

AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE
VENDING MACHINES CONCESSION

Between

THE CITY OF LOS ANGELES
DEPARTMENT OF ANIMAL SERVICES

And

FIRST CLASS VENDING, INC.

THIS AGREEMENT is made and entered in this _____ day of _____, 2013, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Animal Services Commissioners (hereinafter referred to as "BOARD"), and FIRST CLASS VENDING, INC. (hereinafter referred to as "CONCESSIONAIRE").

WHEREAS, the Department of Recreation and Parks went through a competitive bid process to select a contractor to provide vending machines in its facilities;

WHEREAS, the City Council approved First Class Vending, Inc. to operate and maintain vending machines at Recreation and Park facilities (C.F. 11-0034);

WHEREAS, the Department of Animal Services desires to install vending machines in its shelters and administrative headquarters and would like to "piggyback" off the Recreation and Parks vending machine procurement and Council approval ;

WHEREAS, CONCESSIONAIRE desires to secure and enter into an AGREEMENT in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at seven locations: six shelters and the Department's administrative offices; and

WHEREAS, the principal purpose of CITY entering into this AGREEMENT is to serve the public by providing vending machines to distribute snack food items and beverages (non-alcoholic);

NOW THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. DEFINITIONS

For the purpose of this AGREEMENT, the following words and phrases are defined and shall be construed as hereinafter set forth:

AGREEMENT:	This Concession Agreement consisting of forty (40) pages and five (5) exhibits (A-E) attached hereto.
BOARD:	Board of Animal Services Commissioners.
CITY:	The City of Los Angeles, acting by and through its Board of Animal Services Commissioners.
CONCESSION:	The permitted operation granted by this AGREEMENT.
CONCESSIONAIRE:	First Class Vending, Inc.
DEPARTMENT:	The Department of Animal Services, acting through the BOARD.
FACILITIES:	The Animal Services Department facilities or locations at which the concession is requested to operate.
GENERAL MANAGER:	General Manager of the DEPARTMENT or that person's authorized representative, acting on behalf of the CITY. All actions of the General Manager are subject to review at the discretion of the BOARD.
LAAC:	The Los Angeles Administrative Code.
LAMC:	The Los Angeles Municipal Code.
PREMISES:	The geographical area, as defined in Section 3 of this AGREEMENT, in which the concession may be operated.

SECTION 2. PERMISSION GRANTED

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, CITY hereby grants to CONCESSIONAIRE, subject to all of the terms and conditions of this AGREEMENT, the right and obligation within the Concession to: provide vending machine services at various DEPARTMENT facilities; and not for any other purpose without the prior written consent of GENERAL MANAGER.

This AGREEMENT grants sole or exclusive rights to provide vending machines at the FACILITY requesting service; separate rights may be granted at locations authorized through other agreements as approved by the DEPARTMENT or GENERAL MANAGER.

The concession rights herein granted shall be carried on at the FACILITY as requested by the GENERAL MANAGER solely within the limits and confines of said areas designated. No temporary stands or other places of operation shall be allowed at any time without the prior written consent of GENERAL MANAGER.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the FACILITIES regarding the services to be offered or products to be sold by respective concessionaires or lessees, GENERAL MANAGER shall meet and confer with all necessary parties to determine the services to be offered or products to be sold by each, and CONCESSIONAIRE hereunder agrees thereafter to be bound by said determination.

CITY reserves the right to further develop or improve the PREMISES as it sees fit, without interference or hindrance, however the CITY shall consider the desire and views of CONCESSIONAIRE. No other activity, service or amenity shall be provided by CONCESSIONAIRE unless related to CONCESSION and with the express written approval of DEPARTMENT.

CONCESSIONAIRE shall: provide quality snack food items and beverages (non-alcoholic); provide and remove vending machines at the request of the DEPARTMENT; schedule and provide full maintenance of the vending machine equipment; employ, train and supervise personnel with appropriate qualifications and experience to provide such functions; perform or supervise employees in the performance of all other tasks related to the operation, maintenance and repair of the vending machine equipment; and pay for and obtain all licenses and permits necessary for the operation of the CONCESSION granted.

SECTION 3. PREMISES

The PREMISES subject to this AGREEMENT will be located at six shelters and the Department's administrative offices. The PREMISES to be authorized for use by CONCESSIONAIRE will be at the instruction and discretion of the General Manager requesting the service.

CONCESSIONAIRE shall not use or allow the PREMISES to be used, in whole or in part, during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or

governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include those which relate to sanitation, public health, and safety.

At any time during the term of this AGREEMENT, DEPARTMENT may, by appropriate resolution fully setting forth the reasons therefore, require the CONCESSIONAIRE to surrender any portion of the CONCESSION PREMISES. Should DEPARTMENT impose such a requirement on CONCESSIONAIRE, DEPARTMENT will attempt to provide CONCESSIONAIRE with equivalent substitute space.

SECTION 4. TERM OF AGREEMENT

The term of the AGREEMENT shall be five (5) years, effective on the date of execution, with one five-year extension and one three-year extension, exercisable at the sole discretion of GENERAL MANAGER.

The minimum term shall be for 12 months. However, after eight months, the CONCESSIONAIRE and the DEPARTMENT can terminate this agreement for no fault.

If the CONCESSIONAIRE gives a four-month notice that it will terminate the agreement because the minimum annual revenue is not feasible, the DEPARTMENT may consider lowering this amount. Any proposed reduction will need to be approved by the Board.

Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to CONCESSIONAIRE because of any action taken to revoke, decline to exercise an option or disapprove a renewal of the AGREEMENT.

SECTION 5. TIME OF EXECUTION

Unless otherwise provided, the AGREEMENT shall be considered executed when:

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

SECTION 6. REVENUE SHARING FEE AND PAYMENT

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

such use without the prior written approval of the GENERAL MANAGER shall also constitute a material breach of this agreement and is prohibited.

- A. As part of the consideration for CITY'S granting the concession rights herein above set forth, CONCESSIONAIRE shall pay to CITY a monthly share of CONCESSION gross receipts as follows:

Thirty-four Percent (34%) of the gross receipts produced from the sale of vending machine items (food and beverage).

The sale of other items must be expressly permitted and approved in writing by the GENERAL MANAGER, or designee. A percentage of gross receipts will apply and will be negotiated prior to approval of said items for sale.

The minimum annual revenue for this CONCESSION is \$9,838. If the minimum annual revenue is not met by December 31 of each calendar year, the difference between the actual revenue received by the City of Los Angeles and the minimum annual revenue will be due to the City of Los Angeles by January 15. If the term of the agreement is not a full calendar year, the minimum annual revenue due will be pro-rated accordingly.

In addition to the revenue sharing payments, CONCESSIONAIRE shall pay CITY \$79 per year for a sponsorship payment. The annual sponsorship payment shall be paid within 60 calendar days from the end of each calendar year and remitted to the address mentioned below.

- B. **Payment Due**
Said revenue sharing payments shall be due and payable by the last day of each calendar month based on the gross receipts received in each previous month. The payment and monthly revenue report (Section 6.D – Monthly Remittance Advice Form) shall be addressed to:

DEPARTMENT OF ANIMAL SERVICES
ATTENTION: Assistant General Manager
221 North Figueroa Street, 5th Floor
Los Angeles, CA 90012

- C. **Gross Receipts Defined**
The term "gross receipts" is defined as the total amount charged for the sale of any goods or services (whether or not such services are performed as a part of or in connection with the sale of goods) provided in connection with this CONCESSION, but not including any of the following:

1. Cash discounts allowed or taken on sales;

2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;
5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by CONCESSIONAIRE;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
7. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
8. Receipts from the sale at cost of uniforms, clothing, or supplies to CONCESSIONAIRE'S employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
9. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
10. Fair market trade-in allowance, in the event merchandise is taken in trade;
11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, with the concurrence of both CONCESSIONAIRE and GENERAL MANAGER, including discounts to employees for vending machines supplied to no-rent/no-commission locations where items are priced accordingly, as concurred by GENERAL MANAGER.

CONCESSIONAIRE shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

13. Any error in cash handling by CONCESSIONAIRE or CONCESSIONAIRE'S employees or agents;
14. Any losses resulting from bad checks received from the consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to CONCESSIONAIRE by customer or purchaser;
15. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

D. Monthly Revenue Reports:

CONCESSIONAIRE shall transmit with each revenue payment a Monthly Gross Receipts and Revenue Report, also referred to as a Monthly Remittance Advice

Form (Exhibit C), for the month for which revenue is submitted.

E. Late Payment Fee:

Failure of CONCESSIONAIRE to pay any of the revenue payments or any other fees, charges, or payments required herein on time is a breach of the AGREEMENT for which CITY may terminate same or take such other legal action as it deems necessary.

Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments by CONCESSIONAIRE, the latter recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, CONCESSIONAIRE agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charges for late or delinquent payments shall be \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) calendar day of the month in which payment is due.

The acceptance of a late revenue payment by CITY shall not be deemed as a waiver of any other breach by CONCESSIONAIRE of any term or condition of this AGREEMENT other than the failure of CONCESSIONAIRE to timely make the particular revenue payment so accepted.

F. Annual Accounting Adjustment

At the end of each twelve (12) month period during the term hereof, CONCESSIONAIRE shall prepare and submit to CITY a statement showing the total gross receipts for the said twelve (12) month period and the revenue paid to the City for the said twelve (12) months. If the sums paid by CONCESSIONAIRE during said period exceed the minimum annual fees as well as the annual percentage charges computed as set forth in this Section, whichever is greater, such overpayment shall be credited to the revenue payment thereafter due from CONCESSIONAIRE.

Any breach of this condition for rental fee and payment shall be a material breach of this Concession Agreement.

SECTION 7. ADDITIONAL FEES AND CHARGES

- A. If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said