

Meeting Date: 12/10/2013

Report Type: Consent

Report ID: 2013-00902

Title: Agreement: Sacramento Softball Cafe Lease and Concessions

Location: Citywide

Issue: The City issued a Request for Proposal to operate the Softball Complex Cafe. It is recommended the City enter into a lease agreement with LaRosa Sports. Revenue agreements exceeding \$100,000 require City Council approval.

Recommendation: Pass a Motion 1) awarding a five-year contract to Thomas LaRosa, an individual doing business as LaRosa Sports, to operate and manage the Sacramento Softball Complex Cafe from January 1, 2014, through December 31, 2018, in return for annual rent due the City of \$16,500 or 17% of gross receipts, whichever amount is greater, or a minimum of \$82,500 for the five-year term; 2) authorizing the City Manager or the City Manager's designee to extend the contract for an additional term of five years for a minimum of \$165,000 in rent due the City for the potential 10-year period; and 3) authorizing the City Manager or the City Manager's designee to execute the contracts specified above.

Contact: Elizabeth Anderson, Operations Manager, (916) 808-6076; Shannon Brown, Parks Manager, (916) 808-4070, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Community Recreation Services

Dept ID: 19001531

Attachments:

1-Description/Analysis

2-Softball Complex Cafe Agreement-LaRosa 11-20-13

City Attorney Review

Approved as to Form
Sheryl Patterson
11/27/2013 9:01:00 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
11/20/2013 5:43:28 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 11/26/2013 11:50:18 AM

Description/Analysis

Issue Detail: The City of Sacramento owns the Sacramento Softball Complex located at 3450 Longview Dr. Included in the complex are a kitchen, dining room, and outdoor patio area referred to as the Softball Complex Café. This lease and concession contract has the potential of generating a minimum of \$165,000 in revenue over a ten-year period.

Policy Considerations: The recommendations in this report are in accordance with City Code Chapter 3.68, Leases on City Owned Real Property and City Code Chapter 3.72.

Economic Impacts: None

Environmental Considerations: None

Sustainability: The contract stipulates that Concessionaire shall use biodegradable materials for all of its food packing and shall operate an effective recycling program for paper, cardboard, plastic, and all other recyclable materials used in its operation.

Commission/Committee Action: None

Rationale for Recommendation: On April 2, 2013, the Department of Parks and Recreation, in accordance with City Code Section 3.56, issued a Request for Proposal No. P13191531002 for the Management and Operation of the Sacramento Softball Complex Café. Responses were received from Thomas LaRosa (LaRosa Sports) and Matthew Marcoccia. Both proposals were written and presented well. The LaRosa proposal was scored higher in the evaluation process in several criteria including years of restaurant experience, staff experience, a menu with more variety, higher quality items, and better pricing, and was eligible for the 5% E/SBE preference. The most advantageous proposal was determined to be LaRosa Sports, Thomas LaRosa owner.

Financial Considerations: A five-year contract for the period January 1, 2014 through December 31, 2018 will generate annual rent of \$16,500 or 17% of gross receipts, whichever is greater, or a minimum of \$82,500 for the five-year term. The contract contains the option to extend for up to five additional years, subject to negotiation of a rent increase, for a minimum of \$165,000 in rental revenue to the City over the potential ten year period.

Emerging Small Business Development ESBD: La Rosa Sports is certified with the City of Sacramento as an Emerging/Small Business Enterprise (ESBE).

SACRAMENTO SOFTBALL CAFE LEASE AND CONCESSION CONTRACT

This SACRAMENTO SOFTBALL CAFE LEASE AND CONCESSION CONTRACT (“Contract”) is made as of December 10, 2013 (“Execution Date”), by and between the CITY OF SACRAMENTO, a municipal corporation (“City”), and THOMAS LAROSA, an individual doing business as LaRosa Sports (“Concessionaire”). The City and Concessionaire may be referred to collectively as “Parties” or in the singular as “Party”, as the context requires.

BACKGROUND

A. The City owns the Sacramento Softball Complex located at 3450 Longview Drive. As part of this Complex, there is a kitchen and dining room and outdoor patio area referred to as the Softball Complex Café.

B. In 1995, the City issued a lease for the Softball Complex Café to The Fetters Company, which installed tenant improvements and equipment necessary for a food service operation. These tenant improvements included dining room furniture and fixtures, and kitchen equipment. On February 11, 1999, the lease was assigned to Concessionaire, and the “Agreement Re Assignment of Lease” (City Agreement No. 99-032) provided that at the expiration of the lease all of the equipment installed by The Fetters Company would become the property of City.

C. On September 1, 2002, City and Concessionaire entered into a new lease for restaurant services at the Softball Complex Café (City Agreement No. 2002-154), which was amended twice and expired on August 31, 2012. Concessionaire has continued to occupy the Softball Complex Café as a holdover tenant.

D. In accordance with City Code Chapter 3.68, Leases of City Owned Real Property, and City Code Chapter 3.72, Concession Contracts, a Request for Proposals was issued to solicit price proposals for operation of the Softball Complex Café. Concessionaire was selected as the most qualified proposer offering the most advantageous lease proposal.

E. This Contract grants an exclusive license to operate a food concession at the Sacramento Softball Complex and a lease to occupy the City’s Softball Complex Café building for the term of the Contract.

NOW, THEREFORE, in consideration of the mutual commitments as hereinafter set forth, the Parties enter into this Contract for the purpose of establishing each Party’s rights and obligations with regard to the occupancy, use and maintenance of the Softball Complex Café at the Sacramento Softball Complex as follows:

1. **DESCRIPTION OF PREMISES.** City leases to Concessionaire and Concessionaire leases from City, on the terms and conditions in this Contract, the “Café Building” located

at the Sacramento Softball Complex (the “**Complex**”) located in Del Paso Regional Park (the “**Park**”) located at 3450 Longview Drive, as depicted on Exhibit A attached hereto (the “**Premises**”). The Premises includes the outdoor patio next to the Cafe Building. City makes no representations or warranties of any kind, express or implied, as to the suitability of the Premises for the operation of a restaurant. Concessionaire represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering into this Contract relying only on the facts ascertained from said independent investigation.

2. **CONCESSION RIGHTS.** The City grants to Concessionaire, on the terms and conditions in this Contract, the exclusive right and privilege to operate a restaurant and sell food, beverages, and other products (collectively “**Concessions**”) at the Premises. This Contract is made in reliance on the representations included in Concessionaire’s proposal dated April 23, 2013 (the “**Proposal**”), including, without limitation, the county and state food and alcohol permits, the Café menu, and the experience of LaRosa and his staff.

This Contract does not authorize Concessionaire to engage in any other activity in the Complex other than Concessions, nor does this Contract authorize Concessionaire to engage in any Concessions in any other areas of the Park. Concessionaire acknowledges and agrees that users of the Complex may bring their own beverages into the Complex. City reserves the right to allow other vendors to operate concessions at the Park in locations other than the Complex.

City’s Request for Proposals dated April, 2013 (the “**RFP**”) set forth a description of the annual events held at the Complex. However, City does not guarantee that the type and number of events will remain the same during the Term of this Contract.

3. **FURNITURE, FIXTURES AND EQUIPMENT.** The rights granted to Concessionaire include use of the City owned furniture, fixtures and equipment (“**FF&E**”) located in the Premises as of the Commencement Date. An inventory of the City-owned equipment was described in the RFP, as amended by Addendum No. 1 dated April 16, 2013. Concessionaire’s Proposal clarified that some equipment is owned by third party vendors. Concessionaire agrees to the following terms regarding City’s and Concessionaire’s FF&E.

A. Concessionaire is responsible, at its own expense, for supplying any other FF&E required for operation of its business, and to replace any of the City’s FF&E that may be damaged or destroyed by Concessionaire’s use during the Term of this Contract with the same type of FF&E. City is not required to replace or repair any damaged or destroyed City-owned FF&E. Concessionaire may not pledge as security for any loan City’s FF&E located in the Premises as of the Commencement Date.

B. If Concessionaire, at its option and with City’s consent, replaces any City-owned FF&E which is not damaged or destroyed, ownership of such replaced FF&E shall be transferred to City at the expiration or termination of this Contract. At the expiration or

termination of this Contract, Concessionaire shall not remove any City-owned FF&E and may only remove the FF&E that Concessionaire supplied as its personal property if such removal will not damage the Premises.

C. The FF&E listed in the Concessionaire's Proposal, which is not required for the food service operations, such as TVs, arcade games, juke box, video projector and screen, may be placed in the Premises. Any other FF&E that is not required for the food service operation, and the sale of any non-food merchandise, goods or services in the Premises which is not included in the Menu submitted with the Proposal, requires City's prior written approval.

4. CONCESSION OPERATIONS. Concessionaire shall use the Premises only for food service operations, although the ancillary sale of other products and operation of arcade games is also permitted. Concessionaire will not interfere in any way with the use or enjoyment of the Complex and the Park by the public. Concessionaire shall comply with all of the following provisions:

A. Restaurant Operation. Concessionaire shall operate the restaurant in a professional manner and in accordance with all applicable laws and regulations. Concessionaire shall devote as much of its time to the restaurant operation as may be necessary to provide first-class service to the Complex patrons. Concessionaire shall insure that its employees are well groomed, neat in appearance, and conduct themselves at all times in a professional manner, and in compliance with City's Drug Free Workplace Policy. Concessionaire shall insure that the Premises is maintained in a clean, safe, sanitary and attractive condition at all times.

B. Food Carts. Concessionaire is also permitted to sell food and beverages from one or more carts at other locations in the Complex with the advanced written consent of the Complex manager.

C. Permits and Licenses. Concessionaire shall possess and maintain all required operating permits for the restaurant. Concessionaire shall at all times maintain a "Pass" rating from the Sacramento County Department of Environmental Services.

D. Alcohol Sale. Concessionaire may sell beer and wine with the prior ABC permits, but is prohibited from selling any distilled liquor.

E. Schedule. Concessionaire shall operate the restaurant to sell food and beverages to the public during all scheduled events at the Complex. Concessionaire may operate the restaurant during other days and hours. The Concessionaire shall submit to the City a written schedule specifying the regular hours and days of operation ("**Schedule**") to be approved by the Director of Parks and Recreation ("**Director**") or his designee, which approval will not be unreasonably withheld. The Schedule approved by the Director may be referred to as the "**Approved Schedule.**" Any adjustments or amendments to the Approved Schedule must be agreed upon by both Parties. All unplanned closures of the

restaurant, regardless of the circumstances, must be approved by the City. Concessionaire shall notify the City as far in advance as practicable in the event Concessionaire will not operate the restaurant according to the Approved Schedule. In the event it is not possible or practicable to provide the City with advance notice, then Concessionaire shall provide the City with notice as soon as reasonably possible under the circumstances.

F. Special Events. Concessionaire is permitted to use the Premises for special events when the Complex is not scheduled for use for a sports tournament or city-sponsored event. However, any use of the softball fields or volleyball courts as part of such event requires a City issued permit. Concessionaire shall not engage in any other business or activity in the Complex not authorized under this Contract without the prior written authorization of the Director or his designee.

G. Non-Discrimination. In its occupancy and use of the Premises, Concessionaire shall not discriminate against any applicant for employment, any employee, or any member of the public or community group on the grounds of race, color, religion, sex, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation.

H. Menu and Pricing. Concessionaire shall offer for sale a wide variety of food and beverage items which meet the dietary needs of the public at reasonable prices consistent with the industry. Concessionaire shall provide a cash receipt to each customer setting forth the full amount of the sale. Concessionaire shall supply and have ready for sale all items listed on the Menu and Pricing Sheet listed in its Proposal in sufficient quantities to meet Complex visitors' needs. Any change in the Menu and Pricing Sheet must be approved by the City in advance. However, prices may be increased during the term of this Contract due to inflation and increases in wholesale food costs. City reserves the right to restrict the sale of certain types of food items or products which create excessive debris within, or require special cleaning of, the facilities within the Complex, such as gum and shelled peanuts.

I. Recycling and Waste Reduction. Concessionaire shall use biodegradable materials for all of its food packing. Concessionaire shall operate an effective recycling program for paper, cardboard, plastic, and all other recyclable materials used in its operation. Concessionaire shall remove all such recyclable items from the Premises at the end of each day. In the event Concessionaire shall fail to comply with the provisions of this subsection, the City reserves the right to arrange for the removal of the recyclables at Concessionaire's expense in the same manner as trash removal set out below.

J. Trash Removal. Concessionaire shall keep the Premises in a clean and attractive condition at all times. Concessionaire shall remove all trash and debris in and around the Premises, including the outdoor patio and areas immediately adjacent thereto, on a daily basis. Concessionaire shall make arrangements for commercial trash removal services and shall not place its garbage in any City trash receptacles in the Complex or Park. If the City, in its sole discretion, determines that Concessionaire has failed to fulfill its

obligations under this subsection, then the City reserves the right to arrange for pickup of Concessionaire's trash and to charge the reasonable cost of that removal to Concessionaire. In no event shall the City arrange the pickup of Concessionaire's trash at the cost of Concessionaire without providing a minimum of twenty-four (24) hours' notice to Concessionaire and allowing Concessionaire to arrange for such pickup itself.

K. Signage. Concessionaire shall place no advertising, promotion, or notices related to the operation the Concession in the Complex except on the Premises. Concessionaire shall not place any advertising signs, tables, chairs, fences, shade structures, or other furniture on or near any other location in the Complex, except as authorized by the City. Concessionaire is permitted to place one (1) A-frame sign advertising the Concession within the Complex at a location approved by the Complex manager. City shall have final approval of the size, materials, and method of construction of the A-frame sign.

L. Parking. During the hours of operation of the restaurant, Concessionaire shall park its vehicles only in the approved parking lot location or maintenance roads as directed by the Director or his designee.

M. Amplified Sound. Concessionaire shall not operate or permit any music or other noises within the Premises at such a volume that it would disturb or interfere with the public's use of the Complex or the Park.

N. Employee Wages and Benefits. This Contract shall be subject to City's Living Wage Ordinance (Chapter 3.58 of the Sacramento City Code) and Non-Discrimination in Employee Benefits Code (Chapter 3.54 of the Sacramento City Code).

O. City Access. Concessionaire shall permit City and its employees and authorized agents to enter the Premises at all reasonable times during the restaurant's usual hours of operation or upon twenty-four (24) hours advance notice for the purpose of inspecting the Premises and determining compliance by Concessionaire with the requirements of this Contract.

5. TERM. The term of this Contract shall be for five (5) years commencing on January 1, 2014 ("Commencement Date"), and terminating on December 31, 2018 (the "**Initial Term**"), subject to prior termination by the City in the event of breach of any term or condition of this Contract.

A. Upon mutual agreement of the Parties, this Contract may be renewed for one (1) additional term of five years (5) years (the "**Extended Term**") following the expiration of the Initial Term on the same terms and conditions, but subject to any adjustment in Rent as may be negotiated by the Parties. If Concessionaire desires to renew this Contract, it must provide written notice to the City of its desire to renew for the Extended Term no sooner than one-hundred twenty (120) days and not later than sixty (60) days prior to the expiration of the Initial Term. The reference to "**Term**" in this Contract means the Initial Term and the Extended Term.

B. If Concessionaire is permitted with the consent of City, either express or implied, to occupy the Premises after the expiration of the Initial Term or the Extended Term, such holding over shall be a month-to-month tenancy only and subject to the terms and conditions of this Contract and shall not be a renewal. The Rent in effect at the time of expiration of the Initial Term or the Extended Term, as applicable, shall apply during the hold expiration of the Initial Term or the Extended Term over period.

6. **RENT.** In accordance with the Proposal, Concessionaire shall pay City rent during the Initial Term on an annual basis in the amount equal to seventeen percent (17%) of its gross receipts which is the “**Maximum Annual Rent**,” or Sixteen Thousand Five Hundred Dollars (\$16,500) which is the “**Minimum Annual Rent**,” whichever amount is greater. The term “gross receipts” means all money, cash, receipts, and receivables from the Concessions at the Premises, but excludes (i) sales and excise taxes, (ii) tips, gratuities and service charges, and (iii) refunds.

A. Concessionaire shall pay City the monthly installments of seventeen percent (17%) of its gross receipts for the prior month, the “Monthly Rent,” on before the twentieth (20) day of each month. Any late payments of the Monthly Rent shall be assessed a penalty of five percent (5%) which must be paid with the next Monthly Rent payment. Payments shall be made to the City’s Department of Parks and Recreation, 4623 T Street, Sacramento, CA 95819 on or before the due date.

B. Within thirty (30) days after the end of each calendar year, Concessionaire shall report to City the amount of its gross receipts for the prior year and Monthly Rent payments made during that year as compared against the Minimum Annual Rent. If the total amount of the Monthly Rent payments made during the prior year is less than the Minimum Annual Rent, Concessionaire shall pay City the difference between the total Monthly Rent payments and the Minimum Annual Rent at the same time that it submits the annual report. The report must be certified as to accuracy by Concessionaire. City shall have the right at any time to audit Concessionaire’s books and records to verify the accuracy of its gross receipts reporting.

C. Any amount due to City and not paid when due shall bear interest at the maximum rate then allowable by law beginning fifteen (15) days from the due date. Interest shall not accrue against the 5% late payment penalty. Payment of the late penalty payment and interest shall not excuse or cure any default by Concessionaire to make the required rent payment(s) when due, and City shall not be precluded from enforcing its rights to terminate this Contract for default even if it accepts such payment(s).

D. Concessionaire shall not be entitled to withhold any rent due on account of an alleged or actual breach by City of any of its obligations under this Contract. Any attempt to withhold payment of rent on such grounds shall constitute an event of default.

7. **TAXES.** Concessionaire shall, in addition to other sums to be paid under this Contract, pay to the County of Sacramento all personal property taxes which may be levied against the personal property of Concessionaire at the Premises, and any possessory interest tax per Section 107.6 of the California Revenue and Taxation Code, which may be levied by virtue of this Contract.

8. **UTILITIES AND SERVICES.** Except as set forth below, Concessionaire shall be solely responsible for the costs of all utilities and services for the Premises and its restaurant operation. The term “services” includes, without limitation, janitorial, pest control, security, security alarm monitoring, fire alarm monitoring, fire extinguisher maintenance, telephone, TV and internet services. Concessionaire shall arrange and pay for such services by utility providers, including SMUD, PG&E, and City, and independent professional contractors. If any event of pest or vermin infestation is found in the Premises, Concessionaire shall immediately contract with a bonded, professional pest-and-sanitation control operator to immediately remedy such infestation. City shall only be responsible for providing and maintaining electrical, gas, water and sewer connections to the Premises; however, City’s obligations shall be excused in the event of structural or system defects and failures, or acts of vandalism, which render the utilities or facilities inoperable or prevent its use.

9. **MAINTENANCE OF PREMISES.** With regard to maintenance of the Café Building and the outdoor patio, and the grounds immediately adjacent thereto, the Parties agree as follows:

A. **Concessionaire Maintenance.** Concessionaire shall be solely responsible for maintenance, repair and replacement of the following Premises systems, fixtures and components necessitated by the normal use and wear of the building and facilities, but excluding damages caused by vandalism:

- (1) Security Alarm System;
- (2) Lighting bulbs and fixtures;
- (3) All interior improvements including walls, ceiling tiles, flooring and window coverings, doors and windows, including glass replacement;
- (4) Painting the interior of the Premises and graffiti removal from the interior and exterior of the Premises;
- (5) Telephone and computer-related wires and systems; and
- (6) Minor plumbing (e.g., clogged sink) and incidental expenses.

Concessionaire shall first notify the Complex manager of the required maintenance work and the estimated costs of the repairs and Concessionaire’s schedule for completion of the work. If Concessionaire fails or refuses to maintain, repair or replace any of the foregoing items in a manner reasonably satisfactory to City so that the systems remains operable and the Premises remains in good condition; after providing prior written notice to Concessionaire, City may elect to perform such maintenance and to make the necessary repairs or replacements on Concessionaire’s behalf. In such event, Concessionaire shall refund to City the cost of such work as “**Maintenance Charges**” within ten (10) days after

receipt from City of an invoice specifying said work and its cost. In addition, Concessionaire shall be responsible for any and all damage to City property and facilities caused by Concessionaire or Concessionaire's agents or employees undertaking maintenance work.

B. City Maintenance. City shall be responsible for maintenance, repair and replacement of systems, fixtures and components in the Premises necessitated by the normal use and wear of the building and facilities, as well as components of the Complex required for Concessionaire's operations, but excluding damages caused by vandalism, as follows:

- (1) Heating and air conditioning (HVAC) systems, with the exception of replacement of major system components;
- (2) Roofing leaks and defects and weather proofing, with the exception of roof replacement;
- (3) Plumbing and electrical pipes, wires and systems inside the interior walls;
- (4) Painting and caulking the exterior of the building if signs of paint deterioration exist;
- (5) Doors and door hardware including locks;
- (6) Fencing and gates, parking lot pavement, and landscaping irrigation system and plantings.
- (7) Lighting in the Complex and the adjacent parking lot.
- (8) Restrooms in the Complex, but not in the Café Building (if any).

C. Reporting. Concessionaire shall contact the City's Complex manager to report any problems with the Premises or the Complex which requires maintenance by City. In particular, Concessionaire shall report to City as soon as any of the following are observed:

- (1) Graffiti, vandalism or other illegal activity in or around the Premises, the Complex, and adjacent parking lot and Park facilities;
- (2) Exterior Complex or parking lot lighting is inoperable;
- (3) Parking lot pavement is cracking and uplifting and presents a safety hazard;
- (4) Roof leaks, electrical system default, plumbing system pipe ruptures, or if HVAC system becomes inoperable; and
- (5) Any other problems which may pose a health or safety hazard.

D. Suspension of Use. Whenever the condition of the Premises and/or the exterior areas surrounding the Premises could expose the public to safety or health hazards or could cause damage to their personal property, Concessionaire shall immediately discontinue use of the Premises and shall prevent public entry until the defects can be remediated and the threat of injury or damage to the public and property no longer exists. If City discovers such safety or hazardous conditions at or near the Premises, City shall have the right to order the Premises immediately closed until such conditions are remedied or removed by Concessionaire and/or by City.

E. Major Replacements and Repairs. During the Term of this Contract, City may, but is not obligated to, undertake: (i) replacement of electrical, gas, water and sewer line connections; (ii) replacement of the heating and/or air conditioning systems, roof, and other structural defects of the Premises; or (iii) repair of damages caused by vandalism. If City does not undertake such replacements and repairs, the Parties are unable to mutually agree to modify the terms of this Contract to cover the costs of such items, and the Premises is not operable in a safe, sanitary and attractive condition without such replacements and repairs; in that event City may terminate this Contract without any liability to Concessionaire.

10. IMPROVEMENTS, LIENS AND TAXES. Concessionaire shall not undertake any alterations or improvements to the Premises building and facilities, install signage, or remove any furniture, fixtures or equipment from the Premises without City's prior written consent. If City permits Concessionaire to undertake alterations or improvements to the Premises, upon expiration or earlier termination of this Contract, those alterations or improvements which are affixed to the building shall become the property of City without any obligation to reimburse Concessionaire for said costs. Concessionaire shall not create waste, destroy or modify any improvements or fixtures except as approved by CITY in advance in writing.

Concessionaire shall pay in full all persons and entities who perform labor or provide materials for the work to be performed by Concessionaire at the Premises and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against City's property for such work or materials. Concessionaire shall indemnify and hold harmless City from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or arising from such work done, labor performed, or materials furnished.

11. WASTE AND QUIET ENJOYMENT. Concessionaire shall not commit, or suffer to be committed, any waste upon the Premises, or conduct any activity that may constitute a public or private nuisance. City covenants that if Concessionaire is in compliance with its obligations under this Contract, Concessionaire shall have and enjoy during the Term the quiet and undisturbed possession of the Premises and all appurtenances appertaining thereto as contemplated in this Contract.

12. TERMINATION. This Contract may be terminated in any one of the following ways, which will not be exclusive, but will be cumulative with any other remedies provided by law or equity:

A. Force Majeure. This Contract shall be considered terminated if any act of the federal, state, or county government, act of war, or act of God results in the total or partial destruction of or damage to the Premises or otherwise prevents the Parties from fulfilling their obligations under this Contract. No damages shall be allowed to either Party because of such termination.

B. Termination for Concessionaire's Convenience. If Concessionaire decides to terminate this Contract for its convenience, it shall provide City with at least ninety (90) days prior written notice. If Concessionaire terminates this Contract for its convenience, Concessionaire shall not be entitled to any compensation for the value of its maintenance and improvements made to the Premises or for any damages suffered by it whatsoever.

C. Termination for City's Convenience. City may, at its sole discretion, terminate this Contract for its convenience at a time earlier than the specified expiration date of this Contract by providing Concessionaire with at least ninety (90) days prior written notice. City shall not be liable to Concessionaire for any consequential or other damages, except as expressly provided herein.

D. Insolvency and Receiver. Either the appointment of a receiver to take possession of all or substantially all of the assets of Concessionaire's business at the Premises, a general assignment by Concessionaire's business assets for the benefit of creditors, or any action taken or suffered by Concessionaire under any insolvency or bankruptcy act which affects its business at the Premises, shall constitute a breach of this Contract by Concessionaire. Should such action occur against Concessionaire, it shall have thirty (30) days to cure the action or suit prior to being considered in default of this Contract.

E. Defaults. The following rights and remedies shall be available to City in the event Concessionaire commits any act of default during the Term. Unless a different time period is set forth elsewhere in this Contract, Concessionaire shall be deemed to be in default only after receipt of written notice from City specifying the nature of the violation and not having cured said violation within thirty (30) days after receipt of the notice. These rights and remedies shall not be exclusive, but shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law. In addition to non-compliance with any other provision of this Contract, the occurrence of any of the following by Concessionaire shall constitute a default under this Contract:

- (1) Failure to pay any sum due under this Contract on the date the same first becomes due, if such failure shall continue for more than ten (10) days after written notice from the City to Concessionaire;
- (2) Failure to perform any other obligation under this Contract if the failure to perform is not cured within thirty (30) days after City issues written notice to Concessionaire; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, then Concessionaire shall not be in default under this Contract if Concessionaire commences to cure the failure within the thirty (30) day period and diligently and in good faith continues to cure the failure thereafter;
- (3) Vacating or abandonment of the Premises;
- (4) Knowing providing material false financial statements, but inadvertent errors shall not be considered a default or material breach under any circumstances;

- (5) The failure of Concessionaire, or an individual with suitable management skills and experience, to be in effective management control of the operation of the restaurant at the Premises, where such failure continues for more than ten (10) days after written notice from the Director or his designee to cure the default; provided, however, that if the failure cannot reasonably be cured within ten (10) days, then Concessionaire shall not be in default under this Contract if Concessionaire commences to cure the failure within the thirty (30) day period and diligently and in good faith continues to cure the failure thereafter.

F. Remedies. If Concessionaire commits a default, then City shall have all remedies available at law and/or equity for such default including, without limitation, the right to terminate this Contract upon written notice to Concessionaire, and Concessionaire shall immediately surrender possession of the Premises to City. City shall be entitled to recover from Concessionaire all damages incurred by City by reason of Concessionaire's default, including, without limitation, the costs of recovering possession of the Premises, expenses reletting, including necessary renovation and alteration of the Premises, and reasonable attorneys' fees, whether for outside counsel or the City Attorney. Efforts by City to mitigate the damages caused by Concessionaire's breach of this Contract shall not waive City's right to recover damages. Nothing in this Section 12 shall affect the right of City to indemnification against liability arising from or related to acts or events occurring prior to the termination of this Contract for personal injuries or property damage, or against mechanic's liens or other liens, claims or expenses.

13. INDEMNITY. Concessionaire shall defend, hold harmless and indemnify the City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including, but not limited to, Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Contract by Concessionaire, including its contractors, subcontractors, agents and employees, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of the City, including its contractors, subcontractors, agents, and employees, except when such contractors, subcontractors, agents, and employees are under the direct supervision and control of Concessionaire. The existence or acceptance by the City of any of the insurance policies or coverages described in this Contract shall not affect or limit any of the City's rights under this Section 13, nor shall the limits of such insurance limit the liability of Concessionaire hereunder. The provisions of this Section 13 shall survive any expiration or termination of

this Contract.

14. **INSURANCE REQUIREMENTS**. During the Term of this Contract, Concessionaire shall maintain at its sole cost and expense the insurance coverage described below:

A. **Minimum Scope & Limits of Insurance Coverage.**

1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Concessionaire. No automobile liability insurance shall be required if Concessionaire completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services under this Contract.” _____ (Concessionaire initials)

3) Workers’ Compensation Insurance with statutory limits, and Employers’ Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker’s Compensation policy shall include a waiver of subrogation.

B. **Additional Insured Coverage.**

1) Commercial General Liability Insurance: The City, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Concessionaire, products and completed operations of Concessionaire, and premises owned, leased or used by Concessionaire. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier. If the policy includes 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.

2) **Automobile Liability Insurance:** The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects auto liability.

C. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1) Concessionaire's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Concessionaire's insurance and shall not contribute with it.

2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.

3) Coverage shall state that Concessionaire's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. **Acceptability of Insurance.** 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 14 must be declared to and approved by the City Risk Management Division in writing prior to execution of this Contract.

F. **Verification of Coverage.** Concessionaire shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier. The City may withdraw its offer of contract or terminate this Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Contract. The City may terminate the Contract if the insurance is canceled or Concessionaire otherwise ceases to be insured as required herein.

15. MAINTENANCE AND INSPECTION OF RECORDS. Concessionaire shall comply with all of the following obligations:

A. At all times while this Contract is in effect and for a period of three (3) years thereafter, keep true, accurate, and complete financial records and accounts of its operations under this Contract, including receipts, and such other financial or business records as may be required the Director or authorized City representatives. The Director,

or authorized City representatives, shall have the right at all times to examine and audit said records and accounts.

B. Furnish to the City a copy of each and every sales tax return submitted to the State Board of Equalization no later than thirty (30) days after the filing dates established by the State.

C. Furnish to the City, on or before the fifteenth (15th) of April, an audited annual financial statement for the previous calendar year. This statement must consist of a balance sheet and income statement covering the calendar year of this Contract. The statement must be prepared by a professional bookkeeper on their stationery for Concessionaire and only include financial data for Concessionaire's operations under this Contract.

16. NOTICES. All notices, consents, approvals and other communications under this Contract shall be in writing and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) day after delivery to any overnight courier service, fee prepaid; or (c) three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as follows:

CITY: City of Sacramento
Attn: Director, Parks and Recreation Department
New City Hall
915 I Street, 3rd Floor
Sacramento, CA 95814
(916) 808-8526

Concessionaire: La Rosa Sports
Attn: Thomas B. La Rosa
4523 Hackberry Lane
Carmichael CA 95608
Phone (916) 606-7745

Any party may change the address for notice by giving written notice to the other party according to this Section 16.

17. ASSIGNMENT PROHIBITED. The expertise and experience of Concessionaire are material considerations for this Contract. The City has a strong interest in the qualifications and capability of Concessionaire to fulfill the obligations imposed on Concessionaire under this Contract to benefit City and the public. In recognition of this interest, Concessionaire shall not assign any right or obligation pursuant to this Contract without the written consent of the City. Any attempted or purported assignment without the City's written consent shall be void and of no effect.

18. **WAIVER.** The waiver by either Party of any breach of any term, covenant, or condition contained in this Contract shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any delinquent payment by City shall not be deemed to be a waiver of any preceding breach by Concessionaire of any term, covenant, or condition of this Contract, other than the failure of Concessionaire to pay the particular payment so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such payment.

19. **INDEPENDENT CONTRACTORS; NO JOINT VENTURE.** It is understood and agreed that each Party is an independent entity or individual and that this Contract shall not create a relationship between City and Concessionaire or its individual members of employer-employee, joint venture, partnership, or any other relationship of association. The employees, agents and contractors of Concessionaire shall not be entitled to any benefits payable to employees of City. No Party shall have the authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent, nor bind the other Party to any obligations whatsoever.

20. **NO THIRD PARTY BENEFICIARIES.** This Contract is for the sole benefit of the Parties hereto and no other person or entity shall be entitled to rely upon or receive any benefit from this Contract or any term hereof.

21. **BINDING ON SUCCESSORS.** The covenants and conditions contained in this Contract shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the Parties.

22. **TIME.** Time is of the essence of this Contract.

23. **EXCUSABLE DELAYS.** If the performance of any act required by this Contract to be performed by either City or Concessionaire is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials or permits, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay. However, nothing contained in this Section 23 shall excuse the prompt payment owed by Concessionaire as required by this Contract or the performance of any act rendered difficult solely because of the financial condition of Concessionaire.

24. **SURRENDER AT END OF TERM.** Concessionaire agrees that on the last day of the Term or sooner termination of this Contract, to surrender the Premises to the City in its original condition as of the Commencement Date and broom clean, reasonable use and wear excepted, and to remove all of Concessionaire's signs and personal property not affixed to the Premises. If Concessionaire fails to remove its personal property within thirty (30) days after expiration or termination of this Contract, then City may use or remove and dispose of such items without any liability to Concessionaire.

25. **ENFORCEMENT OF CONTRACT.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Contract shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

26. **ATTORNEYS' FEES.** Any Party may bring a suit or proceeding to enforce or require performance of the terms of this Contract, and the prevailing Party in such suit or proceeding shall be entitled to recover from the other Party reasonable costs and expenses, including attorney's fees, whether for outside counsel or the City Attorney.

27. **CAPTIONS.** The title or headings to the paragraphs of this Contract are not a part of this Contract and shall have no effect upon the construction or interpretation of any part of this Contract.

28. **COUNTERPARTS.** This Contract may be executed in one or more counterparts. Facsimile and PDF (portable document format) signatures on this Contract shall be binding as if an original.

29. **AMBIGUITIES.** The Parties have each carefully reviewed this Contract and have agreed to each term of this Contract. No ambiguity shall be presumed to be construed against either Party.

30. **ENTIRE AGREEMENT AND AMENDMENTS.** This Contract contains the entire agreement between the Parties with respect to the subject matter set forth in this Contract and supersedes all prior agreements, discussions and understandings, whether oral or written. This Contract may be amended only by means of a writing signed by all Parties hereto.

31. **SEVERABILITY.** If any portion of this Contract or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

32. **AUTHORITY.** Each of the signatories to this Contract represents that he/she is authorized to sign the Contract on behalf of such Party and that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained that no further approvals, acts or consents are required to bind such Party to this Agreement.

33. **TERMINATION OF PRIOR LEASE.** The Parties agree that as of the Commencement Date, City Agreement No. 2002-154, the Lease for Restaurant Services at the Sacramento Softball Complex, as amended, shall expire and be of no further force or effect, except for the obligation to indemnify the City for any Liabilities which occurred prior to the Commencement Date pursuant to Section 14 of that City Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO,
a municipal corporation

By: _____
James L. Combs
Director of Parks and Recreation
For: John F. Shirey, City Manager

Approved As To Form:

By: _____
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

THOMAS LAROSA,
an individual doing business as LaRosa Sports

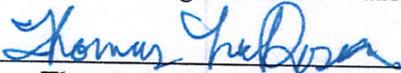
By: 
Thomas LaRosa Concessionaire

EXHIBIT A



CONTRACT
 DEL PASO PARK SPORTS COMPLEX

Project No. 85509
 Project

DEL PASO PARK SPORTS COMPLEX

FOR THE COUNTY OF SACRAMENTO

Sheet Title

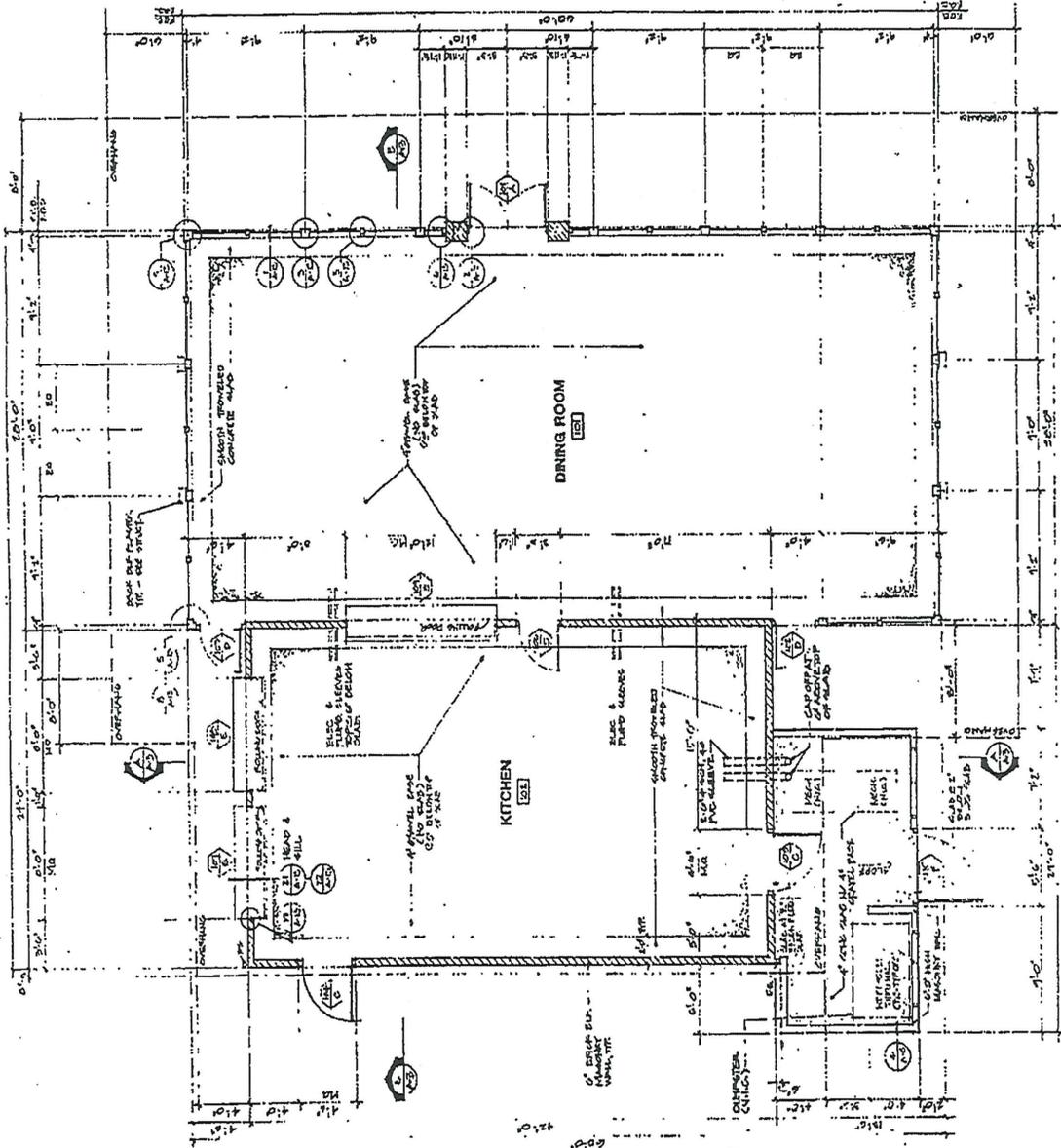
CONCESSION BUILDING FLOOR PLAN

DATE: JAN 4, 1988

Sheet Number

A 2

of 35



FLOOR PLAN - CONCESSION BUILDING
 1/2" = 1'-0"

Unigard Insurance Company
PO Box 90701, Bellevue, WA 98009-0701

Policy No.
4009079

Commercial Multi-Line Policy

Page 1

Schedule of Additional Insureds

Policy Period: February 26, 2013 TO February 26, 2014

CITY OF SACRAMENTO
C/O EBIX BPO
PO BOX 257
PORTLAND, MI 488750257

RE: FORM 154875
Days notice: 30

Loan number: REF #106-Z327374

141025 0787

12-26-12

NONCONTRACTOR'S ADDITIONAL INSURED'S ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (called additional insured) described in Paragraphs A.1. through A.8. below whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be currently in effect or becoming effective during the term of this policy; executed prior to the "bodily injury", "property damage" or "personal injury and advertising injury", but this paragraph does not apply to any additional insured more specifically identified elsewhere in the policy.

1. ADDITIONAL INSURED - STATE OR POLITICAL SUBDIVISIONS - PERMITS

A state or political subdivision subject to the following provisions:

- a. A state or political subdivision is an additional insured only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control to which this insurance applies:
 - (1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (2) The construction, erection, or removal of elevators; or
 - (3) The ownership, maintenance, or use of any elevators covered by this insurance.
- b. A state or political subdivision is an additional insured only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed by or for you for the state or political subdivision.

2. ADDITIONAL INSURED - CONTROLLING INTEREST

Any person or organizations with a controlling interest in you but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

3. ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you can cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

4. ADDITIONAL INSURED - MORTGAGEE, ASSIGNEE OR RECEIVER

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

5. ADDITIONAL INSURED - OWNERS OR OTHER INTERESTS FROM WHOM LAND HAS BEEN LEASED

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to lease that land; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

6. ADDITIONAL INSURED - CO-OWNER OF INSURED PREMISES

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

7. ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT

Any person or organization from whom you lease equipment. Such person or organization are insured only with respect to their liability arising out of the maintenance, operation or use by you or equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply:

- a. To any "occurrence" which takes place after the equipment lease expires; or
- b. To "bodily injury" or "property damage" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under Paragraphs A.1. through A.8. above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard."

8. ADDITIONAL INSURED - VENDORS

Any "vendor", but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in Sub-paragraphs d. or f.; or
 - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

B. As respects the coverage provided under this endorsement, Paragraph 4.b.(3.) SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is added:

4.b.(3.) This insurance is excess over any other insurance covering the additional insured as an insured whether primary, excess, contingent or on any other basis, unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing.