

RESOLUTION NO. 2009-297

Adopted by the Sacramento City Council

May 19, 2009

OLD SACRAMENTO TOUR BOAT INTERIM LEASE AGREEMENT AND AUTHORIZATION TO NEGOTIATE LONG TERM AGREEMENT WITH HORNBLOWER CRUISE AND EVENTS, INC.

BACKGROUND

- A. Staff recommends the City enter into a six-month interim license agreement with Hornblower Cruise and Events, Inc. ("Hornblower") for the use of the City's tour boat dock, waterfront boardwalk, and associated facilities such as the existing ticket booth, to provide, maintain, and operate a riverboat tour concession.
- B. The 2003 Sacramento Riverfront Master Plan calls for establishing the Sacramento riverfront as an active, vibrant urban district that provides a variety of uses and amenities for visitors and local residents.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Competitive bidding for a short-term tour boat concession agreement for the operation of a tour boat concession from Old Sacramento is suspended due to special circumstances that make the use of the bid procedure inappropriate.
- Section 2. The short-term concession agreement with Hornblower Cruise and Events, Inc. for the operation of a tour boat concession from Old Sacramento is approved and the City Manager or his designee is authorized to execute the agreement.
- Section 3. Competitive bidding for a long-term tour boat concession agreement for the operation of a tour boat concession from Old Sacramento is suspended as in the best interests of the City.
- Section 4. The City Manager or his designee is authorized to enter into negotiations with Hornblower for a long-term agreement for the operation of a tour boat concession in Old Sacramento.

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Exhibit A Short-Term Concession Agreement

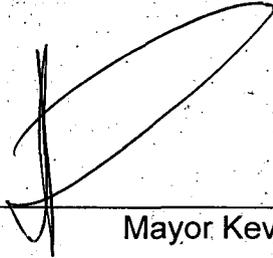
Adopted by the City of Sacramento City Council on May 19, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy,
Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**SACRAMENTO RIVERFRONT
TOUR BOAT CONCESSION AGREEMENT**

THIS SACRAMENTO RIVERFRONT TOUR BOAT CONCESSION AGREEMENT ("Agreement"), is made by and between the City of Sacramento, a municipal corporation ("City"), and Hornblower Yachts, Inc., d/b/a Hornblower Cruises and Events, a California corporation ("Concessionaire") effective MAY 20, 2009 ("Effective Date"). The City and Concessionaire may be referred to collectively as "Parties" or in the singular as "Party", as the context requires.

RECITALS

- A. The State of California ("State") is the owner of property located in the Sacramento River below and water ward of the line of ordinary high tide ("State Parcel"). The State Parcel is shown and labeled on Exhibit A.
- B. The City and State entered into a lease of the State Parcel through City Agreement number 86013 ("Agreement number 86013"), under which the City is required to obtain the State's approval of any subleases of the State Parcel.
- C. The City is the owner of a tour boat dock ("Tour Boat Dock") located in the State Parcel. The Tour Boat Dock is shown and labeled on Exhibit B.
- D. The City would like to sublease a portion of the State Parcel ("Subleased State Parcel") in which the Tour Boat Dock is located to Concessionaire for the operation of a tour boat concession. The portion of the State Parcel to be subleased in shown and labeled on Exhibit A.
- E. The City is the owner of real property adjoining and landward of the State Parcel ("City's Real Property"). City's Real Property is shown and labeled on Exhibit A.
- F. The City is the owner of two ticket booths on City's Real Property ("Ticket Booths"). The Ticket Booths are shown and labeled on Exhibit B.
- G. The Tour Boat Dock, Subleased State Parcel, and Ticket Booth shall be collectively referred to herein as the "Premises".
- H. The City would like to grant an exclusive license to Concessionaire to use the Premises for the operation of a tour boat concession and other passenger vessel related activities (including charters and special events), and for the sale of food and beverages, photographs, tour and travel-related products, and other merchandise.
- I. Concessionaire would like to operate such a tour boat concession on the Premises.

J. The Parties would like to enter into this short-term concession agreement so that tour boat services may be offered in Old Sacramento while the Parties negotiate the terms of a long-term concession agreement. The Parties anticipate that such a long-term concession agreement ("Long-term Agreement") will be negotiated and executed by the parties before July 15, 2009.

Therefore, for good and valuable consideration, the Parties agree as follows:

Section 1. State Approval.

The City shall use its reasonable, good faith efforts to obtain the State's approval of a sublease ("Sublease") of the Subleased State Parcel to Concessionaire pursuant to Section 4 of Agreement number 86013. The Parties agree that the City's failure to obtain the State's approval as provided in this Section 1 shall not constitute a breach of this Agreement by City.

Section 2. Sublease.

A. The City subleases to Concessionaire and Concessionaire subleases from the City the Subleased State Parcel under the terms and conditions of this Agreement.

B. The provisions of Section 3 of Agreement number 86013 apply to Concessionaire's use of the Subleased State Parcel and the Tour Boat Dock.

C. Concessionaire shall not use the Premises for any purpose other than the operation of a tour boat concession and other passenger vessel related activities (including charters, water taxis and special events), and for the sale of food and beverages, photographs, tour and travel-related products, and other merchandise, except with the prior written approval of the City's Director of the Department of Convention, Culture and Leisure (the "Director").

Section 3. License.

A. The City grants to Concessionaire an exclusive license to use the Tour Boat Dock for the purposes of mooring and operating tour boats. ("Tour Boats").

B. City grants to Concessionaire an exclusive license to use the Premises for the purposes specified herein ("Tour Boats Concession").

C. The City grants to Concessionaire an exclusive license to use the Ticket Booths to sell tickets for the Tour Boats Concession and for other purposes either permitted herein or approved by the Director. In the event Concessionaire does not operate a water taxi service as described in Section 8 below, the smaller of the two Ticket Booths shall no longer be part of this Agreement or part of the license granted to Concessionaire.

D. The City will grant no other license to operate a Tour Boat Concession, or other vessel charter or tour business, from the Premises, or from any other City-owned, leased or controlled premises, other than charter licenses to other operators for periodic landings outside

the Premises.

E. City also grants to Concessionaire an exclusive license to a small site on City's Real Property for the purpose of photographing and/or selling photographs to Tour Boats Concession visitors. The location of this site shall be in the close vicinity of the Premises, and shall be determined and identified after consultation by, and mutual agreement of, the City and Concessionaire.

Section 4. Term; Commencement of Services, Extensions.

A. Concessionaire shall commence the operation of the Tour Boats Concession pursuant to the terms of this Agreement not later than twenty (20) days after the Effective Date.

B. The term of this Agreement shall end on October 31, 2009, unless extended or sooner terminated as provided herein.

C. Upon the mutual written consent of the Director and Concessionaire, the Parties may extend the term of this Agreement for individual terms of six (6) months each. Such consent shall be given not less than thirty (30) days before the expiration of the preceding term.

D. This Agreement shall terminate on September 8, 2009 upon notice of either Party if the Parties have not entered into the Long-term Agreement before July 15, 2009.

E. This Agreement shall automatically terminate and shall have no further force or effect upon the execution of the Long-term Agreement by the Parties.

Section 5. Rent.

For the rights granted herein, Concessionaire shall pay to the City five percent (5%) of its gross receipts as defined in Section 6, or "Percentage Rent" without deductions, set-off, prior notice or demand, for tours, water taxi services, charters and any other activities conducted pursuant to this Agreement. Percentage Rent shall be submitted to the City not later than the twentieth (20th) day of the month in arrears and shall be accompanied by the report of gross receipts described in section 14(B). Notwithstanding the foregoing, no Percentage Rent shall be due from Concessionaire to City for any month in which gross receipts do not exceed \$200,000.

Section 6. Gross Receipts Defined

A. The term "gross receipts" as used in this Agreement means all money, cash, receipts, assets, property, or other things of value received by Concessionaire as compensation for the sale of goods and services from the Premises.

B. In calculating the Percentage Rent due from Concessionaire to City, there shall be deducted from the gross receipts only the following:

1. Sales and excise taxes applicable to the gross receipts required to be collected by Concessionaire, its agents, or employees.
2. Federal, state, municipal, or other taxes required by law to be collected from consumers, but the amount of such taxes shall be shown on the books and records required to be kept and maintained pursuant to this Agreement.
3. Sums refunded on a sale previously included in gross receipts.
4. Gratuities received by Concessionaire for distribution to employees and actually distributed to employees, but the amount of such gratuities shall be shown on the books and records required to be kept and maintained pursuant to this Agreement. Gratuities shall only be deducted from the gross receipts if the amount of the gratuity is (1) stated on invoice, contract or customer receipt; and (2) is distributed to employees consistent with California law.
5. Any sums received by Concessionaire that are paid to another person or entity not affiliated with Concessionaire pursuant to an arms-length transaction, for services provided by the other person or entity, including but not limited to, charges for bands, buses and other similar items.

Section 7. City Provided Facilities and Services; Limitation on Damages.

A. The City shall provide the following utility service connections at the flood wall dockside in the immediate vicinity of the Tour Boat Dock:

1. Electrical service: 120/208/240 volts, three phase, 200 amp service.
2. Water: Potable water from 1" line at 40 PSI.
3. Sanitary Sewer: Minimum of 3" line.
4. Conduit suitable for Concessionaire to cause telephone service to be installed.

The City shall provide above service connections at no cost to Concessionaire. Concessionaire shall provide necessary hookups and pay for utility services to all vessels and any storage buildings.

B. At no cost to Concessionaire, the City shall give to Concessionaire the exclusive use of the Ticket Booths shown on Exhibit B.

1. Concessionaire shall have the right to use the Ticket Booths to sell tickets for Tour Boats tours, water taxi services, charters and for other permitted uses. (Concessionaire may also sell such tickets through other reservation facilities or those of Concessionaire affiliates.)
2. Concessionaire shall have the right to merchandise, market and sell memorabilia items associated with the Tour Boats Concession, the City of

Sacramento, other services provided by Concessionaire or affiliates of Concessionaire, or the Old Sacramento Historic District from the Ticket Booths.

3. Concessionaire shall comply with all City codes, rules and regulations for the occupancy of the Ticket Booths, including the Old Sacramento Historic District Sign Ordinance.
4. Electricity for the Ticket Booths shall be provided by the City.

C. The City shall provide Concessionaire with access to the garbage disposal facility identified in Exhibit B.

D. The City shall maintain the wharves, docking, and access areas adjacent to the Premises.

E. City shall reimburse Concessionaire for marketing fees incurred by Concessionaire in the marketing of the Concession during the term of this Agreement in an amount not to exceed five-thousand dollars (\$5,000). The City shall reimburse Concessionaire for these fees within thirty (30) days after presentation of an invoice and documentation satisfactory to the City from Concessionaire.

F. The City will cooperate with Concessionaire in efforts to publicize and market the Tour Boats Concession, and to do so will use its best efforts to place and promulgate signage, City website materials, flyers, and other similar items as the City and Concessionaire jointly deem appropriate.

G. Upon Concessionaire's request, City shall provide to Concessionaire City parking tickets for the use of the City's parking facilities in Old Sacramento by Concessionaire's patrons. The tickets shall be valid for a four (4) hour period. Concessionaire shall pay to the City's Parking Division \$.50 for each parking ticket upon receipt of ticket.

H. In the event that Concessionaire's ability to use the Premises is interrupted due to any cause whatsoever, whether such interruption involves the Premises themselves or an interruption of access to them and whether or not fault for the interruption can be attributed to the City, its officers, employees, or agents, Concessionaire's sole remedy against the City shall be abatement of the rent imposed by Section 5 for the period of interruption. Neither the City nor any of its officers, agents, or employees shall be liable for any damages, including consequential damages incurred by Concessionaire as a result of an interruption in the use of the Premises.

Section 8. Concessionaire Provided Facilities, Services, and Obligations.

- A. Concessionaire agrees to retain a commercial garbage collection service provider and arrange for garbage removal on a regular schedule. Concessionaire shall arrange for garbage to be removed more frequently than scheduled if, in the City's reasonable discretion, odor, health, or safety problems caused by Concessionaire's

garbage develop.

- B. Concessionaire shall provide Tour Boats tours to the general public that originate and terminate at the Tour Boat Dock in accordance with the schedule set forth in Exhibit C. Any material change to this schedule must be approved in writing in advance by the Director; provided, however, the schedule may be adjusted from time to time depending on external factors beyond the control of Concessionaire such as weather, conflicting events, and related activities.
- C. Concessionaire shall furnish, at its sole cost and expense, the Tour Boats(s) and all supplies, fixtures, equipment, labor and security necessary for the operation, maintenance, and improvements of the Tour Boats.
- D. Concessionaire shall provide the Tour Boats and all personnel, equipment and improvements necessary to provide a quality and safe Tour Boats Concession from the Premises. Except with the prior written approval of the Director, Concessionaire shall not use the Premises for any purpose other than the operation of the Tour Boats Concession pursuant to this Agreement. Concessionaire shall be solely responsible for providing for the safe moorage of the Tour Boats at the Tour Boat Dock.
- E. Tour Boats tours when appropriate shall be narrated.
- F. Concessionaire shall not throw, deposit, discharge, or otherwise place any refuse, garbage, debris, bait, sewage, or waste matter of any description upon the Premises, City's Real Property, the State Parcel or into the waters of the Sacramento River. Concessionaire agrees not to throw, deposit, discharge, or otherwise place any oil, paint, varnish, spirits, coal tar, contaminated bilge water, flammable liquid, refuse or residuary product of coal, petroleum, asphalt, bitumen, or other carbonaceous substances into the waters of the Sacramento River.
- G. Concessionaire shall assume the responsibility and expense for the installation of all utilities not required to be provided by the City hereunder, all utility hookups and all telephone service, gas, electrical service, and disposal of garbage, refuse, and rubbish in connection with the activities incident to all Tour Boats Concession operations.
- H. Concessionaire shall not, except as authorized herein, interfere in any way with the general or specific use or enjoyment by the public of City's Real Property, the State Parcel, and all other public property.
- I. Concessionaire shall not conduct major repairs to the Tour Boats on the Premises, City's Real Property or the State Parcel, except with the advance written consent of the Director, and in no event shall any repairs be carried on upon the wharves, docking, or access areas in proximity to the Premises. Concessionaire agrees that no welding equipment, burning torch, or any other

open flame apparatus shall be used within the confines of the Premises, City's Real Property, or the State Parcel without prior written authorization of the Director and then only in the area and within the time specified by the Director in the written authorization.

- J. Concessionaire shall neither permit nor carry on any activity nor allow any condition on the Tour Boats or Premises which constitutes a public or private nuisance.
- K. Concessionaire shall not engage in any business or activity on the Premises, City's Real Property or the State Parcel not authorized under this Agreement, except with the prior written approval of the Director.
- L. At its sole cost and expense, Concessionaire shall assure that the Premises are kept in a safe, clean, wholesome, and sanitary condition and shall conduct its Tour Boats Concession in such way as to prevent the escape of debris from its activities into the Sacramento River.

Section 9. Optional Services

A. The sale of any alcoholic beverages on-board the Tour Boats shall be in accordance with a liquor license issued by the State of California Department of Alcoholic Beverage Control (the "ABC"). Concessionaire shall restrict the sale, serving, and consumption of alcoholic beverages to the Tour Boats and other activities authorized herein and other areas approved by the Director and the ABC. Concessionaire shall not cause (and will take good faith efforts to prohibit) any alcoholic beverages to be consumed on the Tour Boat Dock, City's Real Property, or on any other public property without first obtaining all necessary governmental approvals, permits, and licenses.

B. Concessionaire may operate other tours, excursions, special events, charters, and other passenger and vessel-related activities, including a water taxi service, from the Premises. In the event Concessionaire does not operate a water taxi service under this Agreement, upon twenty (20) days written notice to Concessionaire, the City shall be permitted to grant a license to another operator for the provision of water taxi services so long as such services (excluding Ticket Booth operations) are provided at a location other than the Premises.

Section 10. Access and Emergencies

A. The Tour Boats shall be accessible primarily via the southern portion of the walkway adjoining the L Street Barge to Front Street in Old Sacramento. No other method or route for boarding the Tour Boats shall be guaranteed for any activities under this Agreement.

B. Deliveries shall be made via the loading zone identified in Exhibit B and hand trucked across the boardwalk to the central dock ramp.

C. The City shall maintain the right to control access to the Tour Boat Dock and City's Real Property for reasons of public health, safety, or benefit.

D. Concessionaire agrees to remove the Tour Boats or other vessels from their moorage at the Tour Boat Dock at Concessionaire's own expense upon request by the City whenever in the City's reasonable opinion it is necessary in the event of an emergency or to perform maintenance or repairs to the Tour Boat Dock.

E. Concessionaire agrees to remove its Tour Boats or other vessels at Concessionaire's own expense upon direction by any governmental agency whose responsibility it is to maintain the safety or the rate of flow of the Sacramento River including, but not limited to, the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation.

F. In the event a Tour Boats or any other vessel for which Concessionaire is responsible should become wrecked, sunken, damaged, or destroyed by fire or any other means on the Sacramento River, Concessionaire shall mark its position immediately by buoy dry beacon by day, or by an electric light visible for 100 yards by night, and maintain such markings until the obstruction is removed. Concessionaire shall assume all cost and responsibility for the immediate removal of the vessel.

Section 11. Taxes and Assessments.

Concessionaire shall pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State of California, County of Sacramento, the City, or any tax or assessment levying body upon any interest in this Agreement or any possessory right which Concessionaire may have in or to premises covered hereby or improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances, and equipment owned or used by Concessionaire in or about these premises. The possessory interest created under this Agreement is subject to property taxation and Concessionaire shall be subject to payment of property taxes levied on the possessory interest by the County of Sacramento. Concessionaire shall in good faith have the privilege before default occurs of protesting, contesting, objecting to, or opposing the legality or amount of any such tax, assessment or charge as provided by law. Such action by Concessionaire shall not constitute a breach of this Agreement.

Section 12. Indemnity

A. Indemnity

Concessionaire shall indemnify and save harmless, the City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (collectively "Liabilities"), to the extent such Liabilities are caused by or arise from any negligent act or omission, recklessness or willful misconduct of Concessionaire, its agents, employees, contractors, subcontractors or invitees, and their respective officers, members, and employees, in

connection with the performance or nonperformance of this Agreement, whether or not (i) the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by Concessionaire, or (ii) such Liabilities are litigated, settled or reduced to judgment. City shall indemnify and save harmless Concessionaire, in the same manner and to the same extent, for all actions of the City and its employees, and for any actions by the City's prior concessionaire at the Premises.

B. Obligation to Defend

Concessionaire shall, upon the City's request, defend at Concessionaire's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities caused by or arising from any negligent act or omission, recklessness or willful misconduct of Concessionaire, its agents, employees, contractors, subcontractors or invitees, and their respective officers, members, and employees in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

C. Insurance Policies

Except as may be expressly provided in this Section 12, the existence or acceptance by the City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of the City's rights under this Section 12, nor shall the limits of such insurance limit the liability of Concessionaire hereunder. The provisions of this Section 12 shall survive any expiration or termination of this Agreement.

Section 13. Insurance Requirements.

At all times while this Agreement is in effect, Concessionaire shall maintain in full force and effect at its own cost and expense the following insurance coverage:

A. Worker's Compensation

Worker's Compensation Insurance with statutory limits is required including United States Longshoremen and Harbor Workers and Jones' Act coverage. Employer's Liability Insurance is required with coverage limits of at least \$1 million. The workers' compensation policy shall include a waiver of subrogation.

B. Auto Liability

Auto liability insurance is required providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury of one or more persons, property damage and personal injury with limits no less than \$1 million per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of Concessionaire.

C. General Liability Insurance

General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury. The policy shall include coverage for products and completed operations liability and contractual liability. There shall be no exclusions for marine operations and no exclusions for losses caused by explosion or collapse. The policy limit for general liability coverage is \$3 million. The policy shall include a fire legal liability, limit of \$300,000.

D. Protection and Indemnity

Marine protection and indemnity coverage including collision coverage shall be provided on an occurrence basis with a policy limit of \$3 million.

E. Property Insurance

All risk property insurance is required for all of Concessionaire's improvements, fixtures, equipment and vessels located on, or appurtenant to, the State Parcel, City's Real Property and the Tour Boat Dock, and all other Concessionaire improvements located on the City's Real Property, against loss or damage including fire or other acts of nature, and vandalism. Concessionaire improvements, fixtures, and equipment shall be insured for replacement value.

F. Other insurance provisions

The City, its officers, employees and volunteers, shall be covered by policy terms or endorsement as additional insured as respects general liability and protection and indemnity arising out of activities performed by or on behalf of Concessionaire including products and completed operations of Concessionaire and premises owned, leased or used by Concessionaire. The additional insured endorsements for general liability and protection and indemnity coverage shall be signed by an authorized representative of the insurance carrier. If the policies include a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

The policies shall stipulate that this insurance will operate as primary insurance and that any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of Concessionaire's insurance and shall not contribute with it.

Required policies shall provide that no cancellation may be effected by the insurance company of the insured during the term of this Agreement, without first giving to the City at least thirty (30) calendar days written notice prior to the effective date of such cancellation.

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self insured retentions, policy terms or other variations that do not comply with the requirements of this Section 13 must be declared to, and approved by, the City's Risk Management Division.

G. Insurance Verifications

Concessionaire shall provide insurance certificates and the required endorsements as evidence of each of the required policies and endorsements to the City within five (5) days following the Effective Date. In addition, throughout the term of this Agreement and upon demand by City, copies of insurance policies and endorsements shall be delivered to the City upon renewal of each of the required policies herein.

1. The City may withdraw its offer or cancel this Agreement if the required certificates of insurance or endorsements have not been provided within five (5) days following the Effective Date. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach of this Agreement by Concessionaire.

H. Contractors

Concessionaire shall require and verify that all of its contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, B and C, except that United States Longshoremen and Harbor Workers and Jones' Act workers' compensation coverage and marine protection and indemnity coverage shall be required only for those contractors or sub-contractors conducting marine operations. Contractor and subcontractor general liability limit shall be \$1 million per occurrence.

Section 14. Maintenance and Inspection of Records.

A. Concessionaire shall, at all times while this Agreement is in effect and for a period of one year thereafter, keep true, accurate, and complete financial records and accounts of its operation of Tour Boats Concession utilizing the Premises and such other financial or business records as may be reasonably required by the City. The City shall have the right at all reasonable times after twenty-four hour notice to Concessionaire, to examine, obtain copies, and audit said records and accounts including the Tour Boats' manifests.

If an audit shows that there is a mistake in the payment of rent, as required by Section 5, the deficiency shall become immediately due and payable if the audit shows an underpayment or be a credit against the rent due hereunder if the audit shows an overpayment. The costs of the audit shall be paid by the City unless the audit shows that Concessionaire understated annual gross receipts by more than two percent (2%), in which case Concessionaire shall pay the City's reasonable costs of the audit as determined by the City's accountant.

B. Concessionaire further agrees to furnish to the Director, within twenty (20) days after the end of each calendar month, a report showing all gross receipts derived from the operation of the Tour Boats Concession for that period. The report shall separately itemize all deductions from the gross receipts pursuant to Section 6(B) and shall be accompanied by documentation supporting the deductions.

Section 15. Compliance with Laws; Equal Rights.

A. Concessionaire and its agents or employees, at their sole cost and expense, shall at all times comply with and abide by all pertinent or applicable regulations and ordinances of the City, the County of Sacramento, and the laws of the State of California and the United States insofar as the same or any of them are applicable, including the Americans with Disabilities Act, and to obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein. In the event of any conflict between State and Federal law that govern operations of Concessionaire, Federal law shall govern.

B. Concessionaire agrees that it shall not make any discrimination, distinction, or restriction on account of sex, color, race, religion, ancestry, disability, national origin, sexual orientation, or any other arbitrary basis contrary to the provisions of Section 51 of the California Civil Code which is incorporated herein by reference or any other state, federal, or City Ordinance prohibiting discrimination.

C. All provisions of Part 2.8 of Division 3, of Title 2 (sections 12900 through 12996) of the California Government Code (California Fair Employment and Housing Act) are hereby incorporated herein by this reference as if set forth in full.

Section 16. Alterations and Repairs.

A. Concessionaire shall not make, nor suffer to be made, any material alterations of the Premises or any part thereof, except movable furniture and trade fixtures, without first obtaining the written consent of the City, and any additions to or alterations of the Premises shall be at Concessionaire's expense with no right to recover the costs and shall become at once a part of the realty and belong to the City. Concessionaire shall keep the Premises free from any liens arising out of any work performed, material furnished, or obligations incurred.

B. Concessionaire shall promptly cause to be repaired at its own expense any and all damage and injury to City's Real Property occurring during the term of this Agreement, if caused by Concessionaire or any officer, agent, contractor, or employee of Concessionaire.

Section 17. Security Devices.

Concessionaire may provide at its own expense any legal devices, installations, or equipment designed for the purpose of protecting the Premises from theft, burglary, or vandalism provided, however, that written approval for any such installation is first obtained from the City. In no case shall security measures, except as required by Federal law, interfere with or restrict access to and egress from the Premises or City's Real Property.

Section 18. City's Right of Entry.

Concessionaire shall allow the City and any other governmental agency with jurisdiction over the Premises or the Tour Boats, to enter the Premises and the Tour Boats, at reasonable times upon reasonable notice to carry out any inspection, facilities management, or business purpose in or about the Premises or the Tour Boats without any abatement of rent. The City, at its sole discretion, may make a detailed and formal inspection and evaluation annually to ensure

compliance with this Agreement by Concessionaire. Each such inspection will be followed by a report in writing with a copy given to Concessionaire. Such inspections shall not materially interfere with Concessionaire's operations.

Section 19. Assignment and Subleasing.

Concessionaire shall not assign this Agreement, or any interest in this Agreement, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto (except to an affiliate of Concessionaire under common management and control), or suffer any other person (the affiliates, agents, employees and invitees of Concessionaire excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of the City and the State. Consent to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void, and shall at the option of the City, terminate this Agreement. This Agreement shall not, nor shall any interest therein, be assignable, as to the interest of Concessionaire, by operation of law, without the prior written consent of the City and the State. Excepting only a change in name, the term "assignment" shall include change in any form of business entity of Concessionaire, any merger or consolidation of Concessionaire, whether voluntarily or by operation of law providing; however, that a change of status due only to a change in the California Corporations Code shall not be deemed to be an assignment, and provided further that a change in the form of business entity of Concessionaire that results in an entity under the common management and control of Concessionaire shall not be deemed to be an assignment.

Section 20. Damage and Destruction of Premises.

In the event of the damage or destruction of the Premises or any of the adjacent wharves, docking, or access areas through no fault of Concessionaire such that Concessionaire is prevented from operating the Tour Boats Concession contemplated by this Agreement, the City, in its sole discretion, may elect to do any or all of the following:

A. Relocate Concessionaire at the City's sole expense to a reasonably comparable location in which event Concessionaire shall continue to offer the services contemplated by this Agreement on the terms and conditions contained herein;

B. Reconstruct the improvements in which event this Agreement shall continue in full force and effect; provided, however, that the rent to be paid by Concessionaire shall be abated during the time that Concessionaire is unable to operate from the Premises or a reasonably comparable substitute location.

C. Terminate this Agreement and any and all rights of the Parties hereunder, without any obligation or liability to Concessionaire.

If, as a result of damage or destruction through no fault of Concessionaire, the Premises become unusable for the purposes of operating the Tour Boats Concession contemplated by this Agreement for a period of ten (10) or more consecutive days and the City does not elect to

relocate Concessionaire or terminate this Agreement, but elects to reconstruct the Premises, then Concessionaire shall be permitted, at its own expense, to relocate its vessels to another location to conduct commercial tours or other related activities until the Premises have been reconstructed, and Concessionaire shall not be obligated to resume its activities and pay rent under this Agreement until thirty (30) days after the City gives Concessionaire notice that the Premises have been restored for use by Concessionaire.

Section 21. Default and Termination.

A. The following events shall be "Events of Default":

1. The failure of Concessionaire to punctually pay the rent or make any other payments required by this Agreement when due within ten (10) days after receipt of written notice from the City.
2. The failure of Concessionaire to offer or provide Tour Boats tours as required by this Agreement, unless such performance is made impossible through no fault of Concessionaire.
3. The failure of Concessionaire to maintain the Tour Boats in a clean, safe, and sanitary condition, or keep, perform, or observe any promise, covenant, condition, and agreement set forth in this Agreement on its part to be so kept, performed, or observed within thirty (30) days or such lesser time as may be reasonable after receipt of written notice of default hereunder from the City.
4. The abandonment, vacation, or discontinuance of the Tour Boats Concession without the written consent of the City.

B. Upon the occurrence of any one or more of the "Events of Default," the City shall have the right to terminate this Agreement. Upon such termination, Concessionaire's right to possession of the Premises shall terminate and Concessionaire shall surrender possession and vacate the Premises immediately. In such event, Concessionaire hereby authorizes the City to enter upon the Premises, or any part thereof, immediately and to take possession of the Premises and improvements. Election by the City to terminate this Agreement shall not prejudice any rights or claims the City may have for sums remaining due it or for damages or pursuing such other remedies as may be available to the City by law or equity, all remedies of the City to be cumulative and not alternative.

Section 22. Surrender and Disposition of Vessels, Equipment, Furniture, and Trade Fixtures.

Upon the expiration or sooner termination of this Agreement, Concessionaire shall peaceably vacate the Premises and any and all improvements located thereon or appurtenant thereto, and deliver up the same to the City in a reasonably good condition, ordinary wear and tear excepted.

Within thirty (30) days after any expiration or other termination of this Agreement, Concessionaire shall remove, at its own expense, all vessels, furniture, furnishings, equipment, inventory, and trade fixtures. This removal shall be conducted in an expeditious and orderly manner and shall be accomplished in such a way as to minimize the nature and the extent of any disruption of service to the public contracted for herein and the Premises shall be restored to their original condition, ordinary wear and tear excepted. Should Concessionaire fail to remove these items within said thirty-day period, it shall lose all right, title, and interest in and to said items, and the City may elect to keep the same upon the Premises or to sell, remove, or demolish them. In the event of such sale, removal, or demolition, Concessionaire shall reimburse the City for any reasonable cost in excess of any consideration received by the City as a result of the sale, removal or demolition.

Section 23. City's Remedies on Default.

It is agreed that if Concessionaire refuses to surrender, vacate, or deliver up possession of the Premises after the City shall have become entitled to the possession thereof, then in that event, the City, in the exercise of its police power or any other power contractual or otherwise that it may possess, may repossess the Premises as its former estate and expel, remove, and put out of possession Concessionaire using such force in so doing as may be needful or proper without being liable for prosecution for damages therefore and without prejudice to any other remedy allowed by law available in such cases. In addition, City shall have any and all rights and remedies provided by law.

Section 24. Notices.

Any notices and orders that may be given under this Agreement may be served by first-class mail or in person as follows, or to such other address as either may provide to the other in writing:

To the City:
City of Sacramento
Department of Convention, Culture and Leisure
Old Sacramento Management Division
922 Second Street, Suite 200
Sacramento, California 95814

To Concessionaire:
Terry A. MacRae
CEO
Hornblower Yachts, Inc.
Pier 3, The Embarcadero
San Francisco, CA 94111

Service shall be deemed complete upon deposit in the mail by certified mail with return receipt requested, or upon personal delivery.

Section 25. Independent Contractor

It is understood and agreed Concessionaire is an independent contractor and neither it nor any of its agents or employees shall be considered for any purpose whatsoever to be employees of the City.

Section 26. No Joint Venture.

This Agreement shall not create between the Parties a joint venture, partnership, or any other relationship of association other than landlord and tenant and licensor and licensee.

Section 27. Authorization.

Each individual executing this Agreement on behalf of any entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that the entity will thereby be obligated to perform the terms of this Agreement.

Section 28. Entire Agreement; Amendment in Writing.

This Agreement, including the exhibits referenced in this Agreement, is the final, complete and exclusive agreement between the Parties and cover in full each and every agreement of every kind or nature, whatsoever, concerning the subject matter of this Agreement and all preliminary negotiations and agreements of whatsoever kind or nature, are merged into this Agreement. The City has made no representations or promises whatsoever with respect to the subject matter of this Agreement, except those contained in this Agreement, and no other person, firm or corporation has at any time had any authority from the City to make any representations or promises on behalf of the City, and Concessionaire expressly agrees that if any such representations or promises have been made by others, Concessionaire hereby waives all right to rely on any such representations or promises. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement, any statute, law or custom to the contrary notwithstanding. Unless otherwise provided in this Agreement, no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the Parties.

CITY OF SACRAMENTO
A Municipal Corporation

By: Cassandra H.B. Jennings

Cassandra H.B. Jennings, Assistant City Manager
For: Ray Kerridge, City Manager, May 20, 2009

For: Ray Kerridge, City Manager

APPROVED TO AS FORM:
Angela Casagrande
Deputy City Attorney

ATTEST:
Dawn Bullwinkel
City Clerk
5-20-09

Attachments

- Exhibit A – Map of State Parcel, City's Real Property and Subleased State Parcel
- Exhibit B – Map of Tour Boat Dock, Ticket Booth, Garbage Disposal Facility and Loading Zone
- Exhibit C – Tour Boats Tour Schedule

CONCESSIONAIRE:

HOBENBLOWER YACHTS, INC.

NAME OF FIRM
94-2699024

Federal I.D. No.
100536

State I.D. No.
[Redacted]

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation (may require 2 signatures)
- Limited Liability Company
- Other (please specify: _____)

[Signature]

Signature of Authorized Person

TERRY A. MacRAE, CEO

Print Name and Title

Additional Signature (if required)

Print Name and Title

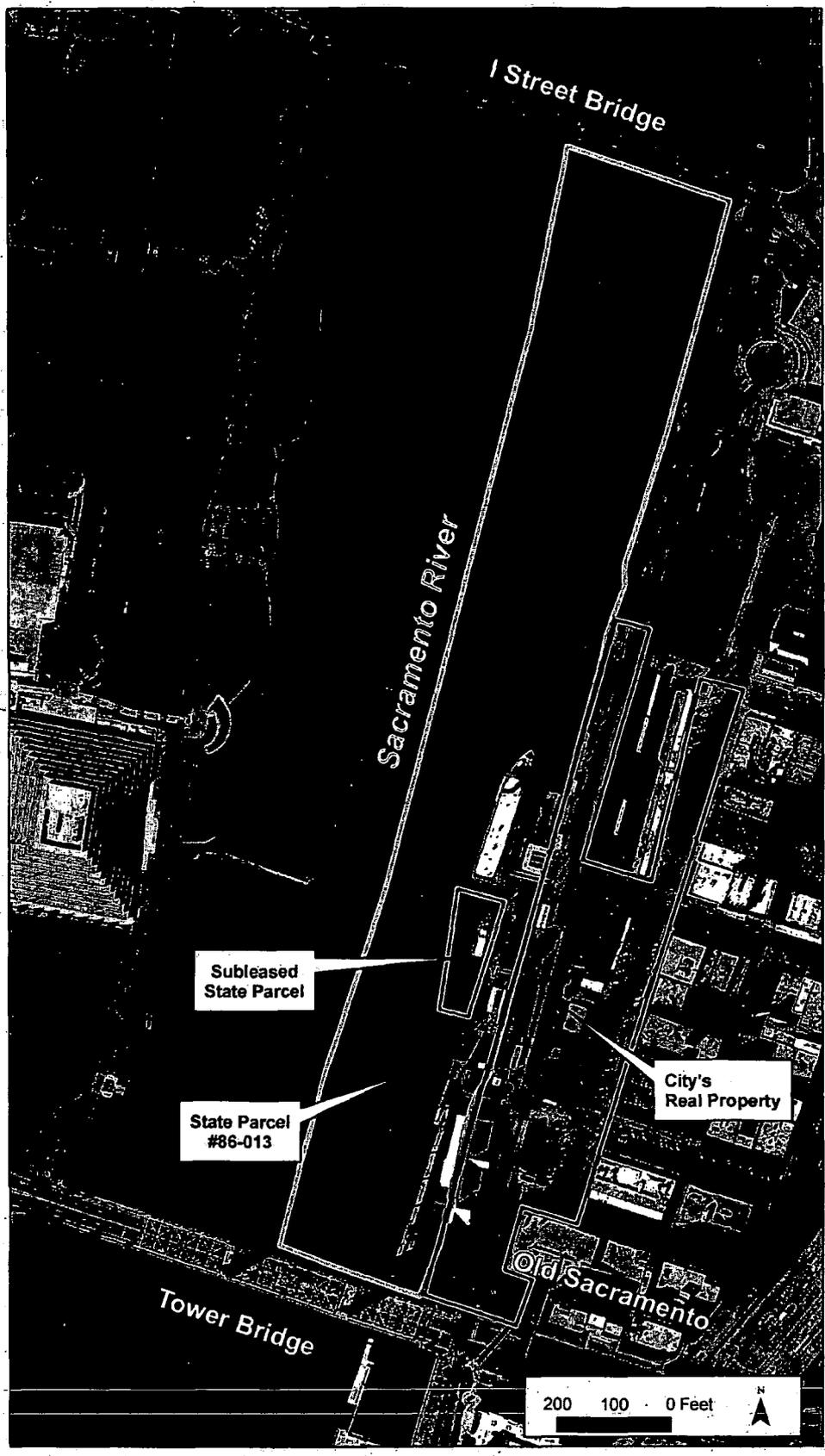


Exhibit- 'A'

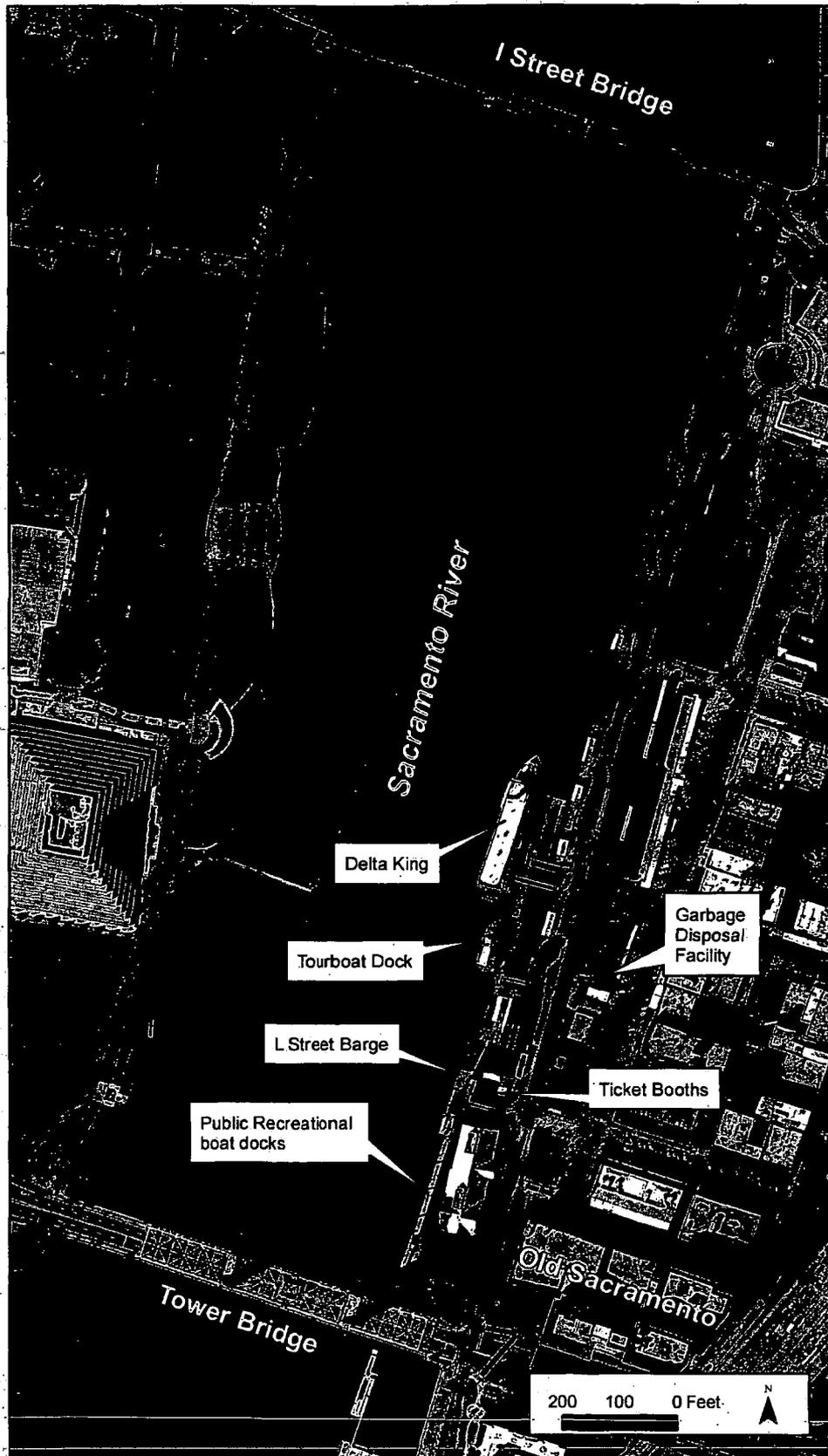


Exhibit - 'B'

TOUR SCHEDULE

Regular Season (April 1 – October 31)	Tours per day
Tuesday – Wednesday	1
Thursday – Sunday	2