

AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE
VENDING MACHINES CONCESSION

Between

THE CITY OF LOS ANGELES
DEPARTMENT OF ANIMAL SERVICES

And

FIRST CLASS VENDING, INC.

THIS AGREEMENT is made and entered in this _____ day of _____, 2013, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Animal Services Commissioners (hereinafter referred to as "BOARD"), and FIRST CLASS VENDING, INC. (hereinafter referred to as "CONCESSIONAIRE").

WHEREAS, the Department of Recreation and Parks went through a competitive bid process to select a contractor to provide vending machines in its facilities;

WHEREAS, the City Council approved First Class Vending, Inc. to operate and maintain vending machines at Recreation and Park facilities (C.F. 11-0034);

WHEREAS, the Department of Animal Services desires to install vending machines in its shelters and administrative headquarters and would like to "piggyback" off the Recreation and Parks vending machine procurement and Council approval ;

WHEREAS, CONCESSIONAIRE desires to secure and enter into an 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 seven locations: six shelters and the Department's administrative offices; and

WHEREAS, the principal purpose of CITY entering into this AGREEMENT is to serve the public by providing vending machines to distribute snack food items and beverages (non-alcoholic);

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 forth:

AGREEMENT:	This Concession Agreement consisting of forty (40) pages and five (5) exhibits (A-E) attached hereto.
BOARD:	Board of Animal Services Commissioners.
CITY:	The City of Los Angeles, acting by and through its Board of Animal Services Commissioners.
CONCESSION:	The permitted operation granted by this AGREEMENT.
CONCESSIONAIRE:	First Class Vending, Inc.
DEPARTMENT:	The Department of Animal Services, acting through the BOARD.
FACILITIES:	The Animal Services Department facilities or locations at which the concession is requested 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 right and obligation within the Concession to: provide vending machine services at various DEPARTMENT facilities; and not for any other purpose without the prior written consent of GENERAL MANAGER.

This AGREEMENT grants sole or exclusive rights to provide vending machines at the FACILITY requesting service; separate rights may be granted at locations authorized through other agreements as approved by the DEPARTMENT or GENERAL MANAGER.

The concession rights herein granted shall be carried on at the FACILITY as requested by the GENERAL MANAGER solely within the limits and confines of said areas designated. No temporary stands or other places of operation shall be allowed at any time without the prior written consent of GENERAL MANAGER.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITIES regarding the services to be offered or products to be sold by respective concessionaires or lessees, 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 desire and views of CONCESSIONAIRE. No other activity, service or amenity shall be provided by CONCESSIONAIRE unless related to CONCESSION and with the express written approval of DEPARTMENT.

CONCESSIONAIRE shall: provide quality snack food items and beverages (non-alcoholic); provide and remove vending machines at the request of the DEPARTMENT; schedule and provide full maintenance of the vending machine equipment; employ, train and supervise personnel with appropriate qualifications and experience to provide such functions; perform or supervise employees in the performance of all other tasks related to the operation, maintenance and repair of the vending machine equipment; and pay for and obtain all licenses and permits necessary for the operation of the CONCESSION granted.

SECTION 3. PREMISES

The PREMISES subject to this AGREEMENT will be located at six shelters and the Department's administrative offices. The PREMISES to be authorized for use by CONCESSIONAIRE will be at the instruction and discretion of the General Manager requesting the service.

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. These ordinances, rules, and regulations include those which relate to sanitation, public health, and safety.

At any time during the term of this AGREEMENT, DEPARTMENT may, by appropriate resolution fully setting forth the reasons therefore, 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 one five-year extension and one three-year extension, exercisable at the sole discretion of GENERAL MANAGER.

The minimum term shall be for 12 months. However, after eight months, the CONCESSIONAIRE and the DEPARTMENT can terminate this agreement for no fault.

If the CONCESSIONAIRE gives a four-month notice that it will terminate the agreement because the minimum annual revenue is not feasible, the DEPARTMENT may consider lowering this amount. Any proposed reduction will need to be approved by the Board.

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 share of CONCESSION gross receipts as follows:

Thirty-four Percent (34%) of the gross receipts produced from the sale of vending machine items (food and beverage).

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 for this CONCESSION is \$9,838. If the minimum annual revenue is not met by December 31 of each calendar year, the difference between the actual revenue received by the City of Los Angeles and the minimum annual revenue will be due to the City of Los Angeles by January 15. If the term of the agreement is not a full calendar year, the minimum annual revenue due will be pro-rated accordingly.

In addition to the revenue sharing payments, CONCESSIONAIRE shall pay CITY \$79 per year for a sponsorship payment. The annual sponsorship payment shall be paid within 60 calendar days from the end of each calendar year and remitted to the address mentioned below.

- B. Payment Due

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

DEPARTMENT OF ANIMAL SERVICES
ATTENTION: Assistant General Manager
221 North Figueroa Street, 5th Floor
Los Angeles, CA 90012

- 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 for vending machines supplied to no-rent/no-commission locations where items are priced accordingly, as 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 Reports:

CONCESSIONAIRE shall transmit with each revenue payment a Monthly Gross Receipts and Revenue Report, also referred to as a Monthly Remittance Advice

Form (Exhibit C), for the month for which revenue is submitted.

E. Late Payment Fee:

Failure of CONCESSIONAIRE to pay any of the revenue payments or any other fees, charges, 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) calendar day of the month in which payment is due.

The acceptance of a late revenue payment 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 payment so accepted.

F. Annual Accounting Adjustment

At the end of each twelve (12) month period during the term hereof, CONCESSIONAIRE shall prepare and submit to CITY a statement showing the total gross receipts for the said twelve (12) month period and the revenue paid to the City for the said twelve (12) months. If the sums paid by CONCESSIONAIRE during said period exceed the minimum annual fees as well as the annual percentage charges computed as set forth in this Section, whichever is greater, such overpayment shall be credited to the revenue payment thereafter due from CONCESSIONAIRE.

Any breach of this condition for rental 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 payment thereafter due hereunder, and each and every part of the same shall be and become additional revenue payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic revenue 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

CONCESSIONAIRE shall ensure that all vending machines are in operation and accessible during the normal hours of operation of the facility or location where vending machines are installed.

SECTION 9. OPERATING RESPONSIBILITIES

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

- A. **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.
- B. **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.

C. 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 GENERAL MANAGER, a Concession Manager of CONCESSIONAIRE'S operations. If CONCESSIONAIRE is authorized, with the prior written consent of the

GENERAL MANAGER, 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 vending machine manager or supervisor of vending machine 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; implement a marketing plan; maintain accounting records; 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, 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.

D. Price Schedules and Merchandise:

1. CITY agrees that CONCESSIONAIRE'S merchandise, including its prices for same, shall be within CONCESSIONAIRE'S discretion; subject, however, to disapproval by GENERAL MANAGER if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of GENERAL MANAGER. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All prices shall be comparable to prices charged in similar establishments in the City of Los Angeles. CONCESSIONAIRE shall, upon execution of AGREEMENT, provide the GENERAL MANAGER with a list of prices for all merchandise and services. This list shall be updated whenever prices are changed.
2. All menu items and service, offered for sale and/or sold by CONCESSIONAIRE in said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. No adulterated, misbranded, or impure articles shall be sold or kept for sale by CONCESSIONAIRE. All merchandise kept for sale or rented 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 written approval of the GENERAL MANAGER. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale or rental.
3. CONCESSIONAIRE expressly agrees to comply with all CITY and DEPARTMENT food programs.
4. CONCESSIONAIRE shall offer for sale to the public a variety of healthy options for food and beverages. Forty percent (40%) of all food items and forty percent (40%) of all beverage items shall follow the guidelines as defined by Education Code Part 27, Chapter 9, Article 2.5, Section 49431(b), Subsections 2 and 3. 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 (low-fat sugar items).

5. CONCESSIONAIRE shall be prohibited from selling merchandise in non-recyclable containers or glass bottles.
 6. All merchandise sold, kept for sale, or rented by CONCESSIONAIRE shall be of a quality acceptable to industry standards and 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 or rented 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 offer it for sale or rent without the consent of GENERAL MANAGER. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale.
 7. CONCESSIONAIRE shall not sell or give away or otherwise dispose of any commodity which in the opinion of GENERAL MANAGER will cause undue litter. CONCESSIONAIRE expressly agrees to comply with all CITY and DEPARTMENT recycling programs.
 8. CONCESSIONAIRE shall not sell lottery tickets or similar type merchandise.
- E. Diversion of Business:
CONCESSIONAIRE may 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.
- F. 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. 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 ninety (90) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY.

G. 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. 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.

H. Maintenance of Vending Machines

1. CONCESSIONAIRE shall, at all times and at its expense, provide all maintenance, repair, and service necessary for the proper and efficient operation of the vending machines in the PREMISES and keep such equipment in good repair and in a clean, sanitary, and orderly condition and appearance.
2. CITY shall not be responsible for the protection of any equipment owned by the CONCESSIONAIRE. CONCESSIONAIRE may remove any equipment that it deems vulnerable to theft or vandalism, or may exercise the right to provide physical security for said vending machine, specifics subject to written approval of the GENERAL MANAGER. If equipment is vandalized, regardless of any protections that have been put in place, CONCESSIONAIRE must repair or remove that equipment within seven (7) calendar days of being notified of the reported damage.
3. CONCESSIONAIRE shall repair equipment and provide and stocking/restocking of items within twenty-four (24) hours of the request being made by the DEPARTMENT.
4. CONCESSIONAIRE shall provide all necessary vending machine equipment (fully stocked and operational) at a new facility location within seventy-two (72) hours of the request being made by the DEPARTMENT.
5. CONCESSIONAIRE shall remove all vending machine equipment from existing locations within seventy-two (72) hours of the request being made by the DEPARTMENT.
6. CONCESSIONAIRE shall ensure that all vending machine and ancillary equipment necessary to operate the CONCESSION is operational and maintained in good working order at all times.

I. Vending Machine Types and Specifications:

CONCESSIONAIRE shall, at the direction of the GENERAL MANAGER, provide vending machines which shall meet or exceed the following:

1. Glass-Front Snack Merchandiser (Vending Machine)

Offer a variety of food items such as top brand candy bars, chips, and cookies.

2. Cold Foods Merchandiser (Vending Machine)
Offer a variety of assorted cold foods; must also offer small containers of regular and skim milk and fruit juices.
3. Cold Drink Merchandiser (Vending Machine)
Offer a variety (minimum of 8 selections per machine) of cold beverages, such as water, fruit juices, sports drinks, and sodas.
4. Hot Beverage Merchandiser (Vending Machine)
Offer a variety of hot beverages, such as coffee (with the capability to add sugar and/or cream), hot chocolate or cocoa, and hot tea.

J. Vending Machine Operating Requirements:

1. The vending machines are to be uniform in size, shape, and appearance to the satisfaction of the GENERAL MANAGER, or designee.
2. The vending machines shall have a non-resettable electronic revenue tracking system that records the net amount of sales in dollars and cents.
3. The vending machines shall have the capability of returning change for money deposited.
4. The vending machines shall have the capability of returning all money deposited, if so desired by the patron.
5. The prices of the vending machine items will be clearly visible to the patron.
6. The vending machines shall have a 3" x 5" sticker that states: "This vending machine is operated as a concession for the City of Los Angeles Department of Animal Services."
7. The vending machines shall have a 3" x 5" sticker stating the CONCESSIONAIRE's refund or return policy and CONCESSIONAIRE'S contact telephone number in order to provide refunds to patrons.
8. All exterior panels for each vending machine shall display healthy options (e.g. water, sports drinks, fruit, granola bars, etc.) and/or sports-activity themed designs.

K. Service Response and Responsibilities:

1. At the request of the GENERAL MANAGER requesting service,

CONCESSIONAIRE shall provide and install all necessary furnishings and equipment in order to create an inviting vending machine concession.

2. Ensure all vending machine equipment necessary to operate the concession is operational and maintained in working order at all times.
3. Respond to requests by the DEPARTMENT within a 24-hour period for issues such as repair of equipment and stocking/restocking of items.
4. Respond to requests by the DEPARTMENT within a 72-hour period to provide vending machine equipment (fully stocked and operational) at new locations.
5. Respond to requests by the DEPARTMENT, at its sole discretion, within a 72-hour period to remove vending machine equipment from existing locations.
6. Cooperate with the DEPARTMENT during the normal course of business and as unforeseeable problems or issues arise.
7. CONCESSIONAIRE must repair or remove vandalized equipment within seven (7) calendar days of the reported damage; regardless of any protections that have been put in place. CONCESSIONAIRE must replace such removed equipment within 24-hours of said removal.

L. Food and Beverage Requirements:

1. CONCESSIONAIRE shall offer for sale to the public a variety of healthy options for food and beverages. Forty percent (40%) of all food items and forty percent (40%) of all beverage items shall follow the guidelines for healthy options as defined by Education Code Part 27, Chapter 9, Article 2.5, Section 49431(b), Subsections 2 and 3. 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 healthy snacks (low-fat sugar items).
 - a. Item will not derive more than thirty-five percent (35%) of total calories from fat. This item does not apply to the sale of nuts or seeds.
 - b. Item will not derive more than ten percent (10%) from saturated fat.
 - c. Item will not have more than thirty-five percent (35%) of total weight composed of sugar. This item does not apply to the sale of fruits or vegetables.
 - d. Fruit-based drinks are composed of no less than fifty percent (50%) fruit juice and have no added sweeteners.

2. CONCESSIONAIRE expressly agrees to comply with all CITY and DEPARTMENT food programs.
3. CONCESSIONAIRE shall be prohibited from selling merchandise in non-recyclable containers or glass bottles.

M. 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.

N. Signs and Advertisements:

1. CONCESSIONAIRE shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever on any vending machine 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 facility or 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 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 on all vending machines a public notice that the machines are operated by the CONCESSIONAIRE's company. The address and phone number will be shown along with the notation that all complaints regarding change, merchandise, etc., shall be referred directly to the company.
5. 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 Animal Services.

O. Utilities:
CONCESSIONAIRE shall pay a monthly utility charge equal to 1.5% of gross receipts as payment for utilities. CONCESSIONAIRE shall remit said monthly payment in conjunction with the monthly revenue payments.

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. CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the rental 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.
3. 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.

P. 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 E). 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.

Q. 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.

- R. 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.
- S. Community Outreach:
CONCESSIONAIRE shall coordinate and cooperate with DEPARTMENT to develop strategies to outreach to all members of the community, particularly those living in low-to-moderate income areas, fixed-income households, youth, the disabled, etc., to provide its services to these members of the community who may not otherwise have the opportunity to partake in the services provided by CONCESSIONAIRE.
- T. 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.
- U. 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.

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 repairs and maintenance, 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 adjacent interior walls and surfaces where vending machines are installed, to include 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.).
 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.

- 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, and the elements, unless otherwise provided for in the AGREEMENT. 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, GENERAL MANAGER may, in its sole discretion, after giving ten (10) days written notice, terminate 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.

SECTION 11. IMPROVEMENTS

CONCESSIONAIRE is responsible to complete all Improvements ("Improvements") as proposed in response to the Request for Proposals (RFP) issued for the AGREEMENT, and to the funding level proposed. If details of the Improvements stipulated in the awarded AGREEMENT differ in any way from the Improvements in the Proposal, CONCESSIONAIRE shall be responsible for those Improvements as prescribed in the AGREEMENT. However, award of the AGREEMENT shall not constitute approval to make the proposed Improvements.

CONCESSIONAIRE shall be responsible for the cost of the Improvements, as stipulated in the AGREEMENT, and shall begin and complete said Improvements within the time frame specified in the AGREEMENT, or as prescribed by the GENERAL MANAGER. The Improvements must have prior written approval from the GENERAL MANAGER. The Improvements are a condition of the AGREEMENT and must be begun and completed as stipulated therein, once approved by GENERAL MANAGER.

CITY reserves the right to recover damages from CONCESSIONAIRE if the Improvements are not begun and completed as stipulated. Such damages may include, but are not

limited to, recovering up to the entire cost of the Improvements from the CONCESSIONAIRE's performance deposit. The deposit must be recompensed as stipulated in Section 14, "Performance Deposit," herein. Should Improvements as stipulated in the AGREEMENT be completed at a lower cost than that committed in the Bid, the difference shall be applied to additional CONCESSION improvements as approved by the GENERAL MANAGER.

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 necessary permits, insurance, and taxes required for compliance of such improvements.

- A. Compliance with Applicable Rules and Regulations:
All structural or other improvements, equipment and interior design and decor 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 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 decor. Copies of all said permits and approvals shall thereafter be submitted to the DEPARTMENT. No permission to begin said Improvements shall be granted by 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 decor, 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.
- D. Improvement Bond:
CONCESSIONAIRE shall provide a bond to secure completion of the faithful performance, in an amount equal to the cost of the improvements as approved by the GENERAL MANAGER. No work may commence before said bonds are received in a form satisfactory to the DEPARTMENT as approved by the Office of the City Administrative Officer, and shall thereafter be kept in full force and effect

until DEPARTMENT accepts the work.

Any breach of this condition for concession improvements shall be a material breach of this CONCESSION AGREEMENT.

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 City Administrative Officer's insurance requirements. See Exhibit D for insurance requirements. The DEPARTMENT, 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 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 Vending Machines Concession Agreement – Page 21 of 40

Office of the City Attorney for its review in accordance with Los Angeles City Administrative Code 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 City 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 D).
- 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.

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 the 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 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 CONCESSION AGREEMENT.

SECTION 13. PROHIBITED ACTS

CONCESSIONAIRE shall not:

- A. 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;
- B. 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;
- C. 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;
- D. Overload any floor in the PREMISES;
- E. 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 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 GENERAL MANAGER, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
- F. 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 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;

- G. 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;
- H. Allow any sale by auction upon the PREMISES;
- I. Permit undue loitering on or about the PREMISES;
- J. Use the PREMISES, or any part thereof, for lodging or sleeping purposes or in any manner that will constitute waste;
- K. Use or allow the PREMISES to be used for, in the opinion of GENERAL MANAGER, any improper, immoral, or unlawful purposes.

SECTION 14. PERFORMANCE DEPOSIT

- A. CONCESSIONAIRE shall provide the DEPARTMENT a sum equal to Ten Thousand Dollars (\$10,000) 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.
 - 4. United States Government negotiable securities (i.e., treasury bills, treasury notes, or treasury bonds).
 - 5. A certificate of time deposit in a 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 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 (rent) 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 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 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.

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 30 days after billing any additional rentals 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.

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, LACC, 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. Minority, Women, and Other Business Enterprise Outreach Program:

CONCESSIONAIRE agrees and obligates itself to utilize the services of Minority, Women, and Other Business Enterprise firms on a level so designated in its proposal, if any. CONCESSIONAIRE certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Contracts greater than \$100,000, if applicable. 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 said 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 Los Angeles Administrative Code, 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 Los Angeles Administrative Code, 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. **Name of CONCESSION**
The name of the CONCESSION, Vending Machines Concession, shall not be used in conjunction with any other business venture during or after the term of the AGREEMENT.

SECTION 21. TERMINATION

- A. **By CITY:**
CITY shall have the right, via 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 GENERAL MANAGER;
 3. CONCESSIONAIRE becomes, without the prior, written approval of 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