



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Lindy Coe-Juell, Assistant to the City Manager

DATE: May 5, 2009

SUBJECT: Authorize the City Manager to enter into a five-year lease agreement with Vera Janischova for operation of a food concession on the Manhattan Beach Pier

RECOMMENDATION:

Staff recommends that the City Council authorize the City Manager to enter into a five-year lease agreement with Vera Janischova to operate a food concession in the Manhattan Beach Pier Roundhouse.

FISCAL IMPLICATION:

Under the terms of the proposal supplied by Ms. Janischova, which will be incorporated as a part of the agreement, she will submit a monthly payment to the City in the amount of \$600 or 8% from gross receipts, whichever is greater. This represents an increased amount over the current payment of \$500 per month. Based on a review of past gross receipts and the pro-forma analysis submitted by Ms. Janischova, staff believes that the proposed payment is realistic and fair.

Per the operating agreement for Pier between the City and the State of California, the revenue has been and shall be deposited in the State Pier and Parking Lots Fund. This fund is restricted and is only used to maintain and operate the Pier and adjacent parking lot areas.

BACKGROUND:

The City assumed operational control of the Manhattan Beach Pier in 1988. Terms in the agreement between the City and the State provide that the City may grant concessions on the property consistent with use by the general public. In May 1998, the City Council awarded a five-year agreement to Mahmoud Saad for the operation of the food concession in the Roundhouse. The next 5-year agreement for the food concession was issued in February 2004 to Rock Fish, LLC.

Early in 2005, the owners of Rock-N-Fish gave full operational duties for the Pier Café to Vera Janischova. Ms. Janischova has been running the café since that time. The current agreement with Rock Fish, LLC. expired in February 2009.

DISCUSSION:

Staff released a Request for Proposals (RFP) for the Pier food concession that opened on March 12, 2009 and closed on April 3, 2009. The RFP was advertised with a ¼ page ad in the Beach Reporter and was placed on the City’s website. We received three proposals in response to the RFP. The Assistant to the City Manager and the Finance Director reviewed and evaluated the proposals based on 1) the vendors experience and capability, 2) the proposed rent to the City and 3) the proposed concept and approach.

Based on these criteria including her proven operational capability, staff is recommending the proposal submitted by Vera Janischova. Ms. Janischova’s proposal is attached to this report (personal information submitted, such as bank account information, has been removed). The other proposals are available for review in the Office of the City Clerk.

The concept and approach in Ms. Janischova’s proposal is one that has been working well and that we believe is particularly well-suited for the location of this food concession. Her menu offers a variety of outdoor friendly foods with healthy options such as veggie burgers and turkey dogs, fun foods such as pizza and cotton candy, and drinks including coffee, teas and ice blended smoothies. This variety has been popular with tourists and regular local visitors as well. Ms. Janischova also offers several sundry beach items such as sunglasses, flip-flops, hats and t-shirts, which have sold well in this location.

Ms. Janischova has a proven record of successful operation of the Pier café. She has consistently received an “A” grade from the Health Department. During the contract prior to Rock Fish LLC., the City found that the café operator was not open consistently and staff received some complaints regarding the operation. Ms. Janischova has provided a consistent operation and staff has received no complaints regarding her business.

One of the other proposals submitted did offer to pay a higher amount of monthly rent to the City. However, staff believes that the approach offered by Ms. Janischova’s proposal is preferable for the Pier location and that her proven capability for running the café is valuable.

CONCLUSION (Optional):

After reviewing the proposals submitted, staff recommends that the City Council authorize the City Manager to sign the lease agreement with Vera Janischova for operation of a food concession in the Manhattan Beach Pier Roundhouse.

Attachments: A. Vera Janischova’s Proposal
B. RFP Sample Pier Concession Agreement

cc: Bruce Moe, Finance Director
Jim Arndt, Public Works Director
Vera Janischova

**Bohemian Beach Cafe
Proposal
And
Business Plan**

**Currently existing and
operating business since
May 20th 2005**

A. Vendor Qualifications

1) Experience

Vera Janischova has extensive experience in the food and beverage industry. She was involved in running her family's restaurant in Germany, which included everything from working in the kitchen, bar area, waiting on customers, managing inventory, managing staff, accounting and over all customer service. She has worked in beverage service and is the President of the Bohemian Bakery cookie company.

Vera has been successfully managing the café at the round house at the Manhattan Beach pier for the last four years and hopes to continue to do so with even more improvements for the next lease term.

2) Line of Credit:

Vera Janischova and BBC, LLC silent partner have access to the necessary line of credit.

3) Past record

Vera Janischova has managed and operated the roundhouse café at the end of the Manhattan Beach pier since May 20th 2005 under the sublease of Michael Zislis (owner of the Shade Hotel and several restaurants in Manhattan Beach and other areas) much to the satisfaction of Michael Zislis. Enclosed please find a recommendation letter from Michael Zislis.

ROCK'N FISH



January 7, 2009

Manhattan Beach City Council
1400 Highland Ave
Manhattan Beach, CA 90266

Re: Roundhouse Cafe

Dear Manhattan Beach City Council,

I'm writing you this letter in regards to the Roundhouse Cafe at the Manhattan Beach pier.

Vera Janischova has been responsible for the operation of the Roundhouse Cafe since May 20, 2005 till present.

I've been very pleased with the way she has managed the Cafe. She has made improvements to the menu as well as the appearance of the Cafe. She also extended the operating business hours, much to the satisfaction of the aquarium, the public consumers, and the City.

I believe that Vera is the clear choice to take over the Roundhouse Cafe Concession when the existing agreement expires in February 2009.

Sincerely,

Michael A. Zislis

120 Manhattan Beach Blvd., Manhattan Beach, CA 90266
(310) 379-9900 direct · (310) 379-9986 fax
www.RockNFishMB.com

PROPOSAL FORM

Name of Vendor: Vera Jamischova (Bohemian)

City of Manhattan Beach
Attn: Lindy Coe-Juell
Assistant to the City Manager
1400 Highland Avenue
Manhattan Beach, CA 90266

Dear Ms. Coe-Juell:

**PROPOSAL FOR THE OPERATION OF A FOOD CONCESSION AT THE
MANHATTAN STATE BEACH PIER ROUNDHOUSE**

I have read the Sample Agreement and related information in this RFP. I am personally acquainted with the premises of the above named facility and acquainted with the uses to be granted as identified in the Sample Agreement.

I propose to provide the required concession services, at the Manhattan State Beach Pier Roundhouse as described in the Sample Agreement.

I propose to provide, install, maintain and replace as necessary all items listed on the enclosed List of Equipment and Inventory - it being understood that the title to said items shall remain in my name. I estimate that the value of those items is \$ 20,000

I propose to pay the following minimum guaranteed rent: \$

a. Minimum Rent: \$ 600 per month or 8% of the gross income, not to exceed \$ 1,200

In addition to the services required in the Agreement, I further propose to offer the following services to the public:

- excellent customer service
- highest quality of food items
- 100% clean environment
- sale of bikinis, sunglasses, sun hats etc.
- surfboard, boogie board and fishing rod rentals
- acoustic musicians occasionally (summer)
- fresh sandwiches, smoothies and all items on the menu.

Vera Jamischova

5) CASH FLOW ANALYSIS

Bohemian Cafe

Table: Cash Flow

Pro Forma Cash Flow	FY 2009	FY 2010	FY 2011
Cash Received			
Cash from Operations			
Cash Sales	\$140,775	\$154,853	\$170,338
Cash from Receivables	\$42,370	\$51,162	\$56,278
Subtotal Cash from Operations	\$183,145	\$206,014	\$226,617
Additional Cash Received			
Non Operating (Other) Income	\$0	\$0	\$0
Sales Tax, VAT, HST/GST Received	\$0	\$0	\$0
New Current Borrowing	\$0	\$0	\$0
New Other Liabilities (interest-free)	\$0	\$0	\$0
New Long-term Liabilities	\$0	\$0	\$0
Sales of Other Current Assets	\$0	\$0	\$0
Sales of Long-term Assets	\$0	\$0	\$0
New Investment Received	\$0	\$0	\$0
Subtotal Cash Received	\$183,145	\$206,014	\$226,617
Expenditures			
Expenditures from Operations			
Cash spending	\$48,000	\$48,000	\$48,000
Bill Payments	\$109,594	\$122,189	\$127,794
Subtotal Spent on Operations	\$157,594	\$170,189	\$175,794
Additional Cash Spent			
Non Operating (Other) Expense	\$0	\$0	\$0
Sales Tax, VAT, HST/GST Paid Out	\$0	\$0	\$0
Principal Repayment of Current Borrowing	\$12,504	\$12,504	\$12,504
Other Liabilities Principal Repayment	\$0	\$0	\$0
Long-term Liabilities Principal Repayment	\$0	\$0	\$0
Purchase Other Current Assets	\$0	\$0	\$0
Purchase Long-term Assets	\$0	\$0	\$0
Dividends	\$0	\$0	\$0
Subtotal Cash Spent	\$170,098	\$182,693	\$188,298
Net Cash Flow	\$13,047	\$23,322	\$38,319
Cash Balance	\$33,047	\$56,369	\$94,688

6) Financial Statement

BBC is a retail food and beverage establishment managed by Vera Janischova, with a back up of a silent partner of the LLC . These partners represent sales/management and finance/administration areas.

Vera Janischova and BBC,LLC will provide funding from their own savings, which will cover start-up expenses and provide a financial cushion for the first months of operation if necessary. The company plans to build a strong market position at the Manhattan Beach pier, which exists already, due to the team's experience in food service.

Please attached find a bank statement of Vera Janischova, business checking account statement. There is also \$20,000 cash in savings available.

7) General Business Statement and Plan

Index:

- a) Our Mission
- b) Menu and price list
- c) Marketing and promoting plan
- d) Company summary
- e) Company Ownership and History
- f) Market Analysis
- g) Competition
- h) Strategy and Implementation
- i) Financial Plan

Our mission:

The Bohemian Beach Café (originally registered as the Bohemian Café and Sweet Spot) strives to offer quality

Coffee and teas	\$1,50
Sodas and bottled water and Perrier sm and lg	\$2,00 – 3,00
ice blendeds smoothies, shakes, icees,	\$3,50
ice cream, fresh baked goods	\$2,50
hamburgers, turkey burgers, veggie burgers,	\$4,50
hot dogs, turkey dogs	\$2,50
French fries (100% canola oil) sm and lg	\$3,50-4,50
Chicken tenders and fries	\$6,90
Fish and chips	\$6,90
Clam chowder bowl with crackers of sourdough bread	\$5,50
Chillie fries	\$5,50
Chillie dog	\$3,50
Chillie bowl	\$4,25
Pizza	\$3,50
Sandwiches	\$4,50
Churros	\$1,50
Cotton candy	\$2,00
Chips and candy	\$1,00
Sunglasses	\$10,00
Bikini	\$25,00
Hats	\$8,00

Flip-flops	\$4,50
Sunscreens	\$4,00
Manhattan Beach t-shirts	\$10,00
Surf and boogie boards and fishing rods for rent	\$15/hour

All of the four years we have received an A from the health department for the very clean environment we create:

We provide excellent customer service. Many people have commented on the great and pleasant atmosphere we create for customers sitting at the 4 tables, in the shade of our big sun umbrella in the café front decorated with small palm trees.

Our customers have also commented on the great quality of our food, our French fries have been called many times the 'best fries ever'.

Keys to Success

1)Location: It's one of the most desirable locations in the world, as far as I'm concerned. There is, of course, also no other business like ours at the pier.

2)Marketing to local consumers as well as tourists all year around.

3)Promoting the concept that our products are nutritionally sound and that we have items on the menu that are well-suited for the active, healthy lifestyle of beach community residents.

The existing café at the end the Manhattan Beach pier currently under Vera Janischova's management since May 2005 has provided customers with excellent service.

Customers have commented on the great and pleasant atmosphere that has been created there for them with the 5 tables outside und a big sun umbrella, surrounded with small palm trees.

Customers have also commented on the great quality of the food, the French fries have been called many times the 'best fries in town'.

The health department always rewarded the café with the letter A in the last for years, every time of testing.

The café has been kept open all year round, except on very rainy days.

The hours of operation in the summer are:

May – October

Mo – Fri 9:00am – 10:00pm

Sat – Sun 8:00am – 10:00pm

Hours in the winter are:

November – April

Mon – Fri 10:00am – 6:00pm

Sat – Sun 10:00am – 6:00pm

The café currently provides reservations for kid's birthday party packages, including decoration of reserved tables and different favorite foods for kids, as well as packages for school trips lunches.

The café also has weekly specials featuring European specialties like German sausage and sauerkraut, or Czech funnel cakes.

Also healthier foods are available as an alternative, for example healthy sandwiches, smoothies, small salads, fresh fruits and juices.

In the summer the café invited some musicians to come to sing and play their acoustic instruments much to the delight of the customers.

BBC has established a large regular customer base of local residents and is always a welcome attraction for tourists. This will continue to

establish a healthy, consistent revenue base to ensure stability of the business.

It's been Vera Janischova's 'dream- come- true' and a joy to manage the café at the end of the Manhattan Beach pier, and she hopes and looks forward to continue to make the best of the 'little piece of paradise' at the best location in the world for everyone to enjoy!

Company Summary

BBC is a retail food and beverage establishment managed by two partners. These partners represent sales/management and finance/administration areas, respectively. The partners will provide funding from their own savings, which will cover start-up expenses and provide a financial cushion for the first months of operation if needed. The company plans to build a strong market position at the Manhattan Beach pier, due to the team's experience in food service and the lack of competition from any similar businesses in the vicinity.

Company Ownership and History

Bohemian Beach café, LLC is incorporated in the state of California. It is equally owned by its two partners.

Vera Janischova has extensive experience in the food and beverage industry. She was involved in running her family's restaurant in Germany, has worked in beverage service, and is President of the Bohemian Bakery cookie company. Patrick Pieper, M.D. has small business financial and managerial experience gained from directing all aspects of his medical practice, including finance, corporate structure, taxes, and marketing. In addition, he is highly skilled with computer applications, especially relational database programming, networking, and internet technology.

BBC has been operating the round house café successfully for the last four years with increased customer satisfaction each year. We are expecting to continue this successful path the next term of the lease as well, based on our past experience and future plans of improvements.

Market Analysis

The market for BBC consists of local residents in the Manhattan Beach area and tourists visiting the South Bay beach communities and coming to one of the most beautiful attractions in the South Bay, the Manhattan Beach pier, the café and the aquarium as well.

BBC has established a large regular customer base of local residents. This will continue to establish a healthy, consistent revenue base to ensure stability of the business. There is a large market in the target demographic of young, affluent consumers, as the greatest segment of the Manhattan Beach population is age 25 to 54, with a growth of about 20% in this group in the past thirty years. Overall the population has grown 5% in the past ten years.

Tourist traffic should comprise approximately 50% of the revenues. High visibility and competitive products and service are critical to capture this segment of the market. Tourism is the leading industry in California and is growing worldwide at a rate of 9% annually.

Competition and Buying Patterns

Competition in the local area is virtually nonexistent and local customers are looking for high quality products in a 'laid-back' atmosphere.

Strategy and Implementation

BBC will be offering consumers high quality food products with personal service at a competitive price.

Competitive Edge

BBC's competitive edge is the very low level of competition in the local area in this particular niche. There is no business in the area that sells similar products or markets any retail food items in a similar way.

Financial Plan

BBC expects to raise \$10,000 of it's own financing to reopen the café if necessary. Financing will come from the partner's capital. BBC is a retail food and beverage establishment managed by two partners. These will provide funding from their own savings if necessary, which will provide a financial cushion.

BBC expects to keep personnel costs for direct salary outlay low, as this is a family run business and the managers will take no up-front salary.

Summary

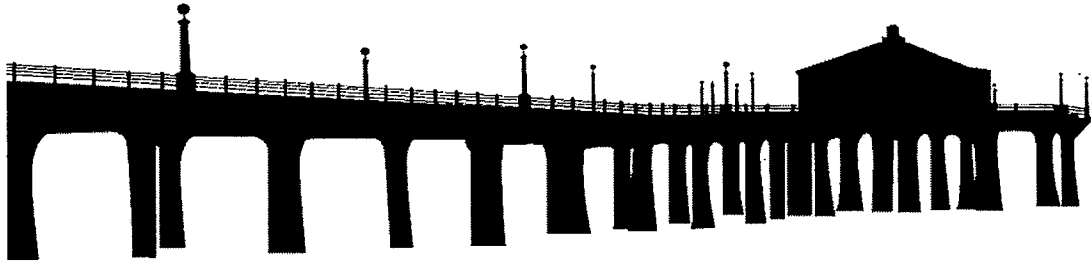
BBC strives to offer premium quality foods as well as excellent customer service and a super clean and pleasant atmosphere.

There is no other business that offers similar foods and products on the pier.

The market for BBC consists of local residents of Manhattan Beach as well as tourists visiting the South Bay beach area.

The company plans to continue to build a strong market position, as well as improving it even more in the Manhattan Beach area, due to the owner's experience in food service. The company has proven to do so in the last four years of operating this exact establishment.

MANHATTAN BEACH



REQUEST FOR PROPOSALS

**MANHATTAN STATE BEACH PIER
ROUNDHOUSE CONCESSION**

MARCH 12, 2009

SAMPLE AGREEMENT

SAMPLE AGREEMENT

THIS CONTRACT is made and entered into on this _____ day of _____, 2009 by and between the CITY OF MANHATTAN BEACH, hereinafter referred to as "CITY" and _____ hereinafter referred to as "VENDOR";

WITNESSETH:

WHEREAS, there is in the State Park System a structure located at the western end of the Manhattan State Beach Pier in the County of Los Angeles, hereinafter referred to as 'Roundhouse'; and

WHEREAS, pursuant to the provisions of Section 5080.30 et seq. of the Public Resources Code of the State of California, hereinafter referred to as "State," the CITY has entered into an Operating Agreement dated August 1, 1988 for the Manhattan State Beach Pier; and,

WHEREAS, the Operating Agreement provides that the CITY shall provide for the operation, care, custodial maintenance, and control of the Manhattan State Beach Pier; and

WHEREAS, VENDOR desires to occupy the one hundred ninety (190) square foot space of the Roundhouse building (shown in Exhibit A), herein designated as the "Roundhouse space," to provide concession services to the public;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. TERM

The term of this contract shall be effective on the date first appearing above, and shall remain in effect for five (5) - years. At the end of the five (5) - year period, this contract shall undergo review by VENDOR and the CITY. This contract may be extended by the CITY for successive ninety (90) - day periods until a new contract is agreed upon and executed by VENDOR and the CITY.

2. CONDITION OF PREMISES

The taking of possession of the subject premises by the VENDOR shall, in itself, constitute acknowledgment that the subject premises are in good and tenable condition. VENDOR agrees to accept said premises in their presently existing condition, "as is", and that the CITY shall not be obligated to make any alterations, additions, or betterments thereto.

3. USE OF PREMISES

The subject premises shall be used by the VENDOR for the sale of food, beverages and beach sundries, all of which shall be subject to the approval of the CITY. Sale of alcoholic beverages is strictly prohibited.

4. QUALITY OF SERVICE

Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to the CITY and is considered a part of the consideration for this contract. Therefore, VENDOR agrees to operate and manage the services and facilities offered in a first-class manner, and comparable to other first-class concessions providing similar facilities and services during the entire term of this contract. Where such facilities are provided, VENDOR shall and will furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to that of other establishments in State Parks and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination.

CITY reserves the right to prohibit the sale or rental of any item which it deems objectionable, beyond the scope of merchandise deemed necessary for proper service to the public, or of inferior quality.

All foods and beverages shall be sold in reusable containers, recyclable containers, or disposable containers made of paper or other biodegradable materials. CITY reserves the right to prohibit the sale or use of non-recyclable containers or plastics.

5. PAYMENT

VENDOR shall pay CITY for the use granted herein as follows:

Commencing with the term herein provided payment during the months of April through September shall be the greater of the sum of the percentages of monthly gross receipts hereinafter provided or the monthly minimum of (...bid...). The percentages to be used in the determination of the monthly payments shall be: (...bid...). During the months of October through March, payment shall be the sum of the percentages of monthly gross receipts only.

Payment shall be made to CITY'S Department of Finance on or before the fifteenth (15th) day of the calendar month following each month of the term provided for herein. Payment shall be made by check or draft issued and payable to the City of Manhattan Beach, and mailed to the City of Manhattan Beach, Department of Finance, C/O Director of Finance, 1400 Highland Avenue, Manhattan Beach, California 90266, or such other place as may hereafter be designated in writing to the VENDOR. A late payment charge of ten percent (10%) per month shall be added to any late rental payment that is received after the last day of the calendar month in which payment is due.

However, the late payment charge herein provided may be waived whenever the CITY, upon appeal by VENDOR finds the late payment excusable by reason of extenuating circumstances. CITY shall not be obligated at any time during the term provided herein to notify the VENDOR of the accumulation of late payment charges. Any returned checks will be assessed the maximum fee for returned checks permitted by State Law to cover bank charges. In addition, the late payment charge shall be added unless the replacement payment is made within the designated grace period.

6. ACCOUNTING RECORDS

VENDOR shall be required to maintain a method of accounting which, to the satisfaction of the CITY, shall correctly and accurately reflect the gross receipts and disbursements of VENDOR in connection with the said operation. The method of accounting, including bank accounts, established for said operation shall be separate from the accounting system used for any other business operated by Concessionaire or for recording VENDOR'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 any 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 providing payment of sums shown.
4. Cash register tapes appropriately identified as to type of gross receipt (daily tapes may be separated but shall be retained so that from day to day the sales can be identified).
5. Any other accounting records that the CITY deems necessary for proper reporting of receipts.

All sales and fee collections shall be recorded. The means of recording such sales and fee collections may include any of the following equipment: cash registers, electronic data processing and record keeping equipment. The cash registers shall publicly display the amount of each transaction and automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, include a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. The electronic data processing and record keeping equipment shall contain such features as the CITY may reasonably require for the purpose of assuring that an accurate record of the transaction is created and retained by the equipment to be used. In the event of a mechanical or electrical failure of a cash register, VENDOR shall record by hand all sales and fee collections, and issue a sequentially pre-numbered customer's receipt in like manner.

All documents, books and accounting records shall be open for inspection and re-inspection at any reasonable time during the term of this Agreement and for one year

after termination of the Agreement. In addition, the CITY may from time to time conduct an audit and re-audit of the books and business conducted by VENDOR and observe the operation of the business so that accuracy of the above records can be confirmed. All information obtained in connection with the CITY'S inspections of records or audit shall be treated as confidential information and exempt from public disclosure thereof to the extent permitted by law.

VENDOR shall not be required to maintain those documents, books and accounting records, required by this section, that pertain to the period for which audit has been completed and a report of the finding has been issued by the CITY and accepted by the VENDOR. If there is a dispute, as a result of said audit, the documents, books and accounting records shall be maintained until all audit disputes have either been settled by agreement of the parties or adjudicated by the final judgment of a court of competent jurisdiction.

VENDOR shall furnish the CITY with a monthly gross receipts report showing the amount payable therefrom to the CITY and a monthly gross expenses report detailing all business related expenditures. Such a report shall accompany each monthly payment required to be made as provided herein. The monthly reporting period shall be by calendar month, rather than monthly anniversary date of the effective date of this Agreement. In addition thereto, VENDOR, shall furnish an annual financial statement and a balance sheet prepared in a form acceptable to the CITY. The financial statement shall be submitted within sixty (60) days of the close of an annual year.

In the event that an audit or review conducted by the CITY finds that due to VENDOR's non-compliance with its obligation to report gross receipts received in connection with its operations authorized herein, an actual loss and/or a projected loss of revenue to CITY can be determined, CITY may, at its option, (1) bill VENDOR for said losses and said amount is to be paid to the CITY within thirty (30) days following billing therefor unless otherwise extended by CITY, and/or (2) assess liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the VENDOR to correctly report gross receipts and a projected loss of revenue due to CITY. The parties hereto agree that under the current circumstances, a reasonable estimate of such damages is Two Hundred and Fifty Dollars (\$250.00) per audit or review and that the VENDOR shall be liable to the CITY for liquidated damages in said amount. Should the CITY find that the additional rental payment due to CITY exceeds two percent (2%) of the total amount which should have been paid as determined by such review or audit and observation, and there being no reasonable basis for the failure to report and pay thereon, VENDOR shall also pay the cost of the audit as determined by CITY and pay any penalty heretofore provided for the delinquent payments.

7. ANNUAL REPORT

VENDOR shall annually, on March 1, furnish the CITY with a financial statement and a report of activities, with information as required by the CITY. This report shall at a minimum include all itemized revenues and itemized expenses shown by month, current menu and prices, hours of operation, and number of employees. Additional information may be required.

8. FACILITIES

- A. The CITY shall provide VENDOR with facilities to be used or occupied by VENDOR for the purpose of carrying out the terms of this contract.
- B. VENDOR shall provide all general maintenance and repair services inside the space to be occupied by VENDOR. The interior area of the Roundhouse space shall be kept in a condition as could reasonably be expected for a food concession. Should VENDOR fail, neglect or refuse to do so, the CITY shall have the right to perform such maintenance or repairs for VENDOR. In this event, VENDOR shall promptly reimburse the CITY for the cost thereof, provided however, that the CITY shall first give VENDOR ten (10) days written notice of its intention to perform such maintenance or repairs for VENDOR for the purpose of enabling VENDOR to proceed with such maintenance or repairs at VENDOR'S own expense.
- C. The CITY shall provide exterior maintenance of the Roundhouse including doors, shutters and windows plus the internal maintenance of the restroom facilities. The restroom facilities shall be cleaned and locked at 4:30 p.m. everyday by City personnel. After 4:30 p.m. patrons shall be directed to use the restroom facilities at the comfort station at the base of the pier. It may be necessary to have access to the interior of the Roundhouse space to periodically replace door and window shutter mechanisms.
- D. VENDOR shall be responsible for payment of all incidental utility services, with the exception of water and refuse service, which shall be provided by the City at no cost. All refuse generated by the operation of the concession stand shall be removed and deposited in the trash bins located in the lower pier parking lot by VENDOR at the close of each business day. Employees of the concession stand shall not deposit any refuse in and/or around the CITY'S trash and/or recycle receptacles located on the pier. VENDOR shall develop a commercial recycling program in cooperation with the CITY'S Public Works Department.
- E. The CITY shall have emergency access to all facilities, which shall also be subject to the rights of the CITY to make such inspections as the CITY deems necessary. CITY personnel shall have access to conduct inspection of the Roundhouse space (including storage areas).
- F. No construction, alteration, repair, reconstruction, restoration, or improvement may be made to the Roundhouse by VENDOR without first obtaining written approval for

any plans, specifications, and contracts from the Director of Public Works of the CITY. This includes painting, tinting windows or any other similar alterations.

- G. Only vehicles with a gross vehicle weight less than 10,000 pounds may be driven on the pier to provide service or deliver goods to VENDOR. Only one such vehicle at a time shall be permitted to be driven on the pier by or for VENDOR and it shall not park on the pier for greater than twenty (20) minutes per visit. VENDOR shall provide the CITY with the required insurance endorsement forms for any and all vehicles which will be driving on the pier. This information shall be provided prior to any vehicle accessing the pier.
- H. VENDOR shall be responsible for opening and closing the five (5) protective window shutters surrounding their portion of the Roundhouse space each day of VENDOR operation. VENDOR shall be liable for any damage resulting from their negligence to close the protective window shutters as required or from any damage to the protective window shutters resulting from improper operation of the shutters. VENDOR shall also be liable for any damage to the triple hung front windows resulting from improper operation.
- I. No signs, names, placards or advertising matter shall be inscribed, painted or affixed upon the Roundhouse or the pier by the VENDOR without the prior written consent of the Director of Public Works of the CITY.
- J. The CITY may negotiate a separate contract for the operation of the westward portion of the Roundhouse. VENDOR and other tenant(s) shall cooperate and coordinate their operations and will minimize any possible interference between the operations and associated activities. VENDOR acknowledges that heating and ventilation is controlled from the other section of the Roundhouse and will coordinate mutually agreeable adjustments.
- K. VENDOR may use the area of the pier deck identified in Exhibit B to place portable tables and chairs for the convenience of its customers subject to approval of the CITY. Said tables and chairs must be removed from the deck at the end of each business day and shall not impede pedestrian and/or emergency vehicle access to the end of the pier.
- L. VENDOR at its sole expense may provide any legal devices, installation, or equipment designated for the purpose of protecting the premises from theft, burglary or vandalism, provided written approval for installation is first obtained from the CITY'S Director of Public Works.

9. TITLE

All improvements, alterations, and restored facilities constructed under this contract shall become the property of the State of California, and neither the CITY nor State shall be responsible for the cost of such improvements, alterations, and restorations.

Title to all improvements shall vest in the State immediately on their becoming affixed to the State's real property.

10. POSSESSORY INTEREST

It is not the intention of the parties to this agreement to create any possessory interest or tenure by VENDOR in any property of the State Park System; however, this agreement may create or cause to be created a possessory interest in public land within the meaning of Revenue and Taxation Code Section 107. In the event such possessory interest is created, VENDOR may be subject to the payment of property taxes levied on such possessory interest. The VENDOR hereby agrees to pay any such property taxes levied. VENDOR agrees to pay the above and all other lawful taxes, assessments, or charges which may at any time be levied by the state, county, city, or any tax or assessment levying body on any interest in this contract which the association may have in or to the premises covered by the contract, as well as taxes and assessments on goods, merchandise, fixtures, appliances, equipment, and property owned by it in or around said premises.

11. PERSONAL PROPERTY

Title to all personal property provided by VENDOR shall remain in VENDOR.

12. EQUIPMENT

VENDOR, at VENDOR'S own expense, shall completely equip the concession and shall keep the same equipment in a safe and first-class manner throughout the term of this contract.

13. OPERATING RESPONSIBILITIES

VENDOR shall conform to and abide by all municipal and County ordinances, and all state and federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the Concession and/or any improvements, the same must be first obtained from the regulatory agency having jurisdiction thereover.

14. PUBLIC USE

VENDOR shall use its best efforts to maximize the public use of the premises and the facilities thereon.

15. DAYS AND HOURS OF OPERATION

CITY and VENDOR upon mutual agreement will provide in writing the days and hours of operation which will be adjusted during summer and winter months to best serve the general public's needs of the concession area. VENDOR shall be permitted to close during periods of inclement weather. Should the VENDOR, at any time during the term of this agreement, decide to change the hours of operation, said changes must be provided to and approved by the City in advance.

16. INDEPENDENT CONTRACTOR

A. In performing the obligations hereunder, VENDOR is engaged solely in the capacity of independent contractor, it being expressly understood that no relationship between the contracting parties hereto other than that of independent contractor has been or is intended to be created. This Agreement does not constitute, and the parties hereto do not intend to create thereby a partnership, or a joint venture, or a relationship of master and servant or principal and agent, as it is mutually understood and agreed that the relationship created thereby and the construction of rights and duties thereunder is to be determined in accordance with laws relating to owners and lessees of real property.

VENDOR understands and agrees that all persons furnishing services to CITY pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of VENDOR, and not of CITY. VENDOR shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries from or connected with services performed on behalf of VENDOR pursuant to this Agreement.

- B. 1) VENDOR understands and specifically agrees to inform its employees that
VENDOR is an independent contractor to the State and the CITY.
- 2) VENDOR understands and specifically agrees to inform its employees that
they are not agents or employees of the State or the CITY.

17. NONDISCRIMINATION CLAUSE

VENDOR and its agents and employees shall not discriminate because of race, religion, color, ancestry, sex, sexual orientation, age, national origin, or physical disability against any person by refusing to furnish such person any accommodation, facility, service, or

privilege offered to or enjoyed by the general public. Nor shall VENDOR or its agents or employees publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, ancestry, sex, sexual orientation, age, national origin, or physical disability.

The following is the State's Nondiscrimination Clause (OCP-1), Standard Form 17A (new 5/83) and it is incorporated herein, per State Administrative Manual Section 1225(c). For the purposes of this contract, the term "contractor" in said Standard Form 17A (new 5/83) shall mean "VENDOR".

NONDISCRIMINATION CLAUSE (OCP-1)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religion creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, an denial of family care leave. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination an harassment. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under his clause to labor organizations with which they have a collective bargaining or other agreement.

2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

18. TERMINATION OF CONTRACT

A. The CITY reserves the unqualified right to terminate this agreement without cause by giving VENDOR twelve (12) months' prior written notice of the effective date of such termination. CITY further may terminate this agreement for material breach by VENDOR of any of the provisions hereof, however, VENDOR shall be given not less than twenty (20) days written notice to cure any and all breaches hereunder. If at the end of such a twenty (20) day period the breach is not cured, the contract shall terminate upon written notice from the CITY.

B. VENDOR reserves the unqualified right to terminate this agreement without cause by giving CITY twelve (12) months' prior written notice of the effective date of such

termination. VENDOR further may terminate this agreement for breach by CITY of any of the provisions hereof.

19. WAIVER

Waiver of a breach of this contract by either party shall not be construed as a waiver of any subsequent breach of the same or any other provision.

20. BREACH

- A. In addition to any breach of this contract, this contract is breached when the CITY determines that VENDOR has failed to meet the criteria outlined in State Public Resources Code Section 513 and/or this contract.
- B. This contract is breached when VENDOR determines that the CITY has failed to meet the criteria outlined in State Public Resources Code Section 513 and/or this contract. In such event, at the option of VENDOR, VENDOR shall have the right to vacate the premises within ninety (90) -days of receipt of written notification that this contract is terminated.

21. CONTRACTUAL OBLIGATIONS

- A. This contract constitutes the entire agreement between the parties, and supersedes any and all prior oral or written agreements or understandings between them. No representatives, warranties, or inducements expressed or implied have been made by either party to the other, except as set forth herein.
- B. Insurance Requirements.

Commencement of Work. VENDOR shall not commence work under this Agreement until it has obtained CITY approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, VENDOR must have and maintain in place, all of the insurance coverages required in this Section . VENDOR'S insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section and VENDOR shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A- unless otherwise approved by CITY.

Coverages, Limits and Policy Requirements. VENDOR shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the CITY. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. Employers Liability Insurance with a minimum limit of no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of CITY.

Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit VENDOR'S liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto. CITY shall notify VENDOR in writing of changes in the insurance requirements. If VENDOR does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, VENDOR shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes:

- (1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to be paid by VENDOR) ; or
- (2) VENDOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

Verification of Compliance. VENDOR shall furnish CITY with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, VENDOR shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY.

C. Indemnity

VENDOR shall indemnify and save harmless the CITY of Manhattan Beach, including its elected officials, officers, agents and employees, against any and all claims, liability, judgments, costs or expenses resulting from any wrongful or negligent acts or omissions of the Named Insured (VENDOR), or other parties acting on VENDOR'S behalf, involving Roundhouse activities.

22. AMENDMENTS

No amendment or modification of the contract shall have an effect whatsoever, unless the same is in writing and signed by each of the parties hereto.

23. CONTRACT ASSIGNMENT

VENDOR shall not assign this contract or any interest herein, or any part thereof, to any party. Nor shall VENDOR enter into any partnerships or operating agreements, formal or informal, with any individuals and/or businesses for operation and/or management of the concession stand without prior approval of the City.

24. NOTICES

Any notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

VENDOR

BY: _____
TITLE: _____
DATE: _____
ADDRESS: _____

CITY

BY: _____
TITLE: _____
DATE: _____

City Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

APPROVED TO FORM: _____
City Attorney

ATTEST: _____
City Clerk