

**APPROVED**  
MAY 04 2023

**BOARD OF RECREATION  
AND PARK COMMISSIONERS**

**BOARD REPORT**

NO. 23-092

DATE May 04, 2023

C.D. 6 and 13

**BOARD OF RECREATION AND PARK COMMISSIONERS**

**SUBJECT: PEDAL BOATS RENTAL CONCESSION – EXERCISE OF AGREEMENT  
RENEWAL OPTION**

\*B. Aguirre BA

M. Rudnick \_\_\_\_\_

C. Santo-Domingo \_\_\_\_\_

B. Jackson \_\_\_\_\_

N. Williams \_\_\_\_\_

9/16

General Manager

Approved X

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

If Approved: Board President [Signature]

Board Secretary [Signature]

RECOMMENDATIONS:

1. Approve the exercise of the option (Option) to extend for an additional five (5) years the term of Concession Contract No. 3607 (Concession Agreement), between the City of Los Angeles and Freetime, Inc. (Freetime) DBA Wheel Fun Rentals for the operation and maintenance of the Pedal Boats Rental Concession;
2. Authorize the General Manager or Designee to exercise the Option; and,
3. Authorize the General Manager or Designee to make any necessary technical changes to implement the intent of this Report.

SUMMARY:

The Pedal Boat Rental Concession (Concession) under the Concession Agreement currently comprises two locations, which include Echo Park Lake and Lake Balboa. The Concession Agreement (Agreement) also allows for the addition of future locations.

Echo Park Lake (Lake)

This Concession is located at the Echo Park Boathouse (Boathouse) at Echo Park, 751 N. Echo Park Avenue, Los Angeles, CA 90026, and is situated on the east side of Lake.

The thirteen (13) acre Lake is surrounded by the Echo Park Community. The Boathouse has undergone several aesthetic and building system retrofits throughout the years. Phase I of the most recent effort to improve the infrastructure was completed in 2007. Phase II, which was

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completed in 2012, included the retrofit of the existing building and incorporation of areas for two concessions: a cafe and a pedal boat rental operation.

### Lake Balboa

This Concession is located at Anthony C. Beilenson Park, 6300 Balboa Boulevard, Van Nuys, CA 91046, in Lake Balboa, which is adjacent to the RAP Lifeguard Station and the dock area of Lake Balboa. Lake Balboa is a twenty-seven (27) acre area filled with water from the Tillman Water Reclamation Plant. Anthony C. Beilenson Park is an eighty (80) acre recreation facility, located within the 2,000-acre Sepulveda Flood Control Basin, which is leased from USACE.

### Future Pedal Boat Locations

Per the Agreement, the Department of Recreation and Parks (RAP) reserves the right to add additional pedal boat rental locations as determined by the needs of the City. Freetime reserves the first right of refusal to operate future pedal boat concessions.

On September 7, 2017 the Board of Recreation and Park Commissioners (Board) awarded Freetime a five-year Agreement (Board Report 17-186) with one five-year renewal option at the sole discretion of the City acting by and through the Board. The initial five-year term expired on February 7, 2023.

Freetime is found to be in full compliance of the Agreement including payment of Revenue Share and Occupancy Tax; maintaining their Performance Deposit; maintaining required Insurance; and submission of Annual Profit and Loss Statements. RAP staff has also determined that maintenance and customer support as well as customer satisfaction has been satisfactory. The Pedal Boats have been featured in numerous media publications as well as news reports, earning good reviews.

RAP staff recommends that the Board approve the exercise of the five-year option to renew the Agreement, extending the expiration date to February 7, 2028. Approximately one year prior to expiration, RAP staff will release a new Request for Proposal and return to the Board with a recommendation for a new agreement.

### FISCAL IMPACT:

RAP staff anticipates revenue share to average approximately \$475,000.00 per year, totaling an estimated \$2,375,000 over the five-year extension period.

### STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Report advances RAP's Strategic Plan by supporting:

Goal No. 6: Build Financial Strength & Innovative Partnerships

Outcome No. 2: Improved management of rental facilities and concessions

This report was prepared by Rahulan Kathir, Management Assistant, Special Operations Branch, Concessions Unit.

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LIST OF ATTACHMENTS

1. Board Report No. 17-186
2. Concession Agreement 3607

# APPROVED

SEP 06 2017

BOARD REPORT

BOARD OF RECREATION  
AND PARK COMMISSIONERS

NO. 17-186

DATE: September 06, 2017

C.D. 6.13.15

**BOARD OF RECREATION AND PARK COMMISSIONERS**

SUBJECT: PEDAL BOAT RENTAL CONCESSION - AWARD OF CONTRACT TO FREETIME, INC. DBA WHEEL FUN RENTALS (CON-M16-003); CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1, CLASS 1(14) (ISSUANCE OF LICENSE TO USE AN EXISTING STRUCTURE)

A.P. Diaz \_\_\_\_\_  
R. Barajas \_\_\_\_\_  
H. Fujita \_\_\_\_\_

V. Israel \_\_\_\_\_  
\*N. Williams NTW



General Manager

Approved

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

**RECOMMENDATIONS**

1. Award the Pedal Boat Rental Concession to Freetime, Inc. DBA Wheel Fun Rentals (Freetime, Inc.) for a term of five years with one five-year renewal option exercisable at the sole discretion of the Department of Recreation and Parks (RAP);
2. Approve the proposed Agreement with Freetime, Inc. DBA Wheel Fun Rentals for the operation and maintenance of the Pedal Boat Rental Concession, herein included as Attachment 1 and as may be modified, if necessary, as may be determined by RAP's General Manager or his designee as set forth in Recommendation #3 of this Report, and subject to approval by the Mayor and the City Council, approval of the City Attorney as to form, and approval of the U.S. Army Corps of Engineers (USACE) for the Pedal Boat Rental Concession at Lake Balboa;
3. Authorize RAP's General Manager or his designee to negotiate modifications to Section 8 (Revenue-Sharing Fee Payment) of the proposed Agreement and the Pedal Boat Rental Concession Price List herein included as Attachment 5 (Price List) consistent with the intent of lowering the per hour rental prices of pedal boats for individual riders and individual riders with one child rider as set forth in this Report and to incorporate such modified Price List into the proposed Agreement;
4. Direct the Board Secretary to transmit the proposed Agreement to the Mayor, in accordance with Executive Directive No. 3 (Villaraigosa Series), and concurrently to the City Attorney for review as to form;
5. Find, in accordance with Charter Section 1022, that it is necessary, feasible, and economical to secure these services by contract as RAP lacks sufficient and necessary personnel to undertake these specialized professional services;

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6. Find, pursuant to Charter Section 371(e)(10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP for the operation, and maintenance of the Pedal Boat Rental Concession;
7. Authorize RAP to execute the proposed Agreement, and to make any necessary technical changes consistent with the Board's intent in approving the proposed Agreement;
8. Find that the proposed Project is categorically exempt from the California Environmental Quality Act (CEQA), and direct RAP staff to file a Notice of Exemption; and,
9. Authorize the RAP Chief Accounting Employee to prepare a check to the Los Angeles County Clerk in the amount of Seventy-Five Dollars (\$75.00) for the purpose of filing a Notice of Exemption.

### SUMMARY

The Pedal Boat Rental Concession (Concession) comprises two locations, which include Echo Park Lake and Lake Balboa. The proposed Concession Agreement (Agreement) also allows for the addition of future locations.

#### Echo Park Lake

This Concession is located at the Echo Park Boathouse (Boathouse) at Echo Park, 751 N. Echo Park Avenue, Los Angeles, CA 90026, and is situated on the east side of Echo Park Lake (Lake). The thirteen (13) acre lake is surrounded by Echo Park in the Echo Park Community.

The Boathouse has undergone several aesthetic and building system retrofits throughout the years. Phase I of the most recent effort to improve the infrastructure was completed in 2007. Phase II, which was completed in 2012, included the retrofit of the existing building and incorporation of areas for two concessions: a café and a pedal boat rental operation.

#### Lake Balboa

This Concession is located at Anthony C. Belenson Park, 6300 Balboa Boulevard, Van Nuys, CA 91046, in Lake Balboa, which is adjacent to the RAP Lifeguard Station and the dock area of Lake Balboa. Lake Balboa is a twenty-seven (27) acre area filled with water from the Tillman Water Reclamation Plant. Anthony C. Belenson Park is an eighty (80) acre recreation facility, located within the 2,000-acre Sepulveda Flood Control Basin, which is leased from USACE.

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### Future Pedal Boat Locations

Per the Agreement, RAP reserves the right to add additional pedal boat rental locations as determined by the needs of the City. Freetime, Inc. will reserve the first right of refusal to operate future pedal boat concessions.

### BACKGROUND

On December 10, 2012, the Board approved the release of a Request for Proposal (RFP) for the Echo Park Pedal Boats and Café through Report No.12-329 (Attachment 2). The RFP was released to the public on February 14, 2013. No proposals were received due in part to the inability of the prospective bidders to manage both operations. Subsequently, the Pedal Boat and Café Operations were bifurcated.

On July 11, 2013, RAP issued a 90-Day Interim Permit to Chaffin & Reeves, Inc., the current operators. On October 2, 2013, the Board approved an Interim Concession Agreement with Chaffin & Reeves for a one-year term with two one-year renewal options exercisable at the General Manager's sole discretion through Report No. 13-243 (Attachment 3).

On April 28, 2015, RAP issued a Temporary, Revocable Right-of-Entry Permit to Chaffin & Reeves to operate a second pedal boat rental location as a result of RAP staff identifying an opportunity to bring pedal boats to Lake Balboa. RAP receives ten percent (10%) revenue-share for both locations. In 2016, Echo Park Lake grossed Five Hundred Forty-Three Thousand, Nineteen Dollars (\$543,019.00) and RAP received Fifty-Four Thousand, Three Hundred One Dollars (\$54,301.00). Concurrently, Lake Balboa pedal boat rentals grossed Two Hundred Thirty-One Thousand, Four Hundred Fifteen Dollars (\$231,415.00) and generated a revenue-share of Twenty-Three Thousand, One Hundred Forty-One Dollars (\$23,141.00) for RAP.

On December 14, 2016, the Board approved the release of the RFP for the operation and maintenance of the Pedal Boat Rental Concession with a term of five years, with one five-year renewal option through Report No. 16-257 (Attachment 4). The RFP was advertised via Los Angeles Daily Journal, RAP's website, on Los Angeles Business Assistance Virtual Network (LABAVN), and by email notifications to businesses with similar operations. The pre-proposal conference was held on February 2, 2017.

On March 8, 2017, RAP received four proposals from the following businesses: Freetime, Inc., Boat Rentals of America, Chaffin & Reeves, Inc. and Stow Lake Boathouse, LLC. All four proposers passed the Level I review and were evaluated for Level II. Interviews were conducted and Freetime, Inc., received the highest score with an overall average of 91 points. Boat Rental of America's overall average score was 83 points; Chaffin & Reeves, Inc. overall average score was 73 points; and Stow Lake Boathouse, LLC's overall average was 65 points.

The current pedal boat concessionaire, Chaffin & Reeves, Inc. has revived and successfully operated both the Echo Park Lake and Lake Balboa pedal boat concessions for over the past

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three years. Both locations house Kay Park pedal boats and ADA compliant pedal boats. In addition, the Echo Park Lake location provides gondola and outrigger canoe rides. Chaffin & Reeves employees are CPR certified, and there have been no safety accidents during their operation at these locations.

### BACKGROUND & EXPERIENCE

Freetime, Inc. has over seventeen (17) years of experience in providing recreation pedal boat and bicycle rentals, including pedal boat operations at several locations: Santa Fe Dam in Irwindale, Whittier Narrows Recreational Area in South El Monte, Mile Square Park in Fountain Valley, Yorba Regional Park in Anaheim, and Frank G. Bonelli Park in San Dimas.

### BUSINESS PLAN AND OPERATIONAL PLAN

Freetime, Inc. proposed an innovative and invigorating business, operational, revenue-sharing, and improvement plan. The proposed business and operation plans offer year round service including all major holidays, weather permitting. Freetime, Inc. will provide a fleet of two and four person Swan pedal boats with bimini shade covers, ADA compliant pedal boats, outrigger canoes, gondolas and water tricycles. Employees of Freetime, Inc. will be First Aid, CPR, Water Rescue, and AED certified. Freetime, Inc. will also require Tour Guide Certification for employees who will guide gondola and outrigger tours. Freetime, Inc. currently has a zero accident water safety record and proposes to supply an adequate quantity of lifejackets in a variety of sizes. The additional amenities proposed include special occasion purchasing packages, romantic guided gondola rides, outrigger canoe excursions, and an annual pass program. Freetime, Inc. proposed a marketing campaign to establish and increase a strong customer base through marketing and advertising tools such as social, print, web media, and mobile marketing.

Freetime, Inc. proposed to voluntarily set aside one percent (1%) capital improvement/maintenance reserve fund with plans to enhance Lake Balboa by improving the pedal boat kiosk and adding a dock awning for shading. Freetime, Inc. also proposed the installation of a separate gated pedal boat entrance ramp at Echo Park Lake.

*(Proposer Scoring Matrix to Follow)*

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**SCORING:**

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

Panelist #1

SCORING CATEGORIES	Maximum Possible Points by Category	FREETIME, INC. DBA WHEEL FUN RENTALS	BOAT RENTALS OF AMERICA	CHAFFIN & REEVES, INC.	STOW LAKE BOATHOUSE COMPANY, LLC.
		Points Received	Points Received	Points Received	Points Received
<b>Background &amp; Experience:</b> Pedal Boat Background & Years of Experience					
<b>Subtotal</b>	<b>25</b>	<b>20</b>	<b>22</b>	<b>25</b>	<b>10</b>
<b>Business Plan:</b> Additional Amenities & Marketing Plan					
<b>Subtotal</b>	<b>25</b>	<b>22</b>	<b>21</b>	<b>14</b>	<b>19</b>
<b>Operational Plan:</b> Operational Equipment & Safety Plan					
<b>Subtotal</b>	<b>30</b>	<b>24</b>	<b>26</b>	<b>18</b>	<b>22</b>
<b>Revenue-Sharing:</b> Revenue Sharing & Optional Improvement Plan					
<b>Subtotal</b>	<b>20</b>	<b>18</b>	<b>14</b>	<b>8</b>	<b>16</b>
<b>Total Score</b>	<b>100</b>	<b>84</b>	<b>83</b>	<b>65</b>	<b>67</b>



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Panelist #2

<b>SCORING CATEGORIES</b>	<b>Maximum Possible Points by Category</b>	<b>FREETIME, INC. DBA WHEEL FUN RENTALS Points Received</b>	<b>BOAT RENTALS OF AMERICA Points Received</b>	<b>CHAFFIN &amp; REEVES, INC. Points Received</b>	<b>STOW LAKE BOATHOUSE COMPANY, LLC. Points Received</b>
<b>Background &amp; Experience: Pedal Boat Background &amp; Years of Experience</b>					
<b>Subtotal</b>	<b>25</b>	<b>22.5</b>	<b>19.5</b>	<b>21</b>	<b>9</b>
<b>Business Plan: Additional Amenities &amp; Marketing Plan</b>					
<b>Subtotal</b>	<b>25</b>	<b>25</b>	<b>21</b>	<b>25</b>	<b>23</b>
<b>Operational Plan: Operational Equipment &amp; Safety Plan</b>					
<b>Subtotal</b>	<b>30</b>	<b>27</b>	<b>24.5</b>	<b>26</b>	<b>19</b>
<b>Revenue-Sharing: Percentage of Revenue Sharing &amp; Optional Improvement Plan</b>					
<b>Subtotal</b>	<b>20</b>	<b>20</b>	<b>16</b>	<b>15</b>	<b>17</b>
<b>Total Score</b>	<b>100</b>	<b>94.5</b>	<b>81</b>	<b>87</b>	<b>68</b>

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Panelist #3

<b>SCORING CATEGORIES</b>	<b>Maximum Possible Points by Category</b>	<b>FREETIME, INC. DBA WHEEL FUN RENTALS Points Received</b>	<b>BOAT RENTALS OF AMERICA Points Received</b>	<b>CHAFFIN &amp; REEVES, INC. Points Received</b>	<b>STOW LAKE BOATHOUSE COMPANY, LLC. Points Received</b>
<b>Background &amp; Experience: Pedal Boat Background &amp; Years of Experience</b>					
<b>Subtotal</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>10</b>
<b>Business Plan: Additional Amenities &amp; Marketing Plan</b>					
<b>Subtotal</b>	<b>25</b>	<b>21</b>	<b>25</b>	<b>15</b>	<b>18</b>
<b>Operational Plan: Operational Equipment &amp; Safety Plan</b>					
<b>Subtotal</b>	<b>30</b>	<b>28</b>	<b>24</b>	<b>20</b>	<b>16</b>
<b>Revenue-Sharing: Revenue Sharing &amp; Optional Improvement Plan</b>					
<b>Subtotal</b>	<b>20</b>	<b>20</b>	<b>12</b>	<b>7</b>	<b>16</b>
<b>Total Score</b>	<b>100</b>	<b>94</b>	<b>86</b>	<b>57</b>	<b>60</b>

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### TRANSITION PLAN

In an effort to minimize any impacts to regular operations of the Concession and ensure all necessary safety protocols are in place, RAP concessions staff will work with RAP Aquatics Division, the incumbent concessionaire and Freetime, Inc. to facilitate a smooth transition.

### ENVIRONMENTAL IMPACT STATEMENT

The proposed project consists of the issuance of a new concession contract to manage boat rentals in Echo Park Lake and at Lake Balboa. As such, RAP staff recommends that the Board determine that this action is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1 (14) of the City CEQA Guidelines. A Notice of Exemption will be filed with the Los Angeles County Clerk upon approval by the Board.

The proposed project and relative CEQA determination include only the operation of the concessions at Echo Park and at Lake Balboa. If other sites are added and/or maintenance or capital improvement projects are proposed, they will be subject to further RAP approval and evaluation under CEQA.

### FISCAL IMPACT STATEMENT

#### Echo Park Lake

Freetime, Inc. proposed to pay RAP the greater of twenty-five percent (25%) of gross sales or One Hundred Twenty Thousand (\$120,000.00) per year, which will guarantee revenue to RAP of at least Six Hundred Thousand Dollars (\$600,000.00) during the first five-year term.

#### Lake Balboa

Freetime, Inc. proposed the greater of twenty-five percent (25%) of gross revenue sales or Sixty Thousand (\$60,000.00) per year, which will guarantee revenue to RAP of at least Three Hundred Thousand Dollars (\$300,000.00) during the first five-year term.

The proposed pedal boat rental concessions will guarantee RAP a total of Nine Hundred Thousand Dollars (\$900,000.00) minimum revenue during the first five-year term.

It should be noted that this award will result in a pricing restructure which contributes to the expected increase in revenue. The current price for pedal boat rentals is \$10.00 per adult and \$5.00 per child per hour. The proposed new pricing structure was proposed to be \$25.00 per hour for a pedal boat that will hold two adults and one lap child or \$35.00 per hour for a pedal boat with capacity for four adults and one lap child. Under the proposed new pricing structure, based on a per boat model instead of a per person model, there would be a \$5.00 increase for two adults for an hour rental. Conversely, there would be a \$5.00 price reduction for four adults for an hour rental. Given that the proposed pricing would increase the price of a pedal boat rental from \$10.00 to \$25.00 for an individual rider per hour, and from \$15.00 to \$25.00 for an individual rider and one child rider per hour, it is recommended that the General Manager or his designee be authorized to negotiate a lower per hour price point for individual riders and

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individual riders with one child rider and any necessary adjustments to Section 8 (Revenue-Sharing Fee Payment) of the proposed Agreement without modifying any other commitments made by Freetime, Inc. in its proposal. In addition, patrons will have the option to purchase an annual pass for an additional \$12.00 which gives them a 50% discount thereafter for one year. The increased revenue is also based on rentals from other watercraft rentals as listed in Freetime, Inc.'s proposed price list. (Attachment 5) and a robust marketing plan. RAP staff has conducted comparative research of similar pedal boat operations, and this price restructure increase is consistent with such pedal boat operations.

This Report was prepared by Sonia Robinson, Management Analyst II, Finance Division, Concessions Unit.

### LIST OF ATTACHMENTS

- 1) Proposed Agreement for the Operation and Maintenance of the Pedal Boat Rental Concession between the City of Los Angeles and Freetime, Inc. DBA Wheel Fun Rentals
- 2) Board Report No. 12-329 dated December 10, 2012
- 3) Board Report No. 13-243 dated September 18, 2013
- 4) Board Report No. 16-257 dated December 14, 2016
- 5) Wheel Fun Rental Proposed Pedal Boat Rental Concession Price List



**AGREEMENT  
FOR THE OPERATION AND MAINTENANCE OF  
THE PEDAL BOAT RENTAL CONCESSION**

**BETWEEN**

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

**AND**

**FREETIME, INC. DBA WHEEL FUN RENTALS**

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- 4) Board Report No. 16-257 dated December 14, 2016
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**AGREEMENT FOR OPERATION AND MAINTENANCE OF THE  
PEDAL BOAT RENTAL CONCESSION**

THIS Agreement (hereinafter "AGREEMENT" or "CONTRACT") is made and entered on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the CITY OF LOS ANGELES, a municipal corporation acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "CITY"), and Freetime, Inc. DBA Wheel Fun Rentals, a California corporation (hereinafter referred to as "CONCESSIONAIRE" or "CONTRACTOR").

**WHEREAS**, the Department of Recreation and Parks (hereinafter referred to as "RAP") seeks to serve the public by providing pedal boat and related services at Echo Park (Lake), Anthony C. Beilenson Park (Lake Balboa), and other future locations (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 RAP for the improvement, operation and maintenance of RAP's CONCESSION; and

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

**WHEREAS**, RAP advertised for proposals for the operation and maintenance of the CONCESSION, to include providing pedal boat rental and related services to the public; and

**WHEREAS**, RAP received and evaluated four proposals which were received on March 8, 2017; and

**WHEREAS**, Freetime, Inc. DBA Wheel Fun Rentals was scored as the highest-ranked proposer, and selected to provide pedal boat rental and related services at the PREMISES (as hereinafter defined) 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 Echo Park Lake, Lake Balboa and other future locations.

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

**SECTION 1. DEFINITIONS**

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

**AGREEMENT:** This Concession Agreement consisting of thirty-three (33) pages and thirteen (13) exhibits (A-M) attached hereto

**BOARD:** Board of Recreation and Park Commissioners

**CITY:** The City of Los Angeles, Acting by and through its Board of Recreation and Park Commissioners

**CONCESSION:** Pedal Boat Rental Concession

**CONCESSIONAIRE:** Freetime, Inc. DBA Wheel Fun Rentals

**RAP:** The Department of Recreation and Parks

**FACILITIES:** Echo Park, 751 N. Echo Park Avenue, Los Angeles, CA 90026; Anthony C. Beilenson Park, Lake Balboa, 6300 Balboa Blvd., Van Nuys, CA 91406; and other future locations.

**LAAC:** Los Angeles Administrative Code

**LAMC:** Los Angeles Municipal Code

**PREMISES:** The geographical area, as defined in Section 3 of this AGREEMENT, in which the CONCESSION may be operated.

**STANDARD PROVISIONS:** Standard Provisions for City Contracts (Rev. 3/09), attached hereto as "Exhibit B" and incorporated herein.

## **SECTION 2. PERMISSION GRANTED**

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, RAP hereby grants to CONCESSIONAIRE, the exclusive right and obligation to operate the CONCESSION on the PREMISES.

CONCESSIONAIRE is granted the right to use the designated PREMISES for the purpose of providing pedal boats for rent for a fee, including use of the dock area for loading and unloading patrons from boats, and provide assistance or first aid to patrons as required. No other purpose or activity is authorized, including sales of any merchandise or food or beverage. Any other activity is prohibited without prior written consent of RAP.

The CONCESSION rights herein granted shall be carried on at the FACILITIES 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 FACILITIES.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITIES regarding the services to be offered or products to be sold by

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

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

### **SECTION 3. PREMISES**

The PREMISES (Exhibit A) subject to this AGREEMENT are located at the following:

#### **Echo Park Lake**

Echo Park, 751 N. Echo Park Avenue, Los Angeles, CA 90026. The PREMISES shall include the Boathouse and all, if any, portions of the park at Echo Park Lake that RAP, by express written consent, approves for CONCESSION operation. Any discrepancy in the definition or boundaries of PREMISES shall be resolved solely by RAP.

The CONCESSION is situated within a fifteen hundred (1,500) square foot Boathouse on the east side of Echo Park Lake. The Boathouse was originally constructed in 1932. The design of the Boathouse is in the Spanish Colonial Revival Style. The Boathouse is a historically significant contributing element to the surrounding Echo Park Lake. The thirteen (13) acre Lake is surrounded by Echo Park, with (11) eleven acres of open recreational space. In 2006, the City designated Echo Park as Historic-Cultural Monument (HCM) No. LA-836.

#### **Lake Balboa**

Anthony C. Belienon Park, 6300 Balboa Blvd., Van Nuys, CA 91406. The PREMISES shall include the dock area adjacent to the RAP Lifeguard Station and all portions of the park that RAP, by express written consent, approves for CONCESSION operation. Any discrepancy in the definition of boundaries of PREMISES shall be resolved by RAP.

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

### **SECTION 4. TERM OF AGREEMENT**

The term of the AGREEMENT shall be five (5) years with one five-year extension option exercisable at the sole discretion of RAP, effective on the date of execution of this AGREEMENT by all parties hereto. Neither RAP, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke or terminate 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.

The docks shall be washed daily, and a water sealant for wood shall be applied to the top surface of the docks as appropriate.

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

**B. Conduct**

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

**C. Disorderly Persons**

CONCESSIONAIRE shall use its best efforts to disallow any intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon peace officers to assist in maintaining peaceful conditions. CONCESSIONAIRE shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

Minor rule enforcement to achieve compliance shall be handled by CONCESSIONAIRE. Rule enforcement that results in terminating the pedal boat ride or retrieving the boat shall be handled by CONCESSIONAIRE.

**D. Personnel**

**1. Freedom from Tuberculosis**

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

**2. Qualified Personnel**

CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with RAP. All such personnel, while on or about 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. In the event an employee is not satisfactory, RAP may direct CONCESSIONAIRE to remove that person from the PREMISES.

CONCESSIONAIRE shall maintain adequate staffing of employees certified in First Aid, CPR and Water Rescue as indicated in the Safety Plan (Exhibit E). RAP may evaluate the CONCESSION operation at any time and require additional lifeguards or other safety obligations. CONCESSIONAIRE is responsible for all costs associated with any certifications for employees and will reimburse CITY for any costs in the event that RAP staff assists in providing safety monitoring or other assistance. In the event that adequate staffing procedures and/or safety monitoring are not maintained by CONCESSIONAIRE, RAP may direct CONCESSIONAIRE to close the CONCESSION at CONCESSIONAIRE'S expense until RAP has determined that it is safe to resume operations.

**3. Concession Manager**

CONCESSIONAIRE shall appoint, subject to written approval by RAP, a Concession Manager. Such person must be a qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and manage and supervise the operation of the CONCESSION, including the quality and prices of goods and services, and the appearance, conduct, and demeanor of CONCESSIONAIRE'S agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

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

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

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

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

**E. Pricing and Standards**

1. CONCESSIONAIRE'S services, including price for same, shall be submitted to RAP for approval. Within seven (7) calendar days of notice from RAP, Concessionaire shall adjust service and/or price if the service or equipment is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of RAP. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All prices shall be comparable to prices charged in similar establishments in the City. CONCESSIONAIRE shall, upon execution of AGREEMENT, provide RAP with a list of prices for services. This list shall be updated whenever prices are changed.
2. CONCESSIONAIRE shall offer pedal boat services as described in CONCESSIONAIRE's Proposal, which will become Exhibit C to this AGREEMENT. Boats rented by CONCESSIONAIRE on said PREMISES shall be of a high quality acceptable to industry standards and in conformance with all Federal, State and Municipal laws, ordinances, and regulations in every respect. RAP may order the improvement or upgrade of rental boats.
3. All services, offered and/or sold by CONCESSIONAIRE on said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. No adulterated, misbranded, or impure articles shall be sold or kept for sale by CONCESSIONAIRE. All merchandise kept for sale by CONCESSIONAIRE shall be subject to the approval or rejection of RAP and CONCESSIONAIRE shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the written approval of RAP. RAP may order the improvement of the quality of any merchandise kept or offered for sale.
4. CONCESSIONAIRE is prohibited from selling food items and other merchandise without the written consent of RAP.
5. CONCESSIONAIRE shall not sell lottery tickets or similar type merchandise.

**F. 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

**G. Equipment, Furnishings, and Expendables**

All equipment, furnishings, and expendables required for said CONCESSION shall be purchased and installed by CONCESSIONAIRE at its sole expense and shall remain its personal property.

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

CONCESSIONAIRE agrees to provide, to the satisfaction of RAP, the following equipment at the PREMISES two days prior to commencement of operations.

1. A minimum of ten (10) pedal boats for rental.
2. A rowboat adequate for water rescue operations.
3. A kayak adequate for rule enforcement.
4. Quality life jackets and safety vests in a variety of sizes.
5. A trailer or prefabricated building for the purpose of providing a secure cash register and payment location for customers, and to provide storage for concession equipment.

**H. 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 RAP, together with all of the fixtures, plate and mirror glass, equipment, countertops, cabinetry, indoor and outdoor furniture and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance. RAP will be responsible for utility lines and repairs, including telephone, exterior to the PREMISES.

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

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

**I. 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.

**J. Signs and Advertisements**

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

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

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

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 RAP may direct, any and all of its signs and displays and, in connection therewith, shall restore said PREMISES and improvements thereto to the same condition as prior to the placement of any such signs or displays.

RAP may, at its discretion, install RAP-issued umbrella or canopy shade structure bearing the City's or RAP logo at RAP's request. Said umbrella or canopy shade structure shall be provided by RAP at no cost to CONCESSIONAIRE. RAP-issued umbrella and/or canopy shade structures shall remain City property and shall be returned to RAP upon the expiration or earlier termination of this AGREEMENT.

**K. 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 electricity, heat, air-conditioning, and other utility services to PREMISES. Such charges 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.

In the event that individual utility meters are not available, CONCESSIONAIRE shall remit, on a monthly basis in conjunction with revenue-sharing payments to RAP, the amount of Two Hundred Dollars (\$200.00) as payment for utilities. Payment of utilities will be subject to increase annually to cover increasing utility costs.

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

CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the rental payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake, wind, civil commotion, or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforementioned 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.

**L. Vending Machines**

CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of RAP. RAP shall have the right to order the immediate removal of any unauthorized machines.

**M. Safety and First Aid**

CONCESSIONAIRE shall adhere to the Concessionaire's Safety Plan (Exhibit E). CONCESSIONAIRE shall be responsible for minor first aid and for retrieving boats and/or patrons in the event of mechanical problems. In the event that adequate staffing procedures and/or safety monitoring are not being maintained by CONCESSIONAIRE, RAP may direct CONCESSIONAIRE to close the CONCESSION at CONCESSIONAIRE's expense until it has been determined that it is safe to resume operations.

Due to the potential for water-related accidents and injuries to boat patrons, the CONCESSIONAIRE shall be required to:

1. Post, implement, and enforce all safety rules and regulations related to the PEDAL BOAT RENTAL.
2. Ensure all patrons riding in pedal boats are wearing life jackets.
3. Ensure that staff are trained and knowledgeable of guidelines for the proper operation of the pedal boats, gondola, outrigger canoe, or any other floating device offered for rent.
4. Provide and make use of a paddle board and kayak for the purposes of effecting rescues and notifying patrons of rule infractions.

CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or RAP notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on 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 20, "NOTICES," for mailing address) (Exhibit F). If CONCESSIONAIRE fails to promptly correct hazardous conditions specified by RAP in a written notice, which have led, or in the opinion of CITY could lead, to injury, RAP may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost

thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

**Lake Balboa**

For the Lake Balboa CONCESSION, CONCESSIONAIRE shall adhere to all safety guidelines stipulations under this Section M. "Safety and First Aid." Notwithstanding the foregoing, emergency response for boat patrons at Lake Balboa shall be handled by RAP staff initially; until it is determined the emergency is resolved. Major first aid to patrons of the Lake Balboa boat rental will be provided by RAP staff. First aid resulting from land activity in Anthony C. Belenson Park shall be handled by RAP staff.

**N. 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 including the protection of those existing facilities and natural resources at and near the PREMISES. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

**O. Fund Raising Activities**

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

**P. Community Outreach**

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

RAP and CONCESSIONAIRE agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of this AGREEMENT, the use or promotion of the PREMISES, or the CONCESSION, except as may be legally required by applicable laws, regulations, or judicial order. RAP and CONCESSIONAIRE agree to notify each other in writing of any press release, public announcement, marketing or promotion of the PREMISES. Further, any press release, public announcement, marketing materials, or brochures prepared by either RAP or CONCESSIONAIRE, shall appropriately acknowledge the contributions of both RAP and CONCESSIONAIRE. To the extent stipulated in any grant agreement, RAP and CONCESSIONAIRE shall duly notify any grantors, and each other, prior to any public or media event publicizing the accomplishments funded by any grant agreement, and shall provide the opportunity for attendance and participation by grantor representatives. Further, RAP and CONCESSIONAIRE shall coordinate the scheduling and organization of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of both RAP and CONCESSIONAIRE; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by either RAP or CONCESSIONAIRE, in whole or in part pursuant to the acquisition of property and/or installation of improvements, shall contain any acknowledgements required under any grant agreement.

CONCESSIONAIRE agrees that any public release or distribution of information related to this AGREEMENT or CONCESSION and related programs or services, shall include the following statement at the beginning or introduction of such release:

"This concession is operated under a written agreement with the  
City of Los Angeles, Department of Recreation and Parks,  
and is in collaboration with the mission and activities of Recreation and Parks"

**Q. Amplified Sound**

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

**R. Security**

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

**S. 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 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 PREMISES, RAP shall have final determination of any solution to such dispute; RAP's final determination shall be binding upon all parties in such dispute.

**T. Filming**

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

**U. Receipts**

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

## **SECTION 6. IMPROVEMENTS**

Physical improvements, repairs or physical alterations to the Echo Park Boathouse ("Boathouse") are restricted due to the historical significance of that FACILITY. CONCESSIONAIRE is not required to provide any improvements to the FACILITIES. The award of the AGREEMENT shall not constitute approval to make any improvements. Notwithstanding the foregoing, RAP reserves the right to request a capital improvement plan upon exercising the five (5) year renewal option.

In the event improvements, repairs or physical alterations are required at any location, for any reason during the term of the AGREEMENT, no improvements, repairs or physical alterations to the Boathouse may be initiated by CONCESSIONAIRE without prior written approval from RAP. In addition to written approval from RAP, the CONCESSIONAIRE must also obtain the prior written approval of the Cultural Heritage Commission for any proposed substantial alterations to the affected area, in accordance with Section 22.171.14 of the Los Angeles Administrative Code.

Any infractions, large or small, to the prohibition on improvements, repairs or physical alterations will be treated as a material breach of the AGREEMENT and will be subject to all of the applicable laws, fines and penalties imposed by the City's Department of Building and Safety, as well as the Office of Historic Resources.

CITY shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all improvements, according to RAP 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, not completed as stipulated, or not completed to the satisfaction of RAP. Such damages may include, but are not limited to, recovering up to the entire cost of the improvements from the CONCESSIONAIRE's performance deposit. The performance deposit must be recompensed as stipulated in Section 12, "Performance Deposit," herein. Failure to complete the required improvements within the time frame specified in the written approval, or as prescribed by RAP, shall subject CONCESSIONAIRE 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 to RAP. At that point, RAP 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 value of the improvements as approved by RAP under this AGREEMENT or otherwise, the CONCESSIONAIRE will be responsible to RAP for the difference payable within (30) days of written notification.

RAP reserves the right to further develop or improve the FACILITIES 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. RAP shall not be liable for loss of business which results from the construction of any development or improvements to the FACILITIES or the PREMISES

### **A. Reserve Fund**

RAP will establish a reserve fund for the CONCESSION. CONCESSIONAIRE shall submit with the monthly revenue-sharing payment, a monthly reserve fund (Fund) payment in the amount of Two Hundred Dollars (\$200.00) per month for the purpose of

repair, refurbishment, or replacement of equipment and capital improvements. This Fund is not to be used for routine repair and maintenance or lost equipment replacement. The Fund shall be cumulative and carry-over from year-to-year during the term of the AGREEMENT. In the event of AGREEMENT termination for any reason, or at the conclusion of the AGREEMENT term, any amount in this Fund account will remain with RAP. Annually in January, the CONCESSIONAIRE may submit a request for use of the Fund for expenditures in the coming year for review and approval of RAP. In the event of emergency, CONCESSIONAIRE shall request in writing the use of the Fund for other purposes, or RAP may request use of the Fund on a specific repair, refurbishment, or replacement.

**B. Compliance with Applicable Rules and Regulations**

All structural or other improvements, equipment and interior design and decor constructed or installed by CONCESSIONAIRE in the FACILITIES, 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 FACILITIES or CONCESSIONAIRE'S operations therein. The written approval by RAP of any improvements as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain with CONCESSIONAIRE.

**C. Procurement of Permits and Approvals**

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

**D. Subcontractors**

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

**SECTION 7. HOURS / DAYS OF OPERATION**

Echo Park Lake

The CONCESSION must be open, weather permitting, in conjunction with the Echo Park Café Concession. RAP staff will coordinate as needed. The minimum hours of operation are as follows:

Open daily from 9:00 a.m. to sunset including ALL major holidays.

## Lake Balboa

The minimum hours of operation are as follows:

Open daily from 9:00 a.m. to sunset including ALL major holidays.

CONCESSIONAIRE must post the hours of operation in a location visible to the public, and must be open for business during the hours posted. Hours of operation may not be changed without prior written approval of RAP.

CONCESSIONAIRE will cease renting boats within ninety (90) minutes prior to the "closing time" of the park, which is defined as the closest fifteen (15) minute increment after sunset. Rentals already on the water shall be allowed to complete their usage.

CONCESSIONAIRE shall cooperate with RAP personnel and Park staff on all matters relative to the conduct of operations or any activity, event, and/or special use at PREMISES, including concerns related to parking, traffic, and attendance.

### **SECTION 8. REVENUE-SHARING FEE PAYMENT**

As part of the consideration for CITY'S granting the CONCESSION rights as set forth in this AGREEMENT, CONCESSIONAIRE shall pay to CITY a monthly revenue-sharing fee for each FACILITY as follows:

#### **A. Echo Park Lake**

The greater of:

- The Annual Minimum Revenue-Sharing Guarantee of One Hundred Twenty Thousand Dollars (\$120,000.00)

or

- 25% of gross receipts of all sales

#### **B. Lake Balboa**

The greater of:

- The Annual Minimum Revenue-Sharing Guarantee of Sixty Thousand Dollars (\$60,000.00)

or

- 25% of gross receipts of all sales

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

If the minimum annual revenue-sharing payment is not satisfied by December 31st of each calendar year, the difference between the actual revenue-sharing payment received by the City and the minimum annual revenue-sharing payment will be due to the City by January 15<sup>th</sup> 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.

**C. 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 G) shall be addressed to:

CITY OF LOS ANGELES  
DEPARTMENT OF RECREATION AND PARKS  
ATTENTION: Partnership and Revenue Branch/Concessions Division  
P. O. Box 86328  
Los Angeles, CA 90086

**D. Gross Receipts Defined**

The term "gross receipts" is defined as the total revenue collected for services or goods (whether or not such services are performed as a part of or in connection with the sale of goods) by the CONCESSIONAIRE. CONCESSIONAIRE shall maintain an accurate accounting method for the CONCESSION which correctly reflects all gross receipts and disbursements by CONCESSIONAIRE from the CONCESSION operation. Methods 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 documents for the CONCESSION for the following items, which shall not be considered part of gross receipts:

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

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

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

**E. 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 G), for the month for which a payment is submitted.

**F. 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.

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

#### **SECTION 9. ADDITIONAL FEES AND CHARGES**

- A. If 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 revenue sharing fee payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic revenue sharing fee payment set forth in Section 8 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, whether approved in writing by RAP or not, may result in additional charges; however, any such use without the prior written approval of RAP shall also constitute a material breach of AGREEMENT and is prohibited.

#### **SECTION 10. MAINTENANCE OF PREMISES**

During all periods that the PREMISES are used or are under the control of CONCESSIONAIRE for the uses, purposes, and occupancy aforesaid, CONCESSIONAIRE shall be responsible for all necessary janitorial duties and damage/maintenance repairs, to the satisfaction of RAP.

The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism.

**A. Interior of Premises**

**1. Areas to be maintained by CONCESSIONAIRE:**

CONCESSIONAIRE shall, at its own expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by 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, RAP may direct CONCESSIONAIRE to perform necessary repairs and maintenance to the interior of the structure or to the equipment, whether the equipment is CONCESSIONAIRE or 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 RAP to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the PREMISES, such as light fixtures, toilets, and faucets.

**B. Exterior of Premises and Common Passageways**

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, RAP

may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand. If, for any reasons, payment of such fees becomes delinquent, RAP may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

**D. Property Damage and Theft Reporting**

CONCESSIONAIRE shall complete and submit to RAP a "Special Occurrence and Loss Report," (Exhibit H) in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. Blank forms for this purpose shall be provided by RAP.

**E. Damage or Destruction to Premises**

**1. Partial Damage**

If all or a portion of the PREMISES is 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 RAP as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

**3. Complete Destruction**

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, 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 PREMISES.

**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 storage facilities, offices and storage containers owned and/or used by CONCESSIONAIRE.
2. Other areas, structures, or facilities adjacent to the PREMISES, but not used by or under the control of CONCESSIONAIRE; or areas, structures, or facilities shared by CONCESSIONAIRE and RAP.
3. Open structures such as the dock area where the boats are moved.

Pest control for pests which may cause permanent structural damage to RAP 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 AGREEMENT, and keeping wood components painted. RAP may direct CONCESSIONAIRE to take additional measures to abate pests which are an immediate threat to public health or safety.

**SECTION 11. 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 PREMISES, nor do or permit to be done anything which may interfere with free access and passage to 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 PREMISES 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 RAP.
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 to any existing door or window lock or the mechanism thereof, unless a key is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to RAP any and all keys to the interior and 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 RAP, 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 RAP, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the CONCESSION 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 the CONCESSION, or from carrying on the CONCESSION 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. Climb the ladder that accesses the Tower area inside the Boathouse (Exhibit A, Space 5).
12. Use the PREMISES in any manner that will constitute waste.
13. Use or allow the PREMISES to be used for, in the opinion of RAP, any improper, immoral, or unlawful purposes.

## **SECTION 12. PERFORMANCE DEPOSIT**

CONCESSIONAIRE shall provide RAP a sum equal to Ten Thousand Dollars (\$10,000.00) to guarantee payment of fees and as a damage deposit ("Deposit") to be used in accordance with the default provisions of this AGREEMENT.

CONCESSIONAIRE'S Deposit shall be in the following form:

A cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, which cashier's check is payable to the order of the City of Los Angeles.

### **A. Agreement of Deposit and Indemnity**

CONCESSIONAIRE unconditionally agrees that in the event of any default or breach under this AGREEMENT, 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 RAP.

### **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 the terms and conditions of the AGREEMENT.

## **SECTION 13. 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, certifications, etc. CONCESSIONAIRE shall perform all necessary coordination to ensure performance of permitted activity.
- B. CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the

AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

- C. 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 and utilities) attributable to said calendar quarter, plus One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter for each additional One Thousand Dollars (\$1,000.00) of charges or fractional part thereof in excess of One Thousand Dollars (\$1,000.00). Said tax shall be paid quarterly to RAP, on or before the fifteenth (15<sup>th</sup>) of April, July, October, January of each calendar year, for the preceding three 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 14. ASSIGNMENT, SUBLEASE, BANKRUPTCY**

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

#### **SECTION 15. 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 RAP, 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 RAP's discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.



**B. Cash and Record Handling Requirements**

If requested by RAP, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to RAP for approval.

CONCESSIONAIRE shall be required to maintain a method of accounting which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE. 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 RAP'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 RAP's written approval of the specific hardware and software to be purchased.

**D. Annual Statement of Gross Receipts and Expenses**

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations as specified in the AGREEMENT, in a form acceptable to RAP, on or before April 30th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. An extension may be granted in writing, prior to the April 30th due date, by



RAP provided sufficient verification of the need for the extension is provided, as accepted by RAP. The charge for late or delinquent Statements shall be One Hundred 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 16. 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**

CONCESSIONAIRE shall comply with the following rules, laws and regulations

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 RAP 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 RAP and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or RAP.

**D. Right of Inspection**

CITY and RAP, 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 RAP fully as to CONCESSIONAIRE's conduct of the CONCESSION. During these inspections, they all shall have the right to photograph, film, or otherwise record conditions and events taking place upon 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.
3. To ensure quality control and verify the validity of mandatory operating permits.

**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 J). 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 K) when submitting the Monthly Remittance Advice. Upon completion of the AGREEMENT, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit L) and certified correct by CONCESSIONAIRE or its authorized representative. The completed Schedule C shall be furnished to RAP 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 the AGREEMENT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONCESSIONAIRE estimates it will need to fill in order to perform the services under 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 DAA, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the LAAC the DAA has determined that the CONCESSIONAIRE intentionally violated or used hiring practices for the purpose of avoiding the FSHO, 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 the FSHO.

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

**H. CEC Form 50**

CONCESSIONAIRE agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if CONCESSIONAIRE qualifies as a lobbying entity under Los Angeles Municipal Code 48.02. CEC Form 50 is attached hereto as Exhibit M.

**Bidder Contributions – City Charter Sections 470(c) (12)**

Concessionaire is subject to Charter section 470(c) (12) and related ordinances. As a result, CONCESSIONAIRE may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office for twelve (12) months after the AGREEMENT is signed. CONCESSIONAIRE's principals and subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the AGREEMENT, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

**I. CEC Form 55**

CEC Form 55 requires CONCESSIONAIRE to identify their principals, their subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the AGREEMENT, and the principals of those subcontractors. CONCESSIONAIRE must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. If CONCESSIONAIRE fails to comply with City law, it may be subject to penalties, termination of the AGREEMENT, and debarment. Additional information regarding restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or [ethics.lacity.org](http://ethics.lacity.org).

**SECTION 17. 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 AGREEMENT or any prior agreement or lease. CONCESSIONAIRE will have thirty (30) days to effect removal and restoration. RAP may 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 18. 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 Division  
P O. Box 86328  
Los Angeles, CA 90086

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. Written notices may also be emailed to RAP Concessions Analyst.

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 RAP shall be as effective for CONCESSIONAIRE as if it were executed by BOARD, or by Resolution or Order of said BOARD.

All such notices may 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, or transmitted via email by RAP Concessions Analyst. 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:

Freetime, Inc., DBA Wheel Fun Rentals  
Attn: Al Stonehouse  
4256 Telephone Rd., #202  
Ventura, CA 93003

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

## **SECTION 19. 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. Echo Park Boathouse and Lake Balboa Premises Maps
- B. Standard Provisions for City Contracts (Rev. 3/09)

- C. Proposal in Response to RFP No. CON-M16-003
- D. Echo Park Boathouse Floor Plan
- E. Echo Park Boathouse and Lake Balboa Safety Plans
- F. Form General No. 87 "Non-Employee Accident or Illness Report"
- G. Remittance Advice Forms Echo Park Boathouse and Lake Balboa
- H. Special Occurrence and Loss Report
- I. Required Insurance and Minimum Limits
- J. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- K. Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile
- L. Schedule C, Final Subcontracting Report
- M. CEC Form 50, Bidder Certification

In the event of any inconsistency between any of the provisions of this AGREEMENT and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This AGREEMENT exclusive of attachments, 2) Exhibit A, 3) Exhibit B, 4) Exhibit C, 5) Exhibit D, 6) Exhibit E, 7) Exhibit F, 8) Exhibit G, 9) Exhibit H, 10) Exhibit I, 11) Exhibit J, 12) Exhibit K, 13) Exhibit L, 14) Exhibit M.

*(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 its Board of Recreation and Park Commissioners

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MICHAEL A. SHULL  
General Manager

**FREETIME, INC. DBA WHEEL FUN RENTALS**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Title: \_\_\_\_\_

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

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Deputy City Attorney

Business Tax Registration Certificate Number: \_\_\_\_\_

Internal Revenue Service Taxpayer Identification Number: \_\_\_\_\_

AGREEMENT Number: \_\_\_\_\_

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Exhibit A – Premises Map – Orientation  
Lake Balboa, vicinity of Lifeguard Station

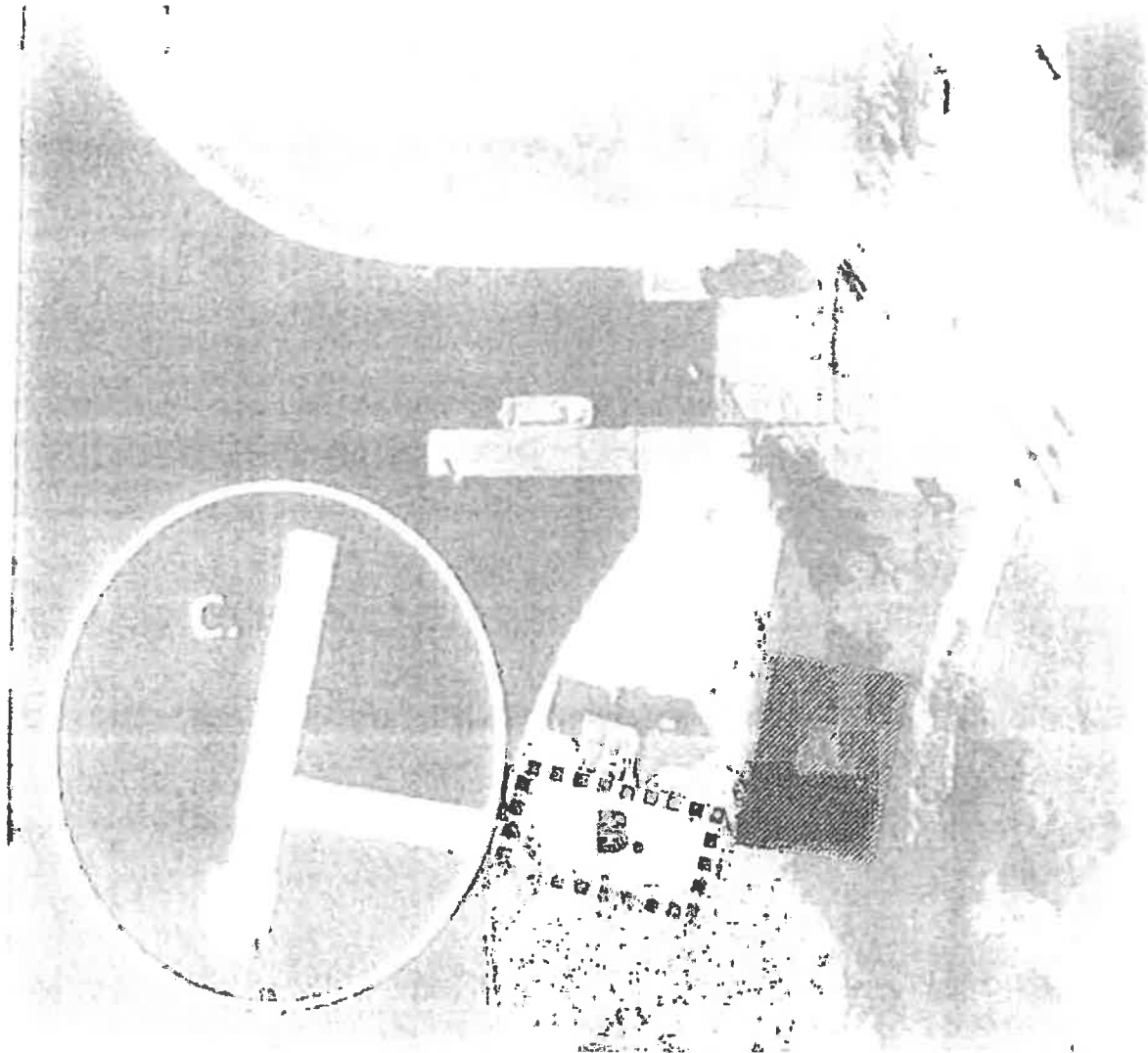


A. Lake Balboa Lifeguard Station and Boat Dock  
6300 Balboa Boulevard., Van Nuys CA 91046.



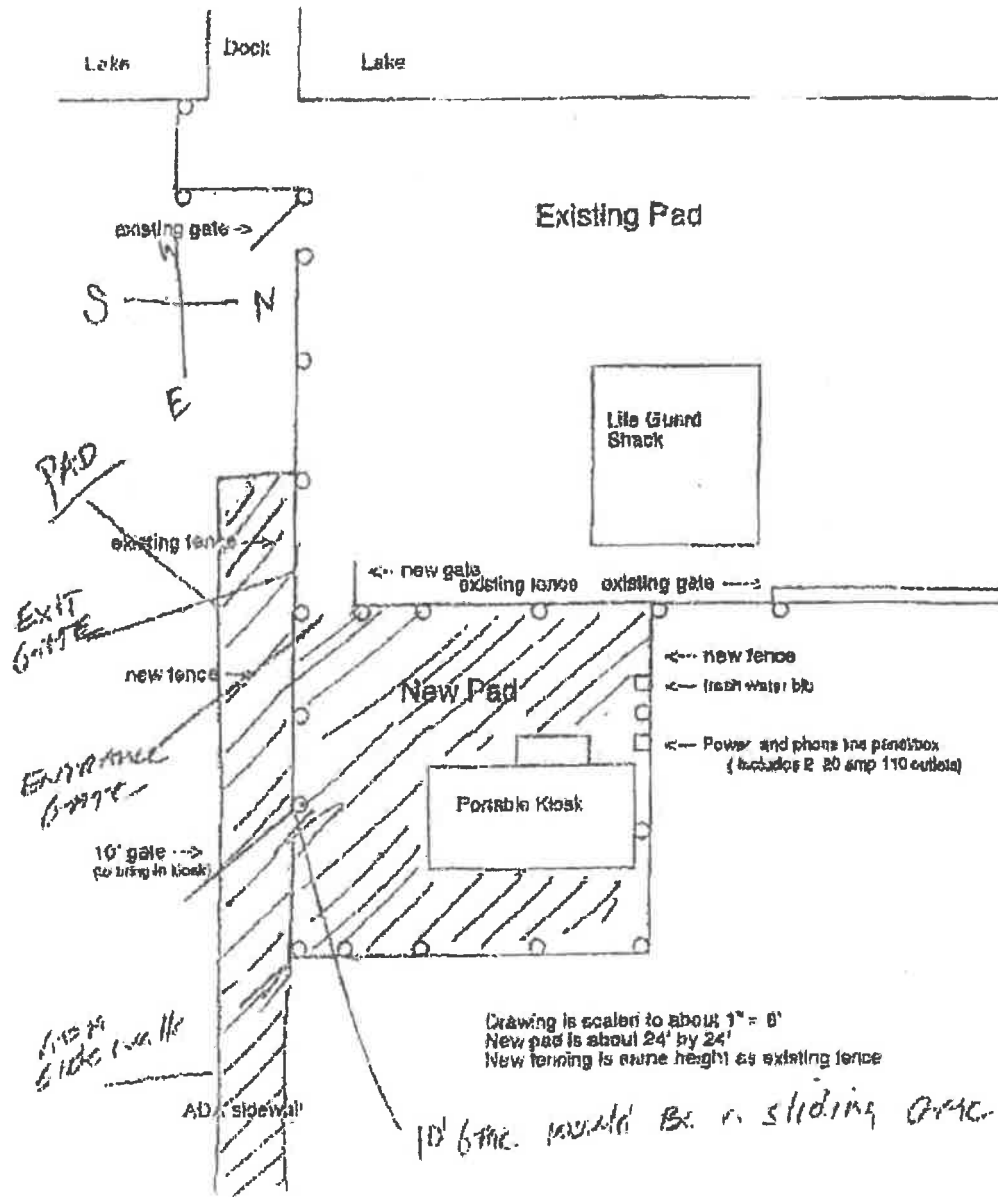


Page 2 of 3  
Exhibit A – Premises Map – Aerial View  
Lake Balboa, vicinity of Lifeguard Station



- A. Concrete Pad with Kiosk for Ticket Sales
- B. Walkway and Patron Prep Area
- C. Dock for Loading and Unloading Pedal Boat Patrons

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 Exhibit A - Premises Map - Detail  
 Lake Balboa, vicinity of Lifeguard Station



## 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](http://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 lim its 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.

	WC	Statutory
<b>Workers' Compensation – Workers' Compensation (WC) and Employer's Liability (EL)</b>	EL	_____
<input type="checkbox"/> Waiver of Subrogation in favor of City		
<input type="checkbox"/> Longshore & Harbor Workers		
<input type="checkbox"/> Jones Act		

<b>General Liability</b>		
<input type="checkbox"/> Products/Completed Operations		<input type="checkbox"/> Sexual Misconduct _____
<input type="checkbox"/> Fire Legal Liability _____		
<input type="checkbox"/> _____		

**Automobile Liability** (for any and all vehicles used for this Contract, other than commuting to/from work) \_\_\_\_\_

**Professional Liability** (Errors and Omissions) \_\_\_\_\_

<b>Property Insurance</b> (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"/> _____

**Pollution Liability** \_\_\_\_\_

\_\_\_\_\_

<b>Surety Bonds – Performance and Payment (Labor and Materials) Bonds</b>		100 % of Contract Price
<b>Crime Insurance</b>		_____

**Other:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Exhibit C  
of  
Draft Concession Agreement

Proposal in Response to  
RFP No. CON-M16-003  
(on file in the Board Office)



## Echo Park Pedal Boats Concession: Safety Plan



### Location Safety,

#### Location shall have:

- a. Mandatory Life Jacket signs for all renters
- b. Chain at bottom of ramp to retain customers on ramp until they have their life jacket on and have had their safety talk.
- c. Throw ring and 50' of line ready on dock in case someone falls in.
- d. Rescue ladder in case someone falls in.
- e. Row boat and kayak in case a pedal boat needs to be towed back.
- f. Rescue paddle board in case someone goes in and can not get back up in their pedal boat.
- g. Bullhorn to call out instructions to pedal boat renters on lake if necessary.
- h. First aid kit.

### Employees;

- a. All employees at Echo Park will be First Aid & CPR certified.
- b. All guides (who operate the gondola or outrigger canoe) are CPR certified and are a U.S.C.G. certified Captain or they shall be either water rescue certified or a certified life guard.

- c. All employees are trained in towing operations.
- d. All employees are trained on the proper fitting of life jackets.
- e. All employees review the "Employee Handbook" every 6 weeks. The Employee Handbook has emergency numbers on the cover. The handbook also reviews safety issues with concern to both the customer and employee. The handbook also has guidelines about customer briefings and release forms.
- f. Employees will call on the aid of a peace officer in the case of a unruly person.
- g. In case of an emergency employees shall immediately call 911, and then call Department of Recreation and Parks

Customer;

- a. All renters shall wear a correct size, fastened life jacket.
- b. No Children under 25 pounds allowed in any of our equipment.
- c. Children under 50 pounds must wear a life jacket with a head float, leg strap and rescue handle.
- d. Children under 12 must be accompanied by an adult.
- e. All renters will be informed that they must keep their life jackets fastened and one person from each group of renters will sign an addition back up form agreeing to make sure everyone in their group or pedal boat keeps their life jacket on.
- f. No renters may use our equipment if they are intoxicated or obnoxious.
- g. All renters will be instructed on how to safety get in and out of the boats.

## Lake Balboa Pedalboat Concession. Safety Plan



### Location Safety,

#### Location shall have:

- a. Mandatory Life Jacket signs for all renters
- b. Chain at gate to retain customers off dock until they have their life jacket on and have had their safety talk.
- c. Throw ring and 50' of line ready on dock in case someone falls in.
- d. Rescue ladder in case someone falls in.
- e. Electric powered skiff with back up oars to reach pedalers sooner and then maneuver with oars to prevent a propeller accident.
- f. Rescue row boat in case someone goes in and can not get back up in their pedal boat.
- g. Bullhorn to call out instructions to pedal boat renters on lake if necessary.
- h. First aid kit.

#### Employees;

- a. All employees at Lake Balboa Park will be First Aid & CPR certified.
- b. All guides (who operate the gondola or outrigger canoe) are CPR certified and are a U.S.C.G. certified Captain or they shall be either



DRAFT AGREEMENT EXHIBIT E

PAGE 4 OF 4

- water rescue certified or a certified life guard.
- c. All employees are trained in towing operations.
- d. All employees are trained on the proper fitting of life jackets.
- e. All employees review the "Employee Handbook" every 6 weeks. The Employee Handbook has emergency numbers on the cover. The handbook also reviews safety issues with concern to both the customer and employee. The handbook also has guidelines about customer briefings and release forms.

**Customer;**

- a. All renters shall wear a correct size, fastened life jacket.
- b. No Children under 30 pounds allowed in any of our equipment.
- c. Children under 50 pounds must wear a life jacket with a head float, leg strap and rescue handle.
- d. Children under 12 must be accompanied by an adult.
- e. All renters will be informed that they must keep their life jackets fastened and one person from each group of renters will sign an addition back up form agreeing to make sure everyone in their group or pedal boat keeps their life jacket on.
- f. No renters may use our equipment if they are intoxicated or obnoxious.
- g. All renters will be instructed on how to safety get in and out of the boats.

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
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

DRAFT AGREEMENT - EXHIBIT G

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

REMITTANCE ADVICE FORM  
 ECHO PARK BOATHOUSE PEDAL BOATS CONCESSION  
 NAME OF CONCESSIONAIRE

PERIOD COVERED: From: \_\_\_\_\_ To: \_\_\_\_\_

CATEGORY	GROSS SALES	SALES TAX	NET SALES	RENTAL RATE	AMOUNT DUE
Pedal Boat Rental	_____	_____	_____	12%	\$ _____
	_____	_____	_____		\$ _____
	_____	_____	_____		\$ _____
	_____	_____	_____		\$ _____

OTHER: \_\_\_\_\_

SUB-TOTAL RENT DUE: \$ \_\_\_\_\_

UTILITIES: \$ 200.00

LATE RENT FEE: \$150.00 per month. 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: \$ \_\_\_\_\_

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: \$ \_\_\_\_\_

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

DRAFT AGREEMENT - EXHIBIT G

CITY OF LOS ANGELES  
 DEPARTMENT OF RECREATION AND PARKS  
 Attn: Concessions Unit  
 P.O. Box 88328  
 Los Angeles, CA 90088

REMITTANCE ADVICE FORM  
 LAKE SALBOA PEDAL BOATS CONCESSION  
 NAME OF CONCESSIONAIRE

PERIOD COVERED:	From:	_____			To:	_____
<b>CATEGORY</b>	<b>GROSS SALES</b>	<b>SALES TAX</b>	<b>NET SALES</b>	<b>RENTAL RATE</b>	<b>AMOUNT DUE</b>	
Pedal Boat Rental	_____	_____	_____	12%	\$ -	
	_____	_____	_____	_____	\$ -	
	_____	_____	_____	_____	\$ -	
	_____	_____	_____	_____	\$ -	
OTHER:	_____	_____	_____	_____	_____	
<b>SUB-TOTAL RENT DUE:</b>					<u>\$ -</u>	
<b>UTILITIES:</b>					\$ 200.00	
<b>LATE RENT FEE:</b>	\$150.00 per month. All payments are due by the 15th for the previous month.					\$ -
<b>OCCUPANCY TAX:</b>	Paid Quarterly (April / July / October / January) for preceding three months at \$1.48 per \$1,000 or fraction thereof of rent paid)					\$ -
<b>LATE OCCUPANCY TAX FEE:</b>	Occupancy Tax payments are due quarterly by the 15th of April, July, October, January for the preceding three (3) months.					\$ -
<b>SUB-TOTAL DUE:</b>					_____	
<b>ADJUSTMENTS*:</b>	Explain: _____					
	_____					
	_____					\$ -
<p>*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.</p>						
<b>TOTAL AMOUNT DUE:</b>					<u>\$ -</u>	

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**SPECIAL OCCURRENCE AND LOSS REPORT**

REPORT NUMBER

SEE INSTRUCTIONS ON PAGE 2					
1 NAME OF FACILITY		DATE OF OCCURRENCE	TIME	A M	P M
				<input type="checkbox"/>	<input type="checkbox"/>
2 SUBJECT OF REPORT					
3 EXACT LOCATION OF OCCURRENCE					
4 DESCRIBE WHAT HAPPENED ESTIMATE PROPERTY DAMAGE, IF ANY					
					ESTIMATE OF DAMAGES
5					
6 LIST STOLEN ITEMS IF ANY. (EXCEPT CASH)					
QUANTITY	TYPE OF ITEM OR EQUIPMENT DESCRIBE		DEPT NO	SERIAL NO	APPROX VALUE
					TOTAL
					\$0.00
7 IF MONEY WAS TAKEN INDICATE AMOUNT AND WHERE KEPT AT TIME OF THEFT CALL CHIEF FINANCIAL OFFICER AT (213) 207-4380					AMOUNT
LOCATION					
8 TOTAL LOSSES (TOTAL OF LINES 5, 7 AND 8)					TOTAL
					\$0.00
9 WHO DISCOVERED LOSS?		TITLE	DATE	TIME	A M P M
NAME					<input type="checkbox"/> <input type="checkbox"/>
10 HOW WAS ENTRANCE GAINED?					
11 WHO SECURED LOSS PRIOR TO OCCURRENCE?		TITLE	DATE	TIME	A M P M
NAME					<input type="checkbox"/> <input type="checkbox"/>
12 WAS POLICE REPORT MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO D/R NUMBER					
13 HAS A WORK ORDER BEEN INITIATED FOR REPAIRS? <input type="checkbox"/> YES <input type="checkbox"/> NO WORK ORDER					
14 PERSONS INVOLVED <input type="checkbox"/> WITNESS <input type="checkbox"/> VICTIM <input type="checkbox"/> SUSPECT					
NAME	ADDRESS	AGE	SEX	PHONE NUMBER	INDICATE
					<input type="checkbox"/> W <input type="checkbox"/> V <input type="checkbox"/> S
					<input type="checkbox"/> W <input type="checkbox"/> V <input type="checkbox"/> S
					<input type="checkbox"/> W <input type="checkbox"/> V <input type="checkbox"/> S
					<input type="checkbox"/> W <input type="checkbox"/> V <input type="checkbox"/> S
15 IF VEHICLE INVOLVED		LICENSE NO	OWNER'S NAME, ADDRESS AND INSURANCE CO		
YEAR	MAKE				
16 GIVE ANY REMEDIAL MEASURES / CORRECTIVE ACTIONS THAT WERE TAKEN, IF ANY					
17 REPORT SUBMITTED BY		NAME	TITLE	DATE	

PRINT

PAGE 2

### Required Insurance and Minimum Limits

Name: RFP Pedal Boat Rentals Concession

Date: 07/21/2016

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.

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** City of Los Angeles must be named as an additional insured \$2,000,000

Products/Completed Operations
  Sexual Misconduct  
 Fire Legal Liability \$100,000  
 \_\_\_\_\_

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

\_\_\_\_ **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)

<input checked="" 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"/> _____

\_\_\_\_ **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>  
2) In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

**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.

PRINT

Goto Page 1

**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)

<b>Project Title</b>
----------------------

<b>Prosper</b>	<b>Address</b>
<b>Contact Person</b>	<b>Phone/Fax</b>

<b>LIST OF ALL SUBCONTRACTORS (SERVICE PROVIDERS/SUPPLIERS/ETC.)</b>				
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

<b>PERCENTAGE OF MBE/WBE/SBE/EBE/DVBE/OBE PARTICIPATION</b>			<div style="text-align: center; margin-bottom: 20px;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> <b>Signature of Person Completing this Form</b> </div> <div style="text-align: center; margin-bottom: 20px;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> <b>Printed Name of Person Completing this Form</b> </div> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center; width: 40%;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> <b>Title</b> </div> <div style="text-align: center; width: 40%;"> <hr style="border: 0; border-top: 1px solid black; width: 80%; margin: 0 auto;"/> <b>Date</b> </div> </div>	
	DOLLARS	PERCENT		
<b>TOTAL MBE AMOUNT</b>	\$	%		
<b>TOTAL WBE AMOUNT</b>	\$	%		
<b>TOTAL SBE AMOUNT</b>	\$	%		
<b>TOTAL EBE AMOUNT</b>	\$	%		
<b>TOTAL DVBE AMOUNT</b>	\$	%		
<b>TOTAL OBE AMOUNT</b>	\$	%		
<b>BASE BID AMOUNT</b>	\$			

**MUST BE SUBMITTED WITH BID**



**SCHEDULE B**

**MBE/WBE/SBE/EBE/DVBE/OBE UTILIZATION PROFILE**

<b>Project Title</b>	<b>Contract No.</b>
----------------------	---------------------

<b>Consultant</b>	<b>Address</b>
-------------------	----------------

<b>Contact Person</b>	<b>Phone/Fax</b>
-----------------------	------------------

<b>CONTRACT AMOUNT (INCLUDING AMENDMENTS)</b>	<b>THIS INVOICE AMOUNT</b>	<b>INVOICED TO DATE AMOUNT (INCLUDE THIS INVOICE)</b>

**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

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

**MUST BE SUBMITTED WITH EACH INVOICE**

**SCHEDULE C  
FINAL SUBCONTRACTING REPORT**

<b>Project Title</b>	<b>Contract No.</b>
----------------------	---------------------

<b>Company Name</b>	<b>Address</b>
<b>Contact Person</b>	<b>Phone</b>

Name, Address, Telephone No. of all Sub-consultants Listed on Schedule C	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**



City Ethics Commission  
 200 N Spring Street  
 City Hall — 24th Floor  
 Los Angeles, CA 90012  
 Mail Stop 129  
 (213) 975-1960

# Bidder Certification

## CEC Form 50

*This form must be submitted to the awarding authority with your bid or proposal for the contract noted below. Please write legibly.*

Original filing     Amended filing (original signed on \_\_\_\_\_; last amendment signed on \_\_\_\_\_)

Bid/Contract/BAVN Number:	Awarding Authority (Department):
---------------------------	----------------------------------

Name of Bidder:	Phone:
-----------------	--------

Address:

Email:

**CERTIFICATION**

I certify the following on my own behalf or on behalf of the entity named above, which I am authorized to represent:

- A. I am a person or entity that is applying for a contract with the City of Los Angeles.
- B. The contract for which I am applying is an agreement for one of the following:
  - 1. The performance of work or service to the City or the public;
  - 2. The provision of goods, equipment, materials, or supplies;
  - 3. Receipt of a grant of City financial assistance for economic development or job growth, as further described in Los Angeles Administrative Code § 10.40.1(h); or
  - 4. A public lease or license of City property where both of the following apply, as further described in Los Angeles Administrative Code § 10.37.1(l):
    - a. I provide services on the City property through employees, sublessees, sublicensees, contractors, or subcontractors, and those services:
      - i. Are provided on premises that are visited frequently by substantial numbers of the public; or
      - ii. Could be provided by City employees if the awarding authority had the resources; or
      - iii. Further the proprietary interests of the City, as determined in writing by the awarding authority.
    - b. I am not eligible for exemption from the City's living wage ordinance, as eligibility is described in Los Angeles Administrative Code § 10.37.1(l)(b).
- C. The value and duration of the contract for which I am applying is one of the following:
  - 1. For goods or services contracts—a value of more than \$25,000 and a term of at least three months;
  - 2. For financial assistance contracts—a value of at least \$100,000 and a term of any duration; or
  - 3. For construction contracts, public leases, or licenses—any value and duration.
- D. I acknowledge and agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if I qualify as a lobbying entity under Los Angeles Municipal Code § 48.02.

I certify under penalty of perjury under the laws of the City of Los Angeles and the state of California that the information in this form is true and complete.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Los Angeles Administrative Code § 10.40.1**

- (h) **"City Financial Assistance Recipient"** means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

**Los Angeles Administrative Code § 10.37.1**

- (l) **"Public lease or license"**.

- (a) Except as provided in (l)(b), "Public lease or license" means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:
- (1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or
  - (2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or
  - (3) The DAA has determined in writing that coverage would further the proprietary interests of the City.
- (b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:
- (1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City property;
  - (2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;
  - (3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;
  - (4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;
  - (5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);
  - (6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;
  - (7) Public leases and licenses shall be deemed to include public subleases and sublicensees;
  - (8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.



**APPROVED**  
**DEC 10 2012**  
BOARD OF RECREATION  
& PARK COMMISSIONERS

REPORT OF GENERAL MANAGER

NO. 12-329

DATE December 10, 2012

C.D. 13

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ECHO PARK PEDAL BOATS AND CAFÉ CONCESSION – REQUEST FOR PROPOSALS

R. Adams  
H. Fujita  
V. Israel

K. Regan  
M. Schull  
W. Williams *(initials)*

*(Signature)*  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve the Echo Park Pedal Boats and Café Concession Request for Proposals (RFP) for a five (5) year Concession Agreement, with two (2) five (5) year renewal options exercisable at the sole discretion of General Manager, substantially in the form on file in the Board Office, subject to review and approval of the City Attorney as to form;
2. Direct the Board Secretary to transmit the RFP to the City Attorney for review and approval as to form; and,
3. Direct staff, subsequent to City Attorney review and approval as to form, to advertise the RFP and conduct the RFP process for the Concession.

SUMMARY:

This is a newly established concession, The 1,500 square foot Echo Park Boathouse, originally constructed in 1932 at 751 N. Echo Park Ave. in Los Angeles, was designed in the Spanish Colonial Revival Style and is positioned over the Echo Park Lake.

## REPORT OF GENERAL MANAGER

PG. 2

NO. 12-329

Other amenities and features at Echo Park Lake include a baseball diamond, lighted, indoor, and outdoor basketball courts, a play area for children, a lighted football field, two swimming pools, a soccer field, and lighted tennis courts. Besides offering a variety of recreational activities to be enjoyed by patrons, the historic park has also long been a popular location for Hollywood filming.

The Boathouse has undergone several aesthetic and building system retrofits throughout the years. Phase I of the most recent rehabilitation effort, the Echo Park Boathouse Rehabilitation project, was completed in 2007. It entailed preserving the existing piles, rehabilitating the dock, and providing disabled access to the dock.

Phase II of the Echo Park Boathouse Rehabilitation included the completion of the aesthetic, and structural retrofit of the existing building and mechanical systems. The Boathouse Rehabilitation is a small part of the larger Echo Park Lake Rehabilitation project.

This newly established Concession will operate in the recently restored Boathouse at Echo Park Lake. The state-of-the-art facility has not yet been used. This Concession includes the exclusive right and obligations to staff, equip, and operate a pedal boat rental service and café. The Concessionaire will provide certified life guards for the pedal boat service, and put in place safety policies and procedures satisfactory to the General Manager. The café operation will offer food and non-alcoholic beverages to park patrons and the neighboring community.

Staff has developed and is now ready to release, at the direction of the Board, an RFP for this concession. With this RFP, the Department will seek a qualified, experienced, and financially sound operator who will meet or exceed the Department's expectations in all operational and financial areas, and optimize service to the public and profitability to the business.

Proposal and Contractual Provisions

1. **Proposal Deposit:** A \$5,000 proposal deposit will be required with the submission of each proposal.
2. **Term:** Five (5) years, with two (2) five (5) year renewal options at the sole discretion of the General Manager.
3. **Rental Terms:** The minimum rental sharing payment percentage is of 8% of food and beverage gross revenue, and 33% of gross revenue from the pedal boats operation. The minimum annual rental sharing payment is \$60,000.
4. **Concession Improvements:** Required improvements include installing new dining furniture, a minimum of five (5) pedal boats, and a Jon boat to aid the patrons on the

## REPORT OF GENERAL MANAGER

PG. 3

NO. 12-329

water and retrieve pedal boats. The flooring is to be replaced every five years if the Agreement is renewed. Optional improvements by the proposer will initially be evaluated and scored by the panel, and later reviewed by staff for conduciveness to the enhancement, safety and increased revenue of the Concession.,

5. **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 water, gas, electricity, heat, air-conditioning, trash pick-up, and other utility services to the 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.

In the event that individual utility meters are not available, Concessionaire shall remit, on a monthly basis in conjunction with rental payments to Department, the amount of Two Hundred and Fifty Dollars (\$250.00) as payment for utilities.

6. **Contractual and Financial Terms:** The City will enter into an Agreement whereby the City has no financial responsibility or liability for the operation and the City will share in profits in the form of a percentage of gross revenue.
7. **Faithful Performance Deposit:** A Faithful Performance Deposit will be required to be maintained for the duration of the Agreement in the amount of Thirty-Five Thousand Dollars (\$35,000). The Deposit will be in the form of a cashier's check made out to the City of Los Angeles.

#### Evaluation Process

Proposals will be evaluated in two Levels. Level I will be a check and review by Concessions Unit staff for required compliance and submittal documents; Level II will be a comprehensive evaluation of the proposals by a panel comprised of qualified persons not part of the Concessions Unit that may include individuals outside the Department. Proposers must successfully pass Level I to proceed to Level II.

#### RFP Evaluation Criteria Areas

For the purposes of evaluation, the responsive proposals to pass Level I will be evaluated on the criteria below (Level II):

- 1) Ability to Finance (15 points)
- 2) Background and Experience (20 points)
- 3) Proposed Business Plan for this Concession (20 points)



REPORT OF GENERAL MANAGER

PG. 4

NO. 12-329

- 4) Proposed Rental Payment to City (20 points)
- 5) On-Going Refurbishment, Improvements, and Maintenance (15 points)
- 6) Concession Improvements (10 points)

The RFP documents will be advertised in periodicals; made available on the Department's website; and posted on the Los Angeles Business Assistance Virtual Network (BAVN). A letter inviting bids will be mailed to organizations and individuals from a mailing list maintained by the Concessions Unit. The anticipated time of completion for the RFP process is approximately eight to twelve months.

A conference will be held approximately one month after the release of the RFP in order to provide potential proposers with a review of the submittal documents and compliance documents.

It is noted that this project incorporates and implements the City's new Business Inclusion Program (BIP), in compliance with the Mayor's Directive No. 14. For this project, the Department will use the Business Inclusion Program (BIP) per Mayor Executive Directive No. 14 issued on January 12, 2011 which is intended to ensure that all businesses, including job-creating small businesses, have an equal opportunity to do business with the City of Los Angeles.

FISCAL IMPACT STATEMENT:

Releasing and conducting the Request for Proposals process has no impact to the Department's General Fund.

Report prepared by Shaun Larsuel, Management Analyst I, Concessions Unit, Finance Division

**APPROVED**  
OCT 02 2013

REPORT OF GENERAL MANAGER

NO. 13-243

DATE September 18, 2013

BOARD OF RECREATION  
and PARK COMMISSIONERS

C.D. 13

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ECHO PARK PEDAL BOATS CONCESSION - AWARD OF INTERIM CONCESSION AGREEMENT TO CHAFFIN & REEVES, INC.

R. Adams \_\_\_\_\_  
H. Fujita \_\_\_\_\_  
V. Israel \_\_\_\_\_

K. Regan \_\_\_\_\_  
M. Schull \_\_\_\_\_  
\*N. Williams *RAF*

*[Signature]*  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve a proposed Interim Concession Agreement between the City of Los Angeles Department of Recreation and Parks (RAP) and Chaffin & Reeves, Inc., substantially in the form on file in the Board Office, for the operation and maintenance of the Echo Park Pedal Boats Concession for a term of one (1) year with two (2) one-year renewal options exercisable at the General Manager's sole discretion, subject to the approval of the Mayor and of the City Attorney as to form;
2. Find, in accordance with Charter Section 1022, that RAP does not have personnel available in its employ with sufficient time and expertise to undertake these specialized professional tasks and that it is more feasible and more economical to secure these services by contract;
3. Find, in accordance with Charter Section 371(c)(10) and Los Angeles Administrative Code Section 10.15(a)(10), that in order to provide continued, uninterrupted service to the public and avoid a revenue shortfall, a competitive bidding process is not practicable or advantageous at this time, and that it is therefore in the City's best interest to enter into this Interim Concession Agreement until the completion of a formal Request for Proposal (RFP) process when a multi-year agreement can be executed;

## REPORT OF GENERAL MANAGER

PG 2

NO. 13-243

4. Find, in accordance with Charter Section 372, that obtaining competitive proposals or bids for work to be performed pursuant to this agreement is not reasonably practicable or compatible with RAP's interests of offering pedal boat, canoe and gondola rentals monitored by certified lifeguards to the public while RAP conducts a formal RFP process;
5. Direct the Board Secretary to transmit the proposed Agreement, concurrently, to the Mayor in accordance with Executive Directive No. 3, and to the City Attorney for approval as to form; and,
6. Authorize the Board President and Secretary to execute the Agreement upon receipt of the necessary approvals.

SUMMARY:

This is a newly established concession. The 1,500 square foot Echo Park Boathouse (Boathouse), originally constructed in 1932 at 751 N. Echo Park Ave. in Los Angeles, was designed in the Spanish Colonial Revival Style and is positioned over the Echo Park Lake.

Other amenities and features at Echo Park Lake include a baseball diamond, lighted indoor and outdoor basketball courts, a play area for children, a lighted football field, two swimming pools, a soccer field, and lighted tennis courts. Besides offering a variety of recreational activities to be enjoyed by patrons, the historic park has also long been a popular location for Hollywood filming.

The Boathouse has undergone several aesthetic and building system retrofits throughout the years. Phase I of the most recent rehabilitation effort, the Echo Park Boathouse Rehabilitation project, was completed in 2007. It entailed preserving the existing piles, rehabilitating the dock, and providing disabled access to the dock.

Phase II of the Echo Park Boathouse Rehabilitation project included the completion of the aesthetic and structural retrofit of the existing building and mechanical systems. The Boathouse Rehabilitation project is a small part of the larger Echo Park Lake Rehabilitation project.

This Concession operates in the recently restored Boathouse, and a one-year interim concession agreement, with two (2) one-year renewal options, will allow the concessionaire the exclusive right and obligation to staff, equip, and operate a pedal boat rental service until completion of a formal Request for Proposal process when a multi-year agreement can be executed. The Concessionaire will provide certified life guards for the pedal boat service, and put in place safety policies and procedures satisfactory to the General Manager.

## REPORT OF GENERAL MANAGER

PG. 3

NO. 13-243

Under a 90-Day Interim Permit, the current operator, Chaffin & Reeves, Inc., has been providing quality service to the community. The individual monthly rental payments from the permittee have exceeded the highest month of gross revenue generated at the site in the last year that the operation was run solely by RAP. Approval of the interim concession agreement will allow RAP to continue to provide uninterrupted service to the public while an RFP is developed.

Staff will develop and, with approval from the Board, release an RFP for this concession. With the RFP, RAP will seek a qualified, experienced, and financially sound operator who will meet or exceed RAP's expectations in all operational and financial areas, and optimize service to the public and profitability to the business.

90-Day Interim Permit

The Echo Park Pedal Boats and Café RFP was approved by the Board for release on December 10, 2012 (BR 12-329). The RFP was released to the public on February 14, 2013, and on March 7, 2013, a Pre-Proposal Conference was held at which representatives for eight (8) companies attended.

On April 23, 2013, the RFP proposals were due. No proposals were received due in part to the inability of the perspective bidders to manage both operations (Pedal Boats and Café) as one concession. On May 23, 2013, the Pedal Boat operation and the Café operation were bifurcated from one another. 90-day interim permit proposal solicitations for each operation were sent to Pre-Proposal Conference attendees, allowing them to bid on either one or both opportunities.

On June 7, 2013, the Interim Permit proposals were due. Chaffin & Reeves, Inc., submitted the sole proposal for the Pedal Boat operation. Staff reviewed the proposal and found that the company was qualified to run the concession operation. On June 17, 2013, RAP staff met with Lloyd Reeves of Chaffin & Reeves, Inc., to discuss the terms of the 90-Day Interim Permit for the Concession.

On July 11, 2013, the Interim Permit between RAP and Chaffin & Reeves, Inc. for the operation of the Echo Park Pedal Boats Concession was executed. On July 20, 2013, the Concession opened to the public. This Interim Permit expires on October 5, 2013.

Pedal Boat Rental and Business Experience

Mr. Lloyd Reeves is a United States Coast Guard licensed Captain, a licensed pilot, a former National Canoe & Kayak Champion, as well as a World Games bronze medalist. In 1993 he opened the Morro Bay Sailing Center. In 2000, he began renting pedal boats at Atascadero Lake, and did the same at Redondo Beach in 2003. Chaffin & Reeves, Inc. was formed in 2004.

## REPORT OF GENERAL MANAGER

PG. 4

NO. 13-243Operation Plan

Offered at affordable prices, Chaffin & Reeves, Inc. will rent out pedal boats to patrons year-round during operation hours. In addition, out-rigger canoe rides and gondola rides for couples are available as well, each guided by trained staff.

Safety signs are posted on the docks. No less than one (1) certified life guard will be on-site during the hours of operation, and all employees handling the boats are trained in CPR, First Aid and water rescue techniques. Patrons riding the canoe or pedal boats are required to wear life jackets supplied by the concessionaire. A rescue paddle board and kayak are available to staff in case of an emergency to assist patrons out on the lake.

Concession Agreement

For this concession, the operator is permitted to use three (3) rooms of the Boathouse, the docks and the lake. The hours of operation will be year-round from 11:00 AM to 7:00 PM (or dusk, whichever is earlier). It will be closed during rainy weather and on Christmas Day. Under the terms of the one-year interim concession agreement, with up to two (2) one-year renewal options, Chaffin & Reeves, Inc. will provide a minimum of ten (10) pedal boats, an outrigger canoe, a gondola, a paddle board and kayak adequate for rescue operations, life jackets, safety related gear and equipment.

The concessionaire shall pay 10% of gross receipts monthly rent, and a minimum of \$500 per month, in each year of operation. If the total rent paid after each twelve (12) month period is less than \$6,000, the concessionaire will remit the difference to RAP.

FISCAL IMPACT STATEMENT:

During the one-year term of this concession agreement RAP will receive a minimum of \$6,000 in rent. Of that amount, \$5,400 will be deposited into Fund 302, Dept. 88 General Fund (90%), and \$600 will be deposited into Fund 302, Dept. 89, Account 89070K Concession Improvement Account (10%).

Report prepared by Shaun Larsuel, Management Analyst II, Finance Division, Concessions Unit.



## BOARD REPORT

PG. 2 NO. 16-257

bidders to manage both operations. Subsequently, the Pedal Boat and Café Operation were bifurcated.

On July 11, 2013, RAP issued a 90-Day Interim Permit to Chaffin & Reeves, Inc., the current operators. On September 18, 2013, the Board approved an Interim Concession Agreement with Chaffin & Reeves for a one-year term with two one-year renewal options exercisable at the General Manager's sole discretion through Report No. 13-243 (Attachment 3).

On April 28, 2015, RAP issued a Temporary, Revocable Right-of-Entry Permit to Chaffin & Reeves to operate a second pedal boat rental location as a result of RAP staff identifying an opportunity to bring pedal boats to Lake Balboa.

In preparation for the expiration of these permits, RAP staff has developed this RFP for the operation and maintenance of pedal boat rental concessions at these and other future locations. RAP seeks a qualified, experienced, and financially sound operator who will meet or exceed RAP's expectations and optimize service to the public and profitability of the Concessions. The award of a pedal boat rental concession does not guarantee exclusive right for the successful proposer to operate all pedal boat rental concession locations.

#### Proposal and Contractual Provisions

1. **Proposal Deposit:** A Ten Thousand (\$10,000.00) proposal deposit will be required with the submission of each proposal.
2. **Term:** Five years with one five-year extension option exercisable at the sole discretion of the RAP General Manager.
3. **Echo Park Lake Boathouse Revenue-Sharing Terms:** Concessionaire will pay the greater of Sixty Thousand, Five Hundred Dollars (\$60,500.00) or the percentage of gross receipts as bid in response to this RFP. The minimum acceptable percentage is 12% of gross revenue.

**Lake Balboa Revenue-Sharing Terms:** Concessionaire will pay the greater of Thirty-Two Thousand Dollars (\$32,500.00) or the percentage of gross receipts as bid in response to this RFP. The minimum acceptable percentage is 12% of gross revenue.

4. **Echo Park Boathouse Concession Improvements:** No concession improvements are required for Echo Park Boathouse. Physical improvements, repairs or physical alterations to the Boathouse are restricted due to the historical significance of the facility. RAP reserves the right to request a capital improvement plan upon exercising the five (5) year renewal option.

**Lake Balboa Concession Improvements:** RAP reserves the right to request facility improvements to the pedal boat loading docks, shade/tent structures, and concession trailer/mobile kiosk during the term of the Agreement. RAP reserves the right to request a capital improvement plan upon exercising the five-year renewal option.

## BOARD REPORT

PG. 3 NO. 16-257

5. **Reserve Fund:** The Concessionaire, in addition to submitting a monthly revenue sharing payment, shall also submit to RAP a monthly reserve fund (Fund) payment in the amount of Two Hundred Dollars (\$200.00) per month for the purpose of repair, refurbishment, or replacement of equipment and capital improvements. This Fund shall not be used for routine repair and maintenance or replacement of equipment. The Fund shall be cumulative and carry-over from year-to-year during the term of the Agreement. In the event of Agreement termination, or at the conclusion of the Agreement term, any amount in this Fund account will remain with RAP. Annually in January, the Concessionaire may submit a request for use of the Fund for expenditures in the coming year, for review and the written approval of the General Manager. In the event of emergency, the Concessionaire shall request in writing the use of the Fund for other purposes, or the General Manager may request use of the Fund on a specific repair, refurbishment, or replacement.
6. **Utilities:** The 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 water, gas, electricity, heat, air-conditioning, trash pick-up, and other utility services to the premises, and shall be paid by the Concessionaire regardless of whether such utility services are furnished by the City or by other utility service providers. The Concessionaire will pay directly for telephone services, which will be in the name of the Concessionaire. In the event that individual utility meters are not available, the Concessionaire shall remit, on a monthly basis in conjunction with revenue-sharing and monthly reserve fund payments to the Department, the amount of Two Hundred Dollars (\$200.00) per location as payment for utilities. The payment for utilities will be subject to increase after the first year of operation to cover increasing utility costs.
7. **Contractual and Financial Terms:** The City will enter into an Agreement whereby the City has no financial responsibility or liability for operation of the Concession and the City will share in profits in the form of a percentage of gross revenue-based and/or annual minimum revenue-based sharing payment in addition to monthly reserve fund payment and utility payments as applicable.
8. **Performance Deposit:** A Performance Deposit (Deposit) will be required to be maintained for the duration of the Agreement in the amount of Ten Thousand Dollars (\$10,000.00). The Deposit will be in the form of a cashier's check made out to the City of Los Angeles.

**Evaluation Process**

Proposals will be evaluated in two Levels. Level I will be a check and review by RAP staff of compliance with City contracting requirements and submittal documents. Level II will be a comprehensive evaluation of the proposals that may consist of a review panel comprised of qualified persons. Proposers must successfully pass Level I to proceed to Level II



**BOARD REPORT**

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**RFP Evaluation Criteria**

Proposals that pass the Level I review will be evaluated on the criteria below:

- 1) Background and Experience (20 points possible) (25 points possible)
- 2) Business Plan (20 points possible) (25 points possible)
- 3) Operational Plan (30 points possible)
- 4) Revenue-Sharing Payment (30 points possible) (20 points possible)

The RFP will be advertised in the Los Angeles Daily Journal; made available on RAP's website; posted on the Los Angeles Business Assistance Virtual Network (BAVN), and other local community advertising agencies. A letter inviting bids will be mailed to organizations and individuals from a mailing list maintained by the Concessions Division.

A mandatory Pre-Proposal Conference will be held following the release of the RFP in order to provide potential proposers with a review of the submittal documents, compliance documents, and requirements for the Business Inclusion Program (BIP). Site walks will be conducted after the conference in order for the potential proposers to view the facilities to gain a better understanding of the operation and maintenance of the Concession.

**ENVIRONMENTAL IMPACT STATEMENT**

Approval and release of the RFP does not impact the California Environmental Quality Act (CEQA) Guidelines.

**FISCAL IMPACT STATEMENT**

This RFP process has no impact to RAP's General Fund.

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

**LIST OF ATTACHMENTS**

- 1) Draft Pedal Boat Rental Concession RFP CON-M16-003
- 2) Board Report No. 12-329 dated December 10, 2012
- 3) Board Report No. 13-243 dated September 18, 2013

Pedal Boat Rental Concession Price List

ATTACHMENT 5

## Wheel Fun Rentals

Proposed Pricing Echo Park and Lake Balboa

<b>BOAT RENTALS</b>	<b>Hourly Rate</b>	<b>Late Fee*</b>
Single Pedal Boat (2 Person)	\$25	\$6.25
Double Pedal Boat (4 Person)	\$35	\$8.75
Hand Crank Pedal Boat (2 Person)	\$25	\$6.25
Wheelchair Accessible Pedal Boat (2 Person)	\$25	\$6.25
Gondola Guided Excursion (2 Persons)	\$75	
Catamaran Guided Excursion (Up to 5 Persons)	\$75	
<b>*Late Fees are pro rated in 15 minute increments after grace period</b>		

<b>Group Rental Pricing</b>	<b>Group Size</b>		
	<b>15-24 People</b>	<b>25-75 People</b>	<b>76+ People</b>
Weekday Group	\$11.50	\$9.50	\$6.50
Weekend Group	\$13.50	\$11.00	\$9.00

<b>ANNUAL PASS</b>	<b>Price</b>
Annual Pass (Valid for one year from date of purchase) \$12, plus initial rental fee, to become an Annual Pass member which gives customers 50% off rentals or tours for an entire year. Plus, we throw in an extra half an hour onto the rental the day the pass is purchased	\$12 (in addition to rental fee)



**REVISED  
AGREEMENT  
FOR THE OPERATION AND MAINTENANCE OF  
THE PEDAL BOAT RENTAL CONCESSION**

**BETWEEN**

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

**AND**

**FREETIME, INC. DBA WHEEL FUN RENTALS**

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**AGREEMENT FOR OPERATION AND MAINTENANCE OF THE  
PEDAL BOAT RENTAL CONCESSION**

THIS Agreement (hereinafter "AGREEMENT" or "CONTRACT") is made and entered on this 8<sup>th</sup> day of February, 2018, by and between the CITY OF LOS ANGELES, a municipal corporation acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "CITY"), and Freetime, Inc. DBA Wheel Fun Rentals, a California corporation (hereinafter referred to as "CONCESSIONAIRE" or "CONTRACTOR").

**WHEREAS**, the Department of Recreation and Parks (hereinafter referred to as "RAP") seeks to serve the public by providing pedal boat and related services at Echo Park (Lake), Anthony C. Beilenson Park (Lake Balboa), and other future locations (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 RAP for the improvement, operation and maintenance of RAP's CONCESSION; and

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

**WHEREAS**, RAP advertised for proposals for the operation and maintenance of the CONCESSION, to include providing pedal boat rental and related services to the public; and

**WHEREAS**, RAP received and evaluated four proposals which were received on March 8, 2017; and

**WHEREAS**, Freetime, Inc. DBA Wheel Fun Rentals was scored as the highest-ranked proposer, and selected to provide pedal boat rental and related services at the PREMISES (as hereinafter defined) 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 Echo Park Lake, Lake Balboa and other future locations.

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

**SECTION 1. DEFINITIONS**

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

AGREEMENT: This Concession Agreement consisting of thirty-three (33) pages and fourteen (14) exhibits (A-N) attached hereto

BOARD: Board of Recreation and Park Commissioners

CITY: The City of Los Angeles, Acting by and through its Board of Recreation and Park Commissioners

CONCESSION: Pedal Boat Rental Concession

CONCESSIONAIRE: Freetime, Inc. DBA Wheel Fun Rentals

RAP: The Department of Recreation and Parks

FACILITIES: Echo Park, 751 N. Echo Park Avenue, Los Angeles, CA 90026, Anthony C. Beilenson Park, Lake Balboa, 6300 Balboa Blvd., Van Nuys, CA 91406; and other future locations.

LAAC: Los Angeles Administrative Code

LAMC: Los Angeles Municipal Code

PREMISES: The geographical area, as defined in Section 3 of this AGREEMENT, in which the CONCESSION may be operated.

STANDARD PROVISIONS: Standard Provisions for City Contracts (Rev. 3/09), attached hereto as "Exhibit B" and incorporated herein.

## **SECTION 2. PERMISSION GRANTED**

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, RAP hereby grants to CONCESSIONAIRE, the exclusive right and obligation to operate the CONCESSION on the PREMISES.

CONCESSIONAIRE is granted the right to use the designated PREMISES for the purpose of providing pedal boats for rent for a fee, including use of the dock area for loading and unloading patrons from boats, and provide assistance or first aid to patrons as required. No other purpose or activity is authorized, including sales of any merchandise or food or beverage. Any other activity is prohibited without prior written consent of RAP.

The CONCESSION rights herein granted shall be carried on at the FACILITIES 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 FACILITIES.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITIES regarding the services to be offered or products to be sold by

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

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

### **SECTION 3. PREMISES**

The PREMISES (Exhibit A) subject to this AGREEMENT are located at the following:

#### **Echo Park Lake**

Echo Park, 751 N. Echo Park Avenue, Los Angeles, CA 90026. The PREMISES shall include the Boathouse and all, if any, portions of the park at Echo Park Lake that RAP, by express written consent, approves for CONCESSION operation. Any discrepancy in the definition or boundaries of PREMISES shall be resolved solely by RAP.

The CONCESSION is situated within a fifteen hundred (1,500) square foot Boathouse on the east side of Echo Park Lake. The Boathouse was originally constructed in 1932. The design of the Boathouse is in the Spanish Colonial Revival Style. The Boathouse is a historically significant contributing element to the surrounding Echo Park Lake. The thirteen (13) acre Lake is surrounded by Echo Park, with (11) eleven acres of open recreational space. In 2006, the City designated Echo Park as Historic-Cultural Monument (HCM) No. LA-836.

#### **Lake Balboa**

Anthony C. Belienon Park, 6300 Balboa Blvd., Van Nuys, CA 91406. The PREMISES shall include the dock area adjacent to the RAP Lifeguard Station and all portions of the park that RAP, by express written consent, approves for CONCESSION operation. Any discrepancy in the definition of boundaries of PREMISES shall be resolved by RAP.

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

### **SECTION 4. TERM OF AGREEMENT**

The term of the AGREEMENT shall be five (5) years with one five-year extension option exercisable at the sole discretion of RAP, effective on the date of execution of this AGREEMENT by all parties hereto. Neither RAP, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke or terminate 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.

The docks shall be washed daily, and a water sealant for wood shall be applied to the top surface of the docks as appropriate.

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

**B. Conduct**

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

**C. Disorderly Persons**

CONCESSIONAIRE shall use its best efforts to disallow any intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon peace officers to assist in maintaining peaceful conditions. CONCESSIONAIRE shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

Minor rule enforcement to achieve compliance shall be handled by CONCESSIONAIRE. Rule enforcement that results in terminating the pedal boat ride or retrieving the boat shall be handled by CONCESSIONAIRE.

**D. Personnel**

**1. Freedom from Tuberculosis**

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

**2. Qualified Personnel**

CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with RAP. All such personnel, while on or about 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. In the event an employee is not satisfactory, RAP may direct CONCESSIONAIRE to remove that person from the PREMISES.

CONCESSIONAIRE shall maintain adequate staffing of employees certified in First Aid, CPR and Water Rescue as indicated in the Safety Plan (Exhibit E). RAP may evaluate the CONCESSION operation at any time and require additional lifeguards or other safety obligations. CONCESSIONAIRE is responsible for all costs associated with any certifications for employees and will reimburse CITY for any costs in the event that RAP staff assists in providing safety monitoring or other assistance. In the event that adequate staffing procedures and/or safety monitoring are not maintained by CONCESSIONAIRE, RAP may direct CONCESSIONAIRE to close the CONCESSION at CONCESSIONAIRE'S expense until RAP has determined that it is safe to resume operations.

3. **Concession Manager**

CONCESSIONAIRE shall appoint, subject to written approval by RAP, a Concession Manager. Such person must be a qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and manage and supervise the operation of the CONCESSION, including the quality and prices of goods and services, and the appearance, conduct, and demeanor of CONCESSIONAIRE'S agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

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

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

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

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

#### **E. Pricing and Standards**

1. CONCESSIONAIRE'S services, including price for same, shall be submitted to RAP for approval. Within seven (7) calendar days of notice from RAP, Concessionaire shall adjust service and/or price if the service or equipment is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of RAP. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All prices shall be comparable to prices charged in similar establishments in the City. CONCESSIONAIRE shall, upon execution of AGREEMENT, provide RAP with a list of prices for services. This list shall be updated whenever prices are changed.
2. CONCESSIONAIRE shall offer pedal boat services as described in CONCESSIONAIRE's Proposal, which will become Exhibit C to this AGREEMENT. Boats rented by CONCESSIONAIRE on said PREMISES shall be of a high quality acceptable to industry standards and in conformance with all Federal, State and Municipal laws, ordinances, and regulations in every respect. RAP may order the improvement or upgrade of rental boats.
3. All services, offered and/or sold by CONCESSIONAIRE on said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. No adulterated, misbranded, or impure articles shall be sold or kept for sale by CONCESSIONAIRE. All merchandise kept for sale by CONCESSIONAIRE shall be subject to the approval or rejection of RAP and CONCESSIONAIRE shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the written approval of RAP. RAP may order the improvement of the quality of any merchandise kept or offered for sale.
4. CONCESSIONAIRE is prohibited from selling food items and other merchandise without the written consent of RAP.
5. CONCESSIONAIRE shall not sell lottery tickets or similar type merchandise.

#### **F. 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.

**G. Equipment, Furnishings, and Expendables**

All equipment, furnishings, and expendables required for said CONCESSION shall be purchased and installed by CONCESSIONAIRE at its sole expense and shall remain its personal property.

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

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

1. A minimum of twenty-two (22) pedal boats at all times at Lake Balboa.
2. Four (4) person Swan Boat – Twelve (12)
3. Two (2) person Swan Boat – Eight (8)
4. A minimum of thirty-two (32) pedal boats for rent at all times at Echo Park
5. Four (4) person Swan Boat – Eighteen (18)
6. Two (2) person Swan Boat – Twelve (12)
7. A Gondola – One (1) per location
8. An Outrigger Canoe – One (1) per location
9. A rowboat adequate for water rescue operations – One (1) per location
10. A kayak adequate for rule enforcement - One (1) per location
11. A Wheelchair Accessible Boat - One (1) per location
12. A Hand Crank Boat – One (1) per location
13. Quality life jackets and safety vests in a variety of sizes
14. A trailer or prefabricated building for the purpose of providing a secure cash register and payment location for customers, and to provide storage for concession equipment.

**H. 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 RAP, together with all of the fixtures, plate and mirror glass, equipment, countertops, cabinetry, indoor and outdoor furniture and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance. RAP will be responsible for utility lines and repairs, including telephone, exterior to the PREMISES.

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

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

**I. 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.

**J. Signs and Advertisements**

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

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

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

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 RAP may direct, any and all of its signs and displays and, in connection therewith, shall restore said PREMISES and improvements thereto to the same condition as prior to the placement of any such signs or displays.

RAP may, at its discretion, install RAP-issued umbrella or canopy shade structure bearing the City's or RAP logo at RAP's request. Said umbrella or canopy shade structure shall be provided by RAP at no cost to CONCESSIONAIRE. RAP-issued umbrella and/or canopy shade structures shall remain City property and shall be returned to RAP upon the expiration or earlier termination of this AGREEMENT.

**K. 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 electricity, heat, air-conditioning, and other utility services to PREMISES. Such charges 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.

In the event that individual utility meters are not available, CONCESSIONAIRE shall remit, on a monthly basis in conjunction with revenue-sharing payments to RAP, the amount of Two Hundred Dollars (\$200.00) as payment for utilities. Payment of utilities

will be subject to increase annually to cover increasing utility costs.

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

CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the rental payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake, wind, civil commotion, or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforementioned 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.

**L. Vending Machines**

CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of RAP. RAP shall have the right to order the immediate removal of any unauthorized machines.

**M. Safety and First Aid**

CONCESSIONAIRE shall adhere to the Concessionaire's Safety Plan (Exhibit E). CONCESSIONAIRE shall be responsible for minor first aid and for retrieving boats and/or patrons in the event of mechanical problems. In the event that adequate staffing procedures and/or safety monitoring are not being maintained by CONCESSIONAIRE, RAP may direct CONCESSIONAIRE to close the CONCESSION at CONCESSIONAIRE's expense until it has been determined that it is safe to resume operations.

Due to the potential for water-related accidents and injuries to boat patrons, the CONCESSIONAIRE shall be required to:

1. Post, implement, and enforce all safety rules and regulations related to the PEDAL BOAT RENTAL.
2. Ensure all patrons riding in pedal boats are wearing life jackets.
3. Ensure that staff are trained and knowledgeable of guidelines for the proper operation of the pedal boats, gondola, outrigger canoe, or any other floating device offered for rent.
4. Provide and make use of a paddle board and kayak for the purposes of effecting rescues and notifying patrons of rule infractions.

CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or RAP notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on 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 20, "NOTICES," for mailing address) (Exhibit F). If CONCESSIONAIRE fails to promptly correct hazardous conditions specified by RAP in a written notice, which have led, or in the opinion of CITY could lead, to injury, RAP may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

#### **Lake Balboa**

For the Lake Balboa CONCESSION, CONCESSIONAIRE shall adhere to all safety guidelines stipulations under this Section M. "Safety and First Aid." Notwithstanding the foregoing, emergency response for boat patrons at Lake Balboa shall be handled by RAP staff initially; until it is determined the emergency is resolved. Major first aid to patrons of the Lake Balboa boat rental will be provided by RAP staff. First aid resulting from land activity in Anthony C. Belienon Park shall be handled by RAP staff.

#### **N. 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 including the protection of those existing facilities and natural resources at and near the PREMISES. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

#### **O. Fund Raising Activities**

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

#### **P. Community Outreach**

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

RAP and CONCESSIONAIRE agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of this AGREEMENT, the use or promotion of the PREMISES, or the CONCESSION, except as may be legally required by applicable laws, regulations, or judicial order. RAP and CONCESSIONAIRE agree to notify each other in writing of any press release, public announcement, marketing or promotion of the PREMISES. Further, any press release, public announcement, marketing materials, or brochures prepared by either RAP or CONCESSIONAIRE, shall appropriately acknowledge the contributions of both RAP and CONCESSIONAIRE. To the extent stipulated in any grant agreement, RAP and CONCESSIONAIRE shall duly notify any grantors, and each other,

prior to any public or media event publicizing the accomplishments funded by any grant agreement, and shall provide the opportunity for attendance and participation by grantor representatives. Further, RAP and CONCESSIONAIRE shall coordinate the scheduling and organization of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of both RAP and CONCESSIONAIRE; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by either RAP or CONCESSIONAIRE, in whole or in part pursuant to the acquisition of property and/or installation of improvements, shall contain any acknowledgements required under any grant agreement.

CONCESSIONAIRE agrees that any public release or distribution of information related to this AGREEMENT or CONCESSION and related programs or services, shall include the following statement at the beginning or introduction of such release:

“This concession is operated under a written agreement with the  
City of Los Angeles, Department of Recreation and Parks,  
and is in collaboration with the mission and activities of Recreation and Parks”

**Q. Amplified Sound**

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

**R. Security**

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

**S. 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 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 PREMISES, RAP shall have final determination of any solution to such dispute; RAP's final determination shall be binding upon all parties in such dispute.

**T. Filming**

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

**U. Receipts**

1. CONCESSIONAIRE shall offer receipts to customers for every transaction.



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

## **SECTION 6. IMPROVEMENTS**

Physical improvements, repairs or physical alterations to the Echo Park Boathouse ("Boathouse") are restricted due to the historical significance of that FACILITY. CONCESSIONAIRE is not required to provide any improvements to the FACILITIES. The award of the AGREEMENT shall not constitute approval to make any improvements. Notwithstanding the foregoing, RAP reserves the right to request a capital improvement plan upon exercising the five (5) year renewal option.

In the event improvements, repairs or physical alterations are required at any location, for any reason during the term of the AGREEMENT, no improvements, repairs or physical alterations to the Boathouse may be initiated by CONCESSIONAIRE without prior written approval from RAP. In addition to written approval from RAP, the CONCESSIONAIRE must also obtain the prior written approval of the Cultural Heritage Commission for any proposed substantial alterations to the affected area, in accordance with Section 22.171.14 of the Los Angeles Administrative Code.

Any infractions, large or small, to the prohibition on improvements, repairs or physical alterations will be treated as a material breach of the AGREEMENT and will be subject to all of the applicable laws, fines and penalties imposed by the City's Department of Building and Safety, as well as the Office of Historic Resources.

CITY shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all improvements, according to RAP 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, not completed as stipulated, or not completed to the satisfaction of RAP. Such damages may include, but are not limited to, recovering up to the entire cost of the improvements from the CONCESSIONAIRE's performance deposit. The performance deposit must be recompensed as stipulated in Section 12, "Performance Deposit," herein. Failure to complete the required improvements within the time frame specified in the written approval, or as prescribed by RAP, shall subject CONCESSIONAIRE 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 to RAP. At that point, RAP 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 value of the improvements as approved by RAP under this AGREEMENT or otherwise, the CONCESSIONAIRE will be responsible to RAP for the difference payable within (30) days of written notification.

RAP reserves the right to further develop or improve the FACILITIES 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. RAP shall not be liable for loss of business which results from the construction of any development or improvements to the FACILITIES or the PREMISES.

**A. Reserve Fund**

RAP will establish a reserve fund for the CONCESSION. CONCESSIONAIRE shall submit with the monthly revenue-sharing payment, a monthly reserve fund (Fund) payment in the amount of Two Hundred Dollars (\$200.00) per month for the purpose of repair, refurbishment, or replacement of equipment and capital improvements. This Fund is not to be used for routine repair and maintenance or lost equipment replacement. The Fund shall be cumulative and carry-over from year-to-year during the term of the AGREEMENT. In the event of AGREEMENT termination for any reason, or at the conclusion of the AGREEMENT term, any amount in this Fund account will remain with RAP. Annually in January, the CONCESSIONAIRE may submit a request for use of the Fund for expenditures in the coming year for review and approval of RAP. In the event of emergency, CONCESSIONAIRE shall request in writing the use of the Fund for other purposes, or RAP may request use of the Fund on a specific repair, refurbishment, or replacement.

**B. Compliance with Applicable Rules and Regulations**

All structural or other improvements, equipment and interior design and decor constructed or installed by CONCESSIONAIRE in the FACILITIES, 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 FACILITIES or CONCESSIONAIRE'S operations therein. The written approval by RAP of any improvements as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain with CONCESSIONAIRE.

**C. Procurement of Permits and Approvals**

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

**D. Subcontractors**

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

**SECTION 7. HOURS / DAYS OF OPERATION**

Echo Park Lake

The CONCESSION must be open, weather permitting, in conjunction with the Echo Park Café Concession. RAP staff will coordinate as needed. The minimum hours of operation are as follows:

Open daily from 9:00 a.m. to sunset including ALL major holidays.

## Lake Balboa

The minimum hours of operation are as follows:

Open daily from 9:00 a.m. to sunset including ALL major holidays.

CONCESSIONAIRE must post the hours of operation in a location visible to the public, and must be open for business during the hours posted. Hours of operation may not be changed without prior written approval of RAP.

CONCESSIONAIRE will cease renting boats within ninety (90) minutes prior to the “closing time” of the park, which is defined as the closest fifteen (15) minute increment after sunset. Rentals already on the water shall be allowed to complete their usage.

CONCESSIONAIRE shall cooperate with RAP personnel and Park staff on all matters relative to the conduct of operations or any activity, event, and/or special use at PREMISES, including concerns related to parking, traffic, and attendance.

### **SECTION 8. REVENUE-SHARING FEE PAYMENT**

As part of the consideration for CITY'S granting the CONCESSION rights as set forth in this AGREEMENT, CONCESSIONAIRE shall pay to CITY a monthly revenue-sharing fee for each FACILITY as follows:

#### **A. Echo Park Lake**

The greater of:

- The Annual Minimum Revenue-Sharing Guarantee of One Hundred Five Thousand Six Hundred Dollars (\$105,600.00)

or

- 22% of gross receipts of all sales

#### **B. Lake Balboa**

The greater of:

- The Annual Minimum Revenue-Sharing Guarantee of Fifty Two Thousand Eight Hundred Dollars (\$52,800.00)

or

- 22% of gross receipts of all sales

Refer to SECTION 8.D for the definition of “Gross Receipts.”

If the minimum annual revenue-sharing payment is not satisfied by December 31st of each calendar year, the difference between the actual revenue-sharing payment received by the City and the minimum annual revenue-sharing payment will be due to the City by January 15<sup>th</sup> 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.

**C. 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 G) shall be addressed to:

CITY OF LOS ANGELES  
DEPARTMENT OF RECREATION AND PARKS  
ATTENTION: Partnership and Revenue Branch/Concessions Division  
P. O. Box 86328  
Los Angeles, CA 90086

**D. Gross Receipts Defined**

The term "gross receipts" is defined as the total revenue collected for services or goods (whether or not such services are performed as a part of or in connection with the sale of goods) by the CONCESSIONAIRE. CONCESSIONAIRE shall maintain an accurate accounting method for the CONCESSION which correctly reflects all gross receipts and disbursements by CONCESSIONAIRE from the CONCESSION operation. Methods 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 documents for the CONCESSION for the following items, which shall not be considered part of gross receipts:

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

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

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

**E. 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 G), for the month for which a payment is submitted.

**F. Late Payment Fee**

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

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

The charges for late or delinquent payments shall be 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.

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

## **SECTION 9. ADDITIONAL FEES AND CHARGES**

- A. If 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 revenue sharing fee payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic revenue sharing fee payment set forth in Section 8 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, whether approved in writing by RAP or not, may result in additional charges; however, any such use without the prior written approval of RAP shall also constitute a material breach of AGREEMENT and is prohibited.

## **SECTION 10. MAINTENANCE OF PREMISES**

During all periods that the PREMISES are used or are under the control of CONCESSIONAIRE for the uses, purposes, and occupancy aforesaid, CONCESSIONAIRE shall be responsible for all necessary janitorial duties and damage/maintenance repairs, to the satisfaction of RAP.

The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism.

**A. Interior of Premises**

1. Areas to be maintained by CONCESSIONAIRE:

CONCESSIONAIRE shall, at its own expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by 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, RAP may direct CONCESSIONAIRE to perform necessary repairs and maintenance to the interior of the structure or to the equipment, whether the equipment is CONCESSIONAIRE or 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 RAP to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the PREMISES, such as light fixtures, toilets, and faucets.

**B. Exterior of Premises and Common Passageways**

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, RAP

may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand. If, for any reasons, payment of such fees becomes delinquent, RAP may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

**D. Property Damage and Theft Reporting**

CONCESSIONAIRE shall complete and submit to RAP a "Special Occurrence and Loss Report," (Exhibit H) in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. Blank forms for this purpose shall be provided by RAP.

**E. Damage or Destruction to Premises**

**1. Partial Damage**

If all or a portion of the PREMISES is 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 RAP as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

**3. Complete Destruction**

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, 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 PREMISES.

**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 storage facilities, offices and storage containers owned and/or used by CONCESSIONAIRE.
2. Other areas, structures, or facilities adjacent to the PREMISES, but not used by or under the control of CONCESSIONAIRE; or areas, structures, or facilities shared by CONCESSIONAIRE and RAP.
3. Open structures such as the dock area where the boats are moved.

Pest control for pests which may cause permanent structural damage to RAP 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 AGREEMENT, and keeping wood components painted. RAP may direct CONCESSIONAIRE to take additional measures to abate pests which are an immediate threat to public health or safety.

**SECTION 11. 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 PREMISES, nor do or permit to be done anything which may interfere with free access and passage to 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 PREMISES 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 RAP.
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 to any existing door or window lock or the mechanism thereof, unless a key is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to RAP any and all keys to the interior and 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 RAP, 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 RAP, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the CONCESSION 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 the CONCESSION, or from carrying on the CONCESSION 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. Climb the ladder that accesses the Tower area inside the Boathouse (Exhibit A, Space 5).
12. Use the PREMISES in any manner that will constitute waste.
13. Use or allow the PREMISES to be used for, in the opinion of RAP, any improper, immoral, or unlawful purposes.

## **SECTION 12. PERFORMANCE DEPOSIT**

CONCESSIONAIRE shall provide RAP a sum equal to Ten Thousand Dollars (\$10,000.00) to guarantee payment of fees and as a damage deposit ("Deposit") to be used in accordance with the default provisions of this AGREEMENT.

CONCESSIONAIRE'S Deposit shall be in the following form:

A cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, which cashier's check is payable to the order of the City of Los Angeles.

### **A. Agreement of Deposit and Indemnity**

CONCESSIONAIRE unconditionally agrees that in the event of any default or breach under this AGREEMENT, 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 RAP.

### **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 the terms and conditions of the AGREEMENT.

## **SECTION 13. 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, certifications, etc. CONCESSIONAIRE shall perform all necessary coordination to ensure performance of permitted activity.
- B. CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the

AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

- C. 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 and utilities) attributable to said calendar quarter, plus One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter for each additional One Thousand Dollars (\$1,000.00) of charges or fractional part thereof in excess of One Thousand Dollars (\$1,000.00). Said tax shall be paid quarterly to RAP, on or before the fifteenth (15<sup>th</sup>) of April, July, October, January of each calendar year, for the preceding three 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 14. ASSIGNMENT, SUBLEASE, BANKRUPTCY**

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

#### **SECTION 15. 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 RAP, 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 RAP's discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.

**B. Cash and Record Handling Requirements**

If requested by RAP, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to RAP for approval.

CONCESSIONAIRE shall be required to maintain a method of accounting which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE. 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 RAP'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 RAP's written approval of the specific hardware and software to be purchased.

**D. Annual Statement of Gross Receipts and Expenses**

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations as specified in the AGREEMENT, in a form acceptable to RAP, on or before April 30th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. An extension may be granted in writing, prior to the April 30th due date, by

RAP provided sufficient verification of the need for the extension is provided, as accepted by RAP. The charge for late or delinquent Statements shall be One Hundred 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 16. 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**

CONCESSIONAIRE shall comply with the following rules, laws and regulations:

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 RAP 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 RAP and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or RAP.

**D. Right of Inspection**

CITY and RAP, 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 RAP fully as to CONCESSIONAIRE's conduct of the CONCESSION. During these inspections, they all shall have the right to photograph, film, or otherwise record conditions and events taking place upon 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.
3. To ensure quality control and verify the validity of mandatory operating permits.

**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 J). 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 K) when submitting the Monthly Remittance Advice. Upon completion of the AGREEMENT, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit L) and certified correct by CONCESSIONAIRE or its authorized representative. The completed Schedule C shall be furnished to RAP 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 the AGREEMENT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONCESSIONAIRE estimates it will need to fill in order to perform the services under 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 DAA, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the LAAC the DAA has determined that the CONCESSIONAIRE intentionally violated or used hiring practices for the purpose of avoiding the FSHO, 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 the FSHO.

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



H. **CEC Form 50**

CONCESSIONAIRE agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if CONCESSIONAIRE qualifies as a lobbying entity under Los Angeles Municipal Code 48.02. CEC Form 50 is attached hereto as Exhibit M.

Bidder Contributions – City Charter Sections 470(c) (12)

Concessionaire is subject to Charter section 470(c) (12) and related ordinances. As a result, CONCESSIONAIRE may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office for twelve (12) months after the AGREEMENT is signed. CONCESSIONAIRE's principals and subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the AGREEMENT, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

I. **CEC Form 55**

CEC Form 55 requires CONCESSIONAIRE to identify their principals, their subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the AGREEMENT, and the principals of those subcontractors. CONCESSIONAIRE must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. If CONCESSIONAIRE fails to comply with City law, it may be subject to penalties, termination of the AGREEMENT, and debarment. Additional information regarding restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or [ethics.lacity.org](http://ethics.lacity.org).

**SECTION 17. 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 AGREEMENT or any prior agreement or lease. CONCESSIONAIRE will have thirty (30) days to effect removal and restoration. RAP may 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 18. 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 Division  
P.O. Box 86328  
Los Angeles, CA 90086

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. Written notices may also be emailed to RAP Concessions Analyst.

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 RAP shall be as effective for CONCESSIONAIRE as if it were executed by BOARD, or by Resolution or Order of said BOARD.

All such notices may 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, or transmitted via email by RAP Concessions Analyst. 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:

Freetime, Inc., DBA Wheel Fun Rentals  
Attn: Al Stonehouse  
4256 Telephone Rd., #202  
Ventura, CA 93003

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

## **SECTION 19. 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. Echo Park Boathouse and Lake Balboa Premises Maps
- B. Standard Provisions for City Contracts (Rev. 3/09)
- C. Proposal in Response to RFP No. CON-M16-003
- D. Echo Park Boathouse Floor Plan
- E. Echo Park Boathouse and Lake Balboa Safety Plans
- F. Form General No. 87 "Non-Employee Accident or Illness Report"
- G. Remittance Advice Forms Echo Park Boathouse and Lake Balboa
- H. Special Occurrence and Loss Report
- I. Required Insurance and Minimum Limits
- J. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- K. Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile
- L. Schedule C, Final Subcontracting Report
- M. CEC Form 50, Bidder Certification
- N. Freetime, Inc. DBA Wheel Fun Rentals Price List

In the event of any inconsistency between any of the provisions of this AGREEMENT and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This AGREEMENT exclusive of attachments, 2) Exhibit A, 3) Exhibit B, 4) Exhibit C, 5) Exhibit D, 6) Exhibit E, 7) Exhibit F, 8) Exhibit G, 9) Exhibit H, 10) Exhibit I, 11) Exhibit J, 12) Exhibit K, 13) Exhibit L, 14) Exhibit M, 15) Exhibit N.


*(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 its Board of Recreation and Park Commissioners

BY:  DATE: 2/8/18  
MICHAEL A. SHULL  
General Manager

FREETIME, INC. DBA WHEEL FUN RENTALS

BY:  DATE: 2/2/18  
Title: President

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

BY:  DATE: 2/8/18  
Deputy City Attorney

Business Tax Registration Certificate Number: 0000138509-0002-1

Internal Revenue Service Taxpayer Identification Number: 77-0529176

AGREEMENT Number: 3607