

TRANSMITTAL

0150-11019-0001

TO
The City Council

DATE
10/26/18

COUNCIL FILE NO.


FROM
The Mayor

COUNCIL DISTRICT

6

**Agreement between the City of Los Angeles and Freetime Inc.,
DBA Wheel Fun Rentals for the Operation and Maintenance of the Bicycle Rental
Concession at Lake Balboa/Anthony C. Beilenson Park**

Approved and transmitted for your consideration. The Council has 60 days from the date of 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.



ERIC GARCETTI (Ana Guerrero) for
MAYOR

RHL:JSS:08190030t

CAO 649-d

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: 10-26-18	C.D. No. 6	CAO File No.: 0150-11019-0001
Contracting Department/Bureau: Recreation and Parks		Contact: LaTricia Jones	
Reference: Transmittal from the Board of Recreation and Park Commissions dated October 4, 2018; referred by the Mayor on October 4, 2018			
Purpose of Contract: Bicycle Rental Concession at Lake Balboa			
Type of Contract: (X) New contract () Amendment		Contract Term Dates: Five-years with one five-year extension option	
Contract/Amendment Amount: Revenue-sharing fee payment; greater of 1) 15% of gross sales per year, or 2) \$22,000 per year			
Source of funds: N/A			
Name of Contractor: Freetime Inc., DBA Wheel Fun Rentals 4526 Telephone Road, #202 Ventura, CA 93003			
	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: 0%			
Contractor has complied with:		Yes	No
8. Business Inclusion Program		X	
9. Equal Benefits & First Source Hiring Ordinances		X	
10. Contractor Responsibility Ordinance		X	
11. Slavery & Border Wall Disclosure Ordinances		X	
12. Bidder Certification CEC Form 50		X	
13. Prohibited Contributors (Bidders) CEC Form 55		X	
14. California Iran Contracting Act of 2010		X	

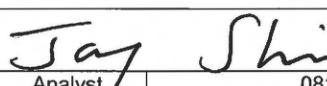
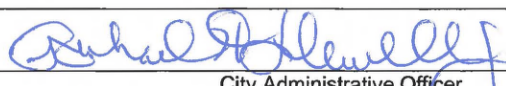
RECOMMENDATION

That the City Council approve and authorize the President and Secretary of the Board of Recreation and Park Commissioners to execute the agreement with Freetime Inc., DBA Wheel Fun Rentals for the operation and maintenance of the Lake Balboa bicycle rental concession, for a period of five-years with one five-year renewal option, subject to the approval of the United States Army Corps of Engineers, and the City Attorney as to form.

SUMMARY

At its meeting of October 3, 2018, the Board of Recreation and Park Commissioners (Board) approved a proposed concession contract with Freetime, Inc. DBA Wheel Fun Rentals (Freetime, Inc.) for the operation and maintenance of the bicycle rental concession at Lake Balboa (Concession) for a period of five-years with one five-year renewal option.

The Department of Recreation and Parks (Department) operates the Lake Balboa/Anthony C. Belienso Park, and the Concession is located at 6200 Balboa Boulevard in Council District 6. The Concession will offer a variety of bicycles, beach cruisers, kid bikes, and safety equipment for use in the park.

 JSS Analyst 08190030	 City Administrative Officer
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In June 2017, the Board approved and authorized the release of a Request for Proposals (RFP) for the operation and maintenance of the Bicycle Rental Concession. According to the RFP, the following scoring categories would be used to select the best proposer:

- Background & Experience – Bicycle Rental Background and Years of Experience (10 points)
- Business Plan – Additional Amenities, Marketing Plan, Proposed Equipment & Financial Projections and Planning (30 points)
- Operational Plan – Proposed Operational Plan, Safety Plan & Maintenance Plan (30 points)
- Financial Offer (20 points)
- Concession Improvements – Optional Improvement Plan (10 points)

On August 29, 2017, the Department received proposals from Freetime, Inc. and Spokes N. Stuff, Inc. for the Concession.

The Department used the RFP scoring categories to evaluate the two proposals, and the results were as follows: Freetime, Inc. (77.5 points); Spokes N. Stuff, Inc (66.0 points). Based on the scores, the Department awarded the Concession to Freetime, Inc.

During the first five-year term of the proposed Concession agreement, the Freetime, Inc. will pay the City a revenue-sharing fee payment of 1) 15% of gross annual receipts or 2) \$22,000 per year, whichever is greater.

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

The Concession at the Lake Balboa/Anthony C. Beilenson Park is located in the Sepulveda Flood Control Basin. Therefore, the proposed agreement is subject to approval of all terms and conditions of the lease between the City and the United States Army Corps of Engineers.

In accordance with Los Angeles Administrative Code Section 10.5(a), Council approval of the proposed agreement is required because the term exceeds three years. To the best of our knowledge, the proposed contractor has complied with all City contracting requirements.

FISCAL IMPACT STATEMENT

The Freetime Inc., DBA Wheel Fun Rentals will pay the City a revenue-sharing fee payment of 1) 15% of gross annual receipts or 2) \$22,000 per year, whichever is greater. Revenues from this Concession agreement would be deposited into the Department of Recreation and Park's operating fund. There is no impact on the General Fund. The recommendation above complies with City Financial Policies in that user charges and fees are set to support the full costs of operations for which the fees are charged.

**DEPARTMENT OF RECREATION
AND PARKS**

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

MELBA CULPEPPER
PILAR DIAZ
JOSEPH HALPER

IRIS L. DAVIS
BOARD SECRETARY (213) 202-2640

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

MICHAEL A. SHULL
GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.
EXECUTIVE OFFICER &
CHIEF OF STAFF

RAMON BARAJAS
ASSISTANT GENERAL MANAGER

VICKI ISRAEL
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ
ASSISTANT GENERAL MANAGER

(213) 202-2633 FAX (213) 202-2614

October 4, 2018

Honorable Eric Garcetti, Mayor
City of Los Angeles
Room 303, City Hall

Attention: Ms. Mandy Morales

Dear Mayor Garcetti:

Attached herewith is a proposed Agreement, herein included as Attachment 1, between the City of Los Angeles, Department of Recreation and Parks (RAP) and Freetime, Inc. DBA Wheel Fun Rentals for the operation and maintenance of the Bicycle Rental Concession at Lake Balboa and Anthony C. Beilenson Park;

Also attached is Board Report No. 18-200, which was adopted by the Board of Recreation and Park Commissioners at its Regular Meeting held on October 3, 2018. After your review and recommendation, 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 Ms. LaTricia Jones, Management Analyst II, Concessions Unit, at (213) 202-5678.

Very truly yours,

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

H Davis for
IRIS L. DAVIS

Commission Executive Assistant II

Attachments

cc: LaTricia Jones, Management Analyst II, Finance Division, Concessions Unit (w/out attachments)



APPROVED
OCT 03 2018

BOARD REPORT

BOARD OF RECREATION
AND PARK COMMISSIONERS

NO. 18-200

DATE: October 3, 2018

C.D. 6

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: LAKE BALBOA / ANTHONY C. BEILENSON PARK - BICYCLE RENTAL
CONCESSION - AWARD OF CONTRACT TO FREETIME, INC. DBA WHEEL
FUN RENTALS

AP Diaz

V. Israel

R. Barajas

S. Pina-Cortez

H. Fujita

*N. Williams

710W

General Manager

Approved ☒

Disapproved ☐

Withdrawn ☐

RECOMMENDATIONS

1. Award the Bicycle Rental Concession to Freetime, Inc. DBA Wheel Fun Rentals (Freetime) in accordance with the details set forth in the Summary of this Report, for a term of five (5) years with one five (5) year renewal option exercisable at the sole discretion of the Recreation and Parks (RAP) General Manager;
2. Approve the proposed Agreement ("Agreement") with Freetime for the operation and maintenance of the Bicycle Rental Concession, herein included as Attachment 1, subject to approval by the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), City Council, City Attorney as to form, and the U.S. Army Corps of Engineers (USACE) for the Bicycle Rental Concession at Lake Balboa;
3. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the proposed Agreement to the Mayor, in accordance with Executive Directive No. 3 (Villaraigosa Series), and concurrently to the City Attorney for review as to form;
4. Find, in accordance with Charter Section 1022, that it is necessary, feasible, and economical to secure these services by contract as RAP lacks sufficient and necessary personnel to undertake these specialized professional services;
5. Find, pursuant to Charter Section 371(e)(10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP for the operation, and maintenance of the Bicycle Rental Concession;
6. Authorize RAP's General Manager or designees to make any necessary technical changes to carry out the intent of this Report; and

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7. Authorize the Board President and Secretary to execute the proposed Agreement upon receipt of all necessary approvals.

SUMMARY

The Bicycle Rental Concession (Concession) is currently comprised of two locations, which include Griffith Park and Lake Balboa. After consideration by RAP staff and the Griffith Park Superintendent, it was mutually agreed with the concessionaire to forego assigning the Griffith Park location to Freetime at this time. However, RAP reserves the right to request that Freetime commence operating at Griffith Park at any time with a 30-day notice, and Freetime would be obligated to honor that request. Bicycle service in Griffith Park will be satisfied through a bike share program which has successfully been operating in the park since early 2018.

The Lake Balboa Bicycle Rental Concession is located within Anthony C. Beilenson Park, an eighty (80) acre recreation facility, located in the 2,000-acre Sepulveda Flood Control Basin, which is leased from USACE.

Future Bicycle Rental Locations

Per the Agreement, RAP reserves the right to relocate the bicycle rental concession or add additional bicycle rental locations as determined by the needs of the City. Freetime will reserve the right of first refusal to operate future bicycle rental concessions with the exception of bike share programs.

BACKGROUND

The Lake Balboa Bicycle Rental Concession has been operated by Freetime since February 23, 2009. Freetime has paid the greater of 15% of gross revenue or a minimum annual guarantee of \$12,000 to RAP, plus \$50 per month for utilities. In 2017, Freetime paid \$25,027.21 in revenue sharing payments to RAP on gross sales of \$166,848.06.

The Request for Proposal (RFP) for the operation and maintenance of the Bicycle Rental Concession with a term of five years, with one (1) five-year renewal option exercisable at the sole discretion of RAP's General Manager, was approved to be released on June 16, 2017. The RFP was advertised via Los Angeles Daily Journal, RAP's website, on Los Angeles Business Assistance Virtual Network (LABAVN), and by email notifications to businesses with similar operations. A pre-proposal conference was held on July 20, 2017.

On August 29, 2017, RAP received two proposals from the following businesses: Freetime and Spokes N' Stuff, Inc. Both proposers passed Level I review and advanced to Level II. Freetime received the highest score with an overall average of 77.5 points; and Spokes N' Stuff, Inc. received an overall average of 66.0 points.

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BACKGROUND & EXPERIENCE

Freetime has over seventeen (17) years of experience and success in providing recreational activities, including bicycle rentals around the country. Some of their bicycle rental locations include Cabrillo Blvd. in Santa Barbara, CA, Hotel Coronado in Coronado, CA, Lakes Park in Ft. Myers, FL., White River State Park in Indianapolis, IN, City Park in New Orleans, LA, Irving Park in Orange, CA, Oceanside Beach/Pier, Oceanside, CA and Shoreline Village in Long Beach, CA. Freetime was also recently awarded the RAP Pedal Boat Rental Concession contract for both the Lake Balboa and Echo Park pedal boat locations.

BUSINESS PLAN AND OPERATIONAL PLAN

Freetime's proposal detailed innovative business, operational, and improvement plans along with a sound Financial Offer. The proposed business and operation plans offer daily bicycle rental service at Lake Balboa from March 1st to Labor Day, and Thursday through Sunday, from Labor Day to February 28th. In addition, Freetime proposes to operate on all major holidays and during winter and spring breaks. Freetime will provide a fleet of 62 cycles including Single and Double Bench Surreys, Deuce and Quad Sport Choppers, Cruiser Bicycles, and Hybrid Infinity Shifting, along with 170 helmets that comply with California safety standards. Freetime maintains a warehouse distribution center in Ventura, CA to assure availability of fleet products and services. All products are inspected for safety at the start of each day and prior to rental. Every bicycle rental and tour comes with detailed safety and riding instructions, a helmet, a lock, a map, a bike bell, a tour bag or basket to hold belongings, a quick release seat post for easy seat adjustment, and a heavy duty kickstand.

The proposed price structure will keep the cost of bicycle rentals at the current rental rates. The hourly rental rate for a single surrey is \$25.00, a double surrey is \$35.00, a deuce coupe is \$25.00, a chopper is \$12.00, and a quad sport is \$12.00. Patrons also have the option to rent cruiser, tandem, and kid's bikes at hourly, ½ day or full day rental rates ranging from \$6.00 to \$40.00. Additionally, patrons can purchase an annual pass for an additional \$12.00 which gives them a 50% discount thereafter for one year. RAP staff has conducted comparative research of similar bike rental operations, and this price structure is consistent with similar operations.

Employees of Freetime undergo a comprehensive training program that includes standardized training on Standard Operating Procedures and checklists, Point of Sale Equipment Training and Testing, Customer Service and Conflict Resolution, and Facilities/Fleet/Customer Service Inspection logs. Additional training is provided for staff in management positions.

Additional amenities proposed include special occasion packages, corporate team building packages, self-guided bike tours, and picnic in the park packages. Freetime proposed a marketing campaign to establish and increase a strong customer base through marketing and advertising tools such as social, print, web media, and mobile marketing.

Freetime's community outreach and involvement includes the "Biking Buddies" program with the Big Brothers Big Sisters chapters nationwide where program participants receive free rentals to

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enjoy riding together; the promotion of special days for kids camps, YMCA, Boys and Girls Clubs, churches and other similar organizations where pricing is lowered allowing biking activities to easily fit into a tight budget; a partnership with local Bicycle Coalitions to teach adults and children how to learn to ride a two-wheel bike through a "Learn to Ride" program; and regular engagement with senior centers, retirement communities and disabled groups or those with physical limitations to promote and aid in the enjoyment of bike riding or exploration throughout the parks.

Freetime's proposal included attractive capital improvements that have already been completed at the Lake Balboa concession. Improvements included upgrading storage containers with the addition of aesthetically pleasing wooden siding to create a more building-like appearance that integrates into the park environment, a rolling cart or rental kiosk to allow easy accessibility to guests and allow staff to see and greet customers approaching from multiple directions, and directional signage to help direct patrons to the bike rental locations.

Freetime's proposal reflected a commitment to facility maintenance and cleanliness through its plan for rubbish removal, which described an effective system for the collection, storage, and disposal of waste, and a detailed cleaning schedule of their inventory and the concession area. They are also committed to creating and maintaining a strong relationship with RAP staff.

(Proposer Scoring Matrix to Follow)

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SCORING:

The following are the results of the two panelists scoring evaluation:

SCORING CATEGORIES		FREETIME, INC. DBA WHEEL FUN RENTALS		SPOKES AND STUFF, INC.	
		Points Received	Points Received	Points Received	Points Received
	Maximum Possible Points	Panelist #1	Panelist #2	Panelist #1	Panelist #2
Background & Experience: Bicycle Rental Background & Years of Experience	10	9	10	9	10
Business Plan: Additional Amenities, Marketing Plan, Proposed Equipment & Financial Projections and Planning	30	24	25	20	20
Operational Plan: Proposed Operational Plan, Safety Plan & Maintenance Plan	30	22	25	17	15
Financial Offer: Proposed Financial Offer	20	10	12	15	15
Concession Improvements: Optional Improvement Plan	10	8	10	6	5
Total Score	100	73	82	67	65
Average of Combined Scores		77.5		66.0	

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FISCAL IMPACT STATEMENT

Freetime proposed the greater of fifteen percent (15%) of gross sales or Twenty-Two Thousand Dollars (\$22,000.00) per year, which will guarantee revenue to RAP of at least One Hundred-Ten Thousand Dollars (\$110,000.00) during the first five-year term.

This Report was prepared by LaTricia Jones, Management Analyst II, Finance Division, Concessions Unit.

LIST OF ATTACHMENTS

- 1) Proposed Agreement for the Operation and Maintenance of the Bicycle Rental Concession between the City of Los Angeles and Freetime, Inc. DBA Wheel Fun Rentals

AGREEMENT
FOR THE OPERATION AND MAINTENANCE OF
THE BICYCLE RENTAL CONCESSION

BETWEEN

THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

AND

FREETIME, INC.

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AGREEMENT FOR THE OPERATION AND MAINTENANCE
OF THE BICYCLE RENTAL CONCESSION

This Concession Agreement (hereinafter AGREEMENT or CONTRACT), is made and entered into this _____ day of _____, 201____, by and between the City of Los Angeles, a municipal corporation acting by and through its Department of Recreation and Parks (hereinafter CITY), and Freetime, Inc. DBA Wheel Fun Rentals (hereinafter CONCESSIONAIRE).

WHEREAS, the Department of Recreation and Parks (hereinafter RAP) seeks to serve the public by providing bicycle rental and related services at Lake Balboa/Beilenson Park and other future locations (hereinafter CONCESSION); and

WHEREAS, the CITY recognizes that the U.S. Army Corps of Engineers, Los Angeles District is the management agency for the Sepulveda basin on behalf of the United States, and recognizes the master lease between the United States and the City of Los Angeles; and

WHEREAS, the CITY finds, in accordance with Charter Section 1022, that it is necessary, feasible, and economical to secure these services by contract as it lacks available personnel in its employ with sufficient expertise to undertake these specialized services; and

WHEREAS, the CITY finds, pursuant to Charter Section 371(e)(10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical, or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP for the improvement, operation, and maintenance of RAP's CONCESSION; and

WHEREAS, RAP finds it is necessary to utilize a standard request for proposal process and to evaluate proposals received based upon the criteria included in a Request for Proposal (RFP); and

WHEREAS, RAP solicited proposals for the operation and maintenance of the CONCESSION, to include providing bicycle rental and related services to the public; and

WHEREAS, RAP received and evaluated *two* proposals which were received on *August 29, 2017*; and

WHEREAS, Freetime, Inc. DBA Wheel Fun Rentals was the highest-ranked proposer, and was selected to provide bicycle rental and related services in accordance with the terms and conditions of this AGREEMENT; and

WHEREAS, CONCESSIONAIRE desires to enter into such AGREEMENT to provide services of the type and character required therein by CITY to meet the needs of the public at Lake Balboa/Beilenson Park and other future locations.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter 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 thirty (30) pages and twelve (12) exhibits (A-L) attached hereto
BOARD:	Board of Recreation and Park Commissioners
CITY:	The City of Los Angeles, acting by and through its Department of Recreation and Parks
CONCESSION:	Bicycle Rental Concession
CONCESSIONAIRE:	Freetime, Inc. DBA Wheel Fun Rentals
RAP:	The Department of Recreation and Parks
FACILITY:	Lake Balboa/Beilenson Park Bicycle Concession located at 6300 Balboa Boulevard, Van Nuys, CA 91316
CORP:	United States Army Corps of Engineers, acting by and through the District Engineer of the Los Angeles District or its duly authorized representative.
UNITED STATES:	The Federal Government of the United States of America, acting through the CORP
LAAC:	Los Angeles Administrative Code
LAMC:	Los Angeles Municipal Code
PREMISES:	The geographical areas, as defined in Section 3 of this AGREEMENT, in which the CONCESSIONAIRE may operate.
GENERAL MANAGER:	The City of Los Angeles Department of Recreation and Parks General Manager or designee.
DAA:	Designated Administrative Agency, as defined in Section 10.8.1. of the LAAC.

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, RAP hereby grants to CONCESSIONAIRE, the exclusive right and obligation to furnish, equip, and operate a bicycle rental service, including mountain bikes, tandem bikes, children's bikes, surrey bikes, beach cruisers, bikes with child seats, in-line skates, traditional skates, and all equipment, and supply storage facilities of a type and location satisfactory to RAP; and not for any other purpose without the prior written consent of RAP. CONCESSIONAIRE understands that this right excludes any bike share program operation.

Rental of motorized scooters or other motorized vehicles is not permitted under this AGREEMENT.

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

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, RAP 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.

RAP reserves the right to further develop or improve PREMISES as it sees fit, without interference or hindrance, however RAP shall consider the desire and views of CONCESSIONAIRE.

SECTION 3. PREMISES

The PREMISES (Exhibit A) subject to this AGREEMENT are located at: 6300 Balboa Boulevard, Van Nuys, CA 91316. Location of PREMISES as set forth in Exhibit A, attached hereto and incorporated herein. Any discrepancy in the definition or boundaries of PREMISES shall be resolved solely by RAP.

CONCESSIONAIRE shall not use or allow PREMISES to be used, in whole or in part, during the term of this 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 public health, safety, or welfare.

Future Bicycle Rental Locations

RAP reserves the right to request that the CONCESSIONAIRE operate the Griffith Park bicycle rental concession ("Griffith Concession") located at Griffith Park as part of the CONCESSION under this AGREEMENT with 30 days notice, and CONCESSIONAIRE shall be obligated to operate such concession upon such RAP request. If RAP decides, in its sole discretion, to add the Griffith Concession as part of the CONCESSION under this AGREEMENT, it shall be

subject to the same terms and conditions of this AGREEMENT and the concession fees paid for such Griffith Concession shall be consistent with that set forth in CONCESSIONAIRE's proposal under the CONCESSION RFP. RAP also reserves the right to relocate any bicycle rental concession or add additional bicycle rental locations as determined solely by the City. Other than the Griffith Concession, CONCESSIONAIRE shall be given the right of first right of refusal to operate future bicycle rental concessions with the exception of bike share programs upon the same terms and conditions of this AGREEMENT.

SECTION 4. TERM OF AGREEMENT

The term of this AGREEMENT shall be five years with one five-year extension option exercisable at the sole discretion of RAP, effective on XXXXX. Neither RAP, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke or decline to exercise an option of this AGREEMENT.

SECTION 5. OPERATING RESPONSIBILITIES

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

A. Cleanliness

CONCESSIONAIRE shall, at its own expense, keep the PREMISES and the surrounding areas, within a minimum of twenty-five (25) feet, clean, sanitary, and free of graffiti 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.

CONCESSIONAIRE, at its own expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day 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 RAP. If no trash storage area is made available, CONCESSIONAIRE shall provide at its own expense and with RAP's prior written approval, an enclosed area concealing the trash storage from public view. RAP 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 RAP.

C. Disorderly Person

CONCESSIONAIRE shall use its best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon peace officers to assist in maintaining peaceful conditions. CONCESSIONAIRE shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

D. Personnel

1. Freedom from Tuberculosis

CONCESSIONAIRE, on behalf of all employees of the CONCESSION, shall provide to RAP certificates for each, indicating freedom from communicable tuberculosis as required under Section 5163 of the California Public Resources Code.

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 RAP. All such personnel, while on or about PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. Appearance standards include: no body jewelry/piercing (other than earrings), hair must be neat and if dyed, must be a color that occurs naturally, and overall appearance be clean and generally well groomed. All CONCESSIONAIRE staff members shall wear standardized uniforms consisting of branded polo shirts and/or branded jackets, khaki or navy shorts or pants, and branded hats, if worn. Uniforms are to be clean and in good condition without holes, stains or noticeable wear. No person employed by CONCESSIONAIRE, while on or about 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, RAP may direct CONCESSIONAIRE to remove that person from PREMISES.

3. Concession Manager

CONCESSIONAIRE shall appoint, subject to written approval by RAP, a Concession Manager. Such person must be a qualified and experienced manager or supervisor of 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 the 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 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 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 this AGREEMENT, RAP may, in its sole discretion, suspend this AGREEMENT and all terms and conditions contained therein.

4. Approval of Employees, Volunteers, and Subcontractors

RAP 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 RAP's written approval of all persons operating under the authority of this AGREEMENT on 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 PREMISES to RAP prior to commencing operations pursuant to this AGREEMENT. All changes to the approved list of employees, volunteers, and subcontractors shall be submitted to RAP for written approval prior to any employee, volunteer, or subcontractor commencing work at PREMISES. CONCESSIONAIRE shall not hire as an employee or volunteer, or subcontract with, any person whom RAP would be prohibited from hiring as an employee or volunteer pursuant to California Public Resources Code Section 5164 to perform work at 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 RAP 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 RAP's instruction.

E. Pricing and Standards

1. Bike rental fees and other charges to the public for the use of bicycles and other equipment are subject to approval by RAP and cannot be changed without prior written approval by RAP. RAP seeks to promote both high standards of quality as well as provide services at an affordable rate. All prices shall be prominently posted and shall not exceed prevailing market prices for the same standard of services at similar establishments in the City of Los Angeles.

A price list must be submitted with the execution of this AGREEMENT for written approval by RAP. Changes are subject to RAP approval. Upon request during the term of this AGREEMENT, CONCESSIONAIRE shall provide RAP with a list of prices of all items or services rented and/or sold.

2. All services offered for rent, 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 equipment rented by CONCESSIONAIRE shall be kept subject to the approval or rejection of RAP, and CONCESSIONAIRE shall remove from the PREMISES any article which may be rejected and shall not again offer it for rent without the written approval of the RAP. RAP may order the improvement of the quality of any equipment.

F. Diversion of Business

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

G. Layout and Inventory

CONCESSIONAIRE shall provide to the CITY a layout, indicating the location of storage container(s), displays, and modifications of any kind that will take place to accommodate the bicycles, safety equipment, and administrative materials. Prior to operating, CONCESSIONAIRE shall also provide a starting inventory of bicycles, and other equipment. Any changes to the storage or display arrangements are subject to prior written approval of RAP.

H. Equipment, Furnishings, and Expendables

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. Upon expiration or earlier termination of this AGREEMENT, CONCESSIONAIRE shall have the right to remove its own equipment, furnishings, and expendables, but not improvements, from PREMISES and shall be allowed a period of seven (7) calendar days to complete such removal. If not removed within that period, said equipment, furnishings, and expendables shall become the property of RAP.

CONCESSIONAIRE agrees to provide, to the satisfaction of RAP, the following equipment at the PREMISES two days prior to commencement of operations. RAP reserves the right to request CONCESSIONAIRE to alter the equipment list as necessary:

Lake Balboa Park Equipment List

Item	# of Items
Single Bench Surrey	11
Double Bench Surrey	10
Deuce Coupe	3
Chopper Recumbent Cycle	4
Quad Sport Recumbent Cycle	4
Cruiser Bicycle	10
Hybrid Infinity Shifting Bicycle	15
Tandem	1
Kid Bike	3
Child Trailer	1
Helmets	170

I. 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, in good repair and in a clean, sanitary, and orderly condition and appearance. RAP will be responsible for utility lines and repairs, including telephone, exterior to the PREMISES.

All maintenance, repairs and replacements of all equipment shall be performed at the sole expense of the CONCESSIONAIRE. CONCESSIONAIRE may elect to not use City-owned equipment, with prior written consent of RAP.

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

J. Claims for Labor and Materials

CONCESSIONAIRE shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this 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 CONCESSIONAIRE hereunder), against CONCESSIONAIRE's rights hereunder, or against CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

K. Signs and Advertisements

CONCESSIONAIRE shall post, implement, and enforce all required safety rules and regulations related to the CONCESSION.

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 RAP. Certain signs and advertisements may also require the prior written approval of other appropriate agencies.

CONCESSIONAIRE shall place a public notice that CONCESSIONAIRE operates the CONCESSION. The address and phone number of CONCESSIONAIRE shall be shown along with the notation that all complaints should be referred directly to CONCESSIONAIRE.

On signage on the PREMISES, CONCESSIONAIRE shall provide the credit, or as proportions of signage allow, similar credit as approved by RAP in writing:

"In Collaboration with the City of Los Angeles Department of Recreation and Parks."

RAP may require removal or refurbishment, at CONCESSIONAIRE's expense, of any sign previously approved.

Upon the expiration or earlier termination of this AGREEMENT, CONCESSIONAIRE shall, at its own expense, remove or paint out, as RAP may direct, any and all of its signs and displays on 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.

L. Utilities

CONCESSIONAIRE shall pay RAP an amount equal to Seventy-Five Dollars (\$75.00) per month for utility costs. Such payment will be included with the monthly concession fee payment and stated on the Monthly Gross Receipts and Concession Fee Report, also referred to as a Monthly Revenue Report (Section 8.D – Monthly Revenue Reports). Payment of utilities will be subject to increase annually to cover increasing utility costs. The utility payment for future CONCESSION locations will be negotiated and determined by RAP, and based on cost of utilities per location.

Water and electricity shall be utilized by CONCESSIONAIRE in the most efficient manner possible, and CONCESSIONAIRE expressly agrees to comply with all CITY water conservation programs.

The CONCESSIONAIRE will pay all other utilities directly to the service provider(s) when at such time separate meter(s) is/are installed at the PREMISES.

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.

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.

CONCESSIONAIRE shall reimburse RAP if any utility charges are paid by RAP.

M. 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 RAP. RAP shall have the right to order the immediate removal of any unauthorized machines.

N. Safety

CONCESSIONAIRE shall correct safety deficiencies and violations of safety practices immediately after the condition becomes known or RAP notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on 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 18, "Notices," for mailing address) (Exhibit F). If CONCESSIONAIRE fails to correct hazardous conditions specified by RAP in a written notice, which have led, or in the opinion of CITY could lead, to injury, RAP 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.

O. Environmental Sensitivity

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 of environmentally unsafe products on PREMISES.

P. Fund Raising And / Or Special Events Activities

CONCESSIONAIRE shall cooperate with RAP personnel on all matters relative to the conduct of fund-raising and/or special events at the discretion of RAP.

Q. Community Outreach

CONCESSIONAIRE shall coordinate and cooperate with RAP 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.

R. Amplified Sound

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

S. Security

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

T. Receipts

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

U. Quiet Enjoyment

RAP 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 PREMISES during the term of this AGREEMENT. In the case of disputes, during the term of the AGREEMENT, over any conditions which may impede upon the CONCESSIONAIRE's quiet enjoyment of the PREMISES, RAP shall have final determination of any solution to such dispute; RAP's final determination shall be binding upon all parties in such dispute.

V. Filming

It is the policy of RAP to facilitate the use of City-controlled properties as film locations when appropriate. RAP has established a Park Film Office to coordinate use of parks for film production purposes. Any commercial filming shall be subject to approval by RAP and the Film Office. All fees for use of park premises by film production companies shall be established and collected by the Film Office in accordance with RAP policies. The Park Film Office may be reached at (323) 644-6220. If PREMISES is used as a film location, CONCESSIONAIRE agrees to report any revenue received from use of the PREMISES and any property of the CONCESSIONAIRE as a film location and to share that revenue equally with RAP.

W. Failure to Operate

Should CONCESSIONAIRE fail to use the PREMISES for a period of thirty (30) consecutive calendar days, this AGREEMENT shall cease, terminate, and be forfeited unless CONCESSIONAIRE, prior to the expiration of any such period notifies GENERAL MANAGER in writing that such non-use is temporary and obtains the written consent of GENERAL MANAGER of non-use.

SECTION 6. IMPROVEMENTS

CONCESSIONAIRE may propose 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. Improvements for Lake Balboa/Beilenson Park must also have written concurrence from CORP.

RAP shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all 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 AGREEMENT. RAP reserves the right to recover damages from CONCESSIONAIRE if the improvements are not completed, completed as stipulated, or completed to the satisfaction of RAP. 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 performance deposit must be recompensed as stipulated in Section 13, "Performance Deposit," herein. Failure to complete the required improvements within the time frame specified in the written approval, or as prescribed RAP, is subject to a penalty of One Hundred Dollars (\$100.00) per day for each calendar day over the appropriate time limit. At the conclusion of each improvement, CONCESSIONAIRE shall submit proof of project completion to RAP. At that point, RAP will inspect the submitted improvement to confirm completion. All improvements shall become the property of RAP. Additionally, if the value of all completed required and optional improvements is less than the agreed upon value, the CONCESSIONAIRE will be responsible for paying RAP the difference within thirty (30) days of written notification.

RAP reserves the right to further develop or improve 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 PREMISES.

A. Optional Concession Improvements

CONCESSIONAIRE agrees to make, to the satisfaction of the CITY, optional improvements to the PREMISES specified below within six months of the execution of this AGREEMENT or pay the CITY an amount equal to the value of the specific optional improvements not completed within sixty (60) days of written notification by the City that said improvement was not completed:

The CONCESSIONAIRE is the current operator of the CONCESSION at Lake Balboa/Beilenson Park and has already made the following concession improvements with the following value:

1. Upgraded Storage. Value - \$20,000.00.
2. Rental Kiosk. Value - \$10,000.00.
3. Signage.

The total value of all optional concession improvements is Thirty Thousand Dollars (\$30,000.00).

B. Compliance with Applicable Rules and Regulations

All structural or other improvements, equipment and interior design and decor constructed or installed by CONCESSIONAIRE, 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 RAP 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 with CONCESSIONAIRE.

C. 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 RAP. No permission to begin said improvements shall be granted by RAP prior to CONCESSIONAIRE obtaining of said permits and approvals.

D. 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 RAP evidence of required insurance coverage.

SECTION 7. HOURS / DAYS OF OPERATION

At minimum, CONCESSIONAIRE shall operate the CONCESSION daily from March 1st to Labor Day, Thursday through Sunday from Labor Day to February 28th, and on all major holidays and during winter and spring breaks. Additionally, in all cases, CONCESSIONAIRE shall operate only when weather permits and not to extend beyond those hours that the park is open to the public. Exceptions to this may be granted by RAP upon written request by CONCESSIONAIRE.

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 RAP.

SECTION 8. CONCESSION FEE

A. Payment

As part of the consideration for RAP granting the CONCESSION rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay to RAP annually as follows:

The greater of:

- The Minimum Annual Guarantee (MAG) of Twenty-Two Thousand Dollars (\$22,000.00)

or

- 15% of gross receipts of all sales.

In the event the Griffith Concession is added as part of the CONCESSION under this AGREEMENT, the applicable concession fee shall be that proposed by CONCESSIONAIRE for the Griffith Concession in its proposal submitted for the CONCESSION RFP. Other than the Griffith Concession, the minimum payment commitment for future locations will be negotiated and determined by comparable existing bicycle rental operations.

Refer to Section 8.C for the definition of "Gross Receipts."

CONCESSIONAIRE shall pay to RAP a monthly payment representing 15% of the gross receipts of sales for the applicable month. If the MAG is not met by December 31st of each calendar year, the difference between the actual concession fee payment received by RAP and the MAG will be due to RAP by January 15th of the subsequent year. The MAG shall be pro-rated as necessary for the first year of operation or fractional part thereof, and pro-rated as necessary for the final year of operation or fractional part thereof.

B. Payment Due

Payment shall be due and payable (postmarked) by the fifteenth (15th) day of each calendar month based on the gross receipts received in the previous month. The payment and Monthly Revenue Report (Section 8.D) shall be addressed to:

CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
ATTENTION: Concessions Unit
P.O. Box 86328
Los Angeles, California 90086

Payments may also be made by electronic deposit, which may be arranged by submitting a request to the department contact listed in Section 19.A.

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 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 RAP, including discounts to employees, if concurred by RAP;

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 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 payment a Monthly Revenue Report (Exhibit D) for the month for which a payment is submitted.

E. Late Payment Fee

Failure of CONCESSIONAIRE to pay any of the concession fee payments or any other fees, charges, or payments required herein on time is a breach of this AGREEMENT for which RAP may terminate same or take such other legal action as it deems necessary.

Without waiving any rights available at law, in equity or under this AGREEMENT, in the event of late or delinquent payments by CONCESSIONAIRE, the latter recognizes that

RAP 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 RAP a late fee set forth below to compensate RAP for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charge for late or delinquent payments shall be one hundred and fifty dollars (\$150.00) 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 payments by RAP 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 payment so accepted.

F. Compliance with Identity Theft Laws and Payment Card Data Security Standards:

CONCESSIONAIRE agrees to comply with all Identity Theft Laws including without limitation, Laws related to: 1) Payment Devices; 2) Credit and Debit Card Fraud; and 3) the Fair and Accurate Credit Transactions Act (FACTA), including its requirement relating to the content of Transaction Receipts provided to Customers. CONCESSIONAIRE also agrees to comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (PCI DSS). During the performance of any service to replace, install, program or update Payment Devices equipped to conduct Credit or Debit Card transactions, including PCI DSS services, CONCESSIONAIRE agrees to verify proper truncation of receipts in compliance with FACTA. CONCESSIONAIRE understands that failure to ensure proper truncation will result in the imposition of liability and defense costs that may arise out of consequent litigation.

SECTION 9. ADDITIONAL FEES AND CHARGES

- A.** If RAP pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse RAP for, or if RAP 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 this AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants, and agreements, CONCESSIONAIRE agrees to pay RAP the sum so paid or the expense so incurred, including all interest, costs, (including RAP's fifteen percent (15%) administrative overhead cost), damages, and penalties. This amount shall be added to the concession fee payment thereafter due hereunder, and each and every part of the same shall be and become additional concession fee payment, recoverable by RAP in the same manner and with like remedies as if it were originally a part of the concession fee payment set forth in Section 8.
- B.** 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 RAP 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 RAP 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.

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

SECTION 10. MAINTENANCE OF PREMISES

During all periods that the PREMISES are used or are under control of 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 RAP. 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 RAP 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, RAP 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 RAP 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 RAP 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

RAP 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 RAP which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this

Section. In addition, RAP shall be responsible for maintenance of the lawn area within the perimeter of the PREMISES, including mowing and watering, and shall maintain all existing landscaping, trees, and bushes on the PREMISES. CITY shall also maintain the existing water, drain and sewer systems, provided, however, that CONCESSIONAIRE shall make every effort not to clog such systems with debris from operations.

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 RAP, could lead to significant damage to CITY property, RAP 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 RAP on demand. If, for any reason, payment of such fees becomes delinquent, RAP 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 RAP a "Special Occurrence and Loss Report," (Exhibit G) 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 RAP.

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 RAP 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 RAP 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 RAP 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 RAP 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, RAP 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 RAP may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve 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 rent as determined above during the rebuilding of the PREMISES.

4. Limits of CITY'S Obligation Defined

In the application of the foregoing provisions, RAP may, but shall not be obligated to, repair or reconstruct the PREMISES. If RAP 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.

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

1. Open, unfenced areas such as those locations permitted for mobile food vending, bike rentals, coin-operated telescopes, etc.
2. Recreation centers, rental halls, and other facilities occupied in part by CONCESSIONAIRE but maintained by CITY.
3. 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 RAP.

Pest control for pests which may cause permanent structural damage to RAP property (for example, termite infestation) shall be the responsibility of RAP. 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. RAP may direct CONCESSIONAIRE to take additional measures to abate pests which are an immediate threat to public health or safety.

SECTION 11. UNITED STATES ARMY CORP OF ENGINEERS REQUIREMENTS

This AGREEMENT is executed subject to all terms and conditions in accordance with the Master Agreement Lease Number DACW09-1-67-11 between CITY and the United States, (Exhibit H) ("Master Lease"). The following requirements are for the Lake Balboa bicycle rental concession location:

1. CONCESSIONAIRE is charged at all times with full knowledge of all the limitations and requirements of Master Lease No. DACW09-1-67-11 and its Supplemental Agreements and the necessity for corrections of deficiencies, and compliance with any reasonable request By the Corps District Engineer or his/her representative.
2. CONCESSIONAIRE shall indemnify, and hold harmless, the United States of America and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability out of Lease No. DACW09-1-67-11 and its Supplemental Agreements, from any cause whatsoever incurred by the City or United States of America on account of any claim therefore, except where such indemnification is prohibited by law.
3. Indemnity and Insurance: CONCESSIONAIRE, at the commencement of operating under the terms of Lease No. DACW09-1-67-11 and its Supplemental Agreements shall obtain from a reputable insurance company or companies contracts of liability insurance which names the United States Army Corps of Engineers an additional insured. The insurance shall provide an amount not less than that which is prudent, reasonable, and consistent with sound business practices or a minimum Combined Single Limit of \$2,000,000.00, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both suffered or alleged to have been suffered by any person or persons, resulting from the operations of the CONCESSIONAIRE under the terms of Lease No. DACW09-1-67-11 and its Supplemental Agreements. The CONCESSIONAIRE shall require its insurance company to furnish to the City and District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required. The Insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services, and products involved, and shall provide that the District Engineer be given thirty (30) days' notice of cancellation or change in such insurance. The City's insurance status shall not eliminate the requirement for CONCESSIONAIRE to have insurance from a reputable insurance carrier. The District Engineer may require closure of any or all of the premises during any period for which the City and/or its CONCESSIONAIRE do not have the required coverage.
4. CONCESSIONAIRE agrees that this AGREEMENT is granted subject to all of the terms and conditions of the Master Lease and will not be effective until the terms and conditions thereof are approved by the District Engineer.

SECTION 12. PROHIBITED ACTS

CONCESSIONAIRE shall not:

1. Use PREMISES to conduct any other business operations not related to the CONCESSION.
2. 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 PREMISES or elsewhere at the PREMISES, nor do or permit to be done anything which may interfere with free access and passage in PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining PREMISES, or hinder police, fire fighting, or other emergency personnel in the discharge of their duties;
3. Interfere with the public's enjoyment and use of the PREMISES or use PREMISES for any purpose which is not essential to the CONCESSION operations;
4. Rent, sell, lease, or offer any space for storing of any articles whatsoever within or on PREMISES other than specified herein, without the prior written approval of RAP;
5. Overload any floor on PREMISES;
6. Place any additional lock of any kind upon any window or interior or exterior door on PREMISES, or make any change in any existing door or window lock or mechanism thereof, nor refuse, upon the expiration or earlier termination of this AGREEMENT, to surrender to RAP any and all keys to the interior or exterior doors on PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE. In the event of the loss of any keys furnished by RAP, CONCESSIONAIRE shall pay RAP, on demand, the cost for replacement thereof;
7. Do or permit to be done any act or thing upon PREMISES which will invalidate, suspend, or increase the rate of any insurance policy required under this AGREEMENT, or carried by RAP, covering PREMISES, or the buildings in which the same are located or which, in the opinion of RAP, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this 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;
8. 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 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. All hazardous materials must be stored and used in compliance with all City, State, and Federal rules, regulations, ordinances, and laws;
9. Allow any sale by auction upon PREMISES;
 10. Permit undue loitering on or about PREMISES;
 11. Use PREMISES in any manner that will constitute waste;
 12. Use or allow PREMISES to be used for, in the opinion of RAP, any improper, immoral, or unlawful purposes.

SECTION 13. PERFORMANCE DEPOSIT

CONCESSIONAIRE shall provide to RAP a sum equal to Six Thousand Dollars (\$6,000.00) to guarantee payment of fees and as a damage deposit to be used in accordance with the default provisions of this AGREEMENT.

A. Form of Deposit

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.

B. Agreement of Deposit and Indemnity

CONCESSIONAIRE unconditionally agrees that in the event of any default, RAP shall have full power and authority to use the deposit in whole or in part to indemnify CITY. All deposits of checks must be immediately so deposited by RAP.

C. Maintenance of Deposit

Said Deposit shall be held by CITY during the entire term of this AGREEMENT.

D. Return of Deposit to CONCESSIONAIRE

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

SECTION 14. 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, 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 PREMISES, or upon CONCESSIONAIRE's improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE's operations hereunder. In addition, by executing this

AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to 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 this AGREEMENT, CONCESSIONAIRE must hold a current Los Angeles Business Tax Registration Certificate (BTRC) as required by CITY's Business Tax Ordinance (LAMC Article 1, Chapter 2, Section 12.00 *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 One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter or fractional part thereof for the first One Thousand Dollars (\$1,000.00) or less of charges (rent) attributable to said calendar quarter, plus One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter for each additional One Thousand Dollars (\$1,000.00) of charges or fractional part thereof in excess of One Thousand Dollars (\$1,000.00). Said tax shall be paid quarterly to RAP, on or before the fifteenth (15th) of April, July, October, and January of each calendar year, for the preceding three (3) months. Should the rate of the Occupancy Tax rise at any time during the term of this AGREEMENT, CONCESSIONAIRE shall be responsible to pay the updated, higher rate.

SECTION 15. 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 purport or attempt to assign this AGREEMENT nor transfer, assign, or in any manner convey any of the rights or privileges herein granted without the explicit prior written consent of RAP and the CORP. Neither this 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 this AGREEMENT or right of use of the whole or any portion of PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee, or other lien holder, successor, or purchaser. Any such purported or attempted assignment, transfer, mortgaging, hypothecation, or encumbering without the explicit, prior written consent of RAP (and the CORP if it pertains to Lake Balboa/Beilenson Park) shall be a material breach of this AGREEMENT, and RAP, at its discretion, may terminate this AGREEMENT. A change of control in the ownership of the CONCESSIONAIRE during the term of this AGREEMENT shall be deemed an assignment of this AGREEMENT.

SECTION 16. BUSINESS RECORDS

CONCESSIONAIRE shall maintain during the term of this AGREEMENT and for three 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 this AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by RAP, or a duly authorized representative, during ordinary business hours at any time during the term of this AGREEMENT and for at least three years thereafter.

A. Employee Fidelity Bonds

At RAP'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 RAP, 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 RAP 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 RAP, in its sole discretion, deems necessary for proper reporting of receipts.

C. Method of Recording Gross Receipts

CONCESSIONAIRE must install a computerized point-of-sale (POS) system, including hardware and software, to record transactions and receipts. Such POS system must be capable of accepting credit and debit card payments; 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 POS system, including hardware and software, before obtaining RAP'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 this AGREEMENT, in a form acceptable to RAP, on or before April 30th, of each calendar year during the term of this 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 RAP, provided sufficient verification of the need for the extension is provided, as

accepted by RAP. The charge for late or delinquent Statements shall be One Hundred Fifty Dollars (\$150.00) per month or part thereof late.

In addition, RAP 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 RAP shall be found to be less than the amount of gross sales disclosed by such audit and observation, CONCESSIONAIRE shall pay RAP within thirty (30) days after billing any additional rentals disclosed by such audit. If discrepancy exceeds two percent (2%) and no reasonable explanation is given for such discrepancy, CONCESSIONAIRE shall also pay the cost of the audit.

SECTION 17. REGULATIONS, INSPECTION, AND DIRECTIVES

A. Constitutional and Other Limits on CONCESSIONAIRE's Rights to Exclusivity

Notwithstanding exclusivity granted to CONCESSIONAIRE by the terms of this AGREEMENT, CITY in its discretion may require CONCESSIONAIRE, without any reduction in rent or other valuable consideration to CONCESSIONAIRE, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the First Amendment to the UNITED STATES Constitution, the California Constitution, and other laws, as these laws are interpreted by CITY. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items.

B. Conformance with Laws

CONCESSIONAIRE shall conform to:

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by RAP with respect to the operation of the CONCESSION;
2. Any and all orders, directions, or conditions issued, given, or imposed by CITY with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to 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 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.

C. Permissions

Any permission required by this AGREEMENT shall be secured in writing by CONCESSIONAIRE from CITY or RAP 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 RAP.

D. Right of Inspection

The UNITED STATES, CITY and RAP, their authorized representatives, agents, and employees shall have the right to enter upon PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE's operation. Park Rangers are specifically designated as CITY agents and are empowered by CITY to conduct inspections of PREMISES, evaluate CONCESSIONAIRE, and inform RAP fully as to CONCESSIONAIRE's conduct of the CONCESSION. During these inspections, they all shall have the right to photograph, film, or otherwise record conditions and events taking place upon 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 CITY or another governmental entity with jurisdiction is authorized to perform inspections of the PREMISES:

1. To determine if the terms and conditions of this AGREEMENT are being complied with.
2. To observe transactions between CONCESSIONAIRE and patrons in order to evaluate the quality of services provided or quality and quantities of items sold or dispensed.
3. To ensure quality control and verify the validity of mandatory operating permits.

E. Control of Premises

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

F. Business Inclusion Program

CONCESSIONAIRE agrees and obliges 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, Schedule A (Exhibit I). CONCESSIONAIRE certifies that it has complied with Executive Directive No. 14 regarding the Outreach Program. CONCESSIONAIRE shall not change any of these designated sub consultants and subcontractors, nor shall CONCESSIONAIRE reduce their level of effort, without prior written approval of CITY, provided that such approval shall not be unreasonably withheld.

During the term of this AGREEMENT, CONCESSIONAIRE must submit the MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B (Exhibit J) when submitting the Monthly Remittance Advice. Upon completion of the project, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit K) and certified corrected by CONCESSIONAIRE or its authorized representative. The completed Schedule C shall be furnished to RAP within fifteen (15) working days after completion of this AGREEMENT.

G. 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 this AGREEMENT, 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 this AGREEMENT. The Department of Public Works, Bureau of Contract Administration is the DAA.
2. CONCESSIONAIRE further pledges that it will, during the term of this AGREEMENT:
 - a. At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notification of that employment opportunity to the Economic and Workforce Development Department (EWDD), which will refer individuals for interview;
 - b. Interview qualified individuals referred by EWDD; and,
 - c. Prior to filling any employment opportunity, 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 CONCESSIONAIRE interviewed, and the reasons why referred individuals were not hired.
3. Any subcontract entered into by 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 DAA, 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 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 CONCESSIONAIRE's subsequent Contractor Responsibility Questionnaires submitted under LAAC Section 10.40 *et seq.* This measure does not limit 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.

H. CEC Form 50

Certain contractors agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if those contractors qualify as a lobbying entity under Los Angeles Municipal Code 48.02. CEC Form 50 attached as Exhibit L. Responses submitted without a completed CEC Form 50, by proposers that qualify as a lobbying entity under Los Angeles Municipal Code 48.02 shall be deemed nonresponsive.

I. CEC Form 55

CEC Form 55 requires bidders to identify their principals, their subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the contract, and the principals of those subcontractors. Bidders must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Responses submitted without a completed CEC Form 55 shall be deemed nonresponsive. Bidders who fail to comply with City Law may be subject to penalties, termination of contract, and debarment. Additional information regarding restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.

SECTION 18. SURRENDER OF POSSESSION

CONCESSIONAIRE agrees to yield and deliver possession of PREMISES to RAP on the date of the expiration or earlier termination of this AGREEMENT promptly, peaceable, quietly, and in as good order and condition as the same now are or may be hereafter improved by CONCESSIONAIRE or RAP, 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 RAP and CONCESSIONAIRE. Neither the doing nor omission of any act or thing by any of the officers, agents, or employees of RAP shall be deemed an acceptance of a surrender of PREMISES utilized by CONCESSIONAIRE under this AGREEMENT.

Upon termination of this AGREEMENT other than by forfeiture, CONCESSIONAIRE shall quit and surrender possession of PREMISES to RAP and shall, without cost to RAP, remove any and all works, structures, or other improvements owned by CONCESSIONAIRE and restore PREMISES to the same or as good condition, ordinary wear and tear excepted, as the same were in it at the time of the first occupancy, thereof by CONCESSIONAIRE under this or any prior agreement or lease. CONCESSIONAIRE will have thirty (30) days to effect removal and restoration. RAP may at its option accept all or a portion of the works, structures, or other improvements on behalf of RAP in lieu of all or a portion of the removal or restoration required herein.

SECTION 19. NOTICES

A. To RAP

Unless otherwise stated in this AGREEMENT, written notices via post to RAP hereunder shall be addressed to:

Department of Recreation and Parks
Attention: Concessions Unit
P.O. Box 86328
Los Angeles, CA 90086-0610

All such notices may be delivered personally, transmitted via electronic mail, 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 email, personal delivery, or registered or certified mail shall be effective upon receipt. Written notices may also be emailed to RAP Concessions Analyst.

RAP 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 RAP 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 be delivered personally to 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, or transmitted via electronic mail by the RAP Concessions Analyst. Service in such manner by personal delivery, registered or certified mail, or electronic mail shall be effective upon receipt.

Written Notices via post to CONCESSIONAIRE shall be addressed to CONCESSIONAIRE as follows:

*Freetime, Inc. DBA Wheel Fun Rentals
Attn: Al Stonehouse
4526 Telephone Rd., #202
Ventura, CA 93003*

Written Notices via electronic mail to CONCESSIONAIRE shall be addressed to:

al@wheelfunrentals.com

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

SECTION 20. 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. Lake Balboa Bicycle Rental Premise Map
- B. Standard Provisions for City Contracts (Rev. 10/17 v.3)
- C. Proposal in Response to RFP No. CON-M17-004
- D. Monthly Revenue Report
- E. Required Insurance and Minimum Limits; Instructions and Information on Complying with City Insurance Requirements
- F. Form General No. 87 "Non-Employee Accident or Illness Report"
- G. Special Occurrence and Loss Report
- H. Master Agreement Lease Number DACW09-1-67-11 between CITY and the United States and its Supplemental Agreements
- I. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- J. Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile
- K. Schedule C, Final Subcontracting Report Form
- L. CEC Form 50, Bidder Certification

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 A, 3) Exhibit B, 4) Exhibit C, 5) Exhibit D, 6) Exhibit E, 7) Exhibit F, 8) Exhibit G, 9) Exhibit H, 10) Exhibit I, 11) Exhibit J, 12) Exhibit K, 13) Exhibit L.

(Signature Page to Follow)

SAMPLE

IN WITNESS WHEREOF, THE CITY OF LOS ANGELES has caused this **AGREEMENT** to be executed on its behalf by its duly authorized General Manager of the Department of Recreation and Parks, and FREETIME, INC. DBA WHEEL FUN RENTALS 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 the Department of Recreation and Parks.

BY: _____ DATE: _____
MICHAEL A. SHULL
General Manager

FREETIME, INC. DBA WHEEL FUN RENTALS

BY: _____ DATE: _____
Title: _____

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

BY: _____ DATE: _____
Deputy City Attorney

Business Tax Registration Certificate Number: _____

Internal Revenue Service Taxpayer Identification Number: _____

AGREEMENT Number: _____