

APPROVED
07-13-2016

BOARD REPORT

BOARD OF RECREATION
and PARK COMMISSIONERS

NO. 16-147

DATE July 13, 2016

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK PONY RIDE CONCESSION – AWARD OF CONTRACT TO LOS ANGELES PONY RIDES, INC. (CON-M16-001)

AP Diaz _____
R. Barajas _____
H. Fujita _____

*V. Israel _____
K. Regan _____
N. Williams _____



General Manager

Approved

Disapproved _____

Withdrawn _____

RECOMMENDATIONS

1. Approve the proposed Agreement with Los Angeles Pony Rides, Inc., herein included as Attachment 1, for the operation and maintenance of the Griffith Park Pony Ride Concession for a period of five years with three one-year renewal options exercisable at the General Manager's sole discretion, subject to review and approval by the Mayor, and the City Attorney as to form;
2. Approve the proposed Price List for the Griffith Park Pony Ride Concession, herein included as Exhibit J;
3. Direct the Board Secretary to transmit the proposed Agreement to the Mayor, in accordance with Executive Directive No. 3, 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 the Department of Recreation and Parks (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 improvement, operation and maintenance of the Griffith Park Pony Ride Concession; and
6. Authorize the General Manager or Designee to execute the proposed Agreement (Attachment 1), and to make any necessary technical changes consistent with the Board's intent in approving the proposed Agreement.

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SUMMARY

On May 4, 2016, the Board of Recreation and Park Commissioners approved Board Report 16-108, which awarded the Griffith Park Pony Ride Concession (Concession) to Los Angeles Pony Rides, Inc., and authorized RAP staff to develop the Concession Agreement. Shortly thereafter, RAP staff met with Los Angeles Pony Rides, Inc., to review all contractual terms and discuss a transition plan between the incumbent operator and Los Angeles Pony Rides, Inc. RAP staff expects a smooth transition with minimal interruption to operations.

The Concession is located at 4400 Crystal Springs Drive, within the Griffith Park area that includes recreational amenities such as hiking trails, horseback riding trails, picnic areas, train rides, and a refreshment stand. The Concession consists of a pergola structure, ticket booth, pony sweep structure, wooden guide rails, corrals, and a metal hay barn. The Concession offers pony rides for children with the appropriate saddlery and tack necessary for the safety of the riders and ponies, a mule or pony-drawn stagecoach ride and a pony sweep ride.

The Concession is currently operated under the terms of Concession Agreement No. 191 which began on June 28, 1979 for a single ten-year term and ended on June 28, 1989, between the City of Los Angeles and Hank William Bronk, (Concessionaire) whose family has operated the Concession since 1980. The Agreement has been operated on a month-to-month basis since its expiration in 1989.

BACKGROUND

Transitional and Operational Plan: Los Angeles Pony Rides, Inc. will begin operation of the Concession with sixty-five (65) experienced ponies and other needed equipment acquired through an asset purchase agreement, which was included in the proposal, signed by the current operator of the pony ride concession. This will assist in a smooth transition between the incumbent operator and new operator. The incumbent operator has approved the new operator's general managers to be on site thirty to forty-five (30-45) days prior to insure a smooth transition. In addition to providing pony rides six days a week (closed Mondays for clean-up, care and rest of the animals, with the exception of holidays or private events), as is currently offered, Los Angeles Pony Rides, Inc.'s business plan includes several additional services and/or amenities that include: educational classes where children learn how to groom and relate to a pony; pony-assisted non-riding therapy for special needs children and adults; and a program to help veterans find assistance through bonding with a pony. A small themed product sales kiosk for purchase of pony related products, a free petting zoo, and private birthday parties will also be offered.

Capital Improvements: Los Angeles Pony Rides, Inc. has committed to perform the required concession improvements (deferred maintenance) as listed in the Request for Proposal (RFP) within six months upon execution of the Agreement. In addition to the required improvements, Los Angeles Pony Rides, Inc. included an optional concession improvement plan in its proposal, which includes remodeling the ticket office, adding a petting zoo, pony coral and pony sales kiosk; constructing a birthday party pavilion, landscaping and improvements to the surface of the main pony ring, and installing a state-of-the-art video security system all to be completed within first one hundred twenty (120) days of operations. Both improvement categories, required and optional, are estimated to cost

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Eighty-Three Thousand Dollars (\$83,000.00).

Financial Return to the City: Los Angeles Pony Rides, Inc.'s proposal includes a twenty-five percent (25%) revenue sharing plan with projected gross revenue of One Million, Twenty-Six Thousand, One Hundred Forty-Four Dollars (\$1,026,144.00) the first year of operation and growing to One Million, Ninety-Five Thousand, Eight Hundred Forty-Two Dollars (\$1,095,842.00) by Year Eight of operation. This would provide the City with approximately Two Hundred Fifty Thousand Dollars (\$250,000.00) in rental income per year, or Two Million (\$2,000,000.00) in rental income for this Concession over the eight-year term of the Agreement. This expected increase in revenue is premised on an increase to the pony ride ticket price from the current \$3 per ticket to \$5 per ticket. Staff has conducted comparative research of pony ride ticket prices, and this price increase is consistent with similar pony ride operations in the region.

CONCLUSION

Los Angeles Pony Rides, Inc. has met and in some cases exceeded the requirements, as provided in the RFP, to operate the Concession. Los Angeles Pony Rides, Inc. has demonstrated the necessary qualifications, and has proposed a business plan, operation plan, transition plan, and capital improvement plan that will enhance the experience offered to the public. In addition, the financial return to the city is expected to increase, allowing for ongoing and future resources to be available for upkeep, maintenance and repairs. After a thorough evaluation of the Los Angeles Pony Rides, Inc.'s proposal, and following further clarifying discussions, RAP staff recommends approval of the proposed Agreement.

ENVIRONMENTAL IMPACT STATEMENT

Staff has not yet performed an environmental review as it relates to the capital improvements that have been proposed in concept as part of the proposal submitted by Los Angeles Pony Rides, Inc. Staff will perform an environmental review, and provide a CEQA determination upon concessionaire providing final construction plans.

FISCAL IMPACT STATEMENT

The Board's approval of the Recommendations, and the execution of a new Agreement for the operation of the Griffith Park pony rides, will have a positive impact on the RAP's General Fund, due to an increase in concessions revenue.

This Report was prepared by LaTricia Jones, Management Analyst II, Partnership and Revenue Branch, Concessions Division.

LIST OF ATTACHMENTS

- 1) Proposed Agreement for Operation and Maintenance of the Griffith Park Pony Ride Concession
Exhibit A – Standard Provisions
Exhibit B – _Premise Map

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- Exhibit C – Insurance Requirements
- Exhibit D – Remittance Advice
- Exhibit E – Non-Employee Accident Illness Report
- Exhibit F – Special Occurrence and Loss Report
- Exhibit G – Schedule A
- Exhibit H – Schedule B
- Exhibit I – Schedule C_Final Subcontracting Report
- Exhibit J – Price List
- Exhibit K – Asset Purchase Agreement

AGREEMENT
FOR THE OPERATION AND MAINTENANCE OF
THE GRIFFITH PARK PONY RIDE CONCESSION

BETWEEN

THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

AND

LOS ANGELES PONY RIDES, INC.

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AGREEMENT FOR OPERATION AND MAINTENANCE OF THE GRIFFITH PARK PONY RIDE CONCESSION

THIS Agreement (hereinafter "AGREEMENT") is made and entered in 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 referred to as "CITY"), and *LOS ANGELES PONY RIDES, INC.* (hereinafter referred to as "CONCESSIONAIRE").

WHEREAS, the Department of Recreation and Parks (hereinafter referred to as "Department") seeks to serve the public by providing pony rides and related services exclusively at the Griffith Park Pony Ride Concession (hereinafter "CONCESSION"); 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 the DEPARTMENT for the improvement, operation and maintenance of the DEPARTMENT'S CONCESSION; and

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

WHEREAS, the DEPARTMENT advertised for proposals for the operation and maintenance of the CONCESSION, to include providing pony rides and related services to the public; and

WHEREAS, the DEPARTMENT received and evaluated two (2) proposals which were received on March 15, 2016; and

WHEREAS, Los Angeles Pony Rides, Inc. was the only responsive proposer, and selected to provide pony rides and related services at the CONCESSION in accordance with the terms and conditions of this AGREEMENT; and

WHEREAS, the 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 Griffith Park.

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-four (34) pages and eleven (11) exhibits (A-K) 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:	Griffith Park Pony Ride Concession
CONCESSIONAIRE:	<i>Los Angeles Pony Rides, Inc.</i>
DEPARTMENT:	The Department of Recreation and Parks
FACILITY:	The Griffith Park Pony Ride Concession located at 4400 Crystal Springs Drive, Los Angeles, CA 90027.
LAAC:	The Los Angeles Administrative Code
LAMC:	The Los Angeles Municipal Code
PREMISES:	The geographical area, as defined in Section 3 of this AGREEMENT, in which the concession may be operated.

SECTION 2. PERMISSION GRANTED

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, CITY hereby grants to CONCESSIONAIRE, subject to all of the terms and conditions of this AGREEMENT, the right and obligation within the CONCESSION to: equip, operate and maintain the Griffith Park Pony Ride at Griffith Park, Los Angeles, CA.

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

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, DEPARTMENT shall meet and confer with all necessary parties to determine the services to be offered or products to be sold by each, and CONCESSIONAIRE hereunder agrees thereafter to be bound by said determination.

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

SECTION 3. PREMISES

The PREMISES (Exhibit B) subject to this AGREEMENT are located at: 4400 Crystal Springs Drive, Los Angeles, CA 90027. The PREMISES shall include the ticket booth, pergola, wooden guide rails, corrals and metal hay barn. Location of PREMISES as set forth in Exhibit B, attached hereto and incorporated herein. Any discrepancy in the definition or boundaries of PREMISES shall be resolved solely by the DEPARTMENT.

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

SECTION 4. TERM OF AGREEMENT

The term of the AGREEMENT shall be five (5) years with three (3) one (1) year extension options exercisable at the sole discretion of the Department's General Manager, effective seven (7) days after the date of execution. Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke the AGREEMENT.

SECTION 5. OPERATING RESPONSIBILITIES

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

A. **Cleanliness**

CONCESSIONAIRE shall, at its own expense, keep the PREMISES and the surrounding area [at least twenty-five (25) feet] clean and sanitary at all times. No

offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor any material detrimental to the public health, shall be permitted to remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES.

CONCESSIONAIRE, at its own expense, shall see that all garbage, refuse, abandoned personal items or personal items left longer than twenty-four (24) hours is collected and disposed of as often as necessary and in no case less than once a day. CONCESSIONAIRE shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type, and number approved by DEPARTMENT. If no trash storage area is made available, CONCESSIONAIRE shall provide at its own expense and with the DEPARTMENT'S prior written approval, an enclosed area concealing the trash storage from public view. The department will incur the cost of all garbage pick-up from the main dumpster for the PREMISES during the term of the AGREEMENT.

In addition to the requirements set forth above, CONCESSIONAIRE shall clean all manure from the premises on a daily basis. CONCESSIONAIRE will also clean the metal hay barn and corrals on a daily basis, removing all manure and replacing wet sawdust or straw. Manure will be kept in a manure compound, dumpster trash container or similar device which shall be located so as to prevent offensive odors and insects from bothering patrons. CONCESSIONAIRE shall remove the manure from the premises a minimum of two times each week.

B. Conduct

CONCESSIONAIRE and its representatives, agents, servants, and employees shall at all times conduct its business in a quiet and orderly manner to the satisfaction of the DEPARTMENT.

C. Disorderly Persons

CONCESSIONAIRE shall use its best efforts to permit no intoxicated person or persons 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. Non-Discrimination/ Equal Employment Practices/Affirmative Action

1. CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, sexual orientation or sexual identity shall be excluded from participation, denied the benefits of or be otherwise

subjected to unjust discrimination in access to or in the use of the facilities covered by the AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, sexual orientation or sexual identity shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination.

2. CONCESSIONAIRE agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 18, CITY shall issue a written notice of breach or default to CONCESSIONAIRE, and if CONCESSIONAIRE does not cure said breach or default within thirty (30) calendar days of receipt of said notice, CITY may, by delivering a second written notice to CONCESSIONAIRE, terminate this AGREEMENT without further delay, whereupon CONCESSIONAIRE shall vacate the PREMISES within fourteen (14) calendar days and CITY shall have the right to reenter and repossess said land and the facilities thereon and hold the same as if said AGREEMENT had never been executed.
3. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, sexual orientation or sexual identity. All subcontracts entered into by CONCESSIONAIRE shall be approved in advance by CITY and shall contain a like provision.

E. Personnel

1. **Freedom from Tuberculosis**
For employees preparing food, and others as required by statute (reference Section 5163 of the California Public Resources Code) or directive of the DEPARTMENT, CONCESSIONAIRE shall provide the DEPARTMENT with certificates on applicable employees indicating freedom from communicable tuberculosis.
2. **Qualified Personnel**
CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by CONCESSIONAIRE, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate

conduct for a work environment. In the event an employee is not satisfactory, the DEPARTMENT may direct CONCESSIONAIRE to remove that person from the PREMISES.

3. **Concession Manager**

CONCESSIONAIRE shall appoint, subject to written approval by DEPARTMENT, a Concession Manager of CONCESSIONAIRE'S operations at the FACILITY.

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 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 subject concession, the Concession Manager's personal attention shall not be directed toward the operation of any other business activity.

If, for reasons of ill health, incapacitation, or death, the Concession Manager becomes incapable of performing each and all terms and provisions of the AGREEMENT, the CONCESSIONAIRE shall appoint, subject to written approval by the DEPARTMENT, a new qualified and experienced Concession Manager within 60 days. CONCESSIONAIRE shall act in the capacity of the General Manager until a new General Manager has been appointed. The DEPARTMENT may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein if no appointment has been made within the 60 day time period.

4. **Approval of Employees, Volunteers and Subcontractors**

The DEPARTMENT shall have the right to approve or disapprove all employees, volunteers and subcontractors (including all employees and volunteers for any subcontractor) of CONCESSIONAIRE. Failure of CONCESSIONAIRE to obtain DEPARTMENT'S written approval of all persons operating under the authority of this AGREEMENT on the PREMISES shall be a material breach of this AGREEMENT. CONCESSIONAIRE shall submit a list of all persons employed by, or volunteering or subcontracting for, CONCESSIONAIRE at the PREMISES to the DEPARTMENT prior to commencing operations pursuant to this AGREEMENT. All changes to the approved list of employees, volunteers

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

F. Price Schedules

1. Upon execution of this AGREEMENT, the fees for pony rides, equine classes and birthday parties, as shown in Exhibit J, shall be effective. All future modifications to CONCESSIONAIRE'S fees for pony rides, classes and birthday parties are subject to approval by the GENERAL MANAGER and cannot be changed without prior written approval by the GENERAL MANAGER. Such determination by the GENERAL MANAGER shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. The City 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 services at similar venues in the surrounding community.

CITY agrees that CONCESSIONAIRE'S sale of merchandise, including its price for same, shall be within CONCESSIONAIRE'S discretion; subject, however, to disapproval by GENERAL MANAGER if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of GENERAL MANAGER. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All merchandise prices shall be comparable to prices charged in similar establishments in the City of Los Angeles. A merchandise price list must be submitted within 30 days of execution of this AGREEMENT.

2. All services offered for sale and/or sold by CONCESSIONAIRE in said PREMISES, must be related to the ordinary business of the CONCESSION.

DEPARTMENT may order the improvement of the quality of any services offered for sale.

G. Diversion of Business

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

H. Equipment, Furnishings, and Expendables

1. All equipment, furnishings, and expendables required for said CONCESSION shall be purchased and installed by CONCESSIONAIRE at its sole expense and shall remain its personal property, including, but not limited to:
 - a. A minimum of fifty (50) well-trained ponies suitable for children to ride safely;
 - b. Appropriate saddlery and tack necessary for the proper operation of the pony ride;
 - c. Supplies and feed for the ponies;
 - d. Stagecoach and harness;
2. Upon termination of the AGREEMENT, CONCESSIONAIRE shall have the right to remove its own equipment, ponies, furnishings, and expendables, but not improvements, from the PREMISES and shall be allowed a period of thirty (30) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY.

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, such as, but not limited to, heat exchangers, fans, controls and electric panels, installed by CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance. CITY 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 DEPARTMENT.

No equipment provided by CITY shall be removed or replaced by CONCESSIONAIRE without the prior written consent of the DEPARTMENT, and

if consent is secured, such removal and/or replacement shall be at the expense of CONCESSIONAIRE.

J. Claims for Labor and Materials

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

K. Signs and Advertisements

CONCESSIONAIRE shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of CITY property without the prior written approval from the DEPARTMENT, who may require the removal or refurbishment of any sign previously approved. Certain signs and advertisements may also require the prior written approval of the Griffith Park Advisory Board and the Cultural Heritage Commission or other appropriate agencies.

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

At FACILITY, CONCESSIONAIRE shall provide the following 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."

Upon the expiration or termination of the AGREEMENT, CONCESSIONAIRE shall, at its own expense, remove or paint out, as DEPARTMENT may direct, any and all of its signs and displays on the PREMISES and in connection therewith, and shall restore said PREMISES and improvements thereto to the same condition as prior to the placement of any such signs or displays.

L. Utilities

CONCESSIONAIRE shall be responsible for utility charges associated with the CONCESSION. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, heat, air-conditioning, and other utility services to PREMISES, and shall be paid by CONCESSIONAIRE regardless of whether such utility services are furnished by CITY or by other utility service providers. CONCESSIONAIRE will pay directly for telephone services, which will be in the name of the CONCESSIONAIRE.

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, and 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.

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.

In the event that individual utility meters are not available, CONCESSIONAIRE shall remit, on a monthly basis in conjunction with revenue-sharing payments to DEPARTMENT, the amount of Two Hundred Fifty Dollars (\$250.00) as payment for utilities. Payment of utilities will be subject to increase annually to cover increasing utility costs.

The CONCESSIONAIRE shall reimburse the DEPARTMENT if any utility charges are paid by the DEPARTMENT.

M. Vending Machines

CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines.

N. Safety

CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or DEPARTMENT notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report" (see SECTION 26, "NOTICES," for mailing address) (Exhibit F). If CONCESSIONAIRE fails to correct hazardous conditions specified by the DEPARTMENT in a written notice, which have led, or in the opinion of CITY could lead, to injury, the DEPARTMENT 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**

The CONCESSIONAIRE must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY policies regarding protection of the environment. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

P. **Fund Raising Activities**

CONCESSIONAIRE will be expected to cooperate with Department personnel on all matters relative to the conduct of fund-raising and/or special events at the discretion of DEPARTMENT.

Q. **Community Outreach**

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

R. **Care of Livestock**

CONCESSIONAIRE shall strictly observe all requirements and directives of the Department of Animal Services of the City of Los Angeles. If CONCESSIONAIRE or his employees appear to have mistreated or endangered any livestock, after a review by a licensed equine veterinarian, the DEPARTMENT may immediately exercise default provisions.

S. **Amplified Sound**

No excessive amplified sound, as determined by the DEPARTMENT, is permitted by CONCESSIONAIRE in its operations on PREMISES.

T. **Security**

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

U. **Quiet Enjoyment**

CITY agrees that CONCESSIONAIRE, upon payment of the fees and charges specified herein, and all other charges and payments to be paid by CONCESSIONAIRE under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT,

shall lawfully and quietly hold, use and enjoy the concession PREMISES during the term of this AGREEMENT. In the case of disputes, during the life of the AGREEMENT, over any conditions which may impede upon the CONCESSIONAIRE's quiet enjoyment of the concession PREMISES, the DEPARTMENT shall have final determination of any solution to such dispute; the DEPARTMENT's final determination shall be binding upon all parties in such dispute.

V. 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 Unit (213) 202-3280."

SECTION 6. IMPROVEMENTS

CITY 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. CITY reserves the right to recover damages from CONCESSIONAIRE if the improvements are not completed, completed as stipulated, or completed to the satisfaction of DEPARTMENT. 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 12, "Performance Deposit," herein. Failure to complete the required improvements within the time frame specified in the written approval, or as prescribed by DEPARTMENT, are 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, the CONCESSIONAIRE shall submit proof of project completion, including invoices and receipts, to the DEPARTMENT. At that point, the DEPARTMENT will inspect the submitted improvement to confirm completion. All improvements shall become the property of the CITY. Additionally, if the value of all completed required and optional improvements is less than the AGREEMENT value, the CONCESSIONAIRE will be responsible for paying the DEPARTMENT the difference within sixty (60) days of written notification or investing the difference in additional concession improvements within twenty-four (24) months, subject to the approval of the GENERAL MANAGER.

CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by CONCESSIONAIRE. Such

development or improvement may require the suspension or termination of the AGREEMENT. CITY shall not be liable for loss of business which results from the construction of any development or improvements made by the CONCESSIONAIRE to the FACILITY or the PREMISES.

A. Required Concession Improvements

CONCESSIONAIRE agrees to make, to the satisfaction of the CITY, the following required improvements to the CONCESSION PREMISES within twelve (12) months of the execution of this AGREEMENT or pay the CITY an amount equal to the value of the specific improvement not completed within sixty (60) days of written notification by the City that said improvement was not completed:

1. Repair/replace water troughs for the ponies.
2. Repair concrete flooring under the pergola.
3. Repair pergola footings.
4. Replace gutters on the barn.
5. Repair roof on barn.
6. Paint the exterior of the ticket office.
7. Paint the pergola structure over the waiting area.
8. Paint the fence around the pony ride track area.
9. Paint the exterior of the metal barn.
10. Landscape pony corrals to provide suitable habitation for the ponies.

The total estimated value of all required CONCESSION improvements is Forty-Four Thousand Dollars (\$44,000.00).

Should the City exercise an option to renew the AGREEMENT, CONCESSIONAIRE agrees to repaint the FACILITY as stated above (Items# 6 – 9), within the first six (6) months of the first option term. CONCESSIONAIRE agrees that maintenance of the landscaping improvement of the pony corrals will be ongoing.

B. Optional Concession Improvements

CONCESSIONAIRE agrees to make, to the satisfaction of the CITY, optional improvements to the CONCESSION PREMISES specified below within twenty-

four (24) months of the execution of this CONCESSION 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:

1. Remodel Ticket Office.
2. Addition of a Petting Zoo.
3. Addition of a Pony Related Sales Kiosk.
4. Addition of a 12' x 24' Birthday Party Pavilion and a 12' x 24' Pony Corral on northeast side of service road next to barn gate.
5. Resurface and improve the Main Pony Ring.
6. State Of The Art Video Security System.

The total estimated value of all optional CONCESSION improvements is Thirty-Nine Thousand Dollars (\$39,000.00). CONCESSIONAIRE is required to submit construction plans for optional items within 30 days of execution of the AGREEMENT. Optional concession improvements must be approved by the GENERAL MANAGER, which will not be unreasonably withheld or delayed.

C. Compliance with Applicable Rules and Regulations

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

D. Procurement of Permits and Approvals

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

E. Subcontractors

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

SECTION 7. HOURS / DAYS OF OPERATION

The CONCESSION must be open, weather permitting, to the public six (6) days per week, closed Mondays except for holidays or for private events, and a minimum of six (6) hours per day as required by the DEPARTMENT to adequately serve public demand. Hours of operation are dependent upon Griffith Park's operating days and hours, as well as the discretion of the DEPARTMENT.

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 DEPARTMENT. Any deviation from such days and hours shall be subject to the prior written approval of the DEPARTMENT.

SECTION 8. REVENUE-SHARING FEE PAYMENT

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

The greater of:

The Annual Minimum Revenue-Sharing Guarantee, as follows:

- Two Hundred Fifty-Three Thousand, Five Hundred Thirty-Six Dollars (\$253,536) for year one (1) of the AGREEMENT;
- Two Hundred Fifty-Six Thousand, Three Hundred Eighty-Three Dollars (\$256,383) for year two (2) of the AGREEMENT;
- Two Hundred Fifty-Seven Thousand, Five Hundred Fifty-Four Dollars (\$257,554) for year three (3) of the AGREEMENT;
- Two Hundred Sixty Thousand Dollars (\$260,000) for year four (4) of the AGREEMENT;
- Two Hundred Sixty-Two Thousand, Seven Hundred Two Dollars (\$262,702) for year five (5) of the AGREEMENT;
- Two Hundred Sixty-Five Thousand, One Hundred Seventy-Nine Dollars (\$265,179) for year six (6) of the AGREEMENT;
- Two Hundred Sixty-Seven Thousand, Six Hundred Eighty-One Dollars (\$267,681) for year seven (7) of the AGREEMENT;

- Two Hundred Seventy-Three Thousand, Nine Hundred Sixty Dollars (\$273,960) for year eight (8) of the AGREEMENT; **OR**

25% of gross receipts of all sales, whichever is higher.

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

If the minimum annual revenue-sharing payment is not met by December 31 of each calendar year, the difference between the actual revenue-sharing payment received by the City of Los Angeles and the minimum annual revenue-sharing payment will be due to the City of Los Angeles by January 15th of the subsequent year, 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. Revenue-Sharing Payment Due

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

CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
ATTENTION: Partnership and Revenue Branch/Concessions Unit
P. O. Box 86610
Los Angeles, CA 90086-0610

C. Gross Receipts Defined

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

1. Cash discounts allowed or taken on sales;
2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;

5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by CONCESSIONAIRE;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
7. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
8. Receipts from the sale at cost of uniforms, clothing, or supplies to CONCESSIONAIRE'S employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
9. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
10. Fair market trade-in allowance, in the event merchandise is taken in trade;
11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, with the concurrence of both CONCESSIONAIRE and DEPARTMENT, including discounts to employees, if concurred by DEPARTMENT.

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

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

D. Monthly Revenue-Sharing Reports

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

E. Late Payment Fee

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

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

The charges for late or delinquent payments shall be One Hundred 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 revenue-sharing payments by CITY shall not be deemed as a waiver of any other breach by CONCESSIONAIRE of any term or condition of this AGREEMENT other than the failure of CONCESSIONAIRE to timely make the particular revenue-sharing payment so accepted.

SECTION 9. ADDITIONAL FEES AND CHARGES

- A. If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants, and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs, (including CITY'S fifteen percent (15%) administrative overhead cost), damages, and penalties. This amount shall be added to the rental payment thereafter due hereunder, and each and every part of the same shall be and become additional

rental payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic rental payment set forth in Section 5 hereof.

- 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 CITY for any work done or material furnished shall be prima facie evidence against CONCESSIONAIRE that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations, and to charge CONCESSIONAIRE with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE.
- C. Use of the PREMISES for purposes not expressly permitted herein, may result in additional charges; however, any such use without the prior written approval of the DEPARTMENT shall also constitute a material breach of AGREEMENT and is prohibited.

SECTION 10. MAINTENANCE OF PREMISES

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

A. Interior of Premises

- 1. Areas to be Maintained by CONCESSIONAIRE:
CONCESSIONAIRE shall, at its own expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by CITY or CONCESSIONAIRE. Improvements shall include all buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY-owned facilities (such as buildings, fences, posts, signs, electrical hook-ups, plumbing, tracks, tanks, etc.).

CONCESSIONAIRE shall provide all maintenance, repair, and service required on all interior areas, surfaces, and equipment used in the PREMISES and keep such equipment in good repair and in a clean and orderly condition and appearance. CONCESSIONAIRE shall also be responsible for electrical, mechanical, and plumbing maintenance in the

interior of the PREMISES, such as lighting fixtures, sinks, and faucets; however, CITY shall be responsible for maintenance of utility lines and drains within the walls and floors of the concession PREMISES. Insofar as sanitation and appearance of the PREMISES is concerned, the DEPARTMENT may direct CONCESSIONAIRE to perform necessary repairs and maintenance to the interior of the structure or to the equipment, whether the equipment is CONCESSIONAIRE or CITY property.

2. Duties

CONCESSIONAIRE'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the DEPARTMENT to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.

B. Exterior of Premises and Common Passageways

CITY shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements, unless otherwise provided for in the AGREEMENT. Common passageways leading to other CONCESSION facilities or offices maintained by CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this Section. In addition, CITY 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 manure or other debris from all 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 CITY, could lead to significant damage to CITY property, the DEPARTMENT may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand. If, for any reasons, payment of such fees becomes delinquent, DEPARTMENT may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

D. Property Damage and Theft Reporting

CONCESSIONAIRE shall complete and submit to the DEPARTMENT a "Special Occurrence and Loss Report," in the event that the PREMISES and/or CITY-

owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. Blank forms for this purpose shall be provided by the DEPARTMENT.

E. Damage or Destruction to Premises

1. Partial Damage

If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

2. Extensive Damage

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

3. Complete Destruction

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

CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. CONCESSIONAIRE shall continue paying CITY rent as determined above during the rebuilding of the facility.

4. **Limits of CITY'S Obligation Defined**

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

F. **Pest Control**

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

1. Any portion of a building or enclosed structure with walls, roof, and doors, such as pro shops, gift shops, golf car storage facilities, restaurants, food stands, ticket and sales booths, kiosks, theater stage buildings, offices and storage facilities, storage containers owned and/or used by CONCESSIONAIRE, equine housing, etc.

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

Pest control for pests which may cause permanent structural damage to DEPARTMENT property (for example, termite infestation) shall be the

responsibility of CITY. CONCESSIONAIRE shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES clean and orderly in accordance with this Section, and keeping wood components painted. DEPARTMENT may direct CONCESSIONAIRE to take additional measures to abate pests which are an immediate threat to public health or safety.

SECTION 11. PROHIBITED ACTS

CONCESSIONAIRE shall not:

1. Use the PREMISES to conduct any other business operations of CONCESSIONAIRE 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 the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;
3. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
4. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the DEPARTMENT;
5. Overload any floor in the PREMISES;
6. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to DEPARTMENT any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by DEPARTMENT, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
7. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of DEPARTMENT, may constitute a hazardous condition that will increase the

risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery, including belted safety saddles, 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 the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;
9. Allow any sale by auction upon the PREMISES;
10. Permit undue loitering on or about the PREMISES;
11. Use the PREMISES in any manner that will constitute waste;
12. Use or allow the PREMISES to be used for, in the opinion of DEPARTMENT, any improper, immoral, or unlawful purposes.

SECTION 12. RATIFICATION LANGUAGE

At the request of the DEPARTMENT, and because of the need therefore, CONCESSIONAIRE may have begun performance of the responsibilities herein required prior to the execution hereof. By its execution hereof, the DEPARTMENT hereby accepts such service subject to all the terms, covenants, and condition of this AGREEMENT, and ratifies its AGREEMENT with CONCESSIONAIRE for such services.

SECTION 13. PERFORMANCE DEPOSIT

CONCESSIONAIRE shall provide the DEPARTMENT a sum equal to Forty Thousand Dollars (\$40,000.00) to guarantee payment of fees and as a damage deposit to be used in accordance with the default provisions of this AGREEMENT.

Form of Deposit

CONCESSIONAIRE'S Deposit shall be in the following form:

1. A cashier's check payable to the order of the City of Los Angeles.
- A. **Agreement of Deposit and Indemnity**
CONCESSIONAIRE unconditionally agrees that in the event of any default, CITY shall have full power and authority to use the deposit in whole or in part to indemnify CITY. All deposits of checks must be immediately so deposited by the DEPARTMENT.
 - B. **Maintenance of Deposit**
Said deposit shall be held by CITY during the entire term of the AGREEMENT.
 - C. **Return of Deposit to CONCESSIONAIRE**
Said Deposit shall be returned to CONCESSIONAIRE and any rights assigned to the Deposit shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and any exit audits performed in conjunction with the AGREEMENT. The CITY reserves the right to deduct from the Performance Deposit, any amounts up to and including the full amount of the Deposit as stated herein, owed to the CITY by CONCESSIONAIRE as shown by any exit audits performed by CITY, or as compensation to CITY for failure to adhere to material terms and conditions of the 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, animal regulation, building permits, police and fire permits, etc.
- B. CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to taxation. CONCESSIONAIRE, as the party to whom the Possessory Interest is vested, may be subject to the payment of the possessory taxes levied by the State and County upon such interest.
- C. During the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a current Los Angeles Business Tax Registration Certificate (BTRC) as required by

the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, Sections 21.00 et. seq.).

- D. Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, CONCESSIONAIRE must pay to the City of Los Angeles for the privilege of occupancy, a tax at the rate of 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 the DEPARTMENT, on or before the fifteenth (15th) of April, July, October, 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 the AGREEMENT, the CONCESSIONAIRE shall be responsible to pay the updated, higher rate.

The charges for late or delinquent payments shall be One Hundred 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.

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 the AGREEMENT nor transfer or in any manner convey any of the rights or privileges herein granted without the explicit, prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any purported or attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor or purchaser. Any such purported or attempted assignment, transfer, mortgaging, hypothecation or encumbering without the explicit, prior, written consent of the DEPARTMENT shall be a material breach of this AGREEMENT, and the DEPARTMENT at its discretion may terminate the AGREEMENT.

SECTION 16. BUSINESS RECORDS

CONCESSIONAIRE shall maintain during the term of the AGREEMENT and for three (3) years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted

pursuant to the AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by DEPARTMENT, or a duly authorized representative, during ordinary business hours at any time during the term of this agreement and for at least three (3) years thereafter.

A. Employee Fidelity Bonds

At the DEPARTMENT'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 DEPARTMENT, 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 DEPARTMENT for approval.

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

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

C. Method of Recording Gross Receipts

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall obtain and install a cash register(s) on which it shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. CONCESSIONAIRE shall not purchase or install the cash register before obtaining the DEPARTMENT'S written approval of the specific

register to be purchased. All cash registers shall have a price display which is and shall remain at all times visible to the public.

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

D. Annual Statement of Gross Receipts and Expenses

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations as specified in the AGREEMENT, in a form acceptable to the DEPARTMENT, on or before March 15th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. An extension may be granted in writing, prior to the April 30th due date, by the DEPARTMENT or his designee, provided sufficient verification of the need for the extension is provided, as accepted by the DEPARTMENT or his designee. The charge for late or delinquent Statements shall be One Hundred Dollars (\$100.00) per month or part thereof late.

In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by CONCESSIONAIRE and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by CONCESSIONAIRE to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, CONCESSIONAIRE shall pay CITY within thirty (30) days after billing any additional 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, the 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 the 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

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the CONCESSION;
2. Any and all orders, directions or conditions issued, given, or imposed by DEPARTMENT with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the LAMC, LAAC, the Charter of the City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the CONCESSIONAIRE'S operations; and,
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

C. Permissions

Any permission required by the AGREEMENT shall be secured in writing by CONCESSIONAIRE from CITY or the DEPARTMENT and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the DEPARTMENT.

D. Right of Inspection and Access to Venue

CITY and the DEPARTMENT, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE'S operation. Park Rangers are specifically designated as CITY agents and are empowered by CITY to conduct inspections of the PREMISES, evaluate CONCESSIONAIRE and inform the DEPARTMENT 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 the PREMISES. The inspections may be made by persons identified to CONCESSIONAIRE as CITY Employees, or may be made by independent contractors engaged by CITY. Inspections may be made for the purposes set forth below, and for any other lawful purpose for which the CITY or another governmental entity with jurisdiction is authorized to perform inspections of the PREMISES:

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

E. Control of Premises

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

F. Business Inclusion Program

CONCESSIONAIRE agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise firms on a level so designated in its proposal, Schedule A (Exhibit G). 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 the CITY, provided that such approval shall not be unreasonably withheld.

During the term of the AGREEMENT, CONCESSIONAIRE must submit the MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B (Exhibit H) 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 I) and certified correct by CONCESSIONAIRE or its authorized representative. The completed Schedule C shall be furnished to the DEPARTMENT within fifteen (15) working days after completion of the 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 the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONCESSIONAIRE estimates it will need to fill in order to perform the services under the AGREEMENT. The Department of Public Works, Bureau of Contract Administration is the DAA.

2. CONCESSIONAIRE further pledges that it will, during the term of the AGREEMENT:
 - a. At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications 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, the CONCESSIONAIRE shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONCESSIONAIRE interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by the CONCESSIONAIRE relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. CONCESSIONAIRE shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the LAAC the DAA has determined that the CONCESSIONAIRE intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under LAAC Section 10.39 et seq., and must be documented in each of the CONCESSIONAIRE's subsequent Contractor Responsibility Questionnaires submitted under LAAC Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

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

SECTION 18. SURRENDER OF POSSESSION

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

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

Upon termination of this AGREEMENT other than by forfeiture, CONCESSIONAIRE shall quit and surrender possession of the PREMISES to CITY and shall, without cost to CITY, remove any and all works, structures, or other improvements owned by CONCESSIONAIRE and restore the 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. DEPARTMENT may at his option accept all or a portion of the works, structures, or other improvements on behalf of CITY in lieu of all or a portion of the removal or restoration required herein.

SECTION 19. NOTICES

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to:

Department of Recreation and Parks
Attention: Partnerships and Revenue Branch/Concession Unit
P.O. Box 86610
Los Angeles, CA 90086-0610

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

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

B. To CONCESSIONAIRE:

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

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

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

*Los Angeles Pony Rides, Inc.
Attn: Mr. Stephen Weeks
145 South Van Ness Ave.
Los Angeles, CA 90004*

CONCESSIONAIRE shall provide CITY 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. Standard Provision for City Contracts (Rev. 3/09)
- B. Griffith Park Pony Ride Premises Map
- C. Required Insurance and Minimum Limits; Instructions and Information on Complying with City Insurance Requirements
- D. Remittance Advice Form
- E. Form General No. 87 "Non-Employee Accident or Illness Report"
- F. Special Occurrence and Loss Report
- G. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- H. Schedule B, MBE/WBE/SBE/EVE/DVBE/OBE Utilization Profile
- I. Final Subcontracting Report Form, Schedule C
- J. Price List
- K. Asset Purchase Agreement

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, and, 7) Exhibit F, etc.

(Signature Page to Follow)

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

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the Department of Recreation and Parks

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

CONCESSIONAIRE

BY: _____ DATE: _____
Title: _____

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

BY: _____ DATE: _____
STREFAN FAUBLE
Deputy City Attorney

Business Tax Registration Certificate Number: _____

Internal Revenue Service Taxpayer Identification Number: 81-1465375

AGREEMENT Number: _____

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one **CONTRACTOR** herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

PSC-4. TIME OF EFFECTIVENESS

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR** hereto;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. WAIVER

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

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The **CITY** may terminate this Contract for the **CITY'S** convenience at any time by giving **CONTRACTOR** thirty days written notice thereof. Upon receipt of said notice, **CONTRACTOR** shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to affect such termination. Thereafter, **CONTRACTOR** shall have no further claims against the **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon the date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the **CITY** may give **CONTRACTOR** written notice of such default. If **CONTRACTOR** does not cure such default or provide a plan to cure such default which is acceptable to the **CITY** within the time permitted by the **CITY**, then the **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then the **CITY** may immediately terminate this Contract.
3. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates the

CITY'S lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

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

PSC-12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. The **CITY** shall have the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** agrees to remove personnel from performing work under this Contract if requested to do so by the **CITY**.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The **CITY** has the right to approve **CONTRACTOR'S** subcontractors, and the **CITY** reserves the right to request replacement of subcontractors. The **CITY** does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the **CITY** and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the **CITY**:

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

PSC-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract 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 or intangible matter produced by **CONTRACTOR** hereunder), against **CONTRACTOR'S** rights to payments hereunder, or against the **CITY**, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with

requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY'S** representative at any time during the term of this Contract or within the three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to **CITY** requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the **CITY**, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the **CITY** for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

For all Work Products delivered to the **CITY** that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, **CONTRACTOR** will fully comply with all applicable State and Federal employment reporting requirements for **CONTRACTOR'S** employees. **CONTRACTOR** shall also certify (1) that the Principal Owner(s) of **CONTRACTOR** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that **CONTRACTOR** will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that **CONTRACTOR** will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
 2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles’ Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922.”

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

EXHIBIT 1**INSURANCE CONTRACTUAL REQUIREMENTS**

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS**CONTRACTOR AGREES THAT:**

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

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

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers' Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Exhibit 1 (Continued) Required Insurance and Minimum Limits

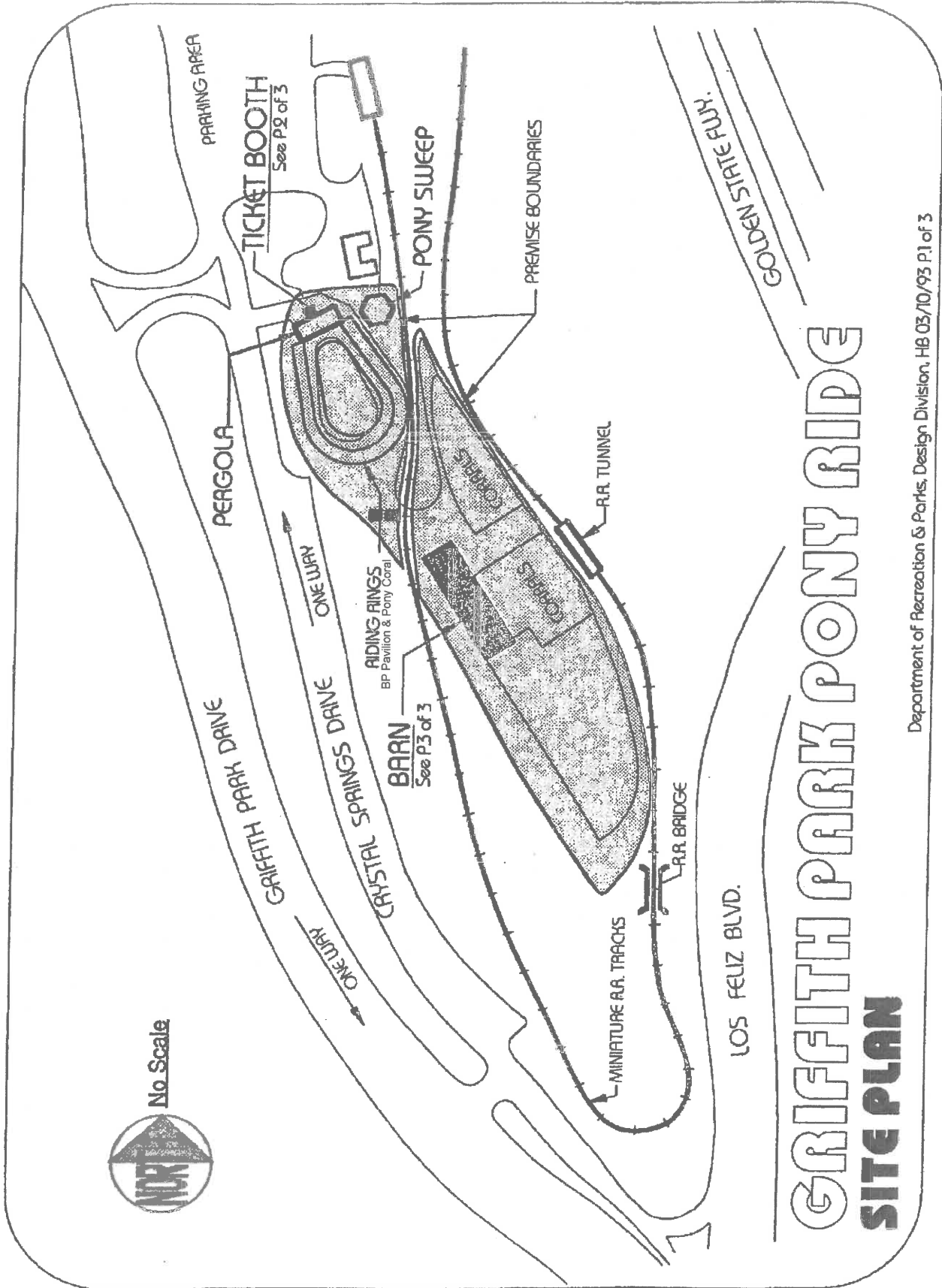
Name: _____ Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits (“CSLs”). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

		<u>Limits</u>
<hr/>		
<input type="checkbox"/> Workers’ Compensation – Workers’ Compensation (WC) and Employer’s Liability (EL)	WC	<u>Statutory</u>
	EL	_____
<input type="checkbox"/> Waiver of Subrogation in favor of City		
<input type="checkbox"/> Longshore & Harbor Workers		
<input type="checkbox"/> Jones Act		
<hr/>		
<input type="checkbox"/> General Liability		
<input type="checkbox"/> Products/Completed Operations		
<input type="checkbox"/> Sexual Misconduct _____		
<input type="checkbox"/> Fire Legal Liability _____		
<input type="checkbox"/> _____		
<hr/>		
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this Contract, other than commuting to/from work)		
<hr/>		
<input type="checkbox"/> Professional Liability (Errors and Omissions)		
<hr/>		
<input type="checkbox"/> Property Insurance (to cover replacement cost of building – as determined by insurance company)		
<input type="checkbox"/> All Risk Coverage		
<input type="checkbox"/> Boiler and Machinery		
<input type="checkbox"/> Flood _____		
<input type="checkbox"/> Builder’s Risk		
<input type="checkbox"/> Earthquake _____		
<input type="checkbox"/> _____		
<hr/>		
<input type="checkbox"/> Pollution Liability		
<input type="checkbox"/> _____		
<hr/>		
<input type="checkbox"/> Surety Bonds – Performance and Payment (Labor and Materials) Bonds		100 % of Contract Price
<input type="checkbox"/> Crime Insurance		_____
<hr/>		

Other: _____



Department of Recreation & Parks, Design Division, HB 03/10/93 P.1 of 3

Required Insurance and Minimum Limits

Name: Griffith Park Pony Ride Concession

Date: 11/06/2015

Agreement/Reference: CON-M16-001

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)

	WC <u>Statutory</u>
	EL <u>\$1,000,000</u>

Waiver of Subrogation in favor of City

Longshore & Harbor Workers
 Jones Act

General Liability \$1,000,000

Products/Completed Operations

Fire Legal Liability

Sexual Misconduct

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work) \$1,000,000

Professional Liability (Errors and Omissions)

Discovery Period 12 Months After Completion of Work or Date of Termination

Property Insurance (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Flood

Earthquake

Boiler and Machinery

Builder's Risk

Pollution Liability

Surety Bonds - Performance and Payment (Labor and Materials) Bonds 100% of the contract price

Crime Insurance

Other: 1) If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at <http://cao.lacity.org/risk/InsuranceForms.htm>

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

**REMITTANCE ADVICE FORM
GRIFFITH PARK PONY RIDE CONCESSION
NAME OF CONCESSIONAIRE**

PERIOD COVERED: From: _____ To: _____

CATEGORY	GROSS SALES	SALES TAX	NET SALES	RENTAL RATE	AMOUNT DUE
Pony Ride Sales	_____	_____	\$ -	25%	\$ -
Equine Classes	_____	_____	_____	25%	\$ -
Birthday Parties	_____	_____	_____	25%	\$ -
Merchandise Kiosk	_____	_____	_____	25%	\$ -
OTHER:	_____	_____	_____	25%	\$ -
SUB-TOTAL RENT DUE:					\$ -

UTILITIES: water, use of trash dumpsters \$ 250.00

LATE RENT FEE: All payments are due by the 15th for the previous month. \$ -

OCCUPANCY TAX: Paid Quarterly (April / July / October / January) for preceding three months at \$1.48 per \$1,000 or fraction thereof of rent paid \$ -

LATE OCCUPANCY TAX FEE: Occupancy Tax payments are due quarterly by the 15th of April, July, October, January for the preceding three (3) months. \$ -

SUB-TOTAL DUE: \$ 250.00

ADJUSTMENTS*: Explain: _____

 \$ -

*NOTE: All amortizations (allowance for rent reduction for any expenditure) must be approved in writing by the Department of Recreation and Parks. Invoices and proof of payment must be submitted with the Remittance Advice for any and all months amortization is realized.

TOTAL AMOUNT DUE: \$ 250.00

I hereby certify that this is a true and correct record of the period stated above:

Signature: _____

Date: _____

Form Gen. 87 (R. 4/09)

City of Los Angeles

Orig. City Attorney m/s 140
Dup. Risk Manager m/s 625-24
Trip. Dept. Area Office or Division Head

NON-EMPLOYEE ACCIDENT OR ILLNESS REPORT

Department Reporting
Recreation and Parks

INSTRUCTIONS: All accidents, illnesses, or injuries, no matter how minor, involving non-employees while on City property, must be reported by the City employee or department in proximity. Be complete as possible. The information provided may be needed by the City Attorney in preparing the case if legal action is necessary. Use typewriter or print carefully.

PART I - PERSONAL DATA

1. NAME (OF PERSON INJURED) (LAST) (FIRST) (MIDDLE)		2a. HOME ADDRESS (STREET) (CITY) (ZIP)	3a. PHONE NUMBER
		2b. BUSINESS ADDRESS (STREET) (CITY) (ZIP)	3b. PHONE NUMBER
4. SEX <input type="checkbox"/> M <input type="checkbox"/> F	5. DATE OF BIRTH	6. IF MINOR, NAME OF PARENT OR GUARDIAN	7. PHONE NUMBER

PART II - ACCIDENT/INJURY

8. DATE	9. TIME	10. LOCATION OF PUBLIC PROPERTY INVOLVED	11. WAS FIRST AID GIVEN? <input type="checkbox"/> YES <input type="checkbox"/> NO
12. FIRST AID GIVEN BY (NAME)		(ADDRESS)	(PHONE NUMBER)
13. PHYSICIAN/HOSPITAL INJURED TAKEN TO		(ADDRESS)	(PHONE NUMBER)
14. NATURE OF INJURIES (BE SPECIFIC)			
15. DESCRIBE ACCIDENT (IN DETAIL)			
16. NAME AND POSITION OF PERSON IMMEDIATELY IN CHARGE OF FACILITY		17. WHERE WAS RESPONSIBLE PERSON AT TIME OF ACCIDENT?	

PART III - WITNESSES

18. NAME (LAST) (FIRST) (MIDDLE)	19. ADDRESS (STREET) (CITY) (ZIP)	20. PHONE NUMBER	CITY EMPLOYEE <input type="checkbox"/> YES <input type="checkbox"/> NO
a.			<input type="checkbox"/> YES <input type="checkbox"/> NO
b.			<input type="checkbox"/> YES <input type="checkbox"/> NO
c.			<input type="checkbox"/> YES <input type="checkbox"/> NO
d.			<input type="checkbox"/> YES <input type="checkbox"/> NO

PART IV - STATEMENT OF INJURED PARTY OR WITNESS

21.

PART V - EMPLOYEE FILING REPORT

22. NAME AND POSITION	23. SIGNATURE	24. DATE
-----------------------	---------------	----------

Print Form

SPECIAL OCCURRENCE AND LOSS REPORT

REPORT NUMBER

SEE INSTRUCTIONS ON PAGE 2				
1. NAME OF FACILITY	DATE OF OCCURRENCE	TIME	A.M. <input type="checkbox"/>	P.M. <input type="checkbox"/>
2. SUBJECT OF REPORT				
3. EXACT LOCATION OF OCCURRENCE				
4. DESCRIBE WHAT HAPPENED ESTIMATE PROPERTY DAMAGE, IF ANY				
5.				ESTIMATE OF DAMAGES
6. LIST STOLEN ITEMS, IF ANY, (EXCEPT CASH)				
QUANTITY	TYPE OF ITEM OR EQUIPMENT, DESCRIBE	DEPT NO	SERIAL NO	APPROX VALUE
7. TOTAL LOSSES (TOTAL OF LINES 5, 7 AND 8)				TOTAL \$0.00
8. IF MONEY WAS TAKEN INDICATE AMOUNT AND WHERE KEPT AT TIME OF THEFT CALL CHIEF FINANCIAL OFFICER AT (213) 202-4380 LOCATION				AMOUNT
9. TOTAL LOSSES (TOTAL OF LINES 5, 7 AND 8)				TOTAL \$0.00
10. WHO DISCOVERED LOSS? NAME		TITLE	DATE	TIME A.M. <input type="checkbox"/> P.M. <input type="checkbox"/>
11. HOW WAS ENTRANCE GAINED?				
12. WHO SECURED BLDG. PRIOR TO OCCURENCE? NAME		TITLE	DATE	TIME A.M. <input type="checkbox"/> P.M. <input type="checkbox"/>
13. WAS POLICE REPORT MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO		D.R. NUMBER		
14. HAS A WORK ORDER BEEN INITIATED FOR REPAIRS? <input type="checkbox"/> YES <input type="checkbox"/> NO		WORK ORDER		
15. PERSONS INVOLVED <input type="checkbox"/> WITNESS <input type="checkbox"/> VICTIM <input type="checkbox"/> SUSPECT				
NAME	ADDRESS	AGE	SEX	PHONE NUMBER
16. IF VEHICLE INVOLVED YEAR MAKE		LICENSE NO	OWNERS NAME, ADDRESS AND INSURANCE CO	
17. GIVE ANY REMEDIAL MEASURES / CORRECTIVE ACTIONS THAT WERE TAKEN, IF ANY				
18. REPORT SUBMITTED BY		NAME	TITLE	DATE

INSTRUCTIONS: This report must be made out in reporting any damage to, theft or loss of, private or public property or any other reportable incident occurring at any department facility and report to any member of the staff. This report to be filled out and distributed within 24 hours of incident. This form is NOT to be used for injury, accident or illness to City Employees or Non-City employees. Use general forms numbers 5020 or 87 for these purposes.

If cash is taken call Chief Financial Officer at (213) 202-4380 as soon as possible.

FILL OUT FORM AS COMPLETE AS POSSIBLE USING THE

1. Name of recreation center, park etc. date and time (if known) incident occurred.
2. Subject of report may be vandalism, theft, fire, defacing public property, indecent exposure, etc.
3. Exact location of incident at facility i.e. gym, boys restroom, merry-go-round, ball diamond, etc.
4. Describe incident, give details. Use other side of form if necessary.
5. Estimate property damage, if any, incurred as a result of the described incident.
6. List stolen or lost items. Give identifying numbers and approximate replacement cost.
7. Total cost of stolen or lost items.
8. If cash taken, state amount and location. i.e. \$10.00 from coke machine, \$50.00 from safe, etc.
9. Total losses. Add up the amounts from 5,7, and 8
10. Name and title of person discovering the loss. Give date and time discovered.
11. Describe how bldg. was entered, i.e. unauthorized key, kitchen window, forced open office door, etc.
12. Name and title of person locking up premises before incident occurred. Give date and time secured.
13. When reporting incident to police, request that reporting officer call his station and obtain a D.R. number. Enter this number on line no. 13
14. If repairs are needed, initiate job order through channels and record Work Order number on line no. 14.
15. Obtain requested information on any persons involved. Be as complete as possible.
16. Give requested information on any city or non-city-owned vehicle involved in the purpose of this report.
17. Give any recommendations for corrective actions that should be taken to avoid further incidents.
18. Name and title of person making this report. Date report made out.

**SCHEDULE A
CITY OF LOS ANGELES
MBE/WBE/SBE/EBE/DVBE/OBE SUBCONTRACTORS INFORMATION FORM**

(NOTE: COPY THIS PAGE AND ADD ADDITIONAL SHEETS AS NECESSARY, SIGN ALL SHEETS)

Project Title

Proposer	Address
Contact Person	Phone/Fax

LIST OF ALL SUBCONSULTANTS (SERVICE PROVIDERS/SUPPLIERS/ETC.)				
NAME, ADDRESS, TELEPHONE NO. OF SUBCONSULTANT	DESCRIPTION OF WORK OR SUPPLY	MBE/WBE/SBE/EBE/DVBE/OBE	CALTRANS/CITY/MTA CERT. NO.	DOLLAR VALUE OF SUBCONTRACT

PERCENTAGE OF MBE/WBE/SBE/EBE/DVBE/OBE PARTICIPATION			<div style="text-align: center; margin-bottom: 20px;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> Signature of Person Completing this Form </div> <div style="text-align: center; margin-bottom: 20px;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> Printed Name of Person Completing this Form </div> <div style="text-align: center;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> Title Date </div>
	DOLLARS	PERCENT	
TOTAL MBE AMOUNT	\$	%	
TOTAL WBE AMOUNT	\$	%	
TOTAL SBE AMOUNT	\$	%	
TOTAL EBE AMOUNT	\$	%	
TOTAL DVBE AMOUNT	\$	%	
TOTAL OBE AMOUNT	\$	%	
BASE BID AMOUNT	\$		

MUST BE SUBMITTED WITH PROPOSAL

**SCHEDULE B
CITY OF LOS ANGELES
MBE/WBE/SBE/EBE/DVBE/OBE UTILIZATION PROFILE**

Project Title	Contract No.
---------------	--------------

Consultant	Address
Contact Person	Phone/Fax

CONTRACT AMOUNT (INCLUDING AMENDMENTS)	THIS INVOICE AMOUNT	INVOICED TO DATE AMOUNT (INCLUDE THIS INVOICE)

MBE/WBE/SBE/EBE/DVBE/OBE SUBCONTRACTORS (LIST ALL SUBS)					
NAME OF SUBCONTRACTOR	MBE/WBE/SBE/EBE/DVBE/OBE	ORIGINAL SUBCONTRACT AMOUNT	THIS INVOICE (AMOUNT NOW DUE)	INVOICED TO DATE (INCLUDE THIS INVOICE)	SCHEDULED PARTICIPATION TO DATE

CURRENT PERCENTAGE OF MBE/WBE/SBE/EBE/DVBE/OBE PARTICIPATION TO DATE			Signature of Person Completing this Form:
	DOLLARS	PERCENT	
TOTAL MBE PARTICIPATION	\$	%	Printed Name of Person Completing this Form: Title: _____ Date: _____
TOTAL WBE PARTICIPATION	\$	%	
TOTAL SBE PARTICIPATION	\$	%	
TOTAL EBE PARTICIPATION	\$	%	
TOTAL DVBE PARTICIPATION	\$	%	
TOTAL OBE PARTICIPATION	\$	%	

**SCHEDULE C
CITY OF LOS ANGELES
FINAL SUBCONTRACTING REPORT**

Project Title		Contract No.
Company Name	Address	
Contact Person	Phone	

Name, Address, Telephone No. of all Subconsultants Listed on Schedule B	Description of Work or Supply	MBE/WBE/SBE/EBE/DVBE/OBE	Original Dollar Value of Subcontract	Actual Dollar Value of Subcontract*

* If the actual dollar value differs from the original dollar value, explain the differences and give details.

	Total Dollars	Achieved Levels	Pledged Levels		Total Dollars	Achieved Levels	Pledged Levels
MBE Participation				WBE Participation			
SBE Participation				EBE Participation			
DVBE Participation				OBE Participation			

Signature of Person Completing this Form _____ Printed Name _____ Title _____ Date _____

SUBMIT WITHIN 15 DAYS OF PROJECT COMPLETION

PRICE LIST
Griffith Park Pony Ride Concession

Pony Ride = \$5

Pony Sweep Ride = \$5

Wagon Ride = \$5

Petting Zoo = Free

School class visits in Pavilion with staff presentation = Free

Birthday Party (2 hour use of Birthday Party Pavilion, pony rides, and train ride included for 10 children) = \$250

Pony Care Experience = \$20 for 1 hour class in Pavilion ring with pony.

Non-riding staffed educational program for children, adults, or veterans with special needs = \$20 per hour in Pavilion ring with pony.

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), made this 3-11-16 day of March, 2016, is entered into by and between Griffith Park Pony Ride, Inc., a California corporation (the "**Seller**"), whose address is 4400 Crystal Springs Drive, Los Angeles, California 90027, and Los Angeles Pony Rides Inc., a California corporation (the "**Purchaser**"), whose address is 145 South Van Ness Avenue, Los Angeles, California 90004.

RECITALS

- A. Seller is engaged in the business of operating a public pony ride concession known as Griffith Park Pony Rides (the "**Concession**") from the City of Los Angeles Department of Recreation and Parks (the "**City**").
- B. Purchaser is participating in a Request for Proposal with the City for the operation and maintenance of the Concession. Purchaser will place or file all paperwork required for the Request for Proposal with the City by March 15, 2016.
- C. If Purchaser is awarded the Concession by the City, then the Seller wishes to sell to the Purchaser, and the Purchaser desires to purchase, the rights of the Seller to the assets listed on Schedule A attached hereto (the "**Purchased Assets**"), subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by and between the parties as follows:

1. Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer and convey, and Purchaser shall purchase all of the Seller's right, title and interest in the Purchased Assets, free and clear of all liens and encumbrances other than (a) liens for taxes not yet due and payable or being contested in good faith by appropriate procedures and (b) mechanics', carriers', workmens', repairmen's or other similar liens arising or incurred in the ordinary course of business consistent with past practice and which are not material to the Purchased Assets ("**Permitted Encumbrances**"). Subject to the terms and conditions set forth herein, the Purchaser shall assume and agree to pay, perform and discharge the liabilities and obligations arising after the Closing under the Purchased Assets.
2. Purchase Price. The aggregate fair market value purchase price for the Purchased Assets shall be \$162,500.00 (the "**Purchase Price**"). The Purchase Price shall be payable by the Purchaser to the Seller in cashier's check form at the Closing.
3. Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place two days before the date Purchaser is approved by the City of Los Angeles, Department of Recreation and Parks to begin operations at the Griffith Park Pony Ride Concession. At the Closing, the Seller shall deliver to the Purchaser a bill of sale in the form of Attachment 1 hereto and duly executed by the Seller, transferring the Purchased Assets to the Purchaser. At the Closing, the Purchaser shall deliver to the Seller (i) the Purchase Price and (ii) such other customary instruments of transfer,

assumption, filings or documents, in form and substance reasonably satisfactory to the Seller, as may be required to give effect to this Agreement.

4. Representations and Warranties of Seller. Seller warrants and represents to the Purchaser as of the date hereof that:

- (a) The Seller is not, to its knowledge, presently involved in any activity or outstanding dispute with any taxing authority as to the amount of any taxes due, nor has the Seller received any notice of any deficiency, credit or other indication of deficiency from any taxing authority that may materially affect the Purchased Assets.
- (b) The Seller is the owner of and has good and marketable title to the Purchased Assets, free from all encumbrances except Permitted Encumbrances.
- (c) All equipment included in the Purchased Assets will be in working condition at the Closing. At the Closing, sixty-five (65) ponies included in the Purchased Assets will be in reasonably good health. Of the sixty-five (65) ponies included in the Purchased Assets, fifty (50) will be trained and able to participate in daily operations of Seller's business; fifteen (15) of which will need training to participate in day to day operations of Seller's business. Sellers will diligently train as many as possible until the Closing with no guarantees that fifteen (15) will be ready by that to participate in the daily operation of Seller's business.
- (d) Except for the representations and warranties contained in this Section 4, neither the Seller nor any other person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Seller, including any representation or warranty as to the Concession and the Purchased Assets furnished or made available to the Purchaser and its representatives or as to the future revenue, profitability or success of the Concession, or any representation or warranty arising from statute or otherwise in law.

5. Representations and Warranties of the Purchaser.

- (a) Organization and Authority of the Purchaser. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the state of California.
- (b) Authority of the Purchaser. The Purchaser has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by the Purchaser of this Agreement, the performance by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and this Agreement constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

- (c) No Conflicts; Consents. The execution, delivery and performance by the Purchaser of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of the Purchaser; (b) result in a violation or breach of any provision of any law or governmental order applicable to the Purchaser; or (c) require the consent, notice or other action by any person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which the Purchaser is a party. Except for the award of the Concession to the Purchaser and approval of Purchaser of the contract to operate Griffith Park Pony Rides by the City, no consent, approval, permit, governmental order, declaration or filing with, or notice to, any governmental authority is required by or with respect to the Purchaser in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
- (d) Sufficiency of Funds; Solvency. The Purchaser has and will have at the Closing sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement. Immediately after giving effect to the transactions contemplated hereby, the Purchaser shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of the Purchaser. In connection with the transactions contemplated hereby, the Purchaser has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.
- (e) Legal Proceedings. There are no actions, suits, claims, investigations or other legal proceedings pending or, to the Purchaser's knowledge, threatened against or by the Purchaser or any affiliate of the Purchaser that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.
- (f) Independent Investigation. The Purchaser has conducted its own independent investigation, review and analysis of the Concession and the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Seller for such purpose. The Purchaser acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, the Purchaser has relied solely upon its own investigation and the express representations and warranties of the Seller set forth in Section 4 of this Agreement; and (b) neither the Seller nor any other person has made any representation or warranty as to the Seller, the Concession, the Purchased Assets or this Agreement, except as expressly set forth in Section 4 of

this Agreement. Purchaser agrees to accept the Purchased Assets "as is" without warranty as to their condition and operation after the Closing.

6. Concession Approval. The Purchaser shall place or file all paperwork required for its Request for Proposal to the City on or before March 15, 2016. The parties acknowledge and agree that (a) the Seller may be a bidder for the Concession, (b) this Agreement does not prohibit the Seller from participating in the bidding process, and (c) prior to the Closing, Seller may enter into any other agreement for the purchase and sale of the Purchased Assets with any other person. Purchaser acknowledges that it encourages all bidders for the Concession in an open process.
7. Termination. If (a) Purchaser is not awarded the Concession and Purchaser not approve the concession contract by the City, or (b) the Seller sells a substantial portion of the Purchased Assets to a person other than the Purchaser pursuant to an agreement entered into in accordance with Section 6 above, then this Agreement shall immediately terminate, and shall no longer be binding on Purchaser or Seller. Upon the termination of this Agreement, no money shall be due to Seller from Purchaser and no assets would transfer to Purchaser, with no recourse to either party. Upon such termination, this Agreement will be null and void.
8. Bulk Sales Laws; Transfer Taxes. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to the Purchaser. All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid by the Purchaser when due. The Purchaser shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees.
9. Survival. All covenants, warranties and representations herein shall not survive the Closing.
10. Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the statements in the body of this Agreement will control.
11. Successors and Assigns. This Agreement shall be binding upon the personal representatives, successors and permitted assignees of the parties. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

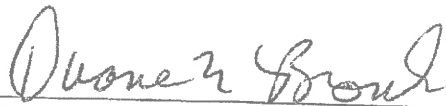
12. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
13. Governing Law; Jurisdiction. This Agreement shall, in all respects, be governed by the laws and judicial decisions of the State of California without giving effect to any choice or conflict of law provision or rule, and any enforcement actions shall be filed in federal or state courts located in the County of Los Angeles.
14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.


[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

GRIFFITH PARK PONY RIDE, INC.

By: 
Name: Duane N. Bronk
Title:

By: 
Name: Hank Bronk III
Title:

PURCHASER:

LOS ANGELES PONY RIDES INC.

By: 
Name: Stephen Weeks
Title:

