

TO: James L. App, City Manager  
FROM: Julie Dahlen, Director, Library and Recreation Services  
SUBJECT: Barney Schwartz Park Concession Operations  
DATE: February 5, 2013

---

Needs: For the City Council to consider awarding a contract for concessions at Barney Schwartz Park.

Facts:

1. The City owns two concession stands at Barney Schwartz Park, one adjacent to the softball fields and one adjacent to the soccer fields.
2. The City is currently without a contract concessionaire at either of the Barney Schwartz Park concession stands.
3. City staff submitted requests for proposals for concession operations at Barney Schwartz Park and received two proposals by the deadline: from Central Coast Softball Tournaments and La Marinera Seafood.
4. City staff reviewed the proposals and found both to be responsive. However, Central Coast Softball Tournaments' proposed menu is better suited to the food service capacity of the Barney Schwartz Park concession stands, and staff recommends awarding the contract for both concession stands to Central Coast Softball Tournaments.

Analysis and

Conclusion: Food and beverage concession is desirable at Barney Schwartz Park. It provides a valuable service for park users during sporting events, tournaments, and other activities at the park. It is also a source of revenue for the city. The city is currently without a contract concessionaire at Barney Schwartz Park. Two proposals were received, and Central Coast Softball Tournaments has proposed a menu better suited to the concession environment at Barney Schwartz Park.

Policy

Reference: City Purchasing and Payment Procedures Manual.  
Previous concession contracts at Barney Schwartz Park.

Fiscal

Impact: Central Coast Softball Tournaments will be charged \$600.00 per month rent for the use of both concession stands.

- Options:
- a. Authorize the City Manager to enter into a contract with Central Coast Softball Tournaments. In the event that the contractor does not complete the term of the contract, authorize the City Manager to enter into a contract with La Marinera Seafood.
  - b. Amend, modify or reject the foregoing option.

Attachments

Proposed menu  
Concession Contract  
Resolution #13-XXX awarding a contract to Central Coast Softball Tournaments

# CCS Subs & Jumbo Dogs

## 8" SUB SANDWICHES

SERVED HOT OR COLD

- #1 ROAST BEEF \$5.00  
ROAST BEEF, TOPPED WITH LETTUCE,  
TOMATO AND MAYO-MUSTARD
- #2 TURKEY \$5.00  
TURKEY, TOPPED WITH MAYO-MUSTARD,  
LETTUCE, TOMATO & ALFALA SPROUTS
- #3 PASTRAMI \$5.00  
PASTRAMI, TOPPED WITH PROVALONE,  
LETTUCE AND MAYO-MUSTARD
- #4 CHIPOTLE CHICKEN \$5.00  
CHICKEN, TOPPED WITH PROVALONE  
LETTUCE, TOMATO & CHIPOTLE SAUCE
- #5 ITALIAN \$5.00  
SALAMI, PROVALONE, CAPICOLA, ONION,  
LETTUCE, TOMATO & VINERGARETTE
- #6 VEGETARIAN \$5.00  
PROVALONE CHEESE, AVACADO SPREAD,  
ALFALA SPROUTS, CUCUMBERS, LETTUCE,  
TOMATO AND MAYO

## SOUPS

\$3.00

- #9 CHICKEN NOODLE \$10
- #10 CHEDDAR BROCCOLI \$11
- #11 HEARTY BEEF CHILI

## 1/4 LB JUMBO DOGS

- #7 THE ORIGINAL \$3.00  
A MEAL IN ITSELF, 100% BEEF
- #8 CHILI DOG \$4.00  
OUR ORIGINAL DOG SMOTHERED IN CHILI

- CANDY \$1.00
- COOKIES \$1.00
- CHIPS \$1.00
- SUNFLOWER SEEDS \$1.00
- BEEF JERKEY \$3.00

- MONSTER \$3.00
- RED BULL \$3.00
- ROCK STAR \$2.00
- CARBONATED DRINKS \$1.00  
PEPSI, DIET PEPSI, DR. PEPPER, 7UP
- GATORADE \$1.00  
BERRY, GRAPE, STRAWBERRY, ICE
- BOTTLED WATER \$1.00
- HOT COFFEE \$1.00

## GRAND SLAM SHAKES

\$3.50

WITH REAL ICE CREAM  
CHOCOLATE,  
STRAWBERRY,  
VANILLA

## CONCESSION AGREEMENT

This Agreement ("Agreement") entered into this \_\_\_\_\_, 2013, is between the City of El Paso de Robles, a municipal corporation ("CITY") and Central Coast Softball Tournaments ("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 two (2) concession stands (the "Concession Stands") at Barney Schwartz Park, 2970 Union Road, Paso Robles, California (the "Park"); and

WHEREAS, CITY owns and controls the Concession Stands at the Park and is willing to grant CONCESSIONAIRE the right to operate such Concession Stands 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. INCORPORATION OF RECITALS. 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. TERM OF AGREEMENT. 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 term, including the initial term, does not exceed six (6) years.

3. CONCESSION GRANTED. CITY grants to CONCESSIONAIRE an exclusive revocable license to operate the Concession Stands at the Park (the "Concession"). CONCESSIONAIRE agrees to operate the Concession Stands in a professional and businesslike manner and in strict compliance with this Agreement's terms and conditions.

4. LOCATION OF CONCESSIONAIRE'S FACILITIES.

(a) Concession Stands. The Concession Stands are located in the Park in approximately the locations indicated on Exhibit A, attached hereto and incorporated herein. One of the Concession Stands is located adjacent to the Park's baseball/softball facility and the other is located adjacent to the Park's soccer/football facility.

(b) Alterations Prohibited. CONCESSIONAIRE shall make no substantial alterations of Concession Stands without the prior written consent of CITY.

(c) Signage. All signage exhibited or used at Concession Stands by CONCESSIONAIRE shall receive written approval from CITY prior to display.

5. DAYS AND HOURS OF OPERATION. CONCESSIONAIRE shall operate the Concession Stands, at a minimum, during all regularly scheduled sporting events at the Park, including but not limited to all adult and youth athletic league games, and all adult and youth tournaments, whether independently sponsored, sponsored or co-sponsored by CITY. The Concession Stands shall open no later than the start of the first regularly scheduled game on the day scheduled for athletic league games or tournament and shall not close until the completion of the final game scheduled for the same day. 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.

6. OPERATION OF CONCESSION STANDS. In the event sporting events are scheduled at the same time on both the baseball/softball facility and the soccer/football facility, CONCESSIONAIRE shall operate both Concession Stands simultaneously. However, in the event that only one of the two athletic facilities (either the baseball/softball facility or the soccer/football facility) is in use for a regularly scheduled sporting event at a given time, CONCESSIONAIRE has the option of operating only the Concession Stand located closest to the athletic facility in use during the time that the single athletic facility is in use.

7. UTILITIES. CONCESSIONAIRE shall pay the full cost of installation and the monthly charges associated with providing telephone service to the Concession Stands. CITY shall be responsible for the cost of all other utilities furnished to the Concession Stands. Any and all utility installation requires the prior written consent of CITY.

8. PERMITTED MERCHANDISE. CONCESSIONAIRE's merchandise may consist of hot and cold food and beverages (including beer and wine), candy, snacks, clothing and novelties. All beer and wine sales must adhere to the following specific conditions: CONCESSIONAIRE must secure and furnish proof of liability insurance specific to alcohol sales; secure and furnish proof of provision of licensed and bonded security in accordance with CITY standards during events when alcohol is sold; restricting alcohol consumption to designated areas; no alcohol sales during youth events; secure and furnish proof by way of adopted meeting minutes of endorsement of such alcohol sales by the Paso Robles Softball Association, Paso Robles Youth Sports Council, the Parks & Recreation Advisory Committee, and City Council.

9. EQUIPMENT. CITY has furnished each Concession Stand with commercial refrigeration and a microwave oven; in addition, an ice maker at the softball area concession stand (stand #1) and an outdoor BBQ adjacent to the soccer/football area concession stand (stand #2) (collectively, the "City Equipment"). CITY shall, at its sole expense, maintain and repair the City Equipment subject to normal use by CONCESSIONAIRE. Upon CITY's reasonable determination that CONCESSIONAIRE has negligently or willfully misused or damaged City

Equipment, CONCESSIONAIRE shall, at its sole cost and expense, repair or replace such City Equipment. CONCESSIONAIRE shall furnish, install, maintain and repair, at its sole expense, all other equipment necessary to provide the permitted merchandise to the public. City approval is required for any additional equipment. Grills, burners and deep fryers may not be used in either concession stand due to County of San Luis Obispo Environmental Health Department requirements.

10. PERMITS AND APPLICABLE LAWS. CONCESSIONAIRE shall be responsible for acquiring, at its sole cost and in a timely manner, any and all necessary permits and licenses from the County of San Luis Obispo Department of Environmental Health (the "DEH") for the purpose of operation of concession operations. CITY may provide such assistance as it deems reasonably necessary to process such permits. CONCESSIONAIRE shall operate stands in accordance with standards set forth by Environmental Health Department codes and permit specifications. CONCESSIONAIRE shall obtain and maintain a City of Paso Robles business license. CONCESSIONAIRE shall

CONCESSIONAIRE shall also operate its Concession in accordance with all applicable laws. "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 term of this Agreement and applicable to the operation of the Concession and this Agreement.

11. SANITATION. CONCESSIONAIRE shall maintain and clean the interior/exterior areas of the concession stands at all times in accordance with the standards set forth by Environmental Health Department codes and permit specifications. In maintaining the concession stands, CONCESSIONAIRE shall use biodegradable materials and cleaning supplies that are suitable for disposal into a septic system. A copy of the Material Safety Data Sheet (MSDS) for all cleaning materials shall be submitted to CITY for approval prior to use on the interior or exterior of the Concession Stands. A copy of the MSDS for such cleaning materials must additionally be kept on the site of each concession stand, and at the location where such cleaning materials are stored. Failure to consistently maintain the concession stands and surrounding areas in a neat and clean condition shall be grounds for retention of cleaning deposit and/or termination of contract. CONCESSIONAIRE shall be financially responsible for any damage or maintenance costs caused by his/her negligence. CITY shall be responsible for routine building maintenance. "Routine building maintenance" shall include, but not be limited to, structural repairs, plumbing and electrical repairs.

12. CLEANING DEPOSIT; COMPENSATION TO CITY.

Upon execution of this Agreement by both parties, CONCESSIONAIRE, shall pay to CITY the amount of Five Hundred Dollars (\$500.00) as a security and cleaning deposit (the "Deposit"). In the event at the termination of this Agreement, CONCESSIONAIRE has not removed its personal property and equipment or left Concession Stands in a neat and clean condition, AS SET FORTH IN Section 15 below, CITY may use the Deposit, or any portion thereof, to pay for the removal of such personal property or equipment or for the cleaning on the Concession Stands. Any amount of the Deposit not used by the CITY shall be returned to CONCESSIONAIRE.

In consideration of the Concession granted by this Agreement, CONCESSIONAIRE hereby agrees to pay to CITY a monthly fee for use of the Concession Stands for each month that the CONCESSIONAIRE is entitled to operate the Concession Stands pursuant to this Agreement (the "Monthly Fee"). The Monthly Fee shall be Six Hundred Dollars (\$600.00) per month for the use of both concession stand #1 and #2 for the first twelve (12) months after this Agreement is executed. The Monthly Fee shall thereafter be adjusted annually based upon the increase in the Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose area for Urban Wage Earners and Clerical Workers. In no event shall the annual fee adjustment for CPI exceed eight percent (8%). Should this CPI index no longer be published, a similar index shall be substituted by the CITY. CONCESSIONAIRE shall pay the Monthly Fee to CITY's Finance Department by the 10th day of each month for each month that CONCESSIONAIRE operates the Concession Stands. 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.

13. TERMINATION. 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 24. Notwithstanding the foregoing, however, in the event CONCESSIONAIRE is in default of this Agreement, and such default is not cured within five (5) business days of written notice by CITY of such default, or such default threatens public health or safety, CITY may immediately terminate this Agreement by personally serving written notice of termination upon CONCESSIONAIRE at the address indicated in Section 24.

14. NO COMPENSATION FOR LOSS OF PROFITS OR GOODWILL. 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.

In addition, if for any reason it becomes necessary to close the Park or to restrict access near or around Concession Stands, CITY shall not incur any liability for damages due to CONCESSIONAIRE's loss of business.

15. OBLIGATION TO REMOVE PERSONAL PROPERTY. Upon the termination of this Agreement, CONCESSIONAIRE shall be responsible for removing any and all personal property or equipment belonging to CONCESSIONAIRE and to leave Concession Stands in a neat and clean condition.

16. ASSIGNMENT PROHIBITED. 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.

17. INDEMNITY. See Exhibit A

18. INSURANCE. See Exhibit A

19. WORKERS' COMPENSATION. See Exhibit A

20. AMENDMENTS. 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.

21. INDEPENDENT CONTRACTOR. 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, agents, and subcontractors, 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.

22. NONDISCRIMINATION. 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 Stands, or any part thereof.

23. HAZARDOUS SUBSTANCES. 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, contractors, 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.

The parties recognize that no adequate remedy at law may exist for CONCESSIONAIRE's breach of this Section 23. Accordingly, CITY may obtain specific performance of any provision of this Section 23.

24. NOTICE. 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 24. 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

CITY OF PASO ROBLES  
1000 Spring Street  
Paso Robles, California 93447  
Attention: City Manager

CONCESSIONAIRE

Central Coast Softball Tournaments  
573 Paula Ray Lane  
Buellton, CA 93427  
Attention: Walt Van Zandt

25. RECORDS AND AUDIT. CONCESSIONAIRE shall establish and maintain records pertaining to this Agreement. CONCESSIONAIRE's 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 whatsoever 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 representatives 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 matter connected with the performance of this Agreement, including, but not limited to , the cost of administering the Agreement.

26. GOVERNING LAW AND CHOICE OF FORUM. 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.

27. COSTS AND ATTORNEYS' FEES. 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.

28. CAPTIONS. 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.

29. CONCESSIONAIRE'S LIABILITY FOR PROPERTY TAX. 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.

30. BINDING EFFECT. The provisions of this Agreement shall inure to the benefit of and be binding upon the CITY and the CONCESSIONAIRE and their respective successors.

31. WAIVER.

(a) Effect of Waiver. 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) No Implied Waivers. 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.

32. FORCE MAJEURE. 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.

33. SEVERABILITY. 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.

34. INTEGRATION. This Agreement, including Exhibit A, represents 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. This Agreement and any amendments to this Agreement will not be effective until:

- a. The Agreement is approved in writing by the City Manager; and
- b. The CONCESSIONAIRE has provided CITY with all pertinent forms and the CONCESSIONAIRE has been successfully screened through fingerprinting by the Department of Justice pursuant to Penal Code Section 11105.3 or successor statute.

**CONCESSIONAIRE:**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name  
Title

**CITY OF PASO ROBLES**

DATED: \_\_\_\_\_

\_\_\_\_\_  
CITY MANAGER  
CITY OF EL PASO DE ROBLES

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY

## EXHIBIT A

### INDEMNIFICATION

CONCESSIONAIRE shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of CONCESSIONAIRE, its officers, agents or employees (or any entity or individual that CONCESSIONAIRE shall bear the legal liability thereof) in carrying out the terms of this agreement.

### INSURANCE

CONCESSIONAIRE shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If CONCESSIONAIRE owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONCESSIONAIRE or CONCESSIONAIRE's employees will use personal autos in any way on this project, CONCESSIONAIRE shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

*Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.*

General conditions pertaining to provision of insurance coverage by CONCESSIONAIRE. CONCESSIONAIRE and CITY agree to the following with respect to insurance provided by CONCESSIONAIRE:

1. CONCESSIONAIRE agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insured CITY, its officials, employees and agents using standard ISO endorsement No. CG 2010 with an edition prior to 1992. CONCESSIONAIRE also agrees to require all subcontractors to do likewise.
2. All insurance coverage and limits provided by CONCESSIONAIRE and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to CITY or its operations limits the application of such insurance coverage.
3. None of the coverage required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

4. All coverage types and limits required are subject to approval, modification and additional requirements by CITY, as the need arises. CONCESSIONAIRE shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY's protection without CITY's prior written consent.
5. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverage required and an additional insured endorsement to CONCESSIONAIRE's general liability policy, shall be delivered to CITY at or prior to the execution of an Agreement.
6. Certificate(s) are to reflect that the insurer will provide 30 days' notice to CITY of any cancellation of coverage. CONCESSIONAIRE agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
7. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by CONCESSIONAIRE or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to CITY.
8. CONCESSIONAIRE agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by CONCESSIONAIRE, provide the same minimum insurance coverage required of CONCESSIONAIRE. CONCESSIONAIRE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONCESSIONAIRE agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to CITY for review.
9. CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving CONCESSIONAIRE ninety (90) days advance written notice of such change. If such change results in substantial additional cost to CONCESSIONAIRE, CITY will negotiate additional compensation proportional to the increased benefit to CITY.
10. CONCESSIONAIRE acknowledges and agrees that any actual or alleged failure on the part of CITY to inform CONCESSIONAIRE of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.
11. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

CONCESSIONAIRE agrees to provide immediate notice to CITY of any claim or loss against CONCESSIONAIRE arising out of the work performed under this agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

RESOLUTION NO. 13-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
TO AWARD A CONTRACT FOR CONCESSIONS AT BARNEY SCHWARTZ PARK

---

WHEREAS, the City owns two concession stands at Barney Schwartz Park, one adjacent to the softball fields and one adjacent to the soccer fields; and

WHEREAS, the City is currently without a contract concessionaire at either of the Barney Schwartz Park concession stands; and

WHEREAS, City staff submitted requests for proposals for concession operations at Barney Schwartz Park and received two proposals by the deadline: from Central Coast Softball Tournaments and La Marinera Seafood.

WHEREAS, City staff reviewed the proposals and found both to be responsive; Central Coast Softball Tournaments' proposed menu is better suited to the food service capacity of the Barney Schwartz Park concession stands, and staff recommends awarding the contract for both concession stands to Central Coast Softball Tournaments.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles, to award a contract for concessions at Barney Schwartz Park to Central Coast Softball Tournaments.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 5<sup>th</sup> day of February, 2013 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

---

Duane Picanco, Mayor

ATTEST:

---

Caryn Jackson, Deputy City Clerk