



Concessionaire Mobile Food Carts

RFP 12-2090

Metro Oregon Zoo

600 NE Grand Ave.
Portland, OR 97232
503-797-1700

Project Manager

Ivan Ratcliff
Ivan.ratcliff@oregonzoo.org
503-525-4232

Procurement Analyst

Karen Slusarenko, CPPB
Karen.slusarenko@oregonmetro.gov
503-797-1809

Notice is hereby given that proposals for RFP 12-2090 for Concessionaire Mobile Food Carts shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until close of business on May 8, 2012. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. Proposers shall review all instructions and contract terms and condition.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

I. INTRODUCTION

The Oregon Zoo, a department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, is soliciting proposals to form a pool of qualified Contractors to provide "on call" mobile cart food service for special events at the Zoo. Primarily, service would be for the summer concert series beginning June 2012 and ending September 2012. Other opportunities may arise throughout the year depending on Zoo need and Contractor availability. Contractors would be required to enter into a concessionaire agreement as indicated within this document.

II. PROPOSED SCOPE OF WORK/SCHEDULE

The Zoo is providing access to a captive audience of an average of 3,386 visitors per concert night (based on last year's numbers.) The Zoo intends to offer different types of food to this audience through mobile food carts. The Zoo expects a 25% share of the Gross Receipts made by the mobile food cart.

The Zoo will work with qualified contractors to determine what dates will be available to determine availability of Contractor. The Zoo will be the sole decision maker as to which Contractors shall be at specific concerts and events after availability is determined. Contractor is not guaranteed a spot at any concert. Spots are limited and the Zoo will determine which contractors to use based on food, menu and suitability.

Contractor shall maintain a collaborative working relationship with the Zoo in order to best serve the Zoo's customers.

Appearance of all equipment must be approved by the Zoo before installation.

As a part of protecting our region's natural environment, the economy, and the health of its citizens, the Zoo is seeking effective ways to reduce the negative environmental impacts of disposable food service ware, which includes reusing or recycling food service ware, and is requiring Contractors to use biodegradable or compostable take-out materials made from renewable resources such as paper, corn starch, potato starch and sugarcane.

The contract period will be for a one (1) year period with the option to renew annually, with the written consent of both the Zoo and Contractor. Total contract length with renewals shall be no more than five (5) years.

The Zoo may terminate Contractor's Agreement upon written notice to Contractor. Such termination shall be effective immediately.

Metro is seeking proposals from qualified firms to perform the following services and to deliver the products described below:

1. Contractor's primary responsibility is to provide high quality food and beverage service to the Oregon Zoo while supporting Metro's commitment to sustainability.
2. Contractor shall provide self contained mobile food carts and staff to operate unit at locations within the Zoo and upon dates agreed upon by contractor and the Zoo.
3. Contractor shall provide all set up, operating, and related items at no cost to the Zoo.
4. For concerts, Contractor must be available to set up at 4:00 PM for a 5:00 PM opening. Contractor cannot leave grounds until after concert ends at 10:00 PM.
5. Contractor shall provide any and all proper equipment necessary to perform the required Concessionaire Services.
6. Contractor shall dispose of litter, recyclables and garbage into designated recycling areas and containers. Recycle all cans and bottles, as required, and use compostable serviceware.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

7. Contractor shall not to distribute or sell any other food product or beverage at the Zoo outside of this Agreement.
8. Contractor and the Zoo will agree mutually on pricing of products sold.
9. As the Zoo has an exclusive agreement with Coca-Cola and Boyds Coffee, all beverages sold must be pre-approved by the Zoo and match Zoo pricing.
10. Contractor shall be responsible for the set up and take down of any and all service facilities and equipment.
11. Contractor shall maintain the food and beverage area(s) in a very clean, sanitary and attractive condition.
12. Contractor shall provide and use an approved cash register approved by the Zoo that assigns a sequential transaction number to each transaction and provides a cash register receipt for the customer. Contractor will be required to account for each transaction on the approved cash register and is required to provide a receipt to all customers. The Zoo and its designee(s) shall have the right at all times during the concert to inspect all transactions, including the full register tape for accuracy and completeness.
13. Contractor will reconcile transactions and supply a Zoo designee(s) with a receipt directly from the cash register that displays the total sales and transactions. A Zoo designee will approve the final amount to be paid to the Zoo. Contractor will issue a check to the Zoo for 25% of the Gross Receipts after reconciling with the Zoo designee the night of the event.
14. Contractor shall employ adequate, qualified and experienced personnel who meet all legal requirements for the type of work involved. Employees shall, at all times, be polite and courteous to Zoo patrons and Zoo employees. Employees shall not disturb or offend customers, use improper language, or act in a loud or boisterous manner.
15. Contractor shall submit a copy of its applicable County Board of Health Certificate proposal submittal.
16. Contractor shall obtain, maintain and submit all required licenses for operation of a food cart business in the city of Portland, Multnomah County, Oregon. Contractor shall comply and take full responsibility for all codes, laws and ordinances pertaining to the operation of the food cart business.
17. Contractor shall be responsible for any damage to the mobile unit.
18. Contractor shall notify the Zoo in writing of any special needs of the Zoo facilities at least seven (7) calendar days prior to the need.
19. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - (3) Insurance coverage shall be a minimum of \$1,000,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
 - (4) Contractor must agree to indemnify and hold the Zoo harmless from any and all legal claims arising from the use of the vending machines.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

III. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

Three (3) paper copies and one (1) electronic version of the proposal shall be furnished to Metro in a sealed envelope, addressed to:

Metro Procurement Services
Attn: Karen Slusarenko RFP 12-2090
600 NE Grand Avenue
Portland, OR 97232-2736

B. Deadline

Proposals will not be considered if received after the date and time indicated on the RFP cover page.

C. RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Karen Slusarenko at karen.slusarenko@oregonmetro.gov. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after 3:00 p.m., May 1, 2012.

D. Information Release

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority and Women-Owned Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Code provisions 2.04.100. Copies of that document are available from the Metro Procurement Services, 600 NE Grand Avenue, Portland, OR 97232 or call 503 797-1648.

IV. GENERAL PROPOSAL/CONTRACT CONDITIONS

A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.

B. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

C. Conflict of Interest: A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

V. EVALUATION OF PROPOSALS

A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.

1. Describe your experience in mobile food cart operation.
2. Acknowledge the ability to meet the following requirements:
 - a. Pay 25% of Gross Receipts to the Zoo in check form, following each event.
 - b. Contractor and the Zoo will agree mutually on pricing of products sold.
 - c. Ability to set up cart at 4:00 PM and be ready to serve at 5:00 PM on mutually agreed upon nights.
 - d. Submit a copy of its applicable County Board of Health Certificate with proposal.
 - e. Obtain, maintain and submit all required licenses for operation of a mobile food cart business in the city of Portland, Multnomah County, Oregon. Contractor shall comply and take full responsibility for all codes, laws and ordinances pertaining to the operation of the catering business.
 - f. Meet the required requirements for accounting of sales transactions as listed in Section II.
 - g. Sell food in compostable, recyclable or reusable containers.
 - h. Carry the insurance amounts as listed in Section II.
3. Submit the menu proposed for your cart.
4. Submit your cart availability between June and September 2012, between 4:00 PM and 10:00 PM. Please include dates the cart is not available.
5. Submit a photograph of proposed units.
6. Describe sustainable packaging/utensils used at cart.

B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

1. Contractor must be able to meet all requirements listed
2. Menu options 40%
3. Appearance of cart 20%
4. Availability 20%
5. Sustainability 20%

Total 100%

NOTICE TO ALL PROPOSERS

The attached agreement included herein reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Proposers should be aware that such language terms and provisions are for illustrative purposes only and that Metro reserves the right, following submission and ranking of all proposals submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions before making a final determination regarding the issuance of the Notice of Intent to Award the agreement arising from this procurement. By submitting a proposal in response to this procurement, proposers acknowledge that they are aware of and do not object to any later, potential



600 NE Grand Ave.
Portland, OR 97232-2736
503-797-1700

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

amendment and modification of such preliminary, draft language and terms. In addition, by responding to this procurement, proposers acknowledge that they are aware of their ability to offer alternatives to any of the preliminary, draft contract language and proposed contract terms set forth herein.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

CONCESSIONAIRE SERVICES AGREEMENT

Metro Contract No.

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 ("Metro") and Mobile Food Cart ("Contractor"), located at 5527 NE 34th, Portland, OR 97211.

RECITALS:

- A. Metro, located at 600 NE Grand Avenue, Portland, OR 97232, is responsible for operating and maintaining the Oregon Zoo. Metro and the Oregon Zoo are collectively referred to hereinafter as the "ZOO."
- B. Contractor is in the business of providing food and beverage concessionaire services and desires to offer said Concessionaire Services to the ZOO and ZOO customers.
- C. The ZOO wishes to offer Contractor the opportunity to prepare and sell food and beverage in a mobile food cart at the ZOO, in consideration for a fee calculated as a percentage of Contractor's Gross Receipts (defined below) from the sale of food and beverage from a mobile food cart (hereafter, "Concessionaire Services") to ZOO customers.

WHEREFORE, for good and valuable consideration, including but not limited to the mutual promises, rights and obligations set forth herein, the ZOO and Contractor agree as follows:

1. Scope of Agreement. Contractor agrees to prepare and sell food and beverage in a mobile food cart to ZOO customers at the ZOO, during all business hours, in locations on the ZOO grounds to be determined by the ZOO, in its sole discretion, and for other catered events as hereinafter mutually agreed upon between the parties on terms that comply with this Agreement. In consideration for the ZOO's grant of permission to Contractor to provide said Concessionaire Services, Contractor agrees pay to Metro a fee of 25% of Contractor's Gross Receipts from said sales. NOTHING IN THIS AGREEMENT SHALL GUARANTEE CONTRACTOR ANY CONCESSIONAIRE BUSINESS AT THE ZOO AND DOES NOT GRANT CONTRACTOR ANY RIGHT TO PROVIDE GENERAL CONCESSIONS AT THE ZOO.
2. Relationship of the Parties. The ZOO and the Contractor have entered into this Agreement for the purpose of establishing an independent contractor relationship between the ZOO and the Contractor (the "Parties"). Any right of use conferred on Contractor shall not be exclusive. It is further understood and agreed by and between the Parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the ZOO, its successors or assigns on the one part, and the Contractor, its successors or assigns on the other part. It is further agreed that the Contractor will provide its own Workers' Compensation insurance or self-insurance program as required or permitted by Oregon Law.
3. Term. This Agreement shall commence on June 1, 2012, or such other later date on which the document is executed and shall terminate on May 31, 2013. Contract may be amended to extend the term for four (4) additional one year periods, upon mutual consent of Contractor and the ZOO.
4. Duties of Contractor. In consideration of the limited rights and privileges granted to Contractor by the ZOO under this Agreement, the Contractor agrees to do the following:
 - a. Submit a verified copy of its applicable County Board of Health Certificate;
 - b. Permit the applicable County Board of Health to inspect any and all areas utilized by Contractor for the preparation of food;
 - c. To maintain a collaborative working relationship with the ZOO in order to best serve the ZOO's customers;
 - d. Not to distribute or sell any other food product or beverage at the ZOO outside of this Agreement;

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

- e. Notify the ZOO in writing of any special needs of the ZOO facilities at least seven (7) calendar days prior to the need;
 - f. Keep true and accurate accounting records, books, and data with respect to all business done under this Agreement, which shall among other things show all Gross Receipts derived from all Concessionaire events, and shall establish and maintain accounting procedures that are acceptable to the ZOO or its designee(s). The ZOO and its designee(s) shall have the right at all reasonable times during normal business hours to inspect all books of accounts and ledgers of the Contractor related to this Agreement, and the right to make or cause to be made audits of these accounts;
 - g. Employ adequate, qualified and experienced personnel who meet all legal requirements for the type of work involved to provide the services required;
 - h. Provide any and all service facilities, not otherwise available from the ZOO;
 - i. Provide any and all proper equipment necessary to perform the required Concessionaire Services;
 - j. Be responsible for the set up and take down of any and all service facilities, and equipment;
 - k. Provide cleanup at the end of each day/evening;
 - l. Return any of ZOO property used to prepare for or to conduct Concessionaire Services to the ZOO in a timely fashion, which shall not be later than the specified take down time, in a substantially clean condition, less ordinary wear and tear. For purposes hereof, substantially clean includes but is not limited to the following:
 - (1) Thorough cleanup of any areas used;
 - (2) Removal of all equipment or facilities from the ZOO premises which Contractor supplied or which Contractor borrowed or rented from others or which were furnished by others;
 - (3) Disposal of compostable, food, trash and garbage in designated containers and removal to designated storage areas or containers;
 - (4) Removal or arrange with customer for the removal of all leftover food and beverages; and
 - (5) Removal of all cans, bottles and compostable service ware and food into the ZOO provided recycling containers to be recycled.
 - m. Contractor and ZOO will agree mutually on pricing of products sold.
 - n. As the ZOO has an exclusive agreement with Coca-Cola and Boyds Coffee all beverages sold must be pre-approved by the ZOO and match ZOO pricing.
 - o. Appearance of all equipment must be approved by ZOO before installation.
 - p. For concerts, Contractor must be available to set up at 4:00 PM for a 5:00 PM opening. Contractor cannot leave grounds until concert ends at 10:00 PM.
5. Compliance with Laws. In addition to Contractor's duties described at paragraph 4 hereof, Contractor expressly agrees to comply with all applicable federal, state, county, city, and regional laws, ordinances, or regulations which apply to Contractor's business, including but not limited to the following:
- a. Those relating to Workers' Compensation;
 - b. Those requiring Contractor to obtain a license or permit; and
 - c. Those relating to health, safety or sanitation.
6. Duties of the ZOO. For and in consideration of the fees paid to the ZOO and promises made by Contractor hereunder, the ZOO agrees as follows:

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

- a. To maintain a collaborative working relationship with the Contractor in order to best serve the customer;
 - b. To provide Contractor access to the ZOO in the locations specified herein during the term hereof; and
 - c. To make available to Contractor an “as is” basis such electric hook ups, recycling containers and other similar service facilities as the ZOO may have reasonably available to it without charge to Contractor. This provision does not require the ZOO to purchase, maintain, or supply any such facilities, and “availability” shall be determined solely by the ZOO, but shall not be unreasonably denied. When available, such service facilities shall be made available to Contractor at the location specified for the catered event.
7. Powers Reserved to the ZOO. In the event of a dispute between the Contractor and the ZOO, the decision of the ZOO and/or its designee(s) concerning Concessionaire Services, practices, policies and procedures, or operation or management of the ZOO shall be final and binding on both Parties. By way of illustration and not as a limitation, the reserved powers of the ZOO include:
- a. The power to have access to any areas of the ZOO facilities at any time;
 - b. The power to approve in advance and in writing any agreements for subcontracting which may be proposed by the Contractor throughout the life of this Agreement; and
 - c. The power to conduct, at its discretion, a performance review or audit of Contractor’s compliance with this Agreement frequently as appears necessary to the ZOO.
8. Alcoholic Beverages. Contractor shall not sell or serve alcoholic beverages.
9. Zoo Concessionaire Fee. Contractor agrees:
- a. Method of Payment. Contractor shall reconcile transactions and supply a Zoo designee(s) with a receipt directly from the cash register that displays the total sales and transactions. A Zoo designee will approve the final amount to be paid to the Zoo. Contractor will issue a check to the Zoo for 25% of the Gross Receipts after reconciling with the Zoo designee the night of the event.
 - b. Accounting. Contractor shall utilize cash controls established by the ZOO in its operations at the ZOO to ensure that all sums received by the Contractor are delivered to the ZOO as required under this Agreement.
 - c. Contractor agrees to work cooperatively with the ZOO in its commitment to sustainability and to supply compostable, biodegradable service ware to assist the ZOO customers in the recycling of compostable service ware and food into appropriate ZOO provided recycling containers.
10. Liability for Damages, Agreement to Hold Harmless and Insurance:
- a. Contractor agrees to repair or replace or, alternatively, to pay the ZOO the reasonable cost to repair or replace, any damage to the ZOO premises or its facilities, equipment, or property caused by any act or failure to act, intentional, negligent, or otherwise, by the Contractor, its employees, agents, representatives, guests, or by any person admitted to the Premises by Contractor.
 - b. Contractor shall defend, indemnify, and hold the ZOO, its agents, elected and appointed officials, and employees (the “Indemnities”), harmless from any and all claims, demands, damages, actions, losses and expenses, including but not limited to claims for bodily injury, sickness, mental anguish or death, or claims for damages to the property of any such person, including attorneys’ fees and court costs, arising out of or in any way connected with the fact of this Agreement, Contractor’s performance or non-performance of this Agreement, any event which was presented or which was supposed to be presented pursuant to this Agreement, or Contractor’s provision of Concessionaire Services to a customer of the ZOO. In the event that Contractor refuses or fails to defend as required herein, the Indemnities may, at their sole

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

option, settle or defend any claims, and may maintain an action in any court of competent jurisdiction against Contractor for the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees. Contractor's duty to indemnify and hold the Indemnities harmless shall survive the termination or expiration of this Agreement.

- c. Contractor shall, at its sole cost and expense, procure and maintain through the term of this Agreement the following insurance requirements:
- (1) Comprehensive General Liability with the Broad Form Comprehensive General Liability endorsement providing coverage against claims for bodily injury or death and property damage occurring in or upon or resulting from the facilities licensed hereunder, such insurance to offer immediate protection to the limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) and such insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnification of the ZOO by Contractor as set forth below.
 - (2) Any Comprehensive General Liability insurance policy required by this Agreement shall name as additional insured: the ZOO, its members, Metro, its elected officials, officers, directors, agents and employees of each entity.
 - (3) Contractor shall maintain an automobile liability policy insuring against liability for bodily injury, death, or damage to property, including the loss of use thereof, arising from the use, loading and unloading of Contractor's owned, hired, and non-owned automobiles on and around the ZOO. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.
 - (4) Contractor shall maintain in force workers' compensation and employer's liability insurance for all of Contractor's employees subject to the Oregon Workers' Compensation laws (or other state if applicable), either as a carrier-insured employer or as a self-insured employer as provided by ORS 656.407. The amount of employer's liability coverage shall not be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per accident and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per employee.
 - (5) Contractor shall maintain with respect to each such policy or agreement evidence of such insurance endorsements as may be required by the ZOO and shall at all times deliver and maintain with the ZOO a certificate with respect to such insurance in a form acceptable to the ZOO.
 - (6) Contractor agrees to provide all required certificates of insurance to the ZOO upon return of the Contractor signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number.. Failure to do so shall constitute immediate breach of this Agreement by Contractor. It is agreed in that event that the ZOO, at its sole option, may terminate this Agreement. The ZOO may exercise any or all options available to it pursuant to this Agreement.
 - (7) The Parties agree that the specified coverage of limits of insurance in no way limit the liability of the Contractor. Contractor shall obtain the written agreement on the part of each insurance company to notify the ZOO at least thirty (30) days prior to cancellation or non-renewal of any such insurance.
 - (8) Should Contractor fail to provide and maintain adequate Liability Insurance by the date listed in subparagraph 4, above, at its option, the ZOO may provide adequate coverage under its Special Events policy and/or invoke any or all of its rights under this Agreement. Contractor shall be invoiced for the cost of any coverage provided by the ZOO.
- d. Waiver of Subrogation. Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the terms of this Agreement or

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

any extension or renewal thereof for any loss of or damage to any of its property, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the Parties hereto. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Contractor is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

11. Interest. Any payment due to the ZOO from the Contractor for ZOO-related Concessionaire Services which is not paid in full on its due date shall be subject to a Finance Charge on its unpaid balance in the amount of one and one-half percent (1.5%) per month (eighteen percent (18%) annualized) or the maximum interest rate allowed by law, whichever is greater. In no event shall the Finance Charge exceed the maximum rate permitted by law.
12. Events of Default and Remedies.
 - a. Contractor and the ZOO agree that any of the following shall constitute an event of default:
 - (1) Failure to comply with any term or condition of this Agreement or any other written agreement between Contractor and the ZOO;
 - (2) Failure to comply with any federal, state, county, city, or regional (including any agency thereof) law, ordinance or regulation or any of the ZOO rules or policies enacted or adopted by the Metro Council;
 - (3) Failure to make any payment or a required disposition of monies on a timely basis as required by the Agreement;
 - (4) Filing for protection under bankruptcy laws or seeking protection from creditors under a plan or reorganization;
 - (5) Failure to remain in good standing with any federal, state, or local regulatory agency;
 - (6) Failure to pay any amounts due under this Agreement or any other written agreement between Contractor and the ZOO, including payment of fees and maintenance of required insurance in strict accordance with this Agreement.
 - b. In the event of a default hereunder by Contractor, Contractor and the ZOO agree that the ZOO may have one or more of the following remedies, in its sole discretion:
 - (1) The ZOO may terminate Contractor's Agreement upon written notice to Contractor. Such termination shall be effective immediately. In addition, Contractor shall not be entitled to request to enter into a new or reinstated Contractor agreement with the ZOO for an additional period of one (1) year. This suspension shall apply to Contractor, and to any subsequent business or entity having substantially the same ownership, identity or control as Contractor. Such termination shall not release Contractor from any liability or obligation arising under or from the Agreement as a result of an event occurring prior to the termination.
 - (2) In the event of failure by Contractor to perform a cleanup, return, or removal duty required hereunder or a failure to perform the same adequately, Metro may, at its discretion, perform such duty or retain a third party to perform such duty, and Contractor shall be responsible for the ZOO's reasonable cost thereof (including the cost of any in-house labor and supervision).
 - (3) The ZOO may declare the entire amount of any balance due per the terms of the Agreement immediately payable.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

- (4) Pursue any other remedies available to the ZOO either at law or equity. No single or partial exercise of a right or remedy shall preclude any other or further exercise of a right or remedy.
 - (5) The ZOO shall have the right, without resorting to any legal action, to withhold from any and all sums, receipts or deposits which may be in the possession of the ZOO for or on behalf of Contractor, such sums as are necessary, in the ZOO's sole opinion, to apply to any claims the ZOO may have against Contractor, or to protect the ZOO against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement.
 - (6) The ZOO may, at its sole option, also terminate any other contract with Contractor.
13. Actions and Lawsuits. Any actions or lawsuits by one party to the Agreement against the other arising out of the Agreement or of conduct, acts or activities of the Parties hereunder will be governed by Oregon Law and shall be maintained in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon. No such action against the ZOO may be maintained except in the State of Oregon. Contractor consents to the maintenance of any such action by the ZOO against it in the Circuit Court of the State of Oregon, in and for Multnomah County, or if jurisdiction is proper, the United States District Court for the District of Oregon.
14. Construction. The parties agree that this Agreement shall be deemed to be the joint work product of Contractor and the ZOO.
15. Notices. Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail as follows:

To The ZOO: Oregon Zoo
Attn: Ivan Ratcliff
Guest Services Manager
4001 SW Canyon Road
Portland, OR 97221

To Contractor: **NAME**
ADDRESS
CITY STATE ZIP
16. Right of Termination for Convenience. The ZOO reserves the right to terminate this Agreement whenever it determines that it would be convenient to do so, at any time on thirty (30) days' written notice, with or without cause.
17. Non-Assignable. It is agreed and understood between the Parties that Contractor has been chosen by the ZOO for its unique abilities and services, and therefore Contractor may not assign this Agreement or any interest therein without the prior written approval of the ZOO. Any attempted assignment without such written prior approval shall be null and void.
18. Non-Exclusive Use. The ZOO shall have the right to use or permit the use of any portion of the ZOO not granted to Contractor under this Agreement to any person, firm or entity regardless of the nature of the use of such other space. This right shall be subject to the ZOO's prudent business judgment.
19. Hazardous Substances. Contractor, its officers, employees and agents, and any performers, customers, invitees or other participants in the event(s) covered by the Agreement are prohibited from bringing any hazardous substance into the ZOO or onto the ZOO property and are prohibited from allowing any hazardous substance to be brought into the ZOO or onto the ZOO property. As used in this paragraph, "hazardous substance" has the meaning given that term in ORS 465.200(16). If any governmental authority or other third party demands that a cleanup plan be prepared and that a cleanup be undertaken because of any release of hazardous substances that occurs as a result of Contractor's use of the ZOO or entry on the ZOO property, Contractor shall, at Contractor's expense, prepare and submit the required plan and all related bonds and other financial assurances, and Contractor shall

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

carry out all such cleanup plans. Contractor agrees to indemnify the ZOO and its respective members, officers, directors, agents, elected and appointed officials, and employees against any claims, costs and expenses of any kind, whether direct or indirect, incurred voluntarily or pursuant to any state or federal law, statute, regulation or order, for the cleanup, extraction, detoxification or neutralization of any release of any hazardous substance associated with or arising from Contractor's use of the Authorized Areas or entry on the ZOO property. As used in this paragraph, "release" has the meaning give that term in ORS 465.200(22). Contractor's obligations under this paragraph survive termination or expiration of the Agreement.

20. Taxes and Fees. Contractor agrees to pay promptly all sales, use, excise and any other taxes required by any governmental authority and shall obtain at its own expense all permits and licenses required by law in connection with its use of the ZOO.
21. Non-Discrimination. Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.
22. Impossibility. The ZOO shall not be liable for failure to perform as agreed herein where such performance is rendered impossible or financially impractical due to labor strikes, walkouts, acts of God, inability to obtain necessary materials, products and services, civil commotion, fire, casualty, or similar cause beyond the control of the ZOO. The ZOO agrees to notify Contractor promptly upon acquiring knowledge of the occurrence of an event or condition which will, or which is likely to, give rise to the likelihood that performance will be rendered impossible or impracticable under this article.
23. Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the provisions shall continue in force and effect to the fullest extent permitted by law.
24. Waiver. The failure by the ZOO to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of the ZOO's right to strictly enforce such terms and conditions thereafter. No waiver by the ZOO of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by the ZOO in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.
25. Maintenance of Records.
 - a. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
 - (1) The performance of the Contractor, including but not limited to the Contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
 - (2) Any claims arising from or relating to the performance of the Contractor or subcontractor under a public contract;
 - (3) Any cost and pricing data relating to the contract; and
 - (4) Payments made to all suppliers and subcontractors.
 - b. Contractor and subcontractors shall maintain records for the longer period of (i) six (6) years from the date of final completion of the contract to which the records relate or (ii) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

- c. Contractor and subcontractors shall make records available to the ZOO and its authorized representatives, including but not limited to the staff of any the ZOO department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for the ZOO employees, and any necessary consultants hired by the ZOO, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that the ZOO incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the ZOO for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- d. Contractor and subcontractors authorize and permit the ZOO and its authorized representatives, including but not limited to the staff of any the ZOO department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. The ZOO shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of Section 25c.
- e. Contractor and subcontractors agree to disclose the records requested by the ZOO and agree to the admission of such records as evidence in any proceeding between the ZOO and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- f. Contractor and subcontractors agree that in the event such records disclose that the ZOO is owed any sum of money or establish that any portion of any claim made against the ZOO is not warranted, the Contractor or subcontractor shall pay all costs incurred by the ZOO in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from the ZOO.
- g. Failure of the Contractor or subcontractor to keep or disclose records as required by this Agreement or any solicitation document may result in debarment as a bidder or proposer for future ZOO contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

26. Miscellaneous

- a. Contractor's Assumption of Responsibility. The Contractor expressly assumes full responsibility for all persons connected with Contractor's use of the ZOO, including all its employees, agents, and contractors.
- b. Time is of the Essence. Time is of the essence to this Agreement.
- c. Entire Agreement. Except as specifically provided herein, this document contains the complete and exclusive agreement between the Parties, and is intended to be a final expression of their agreement. No promise, representation or covenant not included in this document has been or is relied upon by any party. No modification or amendment of this Agreement shall be in force or effect unless in writing executed by all Parties hereto.
- d. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the extent of any provision thereof.
- e. No Third Party Beneficiaries. This Agreement is not intended to benefit any individual, corporation, or other legal entity other than the ZOO, Contractor, and the Indemnities. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any other parties in any proceeding whatsoever.



600 NE Grand Ave.
 Portland, OR 97232-2736
 503-797-1700

SAMPLE CONCESSIONAIRE SERVICES AGREEMENT

Request for Proposals (RFP 12-2090)

27. Modification.
 Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties. Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

CONTRACTOR

METRO

By: _____

By: _____

Date _____

Date: _____

Title _____

Title: _____