

**POINSETTIA TENNIS PROFESSIONAL  
REQUEST FOR PROPOSAL ARS-T11-01**

**EXHIBIT C**

**SAMPLE CONCESSION  
AGREEMENT**

**AGREEMENT FOR THE OPERATION AND MAINTENANCE  
OF THE  
POINSETTIA TENNIS PROFESSIONAL CONCESSION**

**Between**

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

**And**

***CONCESSIONAIRE'S NAME***

AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE  
POINSETTIA TENNIS PROFESSIONAL CONCESSION

TABLE OF CONTENTS

1.	DEFINITIONS .....	2
2.	PERMISSION GRANTED .....	3
3.	PREMISES .....	4
4.	TERM OF AGREEMENT .....	4
5.	TIME OF EXECUTION .....	4
6.	REVENUE SHARING FEE AND PAYMENT .....	5
7.	ADDITIONAL FEES AND CHARGES .....	8
8.	HOURS / DAYS OF OPERATIONS .....	8
9.	OPERATING RESPONSIBILITIES .....	9
10.	MAINTENANCE OF PREMISES .....	18
11.	IMPROVEMENTS .....	21
12.	LIABILITY .....	23
13.	PROHIBITED ACTS .....	26
14.	PERFORMANCE DEPOSIT .....	28
15.	NUMBER OF ORIGINALS .....	28
16.	INDEPENDENT CONTRACTORS / CONSULTANTS .....	28
17.	TAXES, PERMITS, AND LICENSES .....	28
18.	ASSIGNMENT, SUBLEASE, BANKRUPTCY .....	29
19.	BUSINESS RECORDS .....	30
20.	REGULATIONS, INSPECTION, AND DIRECTIVES .....	32
21.	TERMINATION .....	35
22.	SURRENDER OF POSSESSION .....	38
23.	WAIVER .....	38
24.	CONDITIONS AND COVENANTS .....	38
25.	FORCE MAJEURE .....	38
26.	REMEDIES ARE NON-EXCLUSIVE .....	38
27.	AGREEMENT BINDING UPON SUCCESSORS .....	39
28.	LAW OF CALIFORNIA APPLIES .....	39
29.	AGENT FOR SERVICE OF PROCESS .....	39
30.	VENUE .....	39
31.	WAIVER OF CLAIMS .....	39
32.	NOTICES .....	39
33.	INTERPRETATION .....	40
34.	AGREEMENT CONTAINS ENTIRE AGREEMENT .....	41
35.	TIME OF THE ESSENCE .....	41
36.	ACCEPTANCE OF PREMISES .....	41
37.	INCORPORATION OF DOCUMENTS .....	41

AGREEMENT FOR THE OPERATION AND MAINTENANCE OF  
THE POINSETTIA TENNIS PROFESSIONAL CONCESSION

Between

THE CITY OF LOS ANGELES  
DEPARTMENT OF RECREATION AND PARKS

And

*CONCESSIONAIRE'S NAME*

THIS AGREEMENT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as CITY), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as BOARD), and *CONCESSIONAIRE NAME* (hereinafter referred to as CONCESSIONAIRE).

WHEREAS, CITY advertised for proposals for the operation of the Poinsettia Tennis Professional Concession, to include: Professional Tennis Lessons and Professional Shop (tennis-related merchandise and services); and

WHEREAS, BOARD in its capacity as the contract awarding authority for the Department, finds, pursuant to Charter Section 371 (e) (10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the Department for the improvement, operation and maintenance of the Department's concession. To select the best proposer for this concession, the Board finds it is necessary to utilize a standard request for proposals process and to evaluate proposals received based upon the criteria included in this Request for Proposals (RFP). The Board specifically finds that the narrower and more specialized competitive sealed proposal process authorized but not required by Charter Section 371, subsection (b), would not meet the Department's needs and therefore opts to utilize the standard request for proposals process; and

WHEREAS, the staff of the CITY's Department of Recreation and Parks (hereinafter "DEPARTMENT"), received and analyzed the proposals which were received on \_\_\_\_\_; and

WHEREAS, the Board of Recreation and Park Commissioners (hereinafter "BOARD"), determined that CONCESSIONAIRE was responsive to the RFP and was the best responsible proposer, and selected said proposer to operate the CONCESSION in accordance with the terms and conditions of this Concession Agreement (hereinafter "AGREEMENT"); and

WHEREAS, CONCESSIONAIRE desires to secure and enter into an AGREEMENT in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at the Poinsettia Recreation Center; and

WHEREAS, the principal purpose of CITY entering into this AGREEMENT is to serve the public by providing Professional Tennis Lessons and a Tennis Professional Shop Concession (hereinafter "CONCESSION");

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

#### SECTION 1. DEFINITIONS

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

AGREEMENT:	This Concession Agreement consisting of forty-two (42) pages and six (6) exhibits (A-F) attached hereto.
BOARD:	Board of Recreation and Park Commissioners.
CITY:	The City of Los Angeles, Acting by and through its Board of Recreation and Park Commissioners.
CONCESSION:	The permitted operation granted by this AGREEMENT.
CONCESSIONAIRE:	<i>CONCESSIONAIRE'S NAME</i>
DEPARTMENT:	The Department of Recreation and Parks, acting through the BOARD.
FACILITY:	The Recreation and Parks Department facility at which the concession is permitted to operate.
GENERAL MANAGER:	General Manager of the DEPARTMENT, or that person's authorized representative, acting on behalf of the CITY. All actions of the General Manager are subject to review at the discretion of the BOARD.

LAAC: The Los Angeles Administrative Code.

LAMC: The Los Angeles Municipal Code.

PREMISES: The geographical area, as defined in Exhibit A, in which the concession may be operated.

## SECTION 2. PERMISSION GRANTED

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, CITY hereby grants to CONCESSIONAIRE, subject to all of the terms and conditions of this AGREEMENT, the exclusive right and obligation within the Poinsettia Recreation Center to: provide tennis lessons and such other tennis-related operations as approved by the GENERAL MANAGER; operate and maintain the on-site professional shop to provide tennis-related items and services; and, not for any other purpose without the prior written consent of GENERAL MANAGER.

The concession rights herein granted shall be carried on at the FACILITY solely within the limits and confines of said areas designated as PREMISES (Exhibit A) in this AGREEMENT. No temporary stands or other places of operation shall be allowed during special events or at any other time without the express written permission of the GENERAL MANAGER. The CITY shall have the right to authorize the sponsor or sponsors of any special event to operate additional concessions at temporary locations during the term of any such events. Sponsors shall be made aware of CONCESSIONAIRE's services but will not be obligated to use them. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, its successors and assigns, that it will not make use of the PREMISES in any manner which might interfere with the recreational uses of the FACILITY.

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

CITY reserves the right to further develop, improve, or include additional courts located at a separate park facility within a ten (10) mile radius in proximity as part of the PREMISES as it sees fit, without interference or hindrance, however the CITY shall consider the desire and views of the CONCESSIONAIRE. No other activity, service or amenity shall be provided by CONCESSIONAIRE unless related to CONCESSION and without the express written approval of DEPARTMENT.

### SECTION 3. PREMISES

The PREMISES (Exhibit A) subject to this AGREEMENT is located at: Poinsettia Recreation Center, 7341 Willoughby Avenue, Los Angeles, California 90046.

Description of Premises:

- Pro shop: Includes a small retail display area and office (approximately 250 square feet)
- Lesson Services  
Courts 1 and 2 at the Poinsettia Recreation Center.

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

At any time during the term of this AGREEMENT, Department may, by appropriate resolution fully setting forth the reasons therefore, include additional courts located at a separate park facility within a ten (10) mile radius in proximity as part of CONCESSION PREMISES, or require the CONCESSIONAIRE to surrender any portion of the CONCESSION PREMISES. Should DEPARTMENT impose such a requirement on CONCESSIONAIRE, DEPARTMENT shall attempt to provide CONCESSIONAIRE with equivalent, substitute space.

### SECTION 4. TERM OF AGREEMENT

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

Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke or renew the AGREEMENT.

### SECTION 5. TIME OF EXECUTION

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

- A. The Office of the City Attorney has indicated in writing of its approval of the AGREEMENT as to form; and
- B. Said AGREEMENT has been approved by the CITY's Council, BOARD, officer, or employee authorized to give such approval; and
- C. Said AGREEMENT has been signed on behalf of the CONCESSIONAIRE by the

person or persons authorized to bind the CONCESSIONAIRE hereto; and

- D. Said AGREEMENT has been signed on behalf of the CITY by the person or persons authorized and designated to so sign by the CITY's Council, Board, officer, or employee authorized to enter into the AGREEMENT.

#### SECTION 6. REVENUE SHARING FEE AND PAYMENT

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

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

XX percent (X%) of the gross receipts produced by all tennis lessons each month;

XX percent (X%) of the gross receipts for all tennis professional shop sales (goods and services) and rentals each month.

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

The minimum annual revenue sharing payment for this concession is (refer to Pro Forma section of the proposal) per calendar year. If the minimum annual revenue sharing payment is not met by December 31 of each calendar year, the difference between the actual revenue sharing payments received by the City of Los Angeles and the minimum annual revenue sharing payment will be due to the City of Los Angeles by January 15 of the following subsequent year. If the agreement has not been in effect a full calendar year, the minimum annual revenue sharing payment due will be pro-rated accordingly.

- B. Revenue Collection:  
DEPARTMENT reserves the right to collect gross revenue generated from the sale of tennis lessons and/or pro shop sales during the term of this AGREEMENT. DEPARTMENT will provide written notification to CONCESSIONAIRE thirty (30) days prior to the implementation of the collection of said revenue. DEPARTMENT will remit the appropriate revenue to CONCESSIONAIRE as stated in section 6.A. DEPARTMENT will bear the DEPARTMENT cost associated with the collection of the gross revenue.



C. Payment Due:

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

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

D. Gross Receipts Defined:

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

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

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

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

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

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

G. Annual Accounting Adjustment:

At the end of each twelve (12) month period during the term hereof, CONCESSIONAIRE shall prepare and submit to CITY a statement showing the total

gross receipts for the said twelve (12) month period and the revenue sharing payments paid for the said twelve (12) months. If the sums paid by CONCESSIONAIRE during the period exceed the minimum annual fees as well as the annual percentage charges computed as set forth in this Section, whichever is greater, such overpayment shall be credited to the revenue sharing payment thereafter due from CONCESSIONAIRE.

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

#### SECTION 7. ADDITIONAL FEES AND CHARGES

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

#### SECTION 8. HOURS / DAYS OF OPERATION

- A. CONCESSIONAIRE 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 GENERAL MANAGER.

- B. Any deviation from the hours specified shall be subject to prior written approval of GENERAL MANAGER. Additional hours of business shall be at CONCESSIONAIRE'S discretion, keeping in line with the needs of the patron's and park operations determined and approved by GENERAL MANAGER.
- C. Professional Court Numbers and Hours of Operation
- |                |       |                         |
|----------------|-------|-------------------------|
| Courts 1 and 2 | Daily | 7:00 a.m. to 10:00 p.m. |
|----------------|-------|-------------------------|
- D. Professional Shop Hours of Operation  
Hours for the pro shop shall coincide with instruction times as noted above.
- E. No concession activities (except Tennis Pro Shop sales) shall be allowed on the following holidays:
- New Year's Day, Martin Luther King Jr. Day, Presidents Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Columbus Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.
- When any of these holidays fall on a Sunday, the holiday will be observed on the following Monday. If the holiday falls on a Saturday, the holiday will be observed on the preceding Friday.
- F. The Concessionaire shall inform Park Services when the Professional Courts will not be used for concession activities, in order to allow the courts to be rented to the public.

#### SECTION 9. OPERATING RESPONSIBILITIES

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

- A. Cleanliness:  
CONCESSIONAIRE shall, at its own expense, keep the PREMISES and the surrounding area, at least twenty-five (25) feet, clean and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health, shall be permitted to remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES.

CONCESSIONAIRE shall, at its own expense, ensure 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 GENERAL MANAGER. If no trash storage area is made available, CONCESSIONAIRE shall provide at its own expense and with the GENERAL MANAGER'S prior written approval, an enclosed area concealing the trash storage from public view. The DEPARTMENT will incur the cost of all

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

B. Conduct:

CONCESSIONAIRE shall at all times conduct its business in a professional, quiet, and orderly manner to the satisfaction of the GENERAL MANAGER.

C. Disorderly Persons:

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

D. Non-Discrimination/Equal Employment Practices/Affirmative Action:

1. CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered by the AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination.
2. CONCESSIONAIRE agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 33, CITY shall have the right to terminate the AGREEMENT and to reenter and repossess said land and the facilities thereon and hold the same as if said AGREEMENT had never been executed.
3. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall be approved in advance by CITY and shall contain a like provision.

E. Personnel:

1. Freedom from Tuberculosis:

For employees preparing food, and others as required by statute (reference

Section 5163 of the California Public Resources Code) or directive of the GENERAL MANAGER, CONCESSIONAIRE shall provide the GENERAL MANAGER with certificates on applicable employees indicating freedom from communicable tuberculosis.

2. **Qualified Personnel:**  
CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by CONCESSIONAIRE, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, the GENERAL MANAGER may direct CONCESSIONAIRE to remove that person from the PREMISES.
3. **Concession Manager:**  
CONCESSIONAIRE shall appoint, subject to written approval by GENERAL MANAGER, a Concession Manager of CONCESSIONAIRE'S operations at the FACILITY. If CONCESSIONAIRE elects to subcontract the management of any or all of the CONCESSION operations to a managing entity or entities, the provisions of this section shall also apply to any such entity.

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

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

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

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

F. Price Schedules and Merchandise:

1. CITY agrees that CONCESSIONAIRE'S merchandise, including its prices for same, shall be within CONCESSIONAIRE'S discretion; subject, however, to disapproval by GENERAL MANAGER if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of GENERAL MANAGER. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. All prices shall be comparable to prices

charged in similar establishments in the City of Los Angeles. CONCESSIONAIRE shall, upon execution of AGREEMENT, provide the GENERAL MANAGER with a list of prices for all merchandise and services. This list shall be updated whenever prices are changed.

2. All services and merchandise carried in stock, displayed, offered for sale and/or sold by CONCESSIONAIRE in said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. No adulterated, misbranded, or impure articles shall be sold or kept for sale by CONCESSIONAIRE. All merchandise kept for sale or rented by the CONCESSIONAIRE shall be kept subject to the approval or rejection of the GENERAL MANAGER and CONCESSIONAIRE shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the written approval of the GENERAL MANAGER. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale or rental.
3. CONCESSIONAIRE shall not sell lottery tickets or similar type merchandise.
4. CONCESSIONAIRE may issue gift certificates or similar products during the normal course of the business. Said gift certificate shall not have an expiration date. CONCESSIONAIRE shall include language on the gift certificate that clearly states that the gift certificate shall be redeemable only through CONCESSIONAIRE and the City of Los Angeles is not responsible for redemption of the gift certificate. In each instance sale of any gift certificate shall be recorded through the cash register and the full price of the gift certificate must be reported as gross receipts upon issuance and payment received.

G. Diversion of Business:

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

H. Equipment, Furnishings, and Expendables:

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. If, upon termination of the AGREEMENT, CITY does not renew said AGREEMENT, CONCESSIONAIRE shall have the right to remove its own equipment, furnishings, and expendables, but not improvements, from the PREMISES and shall be allowed a period of thirty (30) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY.



I. Maintenance of Equipment:

1. CONCESSIONAIRE shall, at all times and at its expense, keep and maintain all equipment, whether owned and/or installed by CONCESSIONAIRE or CITY, such as, but not limited to, heat exchangers, fans, controls and electric panels, installed by CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance.
2. No equipment provided by CITY shall be removed or replaced by CONCESSIONAIRE without the prior written consent of the GENERAL MANAGER, and if consent is secured, such removal and/or replacement shall be at the expense of CONCESSIONAIRE.

J. Claims for Labor and Materials:

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

K. Signs and Advertisements:

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

L. Utilities:

CONCESSIONAIRE shall be responsible for utility charges. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, heat, air-conditioning, and other utility services to PREMISES, and shall be paid by CONCESSIONAIRE regardless of whether such utility services are furnished by CITY or by other utility service providers.

1. The DEPARTMENT will incur the cost of trash pickup from the main dumpster. Water shall be utilized by CONCESSIONAIRE in the most efficient manner possible, and CONCESSIONAIRE expressly agrees to comply with all CITY water conservation programs.
2. In the event that individual utility meters are not available, CONCESSIONAIRE shall remit, on a monthly basis in conjunction with revenue sharing payments to DEPARTMENT, the amount of One Hundred Dollars (\$100.00) as payment for water, gas and electricity (utilities) during the term of the Agreement.
3. The CITY reserves the right to adjust utility fees annually based on prior years' usage. If the CONCESSIONAIRE desires to install a separate utility meter for their CONCESSION and be billed directly from the utility service provider instead of paying the CITY'S utility fee, CONCESSIONAIRE will assume full responsibility, financial and otherwise, for the separate meter and must first obtain prior written approval from GENERAL MANAGER. The CITY reserves the right to install a separate utility meter for the CONCESSION; in such event, CONCESSIONAIRE shall be billed directly from the utility service provider instead of paying the DEPARTMENT's utility fee.
4. CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the revenue sharing payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake, wind, civil commotion, or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.
5. 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.

M. Vending Machines:

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

N. Safety:

CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or GENERAL MANAGER notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report." (Exhibit F). If CONCESSIONAIRE fails to correct hazardous conditions specified by the GENERAL MANAGER in a written notice, which have led, or in the opinion of CITY could lead, to injury, the GENERAL MANAGER may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand. If for any reasons payments of such fees become delinquent, GENERAL MANAGER may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

All overhead shelving shall include anchoring devices to prevent toppling or spillage of shelved items in the event of seismic activity.

O. Security:

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

P. Environmental Sensitivity:

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

Q. Fund Raising Activities:

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

R. Special Events:

CONCESSIONAIRE may, at the discretion of the GENERAL MANAGER, be

required for up to six (6) calendar days to cease any or all operations in order that the DEPARTMENT may conduct Special Events.

S. Community Outreach:

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

T. Resources Supplied by Concessionaire:

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

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

1. CONCESSIONAIRE shall be required to have the ability to accept Visa, MasterCard, American Express, and debit card payments from patrons (customers).
2. CONCESSIONAIRE may, upon written approval of the GENERAL MANAGER, install and operate an ATM to accommodate all patrons (customers). Operation of ATMs shall not be exclusive to these PREMISES.
3. CONCESSIONAIRE shall not charge an amount exceeding two dollars (\$2.00) as any type of service charge for the use of an ATM. Such service charge will be included in gross receipts, subject to the revenue sharing payment, and included in the monthly remittance advice.

V. Quiet Enjoyment:

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

W. Receipts:

1. CONCESSIONAIRE shall offer receipts to the customers for every transaction.
2. CONCESSIONAIRE shall at all times place a sign within twelve (12) inches

of cash register, in clear view to the public, and in minimum one-inch lettering, which states: "If a receipt for any transaction is not provided, please contact the Department of Recreation and Parks - Concessions Unit at (213) 202-3280".

#### SECTION 10. MAINTENANCE OF PREMISES

During all periods that the PREMISES are used or are under the control of the CONCESSIONAIRE for the uses, purposes, and occupancy aforesaid, CONCESSIONAIRE shall be responsible for all necessary janitorial duties, damage/maintenance repairs, daily cleaning, and trash removal from within and around the PREMISES area to the main dumpsters, to the satisfaction of the GENERAL MANAGER. The DEPARTMENT will be responsible for trash pick-up from the main dumpsters. The cause of said 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.).
2. Duties:  
CONCESSIONAIRE'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the GENERAL MANAGER to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.

##### B. Exterior of Premises and Common Passageways:

CITY shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements, unless otherwise provided for in the AGREEMENT. Common passageways leading to other CONCESSION facilities or offices maintained by CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this Section.

- C. **Correction of Conditions Leading to Damage:**  
If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the opinion of CITY, could lead to significant damage to CITY property, the GENERAL MANAGER may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand. If, for any reasons, payment of such fees becomes delinquent, GENERAL MANAGER may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.
- D. **Property Damage and Theft Reporting:**  
CONCESSIONAIRE shall complete and submit to the DEPARTMENT a "Special Occurrence and Loss Report" in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. Blank forms for this purpose shall be provided by the DEPARTMENT.
- E. **Damage or Destruction to Premises:**
1. **Partial Damage:**  
If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.
  2. **Extensive Damage:**  
If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by GENERAL MANAGER as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.
  3. **Complete Destruction:**  
In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty,

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

4. Limits of CITY'S Obligation Defined:

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

F. Pest Control:

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

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

3. Areas enclosed with a fence such as tennis courts, batting cages, etc.

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

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

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

#### SECTION 11. IMPROVEMENTS

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

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

CITY reserves the right to recover damages from CONCESSIONAIRE if the Improvements are not begun and completed as stipulated. Such damages may include, but are not limited to, recovering up to the entire cost of the Improvements from the CONCESSIONAIRE's performance bond. The bond must be recompensed as stipulated in Section 14, "Performance Bond or Deposit," herein. Should Improvements as stipulated in the AGREEMENT be completed at a lower cost than that committed in the Proposal, the difference shall be applied to additional CONCESSION improvements as approved by the



## GENERAL MANAGER.

### A. Concession Improvements:

CONCESSIONAIRE agrees to make, to the satisfaction of the CITY, the following required improvements to the CONCESSION PREMISES within six (6) months of the execution of this concession agreement or pay the CITY an amount equal to the value of the specific improvement not completed within sixty (60) days of written notification by the City that said improvement was not completed.

1. Paint the Interior and Exterior of the Tennis Professional Shop.
2. Re-floor (carpeting or tile) the Interior of the Tennis Professional Shop.

Should the City exercise an option to renew the concession agreement, the selected operator must repaint the Tennis Professional Shop interior and exterior; and, reinstall new flooring (carpeting or tile) within the first six (6) months of the option term.

Notwithstanding the aforementioned concession improvements:

3. CONCESSIONAIRE agrees to make, to the satisfaction of the CITY, the required improvements to the CONCESSION PREMISES specified in the Concession Improvements section of the Request for Proposal (V.A.6.3), attached hereto as Exhibit B and incorporated herein, within twelve (12) months of the execution of this concession agreement or pay the CITY an amount equal to the value of the specific improvement not completed within sixty (60) days of written notification by the City that said improvement was not completed.
4. CONCESSIONAIRE agrees to make, to the satisfaction of the CITY, the proposed optional improvements to the CONCESSION PREMISES specified in the Concession Improvements section of the CONCESSIONAIRE's proposal (V.A.6.4), attached hereto as Exhibit C and incorporated herein, within twelve (12) months of the execution of this concession agreement or pay the CITY an amount equal to the value of the specific optional improvement not completed within sixty (60) days of written notification by the City that said improvement was not completed.

CITY shall hold CONCESSIONAIRE responsible for guaranteeing the completion of all proposed improvements, according to approved plans, regardless of cost. CONCESSIONAIRE shall bear all costs for necessary permits, insurance, and taxes required for compliance of such improvements.

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

- 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 the DEPARTMENT. No permission to begin said Improvements shall be granted by GENERAL MANAGER prior to CONCESSIONAIRE's obtaining of all 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.
- E. Improvement Bond:  
CONCESSIONAIRE shall provide a bond to secure completion of the faithful performance, in an amount equal to the cost of the project(s) as approved by the GENERAL MANAGER. No work may commence before said bonds are received in a form satisfactory to the DEPARTMENT as approved by the Office of the City Administrative Officer, and shall thereafter be kept in full force and effect until DEPARTMENT accepts the work.

## SECTION 12. LIABILITY

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

B. Insurance:

1. General Conditions:

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

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

a. Additional Insured:

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

b. Insurance Requirements:

All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy and shall be filed with the Office of the City Attorney for its review in accordance with Los Angeles City Administrative Code Sections 11.47 through 11.56.

c. Primary Insurance:

Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on CITY's insurance program for contributions.

d. Admitted Carrier/Licensed California Broker:

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California.

e. 30-Day Notice:

With respect to the interest of CITY, such insurance shall not be canceled, materially reduced in coverage or limits or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier) has been given to the Office of

the City Administrative Officer.

- f. Prior Approval:  
Evidence of insurance shall be submitted to and approved by the Office of the City Administrative Officer prior to commencement of any work or tenancy under this agreement.
  - g. Severability of Interest:  
Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
  - h. Acceptable Evidence:  
CONCESSIONAIRE shall submit acceptable evidence and approval of insurance in accordance with the "Instructions and Information on Complying with City Insurance Requirements" (Exhibit E).
  - i. Renewal:  
Once the insurance has been approved by CITY, evidence of renewal of an expiring policy may be submitted on a manually signed renewal endorsement form. If the policy or the carrier has changed, however, new evidence as specified in paragraphs a. through h. above must be submitted.
  - j. Aggregate Limits/Blanket Coverage:  
If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of CONCESSIONAIRE outside this agreement, CONCESSIONAIRE shall give CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in CONCESSIONAIRE'S best judgment will diminish the protection such insurance affords CITY.
2. Self-Insurance and Self-Insured Retentions:  
Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by CITY upon review of evidence of CONCESSIONAIRE'S financial capacity to respond. Additionally, such programs or retentions must provide CITY with at least the same protections from liability and defense of suits as would be afforded by first-dollar insurance.
3. Modification of Coverage:  
CITY reserves the right at any time during the term of this agreement to change the amounts and types of insurance required hereunder by giving CONCESSIONAIRE ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to

CONCESSIONAIRE, CITY agrees to negotiate additional compensation proportional to the increased benefit to CITY.

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

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

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

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

### SECTION 13. PROHIBITED ACTS

CONCESSIONAIRE shall not:

- A. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or

other emergency personnel in the discharge of their duties;

- B. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
- C. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the GENERAL MANAGER;
- D. Overload any floor in the PREMISES;
- E. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to GENERAL MANAGER any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by GENERAL MANAGER, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
- F. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
- G. Use, create, store or allow any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;

- H. Allow any sale by auction upon the PREMISES;
- I. Permit undue loitering on or about the PREMISES;
- J. Use the PREMISES in any manner that will constitute waste;
- K. Use or allow the PREMISES to be used for, in the opinion of GENERAL MANAGER or District Engineer of the CORPS, any gambling or games of chance, or for the installation and operation of any devices or concessions which are contrary to good morals or are otherwise objectionable.

#### SECTION 14. PERFORMANCE DEPOSIT

- A. CONCESSIONAIRE shall provide the DEPARTMENT a sum equal to Four-Thousand Dollars (\$4,000) to guarantee payment of fees and as a damage deposit to be used in accordance with the default provisions of this AGREEMENT.
- B. Form of Deposit  
CONCESSIONAIRE'S Performance Deposit shall be in a form of a cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, payable to the order of the City of Los Angeles.
- C. Return of Performance Deposit to CONCESSIONAIRE:  
Said Performance Deposit shall be returned to CONCESSIONAIRE and any rights assigned to Performance Deposit shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and any exit audits performed in conjunction with the AGREEMENT. The CITY reserves the right to deduct from the Performance Deposit, any amounts up to and including the full amount of the Performance Deposit as stated herein, owed to the CITY by CONCESSIONAIRE as shown by any exit audits performed by CITY, or as compensation to CITY for failure to adhere to the terms and conditions of the AGREEMENT.

#### SECTION 15. NUMBER OF ORIGINALS

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

#### SECTION 16. INDEPENDENT CONTRACTORS / CONSULTANTS

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

#### SECTION 17. TAXES, PERMITS, AND LICENSES

- A. CONCESSIONAIRE shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the

operation of the CONCESSION including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

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

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

#### SECTION 18. ASSIGNMENT, SUBLEASE, BANKRUPTCY

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



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

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

#### SECTION 19. BUSINESS RECORDS

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

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

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

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

C. Method of Recording Gross Receipts:

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE will be required to maintain a system of tracking lessons and sales, which may include at the minimum a pre-numbered book and daily log of scheduled lessons.

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

D. Annual Statement of Gross Receipts and Expenses:

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

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

E. Adjustments to Gross Revenue:

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

## SECTION 20. REGULATIONS, INSPECTION, AND DIRECTIVES

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

items sold or dispensed.

D. Control of Premises:

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

E. Americans with Disabilities Act:

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

F. Child Support Ordinance:

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

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

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

H. Living Wage Ordinance/Service Contract Worker Retention Ordinance:

The CONCESSIONAIRE must comply with City Ordinance 172336 (Living Wage Ordinance) unless exempted in accordance with said ordinance. The Living Wage Ordinance requires in part that nothing less than a prescribed minimum level of compensation (a "living wage") be paid to employees of service contractors of the CITY and its financial assistance recipients and to employees of such recipients. Under Section 10.37.2 of the Ordinance, CONCESSIONAIRE shall pay service employees who spend any of their time on CITY contracts a wage of no less than

the hourly rates set under the authority of the Living Wage Ordinance (LWO). Such rates shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees' Retirement System.

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

- I. Contractor Responsibility Ordinance:  
Every Request for Proposal, Request for Bid, Request for Qualifications, or other procurement process is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq. of Article 14, Chapter 1 of Division 10 of the LAAC, unless exempt pursuant to the provisions of the Ordinance.
- J. Equal Benefits Ordinance:  
Section 10.8.2.1 (c) of the LAAC (Equal Benefits Ordinance) requires that every contract with or on behalf of the City of Los Angeles for which the consideration is in excess of the \$5,000.00 must incorporate the Equal Benefits Provisions.
- K. Contractor Evaluation Ordinance:  
At the end of the AGREEMENT, the CITY will conduct an evaluation of the CONCESSIONAIRE's performance. The CITY may also conduct evaluations of the CONCESSIONAIRE's performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONCESSIONAIRE assigns to the AGREEMENT. A CONCESSIONAIRE who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed 14 calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONCESSIONAIRE, to evaluate proposals and to conduct reference checks when awarding other service contracts.
- L. Slavery Disclosure Ordinance:  
Unless otherwise exempt in accordance with the provisions of this Ordinance, the AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time. CONCESSIONAIRE certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of the AGREEMENT.
- M. Name of CONCESSION:  
The name of the CONCESSION, Poinsettia Tennis Professional, shall not be used in conjunction with any other business venture during or after the term of the AGREEMENT.

## SECTION 21. TERMINATION

### A. By CITY:

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

1. CONCESSIONAIRE fails to keep, perform and observe any promise, covenant and condition set forth in the AGREEMENT on its part to be kept, performed or observed after receipt of written notice of default from GENERAL MANAGER, except where fulfillment of CONCESSIONAIRE'S obligation requires activity over a period of time and CONCESSIONAIRE has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance diligently and without interruption except for causes beyond its control;
2. The interest of CONCESSIONAIRE under the AGREEMENT is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of GENERAL MANAGER;
3. CONCESSIONAIRE becomes, without the prior, written approval of GENERAL MANAGER a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
4. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with CONCESSIONAIRE'S use of the PREMISES or with its operations under the AGREEMENT;
5. CONCESSIONAIRE becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the CONCESSION areas;
6. By order or decree of court, CONCESSIONAIRE is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of CONCESSIONAIRE seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;
7. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against CONCESSIONAIRE and is not dismissed within one hundred twenty (120) days;

8. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONCESSIONAIRE;
9. Cessation or deterioration of service for any period which, in the opinion of GENERAL MANAGER, materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;
10. Any lien is filed against the PREMISES because of any act or omission of CONCESSIONAIRE and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) days; or
11. CONCESSIONAIRE voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

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

- B. **CITY'S Right of Reentry:**  
CITY shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of CONCESSIONAIRE under the AGREEMENT.
- C. **Additional Rights of CITY:**  
CITY, upon termination of the AGREEMENT, or upon reentry, regaining, or resumption of possession of the PREMISES, may occupy said PREMISES and shall have the right to permit any person, firm or corporation to enter upon the PREMISES and use the same. Such occupation by others may be of only a part of the PREMISES, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in the AGREEMENT.
- D. **Survival of CONCESSIONAIRE'S Obligations:**  
In the event the AGREEMENT is terminated by CITY, or in the event CITY reenters, regains, or resumes possession of the PREMISES, all of the obligations of CONCESSIONAIRE hereunder shall survive and shall remain in full force and effect for the full term of the AGREEMENT. Subject to CITY'S obligation to mitigate damages, the amount of the revenue sharing payment shall become due and payable to CITY to the same extent, at the same time and in the same manner as if

no termination, reentry, regaining or resumption of possession had taken place. CITY may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

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

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

E. Waiver of Redemption and Damages:

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

F. By CONCESSIONAIRE:

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

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



CONCESSIONAIRE of written notice to do so.

#### SECTION 22. SURRENDER OF POSSESSION

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

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

Subject to the provisions of Sec. 22 herein, within thirty (30) days, CONCESSIONAIRE shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the AGREEMENT. If CONCESSIONAIRE fails to remove said property within that thirty (30) days, said property shall be considered abandoned and CITY may dispose of same as it sees fit.

#### SECTION 23. WAIVER

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

#### SECTION 24. CONDITIONS AND COVENANTS

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

#### SECTION 25. FORCE MAJEURE

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

#### SECTION 26. REMEDIES ARE NON-EXCLUSIVE

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

#### SECTION 27. AGREEMENT BINDING UPON SUCCESSORS

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

#### SECTION 28. LAW OF CALIFORNIA APPLIES

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

#### SECTION 29. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if CONCESSIONAIRE is not a resident of the State of California, or is a partnership or joint venture without a partner or member resident in said State, or is a foreign corporation, then in any such event CONCESSIONAIRE does designate the Secretary of State, State of California, its agent for the purpose of service of process in any court action between it and CITY arising out of or based upon the AGREEMENT, and the service shall be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, CONCESSIONAIRE may be personally served with such process out of this State by mailing, by registered or certified mail, the complaint and process to CONCESSIONAIRE at the address set out hereafter in the AGREEMENT, and that such service shall constitute valid service upon CONCESSIONAIRE as of the date of mailing, and CONCESSIONAIRE shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that CONCESSIONAIRE is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

#### SECTION 30. VENUE

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

#### SECTION 31. WAIVER OF CLAIMS

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

#### SECTION 32. NOTICES

##### A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to the Department of Recreation and Parks, Attn: Concessions Unit / Mail Stop 625-26, 221 N. Figueroa Street, 15<sup>th</sup> Floor, Suite 1520, Los Angeles, California, 90012.

All such notices may either be delivered personally or may be deposited in the

United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

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

B. To CONCESSIONAIRE:

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

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

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

*Concessionaire's Name*  
*Concessionaire's Address*  
*Concessionaire's Address*

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

### SECTION 33. INTERPRETATION

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

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

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

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

SECTION 34. AGREEMENT CONTAINS ENTIRE AGREEMENT

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

SECTION 35. TIME OF THE ESSENCE

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

SECTION 36. ACCEPTANCE OF PREMISES

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

SECTION 37. INCORPORATION OF DOCUMENTS

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

- A. Premises Maps
- B. Poinsettia Tennis Professional Concession Request for Proposal –released Month, Day, 2011
- C. Concessionaire's Proposal in Response to Exhibit B
- D. Monthly Remittance Advice Form
- E. Insurance Requirements Form
- F. Form General No. 87 "Non-Employee Accident or Illness Report"

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

*(Signature Page to Follow)*

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

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

BY: \_\_\_\_\_  
President

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Secretary

DATE: \_\_\_\_\_

CONCESSIONAIRE NAME

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Title: \_\_\_\_\_

BTRC: \_\_\_\_\_

APPROVED AS TO FORM:  
Carmen A. Trutanich, City Attorney

BY: \_\_\_\_\_  
Senior Assistant City Attorney

DATE: \_\_\_\_\_

Concession Agreement Number: \_\_\_\_\_