

0220-03187-0002

TRANSMITTAL

TO The Council	DATE MAY 09 2011	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 4	

**Proposed Amendment to Concession Agreement No. 247 between the
Department of Recreation and Parks and GP RAH Enterprises, LLC
for the operation and maintenance of the Griffith Park Train Ride**

Transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.


for (Janelle Erickson)

MAYOR

MAS:DP:08110150t

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 04-18-11	C.D. No. 4	CAO File No.: 0220-03187-0002
Contracting Department/Bureau: Department of Recreation and Parks		Contact: Desiree Guzetta	
Reference: Letter to the Mayor from the Board of Recreation and Park Commissioners dated December 8, 2010; referred by the Mayor on December 9, 2010			
Purpose of Contract: Operation and maintenance of the Griffith Park Train Ride			
Type of Contract: () New contract (X) Amendment		Contract Term Dates: Eighteen years from March 1, 2006 through February 28, 2024 (three-year extension)	
Contract/Amendment Amount:			
Proposed amount \$0 + Prior award(s) \$0 = Total \$0			
Source of funds: Not applicable			
Name of Contractor: GP RAH Enterprises, LLC			
Address: 17216 Saticoy Street, #387, Van Nuys, CA 91406			
	Yes	No	N/A*
1. Council has approved the purpose	X		
2. Appropriated funds are available			X
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 73 %			
8. Contractor has complied with:		Yes	No
a. Equal Employmt. Oppty./Affirm. Action		X	
b. Good Faith Effort Outreach**		X	
c. Equal Benefits Ordinance		X	
d. Contractor Responsibility Ordinance		X	
e. Slavery Disclosure Ordinance		X	
f. Bidder Certification CEC Form 50		X	
*N/A = not applicable ** Contracts over \$100,000			

COMMENTS

At its meeting of December 8, 2010, the Board of Recreation and Park Commissioners (Board) approved the first amendment to the concession agreement (Agreement No. 247) with GP RAH Enterprises, LLC (Concessionaire) for the operation and maintenance of the Griffith Park Train Ride (Train Ride). The proposed amendment extends the term by three years from 15 years to 18 years, terminating on February 28, 2024.

The Concessionaire will operate the Train Ride at the Crystal Springs Drive and Travel Town locations within Griffith Park in Council District 4. On October 12, 2005, the Council approved Agreement No. 247 for a fifteen-year term expiring on February 28, 2021 (C.F. 05-1662).

The Department reports that the City will take ownership of certain train ride equipment and related capital improvements upon expiration of the agreement. The original agreement negotiated the term and rent to allow the Concessionaire to recoup costs associated with the train ride equipment and capital improvements. Ongoing construction for the Los Angeles Department of Water and Power River Supply Conduit project has impacted revenue and ticket sales for the Train Ride. The proposed amendment will extend the term and allow the Concessionaire additional time to recoup the costs associated with the train ride equipment and capital improvements. Under the terms of Agreement

		
DP Analyst 08110150	Assistant CAO	City Administrative Officer

No. 247, an estimated \$85,163 would be paid in rent. This amount is based on revenues and may increase should the current economy recover.

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

In approving the original agreement, the Board found that, in accordance with Charter Section 371(e)(10) and the Los Angeles Administrative Code Section 10.15(a)(10), the use of competitive bidding would be undesirable, impractical or otherwise excused by common law and the City Charter due to the steep capital investments, possibility of protracted closure for removal of existing equipment, and adverse impact on the financial viability of prospective proposers.

In accordance with Los Angeles Administrative Code Section 10.5(b)2, Council approval of the proposed amendment is required because the term exceeds three years and, according to the City Attorney, the original agreement was approved by Council. To the best of our knowledge, the Concessionaire has complied with all standard provisions for City contracts, as well as City contracting requirements.

RECOMMENDATION

That the City Council approve, and authorize the President and the Secretary of the Board of Recreation and Park Commissioners to execute, the first amendment to Operating Concession Agreement No. 247 with GP RAH Enterprises, LLC for the operation and maintenance of the Griffith Park Train Ride, subject to the review and approval of the City Attorney.

FISCAL IMPACT STATEMENT

Ninety percent of the revenues from the concession agreement will be deposited into the Department of Recreation and Parks Operating Fund. The remaining ten percent will be deposited into the Department of Recreation and Parks Fund, Concession Improvement Account. There is no impact on the General Fund. The recommendation above is in compliance with the City Financial Policies in that user charges and fees are set to support the full cost of operations for which the fees are charged.

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

BARRY A. SANDERS
PRESIDENT

LUIS A. SÁNCHEZ
VICE PRESIDENT

W. JEROME STANLEY
JILL T. WERNER
JOHNATHAN WILLIAMS

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

**DEPARTMENT OF
RECREATION AND PARKS**

221 N. FIGUEROA STREET
SUITE 1510
LOS ANGELES, CA 90012

(213) 202-2640
FAX (213) 202-2610

JON KIRK MUKRI
GENERAL MANAGER

December 8, 2010

Hon. Antonio R. Villaraigosa, Mayor
City of Los Angeles
Room 303, City Hall

Attention: Ms. Pamela Finley

Dear Mayor Villaraigosa:

Transmitted forthwith and in accordance with Executive Directive No. 3, there are attached three copies of a proposed Amendment to Concession Agreement No. 247 between the City of Los Angeles Department of Recreation and Parks and GP RAH Enterprises, LLC, for operation and maintenance of the Griffith Park Train Ride Concession.

Also attached for the assistance of your Office in reviewing this proposed Amendment is Report No. 10-335 adopted by the Board of Recreation and Park Commissioners at its meeting of December 8, 2010. After review and recommendation by you, the proposed Amendment will be submitted to the Board for execution.

If you have any questions concerning this proposed Amendment, please contact Desiree Guzzetta, Management Analyst, at (213) 485-5520.

Very Truly Yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS


MARY E. ALVAREZ
Commission Executive Assistant

Enclosures

cc: Noel Williams
Robert Morales

2010 DEC 10 10:05 AM
CITY ADMINISTRATIVE SERVICES

APPROVED
DEC 08 2010

REPORT OF GENERAL MANAGER

NO. 10-335

DATE December 8, 2010

BOARD OF RECREATION
and PARK COMMISSIONERS

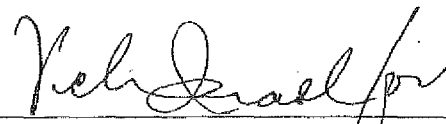
C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK TRAIN RIDE CONCESSION -- AMENDMENT TO
CONCESSION AGREEMENT NO. 247

R. Adams _____
H. Fujita _____
S. Huntley _____
V. Israel _____

*F. Mok NDW
K. Regan _____
M. Shull _____



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Approve a proposed Amendment to Concession Agreement No. 247, substantially in the form on file in the Board Office, between the City of Los Angeles Department of Recreation and Parks and GP RAH Enterprises, LLC, for the operation and maintenance of the Griffith Park Train Ride Concession, to extend the term of the concession agreement from 15 years to 18 years, subject to approval of the Mayor, in accordance with Executive Directive No. 3, and of the City Attorney as to form; and,
2. Find, in accordance with Charter Section 1022, that the Department does not have personnel available in its employ with sufficient time and expertise to undertake these specialized professional tasks and that it is more economical and feasible to secure these services by contract; and,
3. Direct the Board Secretary to transmit forthwith the proposed Amendment to the Mayor in accordance with Executive Directive No. 3 and, concurrently to the City Attorney, for review and approval as to form; and,
4. Authorize the Board President and Secretary to execute the Amendment upon receipt of the necessary approvals.

REPORT OF GENERAL MANAGER

PG. 2

NO. 10-335

SUMMARY:

The Griffith Park Train Ride Concession (Concession) has two locations: one on Crystal Springs Drive in Griffith Park adjacent to the Pony Rides and Pony Ride Refreshment Stand concessions, and another in Travel Town. The Concession offers year-round miniature train rides, a simulator ride, a souvenir stand, and also hosts the "Train Ride to Santa" every November and December.

The Concession has been operated by GP Rah Enterprises, LLC (Concessionaire) since March 1, 2006 under Concession Agreement No. 247 (Agreement). In accordance with Section 7 of the Agreement, the City will take ownership of "certain train ride equipment and related capital improvements" upon expiration of the Agreement on February 28, 2021. As part of the negotiations for the Concession, the 15-year term and rent payment amount allowed the Concessionaire to recoup costs associated with the train ride equipment and capital improvements.

On December 11, 2008, the Board approved nine (9) Concession Agreements for concessions affected by the Department of Water and Power (DWP) River Supply Conduit Improvement project (Board Report No. 08-327), which began in July 2009 and is expected to be completed in 2014. The Griffith Park Train Ride Concession was not included at that time as the Agreement was not due to expire until 2021.

Since the DWP River Supply Conduit Improvement project began, revenue and ticket sales for the Concession have declined (Attachment A) as public access onto Crystal Springs Drive has been negatively affected. Ticket sales declined by 38,736 between FY 2008-09 and FY 2009-10, and revenue declined by \$90,713 during that same time period.

Staff recommends an amendment to the Agreement, to increase the term from 15 years to 18 years, in order to allow the Concessionaire additional time to recoup costs associated with the train ride equipment and capital improvements due to the negative effect on ticket sales and revenue caused by the DWP River Supply Conduit Improvement project.

The Concessionaire has consistently met all contractual terms and conditions, including timely payment of rent, occupancy taxes, and insurance requirements. The Concessionaire also responds timely to Departmental concerns, works well with Department staff, and maintains a cordial working relationship with the other concessionaires in both the Pony Ride Area and at Travel Town, where he regularly meets with other concessionaires and staff to discuss the maintenance and operation of Travel Town.

REPORT OF GENERAL MANAGER

PG. 2

NO. 10-335

Charter Section 1022

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

On October 22, 2010, the Personnel Department completed a Charter Section 1022 review (Attachment B) and determined that while the Department had City classifications that could perform some of the work, the review states that there is no "City classification whose core duties are to maintain and operate miniature trains, simulator, and tracks for amusement purposes," which are the main duties at the Concession.

The Department lacks the personnel with the expertise to operate and maintain a miniature train ride, simulator, and souvenir gift stand operation. It would therefore be more feasible to secure the services by an independent contractor.

FISCAL IMPACT STATEMENT:

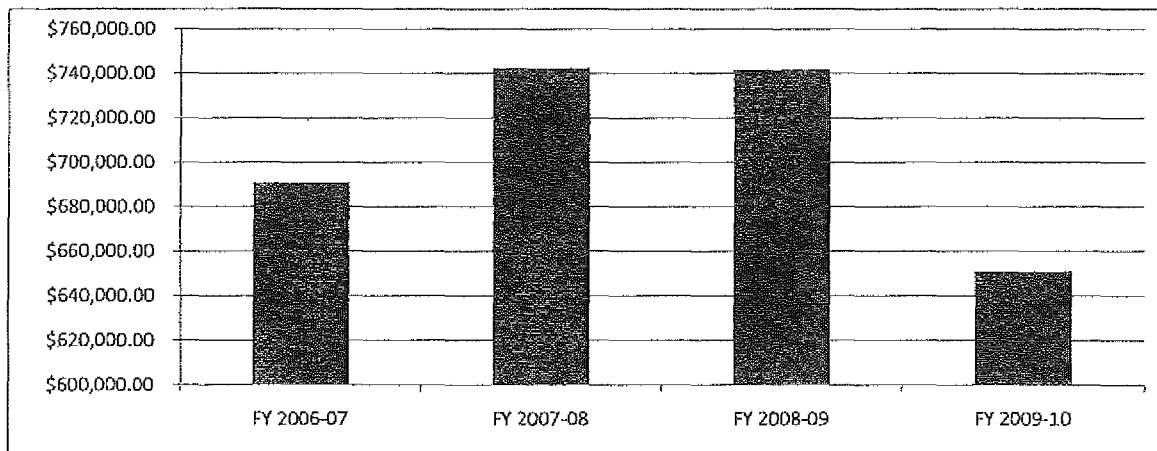
During the three-year proposed extension of the concession agreement, it is estimated that approximately \$85,163 would be paid in rent to the Department. This figure is based on current revenues and could increase as the economy recovers. Of that amount, \$76,647 would be deposited in the Department's General Fund and \$8,516 would be deposited into the Concession Improvement account (Fund 302, Department 89, Account 70K).

Report prepared by Désirée Guzzetta, Management Analyst II, Concessions Unit, Administrative Resources Section, Finance Division.

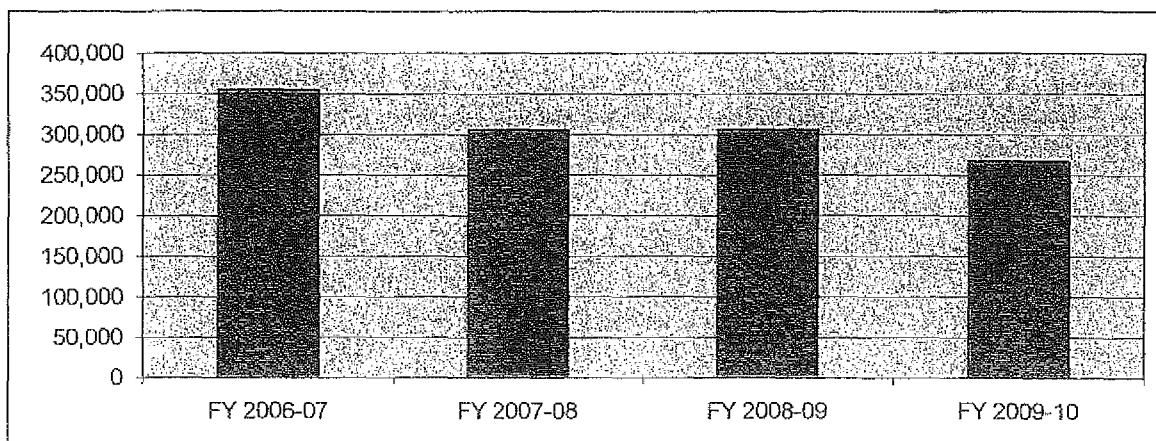
GRIFFITH PARK TRAIN CONCESSION

COMPARISON OF GROSS REVENUE AND TICKETS SOLD (GRIFFITH PARK AND SOUTHERN RAILROAD LOCATION ONLY)

GROSS REVENUE	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	DIFFERENCE FY 2008-09 & FY 2009-10	% CHANGE FY 2008-09 to FY 2009-10
TOTAL	\$ 690,876.50	\$ 742,562.00	\$ 741,838.50	\$ 651,125.50	\$ (90,713.00)	-12.23%



NUMBER OF TICKETS SOLD	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	DIFFERENCE FY 2008-09 & FY 2009-10	% CHANGE FY 2008-09 to FY 2009-10
TOTAL	355,247	306,142	306,255	267,519	(38,736.00)	-12.65%



PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

1. Requesting Department: Department of Recreation and Parks

2. Contacts:

Department: Robert Morales Phone No. 818 243-6421 Fax No. 818 243-6451

CAO: Veronica Salumbides Phone No. 213 473-7561 Fax No. 213 473-7514

3. Work to be performed:

The Recreation and Parks Department seeks to contract services of a vendor to maintain and operate miniature train rides, a train simulator, and a souvenir shop, at Griffith Park. The miniature trains will run in two locations, one near the pony rides and another near Travel Town. The contractor would be responsible for the locomotives, train tracks, and all of the maintenance on the equipment and grounds surrounding the train rides.

Is this a contract renewal? Yes ☒ No ☐ (Contract #247)

4. Proposed length of contract: Three years
(Renewal) Start Date: January, 2011

6. Proposed cost of contract (if known): Unknown (3 year revenue generating anticipated)

7. Name of proposed contractor: GP Rah Enterprises, LLC.

8. Unique or special qualifications required to perform the work:

The contract requires expertise in operating and maintaining of a simulator and miniature train rides. In addition knowledge is required for proper fuel storage; day-to-day operations; scheduled safety checks; as-needed repair of trains, tracks, and simulator. The contractor must prepare for State inspections and be aware of all regulations governing the operation of amusement park-style rides. The contract requires knowledge of operating a souvenir shop which includes staffing, stocking, and marketing the concession.

9. Are there City employees that can perform the work being proposed for contracting?
Yes ☒ (some of the work) No ☐

If yes,

<i>Classification</i>	<i>Departments</i>	<i>List Expires</i>
Building Repairer	Airports, Convention Center, DWP, GSD, Police, PW Sanitation, Recreation & Parks, Zoo	No List
Carpenter	Airports, Convention Center, DWP, Fire, GSD, Harbor, Police PW Sanitation, Recreation and Parks, Zoo	4/2/2011

Custodian	Various	1/22/2011
Electrician	Airports, Convention Center, DWP, GSD, Harbor, Police, PW Sanitation, Recreation & Parks, Zoo	No list
Gardener Caretaker	Various	Continuous
Maintenance and Construction Helper	Various	7/20/12
Painter	Airports, Convention Center, DWP, GSD, Harbor, Police, PW Sanitation, Recreation & Parks, Zoo	Reserve list through 2099
Park Services Attendant	Recreation & Parks, Zoo	Reserve list 6/30/15

If yes,

- Which class (es) and Department(s): See above.
- Is there sufficient Department staff available to perform the work? Yes ☐ No ☒
- Is there a current eligible list for the class(es)? Yes ☐ No ☐ Expiration Date: see above.
- Estimated time to fill position(s) through CSC process? Unknown due to hiring freeze.
- Can the requesting department continue to employ staff hired for the project after project completion? Yes ☐ No ☒
- Are there City employees currently performing some of the work? Yes ☒ No ☐

10. Findings

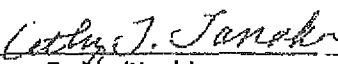
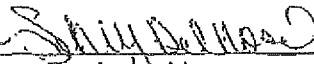

- ☐ City employees DO NOT have the expertise to perform the work
☒ City employees DO have the expertise to perform some of the work

Check if applicable (explanation attached) and send to CAO for further analysis

- ☐ Project of limited duration would have to layoff staff at end of project
☐ Time constraints require immediate staffing of project
☐ Work assignment exceeds staffing availability

SUMMARY:

Staff has identified several City classes that could perform some of the duties required in the Griffith Park Miniature Train Ride Concession contract. There is not however, a City classification whose core duties are to maintain and operate miniature trains, simulator, and tracks for amusement purposes.

			<u>10/22/10</u>
Submitted by	Reviewed by	Approved by	Date
Cathy T. Tanaka	Shelly Del Rosario	Raul Lemus	
Sr. Personnel Analyst I	Sr. Personnel Analyst II	Chief Personnel Analyst	

**AMENDMENT TO
CONCESSION AGREEMENT NO. 247
FOR CONCESSION OPERATION OF
MINIATURE TRAIN RIDES IN GRIFFITH PARK**

THIS AMENDMENT TO CONCESSION AGREEMENT NO. 247 is made and entered into this _____ day of _____, 2011, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (hereinafter "CITY"), and GP RAH ENTERPRISES, LLC (hereinafter "CONCESSIONAIRE").

WITNESSETH

WHEREAS, CITY has chosen to serve the public by providing train rides at Griffith Park through a concession operator; and

WHEREAS, on April 5, 2005, the CITY selected CONCESSIONAIRE to operate the Griffith Park Train Rides (Board Report No. 05-88) (hereinafter "CONCESSION") in accordance with the terms and conditions of a 15-year Operating Concession Agreement No. 247 (hereinafter "AGREEMENT"); and

WHEREAS, the AGREEMENT was executed on March 1, 2006, and encompassed all rights and duties of the parties; and

WHEREAS, the prolonged construction for the Los Angeles Department of Water and Power's (DWP) River Supply Conduit Improvement project, which began in Winter 2009 and is scheduled to be completed in Summer of 2014, has adversely affected attendance and revenues at the CONCESSION; and

WHEREAS, the AGREEMENT was structured in order to allow the CONCESSIONAIRE time to recoup costs associated with the locomotives used for and other related capital improvements to the CONCESSION, which will be owned by the CITY at the conclusion of the term of the AGREEMENT; and

WHEREAS, the decline in attendance and revenues due to the DWP River Supply Conduit Improvement project, has adversely affected the CONCESSIONAIRE's ability to recoup costs associated with the locomotives and the capital improvements; and

THEREFORE, the parties to Concession Agreement No. 247 hereby mutually agree to amend the AGREEMENT as follows:

1. SECTION 3. TERM OF AGREEMENT

Delete the Section in its entirety and replace with:

"The term of this AGREEMENT is eighteen (18) years, effective on the date of execution."

All other terms and conditions of the AGREEMENT shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Concession Agreement No. 247, to be executed by their duly authorized representatives.

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: _____

GP RAH ENTERPRISES, LLC

BY: _____
President

DATE: _____

BY: _____
Secretary

DATE: _____

APPROVED AS TO FORM:
CARMEN TRUTANICH, City Attorney

BY: _____
Senior Assistant City Attorney

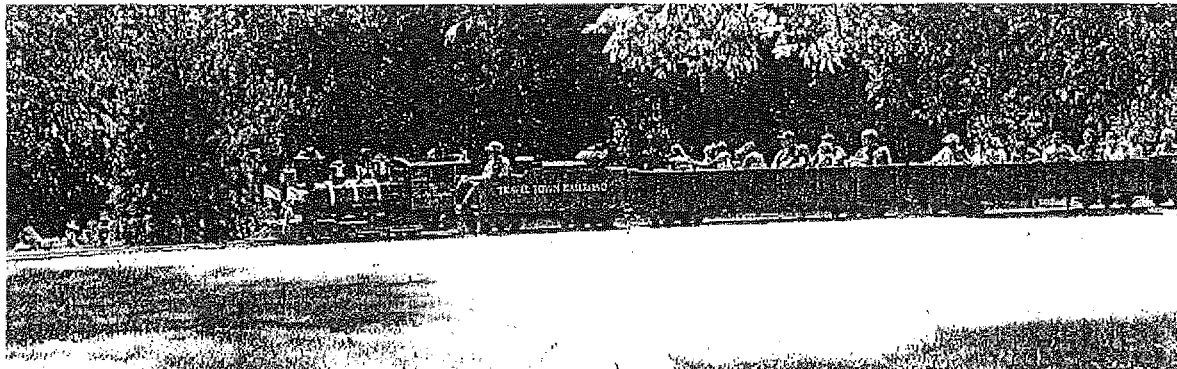
DATE: _____



CITY OF LOS ANGELES
DEPARTMENT OF
RECREATION AND PARKS



Agreement for Concession Operation of Miniature Train Rides in Griffith Park



Administrative Resources Division
3900 Chevy Chase Drive
Mail Stop 628
Los Angeles, California 90039
(818) 243-6488 phone
(818) 243-1459 fax

THIS AGREEMENT, made and entered into this 1st day of March, 2006, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter "CITY"), acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS (hereinafter "BOARD"), and GP RAH, Enterprises, LLC (hereinafter "CONCESSIONAIRE").

WITNESSETH

WHEREAS, the principal purpose of CITY in entering into this Concession Agreement (hereinafter "AGREEMENT") is to serve the public by continuing the Griffith Park tradition of providing safe and entertaining miniature train rides to visitors; and

WHEREAS, the BOARD has determined that the incumbent CONCESSIONAIRE is a sole-source operator, as owner of the existing Griffith Park miniature train ride equipment and numerous train ride-related capital improvements, and has agreed with said CONCESSIONAIRE on terms under which to operate the CONCESSION and sell ownership of equipment and improvements to the CITY, said terms and conditions embodied in this AGREEMENT; and

WHEREAS, CONCESSIONAIRE desires to secure and enter into AGREEMENT in accordance with the foregoing and shall undertake to provide continuing services of the type and character required therein by CITY to meet the needs of the public who desire the experience of miniature train rides at the Los Feliz/Crystal Springs park entrance and Travel Town Museum areas of Griffith Park; and

WHEREAS, due to the fact that the CITY does not own the Griffith Park railroad improvements or equipment, it is not practicable for the CITY to competitively bid this service, nor is it economical or feasible to have CITY employees operate the services; and

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 11 pages and 7 Exhibits (A, B1-B3, C1-C4, D, E, F, and G) attached thereto.

CONCESSION: Miniature Train Ride Operation in Griffith Park (two locations, see PREMISES below)

CONCESSIONAIRE: GP RAH Enterprises, LLC
17216 Saticoy Street, #387
Van Nuys, CA 91406

CONCESSION MANAGER: The person with whom the GENERAL MANAGER
deals with on a daily basis regarding the CONCESSION.

DEPARTMENT: The Department of Recreation and Parks, acting through
the BOARD.

GENERAL MANAGER: GENERAL MANAGER of the DEPARTMENT, or that
person's authorized representative, acting on behalf of
CITY. All actions of the GENERAL MANAGER are
subject to review at the pleasure of the BOARD.

PARK: Griffith Park

PREMISES: Griffith Park Train Ride
4400 Crystal Springs Drive (at Los Feliz Boulevard)
Los Angeles, CA 90027

Travel Town Museum Train Ride
5200 Zoo Drive
Los Angeles, CA 90027

STANDARD CONDITIONS: Standard Conditions and Regulations for the Operation of
Concessions

SECTION 2. CONCESSION GRANTED

CONCESSIONAIRE shall be granted the exclusive right and obligation to utilize PREMISES to provide and maintain a miniature train/amusement ride service to patrons. CONCESSIONAIRE shall provide improvements and maintenance of the PREMISES in accordance with other provisions of this AGREEMENT.

CONCESSIONAIRE shall not perform or conduct any activity on the PREMISES which is not directly related to the purpose set forth in the AGREEMENT for the subject concession without the prior written consent of the GENERAL MANAGER.

At CONCESSIONAIRE'S option and with the written approval of the GENERAL MANAGER, CONCESSIONAIRE may provide other limited amusement/ride related service(s) within the defined premises such as a simulator ride, souvenir gift sales, and ancillary holiday themed

miniature train rides with photos. Any sublicensing of these related activities require the written approval of the GENERAL MANAGER. Souvenir sales are expected to be sublicensed.

SECTION 3. PREMISES

CONCESSIONAIRE is granted the exclusive right to use two Griffith Park Miniature Train Ride Concession Facilities – the Travel Town and Los Feliz Locations (hereinafter PREMISES) as set forth in Exhibits “A,” “B1-B3,” and “C1-C4”, attached hereto and incorporated herein. The adjacent parking lots associated with said PREMISES are not for the exclusive use of the CONCESSIONAIRE, but are shared with neighboring concession operators, and Travel Town Museum guests, however the principal use of the adjacent lot is acknowledged by the DEPARTMENT as related to the concessions or other appurtenant facilities.

SECTION 4. INCORPORATION OF STANDARD CONDITIONS

CONCESSIONAIRE shall abide by all provisions of the “Standard Conditions for the Operation of Concessions”, attached hereto as Exhibit “D” and incorporated herein. These Standard Conditions cover all aspects of PREMISES operations except that in cases where there is a conflict between the Standard Conditions and the terms of this AGREEMENT, the latter is deemed to be controlling.

SECTION 5. TERM

Term will be for fifteen (15) years, effective on the date of execution.

SECTION 6. RENTAL

CONCESSIONAIRE shall pay to CITY four and one-quarter percent (4.25%) of gross receipts received from all standard train rides and ten percent (10%) of gross receipts from merchandise and other rides/services (i.e. SR2 Simulator, Train Ride to Visit Santa). On or before the fifteenth day of each month, payment is due for the prior month. Payment shall be in the form of a check or money order. At the same time, CONCESSIONAIRE shall also submit a Monthly Remittance Advice for the month for which payment is submitted. Forms for this purpose are attached as Exhibit “E”, which may be duplicated. A variation of this form may be submitted by the CONCESSIONAIRE upon prior written approval of the GENERAL MANAGER.

The CONCESSIONAIRE shall mail all payments and reports to:

Department of Recreation and Parks
Park Services Division
P.O. Box 5358
Glendale, CA 91221-5385

Use of the premises for purposes not expressly permitted herein, whether or not approved in writing by GENERAL MANAGER, may result in additional charges.

SECTION 7. OWNERSHIP TRANSFER OF EQUIPMENT AND IMPROVEMENTS AND RESERVE FUND

In consideration of the rental percentage and the term length under this agreement, CONCESSIONAIRE shall transfer ownership of certain train ride equipment and related capital improvements to CITY at the conclusion of this AGREEMENT's term. Items to become City-owned property are listed in Exhibit "F," attached and incorporated herein. CONCESSIONAIRE shall provide adequate insurance (see SECTION 9.) on said equipment and improvements to ensure full replacement as necessary prior to conclusion of the AGREEMENT's term and transfer of equipment and improvement ownership.

CONCESSIONAIRE shall set aside a reserve in the amount of 1% of total standard train ride gross annual receipts from all permitted operations for the purpose of repair, refurbishment, or replacement of equipment and capital improvements to be transferred to the CITY when they are worn or damaged and need to be repaired, refurbished, or replaced. The reserve shall be cumulative and carry-over from year-to-year during the term of the agreement. In the event of agreement termination for any reason, or at the conclusion of the agreement term, any amount in this account will be turned over to the CITY. These dollars are not to be used for routine repair and maintenance or loose equipment replacement. Annually in January the CONCESSIONAIRE will submit prior-year's expenditures from the fund and propose expenditures in the coming year for review and approval of the GENERAL MANAGER. In the event of emergency, CONCESSIONAIRE may request in writing the use of the reserve for other purposes, or the GENERAL MANAGER may request use of the reserve on a specific repair, refurbishment, or replacement.

SECTION 8. OPERATING RESPONSIBILITIES

A. Prices

All prices charged shall be prominently posted and shall not exceed prevailing market prices for the same standard grade of service or merchandise at similar venues in the surrounding community. Prices and subsequent price changes for rides and other services by CONCESSIONAIRE are subject to approval from the BOARD.

B. Hours/Days of Operation

CONCESSIONAIRE shall offer PREMISES services to the public at least six hours per day, seven days per week, except during inclement weather. CONCESSIONAIRE may close concession on December 25.

Prior to operation, CONCESSIONAIRE shall submit in writing to the GENERAL MANAGER the proposed hours of operation. Said hours of operation and all future deviations therefrom shall receive prior approval from the GENERAL MANAGER.

C. Fixtures and Equipment

CONCESSIONAIRE shall provide and install at its own sole expense all equipment, furnishings, and materials necessary to operations licensed including, but not limited to: miniature locomotives and cars, ticket sales machines, cash registers, shelving, fuel storage and delivery for locomotives, racks, counters, display cases, lighting, and heating and air conditioning.

CONCESSIONAIRE may use a Point of Sale system in lieu of a cash register upon review and approval of the GENERAL MANAGER.

All fixtures and equipment required for said concession shall be purchased, installed and maintained and all expendables shall be purchased by CONCESSIONAIRE at its expense and shall remain its personal property.

D. Maintenance of Equipment and Premises

CONCESSIONAIRE shall provide all maintenance, repair, replacement, and service required on all equipment and furnishings used in the CONCESSION, whether or not owned by CONCESSIONAIRE, and keep such equipment in good repair and in a clean and orderly condition and appearance. To accomplish this requirement, CONCESSIONAIRE shall establish an adequate preventive maintenance program and the provisions of same shall be subject to periodic review by CITY'S representatives. Insofar as sanitation and appearance of the PREMISES is involved, the GENERAL MANAGER may direct CONCESSIONAIRE to perform necessary repairs and maintenance. The cost of repairing the heating and air-conditioning equipment serving the CONCESSION PREMISES shall be assumed by the CONCESSIONAIRE. CONCESSIONAIRE is responsible for all utility and sewer lines in the PREMISES, except irrigation lines in some landscaped areas noted below.

CONCESSIONAIRE shall be responsible for the materials, maintenance, and repair of the track right-of-way, the track itself, the track crossings, the fencing, and all interior areas and surfaces of the PREMISES and all improvements at both sites. Common passageways leading to other CONCESSION facilities or offices maintained by the CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this section. In the event PREMISES are damaged as a result of vandalism, it shall be the responsibility of the CONCESSIONAIRE to repair or replace any damages. CONCESSIONAIRE'S duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and painting that may be required to properly maintain the PREMISES in a safe, clean, wholesome, sanitary, orderly, and attractive condition. CONCESSIONAIRE shall also be responsible for electrical,

mechanical, and plumbing maintenance of PREMISES, such as light fixtures, toilets, and faucets.

Because the CONCESSION locations are located at two of the more prominent areas of Griffith Park, the appearance of the PREMISES is of particular importance to the DEPARTMENT. CITY shall maintain the landscaped areas surrounding the CONCESSION. CITY shall be responsible for maintenance of the lawn areas common to the train ride and other adjacent concessions, and for the lawn area within the train ride track at and the Los Feliz and Crystal Springs Drive corner of the PARK. CITY shall be responsible for maintenance of irrigation lines in these areas.

CONCESSIONAIRE shall be responsible for the repair of any exterior alarm device, including such repairs occasioned by normal wear and tear, vandalism, and the elements. Other applicable maintenance responsibilities are defined within the STANDARD CONDITIONS.

E. Utilities

The CONCESSIONAIRE will be responsible for all utility charges associated with the operation of the concession except for water and the main trash pickup (i.e. dumpsters) both of which will be provided for by the DEPARTMENT. At the Griffith Park Train Ride Location (Crystal Springs Drive at Los Feliz Boulevard) CONCESSIONAIRE shall make payments for electricity and natural gas directly to the corresponding utility companies. CONCESSIONAIRE shall pay a flat fee of \$75.00 per month to the DEPARTMENT for utility charges associated with the concession operation at the Travel Town Museum Train Ride location. This flat fee is subject to change by the DEPARTMENT based on actual utility charges from previous months. The DEPARTMENT or CONCESSIONAIRE may install separate utility meters at the Travel Town Museum Train Ride location, at which point CONCESSIONAIRE shall make payments for electricity and natural gas directly to the corresponding utility companies. In all cases, CONCESSIONAIRE will pay directly for telephone and data services, which will be in the name of the concessionaire and will not be transferable to other locations.

F. Safety

CONCESSIONAIRE shall train its ride operators in proper operating procedures to ensure safety of the ride passengers, workers, and park visitors. Inspection of the ride equipment and track shall be conducted frequently and regularly. Preventative Maintenance to all ride equipment shall be conducted on a regular and ongoing basis. Other applicable safety responsibilities are defined within the STANDARD CONDITIONS.

G. Fuel Storage and Maintenance

CONCESSIONAIRE shall be responsible for the safe storage, maintenance and delivery of all hazardous materials on the PREMISE to the satisfaction of the Los Angeles Fire

Department. In addition, CONCESSIONAIRE shall be completely responsible for the safe removal and disposal of any hazardous and/or toxic materials on the premises, to the satisfaction of the Los Angeles Fire Department.

H. Amplified Sound

The use of amplified sound in conformance with the Article 5 of Chapter XI of the Los Angeles Municipal Code, is permitted in connection with regular operations of this CONCESSION, subject to disapproval by the GENERAL MANAGER.

I. 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. CONCESSIONAIRE, along with fellow existing Griffith Park amusement ride concessionaires, will be granted a first right of refusal to provide amusement-ride service(s) at DEPARTMENT-sponsored events at the Griffith Park Train Ride and Travel Town Museum Train Ride areas in the case that the amusement ride service is appropriate for the event and logistically favorable.

J. Scheduled Events in Griffith Park

Long standing annual events in Griffith Park (i.e. walk-a-thons, 5K runs, Kid's Day L.A.) may on occasion increase or decrease the usual amount of business at this concession location due to increased park attendance and/or limited/restricted traffic access. CONCESSIONAIRE shall endeavor to adjust personnel scheduling and service to park visitors accordingly. Regular hours must be maintained, at a minimum, during scheduled special events.

K. Facility and Program Approvals

CONCESSIONAIRE must submit to the Department prior to operation:

- (a) Complete list of amusement/ride services and items to be sold and their corresponding prices; and
- (b) List of equipment to be used on DEPARTMENT property; and
- (c) Plans and specifications for installations and improvements.

L. Failure to Operate

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

M. Caretakers

CONCESSIONAIRE is permitted to install overnight caretakers facility on the PREMISES located at 4400 Crystal Springs Drive. Caretaker must pay CONCESSIONAIRE rent of at least 20% of fair market value, and CONCESSIONAIRE shall remit 10% of this rent to the CITY.

SECTION 9. INSURANCE

CONCESSIONAIRE shall procure at its expense, and keep in effect at all times during the term of this agreement, the types and amounts of insurance specified on the Required Insurance page attached hereto, marked Exhibit "G" and made a part hereof. CONCESSIONAIRE shall provide adequate insurance coverage on equipment and improvements listed in Exhibit "F" to ensure its full replacement since AGREEMENT includes ownership transfer of said equipment and improvements to the CITY upon conclusion of the AGREEMENT.

SECTION 10. PERFORMANCE BOND

CONCESSIONAIRE shall provide a Performance Bond upon execution of this AGREEMENT by CITY in the amount of \$25,000.00. The form, agreement of deposit and indemnity, and the terms of deposit maintenance of said bond are set forth in the STANDARD CONDITIONS.

SECTION 11. IMPROVEMENTS

No improvements are required under this permit; however, CONCESSIONAIRE may propose and DEPARTMENT may approve improvements to the premises. Ownership of said improvements, if authorized, would remain with DEPARTMENT. At DEPARTMENT'S sole discretion, DEPARTMENT may participate jointly in the funding or installation of improvements.

SECTION 12. DAMAGE OR DESTRUCTION TO PREMISES:

If 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 or unusable for public service 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 pay the costs therefore, or CITY may repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

SECTION 13. WRITTEN NOTICES

Written notices to CITY shall be addressed to:

City of Los Angeles
Department of Recreation and Parks
1200 West 7th Street, Suite 700
Los Angeles, CA 90017
Attention: GENERAL MANAGER

and

City of Los Angeles
Department of Recreation and Parks
Administrative Resources Division
3900 W. Chevy Chase Drive, Mail Stop 628
Los Angeles, CA 90039

Written notices to CONCESSIONAIRE hereunder shall, until CITY's receipt of written notice otherwise from CONCESSIONAIRE, be addressed to CONCESSIONAIRE at:

Mr. Don Gustavson
GP RAH Enterprises, LLC
17216 Saticoy Street, #387
Van Nuys, CA 91406

The execution of any such notice by GENERAL MANAGER shall be as effective for CONCESSIONAIRE as if it were executed by CITY, or by Resolution or Order of said CITY. All such notices may either be delivered personally to GENERAL MANAGER, in the one case, or to any officer or responsible employee of CONCESSIONAIRE in the other case, 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 14. INCORPORATION OF DOCUMENTS

The following Exhibits are to be attached to and made part of this AGREEMENT by reference:

- A. Griffith Park Train Ride Concessions – Vicinity Map
- B. Travel Town Train Ride Concession (B1-B3)
- C. Los Feliz Train Ride Concession (C1-C4)
- D. Standard Conditions and Regulations for the Operation of Concessions
- E. Remittance Advice Form
- F. Train Ride Equipment and Related Capital Improvement Ownership Transfer List
- G. Insurance Requirements

In the event of any conflict or inconsistency between the provisions of this AGREEMENT and those of the documents incorporated herein by reference, this AGREEMENT shall be controlling.

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.

Date: 3/1/06

BY: [Signature]
President

BY: [Signature]
Secretary

Date: February 15, 2006

GP RAH ENTERPRISES, LLC
CONCESSIONAIRE

BY: [Signature]

TITLE: President

BY: [Signature]

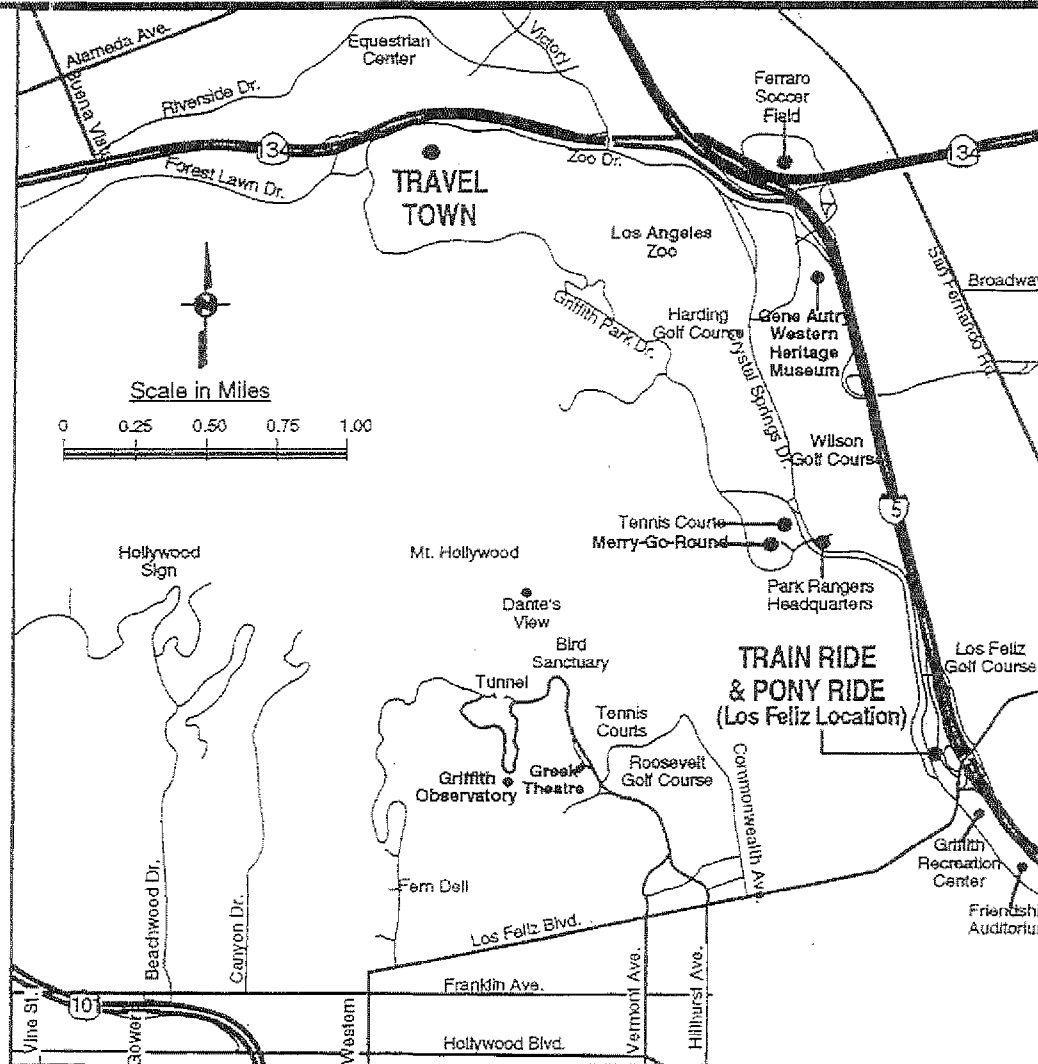
TITLE: SECRETARY

APPROVED AS TO FORM:

Date: 3-1-06

BY: [Signature]
MARK BROWN, Sr. Assistant City Attorney

DRAFT



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Exhibit
A

**GRIFFITH PARK
Vicinity Map**

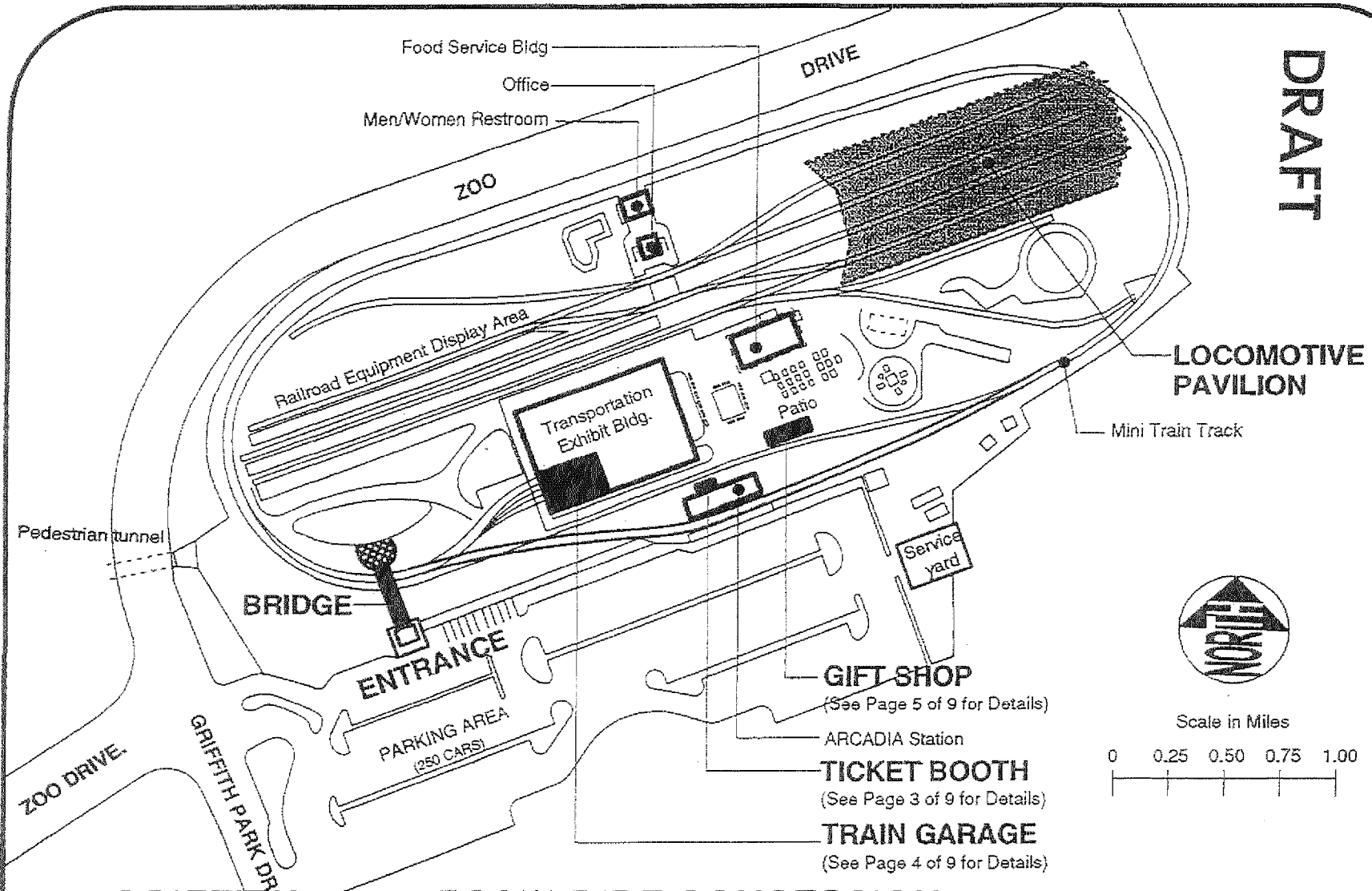
Thomas Guide '95 Edition, P.563, 564&593, 594

**GRIFFITH PARK-TRAIN RIDE CONCESSIONS
VICINITY MAP-Travel Town & Los Feliz Locations**

Department of Recreation & Parks, Design Division, HB 07/20/93, Rev.04/22/96, Rev 02/20/97, P.1 of 9/21

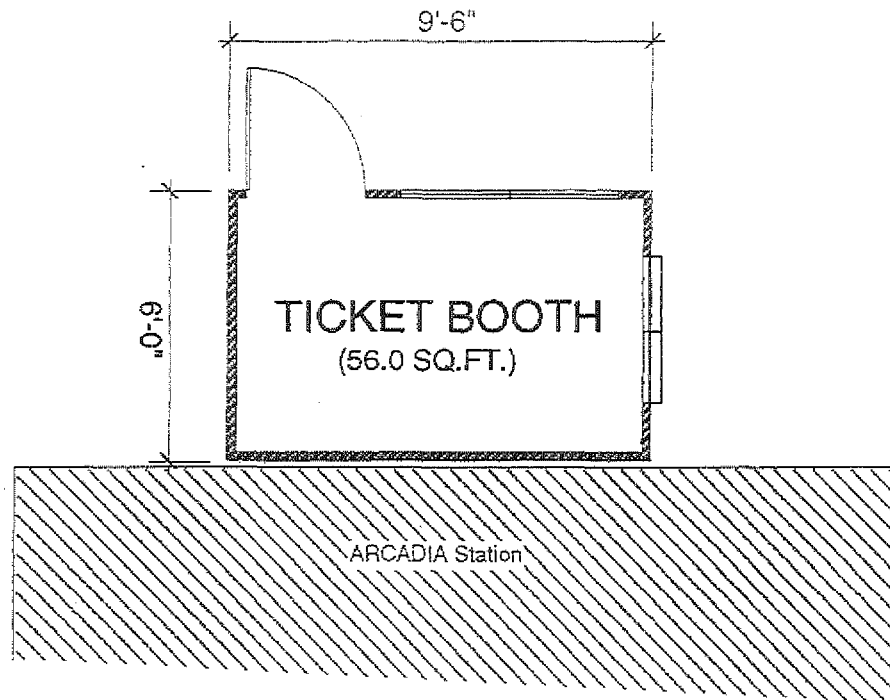
B-1

DRAFT



GRIFFITH PARK TRAIN RIDE CONCESSION
PROPOSED SITE PLAN-Travel Town Location (showing Master Plan Capital Improvements)
Department of Recreation & Parks, Design Division, HB 07/20/93, Rev.04/22/96, Rev 02/20/97, P.2A of 9/21

DRAFT



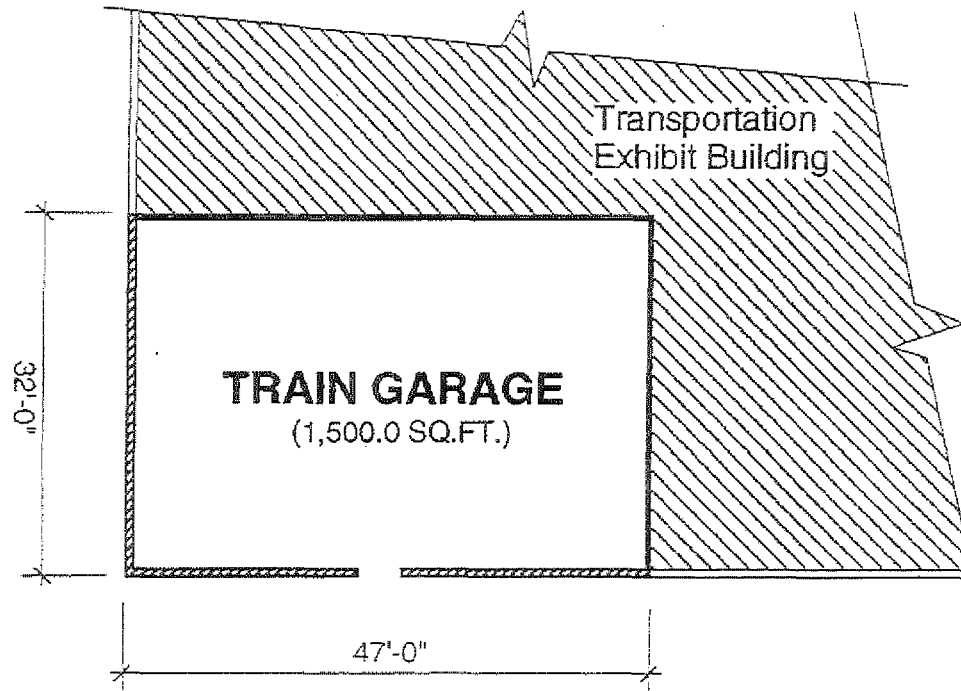
B-2



Scale : 1/4"=1'-0"

GRIFFITH PARK-TRAIN RIDE CONCESSION
TICKET BOOTH-Travel Town Location

DRAFT



B-3



Scale : 1/16"=1'-0"

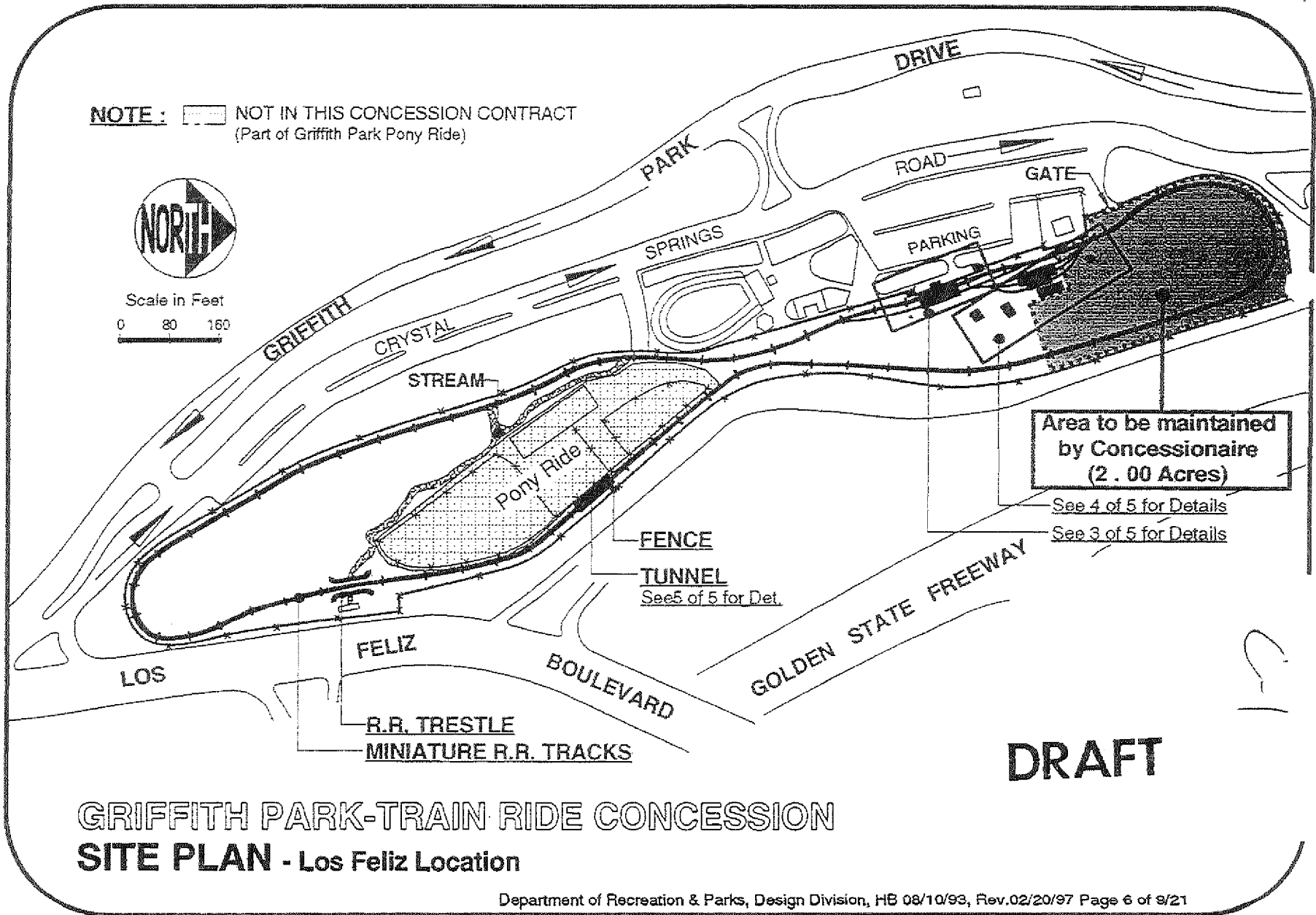
GRIFFITH PARK-TRAIN RIDE CONCESSION
TRAIN GARAGE-Travel Town Location

NOTE: [Hatched Box] NOT IN THIS CONCESSION CONTRACT
(Part of Griffith Park Pony Ride)



Scale in Feet

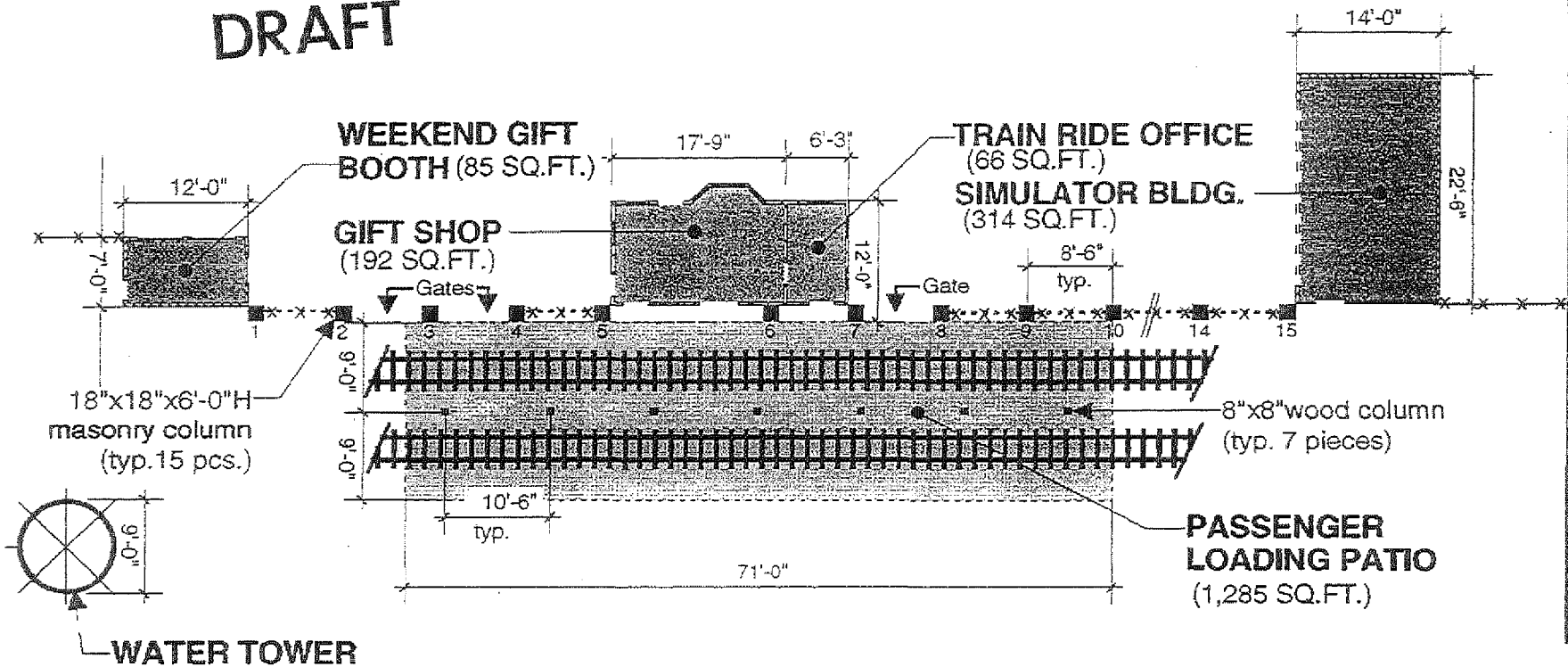
0 80 160



GRIFFITH PARK-TRAIN RIDE CONCESSION SITE PLAN - Los Feliz Location

DRAFT

DRAFT



Scale: 1/16"=1'-0"

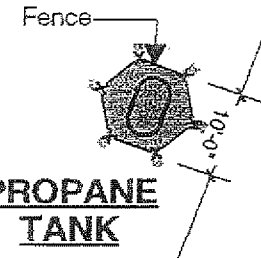
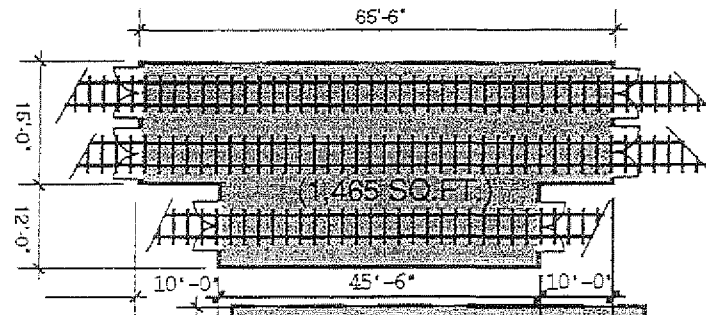
GRIFFITH PARK-TRAIN RIDE CONCESSION

TRAIN RIDE OFFICE / GIFT SHOP / WEEKEND GIFT BOOTH / SIMULATOR BLDG. / PASSENGER / LOADING PATIO AND WATER TOWER (Los Feliz Location)

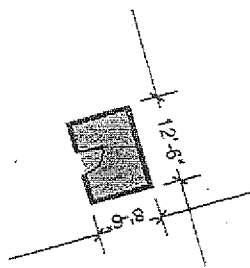
2

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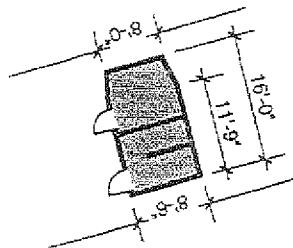
CAR BARN



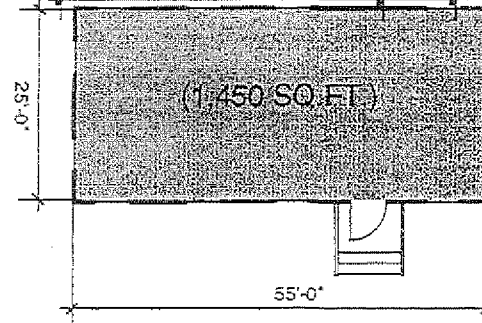
PROPANE TANK



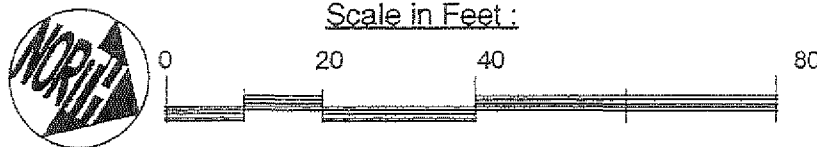
**Building "A"
STORAGE
(95 SQ. FT.)**



**Building "B"
STORAGE
(160 SQ. FT.)**



**TRAILER
Care Taker's Residence**

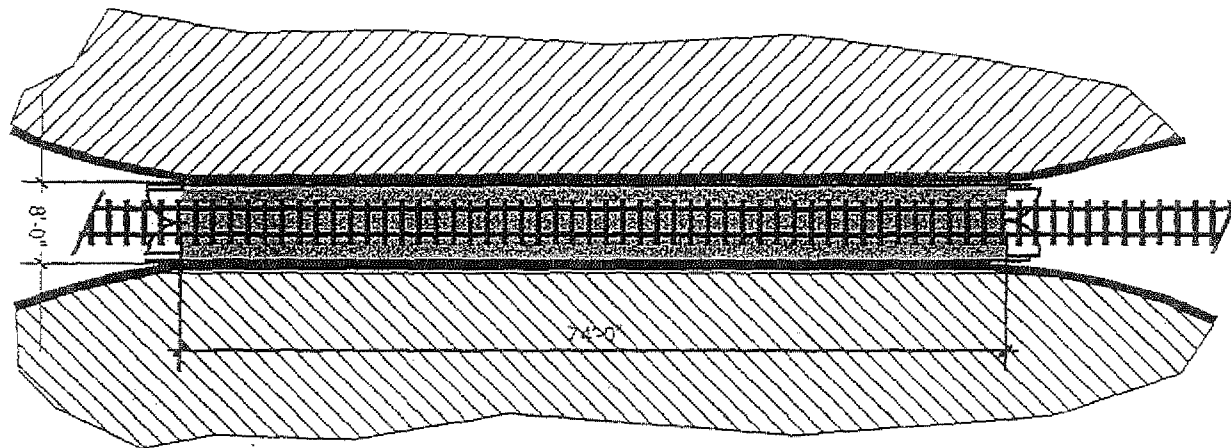


GRIFFITH PARK-TRAIN RIDE CONCESSION

**CAR BARN, STORAGE BLDGS., TRAILER & PROPANE TANK
(Los Feliz Location)**

03

DRAFT



TUNNEL

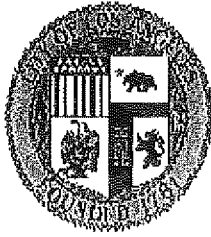


Scale: 1/16"=1'-0"

GRIFFITH PARK TRAIN RIDE CONCESSION
TUNNEL (Los Feliz Location)

C-4

Exhibit D



CITY OF LOS ANGELES
DEPARTMENT OF
RECREATION AND PARKS



STANDARD CONDITIONS
AND REGULATIONS
For The Operation of Concessions

Administrative Resources Division
3900 Chevy Chase Drive
Mail Stop 656-3
Los Angeles, California 90039
(213) 485-5520

Revised 11/10/03

INDEX

DEFINITIONS	1
SECTION 1. CONCESSION GRANTED	1
SECTION 2. PREMISES	2
SECTION 3. TERM OF CONCESSION PERMIT/AGREEMENT	2
SECTION 4. TIME OF EXECUTION	2
SECTION 5. NUMBER OF ORIGINALS	2
SECTION 6. INDEPENDENT CONTRACTORS/ CONSULTANTS	3
SECTION 7. CONCESSION RENTAL	3
A. Payments	3
B. Gross Receipts Defined	3
C. Method of Payment	4
D. Pro Rata Payment	4
E. Late Payment Fee	5
SECTION 8. ADDITIONAL FEES AND CHARGES	5
SECTION 9. OPERATING RESPONSIBILITIES	6
A. Cleanliness	6
B. Conduct	6
C. Disorderly Persons	6
D. Non-Discrimination/ Equal Employment Practices/ Affirmative Action	6
E. Personnel	7
F. Merchandise and Price Schedules	8
H. Hours of Operation	9
I. Equipment, Furnishings and Expendables	9
J. Maintenance, Refurbishing and Repair of Equipment	9
K. Maintenance of Premises	9
L. Claims for Labor and Materials	10
M. Signs and Advertisements	10
N. Taxes and Permits	11
O. Utilities	12
P. Vending Machines	12
Q. Safety	12
R. Environmental Sensitivity	13
SECTION 10. IMPROVEMENTS	13
SECTION 11. PROHIBITED ACTS	14
SECTION 12. LIABILITY	15
A. Indemnification	15
B. Insurance	15
C. Workers' Compensation	18
SECTION 13. FAITHFUL PERFORMANCE BOND	18
A. Amount of Bond	18
B. Form of Bond	18
C. Agreement of Deposit and Indemnity	18
D. Maintenance of Deposit	19
SECTION 14. ASSIGNMENT, SUBLEASE, BANKRUPTCY	19
SECTION 15. BUSINESS RECORDS FOR CONCESSIONAIRES WHOSE RENTAL IS BASED ON GROSS RECEIPTS	20
A. Employee Fidelity Bonds	20
B. Cash And Record Handling Requirements	20
SECTION 16. REGULATIONS, INSPECTION, AND DIRECTIVES	21
A. Subject To	21
B. Permissions	21
C. Right of Inspection	22
D. Control of Premises	22

E.	Americans with Disabilities Act	22
F.	Child Support Ordinance	22
G.	Minority, Women, and Other Business Enterprise Outreach Program	22
H.	Living Wage Ordinance/Service Contract Worker Retention Ordinance	23
I.	Contractor Responsibility Ordinance	23
J.	Equal Benefits Ordinance	23
K.	Contractor Evaluation Ordinance	23
L.	Slavery Disclosure Ordinance	23
SECTION 17.	TERMINATION	24
A.	By CITY	24
B.	CITY'S Right of Reentry	25
C.	Additional Rights of CITY	25
D.	Survival of CONCESSIONAIRE'S Obligations	25
E.	Waiver of Redemption and Damages	26
F.	By CONCESSIONAIRE	26
SECTION 18.	SURRENDER OF POSSESSION	27
SECTION 19.	WAIVER	27
SECTION 20.	CONDITIONS AND COVENANTS	27
SECTION 21.	FORCE MAJEURE	27
SECTION 22.	REMEDIES ARE NON-EXCLUSIVE	27
SECTION 23.	CONCESSION PERMIT/AGREEMENT BINDING UPON SUCCESSORS	27
SECTION 24.	LAW OF CALIFORNIA APPLIES	28
SECTION 25.	AGENT FOR SERVICE OF PROCESS	28
SECTION 26.	VENUE	28
SECTION 27.	ATTORNEY'S FEES	28
SECTION 28.	WAIVER OF CLAIMS	28
SECTION 29.	NOTICES	29
A.	To CITY	29
B.	To CONCESSIONAIRE	29
SECTION 30.	INTERPRETATION	29
SECTION 31.	PERMIT/AGREEMENT CONTAINS ENTIRE AGREEMENT	29
SECTION 32.	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:

BOARD:	Board of Recreation and Park Commissioners.
CITY:	City of Los Angeles, acting by and through its Board of Recreation and Park Commissioners.
CONCESSION:	The permitted operations granted by the Permit/Agreement.
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:	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.
CONCESSIONAIRE:	The person or entity permitted by the Permit or Concession Agreement to operate a CONCESSION at the FACILITY.
PERMIT/AGREEMENT:	The written, executed Concession Agreement to which these STANDARD CONDITIONS are attached.
PREMISES:	The geographical area, as defined in the PERMIT/AGREEMENT, in which the concession may be operated.
LAAC:	The Los Angeles Administrative Code.
LAMC:	The Los Angeles Municipal Code.

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 PERMIT/AGREEMENT and these Standard Conditions, CITY hereby grants to CONCESSIONAIRE the privilege to provide only those services set forth in the PERMIT/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 PERMIT/AGREEMENT. CONCESSIONAIRE, by accepting the PERMIT/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.

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 PERMIT/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.

CITY reserves the right to suspend the PERMIT/AGREEMENT during the occurrence of Special Events at the FACILITY. A Special Event shall be an event advertised to the general public and which is not in the normal and usual use 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 in order 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 PERMIT/AGREEMENT. CONCESSIONAIRE shall not use or allow the PREMISES to be used, in whole or in part, during the term of the PERMIT/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 CONCESSION PERMIT/AGREEMENT

The term of this Concession PERMIT/AGREEMENT shall be the period as specified in the PERMIT/AGREEMENT. The right of the GENERAL MANAGER to revoke or renew the PERMIT/AGREEMENT is and shall remain unconditional. 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 PERMIT/AGREEMENT.

SECTION 4. TIME OF EXECUTION

Unless otherwise provided, this PERMIT/AGREEMENT shall be considered executed when:

- A. The Office of the City Attorney has indicated in writing of its approval of this PERMIT/AGREEMENT as to form and legality; AND
- B. Said PERMIT/AGREEMENT has been approved by the CITY's Council, Board, officer, or employee authorized to give such approval, AND
- C. Said PERMIT/AGREEMENT has been signed on behalf of the CONCESSIONAIRE by the person or persons authorized to bind the CONCESSIONAIRE hereto, AND
- D. This PERMIT/AGREEMENT has been signed on behalf of the CITY by the person designated to so sign by the CITY's Council, Board, officer, or employee authorized to enter into this PERMIT/AGREEMENT.

SECTION 5. NUMBER OF ORIGINALS

The number of original texts shall be equal to the number of the 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 out 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. Payments:

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

B. Gross Receipts Defined

The term "gross receipts" is defined to mean the total amount charged or received for the sale of any goods, wares or merchandise, or for the performance of any act or service (whether such act or service is done as a part of or in connection with the sale of goods, wares, merchandise or not), for which a charge is made or credit is allowed, including all receipts, cash, credits, and property of any kind or nature. However, "gross receipts" does not include cash discounts allowed or taken on sales, nor the amount of any sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE. In the event merchandise is taken in trade, "gross receipts" means the full price of the merchandise sold, less the fair market trade-in allowance. When the traded merchandise is sold, "gross receipts" means the actual selling price less retail sales taxes. In the case of vending machines, "gross receipts" shall be the total amount taken by the vending machines, less sales tax, excise taxes, and CRV. The term "gross receipts" shall not include:

1. Receipts from the sale of waste or scrap materials resulting from the operation of CONCESSIONAIRE'S business;
2. Receipts from the sale of or the trade-in value of any furniture, fixtures or equipment used on the PREMISES, and owned by CONCESSIONAIRE;
3. 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;
4. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
5. Receipts with respect to 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;
6. The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;
7. The amount of any discounts given to CONCESSIONAIRE'S employees;

8. Receipts from the sale at cost of uniforms or clothing to CONCESSIONAIRE'S employees where such uniforms or clothing are required to be worn by said employees;
9. Proceeds from any arbitration, lawsuit, judgment or settlement of a lawsuit or other dispute unless such receipts are otherwise expressly included in the definition of "gross receipts";
10. The cost or value of free meals given to employees of CONCESSIONAIRE pursuant to such employees' employment contracts. CONCESSIONAIRE shall not be credited with nor allowed to have any reduction in the amount of gross receipts, as herein defined, which results from any error in cash handling by concessionaire, or from losses resulting from bad checks received from the consumers or purchasers, or from any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.
11. Discounts or surcharges applied to receipts for services or merchandise, with the concurrence of both CONCESSIONAIRE and CITY

C. Method of Payment

1. Flat Rate Rental
If the PERMIT/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 after the fifteenth (15th) day of that month.
2. Percentage of Gross Receipts Rental
If the PERMIT/AGREEMENT requires a percentage rental, then unless otherwise specified, the rental payment to be paid by CONCESSIONAIRE to CITY hereunder shall be payable in monthly installments during each year of the term of the PERMIT/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 or the percent of gross receipts received in said previous month, whichever sum is greater.

CONCESSIONAIRE must furnish to CITY an annual statement of gross receipts and expenses for the Concession. CONCESSIONAIRE shall transmit with its rental payment a Monthly Gross Receipts and Rent Report 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.

D. Pro Rata Payment

If the execution or termination of the PERMIT/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 paid by CONCESSIONAIRE to CITY pro rata in the same proportion that the number of days the

PERMIT/AGREEMENT is in effect for that month bears to the total number of days in that month.

E. 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 this Agreement for which CITY may terminate same or take such other legal action as it deems necessary. CITY expects all compensation to be paid on time and CONCESSIONAIRE agrees to pay on time. Payments postmarked after the due date will be considered late.

Without waiving any rights available at law, in equity or under the PERMIT/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 PERMIT/AGREEMENT, the charges for late or delinquent payments shall be \$50.00 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 PERMIT/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 4 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 operating and/or maintenance 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 PERMIT/AGREEMENT, strictly comply with the following conditions and requirements:

A. Cleanliness

CONCESSIONAIRE shall keep the PREMISES and the surrounding area clean [at least twenty-five (25) feet] 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 or 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 handicap 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 PERMIT/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 handicap 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 15, CITY shall have the right to terminate the PERMIT/AGREEMENT and to reenter and repossess said land and the facilities thereon and hold the same as if said PERMIT/AGREEMENT had never been made or issued.
3. In addition, CONCESSIONAIRE, during the term of the PERMIT/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 handicap or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall be approved in advance by CITY and shall contain a like provision.

E. Personnel

CONCESSIONAIRE shall provide the GENERAL MANAGER with certificates on each employee indicating freedom from communicable tuberculosis as required by Section 5163 of the Public Resources Code.

CONCESSIONAIRE will, in the operation of the services under the PERMIT/AGREEMENT, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the Department of Recreation and Parks. 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 personnel 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.

Manager and Responsible Representative: CONCESSIONAIRE shall select and 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 an outstanding, highly 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 business herein authorized, including the quality and prices of CONCESSION merchandise and services and the appearance, conduct and demeanor of CONCESSIONAIRE'S agents, servants and employees. Said 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 and render every possible service and convenience to the public. 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 Concession PERMIT/AGREEMENT, CITY may, in its sole discretion suspend the PERMIT/AGREEMENT and all terms and conditions contained therein.

F. Merchandise and Price Schedules

CITY agrees that CONCESSIONAIRE'S merchandise, including its schedule of prices, charges and rates 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, charges and rates are excessively high or low. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. The prices to be charged shall be comparable to prices charged in similar establishments in the neighborhood. CONCESSIONAIRE shall provide the GENERAL MANAGER with a list of charges for merchandise and services. This list shall be updated whenever charges are changed.

All services and/or 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 permitted CONCESSION operations. No limitation, 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.

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

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 PERMIT/AGREEMENT.

H. Hours of Operation

The CONCESSION shall be operated during normal FACILITY hours and, unless otherwise specified in the PERMIT/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 PERMIT/AGREEMENT, CITY does not renew said PERMIT/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) days to make such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY.

J. Maintenance, Refurbishing and Repair of Equipment

CONCESSIONAIRE shall, at all times and at its expense, keep and maintain the PREMISES including 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. Maintenance of Premises

CONCESSIONAIRE shall, at its expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, trade fixtures, and utility systems which may now or hereafter exist thereon, whether installed by CITY or CONCESSIONAIRE, in good, operable, useable and sanitary order throughout the term of the PERMIT/AGREEMENT, providing 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. 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. For the purposes of this provision, improvements shall include all buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY-owned facilities (such as buildings, fences, posts, signs, electrical hook-ups, plumbing, tracks, tanks, etc.).

CONCESSIONAIRE'S 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, orderly and attractive condition. Those duties shall also include electrical, mechanical and plumbing maintenance in the interior of the premises, such as light fixtures, toilets and faucets. However, CITY shall maintain the walls of the PREMISES. 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 PERMIT/AGREEMENT.

In the event that any structural or other improvements or furnishings and supplies constructed or installed by CONCESSIONAIRE in any one or all of the various PREMISES are damaged or destroyed, in whole or in part, from any cause whatsoever, CONCESSIONAIRE shall forthwith proceed with the removal of the debris and damaged or destroyed structural or other improvements, equipment, furnishings and supplies. Thereafter CONCESSIONAIRE shall proceed with all dispatch with the reconstruction work necessary to restore the damaged or destroyed PREMISES to the condition they were in prior to the occurrence of such damage or destruction. CONCESSIONAIRE shall pay all costs and expenses incurred in connection therewith. CITY does not have any duty to make any improvements, replacements or repairs whatsoever to the PREMISES and any structures, improvements, fixtures, trade fixtures, equipment and utilities during the term hereof.

If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the opinion of CITY agents, 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.

L. Claims for Labor and Materials

The CONCESSIONAIRE shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this PERMIT/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.

M. Signs and Advertisements

CONCESSIONAIRE shall not erect, construct or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of the FACILITY or PREMISES without the prior written approval from the GENERAL MANAGER. If CONCESSION is located on U.S. Army Corps of Engineers' (COE's) property, CONCESSIONAIRE shall also be required to obtain COE's 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 earlier termination of the PERMIT/AGREEMENT, CONCESSIONAIRE shall remove, obliterate 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.

In the facility licensed hereunder, a sign shall be posted in a prominent place stating that the CONCESSION is operated under a Concession PERMIT/AGREEMENT issued by CITY through the Department of Recreation and Parks.

N. Taxes and Permits

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 PERMIT/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.

For and during the entire term of the PERMIT/AGREEMENT, the CONCESSIONAIRE must hold a Los Angeles Business Tax Registration Certificate required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, sections 21.00 et. seq.). For and during the entire term covered by the PERMIT/AGREEMENT, the CONCESSIONAIRE shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

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 to the Department of Recreation and Parks quarterly, on or before the fifteenth (15th) of April, July, October, and January of each calendar year, for the preceding three (3) months.

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, police and fire permits, etc.

O. Utilities

CONCESSIONAIRE shall be responsible for those utility charges as described in the PERMIT/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 utility service corporations. 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 CITY'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, the Department of Recreation and Parks and CITY'S officers, employees, servants 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.

P. Vending Machines

CONCESSIONAIRE shall first receive written approval from the GENERAL MANAGER before installing or permitting vending, electronic game, or other coin operated machines to be installed. The GENERAL MANAGER shall have the right to order the immediate removal of any unauthorized machines.

Q. 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 act reasonably to 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 agents could lead, to injury, the GENERAL MANAGER may at his option, and in addition to all other remedies which may be available to CITY, to 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.

R. 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. IMPROVEMENTS

CITY undertakes and agrees to deliver to CONCESSIONAIRE the CONCESSION areas specified herein in the PERMIT/AGREEMENT as improved. CONCESSIONAIRE shall make no improvements to the PREMISES except with the prior written authorization of the BOARD or GENERAL MANAGER as required.

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 this PERMIT/AGREEMENT. If details of the Improvements stipulated in the awarded PERMIT/AGREEMENT differ in any way from the Improvements in the Proposal, CONCESSIONAIRE shall be responsible for those Improvements as prescribed in the PERMIT/AGREEMENT. However, issuance of the PERMIT/AGREEMENT shall not constitute approval to make the proposed Improvements. Environmental and all other required approvals shall be obtained prior to construction of the Improvements. CONCESSIONAIRE shall be responsible for the cost of the Improvements, as stipulated in the PERMIT/AGREEMENT, and shall begin and complete said Improvements within the time frame specified in the PERMIT/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 PERMIT/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 10, "Faithful Performance Bond," herein.

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 be at its sole cost and expense, and 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 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. CONCESSIONAIRE, at its sole cost and expense, shall also procure all building, fire, safety, aesthetics and other permits necessary for the construction of the structural and other improvements, installation of the equipment and the interior design and decor.

In addition, 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.

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 this agreement shall be and become the property of CITY upon termination of the PERMIT/AGREEMENT.

SECTION 11. 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 written consent 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 PERMIT/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 PERMIT/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 PERMIT/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 listed in Division 4, Chapter 30, Article 9 of Title 22, California Administrative Code, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 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 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

General Conditions

1. Without limiting CONCESSIONAIRE'S indemnification of City, CONCESSIONAIRE shall provide and maintain at its own expense during the entire term of the PERMIT/AGREEMENT insurance having the limits customarily carried and actually arranged by CONCESSIONAIRE but not less than the amounts and types listed

in the PERMIT/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 13. FAITHFUL PERFORMANCE BOND

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

A. Amount of Bond

The amount of the bond shall be specified in the PERMIT/AGREEMENT.

B. Form of Bond

The term "Faithful Performance Bond" does not mean that only a formal bond from a bonding company is acceptable. Any of the following instruments are acceptable if they meet the requirements spelled out in this Section. 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 of Recreation and Parks.
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 PERMIT/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 this PERMIT/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 this PERMIT/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 PERMIT/AGREEMENT for which they are 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 PERMIT/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.

SECTION 14. ASSIGNMENT, SUBLEASE, BANKRUPTCY

CONCESSIONAIRE shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign this PERMIT/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 PERMIT/AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to this PERMIT/AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lienholder, 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 15. BUSINESS RECORDS FOR CONCESSIONAIRES WHOSE RENTAL IS BASED ON GROSS RECEIPTS

CONCESSIONAIRE shall maintain during the term of the PERMIT/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 PERMIT/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.

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.

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses for the CONCESSION operations as specified in the PERMIT/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 PERMIT/AGREEMENT.

SECTION 16. REGULATIONS, INSPECTION, AND DIRECTIVES

A. Subject To

The operations conducted by CONCESSIONAIRE pursuant to the PERMIT/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 of Recreation and Parks;
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 PERMIT/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 PERMIT/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 Concession PERMIT/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 PERMIT/AGREEMENT and incorporated herein by this reference.

F. Child Support Ordinance

This PERMIT/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 PERMIT/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 PERMIT/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 and sign 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 this contract, the City will conduct an evaluation of the Contractor's performance. The City may also conduct evaluations of the Contractor's performance during the term of the contract. 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 Contractor assigns to the contract. A Contractor 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 Contractor, 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, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time. Contractor 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 this Contract.

SECTION 17. TERMINATION

A. By CITY

CITY shall have the right to immediately terminate the PERMIT/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 PERMIT/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 PERMIT/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 PERMIT/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 PERMIT/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 PERMIT/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 PERMIT/AGREEMENT.

C. Additional Rights of CITY

CITY, upon termination of the PERMIT/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 PERMIT/AGREEMENT.

D. Survival of CONCESSIONAIRE'S Obligations

In the event the PERMIT/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 PERMIT/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 Permit/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 PERMIT/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 PERMIT/AGREEMENT may be terminated by CONCESSIONAIRE upon the happening of one or more of the following events:

1. The permanent abandonment of the Department of Recreation and Parks 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 this PERMIT/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 PERMIT/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 18. SURRENDER OF POSSESSION

CONCESSIONAIRE covenants and agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the PERMIT/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 has been reduced to 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 PERMIT/AGREEMENT.

SECTION 19. WAIVER

A waiver of a default of any part, term or provision of the PERMIT/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 20. 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 21. 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 PERMIT/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 22. 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 23. CONCESSION PERMIT/AGREEMENT BINDING UPON SUCCESSORS

The PERMIT/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 24. LAW OF CALIFORNIA APPLIES

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

SECTION 25. 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 PERMIT/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 PERMIT/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 26. VENUE

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

SECTION 27. 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 28. 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 PERMIT/AGREEMENT or any part hereof, or by any judgment or award in any suit or proceeding declaring the PERMIT/AGREEMENT null, void or voidable, or delaying the same, or any part hereof, from being carried out.

SECTION 29. NOTICES

A. To CITY

Unless otherwise stated in the PERMIT/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 656-3, Los Angeles, California, 90039.

All such notices may either be delivered personally to GENERAL MANAGER, Department of Recreation and Parks, 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 30. INTERPRETATION

The language of the PERMIT/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 PERMIT/AGREEMENT.

If any provision of the PERMIT/AGREEMENT is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the PERMIT/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 PERMIT/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 31. PERMIT/AGREEMENT CONTAINS ENTIRE AGREEMENT

The provisions of the PERMIT/AGREEMENT contain the entire agreement between the parties hereto and said PERMIT/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 PERMIT/AGREEMENT and these Standard Conditions, the language of the PERMIT/AGREEMENT is controlling.

SECTION 32. TIME OF THE ESSENCE

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

DEPARTMENT OF RECREATION AND PARKS
ADMINISTRATIVE RESOURCES DIVISION - CONCESSIONS
P. O. BOX 5385
GLENDALE, CA 91221-5385
(213) 485-5520
FAX (818) 242-0041

Exhibit

E

C O N C E S S I O N R E M I T T A N C E

NAME: _____ PERIOD COVERED FROM _____

CONCESSION NAME: _____

LOCATION: _____

DRAFT

CATEGORY OF SALE	LOCATION/ REGISTER NUMBER	READING BEGINNING OF PERIOD	READING END OF PERIOD	GROSS SALES	MINUS SALES TAX	NET SALES
1)						
2)						
3)						
4)						
5)						

TOTAL NET SALES	RENT PERCENTAGE	RENT DUE ON SALES
1)	%	\$
2)	%	\$
3)	%	\$
4)	%	\$
	%	\$
TOTAL SALES		

ADDITIONS (SPECIFY):

UTILITIES

\$ _____

\$ _____

\$ _____

ADJUSTMENTS (SPECIFY):

\$ _____

\$ _____

TOTAL DUE THIS REPORT:

\$ _____

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE RECEIPTS FOR THE PERIOD ABOVE STATED.

SIGNED: _____

DATE: _____

Train Ride Equipment and Related Capitol Improvement Ownership Transfer List

A. Locomotives, passenger coaches, track, switches, signals, tools, equipment, parts

No.	Description	Photo Reference
1	1990 Courage Locomotive – TT	1A, 1B, 1C, 1D
2	1990 Stanley Diamond Locomotive	2A, 2B, 2C, 2D
3	Circa 1950's Yard Goat Locomotive – TT	3A, 3B, 3C
4	Circa 1950's Freedom Locomotive	4A, 4B, 4C, 4D, 4E
5	1984 Colonel Griffith Locomotive	5A, 5B, 5C
6	1986 Melody Locomotive – TT	6A, 6B, 6C, 6D
7	6 passenger coaches by Geo. Reddington - TT	7A, 7B, 7C, 7D
8	9 passenger coaches by All Amer. Streamliner (5 in Freedom Train paint scheme and 4 in Colonel Griffith trim)	8A, 8B, 8C
9	3 Wood Gondolas by Skeets Simpson	9A, 9B
10	Approx 5,200 feet of track w/ switches and signals at Los Feliz	10A, 10B, 10C, 10D, 10E
11	Miscellaneous Shop Tools/Equipment including 4 ton hoist, air compressor, cabinets, benches, 36" metal lathe, drill press, cut off saw, hydraulic press, grinder, mig welder, arc welder, acetylene gas welder, welding table, compressor, assorted pneumatic and electric hand tools/impact wrenches, numerous hand tools, battery tester/chargers, electronic testers/multi-meter, track maintenance tools, and grounds maintenance tools.	11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11J
12	* Spare Parts including new Wisconsin VH4D engine, new Spencer hydraulic pump, 2 new Spencer hydraulic motors, 2 complete Bettendorf style trucks/brakes, 50 replacement brake shoe castings, 10 replacement wheel castings, 1 assembled wheel/axle set, 31 machined replacement flanges for TT coach wheels.	12A

* Allowance for depletion of some/all of the spare parts during term of the agreement

B. Buildings, structures, decorations, fencing:

13	Station / Ticket Office	13A, 13B, 13C, 13D, 13E
14	Loading Platform and Cover	14A
15	Workshop / Car Barn	15A, 15B, 15C, 15D, 15E
16	Employee Break Room / Rest Room	16A, 16B, 16C, 16D
17	Storage Building	17A, 17B
18	Tunnel	18A, 18B
19	Bridge	19A, 19B, 19C
20	Water Tower / Tower	20A
21	Ticket Booth at TT	21A, 21B
22	Old Town Facade	
23	Simulator Building	23A, 23B
24	Weekend Gift Booth	24A
25	Trailer / Care Taker's Residence	
26	** Approx 7/8 mile perimeter Chain Link Fence, Approx 100 feet Wrought Iron Fence w/ brick.	26A, 26B
27	Attached safes and attached surveillance/security system equipment	27A, 27B, 27C

** Approximately 3/8 mile of perimeter fence belongs to Cal Trans