TO: JAMES L. APP, CITY MANAGER

FROM: ANN ROBB, INTERIM DIRECTOR, LIBRARY & RECREATION

SUBJECT: CENTENNIAL PARK CONCESSION OPERATIONS

DATE: July 5, 2006

Needs: For the City Council to consider awarding a contract for concessions in the new

teen room at Centennial Park.

Facts:

1. Requests for Proposals were solicited for concession operations at Centennial Park in the new Teen Room of the gymnasium. No proposals were received by the deadline.

- 2. As established by past practice, when no proposals are received, staff may consider proposals submitted after the deadline.
- 3. One proposal by San Luis Obispo YMCA has been submitted for consideration.
- 4. Staff has reviewed the proposal and finds it to be responsive.

Analysis and

Conclusion:

Food and beverage concession is desirable at Centennial Park in the Teen Room. It provides a valuable service for park users during after-school programs, sporting events, and other activities at the park. It is also a source of revenue for the city. Annual revenue is unknown at this time because this is a new location for concessions. San Luis Obispo County YMCA has a long term established relationship with the City operating the after-school program know as Teen X-Treme, as well as other child care, camps, and gymnastics programs. San Luis Obispo County YMCA submitted a responsive proposal, and is ready to begin concession services.

Fiscal

Impact: Estimated revenue of \$1000 annually.

Options: a. Award a contract for concession operations at Centennial Park to San Luis Obispo County YMCA.

**b.** Amend, modify or reject the foregoing option.

### **CONCESSION AGREEMENT**

This agreement ("Agreement") entered into this day of, is between the City of El Paso de Robles, a municipal corporation ("City") and ("Concessionaire") (individually, "Party"; collectively, "the								
Parties").								
RECITALS								
WHEREAS, Concessionaire represents that it is an experienced retail vendor of prepared food and related items and is competent to operate one concession stand at Centennial Park, 600 Nickerson Dr., Paso Robles, California (the "Park"); and								
WHEREAS, City controls the Concession Stand at the Park and is willing to grant Concessionaire the right to operate such Concession Stand in strict accordance with the terms and conditions in this Agreement;								
NOW, THEREFORE, IT IS AGREED by and between City and Concessionaire as follows:								
AGREEMENT								
1. <u>INCORPORATION OF RECITALS</u> . The recitals set forth above and the introductory paragraph preceding the recitals are hereby incorporated into this Agreement as if set forth herein in full.								
2. <u>TERM OF AGREEMENT</u> . The term of this Agreement shall commence on the date of its execution by both parties and shall continue for an initial term of two (2) years. Within the sole discretion of the City, this term may be extended at its expiration for two additional two year periods; provided that the total extended term does not exceed six (6) years.								
3. <u>CONCESSION GRANTED</u> . City grants to Concessionaire an exclusive, revocable license to operate the Concession Stand at the Park (the "Concession"). Concessionaire agrees to operate the Concession in a professional and businesslike manner and in strict compliance with this Agreement's terms and conditions and all Applicable Laws (as defined below).								
4. <u>LOCATION OF CONCESSIONAIRE'S FACILITIES</u> .								
(a) <u>Concession Stands</u> . The Concession is located in the Park in the Norris gymnasium teen room, as shown on Exhibit A, attached hereto and incorporated								

herein. Existing facilities include refrigerator, double sink, cupboards and counter tops

in concession area. Utilities include access to electricity and water. Access to the commercial kitchen located in the community center building may be arranged as needed per department facility use permit process for an additional charge.

- (b) <u>Alterations Prohibited</u>. Concessionaire shall make no physical alterations of Concession without the prior written consent of City.
- (c) <u>Signage</u>. All signage exhibited or used at Concession by Concessionaire shall receive written approval from City prior to display.
- 5. <u>DAYS AND HOURS OF OPERATION</u>. Concessionaire shall operate the Concession, at a minimum, Monday Thursday 3:00 p.m. 5:30 p.m. during the school year. Concessionaire may elect to operate additional hours during regularly scheduled sporting events, including adult and youth league play, and adult and youth tournaments, and during summer open gym hours. Independent tournament or event promoters may sub-contract through prime Concessionaire for concession operations during their events with permission of Concessionaire and the City.

City shall provide Concessionaire with a schedule of regularly scheduled sporting events at the Park upon the execution of this Agreement. City shall provide Concessionaire with new schedules of sporting events at the Park from time to time as necessary to give Concessionaire reasonable notice of all regularly scheduled sporting events. Concessionaire shall make a reasonable effort to remain open during large sporting leagues and events, and after-school programs. Open concession times may be negotiated to include summer programs.

- 6. <u>UTILITIES</u>. Concessionaire shall pay the full cost of installation and the monthly charges associated with providing telephone service to the Concession if desired. City shall be responsible for the cost of electricity and water furnished to the Concession. Any and all utility installation requires the prior written consent of City.
- 7. <u>PERMITTED MERCHANDISE</u>. Concessionaire's merchandise may consist of only prepackaged hot and cold food and beverages, candy, snacks, and novelties. The Concessionaire may additionally contract with independent tournament organizers for the sale of non-food merchandise associated with the tournament. Concessionaire may not sell any alcohol or tobacco products of any kind or allow others to do so. All items sold, including but not limited to items provided by independent tournament organizers, shall be approved by the City's Director of Library and Recreation Services, which approval shall not be unreasonably withheld, and shall conform to City's contractual agreement with Pepsi-Cola Company, which is incorporated herein by reference.
- 8. <u>PERMITS AND APPLICABLE LAWS</u>. City shall acquire, at its sole cost all necessary permits and licenses from the County of San Luis Obispo Department of

Environmental Health (the "DEH") for the purpose of operation of the Concession. Concessionaire shall operate the Concession in accordance with standards set forth for concession operations by the DEH. Concessionaire shall obtain and maintain a City of Paso Robles business license.

"Applicable Laws" shall include all City, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force during the time of its performance with regard to the subject of this Agreement.

- 9. <u>SANITATION</u>. Concessionaire shall maintain and clean the interior and exterior of the Concession in accordance with the standards set forth by the DEH and the California Health and Safety Code (Articles #7, #8), including routine daily janitorial service. The City shall be responsible for routine building maintenance. "Routine building maintenance" shall include, but not be limited to, structural repairs, plumbing and electrical repairs.
- 10. <u>COMPENSATION TO CITY</u>. In consideration of the Concession granted by this Agreement, Concessionaire hereby agrees to pay to City a monthly fee for use of the Concession for each month that the Concessionaire is entitled to operate the Concession pursuant to this Agreement (the "Monthly Fee"). The Monthly Fee shall be thirty percent (30%) of Concessionaire's net proceeds after expenses each month for the first twelve months after this Agreement is executed. Concessionaire shall pay the Monthly Fee to City's Finance Department by the 10th day of each month following each month that Concessionaire operates the Concession. Concessionaire shall deliver a copy of its statement of operating costs and revenue to the City with each payment. Failure to pay the Monthly Fee by the 25th day of the month in which it is due shall be grounds for termination as a violation of this Agreement pursuant to Section 13.
- 11. <u>TERMINATION</u>. Both Parties shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon the other Party sixty (60) days advance written notice of termination. This notice of termination shall be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, postage prepaid, addressed to the other Party at the address indicated in Section 22. However, if Concessionaire operates the Concession in violation of this Agreement or in a manner which creates a hazard or nuisance, City may immediately terminate this Agreement by personally serving written notice of termination upon Concessionaire at the address indicated in Section 22.
- 12. <u>NO COMPENSATION FOR LOSS OF PROFITS OR GOODWILL</u>. The Parties expressly agree that Concessionaire shall be deemed not to have acquired any goodwill in the operation of the Concession granted by this Agreement. The Parties therefore expressly agree that Concessionaire shall not be entitled to recover for the loss of any goodwill or profits upon the termination of this Agreement for any reason at any

time. In addition, the Parties expressly agree that goodwill shall not be considered a factor in any agreement between Concessionaire and any subsequent concessionaire of City regarding the transfer of equipment or fixtures either during or after the term of this Agreement.

- 13. <u>CITY NOT LIABLE FOR LOSS OF BUSINESS</u>. If for any reason it becomes necessary to close the Park or to restrict access near or around Concession, City shall not incur any liability for damages due to Concessionaire's loss of business.
- 14. <u>ASSIGNMENT PROHIBITED</u>. Concessionaire shall not assign or otherwise transfer this Agreement, or any interest or portion of this Agreement without the express prior written consent of City. Any such attempt at assignment or transfer shall be null and void.
- 15. <u>INDEMNITY</u>. The Concessionaire shall be solely responsible for, and shall indemnify, defend (by counsel reasonably acceptable to the City Attorney) and hold the City, its officers, directors, agents, employees, volunteers and any other person acting for or on behalf of the City (collectively, the "Indemnified Parties") harmless from and against any and all costs, claims, losses, damages, causes of action and liability which may arise by reason of any occurrence attributable to or arising out of the Concessionaire's use of the Concession of this Agreement, including but not limited to failures to observe or perform any obligation of the Concessionaire under this Agreement or the Concessionaire's presence, activities, equipment, property or maintenance of the Concession, including without limitation, any claim or cause of action for injury to or death of any person or damage to any property arising out of any such occurrence occurring from and after the date hereof. Concessionaire's obligations under this Section 15 shall extend to claims arising after the termination of this Agreement for any reason.

The City shall have no liability to the Concessionaire, and the Concessionaire waives all claims against the City, arising from, or in any way related to, occurrences within the scope of the indemnity set forth in this Section 15, except to the extent caused solely by the gross negligence or willful misconduct of an Indemnified Party.

Concessionaire waives any right of recovery against the City, its officers, employees and agents for indemnification, contribution or declaratory relief arising from or in any way connected with the Concession even if the City, its officers, employees or agents seek recovery against Concessionaire.

16. <u>INSURANCE</u>. The Concessionaire shall, at its sole cost and expense, obtain and keep in force during the term hereof: commercial general liability insurance insuring the Concessionaire and endorsed to name the City, its officers, agents,

employees, and volunteers as additional insureds against claims for bodily injury, personal injury and property damage, providing coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence, covering the operation and maintenance of the Concessions, with the general aggregate coverage limit applying separately to the City for the duration of this Agreement.

Upon execution of this Agreement, the Concessionaire shall deliver to the City current certificates evidencing the existence and amounts of this insurance, with the additional insured required under this Section 16. Each policy shall contain an endorsement providing that it cannot be cancelled or subject to non-renewal or reduction in coverage except after thirty (30) days' prior written notice from the insurance company to the City. Proof of liability insurance in compliance with the terms and conditions of this Section shall be provided to the City by the Concessionaire annually, prior to expiration of the previous insurance certification, or by January 1, whichever occurs first.

#### 17. WORKERS' COMPENSATION.

- (a) <u>Covenant to Provide</u>. Concessionaire warrants that it is aware of the provisions 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. Concessionaire further agrees that it will comply with such provisions.
- (b) <u>Waiver of Subrogation</u>. Concessionaire and Concessionaire's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, agents, and employees for losses paid under Concessionaire's workers' compensation insurance policy.
- 18. <u>AMENDMENTS</u>. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties. Any purported modification or alteration which is not in writing and executed by both Parties shall have no effect on this Agreement.
- 19. <u>INDEPENDENT CONCESSIONAIRE</u>. In the operation of the Concession granted by this Agreement, Concessionaire is an independent contractor and is not an agent or employee of City. Concessionaire, its officers, employees, and agents, if any, shall have no power to bind or commit City to any decision or course of action, and shall not represent to any person or business that they have such power. Concessionaire has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting Concessionaire in the performance of the Concession. Concessionaire shall be solely responsible for all matters relating to the payment of its employees,

including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

- 20. <u>NONDISCRIMINATION</u>. During the term of this Agreement, Concessionaire agrees as follows:
- a. Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, handicap, medical condition, sexual preference, marital status, ancestry or national origin. Concessionaire shall, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, medical condition, sexual preference, marital status, ancestry or national origin.
- b. There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, age, handicap, medical condition, sexual preference, marital status, ancestry or national origin in the use, occupancy, tenure or enjoyment of the Concession, or any part thereof.
- 21. <u>HAZARDOUS SUBSTANCES</u>. Concessionaire and those acting by, through or under Concessionaire, shall not improperly store, handle, treat, use release, dispose of, discharge or produce any hazardous substances or hazardous waste, or any pollutant, contaminant or toxic substance as those terms are defined in or as may be regulated or governed by any federal, state or local laws or ordinances intended to protect health, safety or the environment. Concessionaire shall be responsible to remediate and clean up any and all such hazardous substances, pollutants, contaminants or toxins. Concessionaire agrees to release, to defend with counsel acceptable to City, indemnify and to hold City harmless of, from and against any and all claims, expense, loss or liability suffered by City by reason of Concessionaire's breach of any of the provisions of this Section 23 or any claims by Concessionaire's employees, agents, contractor's, visitors or assigns, if permitted under this Agreement, caused by, related, to, or arising from such breach. The indemnity contained in this Section 23 shall survive the expiration or earlier termination of this Agreement.
- 22. <u>NOTICE</u>. Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed effective as of the date of mailing and deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

CITY OF PASO ROBLES

1000 Spring Street Paso Robles, California 93447 Attention: City Manager

#### **CONCESSIONAIRE**

23. <u>RECORDS AND AUDIT</u>. Concessionaire shall establish and maintain records pertaining to this Agreement. Concessionaire accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, utility bills, invoices and vouchers.

Concessionaire shall permit City and its authorized representatives to inspect and examine Concessionaire's books, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Concessionaire pursuant to this Agreement and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Agreement; and Concessionaire shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Agreement.

Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement

- 24. <u>GOVERNING LAW AND CHOICE OF FORUM</u>. This Agreement shall be administered and interpreted under California law as if written by both Parties. Any litigation arising from this Agreement shall be brought in the Superior Court of San Luis Obispo County.
- 25. <u>COSTS AND ATTORNEYS' FEES</u>. If either Party commences any legal action against the other Party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered

to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

- 26. <u>CAPTIONS</u>. The captions of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
- 27. <u>CONCESSIONAIRE'S LIABILITY FOR PROPERTY TAX</u>. The Parties expressly agree that they are creating a revocable license to use property and not a possessory interest in land. If, however, the County Assessor or other taxing entity finds that this Agreement creates a possessory interest subject to property taxation, Concessionaire expressly agrees to pay any property tax levied on the premises as a result of such finding.
- 28. <u>BINDING EFFECT</u>. The provisions of this Agreement shall inure to the benefit of and be binding upon the City and the Concessionaire and their respective successors.

#### 29. WAIVER.

- (a) <u>Effect of Waiver</u>. Waiver by either Party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.
- (b) <u>No Implied Waivers</u>. The failure of either Party at any time to require performance by the other Party of any provision hereof shall not affect in any way the right to require such performance at a later time.
- 30. <u>FORCE MAJEURE</u>. Except as otherwise provided in this Agreement, if the performance of any act required by the Agreement to be performed by either City or Concessionaire is prevented or delayed by reason of any act of God, strike, act of terrorism, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations or any other cause (except financial inability) not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.
- 31. <u>SEVERABILITY</u>. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

32. <u>INTEGRATION</u>. This Agreement, including all exhibits, constitutes the entire understanding of City and Concessionaire as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 20.

Executed by City and Concessionaire on the date shown next to their respective signatures. The effective date of this Agreement shall be the date of execution by City as shown below.

DATED:	
	CONCESSIONAIRE
DATED:	
	CITY MANAGER
	CITY OF EL PASO DE ROBLES
	APPROVED AS TO FORM
	CITY A TETODA IEV
	CITY ATTORNEY
ATTEST:	
CITY CLERK	_

## **EXHIBIT A Map of Location of Concession Stand**

[To be inserted.]

# San Luis Obispo County YMCA Concession Operation Proposal Centennial Park, Paso Robles

1. Organization name, address, telephone number and e-mail ad; ∋ss (if available).

San Luis Obispo County YMCA 1020 Southwood Drive San Luis Obispo, CA 93401 (805) 543-8235 krademacher@sloymca.org

Name and telephone number of a contact person.
 Contact Person: Karey Rademacher or Jeri Baxter
 Phone #: Karey Rademacher 543-8235 x109 or Jeri Baxter 441-51 4

3. A list of the organization's principals.

The San Luls Obispo County YMCA, like YMCA's across the courty, has a long history of positive youth, adult and community development of the inception the YMCA has worked with youth and their families to the provide a wide range of engaging and challenging opportunities the promote healthy development. The YMCA has developed community-based programs that offer the very asset-development rich composite that have been proven to be essential to our youth growing up her that have been proven to be essential to our youth growing up her that strong. All of the San Luis Obispo County YMCA programming options address building strong kids, strong families and strong communities.

4. Proposed types of food, drink and/or any other products to be sold at the concession stand.

We would like to provide a variety of food and snacks that not only appeal to youth, but are healthy as well. We do plan to sell some tradition—"junk food," but at the same time there will always be healthy options.

Food: Yogurt, granola bars, pre-packaged fruit & vegetables (i.e. a. ples or carrotsticks), popcom, Cracker Jack, Hot Pockets, energy bars, tring cheese, baked chips and crackers, cookies, muffins, some candy, tc.

Drinks: mainly water, sodas & juice

5. Description of similar concessions operations that the Concessions i e and personnel have conducted previously.

The YMCA often stocks and staffs temporary snack bars at a variet / of venues, from sporting events to teen dances. No real history with a permanent operation involving permits & licenses.

6. Provide a statement of what especially qualifies your organization to enform concession operations.

Our organization currently sells a variety of things at the front dea: of our fitness facility. Items for sale include racquetball equipment, t-shir and energy bars. We have a long history of providing services to San listopo County.

7. Include a statement that the proposal shall remain valid for a period to less than sixty (60) days.

This proposal shall remain valid for a period of no less than sixty (, )

8. Include a statement that no conflicts of interest exist in the provisio of the proposed services.

To our knowledge there are no conflicts of interest that exist in the provision of the proposed services.

Submitted by:

Steve Th Iyes, VP of Operation SLO County VMCA

Date Date

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