



City of Los Angeles
Department of Recreation and Parks

**STANDARD CONDITIONS
And REGULATIONS
for the Operation
of CONCESSIONS**

Revised December 2005

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TABLE OF CONTENTS

DEFINITIONS	1
SECTION 1. CONCESSION GRANTED.....	1
SECTION 2. PREMISES.....	1
SECTION 3. TERM OF AGREEMENT.....	2
SECTION 4. TIME OF EXECUTION.....	2
SECTION 5. NUMBER OF ORIGINALS.....	2
SECTION 6. INDEPENDENT CONTRACTORS/ CONSULTANTS.....	2
SECTION 7. CONCESSION RENTAL.....	2
A. Rental Payments.....	2
B. Gross Receipts Defined.....	2
C. Payment Due Dates.....	3
D. Monthly Rental Reports.....	4
E. Pro Rata Payment.....	4
F. Late Payment Fee.....	4
SECTION 8. ADDITIONAL FEES AND CHARGES.....	4
SECTION 9. OPERATING RESPONSIBILITIES.....	5
A. Cleanliness.....	5
B. Conduct.....	5
C. Disorderly Persons.....	5
D. Non-Discrimination/ Equal Employment Practices/ Affirmative Action.....	5
E. Personnel.....	6
F. Merchandise and Price Schedules.....	7
G. Diversion of Business.....	7
H. Hours of Operation.....	7
I. Equipment, Furnishings, and Expendables.....	8
J. Maintenance of Equipment.....	8
K. Claims for Labor and Materials.....	8
L. Signs and Advertisements.....	8
M. Taxes and Permits.....	9
N. Utilities.....	9
O. Vending Machines.....	10
P. Safety.....	10
Q. Environmental Sensitivity.....	11
SECTION 10. MAINTENANCE OF PREMISES.....	11
A. Interior of Premises.....	11
B. Exterior of Premises and Common Passageways.....	11
C. Correction of Conditions Leading to Damage.....	11
D. Property Damage and Theft Reporting.....	11
E. Damage or Destruction to Premises.....	12
F. Pest Control.....	13
SECTION 11. IMPROVEMENTS.....	13
A. Proposed Capital Improvements.....	14
B. Compliance with Applicable Rules and Regulations.....	14
C. Procurement of Permits and Approvals.....	14
D. Subcontractors.....	15
SECTION 12. PROHIBITED ACTS.....	15
SECTION 13. LIABILITY.....	16
A. Indemnification.....	16
B. Insurance.....	16
C. Workers' Compensation.....	18
SECTION 14. FAITHFUL PERFORMANCE BOND.....	18
A. Amount of Bond.....	18
B. Form of Bond.....	18
C. Agreement of Deposit and Indemnity.....	19

D.	Maintenance of Deposit.....	19
E.	Return of Bond to CONCESSIONAIRE.....	20
	SECTION 15. ASSIGNMENT, SUBLEASE, BANKRUPTCY.....	20
	SECTION 16. BUSINESS RECORDS.....	20
A.	Employee Fidelity Bonds.....	21
B.	Cash And Record Handling Requirements.....	21
C.	Method of Recording Gross Receipts.....	21
D.	Annual Statement of Gross Receipts and Expenses.....	21
	SECTION 17. REGULATIONS, INSPECTION, AND DIRECTIVES.....	21
A.	Subject To.....	21
B.	Permissions.....	22
C.	Right of Inspection.....	22
D.	Control of Premises.....	22
E.	Americans with Disabilities Act.....	22
F.	Child Support Ordinance.....	23
G.	Minority, Women, and Other Business Enterprise Outreach Program.....	23
H.	Living Wage Ordinance/Service Contract Worker Retention Ordinance.....	23
I.	Contractor Responsibility Ordinance.....	23
J.	Equal Benefits Ordinance.....	24
K.	Contractor Evaluation Ordinance.....	24
L.	Slavery Disclosure Ordinance.....	24
	SECTION 18. TERMINATION.....	24
A.	By CITY.....	24
B.	CITY'S Right of Reentry.....	25
C.	Additional Rights of CITY.....	26
D.	Survival of CONCESSIONAIRE'S Obligations.....	26
E.	Waiver of Redemption and Damages.....	26
F.	By CONCESSIONAIRE.....	26
	SECTION 19. SURRENDER OF POSSESSION.....	27
	SECTION 20. WAIVER.....	27
	SECTION 21. CONDITIONS AND COVENANTS.....	27
	SECTION 22. FORCE MAJEURE.....	27
	SECTION 23. REMEDIES ARE NON-EXCLUSIVE.....	27
	SECTION 24. AGREEMENT BINDING UPON SUCCESSORS.....	28
	SECTION 25. LAW OF CALIFORNIA APPLIES.....	28
	SECTION 26. AGENT FOR SERVICE OF PROCESS.....	28
	SECTION 27. VENUE.....	28
	SECTION 28. ATTORNEY'S FEES.....	28
	SECTION 29. WAIVER OF CLAIMS.....	28
	SECTION 30. NOTICES.....	29
A.	To CITY.....	29
B.	To CONCESSIONAIRE.....	29
	SECTION 31. INTERPRETATION.....	29
	SECTION 32. AGREEMENT CONTAINS ENTIRE AGREEMENT.....	29
	SECTION 33. TIME OF THE ESSENCE.....	30

**STANDARD CONDITIONS AND REGULATIONS
FOR THE OPERATION OF CONCESSIONS
(STANDARD CONDITIONS)**

DEFINITIONS

For the purpose of these Standard Conditions, the following words and phrases are defined and shall be construed as hereinafter set out:

- AGREEMENT:** The written, executed Concession Agreement to which these STANDARD CONDITIONS are attached.
- 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 operations granted by the Agreement.
- CONCESSIONAIRE:** The person or entity permitted by the Concession Agreement to operate a CONCESSION at the FACILITY.
- DEPARTMENT:** The Recreation and Parks Department of the City of Los Angeles.
- FACILITY:** The Recreation and Parks Department facility at which the CONCESSION is permitted to operate.
- GENERAL MANAGER:** The General Manager of the Department of Recreation and Parks, or that person's authorized representative, acting as an Agent of CITY. All actions of the General Manager are subject to review by the BOARD.
- LAAC:** The Los Angeles Administrative Code.
- LAMC:** The Los Angeles Municipal Code.
- PREMISES:** The geographical area, as defined in the AGREEMENT, in which the CONCESSION may be operated.

SECTION 1. CONCESSION 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 the AGREEMENT and these Standard Conditions, CITY hereby grants to CONCESSIONAIRE the privilege to provide only those services set forth in the AGREEMENT, and not for any other purpose without the prior written consent of the 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 in the AGREEMENT. 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.

SECTION 2. PREMISES

The PREMISES subject to these Standard Conditions are described in the AGREEMENT. CONCESSIONAIRE shall not use or allow the PREMISES to be used, in whole or in part,

during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY, relating to sanitation or the public health, safety or welfare or operations at and use of the PREMISES.

SECTION 3. TERM OF AGREEMENT

The term of the AGREEMENT shall be the period as specified in the AGREEMENT. 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 4. 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 legality; 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 authorized and designated to so sign by the CITY's Council, Board, officer, or employee to enter into the AGREEMENT.

SECTION 5. NUMBER OF ORIGINALS

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

SECTION 6. 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 7. CONCESSION RENTAL

A. Rental Payments

As part of the consideration for CITY'S granting the concession rights herein above set forth, CONCESSIONAIRE shall pay to CITY a rental payment in the amount specified in the AGREEMENT. Such rental payment may be specified as a monthly flat rate amount, or a percentage of CONCESSIONAIRE'S gross receipts as defined herein, or some specified, predetermined combination thereof.

B. 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:

1. Any error in cash handling by CONCESSIONAIRE or CONCESSIONAIRE's employees or agents;
2. 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;
3. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

C. Payment Due Dates

1. Flat Rate Rental

If the AGREEMENT requires a flat rate monthly rental, then unless otherwise specified, the rental amount shall be due on the first (1st) day of the month of operation and shall be considered past due if postmarked after the fifteenth (15th) day of that month.

2. Percentage of Gross Receipts Rental

If the AGREEMENT requires a rental rate based on a percentage of gross receipts, then unless otherwise specified, the rental payment shall be payable in monthly installments during the term of the AGREEMENT. Within fifteen (15) days after the end of each calendar month, CONCESSIONAIRE shall pay CITY as the rental payment for such

previous calendar month the guaranteed minimum monthly fee, if applicable, or the percent of gross receipts received in said previous month, whichever sum is greater. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

D. Monthly Rental Reports

CONCESSIONAIRE shall transmit with each rental payment a Monthly Gross Receipts and Rent Report, also referred to as a Monthly Remittance Advice, for the month for which rent is submitted. The GENERAL MANAGER shall provide a form for this purpose, and the completed form shall include a statement of the Gross Receipts by source of sales, and such other information as the GENERAL MANAGER may properly require.

E. Pro Rata Payment

If the execution or termination of the AGREEMENT falls on any date other than the first or last day of any calendar month, the applicable rental payment for said month, if it is based on a flat rate or a minimum rental, shall be pro rated.

F. Late Payment Fee

Failure of CONCESSIONAIRE to pay any of the rental 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.

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

SECTION 8. ADDITIONAL FEES AND CHARGES

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 rental payment thereafter due hereunder, and each and every part of the same shall be and become additional rental payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic rental payment set forth in Section 7 hereof.

For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against CONCESSIONAIRE that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations, and to charge CONCESSIONAIRE with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE.

SECTION 9. OPERATING RESPONSIBILITIES

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

A. Cleanliness

CONCESSIONAIRE shall 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 at its own expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than twice a week. It 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.

B. Conduct

CONCESSIONAIRE shall at all times conduct its business in a 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 or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon the aid of peace officers to assist in maintaining peaceful conditions. It shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

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

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

2. CONCESSIONAIRE agrees that in the event of breach of any of the above nondiscrimination covenants, with proper notification as per Section 17, 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 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 or directive of the GENERAL MANAGER, CONCESSIONAIRE shall provide the GENERAL MANAGER with certificates on applicable employees indicating freedom from communicable tuberculosis (reference Section 5163 of the California Public Resources Code).

2. Qualified Personnel

CONCESSIONAIRE will, in the operation of the CONCESSION , employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with 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 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 manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the CONCESSION , including the quality and prices of

CONCESSION goods and services, and the appearance, conduct, and demeanor of CONCESSIONAIRE'S agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

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

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

F. Merchandise and Price Schedules

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. 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 neighborhood. CONCESSIONAIRE shall provide the GENERAL MANAGER with a list of prices for all merchandise and services. This list shall be updated whenever prices are changed.

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 consent of the GENERAL MANAGER. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale or rental.

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. Hours of Operation

The CONCESSION shall be operated during normal FACILITY hours and, unless otherwise specified in the AGREEMENT, must be open for business each day that the FACILITY is open. Hours of operation include all holidays that the FACILITY is open. 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.

I. 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.

J. Maintenance of Equipment

CONCESSIONAIRE shall, at all times and at its expense, keep and maintain all equipment, whether owned and/or installed by CONCESSIONAIRE or CITY, such as, but not limited to, heat exchangers, fans, controls and electric panels, installed by CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance.

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.

K. 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.

L. Signs and Advertisements

CONCESSIONAIRE shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of CITY property without the prior written approval from the GENERAL MANAGER. If CONCESSION is located on U.S. Army Corps of Engineers' ("Corps") property, CONCESSIONAIRE shall also be required to obtain Corps' prior written approval. Certain signs and advertisements may also require the prior written approval of the Cultural Affairs Department or other appropriate agencies.

Upon the expiration or termination of the AGREEMENT, CONCESSIONAIRE shall 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.

At the FACILITY, a sign shall be posted in a prominent place stating that the CONCESSION is operated under a Concession AGREEMENT issued by CITY through the Department of Recreation and Parks.

M. Taxes and Permits

1. Taxes

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 a "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party in 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.

2. City of Los Angeles Business Tax

During the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a current Los Angeles Business Tax Registration Certificate as required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, sections 21.00 et. seq.).

3. Occupancy Tax

Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, CONCESSIONAIRE must pay to the City of Los Angeles for the privilege of occupancy, a tax at the rate of \$1.48 per calendar quarter or fractional part thereof for the first \$1,000 or less of charges (rent) attributable to said calendar quarter, plus \$1.48 per calendar quarter for each additional \$1,000 of charges or fractional part thereof in excess of \$1,000. Said tax shall be paid quarterly to the DEPARTMENT, on or before the fifteenth (15th) of April, July, October, and January of each calendar year, for the preceding three (3) months.

4. Other Taxes, Permits, and Licenses

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.

N. Utilities

CONCESSIONAIRE shall be responsible for those utility charges as described in the AGREEMENT. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, water, 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. Water shall be utilized by CONCESSIONAIRE in the most efficient manner possible, and CONCESSIONAIRE expressly agrees to comply with all CITY water conservation programs.

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 the CITY. 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.

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

In all instances where damage to any utility service line is caused by CONCESSIONAIRE, its employees, contractors, sub-contractors, suppliers, agents, or invitees, CONCESSIONAIRE shall be responsible for the cost of repairs and any and all damages occasioned thereby.

O. 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.

P. Safety

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

Q. Environmental Sensitivity

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

SECTION 10. MAINTENANCE OF PREMISES

A. Interior of Premises

1. Areas to be Maintained by CONCESSIONAIRE:

CONCESSIONAIRE shall, at its 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.

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 rent as determined above during the rebuilding of the facility.

4. Limits of CITY'S Obligation Defined:

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall

also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

F. Pest Control

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

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

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

Pest control for pests which may cause permanent structural damage to DEPARTMENT property (for example, termite infestation) shall be the responsibility of CITY. CONCESSIONAIRE shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES clean and orderly in accordance with this Section, and keeping wood components painted. 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 shall make no improvements to the PREMISES without prior written authorization of the GENERAL MANAGER as required. CITY has the right to monitor all phases of construction. All improvements must be made according to DEPARTMENT standards. All architectural services acquired by CONCESSIONAIRE must be with an agency qualified to do business in the State of California. All improvements provided by CONCESSIONAIRE during the term of the AGREEMENT shall be performed and completed at its sole expense, and shall become the property of CITY upon termination of the AGREEMENT.

CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by CONCESSIONAIRE. Such development or improvement may require the suspension or termination of the AGREEMENT. CITY shall not be liable for loss of business which results from the construction of any development or improvements to the FACILITY or the PREMISES.

A. Proposed Capital 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, "Faithful Performance Bond," 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.

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 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 said permits and approvals.

D. Subcontractors:

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

SECTION 12. PROHIBITED ACTS

CONCESSIONAIRE shall not:

1. 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;
2. 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;
3. 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;
4. Overload any floor in the PREMISES;
5. 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;
6. 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;
7. 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;

8. Allow any sale by auction upon the PREMISES;
9. Permit undue loitering on or about the PREMISES;
10. Use the PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for any improper, immoral, or unlawful purposes.

SECTION 13. 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

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 City Attorney Insurance and Bonds.
- f. **Prior Approval**

Evidence of insurance shall be submitted to and approved by City Attorney and City Risk Manager 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

The appropriate City Special Endorsement forms are the preferred form of evidence of insurance. Alternatively, CONCESSIONAIRE may submit a certified copy of the policy or other evidence acceptable to the City Attorney and City Risk Manager containing language which complies with sub-paragraphs a. through g. above. With respect to Professional Liability insurance, either a signed copy of the Policy Declarations Page or a letter from CONCESSIONAIRE'S insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of the CITY as specified in subparagraph e. will satisfy with this requirement.

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 paragraph 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. Further, CONCESSIONAIRE shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

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 CITY may immediately terminate 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 interest, and for ensuring that such persons comply with applicable insurance statutes. CONCESSIONAIRE is encouraged to seek professional advice in this regard.

C. 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 contract.

SECTION 14. FAITHFUL PERFORMANCE BOND

CONCESSIONAIRE shall provide a Faithful Performance Bond ("Bond") prior to execution of the AGREEMENT by CITY. CITY shall not execute the AGREEMENT and CONCESSIONAIRE may not begin operations on the PREMISES until Bond has been received and approved. The Bond must meet all the following requirements:

A. Amount of Bond

The amount of the Bond shall be specified in the AGREEMENT.

B. Form of Bond

CONCESSIONAIRE'S Bond shall be in any one of the following forms but may not be a combination of two or more types:

1. A cash deposit made at the Cashier's window of the DEPARTMENT.
2. A cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, which cashier's check is payable to the order of the City of Los Angeles.
3. A check drawn on and certified by any bank that is a member of the Los Angeles Clearing House Association, payable to the order of the City of Los Angeles.

4. United States Government negotiable securities (i.e., treasury bills, treasury notes, or treasury bonds).
5. A certificate of time deposit in a bank that is a member of the Los Angeles Clearing House Association, payable to the order of the City of Los Angeles.

C. Agreement of Deposit and Indemnity

The above instruments must be accompanied by an agreement of deposit and indemnity, approved as to form and legality by the City Attorney, wherein CONCESSIONAIRE unconditionally agrees that in the event of any default, CITY shall have full power and authority to use the deposit in whole or in part to indemnify CITY. Every deposit of securities or certificates of time deposit must be accompanied by express authority for the GENERAL MANAGER to convert same into cash and to deposit said cash in the City Treasury in the manner governing deposit of cash in the City Treasury by the Charter of the City of Los Angeles. All deposits of cash or checks must be immediately so deposited by the DEPARTMENT.

The BOARD shall authorize and request the Treasurer of the City of Los Angeles to receive said United States Government negotiable securities, together with the properly executed agreement of indemnity and deposit, for safekeeping. In the event said securities are to be converted to cash because of default, the BOARD may authorize and request the Treasurer to sell said securities on its behalf.

D. Maintenance of Deposit

Said bond shall be held by CITY during the entire term of the AGREEMENT. If the surety, in the opinion of the GENERAL MANAGER, becomes irresponsible, he shall have the right to require additional and sufficient sureties suitable to him, which CONCESSIONAIRE shall furnish within ten days after written notice thereof has been mailed by the Department to CONCESSIONAIRE. United States Government negotiable securities shall at all times have both a par value and a market value of not less than the amount specified in the AGREEMENT and, in the event the market value of said securities declines, CONCESSIONAIRE shall, upon written demand of the GENERAL MANAGER, within ten days of the mailing by the DEPARTMENT of such demand, pledge and furnish such additional United States Government negotiable securities with appropriate agreement of indemnity and deposit approved as to form and legality by the City Attorney, as may be necessary to maintain both a par and market value of securities on deposit of not less than the amount specified in the AGREEMENT. If such additional securities are not received by the DEPARTMENT within ten days after the mailing of written notice as stated above, all default provisions may be exercised at the discretion of CITY.

In the event of maturity of the securities prior to termination of the AGREEMENT for which they were deposited, the BOARD shall authorize and request the Treasurer to redeem the securities. The BOARD shall then use the proceeds of the redeemed securities to purchase a sufficient amount of United States Government negotiable securities to be at least equal as to both par and market value to the original amount of the deposit, and place them with Treasurer on receipt.

If the redemption proceeds are not sufficient, CONCESSIONAIRE shall deposit cash with the DEPARTMENT in an amount sufficient to make up the difference within ten days of mailing of notice of deficiency by the DEPARTMENT.

The surety on said Bond shall, by appropriate notation thereon, stipulate and agree that no change, extension of time, alteration or addition to the terms of the AGREEMENT or to the work to be performed hereunder, shall in any way affect its obligation under said Bond, and shall consent to waive notice of any such matters.

E. Return of Bond to CONCESSIONAIRE

Said Bond shall be returned to CONCESSIONAIRE and any rights assigned to Bond 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 Bond, any amounts up to and including the full amount of the Bond 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. 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 16. BUSINESS RECORDS

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

A. Employee Fidelity Bonds

At the GENERAL MANAGER'S discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.

B. Cash And Record Handling Requirements

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

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

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

C. Method of Recording Gross Receipts

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

D. Annual Statement of Gross Receipts and Expenses

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses for the CONCESSION operations as specified in the AGREEMENT, in a form acceptable to the GENERAL MANAGER, on or before sixty (60) days after the close of each calendar year during the term of the AGREEMENT.

SECTION 17. REGULATIONS, INSPECTION, AND DIRECTIVES

A. Subject To

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 and quantities of services provided or 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, if subject to, must comply with City Ordinance 172336 (Living Wage Ordinance), which 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 City Employees’ Retirement System.

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

I. Contractor Responsibility Ordinance

Every Request for Proposal, Request for Bid, Request for Qualifications, or other procurement process is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq. of Article 14, Chapter 1 of Division 10 of the LAAC, unless exempt pursuant to the provisions of the Ordinance.

J. Equal Benefits Ordinance

Section 10.8.2.1 (c) of the LAAC (Equal Benefits Ordinance) requires that every contract with or on behalf of the City of Los Angeles for which the consideration is in excess of the \$5,000.00 must incorporate the Equal Benefits Provisions.

K. Contractor Evaluation Ordinance

At the end of the AGREEMENT, the CITY will conduct an evaluation of the CONCESSIONAIRE's performance. The CITY may also conduct evaluations of the CONCESSIONAIRE's performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONCESSIONAIRE assigns to the AGREEMENT. A CONCESSIONAIRE who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed 14 calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONCESSIONAIRE, to evaluate proposals and to conduct reference checks when awarding other service contracts.

L. Slavery Disclosure Ordinance

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

SECTION 18. TERMINATION

A. By CITY

CITY shall have the right to immediately 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 rental payment 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 rental 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 rental payment received by CITY from a succeeding CONCESSIONAIRE, shall be the amount of rental 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 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 19. 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.

SECTION 20. 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 21. 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 22. 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 23. 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 24. 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 25. LAW OF CALIFORNIA APPLIES

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

SECTION 26. 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 27. VENUE

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

SECTION 28. ATTORNEY'S FEES

If CITY shall, without any fault, be made a party to any litigation commenced by or against CONCESSIONAIRE arising out of or related to CONCESSIONAIRE'S use or enjoyment of the PREMISES and as a result of which CONCESSIONAIRE is finally adjudicated to be liable, then CONCESSIONAIRE shall pay all costs and reasonable attorney's fees incurred by or imposed upon CITY in connection with such litigation. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

SECTION 29. 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 30. NOTICES

A. To CITY

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall, until CONCESSIONAIRE'S receipt of written notice otherwise from these parties, be addressed to said parties at Department of Recreation and Parks, 3900 West Chevy Chase Drive, Mail Stop 628, Los Angeles, California, 90039, attention: Concessions Unit.

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.

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.

SECTION 31. 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 32. 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. In the event of a conflict between provisions of the AGREEMENT and these Standard Conditions, the language of the AGREEMENT is controlling.

SECTION 33. TIME OF THE ESSENCE

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