

SEASONAL CONCESSION SPECIFICATIONS

The city is seeking to fill various seasonal concession locations as outlined below. The first set of locations outlined requires the vendor provide a self-contained unit for serving customers, which will be referred to as “self-contained seasonal locations”; the second list of locations to be filled are facilities owned and contained within a Boise City Facility, which will be referred to as “Boise City facility seasonal locations”.

The firm(s) selected, based on the written proposal and interview process as the best qualified vendor for the services herein described, will then be requested to enter into contract negotiations with the City of Boise.

If compensation or other terms cannot be agreed upon with the best qualified proposer, the City may terminate negotiations with that proposer, and enter into negotiations with the next most qualified proposer.

The selected vendor shall agree to all of the terms and conditions as set forth in the professional agreement with the City as set forth in **“Exhibit A – Self-Contained Seasonal Concession Licensing Agreement Sample”** and/or **“Exhibit B – Boise City Facility Seasonal Concession Licensing Agreement Sample”** and be ready to execute same at time of award.

Concession Permit: Successful proposer(s) shall meet all concession permit requirements and obtain a Boise City Vending License. If, however, this requirement is not met, The City will award the contract to the next most qualified proposer. This permit is not required at the time of this application, but will be required if proposer is awarded the contract. Proposer will need to indicate if this permit will need to be obtained.

Prime Vendor: The vendor awarded the contract shall be the operator of the concession being proposed. No subcontractor, consignment or other transfer of concession responsibilities to another party is allowed with out the approval of Boise City.

Intent: The City’s intent in awarding the concession contract is to provide courteous, efficient service to the public with a maximum monetary return to the Boise Parks & Recreation Department.

Contract Award: A concession contract shall be awarded to the responsible vendor submitting a proposal which provides the best service to the public, and/or greatest income potential to the City. Multiple awards may be made. The term of the contracts shall be negotiated, but are generally for one (1) to three (3) years with the option to renew contract(s) for additional years. Applications will be accepted throughout the year, with first consideration being **January 13, 2011, 4:00 p.m.**, local time. If vacancies occur in existing locations, applications on file will be reviewed with same consideration, process and requirements.

Note: The contracted vendor(s) opening and closing date may vary contingent upon location and/or patrons served.

Structure/Cart and Operations: Some concession locations are within Boise Parks & Recreation Facilities, in which some electrical and water may be available for use.

Locations not in an existing BPR facility will require a concession / vending cart that shall be fully self-contained and removed from the park each evening, unless otherwise negotiated and agreed upon by both parties. Electrical and water are not available in most park locations.

Products for Resale/Merchandise: The vendor shall include products for resale such as: Snow cones, pop, hot dogs, hamburgers, candy, and other approved products that are geared to the clientele at Boise City parks. City shall approve all proposed products in writing. Vendors must honor existing contractual agreements with current vendors, i.e. beverage (Pepsi) products.

Billing: Vendors must submit payments on a monthly basis. Checks shall be made payable to the Boise Parks & Recreation Department. Payments are due on the first day of each month. Payments may be mailed or hand-delivered to Department of Parks and Recreation Administration Office, 1104 Royal Blvd, Boise, ID 83706.

Limitations: Self-contained seasonal vendor contracts do not guarantee participation in community or department sponsored events, or activities held within the vendor's designated area. Event organizers will be provided a list of contract vendors and products for consideration in their event. If selected to participate in a community or department sponsored event, vendor is responsible for all fees and stipulations of the named event.

Public Information: Proposals may be considered a public record after the award of the contract and, except as noted below, will be available for inspection and copying by any person after the award of this Agreement. The City will take reasonable efforts to protect any information marked "Confidential", to the extent allowed by Idaho Public Records Law. **Confidential information may be submitted in a separate envelope, sealed and marked "Confidential" and will be returned to the Proposer upon request, after the award of the contract.** It is understood, however, that the City will have no liability for disclosure of such information. Any proprietary or otherwise sensitive information contained in or with any Proposal is subject to potential disclosure.

Indemnification and Insurance: Contractor shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, including consequential damages, or injury to persons or property and losses and expenses caused or incurred by Contractor, its servants, agents, employees, guests, and business invitees, or by failure of the equipment provided by Contractor, and not caused by or arising out of the tortious conduct of CITY or its employees. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if CITY becomes liable for an amount in excess of the insurance limits, herein provided, Contractor covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. Contractor shall provide CITY with a Certificate of Insurance or other proof of insurance **naming the City of Boise as an additional insured** and evidencing Contractor's compliance with the requirements of this paragraph and file such proof of insurance with the City.

Additionally, Contractor shall maintain, and specifically agrees that it will maintain, throughout the term of the agreement, product liability insurance. This is not required at the time of application, but will be required if proposer is awarded the contract. Application needs to indicate if insurance is current or needs to be obtained.

Additionally, the contractor shall have and maintain during the life of this contract, statutory Workers Compensation, regardless of the number of employees, or lack thereof, to be engaged in work on the project under this agreement (including self). In case any such work is sublet, the contractor shall require that subcontractor to provide Workers Compensation Insurance for himself and any/all the latter's employees to be engaged in such work. Proof of insurance must be provided to the owner. This is not required at the time of application, but will be required if proposer is awarded the contract. Application needs to indicate if workers compensation is current or needs to be obtained.

CLARIFICATION/PROTEST/CHALLENGE PROCESS

Clarification and/or Protest of Bid Requirements, Standards, Specifications, or Process.

Any Vendor who wishes to request clarifications about or protest the requirements, standards, specifications, or process outlined in this Request for Proposals may submit a written notification to the Jamie Heinzerling ADDRESS, to be received no later than three (3) working days prior to proposal opening. The notification shall state the exact nature of the clarification request or protest. In the case of a protest, vendor shall describe the location of protested portion or clause in the proposal document and explaining why the provision should be struck, added, or altered, and contain suggested corrections. In the event of a protest, the Purchasing Agent may deny the protest, require that the proposal be modified, modify the proposal, and/or reject all or part of the protest.

Clarification and/or Protest of Contractor Selection or Contract Award.

Any actual or prospective proposer who is aggrieved in connection with the selection of a firm or award of the contract or proposal may submit a protest to the Purchasing Agent. The protest shall be submitted in writing within seven (7) calendar days after such aggrieved person knows or should have known the facts which give rise to the protest. The protest must set forth in specific terms the alleged reason the Vendor selection or contract award is erroneous. Any protest addressed to the Mayor or City Council will be referred to the Purchasing Agent.

THE CITY OF BOISE RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS, TO WAIVE ANY IRREGULARITIES IN THE PROPOSALS RECEIVED, TO AWARD ON AN 'EACH ITEM' BASIS (HOWEVER, A PROPOSER MAY INDICATE "ALL OR NONE"), AND TO ACCEPT THE PROPOSAL DEEMED MOST ADVANTAGEOUS TO THE BEST INTEREST OF THE CITY. THE CITY WILL ALSO CONSIDER WHETHER THE PROPOSER IS A RESPONSIBLE PROPOSER AS DESCRIBED IN BOISE CITY CODE 1-11.

SCOPE OF WORK AND VENDOR SELECTION:

The City of Boise reserves the right to reject any and all proposals and to accept the proposal deemed most advantageous and in the best interest of the City. **Only complete applications will be reviewed.**

We appreciate your interest in our projects, and realize that the development of proposals is a costly and time consuming effort. Please be assured your proposal will be given every consideration by Boise City.

The scope of work for this RFP shall include, but is not limited to, the furnishing of food and beverage products, supplies, equipment, services, products offered and cost to the patrons as stated in these specifications.

The vendor(s) selection shall be based on the following:

1. Services Provided by Vendor
2. Experience in Managing Comparably Sized Operations.
3. Product and Proposed Prices
4. Equipment
5. Backup/Inventory Program
6. Financial Responsibility/Soundness
7. Seasonal Rental Fee
8. References
9. Additional Information
10. Commitment of continued use of contractual arrangements with current vendors, i.e., beverage (Pepsi) products.

SELF-CONTAINED SEASONAL LOCATIONS:

It is the intent of the City to enter into a contract for services (see self-contained seasonal locations – Attachment A), with an initial term of one (1) year, with two options to renew, upon mutual agreement for additional terms of one (1) year each. As required by Idaho Code, the contract will contain a "Non-Appropriation" clause, allowing the City to cancel the agreement should the City fail to receive adequate appropriations to continue the agreement.

CRITERIA FOR SELECTION: The city will evaluate the proposals based on your response to items in the submittal requirements titled "Proposal Questionnaire" Sheet and prices bid per site below.

NOTE : Vendor(s) may submit the following proposal on any/all locations.

CONCESSION LOCATIONS

1. POOLS:

Borah and Fairmont: Borah and Fairmont pools and concessions are open during the public swim hours, 1:30–5:30 p.m. daily, with optional public hours from 7–9 p.m., weekdays, from early June through late August. In 2010 Borah pools attendance (afternoon and evenings) was 10,659 visits with 71 days of operation; Fairmont pools attendance (afternoons and evenings) was 11,661 visits with 64 days of operation.

DATE(S) OPEN FOR BUSINESS

Approximately June through mid-August, 2010. Monday-Sunday, 1:00-5:30 and 7:00-9:00.

NOTE: Starting date, days and time of vendor being open for business may be negotiated and set by both Boise Parks and Recreation Department and vendor’s availability and feasibility, and in consideration of inclement weather.

PROPOSAL:

Minimum proposal accepted will be \$8.00/day Monday-Friday and \$26.00/day Saturday-Sunday.

Please specify amounts:

**Borah Pool
801 Aurora
Boise, Idaho**

Please specify amount per week day \$ _____

Please specify amount per weekend day \$ _____

**Fairmont Pool
7929 Northview
Boise, Idaho**

Please specify amount per week day \$ _____

Please specify amount per weekend day \$ _____

2. **ANN MORRISON MEMORIAL PARK:**

Park is located at 1000 Americana Blvd, Boise, Idaho. General park use near east end next to the Boise River.

DATE(s) OPEN FOR BUSINESS

Approximately first week in April 2010 through October 2010, Monday-Sunday.

NOTE: Starting date, days and time of vendor being open for business may be negotiated and set by both Boise Parks and Recreation Department and vendor availability and feasibility, and in consideration of inclement weather and Boise River water flow conditions.

PROPOSAL:

Minimum proposal accepted will be \$8.00/day Monday -Friday and \$26.00/day for Saturday-Sunday.

Please specify amount per week day \$_____

Please specify amount per weekend day \$_____

3. **MISCELLANEOUS: OTHER PROPOSAL(S) FOR FOOD/BEVERAGE SERVICE IN BOISE PARKS AND RECREATION SITES/AREAS NOT LISTED.** (Example: Week days/nights Ann Morrison/Ft. Boise softball fields, Hillside Park, Municipal Park). *Neighborhood parks are not acceptable vending locations.*

DATE(s) OPEN FOR BUSINESS

Dates and hours are contingent on vendor location.

PROPOSAL:

Minimum proposal accepted will be \$8.00/day Monday-Friday and \$26.00/day for Saturday-Sunday.

Please specify site _____

Please specify season _____

Please specify amount per week day \$ _____

Please specify amount per weekend day \$ _____

Please specify site _____

Please specify season _____

Please specify amount per week day \$ _____

Please specify amount per weekend day \$ _____

Please specify site _____

Please specify season _____

Please specify amount per week day \$ _____

Please specify amount per weekend day \$ _____

BOISE CITY FACILITY SEASONAL LOCATIONS:

It is the intent of the City to enter into a contract for services (see similar agreement - Attachment B), with an initial term of **three (3) year, with two options to renew, upon mutual agreement for additional terms of two (2) years (each option)**. As required by Idaho Code, the contract will contain a "Non-Appropriation" clause, allowing the City to cancel the agreement should the City fail to receive adequate appropriations to continue the agreement.

CRITERIA FOR SELECTION: The city will evaluate the proposals based on your response to items in the submittal requirements titled "Proposal Questionnaire" Sheet and prices bid per site below.

NOTE : Vendor(s) may submit the following proposal on any/all locations.

CONCESSION LOCATIONS

1. POOLS:

Ivywild and Natatorium/HydroTube: Ivywild Pool and Natatorium/HydroTube concessions are open during the public swim hours, 1:30–5:30 p.m. daily, with optional public hours from 7–9 p.m., weekdays, from early June through late August. In 2010 Ivywild pool attendance (afternoon and evenings) was 39,304 visits with 73 days of operation; Natatorium/HydroTube attendance (afternoons and evenings) was 33,329 visits with 80 days of operation.

Boise Parks & Recreation will provide vendor with the following operating fulfillments:

Items in italics are owned by an independent vendor (as defined in parentheses), not Boise Parks and Recreation. The vendor selected will need to make arrangements with the respective independent vendor in order to continue use of these items. All equipment is to be maintained by the vendor. The City of Boise will not fix or replace any equipment due to failure.

Ivywild Pool

Facility Space: 30' 10" x 11' 4" + 15' 2" x 11' 4" (approx. 495 sq. ft.)

Equipment & Amenities:

- Commercial Microwaves (2)
- *Nacho Chip Warmer (J. Weil Foodservice)*
- *Nacho Cheese Warmer (J. Weil Foodservice)*
- Food Warmer
- Commercial Refrigerator
- Upright Commercial Freezer
- Chest Freezer
- *Frozen Desert Freezer (Meadow Gold Dairies)*
- *Commercial Ice Maker (Pepsi Bottling Ventures)*
- *Soda Fountain Dispensers/6 Tab – 2 (Pepsi Bottling Ventures)*
- *Soda Fountain Bag-N-Box Syrup Storage Rack (Pepsi Bottling Ventures)*
- Dish Washing Sink – 3 Compartment
- Hand Washing Sink
- Water Heater – 50 Gallon
- Shelving (Length x Height x Depth)
 - 12" x 5'8" x 1'
 - 12' x 2'6" x 1'
 - 6' x 2'6" x 1' (3)
 - 4'3" x 3' x 2'2"

- Cabinets (Length x Height x Depth)
 - 8' x 2'8" x 2'
- In-Ground Safe

Natorium/HydroTube

Facility Space: 16'9" x 14'9" (approx. 224 sq. ft.)

Equipment & Amenities:

- Commercial Microwaves (2)
- *Nacho Chip Warmer (J. Weil Foodservice)*
- *Nacho Cheese Warmer (J. Weil Foodservice)*
- Food Warmer
- Box Refrigerator (2)
- Upright Commercial Freezer (2)
- *Frozen Desert Freezer (Meadow Gold Dairies)*
- *Commercial Ice Maker (Pepsi Bottling Ventures)*
- *Soda Fountain Dispenser/6 Tab – (Pepsi Bottling Ventures)*
- *Soda Fountain Bag-N-Box Syrup Storage Rack (Pepsi Bottling Ventures)*
- Dish Washing Sink – 3 Compartment
- Hand Washing Sink
- Water Heater – 25 Gallon
- Shelving (Length x Height x Depth)
 - 2' x 3'6" x 1'
 - 4' x 2'6" x 1'
 - 2' x 3' x 1'
 - 4' x 3' x 1'
 - 2'6" x 7'8" x 2'
- In-Ground Lock Box

PROPOSAL: Minimum proposal accepted is \$1500.00 per pool site for the season plus 5% of gross sales. One-third of accepted proposal amount shall be due the first of each month (June, July, August); 5% of gross sales shall be due the first of each month (July, August, September).

**Ivywild Pool
2250 Leadville Ave
Boise, Idaho**

Please specify annual bid amount \$ _____

**Natorium/HydroTube
1811 Warm Springs Ave
Boise, Idaho**

Please specify annual bid amount \$ _____

2. WILLOW LANE ATHLETIC COMPLEX:

Willow Lane Athletic Complex is located at 4623 W Willow Lane, Boise, Idaho. Willow Lane Athletic Complex is a 57 acre special use park adjacent to the Boise River Greenbelt. The complex features six lighted softball fields, a soccer field, playground and BMX dirt jump park. Adult softball leagues, consisting of approximately 575 teams annually, are run by the City of Boise from April through September with games being played on weeknights from 6:30–10:30 p.m. On weekends, an average of twenty (20) softball tournaments (benefit, invitational and championship levels) are held with a range of 10-65 teams per tournament (560 teams annually). The Willow Lane Athletic Complex location includes beer and wines sales which are a requirement of this proposal. Licensing is the responsibility of the selected vendor. The awarded vendor for Willow Lane Athletic Complex will also be required to provide concession services at Ann Morrison Park for three (3) pre-scheduled tournaments. Glass bottles are prohibited and patrons of the park are able to bring their own beverages.

Boise Parks & Recreation will provide vendor with the following operating fulfillments:

Items in italics are owned by an independent vendor (as defined in parentheses), not Boise Parks and Recreation. The vendor selected will need to make arrangements with the respective independent vendor in order to continue use of these items. All equipment is to be maintained by the vendor. The City of Boise will not fix or replace any equipment due to failure.

Facility Space:

- Main Concession Area – 18’ x 10’ + 4’10” x 5” (approx. 204 sq. ft.)
- Beer Booth – 10’1” x 10’3” (approx. 100 sq. ft.)
- Storage – 11’1” x 13’2” + 4’6” x 4’6” (approx. 163 sq. ft.)
- *Portable Trailer (Pepsi Bottling Ventures) – 7’6” x 14’ (105 sq. ft)*

Equipment & Amenities:

- Mini Deep Fryer
- Roller Grill
- Commercial Microwave
- Food Warmers (2)
- Humidity Warming Cabinet
- Upright Commercial Freezer
- Chest Freezer
- *Refrigerators (3 – Pepsi Bottling Ventures)*
- *Commercial Ice Makers – 2 (Pepsi Bottling Ventures)*
- *Soda Fountain Dispenser/6 Tab - 2 (Pepsi Bottling Ventures)*
- *Bun Rack*
- Dish Washing Sink – 2 Compartment
- Hand Washing Sink
- Water Heater – 50 Gallon
- Shelving (Length x Height x Depth)
 - 4’8” x 2’10” x 2’6”
 - 6’ x 2’10” x 2’6”
 - 8’2” x 2’10” x 2’6”
 - 5’5” x 2’6” x 1’
 - 12’ x 1’4” x 1’
- In-Ground Safe
- Security Alarm System

Return this Page with Proposal

PROPOSAL: Minimum proposal accepted is \$6000.00, plus 10% of gross sales to be paid monthly from April thru September. One-sixth of accepted proposal amount shall be due the first of each month (April, May, June, July, August, September); 10% of gross sales shall be due the first of each month (May, June, July, August, September, October).

**Willow Lane Athletic Complex
4623 W Willow Lane
Boise, Idaho**

Please specify annual bid amount \$ _____, plus 10% of gross sales.

PROPOSAL QUESTIONNAIRE

The following questions and specifications will help the city determine the most qualified vendor to provide services the City desires to contract for. It is the intent of the City to evaluate the responses to this RFP based on cost, the ability and willingness to provide equipment and services, and the reliability of the vendor. Please include any additional information you feel will assist the City in fairly evaluating your company's services. The vendors selected based on the written proposal may then be interviewed in order for the City of Boise to select the best-qualified candidate. Attach additional pages if needed.

Please check the facility locations in which you are bidding:

- _____ Ivywild Pool
- _____ Natatorium
- _____ Willow Lane Athletic Complex
- _____ Borah Pool
- _____ Fairmont Pool
- _____ Ann Morrison Park
- _____ Other: Please Specify _____

1. What services will you as a vendor provide?

Number of Staff: _____

Season of Operation: _____

Days of the Week Open: _____

Hours: _____

2. Experience in Managing Comparably Sized Operations (please describe your experience in this area):

3. Product and Price Schedule: List all proposed products and prices you anticipate charging customers for the 2011 season. Include products such as beverages, snacks, hamburgers, ice cream novelties, etc.

4. Equipment (equipment listed above per site will be included as part of this rental agreement/if self-contained unit, please indicate type and dimensions of equipment to be used):

5. Backup/Inventory Policy: What is your company's policy regarding providing backup equipment, should the equipment in use fail?

6. Financial Responsibility/Soundness: All proposals shall submit a financial statement, a current credit report (or authorize the City to obtain a credit report), and/or a 2010 tax return. Proposals which do not comply with this requirement may be found non-responsive and disqualified from further consideration. (Please attach).

7. References: Please include 3 references.

Name	Address	Phone Number
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

8. Attach a copy of your Boise City Vendor License
(Indicate if you have a current license or plan to obtain a license if awarded a contract.)

Return this Page with Proposal

- 9. Additional Vendor Comments/Information:** Include any additional information you wish considered in awarding the RFP.

Return this Page with Proposal

PROPOSAL SIGNATURE PAGE

Proposals shall be prepared on forms supplied by the City of Boise.

ALL PROPOSALS MUST BE SIGNED.

Addenda acknowledged (date, number, initial)

Proposer Signature

Company Name Printed

Proposer Name (printed or typed)

Address

Title

City/State/Zip

(_____)
Area Code/Phone No.

Federal Taxpayer Identification Number



LICENSING AGREEMENT City of Boise Parks and Recreation

This LICENSING AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, by and between the **City of Boise Department of Parks and Recreation** (“Licensor”) and _____ (“Licensee”).

RECITALS

[Recitals to be added.]

In consideration of the mutual promises herein contained, and without the requirement of a licensing fee, Licensor and Licensee hereby mutually undertake, promise and agree, each for itself, and its successors and assigns, as follows:

ARTICLE I - DEFINITIONS

1.1 Defined Terms: The following terms shall have the meanings stated below:

[Defined terms to be added.]

ARTICLE II - TERM OF LICENSING AGREEMENT

2.1 Term: This Licensing Agreement shall become effective _____, and shall continue until _____ or until termination or default as provided for by this Agreement.

2.2 Termination:

- a. Either party may terminate this Agreement without cause and without regard to payment periods by providing the other party thirty (30) days written notice.
- b. Total destruction: Should the park(s) or an essential part of the area used by Licensee for business operations be totally destroyed by fire, flood, or other casualty, this Agreement shall terminate.
- c. Partial destruction: In the case of partial destruction of the area used by Licensee for business operations, either party may terminate this Agreement within ten (10) days following such partial destruction, with notice to be given to the other party not less than ten (10) days prior to the chosen date of termination.
- d. If Licensee makes an assignment for the benefit of creditors, or is placed in receivership or adjudicated bankrupt, or takes advantage of any bankruptcy or insolvency law, Licensor may terminate this Agreement by giving written notice to Licensee specifying the date of termination, such notice to be given not less than ten (10) days prior to the chosen date of termination.

ARTICLE III – LICENSE AND PREMISES

3.1 Grant of License: Licensors hereby grants to Licensee a non-exclusive, revocable License to operate the business of _____ at the location of _____.

- a. [Specific terms of license to be added.]
- b.
- c.

3.2 License Premises: The Licensee is allowed access to the park(s) and the ability to operate the business only during the park's regular operating hours.

3.3 Non-exclusive Revocable License: Licensee acknowledges this is a non-exclusive, revocable License for operation of Licensee's business on municipal park property. Licensee acknowledges that Licensor, when possible, will seek competitive proposals for the same or similar services. Licensor reserves the right to solicit other business proposals for the same or similar services and to award additional licenses that, at Licensor's discretion, best meet the needs of the City of Boise City.

3.4 Limitations on Use: Licensee acknowledges this non-exclusive, revocable License does not guarantee participation in community or department sponsored events and activities held within the park(s). Any arrangements for Licensee's participation at such event or activity, including all fees to event sponsor, are the responsibility of Licensee. The terms of this Agreement shall continue to apply during Licensee's participation at such event, including Licensee's obligations to Licensor under *Article V – Fees and Related Provisions*.

3.5 Lawful Business Use: During the term of this Agreement, Licensee shall use the park exclusively for the business described herein and in any attached exhibits. The Licensee shall not allow such premises or any part thereof to be used for any immoral or illegal purposes and shall not allow, suffer, or permit such premises to be used for any purpose, business, activity, use, function, or object to which Licensor objects in writing. The Licensee shall, at all times during the terms of this Agreement, be subject to the lawful exercise of the police power of Boise City.

ARTICLE IV – DUTIES OF LICENSEE

4.1 Duties: In exchange for the privilege of obtaining this non-exclusive, revocable License, Licensee agrees to:

- a. Provide all services and business operations in a safe and law-abiding manner.
- b. Follow all rules and regulations of the park(s) and the laws of the City of Boise City.
- c. Provide daily and continuous clean up of all debris in the area used, occupied, and immediately adjacent to Licensee's business that is caused or created by Licensee's employees, servants, agents, business invitees, patrons, and guests.
- d. Keep all company vehicles on roadways or parking lots within the boundaries of the park(s). All equipment and supplies shall be carried by hand from the vehicle to location of business operations.
- e. Pay for all damages to the park(s) caused directly or proximately by Licensee's business equipment, employees, servants, agents, business invitees, patrons, and guests and not a result of normal wear and tear that would have occurred had Licensee's business not operated within the park(s).
- f. At the termination of this Agreement, either by natural expiration or default as provided, return the areas of use in the park(s) to their original condition excepting normal wear and tear.

4.2 No Assignment: Licensee shall not assign this Agreement or any of its privileges hereunder, either voluntarily or involuntarily, without the prior written consent of Licensor.

4.3 Limitations: This Agreement shall apply to and be binding on Licensee only to the extent Licensee's business operates within the confines of the park(s) and as may be approved by Licensor.

4.4 Default and Cancellation: If Licensee is in default of any of the terms and conditions of this Agreement or violates any laws of the United States, the state of Idaho, or applicable City of Boise ordinances, rules or regulations and thereafter fails or refuses to perform or correct the conditions constituting a breach or default, or by the very nature of the default cannot thereafter perform or correct the conditions constituting a breach or default, after five (5) days written notice this Agreement shall be deemed terminated and forfeited without further notice or demand, and all rights of Licensee hereunder shall be terminated.

4.5 Code of Conduct: In order to ensure a professional and respectful relationship with the general public, the City of Boise requires its business licensees to behave in a civil and courteous manner at all times. While it is impossible to list every type of conduct that is unacceptable, the following are examples of behavior that may, at the sole discretion of Licensor, result in license revocation:

- a. Harm or threat of harm to any City employee, member of the public, City government, or City property, regardless of location.
- b. Physical violence against persons or property.
- c. Sabotage of City property or processes.
- d. Theft or unauthorized removal or possession of the City's property or another person's property from City premises.
- e. Speech or conduct with the public that violates commonly accepted standards and that, under present circumstances, has no redeeming social value, including the use of profane, indecent, or abusive language.
- f. Speech or conduct deemed rude, disrespectful, aggressive, intimidating, harassing or otherwise inappropriate when conducting licensee's business.
- g. Making malicious, vindictive, false, and/or harmful statements about others or engaging in verbal abuse, altercations or outbursts.
- h. Any conduct that obstructs, disrupts, or interferes with City business, service, work environment or administrative functions, including City sponsored events.
- i. Untruthfulness related to use of the license which could hinder or jeopardize the City's interests.
- j. Use, possession, distribution, or sale of illegal drugs, paraphernalia, or controlled substances not prescribed to the user by a physician, on City property or at City sponsored events, including the use of alcohol, drugs, or controlled substances while working in accordance with the license.

4.6 Criminal History: Licensee shall not employ to work under the terms of this License any employee, servant, or agent who is unsuitable to interact with children. "Unsuitable to interact with children" shall mean having been convicted of a crime listed in Idaho Code § 18-8304 (or similar statute from any other state or territory) or required to register under Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, Idaho Code § 18-8301 et seq. (or similar statute from any other state or territory).

- a. Licensee, at its own expense, shall conduct appropriate and applicable background and reference checks on each of its employees, servants, and/or agents to ascertain that there is no history of behavior that would make Licensee or its employees, servants, or agents unsuitable to interact with children.
- b. Licensee shall certify to Licensor that each of Licensee's employees, servants, and/or agents is fit to interact with children and will so certify this information prior to allowing the employee, servant, or agent to perform any on-site services. Failure to certify shall be grounds for immediate revocation of this licensing agreement.

ARTICLE V – FEES AND RELATED PROVISIONS

5.1 Licensing Fee: For the privileges of receiving the License herein described, Licensee agrees to pay to the Licensor a licensing fee of \$8.00 per weekday (Monday through Friday) and \$26.00 per weekend day (Saturday and Sunday), for each day or partial day of business operation within the park(s).

- a. Licensee shall complete a monthly affidavit of business operations, attached hereto as Exhibit A,

attesting to all days worked and not worked within the park(s) and setting forth the amount owed Licensors.

- b. Licensee shall submit the monthly affidavits with each corresponding payment.

5.2 Payment of Fee; Notices to Licensors: Payment of the licensing fee shall be monthly and shall be due by the tenth (10th) day of the following month for which the fees were incurred. Payment of the licensing fee and all notices to Licensors set forth in this Agreement shall be made at the following address, without demand, or such other place as the Licensors may designate to Licensee in writing:

City of Boise – Department of Parks and Recreation
Attn: Ms. Jamie Heinzerling
1104 Royal Boulevard
Boise, Idaho 83706

5.3 Unpaid Fees: All amounts not paid by Licensee to the Licensors when due shall bear a service charge at the Licensors' prevailing rate on delinquent accounts. The said rate shall be applied from the date when the same was due until paid by the Licensee. Past due accounts shall be subject to a minimum Administration charge per month which shall cover the costs of handling. Licensee agrees that it shall pay and discharge all costs and expenses, including reasonable attorney's fees, incurred or expended by Licensors in collection of any delinquent amounts due.

5.4 Other Taxes, Fees, or Charges: Fees and charges paid to the Licensors shall not include any taxes, fees or license charges that may be levied, assessed or charged by any governmental entity on Licensee. Licensee agrees to pay such taxes, fees or license charges directly to the appropriate taxing authority, without involving the Licensors, or in the event Licensee desires to contest such taxes, fees or license charges, such contest shall be in good faith and the taxes, fees, or charges in contest shall be bonded if not paid when due.

5.5 Inspection of Records: Licensee agrees to maintain accurate business records and to allow Licensors to inspect any and all financial books, records, and receipts from the business operations conducted by Licensee at the park.

ARTICLE VI – INDEMNIFICATION AND INSURANCE

6.1 Indemnification: Licensee shall protect and hold Licensors and its officials, agents and/or employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of the negligent acts or omissions of Licensee or its officers, agents, employees, contractors, subcontractors, or invitees incident to this Lease and/or the use or occupancy of the park(s) regardless of where the injury, death, or damage may occur. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this License.

6.2 Liability Insurance: Licensee shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance in which Licensors shall be a named insured in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Licensors. And if Licensors becomes liable for an amount in excess of the insurance limits herein provided, Licensee covenants and agrees to indemnify and save and hold harmless Licensors from and for all such losses, claims, actions or judgments for damages or liability to persons or property. Licensee shall provide Licensors with a Certificate of Insurance or other proof of insurance evidencing Licensee's compliance with the requirements of this paragraph and file such proof of insurance with Licensors' Purchasing and Parks & Recreation Departments. In the event the insurance minimums of the Idaho Tort Claims Act are changed, Licensee shall immediately submit proof of compliance with the changed limits.

6.3 Other Insurance Coverage: Licensee shall be solely responsible for obtaining workers' compensation insurance (regardless of the number of employees, or lack thereof), in the statutory limits as required by law, employers' liability

insurance, business interruption insurance, and any other type of insurance for the benefit of Licensee. Evidence of all such insurance shall be furnished to Licensor upon execution of this Agreement.

ARTICLE VII – GENERAL PROVISIONS

7.1 Notices: The parties' addresses for all notices set forth in this Agreement are:

Licensor:	City of Boise	Licensee:
	Department of Parks and Recreation	
	Attn: Ms. Jamie Heinzerling	
	1104 Royal Boulevard	
	Boise, Idaho 83706	

or such future changed address for which notice has been given to the other party in accordance with the above provisions.

7.2 Non-Discrimination: Licensee, by using this License herein granted, shall not discriminate or permit discrimination against any person or group of persons in any manner on the grounds of race, color, sex, religion, national origin or ancestry, age or physical handicap. Non-compliance with such assurances shall constitute a natural breach of this License Agreement, and in the event of non-compliance, Licensor may take appropriate action to enforce compliance and may terminate this Agreement or seek judicial enforcement thereof.

7.3 Compliance With Laws: In performing the scope of services required hereunder, Licensee shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments including, but not limited to, required licensing for drivers of commercial vehicles in the State of Idaho, workers compensation insurance, and all sales and use tax legislation. The Licensor reserves the right to request proof of compliance with any applicable statute, ordinance or regulation for which Licensee is statutorily required to comply.

7.4 Interpretation: The paragraph headings used herein are for convenience only, are not a part of this Agreement, and are not to be used in construing it. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

7.5 Modification: There shall be no modification of this Agreement, except in writing, executed with the same formalities as was this License Agreement.

7.6 Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho and the ordinances of the City of Boise City.

7.7 Attorney's Fees: Should any litigation be commenced between the parties to this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

7.8 Independent Permittee: Licensee is and shall at all times be considered as an independent permittee and is in no way an employee of the City of Boise City.

- a. The parties intend that this Agreement create only an independent licensing relationship. Licensee shall complete the services agreed upon with Licensor according to its own means and methods, which shall be in the exclusive control of Licensee and which shall not be subject to the control or supervision of Licensor other than as specified in this Licensing Agreement. The parties agree that this Agreement does not entitle Licensee or its employees or agents (if any) to workers' compensation benefits, unemployment compensation benefits, or any other benefits or protections that accrue from an employment relationship, all of which shall remain the sole and exclusive responsibility of Licensee and/or its employees or agents.

- b. Licensee is not required to perform its services exclusively for the Licensor. Licensee, its employees or agents shall be responsible for any business registrations or licenses required by any governmental entity. Licensor shall not control, directly or indirectly, the number of hours Licensee, its employees, or agents shall perform services under this Agreement. Licensor shall not combine business operations with Licensee.
- c. Neither Licensee nor its employees or agents are to be considered agents or employees of Licensor for any purpose, including that of federal and state taxation, and neither Licensee nor its employees or agents are entitled to any of the benefits that the City may provide to its employees. It is understood and agreed that Licensor does not require Licensee to provide services exclusively to Licensor and that Licensor is free to contract to provide services to other entities during the term of this Agreement.

7.9 Entire Agreement: This instrument embodies the whole Agreement of the parties and supersedes any and all other agreements or understandings. No failure of Licensor to exercise any power given it hereunder, or to insist upon strict compliance by Licensee of any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Licensor's right to demand strict compliance with the terms hereof.

7.10 Severability: If any provision of this Agreement or application thereof is held invalid, such invalidity will not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to that end, the provisions hereof are declared to be severable.

End of Agreement

IN WITNESS WHEREOF the parties hereto have subscribed their names the date first written above.

CITY OF BOISE

Licensor

Licensee

By: _____
James R. Hall, Director
Department of Parks and Recreation

By: _____

**BOISE CITY FACILITY SEASONAL CONCESSION
AND LICENSING AGREEMENT**
(Willow Lane Athletic Complex, Ivywild Pool and Natatorium Pool & Hydrotube)

AGREEMENT made this _____ day of _____, 2011, by and between Boise City, an Idaho municipal corporation, by and through its Department of Parks and Recreation (“Lessor”), and _____ (“Lessee”). Lessor and Lessee may collectively be referred to as “the Parties”.

WITNESSETH

WHEREAS, it is in the public interest to provide seasonal concession services in parks owned and managed by the City,

WHEREAS, the Lessee desires to provide concession services under mutually agreeable terms and conditions;

NOW, THEREFORE, in consideration of the premises and covenants and agreements contained herein, the Parties agree as follows.

1. LEASE. Lessor hereby leases to Lessee the area situated within the City’s recreational facility known as Willow Lane Athletic Complex, 4623 West Willow Lane, Boise, Ada County, Idaho, as illustrated on Exhibit A attached hereto and incorporated herein by reference (“Leased Premises”) in order to provide food and beverage services and novelty items, including, but not limited to baseball caps, sunglasses, sunscreen and the like to patrons of that facility. Lessee hereby accepts the Leased Premises from Lessor in its present “as-is” condition.

2. TERM OF LEASE. The initial term of this lease shall be three (3) years, beginning April 1, 2011, and ending on September 30, 2013, unless sooner terminated as herein provided.

3. OPTION TO RENEW. Lessee shall have an option to renew this Agreement for additional two (2) terms not to exceed two (2) years each at a rental rate and upon such terms and conditions as may be agreed upon by the Parties, such option to be exercised in writing by Lessee not later than ninety (90) days prior to the expiration of the original term or any extension thereof.

4. HOLDING OVER. In the event that Lessee shall remain in possession of the Leased Premises upon expiration of either the original term or any renewal term, such possession shall be as a month-to-month tenant. During such month-to-month tenancy, lease payments shall be payable at the same rate as in effect during the last month of the preceding term or any extension thereof.

5. BASE RENT. Lessee shall pay to Lessor a monthly rent (“Monthly Rent”) of \$_____, for the months of June through September for each year of the initial term.

6. ADDITIONAL RENT.

(a) 10% of gross sales shall be paid for each month of the concession season.

(b) The term "concession season" shall mean a period commencing April 1 and ending September 30 for each year of the term or any renewal thereof.

(c) The term "Gross Sales" shall mean all receipts of the conduct of all business upon the Leased Premises including, without being limited to, the gross sales of merchandise at or supplied from the Leased Premises whether sold for cash or on a charge or credit basis, all charges for the rendition of services on or supplied from the Leased Premises, and all sales and business of any licensees or concessionaires operating upon the Leased Premises. Amounts attributable to sales originally made upon the Leased Premises and to Services originally contracted for upon the Leased Premises shall be included in Gross Sales even though payment of the bill or such sales or services is transferred to another location for collection.

(d) In computing Gross Sales there shall be deducted the amount of all taxes payable by Lessee on the sale

of merchandise or services in or from the Leased Premises under any federal, state or local law levying or imposing a tax upon the sale of merchandise or services. In computing Gross Sales there may also be excluded or deducted receipts from the sale on the Leased Premises of meals to Lessee's employees in the course of the employment, any service charge collected by and turned over to its employees in lieu of such employees receiving tips or gratuities from Lessee's patrons, and any cash or credit refund made upon a sale which was previously included in Gross Sales.

7. DEFINITION OF RENT; PLACE OF PAYMENT. For purposes of this Lease, "Rent" shall include Monthly Rent and all other amounts payable by Lessee to Lessor under this Agreement. Lessee shall pay Rent to Lessor, without notice or demand and within three (3) business days after the same is due at the address set forth for Lessor in Section 29 below (Notices), or at such other place as Lessor may from time to time designate in writing. Rent is deemed paid upon receipt by Lessor at the place of payment.

8. ACCURATE FINANCIAL RECORDS. Lessee shall keep an accurate set of financial records, pursuant to its business, and shall furnish at Landlord's request a statement of revenues, verified by a Certified Public Accountant, setting forth the amount of Gross Sales for the period for which said statement is requested. Lessor shall be given full access at all times to Lessee's complete financial records and shall be allowed to review said records for any and all reasons related or incidental to the contractual relationship between the parties.

9. EXCLUSIVE USE. Lessor hereby grants to Lessee the exclusive right to lease, operate, and sell beverages and food and miscellaneous novelty items at the Leased Premises, subject to the terms and conditions of this Agreement. If Lessee seeks to contract with a sub-Lessee to supply additional items for sale, i.e., beverage, food items and novelties not included or not within the reasonable contemplation of Lessee as provided in Section 1. above, at the Leased Premises, sub-Lessee shall submit a request in writing to Lessor. Lessor will approve or deny request within three (3) business days, which request shall not unreasonably conditioned, delayed or denied. Any sub-Lessee approved by Lessor shall enter a separate agreement in writing with Lessor.

10. HOURS OF OPERATION. The Leased Premises shall be open during the normal operating hours of the City's facility, the specific operating hours to be agreed upon between Lessor and Lessee from time to time and Lessee shall keep the Leased Premises adequately stocked, equipped and staffed.

11. MAXIMUM UTILITY. Lessee shall conduct its concession operations in a professional and businesslike manner generating maximum utility from the resource for the benefit of the public and shall make every reasonable effort to promote good will and enhance the public's image of the facility.

12. NON-DISCRIMINATION. Lessee, in his use and operation of the concession herein granted, will not, on the grounds of race, color, national origin or disability, discriminate or permit discrimination to any person or group of persons in any manner. Non-compliance with such assurances shall constitute a breach of this Agreement.

13. EQUIPMENT USE, REPAIR AND REPLACEMENT. Lessee's right to use of the Leased Premises shall include the right to utilize all existing trade or other fixtures owned by the City and currently installed at each of the Leased Premises at no additional cost to Lessee. Throughout the term of this Agreement or any extension thereof, any and all repairs, maintenance and replacement of such trade or other fixtures shall be at Lessee's sole expense. All trade or other fixtures, merchandise, supplies, and equipment owned by Lessee or installed in the Leased Premises at Lessee's expense shall be the property of Lessee and at the expiration of this Agreement, Lessee shall remove the same as provided in Section 15. below.

14. UTILITIES AND IMPROVEMENTS. In addition to Base Rent, Lessee shall pay all cost of utilities in excess of Five Hundred Dollars (\$500.00) (*Willow Lane Athletic Complex Location Only*) for the months Lessee pays rent Lessee utilizes at the Leased Premises above so long as Lessee makes no alterations to the Leased Premises that result in an increase in utility costs to Lessor. Lessee shall pay utility costs in the same manner as set forth in Section 7. above. In the event Lessee seeks to alter the Leased Premises during the term of this Agreement or any extension thereof, such alterations shall occur only with the written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Such alterations, if approved shall include installation of separate utility meters that measure Lessee's utility consumption. Any alterations of, addition to or improvement of leased areas shall be at Lessee's expense unless otherwise negotiated between the Parties and shall be maintained at the expense of Lessee. All such alterations, additions, or improvements shall become part of the Leased Premises and shall become Lessor's property upon expiration of this Agreement.

15. MAINTENANCE AND REPAIRS. Lessee shall keep the interior, non-structural portions of the Leased Premises in good order and condition as when delivered to it, excepting ordinary wear and tear, or damage by fire, elements or other casualty not due to the intentional act or negligence of Lessee, and shall provide at its sole cost and expense any and all additions or improvements to the Leased Premises that may hereafter be required by any law or ordinance for safety purposes. The cost of repairs due to the intentional act or negligence of Lessee, its employees, agents, guests, or business invitees, shall be at Lessee's sole expense. Upon expiration of this Agreement, or any extension thereof or the earlier termination thereof, Lessee shall within fifteen (15) days thereof, remove all personal property and shall restore the premises to that condition existing at the time this Agreement commenced, ordinary wear and tear and structural damage resulting from natural causes excepted. Failure of Lessee to remove its personal property or to have restored the premises to its original condition as herein provided shall constitute a holding over and be subject to the provision of paragraph 3. of this Agreement. At Lessor's option, any property not removed as herein provided shall become the property of Lessor. Lessee shall be liable for all damage to the leased property occasioned or caused by the presence or removal of Lessee's personal property from the premises. Costs of repair and restoration to the premises necessitated by vandalism caused by third parties and through no fault of Lessee shall be borne by Lessor.

16. SIGNS. Lessee may install, maintain and operate such equipment, signs and facilities as are necessary or convenient for its use and occupancy, provided that such equipment, signs, and facilities are furnished and installed within the places or locations assigned and at Lessee's sole expense and with the prior consent of Lessor, which consent shall not be unreasonably withheld, denied or delayed. Signage also shall be subject to applicable local, state and federal ordinances and statutes.

17. LESSEE'S DISPOSAL OF REFUSE. Lessee shall not dump, dispose, reduce, incinerate, or otherwise burn trash, refuse, or garbage of any kind in or about the Leased Premises except as permitted herein. Lessee shall store all trash and garbage within the Leased Premises or at a location designated by Lessor in covered containers so located as not to be visible to customers or business invitees at the Leased Premises. Lessee will be responsible for providing and placing in and around the Leased Premises approved covered receptacles for trash, garbage, and other refuse. Accumulation of trash, debris and boxes will not be allowed inside or outside of the Leased Premises. Lessee shall provide for the proper handling and disposal of trash, garbage and other refuse caused as a result of its operation in Lessor's containers provided for such purpose. If Lessee requires additional containers to fulfill its obligation hereunder it shall provide them at its sole cost and expense.

18. PRODUCT PRICING AND RESTRICTIONS. Prices of all products and services offered by Lessee at its Leased Premises shall be subject to review and authorization by Lessor. If Lessee seeks to increase its prices at any time during a concession season as defined in Section 6.b. above, only proof of product wholesale cost increase to the Lessor shall be a basis for authorization of mid-season sale price increases. Lessee agrees it shall offer for sale on the Leased Premises the same branded soft drink as Lessor and with which Lessor may from time to time enter into a sponsorship agreement and that Lessee will offer no other beverage products that compete with Lessor's sponsored product.

19. PERSONAL PROPERTY TAXES. Lessee shall pay promptly, or contest in good faith in accordance with applicable procedures, all personal property taxes, if any, levied against personal property of any kind owned by Lessee upon or about the Leased Premises.

20. INDEMNIFICATION AND INSURANCE.

(a) **Liability Insurance.** Lessee, at its sole cost and expense shall, throughout the term of this Agreement and any renewals thereof, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in the minimum amount specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City, and if City becomes liable for an amount in excess of the insurance limits, herein provided, Lessee covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. Prior to occupancy of the Premises, Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's compliance with the requirements of this paragraph and shall file such proof with the Lessor's Risk Manager.

If the Lessee is self-insured for liability it shall provide the following documentation to the Lessor:

Financial statements certified by an independent licensed accountant that Lessee has the financial capacity to meet any and all obligations to indemnify the Lessor, the City of Boise, its agents and employees to the full extent required by the Idaho Tort Claims Act and the indemnification clause of this Agreement. The Lessor shall supply annual financial statements to the Lessor to show maintenance of their financial condition. If the financial condition of the Lessee should change at anytime during the term of this Agreement to the extent that the Lessee's ability to meet all financial obligations of this section is not possible then the Lessee will have 10 days to secure liability insurance to meet the conditions of this Agreement. Notice from the Lessor or Lessee shall be sufficient to enact this condition. At any time, the Lessor, for any reason, may provide notice to the Lessee that the proof of financial condition is insufficient and the Lessee shall provide liability insurance and notice to the Lessor pursuant to this section.

(b) **Authorized Insurance Companies and Certificates of Insurance.** Any insurance policy shall be written by insurance companies authorized to do business in the State of Idaho and shall be written by companies approved by Lessor, and such approval shall not be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain (a) a statement of the coverage provided by the policy; (b) a statement certifying the Lessor to be listed as an additional insured in the policy; (c) a statement of the period during which the policy is in effect; (d) a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and (e) an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor.

(c) **Indemnification.** Lessee shall protect, defend, and hold Lessor, and its officials, agents and/or employees harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Leased Premises or the acts or omissions of Lessee, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur. Lessor shall give to Lessee reasonable notice of any such claims or actions. Lessee shall notify Lessor of the counsel to be used in carrying out its obligations hereunder. Lessor must state any reasonable objection that it has regarding the use of said counsel. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this agreement.

(d) **Other Insurance.** Lessee shall be solely responsible for obtaining any workers' compensation insurance (regardless of the number of employees, or lack thereof) in the statutory limits as required by law, employers' liability insurance, business interruption insurance, and any other type of insurance for the benefit of Lessee. Evidence of all insurance shall be submitted to Boise City Purchasing, Post Office Box 500, Boise, Idaho 83701.

21. LIENS AND ENCUMBRANCES. Lessee shall not permit any lien to stand against the Leased Premises for work done or materials furnished by or on behalf of Lessee, provided that Lessee may contest the validity of any such lien (provided Lessor may require Lessee to transfer said lien to bond as provided under applicable law), but upon a final determination of the validity thereof, Lessee shall cause the lien to be satisfied and released of record. Lessee shall indemnify Lessor against all damages, costs, and charges, including attorney fees reasonably incurred, in any suit involving any liens, judgments or encumbrances caused or suffered by Lessee with respect to the premises or any part thereof.

Furthermore, Lessee shall have no authority to create any liens for labor or material on or against Lessor's interest in the Leased Premises, and all persons contracting with Lessee for the destruction or removal of any equipment, facility, or structure or for the erection, installation, alteration, or repair of any equipment, facility, structure or other improvement on the premises, including all material men, contractors, mechanics, and laborers involved in such work, shall be notified by Lessee that they must look to Lessee and to Lessee's leasehold interest only to secure the payment of any bill or account for work done or material furnished during the rental period

22. CONSTRUCTION AND SEVERABILITY. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

23. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW. Lessee shall comply with all applicable statutes, ordinances, rules and regulations of federal, state and municipal governments applicable to Lessee's use of the Leased Premises, with the sole exception that Lessee shall not be responsible for any capital or structural improvements in order to cause the Leased Premises to so comply.

24. ASSIGNMENT. Subject to the provisions of Section 9. of this Agreement, Lessee shall not assign, mortgage or transfer, this Agreement or any interest herein, sublease all or any part of the Leased Premises, or permit the use or occupancy of the Leased Premises or any part thereof, either voluntarily or involuntarily, by anyone other than Lessee without the prior written consent of Lessor, which consent shall not be unreasonably delayed, withheld or denied. If Lessee sells all or part of its business during the term of this Agreement or any extension thereof, Lessee shall pay to Lessor a processing fee of \$600.00.

25. EFFECT OF BANKRUPTCY. It shall constitute a breach of this Agreement if at any time during the term of this Agreement or any extension thereof, there shall be filed by or against Lessee in any court, pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or appointment of a receiver or trustee of all or a portion of the property of Lessee, or if Lessee makes an assignment for the benefit of creditors, or if this Agreement or the leasehold interest of Lessee or any equipment, facilities, or improvements of Lessee are made the subject of any other involuntary assignment, transfer or sale, whether by operation of law or otherwise, Lessor at its option may thereupon declare this Agreement canceled and terminated. In that event, neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of an order of any court, shall be entitled to possession or to remain in possession of the demised premises, but shall forthwith quit and surrender the premises. Lessor, in addition to its right of termination, shall be entitled to exercise all other remedies herein provided for breach by Lessee, as well as any and all remedies provided by law or in equity.

26. DAMAGE BY FIRE OR OTHER CASUALTY. (a) Lessee shall not be entitled to surrender possession of the leased premises, nor shall the liability of Lessee to pay the rent herein stipulated cease, without the mutual consent of the parties hereto, if the leased premises or the equipment and facilities of Lessee are damaged by fire, the elements, or other natural calamity, and either (a) the damage can be reasonably repaired within thirty (30) days from the date of the damage, or (b) Lessee can reasonably continue use and operation of the premises for the purposes specified in this Agreement.

(a) In the event the damage is so substantial that repairs and resumption of operations by Lessee cannot be affected within thirty (30) days of the date of the damage, Lessor, at its option, may terminate this Agreement or reduce the rental payment provided in Section 4. The option shall be exercised upon written notice to Lessee within ten (10) days of expiration of the original repair period.

(b) In the event of termination of the Agreement under this provision Lessee shall remove all property remaining upon the leased premises in accordance with the provisions of Section 15. of this Agreement.

27. DEFAULT AND CANCELLATION. If Lessee is in default of any of the terms and conditions of this Agreement, or violates any law or ordinance or rules and regulations of Lessor and fails or refuses, after ten (10) days written notice, to perform or correct conditions in which such Agreement is in default, then this Agreement at Lessor's option may be deemed terminated and forfeited without notice or demand, all right of Lessee in and to the leased property shall thereupon be terminated, and the mere retention or possession thereafter by Lessee shall constitute a forcible detainer. In the event Lessee fails to cure any default hereunder and Lessee terminates this Agreement as provided herein, Lessee obligation to pay the Base Rent shall continue through the end of the season in which this Lease is terminated. If Lessee terminates this Agreement at any time prior to the end of the initial term or any extended term Lessee shall be responsible for and pay a termination fee equal to fifty percent (50%) of the Base Rent from the date of termination through the end of the initial term or any extended term.

28. BINDING EFFECT. This Agreement and the terms and conditions hereof shall apply to and are binding upon the heirs, legal representatives, successors, and assigns of the parties.

29. NOTICES. All notices to be given with respect to this Agreement shall be in writing, addressed as follows:

To Lessee:

To Lessor:

City of Boise
Department of Parks and Recreation
1104 Royal Boulevard
Boise, Idaho 83706

Each notice shall be either delivered or sent by registered or certified mail, postage prepaid and return receipt requested to the party to be notified at the address set forth above, or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein, or upon delivery thereof to the party specified above, or his agent or legal representative.

30. APPROVAL. Lessor and Lessee each acknowledges that this Agreement, even though agreed upon by the City's representatives, is not binding upon the City until such time as the Boise City Council approves this Agreement and authorizes the Mayor to execute this Agreement on behalf of the City.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Agreement as of the date first above written.

For Lessor City of Boise:

ATTEST:

David H. Bieter
Mayor

By: _____
Jef Faw
City Clerk

For: _____

By: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 2011, before me, a Notary Public in and for said state, personally appeared David H. Bieter and Jef Faw known to me to be the Mayor and City Clerk of Boise City, Idaho, who executed the within instrument, and acknowledged to me that Boise City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at _____
My Commission Expires: