in gross receipts, subject to the revenue-sharing payment, and included in the monthly remittance advice.

W. Quiet Enjoyment:

CITY agrees that CONCESSIONAIRE, upon payment of the fees and charges specified herein, and all other charges and payments to be paid by CONCESSIONAIRE under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, shall lawfully and quietly hold, use and enjoy the concession PREMISES during the term of this AGREEMENT. In the case of disputes, during the life of the AGREEMENT, over any conditions which may impede upon the CONCESSIONAIRE's quiet enjoyment of the concession PREMISES, the GENERAL MANAGER shall have final determination of any solution to such dispute; the GENERAL MANAGER's final determination shall be binding upon all parties in such dispute.

X. Receipts:

1. CONCESSIONAIRE shall offer receipts to the customers for every transaction.
2. CONCESSIONAIRE shall at all times place a sign within twelve (12) inches of cash register, in clear view to the public, and in minimum one-inch lettering, which states: "If a receipt for this transaction is not provided, please contact the Department of Recreation and Parks - Concessions Unit at (213) 202-3280."

SECTION 10. MAINTENANCE OF PREMISES

During all periods that the PREMISES are used or are under the control of the CONCESSIONAIRE for the uses, purposes, and occupancy aforesaid, CONCESSIONAIRE shall be responsible for all necessary janitorial duties and damage/maintenance repairs, to the satisfaction of the GENERAL MANAGER. The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism.

A. Interior of Premises:

1. Areas to be Maintained by CONCESSIONAIRE:
CONCESSIONAIRE shall, at its own expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by CITY or CONCESSIONAIRE. Improvements shall include all buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY-owned facilities (such as buildings, fences, posts, signs, electrical hook-ups, plumbing, tracks, tanks, etc.). CONCESSIONAIRE shall provide all maintenance, repair, and service required on all interior areas, surfaces, and equipment used in the PREMISES and keep such equipment in good repair and in a clean and orderly condition and appearance. CONCESSIONAIRE shall also be responsible for electrical, mechanical, and plumbing maintenance in the interior of the PREMISES, such as lighting fixtures, sinks, and faucets; however, CITY shall be responsible for maintenance of utility lines and drains within the walls and floors of the concession PREMISES. Insofar as sanitation and appearance of the PREMISES is concerned, the GENERAL MANAGER may direct CONCESSIONAIRE to perform necessary repairs and maintenance to the interior of the structure or to the equipment, whether the equipment is CONCESSIONAIRE or CITY property.

2. Duties:
CONCESSIONAIRE's maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the GENERAL MANAGER to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.
- B. Exterior of Premises and Common Passageways:
CITY shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, vandalism, and the elements, unless otherwise provided for in the AGREEMENT. However, the CONCESSIONAIRE shall be responsible for the repair of any exterior alarm device and/or the roll up doors over the food service window, including such repairs occasioned by normal wear and tear, vandalism, and the elements. Common passageways leading to other CONCESSION facilities or offices maintained by CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this Section.
- C. Correction of Conditions Leading to Damage:
If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the opinion of CITY, could lead to significant damage to CITY property, the GENERAL MANAGER may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand. If, for any reasons, payment of such fees becomes delinquent, the GENERAL MANAGER may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.
- D. Property Damage and Theft Reporting:
CONCESSIONAIRE shall complete and submit to the DEPARTMENT a "Special Occurrence and Loss Report," in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. Blank forms for this purpose shall be provided by the DEPARTMENT.
- E. Damage or Destruction to Premises:
 1. Partial Damage:
If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence

by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

2. Extensive Damage:

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by the GENERAL MANAGER as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

3. Complete Destruction:

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, CONCESSIONAIRE may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. CONCESSIONAIRE shall continue paying CITY the revenue-sharing payment as determined above during the rebuilding of the facility.

4. Limits of CITY's Obligation Defined:

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY's obligation shall also be limited to repair or reconstruction of the

PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

F. Pest Control:

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall be responsible for pest control in and around the PREMISES, including but not limited to, abatement of insects (including roaches, bees, etc.), spiders, rodents, vermin, and other nuisance pests, if the pests are found in or on structures or areas used and maintained by CONCESSIONAIRE, such as any of the following portions of the PREMISES:

1. Any portion of a building or enclosed structure with walls, roof, and doors, such as pro shops, gift shops, golf car storage facilities, restaurants, food stands, ticket and sales booths, kiosks, theater stage buildings, offices and storage facilities, storage containers owned and/or used by CONCESSIONAIRE, equine housing, etc.
2. Open structures such as driving ranges, tee structures, arenas, etc.
3. Areas enclosed with a fence such as driving ranges, tennis courts, batting cages, trash and/or storage areas behind food stands, etc.

CITY shall be responsible for pest control if pests are found in or on structures or areas maintained by CITY, such as:

4. Open, unfenced areas such as those locations permitted for mobile food vending, bike rentals, coin-operated telescopes, etc.
5. Recreation centers, rental halls, and other facilities occupied in part by CONCESSIONAIRE but maintained by CITY.
6. Other areas, structures, or facilities adjacent to the PREMISES, but not used by or under the control of CONCESSIONAIRE; or areas, structures, or facilities shared by CONCESSIONAIRE and CITY.

Pest control for pests which may cause permanent structural damage to DEPARTMENT property (for example, termite infestation) shall be the responsibility of CITY. CONCESSIONAIRE shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES clean and orderly in accordance with this Section, and keeping wood components painted. The GENERAL MANAGER may direct CONCESSIONAIRE to take additional measures to abate pests which are an immediate threat to public health or safety.

SECTION 11. IMPROVEMENTS

The CONCESSIONAIRE is required to make to the satisfaction of the CITY the improvements detailed in Exhibit C under A.6, "Proposal Items / Concession Improvements," subject to the approval of the DEPARTMENT. Included are the storage space, retractable awning, restroom exteriors, service windows, and information kiosk. All improvements provided by the CONCESSIONAIRE become the property of the CITY upon the date of completion of the improvements and receipt of all applicable certificates of occupancy, etc.

The proposed cost of all the above improvements is estimated to be \$35,475.00, to be paid in cash by the CONCESSIONAIRE. The CONCESSIONAIRE shall submit full documentation of the cost of implementing the proposed improvements. CONCESSIONAIRE shall further use its best efforts to complete the proposed improvements on or before two years of the date of execution of the AGREEMENT.

Prior to the construction and installation of any CONCESSION improvements and no more than thirty (30) days after execution of the AGREEMENT by the parties, the CONCESSIONAIRE shall submit an overall program consistent with the proposal timeline, including a time schedule, for same which shall be subject to the approval of the GENERAL MANAGER and upon approval, CONCESSIONAIRE shall, as applicable, and at its sole cost and expense, employ competent architects, engineers and interior decorators, as required, who will prepare detailed plans, specifications, interior design and decorations and cost estimates of all CONCESSION improvements, décor, and equipment to be installed in the CONCESSION areas. Time schedule shall not interfere with the regular operating hours of the CONCESSION, unless approved in writing in advance by the GENERAL MANAGER. The detailed plans, specifications, equipment, interior design and décor and cost estimates shall be submitted to the GENERAL MANAGER for written approval no more than ninety (90) days after CONCESSIONAIRE receives approval of the overall program by the GENERAL MANAGER. CONCESSIONAIRE shall not award or let any contract for the construction of said CONCESSION improvements, enter into any contracts for the purchase of any equipment to be installed in the CONCESSION areas or enter into any contracts regarding the improvements until the detailed plans and specifications have been approved in writing by the GENERAL MANAGER.

The GENERAL MANAGER shall, within sixty (60) days of receipt of any such plans and specifications, either approve or disapprove the same. Approval by the GENERAL MANAGER shall extend to and include architectural and aesthetic matters and the GENERAL MANAGER reserves the right to reject any such data submitted and to require CONCESSIONAIRE to resubmit design and layout proposals until they meet with the GENERAL MANAGER's approval. One (1) copy of plans for all improvements or subsequent changes therein or alterations thereof shall, within fifteen (15) days after approval by the GENERAL MANAGER, be signed by a representative of CONCESSIONAIRE and deposited with CITY.

Upon approval by the GENERAL MANAGER of the detailed plans, specifications, equipment, cost estimates and the interior design and décor of the CONCESSION improvements, CONCESSIONAIRE shall forthwith cause the work called for as approved by said GENERAL MANAGER to be forthwith commenced and completed with reasonable dispatch. No change, addition or alteration shall be made in the scope of the work so approved without first obtaining the GENERAL MANAGER's approval in writing. CONCESSIONAIRE and the CITY acknowledge that the scope of work may be modified as a result of unforeseen conditions and value engineering, and the parties shall consult in good faith to promptly respond to unforeseen conditions (with, among other things, change orders) and to implement value engineering. The CITY reserves the right to disapprove any proposal to modify the scope of the work which the GENERAL MANAGER reasonably determines is not in the best interest of the CITY.

Upon completion of the CONCESSION improvements, CONCESSIONAIRE shall, within a reasonable time thereafter, furnish CITY, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all laws, rules, ordinances and governmental rules, regulations and orders; (2) two complete, reproducible sets of as-built drawings covering the structural and other improvements installed by CONCESSIONAIRE in the CONCESSION areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air conditioning ducts and related matters.

CONCESSIONAIRE shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made by CONCESSIONAIRE and three (3) duplicated receipted invoices on all materials and labor costs incurred in the installation of the foregoing structural and equipment items, and the interior design and décor which CONCESSIONAIRE enters on its records as representing its capital expenditures in the CONCESSION areas.

CONCESSIONAIRE will be required to reimburse the DEPARTMENT for the employment of environmental consultants to provide any environmental assessment which may be required by Federal (National Environmental Policy Act) or State (California Environmental Quality Act) regulations to build the improvements proposed. All required environmental documents and processing must be completed before the proposed project or improvements are submitted to the GENERAL MANAGER for approval. CONCESSIONAIRE will be responsible for any mitigation requirements resulting from the project proposed.

After completion of the structural or other improvements and installation of equipment and interior design and décor, as above provided, CONCESSIONAIRE shall not make any structural alterations to the ceilings, walls or floors of any permanent improvements which it constructs or installs in the CONCESSION areas without first obtaining the GENERAL MANAGER's written consent; provided, however, that CONCESSIONAIRE may make nonstructural alterations which the exigencies of the operation of its CONCESSION demand in order to promote efficiency in the operation thereof.

CONCESSIONAIRE may propose other improvements to the CONCESSION and PREMISES. However, award of the AGREEMENT shall not constitute approval to make any such proposed improvements. The Improvements must have prior written approval from the General Manager. CONCESSIONAIRE shall be responsible for the cost of any improvements, and shall begin and complete said improvements within the time frame specified in the written approval, or as prescribed by the GENERAL MANAGER. CITY reserves the right to recover damages from CONCESSIONAIRE if the improvements are not completed, completed as stipulated, or completed to the satisfaction of the GENERAL MANAGER. Such damages may include, but are not limited to, recovering up to the entire cost of the improvements from the CONCESSIONAIRE's performance bond. The bond must be recompensed as stipulated in Section 14, "Performance Deposit," herein.

CITY shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all proposed improvements, according to approved plans, regardless of cost. CONCESSIONAIRE shall bear all costs for all necessary permits, insurance, and taxes required for compliance of such improvements. Any breach of this condition for concession improvements shall be a material breach of this Concession Agreement.

CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by CONCESSIONAIRE. Such development or improvement may require the suspension or termination of the AGREEMENT. CITY shall not be liable for loss of business which results from the construction of any development or improvements to the FACILITY or the PREMISES.

A. Compliance with Applicable Rules and Regulations:

All structural or other improvements, equipment and interior design and décor constructed or installed by CONCESSIONAIRE in the facility areas, including the plans and specifications therefore, shall in all respects conform to and comply with the applicable statutes (including the California Environmental Quality Act), ordinances, building codes, rules and regulations of CITY and such other authorities that may have jurisdiction over the facility areas or CONCESSIONAIRE'S operations therein. The written approval by the GENERAL MANAGER of any improvements as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in CONCESSIONAIRE.

B. Procurement of Permits and Approvals:

CONCESSIONAIRE shall, at its sole expense, and prior to construction of any Improvements, procure all building, fire, safety, aesthetic, environmental, and other permits and approvals necessary for the construction of the structural and other improvements, installation of the equipment, and the interior design and décor. Copies of all said permits and approvals shall thereafter be submitted to the DEPARTMENT. No permission to begin said Improvements shall be granted by the GENERAL MANAGER prior to CONCESSIONAIRE's obtaining of said permits and approvals.

- C. Subcontractors:
CONCESSIONAIRE shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment, and the interior designing and décor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, and submit to CITY evidence of required insurance coverage.

SECTION 12. LIABILITY

- A. Indemnification: Except for the active negligence or willful misconduct of City, CONCESSIONAIRE undertakes and agrees to defend, indemnify and hold harmless City and any and all of City's Officers, Agents, and Employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONCESSIONAIRE's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this agreement on the part of CONCESSIONAIRE, its officers, agents, employees, or sub-contractor of any tier.

- B. Insurance:

1. General Conditions:
CONCESSIONAIRE shall obtain and keep in force an insurance policy which covers all operations conducted pursuant to this AGREEMENT. Such insurance policy must also insure the City of Los Angeles and comply with the Office of the Administrative Officer's insurance requirements. See Exhibit E for insurance requirements. The GENERAL MANAGER, based upon advice of the CITY's Risk Managers, may increase or decrease the amounts of insurance coverage required herein by giving thirty (30) days' written notice to CONCESSIONAIRE.

Without limiting CONCESSIONAIRE'S indemnification of City, CONCESSIONAIRE shall provide and maintain at its own expense during the entire term of the AGREEMENT insurance having the limits customarily carried and actually arranged by CONCESSIONAIRE but not less than the amounts and types listed in the AGREEMENT covering its operations hereunder subject to the following conditions:

- a. Additional Insured:
CITY, its Officers, Agents and Employees shall be included as additional insureds in all liability insurance policies except: Workers' Compensation/ Employer's Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Fire Legal). CITY shall be named a Loss Payee as its interest may appear in all required property, fidelity or surety coverages.

- b. Insurance Requirements:
All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy and shall be filed with the Office of the City Administrative Officer for its review in accordance with LAAC Sections 11.47 through 11.56.
- c. Primary Insurance:
Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on CITY's insurance program for contributions.
- d. Admitted Carrier/Licensed California Broker:
Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California.
- e. 30-Day Notice:
With respect to the interest of CITY, such insurance shall not be canceled, materially reduced in coverage or limits or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier) has been given to the Office of the City Administrative Officer.
- f. Prior Approval:
Evidence of insurance shall be submitted to and approved by the Office of the Administrative Officer prior to commencement of any work or tenancy under this agreement.
- g. Severability of Interest:
Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
- h. Acceptable Evidence:
CONCESSIONAIRE shall submit acceptable evidence and approval of insurance in accordance with the "Instructions and Information on Complying with City Insurance Requirements" (Exhibit E).
- i. Renewal:
Once the insurance has been approved by CITY, evidence of renewal of an expiring policy may be submitted on a manually signed renewal endorsement form. If the policy or the carrier has changed, however, new evidence as specified in paragraphs a. through h. above must be submitted.

j. Aggregate Limits/Blanket Coverage:

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of CONCESSIONAIRE outside this agreement, CONCESSIONAIRE shall give CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in CONCESSIONAIRE'S best judgment will diminish the protection such insurance affords CITY. Further, CONCESSIONAIRE shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

2. Self-Insurance and Self-Insured Retentions:

Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by CITY upon review of evidence of CONCESSIONAIRE's financial capacity to respond. Additionally, such programs or retentions must provide CITY with at least the same protections from liability and defense of suits as would be afforded by first-dollar insurance.

3. Modification of Coverage:

CITY reserves the right at any time during the term of this agreement to change the amounts and types of insurance required hereunder by giving CONCESSIONAIRE ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to CONCESSIONAIRE, CITY agrees to negotiate additional compensation proportional to the increased benefit to CITY.

4. Availability/Failure to Procure Insurance:

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by CITY. Nonavailability or nonaffordability must be documented by a letter from CONCESSIONAIRE's insurance broker or agent indicating a good faith insurance and showing as minimum the names of then insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, CONCESSIONAIRE's failure to procure or maintain required insurance or a self-insurance program shall constitute a material breach of contract under which the GENERAL MANAGER may immediately terminate or suspend this agreement or, at its discretion, procure or renew such insurance to protect CITY's interests and pay any and all premiums in connection therewith, and recover all monies so paid from CONCESSIONAIRE.

5. Underlying Insurance:
CONCESSIONAIRE shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance, consultants, agents and subcontractor, if any, to protect CONCESSIONAIRE's and CITY's interest, and for ensuring that such persons comply with applicable insurance statutes. CONCESSIONAIRE is encouraged to seek professional advice in this regard.
6. Workers' Compensation:
CONCESSIONAIRE hereby certifies that it is aware of the provisions of Section 3700 et seq., of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work of this AGREEMENT.

Any breach of this condition for insurance requirements shall be a material breach of this AGREEMENT.

SECTION 13. PROHIBITED ACTS

CONCESSIONAIRE shall not:

1. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;
2. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
3. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the GENERAL MANAGER;
4. Overload any floor in the PREMISES;
5. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to the GENERAL MANAGER any and all keys to

the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by the GENERAL MANAGER, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;

6. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of the GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
7. Use, create, store or allow any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;
8. Allow any sale by auction upon the PREMISES;
9. Permit undue loitering on or about the PREMISES;
10. Use the PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for, in the opinion of the GENERAL MANAGER, any improper, immoral, or unlawful purposes.

SECTION 14. PERFORMANCE DEPOSIT

- A. CONCESSIONAIRE shall provide the DEPARTMENT a sum equal to Three Thousand Dollars (\$3,000) to guarantee payment of fees and as a damage deposit to be used in accordance with the default provisions of this AGREEMENT.

B. Form of Deposit

CONCESSIONAIRE's Deposit shall be in any one of the following forms but may not be a combination of two or more types:

1. A cash deposit made at the Cashier's window of the DEPARTMENT.
2. A cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, which cashier's check is payable to the order of the City of Los Angeles.
3. A check drawn on and certified by any bank that is a member of the Los Angeles Clearing House Association, payable to the order of the City of Los Angeles.

C. Agreement of Deposit and Indemnity:

The above instruments must be accompanied by an agreement of deposit and indemnity, approved as to form and legality by the City Attorney, wherein CONCESSIONAIRE unconditionally agrees that in the event of any default, CITY shall have full power and authority to use the deposit in whole or in part to indemnify CITY. Every deposit of securities or certificates of time deposit must be accompanied by express authority for the GENERAL MANAGER to convert same into cash and to deposit said cash in the City Treasury in the manner governing deposit of cash in the City Treasury by the Charter of the City of Los Angeles. All deposits of cash or checks must be immediately so deposited by the DEPARTMENT.

The BOARD shall authorize and request the Treasurer of the City of Los Angeles to receive said United States Government negotiable securities, together with the properly executed agreement of indemnity and deposit, for safekeeping. In the event said securities are to be converted to cash because of default, the BOARD may authorize and request the Treasurer to sell said securities on its behalf.

D. Maintenance of Deposit:

Said deposit shall be held by CITY during the entire term of the AGREEMENT. United States Government negotiable securities shall at all times have both a par value and a market value of not less than the amount specified in the AGREEMENT and, in the event the market value of said securities declines, CONCESSIONAIRE shall, upon written demand of the GENERAL MANAGER, within ten days of the mailing by the DEPARTMENT of such demand, pledge and furnish such additional United States Government negotiable securities with appropriate agreement of indemnity and deposit approved as to form and legality by the City Attorney, as may be necessary to maintain both a par and market value of securities on deposit of not less than the amount specified in the AGREEMENT. If such additional securities are not received by the DEPARTMENT within ten days after the mailing of written notice as stated above, all default provisions may be exercised at the discretion of CITY.

In the event of maturity of the securities prior to termination of the AGREEMENT for which they were deposited, the BOARD shall authorize and request the Treasurer to redeem the securities. The BOARD shall then use the proceeds of the redeemed securities to purchase a sufficient amount of United States Government negotiable securities to be at least equal as to both par and market value to the original amount of the deposit, and place them with Treasurer on receipt.

If the redemption proceeds are not sufficient, CONCESSIONAIRE shall deposit cash with the DEPARTMENT in an amount sufficient to make up the difference within ten days of mailing of notice of deficiency by the DEPARTMENT.

If said deposit is in the form of a certificate of deposit, a current certificate shall be provided to the DEPARTMENT at the sole expense of the CONCESSIONAIRE, on an annual basis, no later than April 30th of each calendar year.

- E. Return of Performance Deposit to CONCESSIONAIRE:
Said Performance Deposit shall be returned to CONCESSIONAIRE and any rights assigned to the Performance Deposit shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and any exit audits performed in conjunction with the AGREEMENT. The CITY reserves the right to deduct from the Performance Deposit, any amounts up to and including the full amount of the Performance Deposit as stated herein, owed to the CITY by CONCESSIONAIRE as shown by any exit audits performed by CITY, or as compensation to CITY for failure to adhere to the terms and conditions of the AGREEMENT.

SECTION 15. NUMBER OF ORIGINALS

The number of original texts of this AGREEMENT shall be equal to the number of parties hereto, one text being retained by each party.

SECTION 16. INDEPENDENT CONTRACTORS / CONSULTANTS

The CONCESSIONAIRE is acting hereunder as an independent contractor and not as an agent or employee of the CITY. The CONCESSIONAIRE shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

SECTION 17. TAXES, PERMITS, AND LICENSES

- A. CONCESSIONAIRE shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

- B. CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE's improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE's operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.
- C. During the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a current Los Angeles Business Tax Registration Certificate (BTRC) as required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, Sections 21.00 et. seq.).
- D. Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, CONCESSIONAIRE must pay to the City of Los Angeles for the privilege of occupancy, a tax at the rate of \$1.48 per calendar quarter or fractional part thereof for the first \$1,000 or less of charges (revenue-sharing payments) attributable to said calendar quarter, plus \$1.48 per calendar quarter for each additional \$1,000 of charges or fractional part thereof in excess of \$1,000. Said tax shall be paid quarterly to the DEPARTMENT, on or before the fifteenth (15th) of April, July, October, January of each calendar year, for the preceding three (3) months.

The charges for late or delinquent payments shall be \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.

SECTION 18. ASSIGNMENT, SUBLEASE, BANKRUPTCY

CONCESSIONAIRE shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor or purchaser.

The CONCESSIONAIRE may not, without prior written permission of the CITY:

- A. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

SECTION 19. BUSINESS RECORDS

CONCESSIONAIRE shall maintain during the term of the AGREEMENT and for three (3) years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to the AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by GENERAL MANAGER, or a duly authorized representative, during ordinary business hours at any time during the term of this agreement and for at least three (3) years thereafter.

- A. Employee Fidelity Bonds:
At the GENERAL MANAGER's discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.
- B. Cash And Record Handling Requirements:
If requested by the GENERAL MANAGER, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to the GENERAL MANAGER for approval.

CONCESSIONAIRE shall be required to maintain a method of accounting of the CONCESSION which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE from the operation of the CONCESSION. The method of accounting, including bank accounts, established for the CONCESSION shall be separate from the accounting systems used for any other business operated by CONCESSIONAIRE or for recording CONCESSIONAIRE's personal financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
3. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
4. Cash register tapes shall be retained so that day to day sales can be identified. A cash register must be used in public view which prints a dated double tape, indicating each sale and the daily total.

5. Any other accounting records that CITY, in its sole discretion, deems necessary for proper reporting of receipts.

C. Method of Recording Gross Receipts:

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall obtain and install a cash register(s) on which it shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. CONCESSIONAIRE shall not purchase or install the cash register before obtaining the GENERAL MANAGER's written approval of the specific register to be purchased. All cash registers shall have a price display which is and shall remain at all times visible to the public.

In lieu of a cash register as described directly above, the CONCESSIONAIRE may install a computerized Point-of-Sale system, including hardware and software, to record transactions and receipts. Such computerized Point-of-Sale system must be capable of providing paper receipts to patrons, have a price display which is and shall remain at all times visible to the public, and have controls in place to make it equivalent to a non-resettable cash register. CONCESSIONAIRE shall not purchase or install the computerized Point-of-Sale system, including hardware and software, before obtaining the GENERAL MANAGER's written approval of the specific hardware and software to be purchased.

D. Annual Statement of Gross Receipts and Expenses:

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations as specified in the AGREEMENT, in a form acceptable to the GENERAL MANAGER, on or before April 30th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. An extension may be granted in writing, prior to the April 30th due date, by the GENERAL MANAGER or his designee, provided sufficient verification of the need for the extension is provided, as accepted by the GENERAL MANAGER or his designee. The charge for late or delinquent Statements shall be \$50.00 per month or part thereof late.

In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by CONCESSIONAIRE and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by CONCESSIONAIRE to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, CONCESSIONAIRE shall pay CITY within thirty (30) days after billing any additional revenue-sharing payments disclosed by such audit. If discrepancy exceeds 2% and no reasonable explanation is given for such discrepancy, CONCESSIONAIRE shall also pay the cost of the audit.

- E. Adjustments to Gross Revenue:
CONCESSIONAIRE shall provide to DEPARTMENT information on all adjustments to reported gross revenue. CONCESSIONAIRE shall provide said adjustment to DEPARTMENT within sixty (60) calendar days of the date of the adjustment. Should CONCESSIONAIRE fail to provide the adjustment to DEPARTMENT, CONCESSIONAIRE shall pay a penalty of \$50.00 per month for the late submission of the information for each month late.

SECTION 20. REGULATIONS, INSPECTION, AND DIRECTIVES

- A. The operations conducted by CONCESSIONAIRE pursuant to the AGREEMENT shall be subject to:
1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the CONCESSION;
 2. Any and all orders, directions or conditions issued, given, or imposed by GENERAL MANAGER with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
 3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the LAMC, LAAC, the Charter of the City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the CONCESSIONAIRE's operations; and,
 4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.
- B. Permissions:
Any permission required by the AGREEMENT shall be secured in writing by CONCESSIONAIRE from CITY or the GENERAL MANAGER and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the GENERAL MANAGER.
- C. Right of Inspection:
CITY and the GENERAL MANAGER, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE's operation. During these inspections, they shall have the right to photograph, film, or otherwise record conditions and events taking place upon the PREMISES. The inspections may be made by persons identified to CONCESSIONAIRE as CITY Employees, or may be made by independent contractors engaged by CITY. Inspections may be made for the purposes set forth

below, and for any other lawful purpose for which the CITY or another governmental entity with jurisdiction is authorized to perform inspections of the PREMISES:

1. To determine if the terms and conditions of the AGREEMENT are being complied with.
2. To observe transactions between the CONCESSIONAIRE and patrons in order to evaluate the quality of services provided or quality and quantities of items sold or dispensed.

D. Control of Premises:

CITY shall have absolute and full access to the PREMISES and all its appurtenances during the term of the AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by said CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE.

E. Americans with Disabilities Act:

The CONCESSIONAIRE shall comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq., and with the provisions of the Certification Regarding Compliance with the Americans with Disabilities Act which is attached to AGREEMENT and incorporated herein by this reference.

F. Child Support Ordinance:

The AGREEMENT is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the LAAC, Child Support Assignment Orders Ordinance. CONCESSIONAIRE is required to complete a Certification of Compliance with Child Support obligations which is attached to the AGREEMENT and incorporated herein by this reference. Pursuant to this ordinance, CONCESSIONAIRE shall (1) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of CONCESSIONAIRE are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230 et seq.; and (4) maintain such compliance throughout the term of this AGREEMENT.

G. Business Inclusion Program:

CONCESSIONAIRE agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise firms on a level so designated in its proposal, if any. CONCESSIONAIRE certifies that it has complied with Executive Directive No. 14 regarding the Outreach Program. CONCESSIONAIRE shall not change any of these designated subconsultants and subcontractors, nor shall CONCESSIONAIRE reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

- H. Living Wage Ordinance/Service Contract Worker Retention Ordinance:
The CONCESSIONAIRE must comply with City Ordinance 172336 (Living Wage Ordinance), unless exempted in accordance with such ordinance. The Living Wage Ordinance requires in part that nothing less than a prescribed minimum level of compensation (a "living wage") be paid to employees of service contractors of the CITY and its financial assistance recipients and to employees of such recipients. Under Section 10.37.2 of the Ordinance, CONCESSIONAIRE shall pay service employees who spend any of their time on CITY contracts a wage of no less than the hourly rates set under the authority of the Living Wage Ordinance (LWO). Such rates shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees' Retirement System.

CONCESSIONAIRE must also comply with the Service Contract Worker Retention Ordinance (SCWRO), adopted through Ordinance 171004. This Ordinance requires CONCESSIONAIRE to retain all employees from the previous contractor/concessionaire for a period of 90 days, and must continue to retain those satisfactory performing employees.

- I. Contractor Responsibility Ordinance:
Every Request for Proposal, Request for Bid, Request for Qualifications, or other procurement process is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq. of Article 14, Chapter 1 of Division 10 of the LAAC, unless exempt pursuant to the provisions of the Ordinance.
- J. Equal Benefits Ordinance:
Section 10.8.2.1 (c) of the LAAC (Equal Benefits Ordinance) requires that every contract with or on behalf of the City of Los Angeles for which the consideration is in excess of the \$5,000.00 must incorporate the Equal Benefits Provisions.
- K. Contractor Evaluation Ordinance:
At the end of the AGREEMENT, the CITY will conduct an evaluation of the CONCESSIONAIRE's performance. The CITY may also conduct evaluations of the CONCESSIONAIRE's performance during the term of the AGREEMENT. As required by Section 10.39.2 of the LAAC, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONCESSIONAIRE assigns to the AGREEMENT. A CONCESSIONAIRE who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed 14 calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONCESSIONAIRE, to evaluate proposals and to conduct reference checks when awarding other service contracts.

- L. Slavery Disclosure Ordinance:
Unless otherwise exempt in accordance with the provisions of this Ordinance, the AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the LAAC, as may be amended from time to time. CONCESSIONAIRE certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of the AGREEMENT.
- M. First Source Hiring Ordinance:
Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the LAAC, as amended from time to time.
1. CONCESSIONAIRE shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONCESSIONAIRE estimates it will need to fill in order to perform the services under the AGREEMENT. The Department of Public Works, Bureau of Contract Administration is the DAA.
 2. CONCESSIONAIRE further pledges that it will, during the term of the AGREEMENT:
 - a. At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview;
 - b. Interview qualified individuals referred by CDD; and
 - c. Prior to filling any employment opportunity, the CONCESSIONAIRE shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONCESSIONAIRE interviewed and the reasons why referred individuals were not hired.
 3. Any Subcontract entered into by the CONCESSIONAIRE relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
 4. CONCESSIONAIRE shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the LAAC the DAA has determined that the CONCESSIONAIRE intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be

documented in the Awarding Authority's Contractor Evaluation, required under LAAC Section 10.39 et seq., and must be documented in each of the CONCESSIONAIRE's subsequent Contractor Responsibility Questionnaires submitted under LAAC Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the LAAC, the Awarding Authority shall, under appropriate circumstances, terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the DAA determines that the subject CONCESSIONAIRE has violated provisions of the FSHO.

SECTION 21. TERMINATION

A. By CITY:

CITY shall have the right, via a thirty (30) day written notice, to terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events occur:

1. CONCESSIONAIRE fails to keep, perform and observe any promise, covenant and condition set forth in the AGREEMENT on its part to be kept, performed or observed after receipt of written notice of default from GENERAL MANAGER, except where fulfillment of CONCESSIONAIRE's obligation requires activity over a period of time and CONCESSIONAIRE has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance diligently and without interruption except for causes beyond its control;
2. The interest of CONCESSIONAIRE under the AGREEMENT is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of the GENERAL MANAGER;
3. CONCESSIONAIRE becomes, without the prior, written approval of the GENERAL MANAGER a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
4. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with CONCESSIONAIRE's use of the PREMISES or with its operations under the AGREEMENT;
5. CONCESSIONAIRE becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or

liquidator of all or substantially all of its property or its property located within the CONCESSION areas;

6. By order or decree of court, CONCESSIONAIRE is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of CONCESSIONAIRE seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;
7. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against CONCESSIONAIRE and is not dismissed within one hundred twenty (120) days;
8. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONCESSIONAIRE;
9. Cessation or deterioration of service for any period which, in the opinion of the GENERAL MANAGER, materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;
10. Any lien is filed against the PREMISES because of any act or omission of CONCESSIONAIRE and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) days; or
11. CONCESSIONAIRE voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

No acceptance by CITY of the revenue-sharing payment or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by CONCESSIONAIRE, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY including the right to terminate the AGREEMENT on account of such default.

B. CITY's Right of Reentry:

CITY shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of CONCESSIONAIRE under the AGREEMENT.

C. Additional Rights of CITY:

CITY, upon termination of the AGREEMENT, or upon reentry, regaining, or resumption of possession of the PREMISES, may occupy said PREMISES and shall have the right to permit any person, firm or corporation to enter upon the PREMISES and use the same. Such occupation by others may be of only a part of

the PREMISES, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in the AGREEMENT.

D. Survival of CONCESSIONAIRE's Obligations:

In the event the AGREEMENT is terminated by CITY, or in the event CITY reenters, regains, or resumes possession of the PREMISES, all of the obligations of CONCESSIONAIRE hereunder shall survive and shall remain in full force and effect for the full term of the AGREEMENT. Subject to CITY's obligation to mitigate damages, the amount of the revenue-sharing payment shall become due and payable to CITY to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place. CITY may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any revenue-sharing payment received by CITY from a succeeding CONCESSIONAIRE, shall be the amount of revenue-sharing fee otherwise due until the end of the term of the AGREEMENT.

The damages specified above shall not affect or be construed to affect CITY's right to such damages in the event of termination, reentry, regaining or resumption of possession where CONCESSIONAIRE has not received any actual gross receipts under the AGREEMENT.

E. Waiver of Redemption and Damages:

CONCESSIONAIRE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner. CONCESSIONAIRE further agrees that in the event the manner or method employed by CITY in reentering or regaining possession of the PREMISES gives rise to a cause of action in CONCESSIONAIRE in forcible entry and detainer under the laws of the State of California, the total amount of damages to which CONCESSIONAIRE shall be entitled in any such action shall be the sum of One Dollar (\$1), and CONCESSIONAIRE agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

F. By CONCESSIONAIRE:

The AGREEMENT may be terminated by CONCESSIONAIRE, via a thirty (30) day written notice, upon the happening of one or more of the following events:

1. The permanent abandonment by the DEPARTMENT of the FACILITY or the permanent removal of all DEPARTMENT services from the FACILITY;

2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the FACILITY or any substantial part thereof, in such manner as to materially restrict CONCESSIONAIRE from operating thereon;
3. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission to act of CONCESSIONAIRE, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
4. Any exercise of authority under the AGREEMENT which so interferes with CONCESSIONAIRE'S use and enjoyment of the PREMISES as to constitute a termination, in whole or in part, of the AGREEMENT by operation of law in accordance with the laws of the State of California; or
5. The default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from CONCESSIONAIRE of written notice to do so.

SECTION 22. SURRENDER OF POSSESSION

CONCESSIONAIRE agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by CONCESSIONAIRE or CITY, normal use and wear and tear thereof excepted.

No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and CONCESSIONAIRE. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by CONCESSIONAIRE under the AGREEMENT.

CONCESSIONAIRE shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the AGREEMENT. If CONCESSIONAIRE fails to remove said property within that thirty (30) days, said property shall be considered abandoned and CITY may dispose of same as it sees fit.

SECTION 23. WAIVER

A waiver of a default of any part, term, or provision of the AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

SECTION 24. CONDITIONS AND COVENANTS

Each covenant herein is a condition, and each condition herein is as well a covenant by the parties bound thereby, unless waived in writing by the parties hereto.

SECTION 25. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the AGREEMENT due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, or any other circumstance for which such party is not responsible and which is not in its power to control.

SECTION 26. REMEDIES ARE NON-EXCLUSIVE

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

SECTION 27. AGREEMENT BINDING UPON SUCCESSORS

The AGREEMENT shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators, and assigns of the parties hereto. The term "CONCESSIONAIRE" shall include any assignee of CONCESSIONAIRE under any assignment permitted and approved by GENERAL MANAGER.

SECTION 28. LAW OF CALIFORNIA APPLIES

The AGREEMENT shall be enforced and interpreted under the laws of the State of California.

SECTION 29. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if CONCESSIONAIRE is not a resident of the State of California, or is a partnership or joint venture without a partner or member resident in said State, or is a foreign corporation, then in any such event CONCESSIONAIRE does designate the Secretary of State, State of California, its agent for the purpose of service of process in any court action between it and CITY arising out of or based upon the AGREEMENT, and the service shall be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, CONCESSIONAIRE may be personally served with such

process out of this State by mailing, by registered or certified mail, the complaint and process to CONCESSIONAIRE at the address set out hereafter in the AGREEMENT, and that such service shall constitute valid service upon CONCESSIONAIRE as of the date of mailing, and CONCESSIONAIRE shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that CONCESSIONAIRE is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

SECTION 30. VENUE

Venue of any action brought under the AGREEMENT shall lie in Los Angeles County.

SECTION 31. ATTORNEY'S FEES

If CITY shall, without any fault, be made a party to any litigation commenced by or against CONCESSIONAIRE arising out of or related to CONCESSIONAIRE's use or enjoyment of the PREMISES and as a result of which CONCESSIONAIRE is finally adjudicated to be liable, then CONCESSIONAIRE shall pay all costs and reasonable attorney's fees incurred by or imposed upon CITY in connection with such litigation. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

SECTION 32. WAIVER OF CLAIMS

CONCESSIONAIRE hereby waives any claim against CITY, its officers, agents, or employees, for loss of anticipated profits caused by any suit or proceeding directly or indirectly attacking the validity of the AGREEMENT or any part hereof, or by any judgment or award in any suit or proceeding declaring the AGREEMENT null, void or voidable, or delaying the same, or any part hereof, from being carried out.

SECTION 33. NOTICES

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to the City of Los Angeles Department of Recreation and Parks, Administrative Resources Section, Concessions Unit, 221 N. Figueroa Street, 15th Floor, Suite 1520, Mail Stop 625-26, Los Angeles, CA 90012.

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide CONCESSIONAIRE with written notice of any address change within thirty (30) days of the occurrence of said change.

B. To CONCESSIONAIRE:

The execution of any notice to CONCESSIONAIRE by GENERAL MANAGER shall be as effective for CONCESSIONAIRE as if it were executed by BOARD, or by Resolution or Order of said BOARD.

All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to CONCESSIONAIRE shall be addressed to CONCESSIONAIRE as follows:

Rowena Partners, LLC
2333 Fern Dell Place
Los Angeles, CA 90068

CONCESSIONAIRE shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

SECTION 34. INTERPRETATION

The language of the AGREEMENT shall be construed according to its fair meaning and not strictly for or against either CITY or CONCESSIONAIRE.

The section headings appearing herein are for the convenience of CITY and CONCESSIONAIRE, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT.

If any provision of the AGREEMENT is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the AGREEMENT, and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of the AGREEMENT is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

The use of any gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

SECTION 35. AGREEMENT CONTAINS ENTIRE AGREEMENT

The provisions of the AGREEMENT contain the entire Agreement between the parties hereto and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONCESSIONAIRE.

SECTION 36. TIME OF THE ESSENCE

Time is of the essence for all provisions of the AGREEMENT.

SECTION 37. ACCEPTANCE OF PREMISES

CONCESSIONAIRE has inspected the PREMISES and agrees that they are suitable for the uses permitted herein. No officer or employee of CITY has made any representation or warranty with respect to the PREMISES except as described in writing.

SECTION 38. INCORPORATION OF DOCUMENTS

This AGREEMENT and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following Exhibits are to be attached to and made part of this AGREEMENT by reference:

- A. Premises Map
- B. Request For Proposal (CON-M11-02) (excluding Exhibits A through F)
- C. Submitted Proposal in Response to Request For Proposal (CON-M11-02)
- D. Monthly Remittance Advice Form
- E. Insurance Requirements Form and Instructions and Information on Complying with City Insurance Requirements
- F. City-Owned Equipment List
- G. Form General No. 87 "Non-Employee Accident or Illness Report"

In the event of any inconsistency between any of the provisions of this Agreement and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This Agreement exclusive of attachments, 2) Exhibit B, 3) Exhibit C, 4) Exhibit A, 5) Exhibit D, 6) Exhibit E, 7) Exhibit F, and 8) Exhibit G.

(Signature Page to Follow)

IN WITNESS WHEREOF, THE CITY OF LOS ANGELES has caused this AGREEMENT to be executed on its behalf by its duly authorized Board of Recreation and Park Commissioners, and CONCESSIONAIRE has executed the same as of the day and year herein below written.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

BY: _____
President

DATE: _____

BY: _____
Secretary

DATE: _____

ROWENA PARTNERS, LLC

BY: _____
Mario Petralia, Owner

DATE: _____

BTRC: _____

APPROVED AS TO FORM:
CARMEN A. TRUTANICH, City Attorney

BY: _____
Deputy City Attorney

DATE: _____

Concession Agreement Number: _____