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CITY OF FRESNO  
City Clerk's Office (Original)

CONCESSION AGREEMENT  
between  
THE CITY OF FRESNO and FRESNO BICYCLE RENTALS  
regarding  
RENTAL BICYCLES AT THE WOODWARD PARK BIKE COMPLEX

THIS AGREEMENT, effective this 31<sup>st</sup> day of January 2011, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, hereinafter referred to as "City", and Darrell Jennings, individually and dba Fresno Bike Rentals, hereinafter referred to as "Concessionaire".

WHEREAS, City owns, operates and has full rights to use for the purposes herein the Bike Complex at Woodward Park consisting of a Mountain Bike Skills Progression Park, BMX Dirt Jump Park, and Downhill BMX Race Track, located in the City of Fresno, County of Fresno, State of California, hereinafter referred to as "Bike Complex"; and

WHEREAS, Concessionaire is a business engaged in providing rental bicycles to the public; and

WHEREAS, City deems it desirable to enter into a fourteen (14) month agreement with Concessionaire to provide rental bicycles to patrons from a Designated Area within Woodward Park (the "Designated Area") and to afford the City the opportunity to evaluate the community's participation and interest in having such a service provided long term.

NOW THEREFORE, in consideration of the above recitals which are contractual in nature, the mutual covenants and conditions contained herein, and for other good and sufficient consideration hereby acknowledged the parties do hereby agree, each for itself and its successors and assigns, as follows:

1. General: The above recitals are true and correct and adopted as part of this Agreement. This Agreement is issued subject to the terms, covenants, conditions, and provisions herein contained and Concessionaire covenants and agrees, as a material part of the consideration for this Agreement, that Concessionaire shall fully and faithfully comply with, keep, perform, and/or observe each and every term, condition, agreement, and/or provision hereof to be complied with, kept, performed, and/or observed by Concessionaire, and Concessionaire shall comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

2. Term, Default and Termination:

A. Initial Term Of Agreement: The initial term of this Agreement shall be for a fourteen (14) month period commencing March 1, 2011, and ending May 31, 2012, unless sooner terminated in the manner hereinafter. Either party may terminate this Agreement at any time with or without cause by serving written notice upon the other party no less than thirty (30) days before such termination is to be effective. Upon any termination Concessionaire shall promptly remove all its improvements, fixtures and property and reasonably restore the Designated Area to its original condition and thereupon surrender the Designated Area. City, at its option may take possession of, remove and/or destroy any improvements, fixtures and property not removed, and cause restoration of the Designated Area at Concessionaire's cost, should Concessionaire fails to timely do so. Any material failure by

either party to perform hereunder upon fifteen (15) days notice of nonperformance shall be a default hereunder.

3. Grant of Concessionaire Uses and Rights: During the Term of this Agreement, City grants to Concessionaire non-exclusive and subordinate use and concession rights, to the Designated Area in "as is" condition, consistent with this Agreement and controlling law regulations, approvals and permits:
  - A. Concessionaire will offer a variety of bicycle rentals including mountain, BMX Racing and leisure bicycles for children and adults (the "Concession") for use in the Bike Complex and throughout Woodward Park.
  - B. Concessionaire agrees to operate the Concession during the normal hours of the Bike Complex.
  - C. Concessionaire may offer purchase of bicycle related accessories.
  - D. Concessionaire shall be responsible for the security of all its materials and equipment.
4. Obligations Of The Concessionaire:
  - A. Concessionaire shall be responsible for transporting bicycles and related equipment to and from the Designated Area within Woodward Park.
  - B. Concessionaire shall advertise and promote its services to the public.
  - C. Concessionaire shall require all patrons of the Concession who are renting a bicycle to complete appropriate rental forms approved by the City.
5. Obligations of the City Of Fresno – PARCS:
  - A. The City will identify an appropriate temporary location for the Designated Area.
  - B. The City will assist in advertising and promotion of the Concession.
  - C. The City of Fresno-PARCS shall bear no cost or liability under or in relation to this Agreement, including without limitation:
    - a. The City shall not be held liable for any personal injuries, property damage or loss due to vandalism, theft or accidents.
    - b. The City shall not be responsible for any inability of Concessionaire to access/use the Designated Area, in whole or part, including any direct/consequential damages resulting therefrom.
6. Pricing And Fees:
  - A. Pricing:
    - (1) Fees charged by Concessionaire shall be established by Concessionaire subject to prior approval of the PARCS Director, consistent with controlling law.
    - (2) Concessionaire shall provide to PARCS Director in writing a current price schedule for approval thereby prior to implementation/launch of the program or to any pricing

changes. Any questions or complaints regarding the quality of services and/or prices shall be submitted to Concessionaire for Concessionaire's prompt response. At the Director's request, Concessionaire shall meet with the City to review any complaints or concerns and to correct any deficiencies promptly. The Director's determination as to quality of operation or services shall be conclusive and curative measures shall be implemented by Concessionaire as expeditiously as possible.

- (3) Concessionaire shall provide PARCS with an operating schedule for the calendar year within thirty (30) days of the effective date of this Agreement.

7. Concession Fee:

- A. As consideration for the rights and privileges herein granted, so long as this Agreement shall be in effect, Concessionaire shall pay to City a monthly Concession Fee of \$250.00 for every month of operations during the term of this Agreement; except for the months of June, July, August, and September, when the monthly Concession Fee will be increased to \$500.00.
- B. Payment, Place of Payment: Concessionaire shall pay to the City monthly, in advance on the first day of each month. All fees/charges due to be paid to City by Concessionaire hereunder shall be paid to City at the address shown below or at such other address to which City, by service of written notice upon Concessionaire, may direct the payment thereof from time to time during the term hereof.

CITY OF FRESNO  
PARKS, AFTER-SCHOOL, RECREATION AND  
COMMUNITY SERVICES DEPARTMENT  
ATTN: PARCS ACCOUNTING  
1515 E. DIVISADERO ST.  
FRESNO, CA 93721

- C. Late Payment Charge: Should any installment of Concession fees accruing to City under the provisions of this Agreement not be RECEIVED by City within ten (10) calendar days after such shall be due, a LATE PAYMENT CHARGE EQUAL TO FIVE PERCENT (5%) OF THE OVERDUE AMOUNT added thereto and constituting a part thereof shall be imposed by City each and every month until the entire delinquent amount is received by City.
8. Additional Fees, Charges and Rentals: Concessionaire shall pay to the City additional fees, charges and rentals in the event of any of the following:
- A. If the City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse the City, or for which Concessionaire is otherwise responsible.
  - B. If City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the promises, terms, conditions or covenants required of it hereunder.
  - C. Concessionaire's obligations pursuant to this section shall include all interest, cost, damages and penalties allowable by law or contract in conjunction with such sums so paid or expenses so incurred by the City. If billed by City, Concessionaire shall pay City within thirty (30) days following the date of such billing.

9. Concessionaire's Duty to Operate Concession: Within five (5) days of the effective date of this Agreement, Concessionaire shall, at its sole cost and expense, commence operations of the Concession.

10. Insurance and Indemnification:

Throughout the life of this Agreement, Concessionaire shall pay for and maintain in full force and effect all insurance as required in Exhibit B or as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

If at any time during the life of the Agreement or any extension, Concessionaire or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Concessionaire shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Concessionaire of its responsibilities under this Agreement.

The fact that insurance is obtained by Concessionaire shall not be deemed to release or diminish the liability of Concessionaire, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire, its principals, officers, agents, employees, persons under the supervision of Concessionaire, vendors, suppliers, invitees, consultants, subconsultants, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Upon request of City, Concessionaire shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If Concessionaire should subcontract all or any portion of the services to be performed under this Agreement, Concessionaire shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Concessionaire and City prior to the commencement of any services by the subcontractor.

- F. Indemnification: Concessionaire shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Concessionaire or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Concessionaire's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of

its officers, officials, employees, agents or authorized volunteers.

If Concessionaire should subcontract all or any portion of the work to be performed under this Agreement, Concessionaire shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

- G. Exemption of City: Concessionaire hereby specifically warrants, covenants and agrees that City SHALL NOT be liable for injury to Concessionaire's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Bike Complex authority hereof, whether belonging to Concessionaire, or Concessionaire's employees, customers, agents, contractors, sub-contractors, tenant, sub-lessee of Concessionaire, or any other person whomsoever; NOR shall City be liable for any injury to the person of Concessionaire or Concessionaire's employees, agents, contractors, subcontractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Facility in or on any of the improvements/facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Concessionaire. Concessionaire also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties.
11. Contact with Minors/Background Check: Concessionaire understands that operation of the Concession will involve direct contact with minors under the age of eighteen (18). Concessionaire represents that it has in effect all licenses, permissions, and legal qualifications to perform this Agreement, including the following fingerprinting requirements. Concessionaire expressly acknowledges and certifies that: (i) Concessionaire and all of its employees and agents (hereinafter collectively "employees") involved with the Concession do not have a record of conviction for any serious felony and understand that they must submit or have submitted fingerprints in a manner authorized by the Department of Justice, and that proof of such Department of Justice clearance is to be provided to the City prior to Concessionaire or its employees working at site; (ii) Concessionaire shall not permit any employee to come in contact with minors under the age of eighteen (18) until the Department of Justice has ascertained that the employee has not been convicted of a serious or violent felony; (iii) Concessionaire shall certify in writing to the City that none of its employees who may come in contact with students have been convicted of a serious or violent felony; and (iv) Concessionaire shall provide to City a list of names of its employees who may come in contact with minors under the age of eighteen (18).
12. Additional Termination Rights of City: If, at any time during the term of this Agreement, Concessionaire voluntarily or involuntarily seeks protection under federal bankruptcy laws, such shall be a material default by Concessionaire and this Agreement shall be subject to immediate revocation by City upon three (3) days advance written notice to such effect upon Concessionaire, in which event, this Agreement shall be terminated and at an end as of the time and date set forth within the notice. In the event this Agreement shall be terminated by City pursuant to the provisions of this section, Concessionaire shall remove all of its personal property from the Designated Area and peacefully vacate and surrender said premises back to City not later than the revocation time and date specified within City's notice. Termination of this Agreement by City under the provisions of this section shall not

be construed as a waiver of any claim City may have against Concessionaire for such failure or for any other failure to perform, keep or observe the same or any other terms, covenants, conditions, warranties, agreements, or provisions of this Agreement.

13. Assignment: The Concessionaire shall not transfer or assign this Agreement, or any part hereof, or interest herein, except with the prior written approval of the City and subject to whatever limitations and conditions that may be required by City. Any other attempted transfer or assignment shall be void and shall confer no rights upon any third person. No assignment shall relieve the Concessionaire of any obligation under this Agreement unless otherwise agreed by the City. Notwithstanding the foregoing, this section shall not be interpreted to preclude the assignment of this Agreement to Concessionaire's ultimate parent, a wholly owned subsidiary of Concessionaire, or a successor by merger, if such parent subsidiary, or successor by merger assumes all rights and obligations of this Agreement. Written notice of such assumption shall be provided to the City by the parent, subsidiary, or successor by merger not less than thirty (30) days prior to the effective date of such assignment.

14. Government Requirements:

A. Nondiscrimination:

(1) Concessionaire hereby agrees to comply with the following requirements as they pertain to Concessionaire's operations.

(a) Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that Concessionaire shall operate in compliance with applicable rules and regulations and as said regulation may be amended.

(b) Concessionaire for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the basis of race, creed, color, sex, national origin, ancestry, age or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the basis of race, creed, color, sex, national origin, ancestry, age or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Concessionaire shall use the Concession and the Designated Use Area in compliance with all other requirements imposed by or pursuant to applicable rules and regulations and as said regulation may be amended.

(c) In the event of breach of the nondiscrimination covenants contained herein, City shall have the right to terminate this Agreement and the concession and use rights granted thereunder immediately by written notice.

15. Miscellaneous:

A. Complaints: Concessionaire shall respond in writing to all written complaints or inquiries made by customers/the public as provided in this Agreement. Concessionaire shall furnish the City with copies of all such correspondence received by Concessionaire and all responses issued by Concessionaire.

- B. Changes in Hours of Operation: Concessionaire shall provide PARCS with fourteen (14) days notice before changing scheduled operations.
- C. Quality and Price Control: In entering into this Agreement, Concessionaire acknowledges City's desire and obligation to provide the general public and the Bike Complex users with high quality services, comparable in price and quality to similar services offered in other Cities. Concessionaire shall clearly provide accurate information on fees for all services.
- D. City Employees: Concessionaire shall not during the Term of this Agreement, hire or employ, on either a full time or part time basis, person or persons so long as such person shall be employed by the City.
- E. Notices: Any notice or other communication to City or Concessionaire pursuant hereto shall be deemed validly given, serviced or delivered upon deposit in the United States mail, certified, and with proper postage and fees prepaid, addressed to City or Concessionaire, respectively, at the addresses hereinafter shown or at the address hereafter specified in writing.
- (1) Director of Parks, After-School, Recreation and Community Services  
1515 E. Divisadero St.  
Fresno, CA 93721  
Telephone: (559) 621-2900
- (2) Fresno Bike Rentals  
Attn: Darrell Jennings  
8168 N. Matus Ave.  
Fresno, CA 93720-4900  
Telephone: (559) 696-7696
- G. Rules and Regulations: Concessionaire shall observe and obey and require its officers, employees, agents and invitees to obey and observe the duly enacted and lawful rules and regulations of the City, and the duly enacted and lawful rules and regulations now in existence or hereafter promulgated by City, or by any other local, state or federal agency of competent jurisdiction. Concessionaire shall comply with all federal, state and municipal laws, regulations and ordinances, included all promulgated which may apply to the operations of Concessionaire at the Bike Complex.
- H. Permits, Licenses, Miscellaneous Fees: Concessionaire shall have an appropriate business license and all necessary permits to run the Concession. The Concessionaire shall pay all taxes, including ad valorem taxes, permit fees, license fees, and assessments lawfully levied or assessed upon the Concessionaire and upon which Concessionaire is legally responsible for paying. Concessionaire agrees to secure all such permits and licenses. Failure to pay said taxes and/or fees shall be considered an event of default under the terms of this Permit.<sup>1</sup> Nothing within this Section shall be deemed to

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<sup>1</sup> Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (Lessor) is a Taxable Possessory Interest unless the possessor of interest in such property is exempt from such taxation. With regard to any Possessory interest to be acquired by Concessionaire under this Permit, Concessionaire, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Permit, Concessionaire either took a copy hereof to the office of the Fresno County Tax Assessor or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Concessionaire's full and complete satisfaction, how much Concessionaire will be taxed, if at all.

limit any of Concessionaire's rights to appeal any such levies and/or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority(ies) making such levies and/or assessments

- I. Nothing in this Agreement generally shall be construed as any kind of warranty or guarantee that the City will issue, grant or secure any permits, licenses or other documents necessary to conduct the use authorized herein. Concessionaire shall be solely responsible for securing any and all necessary and appropriate licenses and other documents necessary to permit the authorized use.
- J. Invalid Provisions. The provisions of this Agreement are severable. In the event any term, covenant, condition or provision of this Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.
- K. Attorney's Fees: If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.
- L. Exhibits: Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
- M. Precedence of Documents: In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement shall be null and void.
- N. Cumulative Remedies: No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- O. Waiver: The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.
- P. Governing Law and Venue: This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Permit and any rights and duties hereunder shall be Fresno County, California.
- Q. Acknowledgment by Concessionaire: By its signature(s) hereunto affixed, Concessionaire expressly acknowledges that Concessionaire clearly understands that neither this Agreement, itself, nor the issuance of this Agreement by City to Concessionaire nor

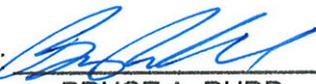
acceptance of this Agreement by Concessionaire constitutes, in any way whatsoever, any Agreement by or on behalf of City to enter into any further/other Agreement, permit, lease, or other arrangement of any type whatsoever, beyond the term of or in addition to this Agreement.

- R. Interpretation: The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- S. Final Agreement: Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement and any documents, instruments and materials referenced and incorporated herein represents the entire and integrated Agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or Agreements, either written or oral.
- T. Counterparts: This Agreement may be executed in any number of counterparts and any party may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will be deemed to be but one and the same instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.
- U. Independent Contractor. Concessionaire is and throughout this Agreement shall be an independent contractor and not an employee, partner or agent of the City.

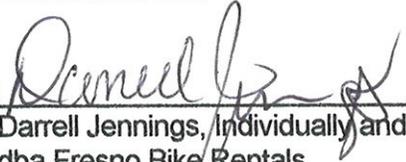
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SIGNATURES APPEAR ON NEXT PAGE.

IN WITNESS WHEREOF, said parties have executed these presents to be duly executed by their proper officers thereunto authorized, and corporate seals affixed this 1<sup>st</sup> day of February, 2011.

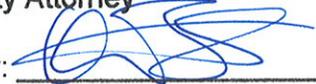
**CITY OF FRESNO**

By:   
BRUCE A. RUDD  
Assistant City Manager

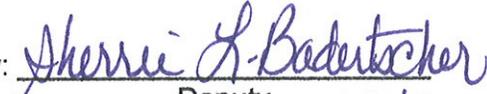
**CONCESSIONAIRE**

By:   
Darrell Jennings, Individually and  
dba Fresno Bike Rentals

**APPROVED AS TO FORM:**  
JAMES SANCHEZ  
City Attorney

By:   
Deputy DAERR

**ATTEST:**  
REBECCA A. KLISCH  
City Clerk

By:   
Deputy 2/1/11

- EXHIBIT "A" Concessionaire's Proposal
- EXHIBIT "B" Insurance Requirements
- EXHIBIT "C" Bike Rental Price List

## **Exhibit A**

### **Fresno Bike Rental Business Plan**

#### **Executive Summary**

Fresno Bike Rental is a new venture and will be offering bike rentals in the north east Fresno area. Our primary location will be at Woodward Park which is heavily trafficked with families and events.

The primary market for Fresno Bike Rentals will be families visiting the park, approximately three to four hundred people attend the park on weekends. Our secondary market will be renter from nearby apartment complexes; there are five large complexes with in a three mile radius of the park with an average of five hundred units per complex.

Darrell Jennings has been in the community for over sixteen years and has a great knowledge of marketing as he has been in the Television industry for over fourteen years as a Marketing rep and a Sales Manager for both English and Spanish Television Networks. Darrell started investigating the opportunity to do bike rental in Fresno over a year ago and realizing that no one in Fresno offers bike rentals he pursued Fresno Parks and Recreation thinking that Woodward Park would be a great venue.

#### **Objectives**

1. Bringing something new and exciting to Woodward Park
2. Maintain a financially healthy business
3. Offer something new to the community
4. Aim to provide a opportunity for a Healthier Fresno
5. Focus marketing on park attendees

#### **Keys to Success**

Our premier, high visibility at Woodward Park will be critical to the success of the business. We will also use direct mail to reach homes within a five mile radius and utilize local Television to get our message out to the public

that Woodward Park now offers bike rentals. Fresno Bike Rentals will be a family owned business as Lesa Jennings will be the face on camera for our business and our two older sons will be helping with rentals, repairs, and daily upkeep of the bikes. We will be using a 20x20 pop up tent to display the bikes adjacent to the parks entry. Fresno Bike Rentals will also store bikes in a covered trailer with logos and a repair shop with in the trailer for minor bike repairs.

## **Products and Services**

### **Retail Rental and Sales**

1. **Bicycles.** We will sell the bikes at the end of each year and replace them with upgraded bikes, predominantly in the beach cruiser style. Season two we will offer different styles of bikes.
2. **Accessories.** We will offer a wide variety of locks, water bottles, sunscreen, child seats and trailers, t-shirts, visors, and bike helmets .
3. **Clothing.** Clothing appeals to all persons, whether it is a logo emblazoned T-shirt or water resistant rain gear. We will be rotating our clothing by season.
4. **Parts.** Parts generally refer to pieces or materials necessary to the basic function of a bicycle. We will sale bike tires and tubes to the general public.

## **Competitive Comparison**

Fresno Bike rental has done an extensive research on the bike rental business in the Fresno area and we have found that no one offers this service to the public. We will be contacting bike shops to offer them demo days at the park with their different lines of bikes. We have also been in contact with Street Glider a new bike that you stand on and offer a great work out because of all of the moving parts. Most park attendees do not bring their bike to the park because of the hassle of loading and unloading and we feel this is a huge opportunity for our business. The staff at Fresno Bike Rental will provide the kind of personal, professional services people want , and are willing to pay for.

## **Pricing Strategy**

### **Rental**

Pricing of our bicycles will be very affordable for individuals, couples, and families. I've priced everything based off of what family of four could afford for a fun day riding bikes and enjoying the outdoors.

### **Service**

We will try to be as competitive as we can with repairs and rentals. Some repairs such as a flat tire, are limited by customers perception of difficulty.

- Flat tire \$7.50
- Bike Rental \$10.00 (2 hour rental)
- Kid trailers \$5.00
- Child seats \$5.00
- Pedal trailer \$5.00
- Bike baskets \$2.50
- Helmets \$2.50
- Bike locks \$2.50
- Sunscreen \$5.00
- Water bottles \$2.50
- T-shirts \$12.00
- Sun visors \$5.00
- Rain gear \$10.00

## Pro Forma Profit and Loss

### Year 1

<b>Sales</b>	\$18,000
Direct cost of sales	\$12,000
Total cost of sales	\$12,000
Gross Margin	\$6,000
<b>Expenses</b>	
Marketing	\$3,000
Insurance	\$1,600
Park Rental	\$6,000
Net profit	-\$4,600

## EXHIBIT B

**INSURANCE REQUIREMENTS**  
**Agreement between City of Fresno**  
**and Fresno Bike Rentals**  
Bike Rentals at the Woodward Park Bike Complex  
PROJECT TITLE

### Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

### Minimum Limits of Insurance

CONCESSIONAIRE shall maintain limits of liability of not less than:

1. General Liability:
  - \$1,000,000 per occurrence for bodily injury and property damage
  - \$1,000,000 per occurrence for personal and advertising injury
  - \$2,000,000 aggregate for products and completed operations
  - \$2,000,000 general aggregate
2. Automobile Liability:
  - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
  - \$1,000,000 each accident for bodily injury
  - \$1,000,000 disease each employee
  - \$1,000,000 disease policy limit

### Umbrella or Excess Insurance

In the event Concessionaire purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

## **Deductibles and Self-Insured Retentions**

Concessionaire shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Concessionaire shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Concessionaire shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

## **Other Insurance Provisions**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
3. Concessionaire's insurance coverage shall be primary and no contribution shall be required of City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Concessionaire and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and authorized volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Concessionaire shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Concessionaire shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

## **Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by City's Risk Manager.

### Verification of Coverage

Concessionaire shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.

## Exhibit C

### Fresno Bike Rental Price List

Bike Rental - \$10.00 (2 hour rental)

Kid Trailer - \$5.00 (daily rental)

Child Seats - \$5.00 (daily rental)

Pedal Trailer - \$5.00 (daily rental)

Bike Baskets - \$2.50 (daily rental)

Adult Helmets - \$2.50 (daily rental)

Kids Helmets - \$2.50 (daily rental)

Flat Tire - \$7.50

Bike Locks - \$2.50

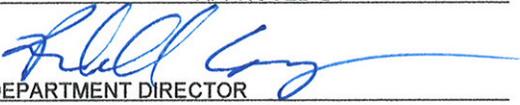
Sunscreen - \$5.00

Water Bottles - \$2.50

T- Shirts - \$12.00

Sun Visors - \$5.00

Rain Gear - \$10.00

AGENDA ITEM NO.	1E
COUNCIL MEETING	9/30/10
APPROVED BY	
	
DEPARTMENT DIRECTOR	
	
CITY MANAGER	

September 30, 2010

**FROM:** RANDALL L. COOPER, Director  
Parks, After School, Recreation and Community Services Department

**BY:** JERRY HAYNES, Parks and Capital Projects Manager   
PAUL A. MELIKIAN, Administrative Manager   
Parks, After-school, Recreation and Community Services Department

**SUBJECT:** 1) ADOPT CEQA CATEGORICAL EXEMPTION PURSUANT TO GUIDELINES SECTION 15311 (ACCESSORY STRUCTURES)  
  
2) APPROVE A RENTAL BICYCLE CONCESSION AGREEMENT WITH FRESNO BICYCLE RENTALS AT WOODWARD REGIONAL PARK  
  
3) A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 494<sup>TH</sup> AMENDMENT TO MASTER FEE SCHEDULE RESOLUTION NO. 80-420 TO ESTABLISH THE WOODWARD PARK BIKE RENTAL FEES IN THE PARKS SECTION

**RECOMMENDATION**

Staff recommends that the City Council approve the attached 14-month Concession Agreement with Fresno Bicycle Rentals and corresponding Amendment to the Master Fee Schedule for the purpose of offering bike rentals to Woodward Park visitors.

**EXECUTIVE SUMMARY**

The PARCS Department has completed the Bike Complex (Mountain Bike Trail, Dirt Jump Park and BMX Race Track) in Woodward Park. Park attendees have the opportunity to utilize these facilities; however, the opportunity to rent bicycles and related equipment onsite is not currently available. The Department does not have sufficient information about the market and activity levels required to support a significant investment into a permanent concession facility. This short-term (14 month) agreement would establish a pilot program for bike rentals; and allow the Department to collect information that will be instrumental in developing a future Request for Proposal to gauge private sector interest in partnering with the City to construct and operate out of a permanent facility.

The proposed Concession Agreement is for 14 months and the Concessionaire, Fresno Bicycle Rentals (FBR), will operate out of a portable trailer. The monthly Concession Fee will be \$250.00 through March 2011 and \$500.00 effective April 2011. In addition FBR will:

1. Offer bicycles and related accessories to children and adults.
2. Be responsible for the security of all its materials and equipment.
3. Be responsible for transporting bicycles & related equipment to and from the designated area within the park.
4. Will advertise and promote its services to the public.

Presented to City Council  
Date 9/30/10  
Disposition Approved & Fed.  
2010-218

5. Will require all patrons of the Concession who are renting a bicycle to complete appropriate rental forms approved by the City.

The City will bear no cost or liability under or in relation to this agreement.

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemption set forth in CEQA guidelines section 15311 which exempts construction or placement of minor structures accessory to existing facilities because the concession will be operating from a mobile unit in generally the same location in the park. Furthermore, staff has determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project. In addition, the establishment of rental fees is not a project under CEQA Guidelines 15378(b)(4), as it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

This Agreement has been reviewed and approved by the City Attorney and Risk Management Offices. The rental fees and other miscellaneous items the vendor will have available to the public are presented below for inclusion in the City Master Fee Schedule:

<b>Woodward Bike Rentals</b>	<u>Proposed</u>
Bike Rental - 2 hr rental	\$ 10.00
Kid Trailer - Daily	5.00
Child Seats - Daily	5.00
Pedal Trailer - Daily	5.00
Bike Baskets - Daily	2.50
Adult Helmets - Daily	2.50
Kids Helmets - Daily	2.50
Flat Tire	7.50
Bike Locks	2.50
Sunscreen	5.00
Water Bottles	2.50
T-Shirts	12.00
Sun Visors	5.00
Rain Gear	10.00

The inclusion of bike rental fees in the Master Fee Schedule is required under FMC sec 1-107 that states "All fees, penalties, refunds, reimbursements and charges of any kind collected by the City shall be specified in the Master Fee Schedule designated in the Master Fee Resolution, as amended by the Council from time to time. Whenever applicable throughout the Code, reference shall be made to the Master Fee Resolution in lieu of any reference to specific fee amounts." This requirement applies to concessionaires acting on behalf of the City.

**BACKGROUND**

In December 2006, City Council authorized and approved a reimbursement resolution which included expansion of Woodward Park. In 2007 PARCS began utilizing those funds to construct the Bike Complex in Woodward Park which includes the Mountain Bike Trail, Dirt Jump Park and BMX Race Track. This facility attracted more people to the park to enjoy these amenities. PARCS has not provided rental bicycles or equipment; however, the establishment of these new amenities creates an opportunity to provide a service to park attendees.

**FISCAL IMPACT**

There is no adverse impact to the General Fund as a result of approving this Agreement and corresponding Master Fee Schedule Amendment. A successful Bicycle Rental service will attract more visitors to Woodward Park and enhance parking revenue to the General Fund and Woodward Park Capital Improvement Fund.

9/20/10

Attachments: Concession Agreement  
MFS Resolution