

ORDINANCE No. 121451

COUNCIL BILL No. 114853

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the execution of a five (5) year concession agreement with two five (5) year options, with Fifth Avenue Sports, LLC to manage, maintain, and provide boat rental services at the Department's facility at Green Lake Park.

COMPTROLLER FILE No. _____

Introduced: <u>APR 5 - 2004</u>	By: <u>DELLA</u>
Referred: <u>ADD 5 - 2004</u>	To: <u>Parks, Neighborhoods & Education</u>
Referred:	To:
Referred:	To:
Reported: <u>4-26-04</u>	Second Reading:
Third Reading: <u>4-26-04</u>	Signed: <u>4-26-04</u>
Presented to Mayor: <u>4-27-04</u>	Approved: <u>5/7/04</u>
Returned to City Clerk: <u>5/7/04</u>	Published: <u>title 2pp</u>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

US9047

The City of Seattle--Legislative

REPORT OF COMMITTEE

Honorable President:

Your Committee on Parks, Neighborhoods & Education

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommend that the same

Amendment -

Pass - Della, Steinbreck,

(u)
(M)

4-26-04 Passed 9-0

Committee Chair

me

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

Honorable President:

Your Committee on Parks, Neighborhoods & Education

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommended that the same:

Amendment -

Pass - Della, Steinbreck, Hodder

(4)
(M)

4-26-04 Passed 9-0

Committee Chair

SMEAD 45 YSP 17703

3/31/04
Facel Map
Call
Council
Committee
No tables
No Review notes
Law Department

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ORDINANCE 121451

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the execution of a five (5) year concession agreement with two five (5) year options, with Fifth Avenue Sports, LLC to manage, maintain, and provide boat rental services at the Department's facility at Green Lake Park.

WHEREAS, the provision of boat rental services at Green Lake Park for the public has been a popular feature for many years; and

WHEREAS, the Department desires to continue boat rental services and provide a long-term operator for such services; and

WHEREAS, the Department publicly advertised and completed a Request for Proposals (RFP) process in 2001 for a new rental boat concessionaire; and

WHEREAS, Fifth Avenue Sports, LLC submitted the only proposal and its proposal was evaluated to be fully responsive to the RFP questionnaire; and

WHEREAS, the Department wishes to execute and finalize this Concession Agreement with Fifth Avenue Sports, LLC, NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation, or his designee, is hereby authorized on behalf of The City of Seattle to execute a five (5) year Concession Agreement, substantially in the form attached as Attachment 1 to this ordinance, with Fifth Avenue Sports, LLC, which also provides for a five (5) year extension at the parties' option.

Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.



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Charles Ng/BF
DPR Greenlake Boat ORD
02/24/04
version #4

1 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 26th day of April, 2004, and signed by me in open
5 session in authentication of its passage this 26th day of April, 2004.

6
7
8 Kandrago
9 President _____ of the City Council
10 Approved by me this 7 day of May, 2004.

11 G. J. Nickels
12 Gregory J. Nickels, Mayor

13 Filed by me this 7 day of May, 2004.

14 Joan E. Ruppel
15 City Clerk

16 (Seal)

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19 Attachment 1: Green Lake Boat Rental Concession Agreement
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Attachment 1 to DPR Greenlake Boat Ordinance

GREEN LAKE BOAT RENTAL CONCESSION AGREEMENT

Between

THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION

And

FIFTH AVENUE SPORTS, LLC

THIS BOAT RENTAL CONCESSION AGREEMENT is entered into between The City of Seattle (hereinafter referred to as the "City"), operating through its Department of Parks and Recreation (hereinafter referred to as the "Department") and its Superintendent of Parks and Recreation (hereinafter referred to as the "Superintendent") and Fifth Avenue Sports, LLC (hereinafter referred to as the "Concessionaire").

In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

PART A: SPECIAL CONDITIONS AND COVENANTS OF AGREEMENT

A-1 GRANT OF CONCESSION.

The Department hereby grants to the Concessionaire for the full term of this Agreement upon the conditions, limitations, reservations and provisions herein, the concession right and privilege to operate a business at Department's Green Lake Park (hereinafter referred to as the "Premises" or the "Concession Premises") engaging in boat rentals and miscellaneous fishing and sports related rentals, and retail sales including small boats, boating supplies and other retail items. All items offered for sale or rental at or from the Premises are subject to the prior approval of the Department.

A-2 CONCESSION PREMISES.

The Concession Premises shall be at the Department site that includes the boat rental building, the area between the rear of the boat rental building and the tennis court fence.

Page 1

Attachment 1: Green Lake Boat Rental Concession Agreement



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the boat staging area at the shoreline and other area around the building that will be mutually agreed. Space assignment on the Premises may be changed at any time at the option of the Department.

A-3 TERM OF AGREEMENT.

This Agreement shall commence when executed by both parties and shall expire at 11:59 P.M. on December 31, 2009, unless terminated earlier pursuant to the provisions hereof. This Agreement may be extended for an additional term of five (5) years by mutual agreement of the parties hereto.

A-4 TERMINATION.

Either party may terminate this Agreement by giving the other party 90 days written notice of its intention to so terminate. The City may terminate this Agreement upon 30 days notice to the Concessionaire if the Concessionaire is in material breach of any of the material terms of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.

A-5 CONSIDERATION.

The concession right and privilege granted herein for the term as specified, is given in exchange for the Concessionaire:

a. MAKING CONCESSION FEE PAYMENTS.

Pay the Department thirteen percent (13%) of the Concessionaire's gross rental income and retail sales from all sources. This payment shall hereinafter be referred to as the "Concession Fee."

b. PAYING LEASEHOLD EXCISE TAXES:

Washington State Leasehold Excise Taxes are not part of the Concession Fee described in herein and are over and above the Concession Fee Payments. Payments for Washington State Leasehold Excise Tax shall not be combined with Concession Fees

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and shall be listed as a separate item on all accounting, billings, statements and check stubs.

The Concessionaire shall remit to the Department with each Concession Fee payment the appropriate payment for Washington State Leasehold Excise Taxes. The Leasehold Excise Tax rate at the time this Agreement was executed is 12.84% of the Concession Fee payable to the Department, but such rate is subject to change by state legislative action.

c. PROVIDING CONCESSION EQUIPMENT.

Providing concession equipment, installation, maintenance and services sufficient to reasonably satisfy needs at the Concession Premises.

d. RENDERING SATISFACTORY CONCESSIONAIRE PERFORMANCE.

Satisfying all other conditions and requirements imposed on the Concessionaire by this Agreement.

e. SATISFACTORILY EMPLOYING, TRAINING AND SUPERVISING STAFF.

The Concessionaire shall at all times staff the Premises with sufficient, well-trained staff to reasonably serve the needs of customers in a safe and efficient manner. The Concessionaire's staff shall be trained in water safety, applicable laws, first aid and life saving at the Concessionaire's sole cost and expense. One of the Concessionaire's supervisory employees shall be on continuous duty at any time the boat rental operation is open to the public or at any time a rental boat is occupied by customers.

f. RENTAL RATES AND SALES PRICES.

Rental prices shall be established by mutual agreement. The Department reserves the right to reject any or all portions of the Concessionaire's request for price adjustments. The Department's acceptance or rejection of the Concessionaire's price adjustment request does not in any way relieve the Concessionaire of any duty, responsibility or performance arising from this Agreement.

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g. FREE AND REDUCED PRICE BOAT USES.

The Concessionaire shall provide free use of boats to persons enrolled in Department programs. The free use of boats is not expected to exceed 20 persons per day or to exceed 20 days per year. The Concessionaire shall offer discounted rental rates to persons in Department day camps and other aquatic programs on cloudy days.

h. ADVERTISE IN LOCAL PUBLICATIONS.

The Concessionaire shall advertise its products and services from time to time in neighborhood newspapers and periodicals including the Green Lake Small Craft Center brochure and whatever publication the Department uses to advertise its aquatic programs at Green Lake.

i. TELEPHONE MESSAGE SERVICE.

The Concessionaire shall maintain year round phone message service and advertise the phone number on signs at the site and in advertisements.

j. BUILDING AND GROUNDS MAINTENANCE

The Concessionaire shall maintain the interior of the boat rental building. The Department shall maintain the exterior and structural elements of the building.

The Concessionaire shall maintain the grounds behind the boat rental building when that area is enclosed by fencing.

k. BOAT STORAGE

During the boat rental season when the Concessionaire is actively operating the boat rental concession, the Concessionaire may store boats and concession equipment in the lake front area designated by the Department. The Concessionaire's rental boats may remain on the lake front during periods that public use of the lake is restricted due to potentially unsafe levels of algae toxins.

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The Concessionaire shall store all boats and concession equipment either within the boat rental building or in the fenced area behind the boat rental building during periods when the concession is not operated for a period longer than 3 weeks.

A-6 FINANCES AND PAYMENTS.

a. PAYMENT DUE DATES.

The Concessionaire shall make a monthly Concession Fee payment to the Department for the concession rights received under this Agreement, on or before the tenth (10th) day of each month. This payment shall equal the percentage Concession Fee applied to retail sales and rental income made during the month immediately preceding the month in which such payment is due, plus applicable Washington State Leasehold Excise Tax.

b. PAYMENT LOCATION.

All Concession Fee and Leasehold Excise Tax payments to the Department shall be paid to:

By mail:	Hand delivered:
The City of Seattle	The City of Seattle
Dept. of Parks & Recreation	Dept. of Parks and Recreation
Contract & Business Resources	Contract & Business Resources Office
Attention: Concessions Coordinator	Attention: Concessions Coordinator
P.O. Box 3443	800 Maynard Ave. South, Room 210
Seattle, WA 98114	Seattle, WA 98134-1335

c. ADMINISTRATIVE CHARGES DUE TO LATE PAYMENT.

If any payment is not paid to the Department within ten (10) days after the date due, an administrative late charge of twenty-five Dollars (\$25.00) plus 1% (one percent) interest shall be added to the payment due and the total sum shall become immediately due and payable. Additional interest charges of 1% (one percent) shall be added each month that the Concession Fee or applicable Leasehold Excise Tax remains unpaid.



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d. TAXES, LEVIES AND ASSESSMENTS.

The Concessionaire shall be responsible for and pay before delinquency, all taxes, levies, and assessments of any nature and kind whatsoever, that at any time hereafter may be levied, assessed, or otherwise imposed upon the Concession Premises or upon the Concessionaire's activities on or occupancy of the Concession Premises, and that are or become payable during the term of this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Premises such as the rental or sale of goods or services; taxes levied on its property, equipment, and improvements on the Premises; and taxes on the Concessionaire's interest in this Agreement and any leasehold interest deemed to have created thereby under CH. 82.29A RCW.

e. CONCESSIONS REPORT.

The Concessionaire shall complete and send to the Department a Concessions Report in accordance with operating periods and due dates as specified herein. The Concessions Report shall be on a form provided by the Department and shall contain beginning and ending transaction readings, concession fee calculations and Washington State Leasehold Excise Taxes. The Concessions Report may be modified from time to time by the Department.

A-7 CONCESSIONAIRE OPERATION AND SERVICES.

a. EQUIPMENT.

The Concessionaire shall install and maintain sufficient quantity of rental boats and related equipment to meet the public need as determined by the Department. The Concessionaire shall maintain all equipment and the Concession Premises in good working condition at no cost to the Department. All equipment needed to maintain and operate the Concession Premises shall remain the property of the Concessionaire under the conditions and provisions of this Agreement.

The Concessionaire shall provide U.S. Coast Guard approved PFDs (personal flotation devices) and instruction for the proper use of the PFD for each person boarding a rental



boat. PFDs for all ages and all sizes must be provided including infant, small children, large children, and small adult through extra large adult. Concessionaire must inspect PFDs on a regular basis, at least every 14 days, to verify that all PFDs and floatation cushions are in perfect working condition. Any defective equipment shall be removed and replaced immediately.

The Concessionaire shall provide a customer assistance boat with an outboard motor. The boat and motor shall meet all US Coast Guard regulations and shall be subject to Department review and approval. A fire extinguisher, bailer, paddle, bow line, tow line, large flash light, whistle or signaling device, first aid kit, and a cellular phone or hand held communication radio shall all be made available by the Concessionaire for use on the customer assistance boat. The customer assistance boat operator must be 18 years of age or older, fully trained and shall wear a PFD at all times when in the boat.

The Concessionaire shall carefully inspect all boats on a regular basis to verify that the boats are in safe working condition. Any found to have defects or broken parts shall immediately be marked, removed from service, and repaired or replaced.

b. INSTALLATION AND REMOVAL OF EQUIPMENT.

Any equipment to be installed shall be installed only in locations previously approved by the Department. All installations shall be done in an appropriate manner so as to pose no potential for injury. When the equipment is removed all mounting holes or other damage to the Premises caused by the installation shall be repaired by the Concessionaire to the satisfaction of the Department.

c. LOCKS AND KEYS.

Locks and keys for exterior doors shall be provided by the Department. The Concessionaire shall not remove or replace locks provided by the Department. The Concessionaire shall pay a \$50.00 (fifty-dollar) refundable deposit for each key provided by the Department.



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d. DAYS AND HOURS OF OPERATION.

The Concessionaire's hours of operation shall be established by mutual agreement. The dates and times of operation may be modified from time to time by mutual agreement of the parties hereto.

The Concessionaire may close the rental facility during periods of inclement weather.

e. CONCESSIONAIRE RESPONSIBILITIES DURING SPECIAL EVENTS.

During special events on Green Lake, boat rental activity may be restricted to certain areas of the lake as defined by the Department. The Concessionaire shall provide buoys to define the approved operating area, and provide information to the renters of every boat about the restriction. In addition, Concessionaire must provide general monitoring to ensure that rental boats remain within the designated area.

f. COMPLIANCE WITH THE LAW.

The Concessionaire shall comply with all applicable laws of the United States of America and the State of Washington; the Charter and ordinances of the City of Seattle; and rules and regulations of each of them and with orders and directives of public officials implementing the same.

g. EQUALITY OF TREATMENT.

The Concessionaire shall conduct its business in a manner that assures that no person will be subjected to unfair, unequal and illegal discriminatory treatment on the basis of such person's creed, religion, race, color, national origin, sex, age, or the presence of any sensory, mental, or physical handicap. No person shall be refused service, be given discriminatory treatment, or be denied any privilege, use of facilities, or participation in activities on the Concession Premises or be denied an opportunity to participate in subcontracting in a manner or on a basis that is prohibited by law, ordinance, rule or regulation.

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The Seattle Municipal Code states (SMC 20.44.040) that contracts of the City for leases and concessions shall contain the following provisions:

"The Concessionaire agrees to comply with all state and local laws prohibiting discrimination with regard to creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap."

All contracts of the City for leases and concessions of seven (7) consecutive days' duration or longer and involving employers with three (3) or more employees shall contain the following provisions:

"During the performance of this contract, the Concessionaire agrees as follows:

"The Concessionaire will not discriminate against any employee or applicant for employment because of creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Concessionaire will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these



provisions; provided, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"Concessionaire will, upon the request of the Director (as used herein Director means the Director of Finance, or his/her designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the Concessionaire in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purpose of investigation to determine compliance with these provisions.

"If, upon investigation, the Director determines that there is probable cause to believe that the Concessionaire has failed to comply with any of the terms of these provisions, the Concessionaire shall be so notified in writing. The contracting authority shall give the Concessionaire an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend or terminate this lease (contract) and evict lessee (terminate the contract) in accordance with law.

"Failure to comply with any of the terms of these provisions shall be material breach of this lease (contract).

"The foregoing provisions will be inserted in all subleases (subcontracts) entered into under this lease (contract)."

h. NONDISCRIMINATION AND AFFIRMATIVE ACTION.

The Concessionaire shall comply with all State and local laws and ordinances prohibiting employment discrimination with regard to race, color, national origin, ancestry, creed, religion, political ideology, sex, sexual orientation, marital status, or the presence of any sensory, mental or physical handicap.



i. SIGNS.

The Concessionaire shall obtain the Department's prior approval for all signs, posters and displays to be used on the Premises.

The Concessionaire shall provide signage at the site that shows proper use of PFD and requirements for PFD use as defined by State and Federal Law.

The Concessionaire shall provide signage about general water safety, boating safety and information specific to Green Lake. The Department will review and approve wording as submitted by Concessionaire.

The Concessionaire shall provide signage indicating prices, services and rules for rental of boats on Green Lake.

The Concessionaire shall provide an area for water safety brochure distribution and maintain a minimum of four different brochures. Water safety brochures available from US Coast Guard, Seattle Police Harbor Patrol Unit, Army Corps of Engineers and other agencies shall be provided by the Concessionaire.

A-8 BINDING EFFECT.

This Agreement shall be subject to the written approval of the Superintendent of the Department of Parks and Recreation and shall not be binding until so approved.

A-9 LICENSES.

The Concessionaire shall keep all necessary business licenses current throughout the term of this Agreement and shall supply copies of these licenses to the Department at the address shown herein when the Department requests copies of licenses.



A-10 BACKGROUND INVESTIGATION.

The Concessionaire shall provide information requested by the Department about the Concessionaire's personnel for the purposes of a background investigation required by law for all Concessionaire staff and subcontractors working on the premises.

A-11 INSURANCE.

a. EVIDENCE OF INSURANCE.

Prior to the commencement of use of Premises and pursuant to this Agreement, the Concessionaire shall secure and maintain at no expense to the Department, policy or policies of insurance as enumerated below. Evidence of such insurance, shall be delivered to the Department's address shown herein. Said policy(ies) must protect the City from any and all claims and risks in connection with any activity performed by the Concessionaire by virtue of this Agreement or any use and occupancy of the Premises Facilities authorized by this Agreement.

b. COMMERCIAL GENERAL LIABILITY INSURANCE.

A policy of Commercial General Liability Insurance, written on an occurrence form, including all the usual coverages known as:

1. Premises/Operations Liability,
2. Products/Completed Operations,
3. Personal/Advertising Injury,
4. Contractual Liability,
5. Owners and Contractors Protective Liability, and
6. Stop Gap or Employers Contingent Liability.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$1,000,000 each occurrence

\$1,000,000 annual aggregate

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Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager.

c. REQUIREMENTS.

Coverage and/or limits may be altered or increased as necessary, to reflect type of or exposure to risk. Said insurance policy(ies) and subsequent renewals must be maintained in full force and effect, at no expense to the City, throughout the entire period of the Agreement. The following documents and verbiage must be provided as evidence of insurance coverage:

1. DECLARATIONS.

A copy of the policy's declarations pages, showing the policy effective dates, limits of liability and the Schedule of Forms and Endorsements.

2. ENDORSEMENTS.

A copy of the endorsement naming the City of Seattle as an Additional Insured, showing the policy number and signed by an authorized representative, on Form CG2026 (ISO) or comparable.

A copy of the "Endorsements Form" to the policy that shows endorsements issued on the policy, and which include any company-specific or manuscript endorsements.

A copy of an endorsement stating that "The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle."

3. SEPARATION OF INSURED.

A copy of "Separation of Insureds" or "severability of interests" clause indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named

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insured were the only named insured, and separately to each insured against whom claim is made or suit is brought. "

d. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 per occurrence

e. WORKER'S COMPENSATION INSURANCE.

A policy of Worker's Compensation to comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. Such workers' compensation and occupational disease requirements shall include coverage for all employees suffering bodily injury (including death) by accident or disease, that arises out of or in the connection with the performance of this Agreement.

f. RATING & CITY APPROVAL.

All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.

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A-12 ASSIGNMENT OF AGREEMENT PROHIBITED.

The Concessionaire shall not assign or transfer this Agreement or otherwise convey any concession right or privilege granted hereunder or any part of the Premises unless the approval of the Superintendent is first obtained.

A-13 STANDARDS.

The Concessionaire, its agents and employees, shall render courteous service to the public with a goal of adding to the public use and enjoyment of the Concession Premises. The Concessionaire shall operate and conduct the facilities on the Concession Premises in a businesslike manner, and will not permit any acts or conduct on the part of the Concessionaire's employees that would be detrimental to the City's operation of the Concession Premises.

A-14 INDEMNIFICATION.

The Concessionaire shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, and expenses arising out of or resulting from the Concessionaire's performance or lack of performance under this Agreement. In the event that any suit based upon such losses, claims, actions, damages, or expenses is brought against the City, the Concessionaire, upon notice of the commencement thereof, shall defend the same at its sole cost and expense; and if final judgment be adverse to the City, or the City and the Concessionaire jointly, the Concessionaire shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by the negligence of the City, its officers, employees, or agents; provided, that nothing contained in this subsection shall be construed as requiring the Concessionaire to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its employees, officers, or agents.

PART B: GENERAL TERMS AND CONDITIONS

B-1 CLOSURE OF CONCESSION PREMISES.

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Attachment 1: Green Lake Boat Rental Concession Agreement

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The Department reserves the right to close the Concessionaire's operation or any portion thereof for the convenience of the Department upon seven (7) days' notice to the Concessionaire and to close the Concession Premises or any portion thereof without notice to meet any emergency as determined by the Superintendent. In the event of any such closure, the Department may post a sign notifying the public of the impending or effective closure.

B-2 DEMOLITION OF CONCESSION PREMISES.

The Department reserves the power to terminate this Agreement in order to demolish the Concession Premises. The Department will attempt to notify the Concessionaire of such intent in advance.

B-3 SURRENDER OF PREMISES AND REMOVAL OF PROPERTY.

a. AT TERMINATION.

Upon termination or expiration of this Agreement, the Concessionaire shall surrender the Concession Premises to the Department and promptly surrender and deliver to the Department all keys that it may have to any and all parts of the Concession Premises.

b. CONDITION OF PREMISES.

The Concession Premises shall be surrendered to the Department in as good a condition as at the date of execution of this Agreement, except for the effects of reasonable wear and tear, alterations, and repairs made with concurrence of the Department, and property damaged or destroyed by an uninsured peril or an insured peril where insurance proceeds are paid to the Department.

c. REMOVAL OF EQUIPMENT.

Prior to the expiration of the term of this Agreement, the Concessionaire shall remove from the Concession Premises, at its sole expense, all trade equipment, trade furnishings and other personal property owned and placed in or on the Concession Premises by the Concessionaire. In removing its personal property the Concessionaire shall take due care to not damage or injure the Concession Premises. Structural and capital improvements shall not be removed. In the event of earlier termination, the Concessionaire shall have ten (10) days to complete

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removal of its property from the Concession Premises. In no event shall the Concessionaire make any claim or demand upon the City, nor shall the City be liable, for any inconvenience, annoyance, disturbance or loss of business or any other damage suffered by the Concessionaire arising out of such removal operation or the required relinquishment of capital improvements in or to the Concession Premises.

d. FAILURE TO PERFORM.

In the event that after termination or expiration of this Agreement the Concessionaire has not removed its property and fixtures within the time allowed, the Department may, but need not, remove Concessionaire's personal property and hold it for the Concessionaire, or place the same in storage, all at the expense and risk of the Concessionaire. The Concessionaire shall reimburse the Department for any expense incurred by the Department in connection with such removal and storage. The Department shall have the right to sell such stored property, without notice to Concessionaire, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first, to the cost of sale; second, to the payment of the charge: for storage; and third, to the payment of any other amounts that may then be due from the Concessionaire to the Department; the balance, if any, shall be paid to the Concessionaire.

B-4 LIENS AND ENCUMBRANCES.

The Concessionaire shall keep the Concession Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Concession Premises. At the Department's request, the Concessionaire shall furnish the Department written proof of payment of any item which would or might constitute the basis for such a lien on the Concession Premises if not paid.

B-5 PHOTOGRAPHS.

Each party hereto may make photographs and motion pictures of the Concession Premises and the activity, people, displays, and exhibits thereon; provided, that in the event such material is to be used for a commercial purpose, prior to making the same the Concessionaire shall obtain the approval of the Superintendent and shall pay to the Department a fee therefore in an amount agreed upon by the Concessionaire and the Superintendent in accordance with applicable



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provisions of the Department's then-current Fees and Charges Schedule; and prior to using the same, the Concessionaire shall obtain the necessary written releases from every individual affected.

B-6 WAIVER.

No action other than a written document from the Department so stating shall constitute a waiver by the Department of any breach or default by Concessionaire nor shall such a document waive the Concessionaire's full compliance with the terms and conditions of the Agreement, irrespective of any knowledge the Department may have of such breach, default, or non-compliance. The Department's failure to insist upon full performance or any provision of this Agreement shall not be deemed as consent to or acceptance of such incomplete performance in the future.

B-7 CAPTIONS.

Captions are for convenient reference only, and do not limit or amplify the language of the paragraph(s) following.

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B-8 CHANGES AND MODIFICATIONS.

The parties hereto reserve the right to amend this Agreement from time to time by mutual agreement in writing. No amendment hereto shall be effective unless in writing and signed by an authorized representative of each of the parties.

B-9 APPROVALS BY THE DEPARTMENT OR SUPERINTENDENT.

The granting of approval, consent, or permission or the taking of any other action by the Superintendent pursuant to or in connection with this Agreement does not constitute the taking of any official action, including the granting of approval, by any other City department or official where such action is required by law, ordinance, resolution or rule or regulation, before Concessionaire may rightfully commence, maintain, or terminate any particular undertaking under this Agreement.

B-10 SEVERABILITY.

Should any term, provision, condition or other portion of this Agreement or any provision of any document incorporated by reference be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, and to this end, the remainder shall continue in full force and effect.

B-11 SUCCESSORS IN INTEREST.

Unless otherwise provided, the terms, covenants, and conditions in this Agreement shall apply to and bind any and all heirs, successors, executors, administrators and assigns of the parties, all of who shall be jointly and severally liable with the original contracting party.

B-12 NO RELATIONSHIP ESTABLISHED.

The Department shall in no event be construed to be a partner, associate, joint venturer of the Concessionaire or any party associated with the Concessionaire. The Concessionaire shall not create any obligation or responsibility on behalf of the Department or bind the Department in any manner.

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B-13 ENTIRE AGREEMENT.

This Agreement and Exhibits contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are attached. No other understandings, oral or otherwise may modify the text or an attachment to this Agreement.

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Concession Agreement to be executed by their respective representative(s):

CONCESSIONAIRE, FIFTH AVENUE SPORTS, LLC

By: _____
Signature: _____, 2004
Title Date

THE CITY OF SEATTLE

_____, 2004
Kenneth R. Bounds, Superintendent Date
The City of Seattle Department of Parks and Recreation

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City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

March 16, 2004

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Drago:

The City's Greenlake Boat Rental Facility has been a popular attraction for park visitors for over 20 years. The facility was operated by a concessionaire through a series of long-term concession agreements during this period. However, the concessionaire decided to terminate this contractual relationship in late 2000 to pursue other interests. To continue this popular service for the public, the Department of Parks and Recreation (DPR) conducted a publicly advertised Request for Proposal (RFP) in early 2001 to identify and secure a new operator for the facility. Beginning in 2002, DPR established a series of interim agreements with Fifth Avenue Sports, LLC to ensure continuous public access to boating services. The Department now believes it is in the City's best interest to formalize its agreement with Fifth Avenue Sports, LLC. The attached Council Bill will authorize the Superintendent of Parks and Recreation to enter into a five year agreement with two five-year extension options with Fifth Avenue Sports, LLC to provide rental boats at Green Lake Park.

Thank you for your consideration of this legislation. Should you have questions please contact Barry Firth at 684-8002.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Barry Firth 684-8002	Marilynne Gardner 233-5109

Legislation Title:

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the execution of a five (5) year concession agreement with two five (5) year options, with Fifth Avenue Sports, LLC to manage, maintain, and provide boat rental services at the Department's facility at Green Lake Park.

• **Summary of the Legislation:**

The proposed council bill authorizes the Superintendent of Parks and Recreation to execute a five-year concession agreement for the operation of a boat rental service and sales at Green Lake Park.

• **Background:** (Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):

Boat rentals have been available at Green Lake Park for over 25 years, and have proven to be popular with park visitors. The last concession agreement expired in 2000 and the Department of Parks and Recreation desires to continue this service. A publicly advertised Request for Proposals (RFP) process was completed in 2001. Fifth Avenue Sports, LLC, the sole FRP respondent, met all requirements as set forth in the RFP. DPR will receive a 13% concession fee from net rental receipts per month for 60 months. In addition, the concessionaire will provide all staffing, equipment, supervision, an assistance boat, maintenance, and insurance to support the Department's boating facility at Green Lake Park.

Fifth Avenue Sports, LLC is currently providing boat rental services at Green Lake Park with a temporary agreement. During this interim period, the Department has been collecting a 13% concession fee from monthly net rental receipts.

• Please check one of the following:

☐ **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

☒ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Barry Firth
 6/24/04
 DPR Greenlake Boat ORD
 Version # 4

Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2004 Revenue	2005 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Concession Revenue related to boat rental services at Green Lake Park – K1240 Contract and Business Resources	\$10,000	\$10,000
TOTAL			\$10,000	\$10,000

Notes: Projected revenues are based on a dry and warm summer season and little to no lake closures at Green Lake Park.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: Not applicable.

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2004 Positions	2004 FTE	2005 Positions**	2005 FTE**
TOTAL							

* List each position separately

** 2005 positions and FTE are total 2005 position changes resulting from this legislation, not incremental changes. Therefore, under 2005, please be sure to include any continuing positions from 2004

Notes:

- **Do positions sunset in the future?** (If yes, identify sunset date): Not applicable.



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Barry Firth
02/24/04
DPR Greenlake Boat ORD
Version #: 4

Spending/Cash Flow:

Fund Name and Number	Department	Budget Control Level*	2004 Expenditures	2005 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes: Not applicable.

- **What is the financial cost of not implementing the legislation?**
The cost of not implementing the proposed legislation includes potential loss of annual revenue of \$10,000 and the loss of popular boat rental services at Green Lake Park.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
There are no other viable alternatives to what is formally requested in the proposed legislation.
- **Is the legislation subject to public hearing requirements:**
No.
- **Other Issues** (including long-term implications of the legislation):

Please list attachments to the fiscal note below:

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Attachment 1 to DPR Greenlake Boat Ordinance

GREEN LAKE BOAT RENTAL CONCESSION AGREEMENT
Between
THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION
And
FIFTH AVENUE SPORTS, LLC

THIS BOAT RENTAL CONCESSION AGREEMENT is entered into between The City of Seattle (hereinafter referred to as the "City"), operating through its Department of Parks and Recreation (hereinafter referred to as the "Department") and its Superintendent of Parks and Recreation (hereinafter referred to as the "Superintendent") and Fifth Avenue Sports, LLC (hereinafter referred to as the "Concessionaire").

In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

PART A: SPECIAL CONDITIONS AND COVENANTS OF AGREEMENT

A-1 GRANT OF CONCESSION.

The Department hereby grants to the Concessionaire for the full term of this Agreement upon the conditions, limitations, reservations and provisions herein, the concession right and privilege to operate a business at Department's Green Lake Park (hereinafter referred to as the "Premises" or the "Concession Premises") engaging in boat rentals and miscellaneous fishing and sports related rentals, and retail sales including small boats, boating supplies and other retail items. All items offered for sale or rental at or from the Premises are subject to the prior approval of the Department.

A-2 CONCESSION PREMISES.

The Concession Premises shall be at the Department site that includes the boat rental building, the area between the rear of the boat rental building and the tennis court fence,



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the boat staging area at the shoreline and other area around the building that will be mutually agreed. Space assignment on the Premises may be changed at any time at the option of the Department.

A-3 TERM OF AGREEMENT.

This Agreement shall commence when executed by both parties and shall expire at 11:59 P.M. on December 31, 2009, unless terminated earlier pursuant to the provisions hereof. This Agreement may be extended for an additional term of five (5) years by mutual agreement of the parties hereto.

A-4 TERMINATION.

Either party may terminate this Agreement by giving the other party 30 days written notice of its intention to so terminate.

A-5 CONSIDERATION.

The concession right and privilege granted herein for the term as specified, is given in exchange for the Concessionaire:

a. MAKING CONCESSION FEE PAYMENTS.

Pay the Department thirteen percent (13%) of the Concessionaire's gross rental income and retail sales from all sources. This payment shall hereinafter be referred to as the "Concession Fee."

b. PAYING LEASEHOLD EXCISE TAXES:

Washington State Leasehold Excise Taxes are not part of the Concession Fee described in herein and are over and above the Concession Fee Payments. Payments for Washington State Leasehold Excise Tax shall not be combined with Concession Fees and shall be listed as a separate item on all accounting, billings, statements and check stubs

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The Concessionaire shall remit to the Department with each Concession Fee payment the appropriate payment for Washington State Leasehold Excise Taxes. The Leasehold Excise Tax rate at the time this Agreement was executed is 12.84% of the Concession Fee payable to the Department, but such rate is subject to change by state legislative action.

c. PROVIDING CONCESSION EQUIPMENT.

Providing concession equipment, installation, maintenance and services sufficient to reasonably satisfy needs at the Concession Premises.

d. RENDERING SATISFACTORY CONCESSIONAIRE PERFORMANCE.

Satisfying all other conditions and requirements imposed on the Concessionaire by this Agreement.

e. SATISFACTORILY EMPLOYING, TRAINING AND SUPERVISING STAFF.

The Concessionaire shall at all times staff the Premises with sufficient, well-trained staff to reasonably serve the needs of customers in a safe and efficient manner. The Concessionaire's staff shall be trained in water safety, applicable laws, first aid and life saving at the Concessionaire's sole cost and expense. One of the Concessionaire's supervisory employees shall be on continuous duty at any time the boat rental operation is open to the public or at any time a rental boat is occupied by customers.

f. RENTAL RATES AND SALES PRICES.

Rental prices shall be established by mutual agreement. The Department reserves the right to reject any or all portions of the Concessionaire's request for price adjustments. The Department's acceptance or rejection of the Concessionaire's price adjustment request does not in any way relieve the Concessionaire of any duty, responsibility or performance arising from this Agreement.

g. FREE AND REDUCED PRICE BOAT USES.

The Concessionaire shall provide free use of boats to persons enrolled in Department programs. The free use of boats is not expected to exceed 20 persons per day or to

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exceed 20 days per year. The Concessionaire shall offer discounted rental rates to persons in Department day camps and other aquatic programs on cloudy days.

h. ADVERTISE IN LOCAL PUBLICATIONS.

The Concessionaire shall advertise its products and services from time to time in neighborhood newspapers and periodicals including the Green Lake Small Craft Center brochure and whatever publication the Department uses to advertise its aquatic programs at Green Lake.

i. TELEPHONE MESSAGE SERVICE.

The Concessionaire shall maintain year round phone message service and advertise the phone number on signs at the site and in advertisements.

j. BUILDING AND GROUNDS MAINTENANCE

The Concessionaire shall maintain the interior of the boat rental building. The Department shall maintain the exterior and structural elements of the building.

The Concessionaire shall maintain the grounds behind the boat rental building when that area is enclosed by fencing.

k. BOAT STORAGE

During the boat rental season when the Concessionaire is actively operating the boat rental concession, the Concessionaire may store boats and concession equipment in the lake front area designated by the Department. The Concessionaire's rental boats may remain on the lake front during periods that public use of the lake is restricted due to potentially unsafe levels of algae toxins.

The Concessionaire shall store all boats and concession equipment either within the boat rental building or in the fenced area behind the boat rental building during periods when the concession is not operated for a period longer than 3 weeks.

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A-6 FINANCES AND PAYMENTS.

a. PAYMENT DUE DATES.

The Concessionaire shall make a monthly Concession Fee payment to the Department for the concession rights received under this Agreement, on or before the tenth (10th) day of each month. This payment shall equal the percentage Concession Fee applied to retail sales and rental income made during the month immediately preceding the month in which such payment is due, plus applicable Washington State Leasehold Excise Tax.

b. PAYMENT LOCATION.

All Concession Fee and Leasehold Excise Tax payments to the Department shall be paid to:

By mail:

The City of Seattle

Dept. of Parks & Recreation

Contract & Business Resources

Attention: Concessions Coordinator

P.O. Box 3443

Seattle, WA 98114

Hand delivered:

The City of Seattle

Dept. of Parks and Recreation

Contract & Business Resources Office

Attention: Concessions Coordinator

800 Maynard Ave. South, Room 210

Seattle, WA 98134-1335

c. ADMINISTRATIVE CHARGES DUE TO LATE PAYMENT.

If any payment is not paid to the Department within ten (10) days after the date due, an administrative late charge of twenty-five Dollars (\$25.00) plus 1% (one percent) interest shall be added to the payment due and the total sum shall become immediately due and payable. Additional interest charges of 1% (one percent) shall be added each month that the Concession Fee or applicable Leasehold Excise Tax remains unpaid.

d. TAXES, LEVIES AND ASSESSMENTS.

The Concessionaire shall be responsible for and pay before delinquency, all taxes, levies, and assessments of any nature and kind whatsoever, that at any time hereafter may be levied, assessed, or otherwise imposed upon the Concession Premises or upon

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the Concessionaire's activities on or occupancy of the Concession Premises, and that are or become payable during the term of this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Premises such as the rental or sale of goods or services; taxes levied on its property, equipment, and improvements on the Premises; and taxes on the Concessionaire's interest in this Agreement and any leasehold interest deemed to have created thereby under CH. 82.29A RCW.

e. CONCESSIONS REPORT.

The Concessionaire shall complete and send to the Department a Concessions Report in accordance with operating periods and due dates as specified herein. The Concessions Report shall be on a form provided by the Department and shall contain beginning and ending transaction readings, concession fee calculations and Washington State Leasehold Excise Taxes. The Concessions Report may be modified from time to time by the Department.

A-7 CONCESSIONAIRE OPERATION AND SERVICES.

a. EQUIPMENT.

The Concessionaire shall install and maintain sufficient quantity of rental boats and related equipment to meet the public need as determined by the Department. The Concessionaire shall maintain all equipment and the Concession Premises in good working condition at no cost to the Department. All equipment needed to maintain and operate the Concession Premises shall remain the property of the Concessionaire under the conditions and provisions of this Agreement.

The Concessionaire shall provide U.S. Coast Guard approved PFDs (personal flotation devices) and instruction for the proper use of the PFD for each person boarding a rental boat. PFDs for all ages and all sizes must be provided including infant, small children, large children, and small adult through extra large adult.

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Concessionaire must inspect PFDs on a regular basis, at least every 14 days, to verify that all PFDs and floatation cushions are in perfect working condition. Any defective equipment shall be removed and replaced immediately.

The Concessionaire shall provide a customer assistance boat with an outboard motor. The boat and motor shall meet all US Coast Guard regulations and shall be subject to Department review and approval. A fire extinguisher, bailer, paddle, bow line, tow line, large flash light, whistle or signaling device, first aid kit, and a cellular phone or hand held communication radio shall all be made available by the Concessionaire for use on the customer assistance boat. The customer assistance boat operator must be 18 years of age or older, fully trained and shall wear a PFD at all times when in the boat.

The Concessionaire shall carefully inspect all boats on a regular basis to verify that the boats are in safe working condition. Any found to have defects or broken parts shall immediately be marked, removed from service, and repaired or replaced.

b. INSTALLATION AND REMOVAL OF EQUIPMENT.

Any equipment to be installed shall be installed only in locations previously approved by the Department. All installations shall be done in an appropriate manner so as to pose no potential for injury. When the equipment is removed all mounting holes or other damage to the Premises caused by the installation shall be repaired by the Concessionaire to the satisfaction of the Department.

c. LOCKS AND KEYS.

Locks and keys for exterior doors shall be provided by the Department. The Concessionaire shall not remove or replace locks provided by the Department. The Concessionaire shall pay a \$50.00 (fifty-dollar) refundable deposit for each key provided by the Department.



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d. DAYS AND HOURS OF OPERATION.

The Concessionaire's hours of operation shall be established by mutual agreement. The dates and times of operation may be modified from time to time by mutual agreement of the parties hereto.

The Concessionaire may close the rental facility during periods of inclement weather.

e. CONCESSIONAIRE RESPONSIBILITIES DURING SPECIAL EVENTS.

During special events on Green Lake, boat rental activity may be restricted to certain areas of the lake as defined by the Department. The Concessionaire shall provide buoys to define the approved operating area, and provide information to the renters of every boat about the restriction. In addition, Concessionaire must provide general monitoring to ensure that rental boats remain within the designated area.

f. COMPLIANCE WITH THE LAW.

The Concessionaire shall comply with all applicable laws of the United States of America and the State of Washington; the Charter and ordinances of the City of Seattle; and rules and regulations of each of them and with orders and directives of public officials implementing the same.

g. EQUALITY OF TREATMENT.

The Concessionaire shall conduct its business in a manner that assures that no person will be subjected to unfair, unequal and illegal discriminatory treatment on the basis of such person's creed, religion, race, color, national origin, sex, age, or the presence of any sensory, mental, or physical handicap. No person shall be refused service, be given discriminatory treatment, or be denied any privilege, use of facilities, or participation in activities on the Concession Premises or be denied an opportunity to participate in subcontracting in a manner or on a basis that is prohibited by law, ordinance, rule or regulation.



The Seattle Municipal Code states (SMC 20.44.040) that contracts of the City for leases and concessions shall contain the following provisions:

"The Concessionaire agrees to comply with all state and local laws prohibiting discrimination with regard to creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap."

All contracts of the City for leases and concessions of seven (7) consecutive days' duration or longer and involving employers with three (3) or more employees shall contain the following provisions:

"During the performance of this contract, the Concessionaire agrees as follows:

"The Concessionaire will not discriminate against any employee or applicant for employment because of creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Concessionaire will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these



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provisions; provided, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"Concessionaire will, upon the request of the Director (as used herein Director means the Director of Finance, or his/her designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the Concessionaire in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purpose of investigation to determine compliance with these provisions.

"If, upon investigation, the Director determines that there is probable cause to believe that the Concessionaire has failed to comply with any of the terms of these provisions, the Concessionaire shall be so notified in writing. The contracting authority shall give the Concessionaire an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend or terminate this lease (contract) and evict lessee (terminate the contract) in accordance with law.

"Failure to comply with any of the terms of these provisions shall be material breach of this lease (contract).

"The foregoing provisions will be inserted in all subleases (subcontracts) entered into under this lease (contract)."

h. NONDISCRIMINATION AND AFFIRMATIVE ACTION.

The Concessionaire shall comply with all State and local laws and ordinances prohibiting employment discrimination with regard to race, color, national origin, ancestry, creed, religion, political ideology, sex, sexual orientation, marital status, or the presence of any sensory, mental or physical handicap.



i. SIGNS.

The Concessionaire shall obtain the Department's prior approval for all signs, posters and displays to be used on the Premises.

The Concessionaire shall provide signage at the site that shows proper use of PFD and requirements for PFD use as defined by State and Federal Law.

The Concessionaire shall provide signage about general water safety, boating safety and information specific to Green Lake. The Department will review and approve wording as submitted by Concessionaire.

The Concessionaire shall provide signage indicating prices, services and rules for rental of boats on Green Lake.

The Concessionaire shall provide an area for water safety brochure distribution and maintain a minimum of four different brochures. Water safety brochures available from US Coast Guard, Seattle Police Harbor Patrol Unit, Army Corps of Engineers and other agencies shall be provided by the Concessionaire.

A-8 BINDING EFFECT.

This Agreement shall be subject to the written approval of the Superintendent of the Department of Parks and Recreation and shall not be binding until so approved.

A-9 LICENSES.

The Concessionaire shall keep all necessary business licenses current throughout the term of this Agreement and shall supply copies of these licenses to the Department at the address shown herein when the Department requests copies of licenses.

A-10 BACKGROUND INVESTIGATION.

The Concessionaire shall provide information requested by the Department about the Concessionaire's personnel for the purposes of a background investigation required by law for all Concessionaire staff and subcontractors working on the premises.

A-11 INSURANCE.

a. EVIDENCE OF INSURANCE.

Prior to the commencement of use of Premises and pursuant to this Agreement, the Concessionaire shall secure and maintain at no expense to the Department, policy or policies of insurance as enumerated below. Evidence of such insurance, shall be delivered to the Department's address shown herein. Said policy(ies) must protect the City from any and all claims and risks in connection with any activity performed by the Concessionaire by virtue of this Agreement or any use and occupancy of the Premises Facilities authorized by this Agreement.

b. COMMERCIAL GENERAL LIABILITY INSURANCE.

A policy of Commercial General Liability Insurance, written on an occurrence form, including all the usual coverages known as:

1. Premises/Operations Liability,
2. Products/Completed Operations,
3. Personal/Advertising Injury,
4. Contractual Liability,
5. Owners and Contractors Protective Liability, and
6. Stop Gap or Employers Contingent Liability.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$1,000,000 each occurrence

\$1,000,000 annual aggregate

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager.

c. REQUIREMENTS.

Coverage and/or limits may be altered or increased as necessary, to reflect type of or exposure to risk. Said insurance policy(ies) and subsequent renewals must be maintained in full force and effect, at no expense to the City, throughout the entire period of the Agreement. The following documents and verbiage must be provided as evidence of insurance coverage:

1. DECLARATIONS.

A copy of the policy's declarations pages, showing the policy effective dates, limits of liability and the Schedule of Forms and Endorsements.

2. ENDORSEMENTS.

A copy of the endorsement naming the City of Seattle as an Additional Insured, showing the policy number and signed by an authorized representative, on Form CG2026 (ISO) or comparable.

A copy of the "Endorsements Form" to the policy that shows endorsements issued on the policy, and which include any company-specific or manuscript endorsements.

A copy of an endorsement stating that "The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle."

3. SEPARATION OF INSUREDS.

A copy of "Separation of Insureds" or "severability of interests" clause indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named

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insured were the only named insured, and separately to each insured against whom claim is made or suit is brought. "

d. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 per occurrence

e. WORKER'S COMPENSATION INSURANCE.

A policy of Worker's Compensation to comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. Such workers' compensation and occupational disease requirements shall include coverage for all employees suffering bodily injury (including death) by accident or disease, that arises out of or in the connection with the performance of this Agreement.

f. RATING & CITY APPROVAL.

All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.

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A-12 ASSIGNMENT OF AGREEMENT PROHIBITED.

The Concessionaire shall not assign or transfer this Agreement or otherwise convey any concession right or privilege granted hereunder or any part of the Premises unless the approval of the Superintendent is first obtained.

A-13 STANDARDS.

The Concessionaire, its agents and employees, shall render courteous service to the public with a goal of adding to the public use and enjoyment of the Concession Premises. The Concessionaire shall operate and conduct the facilities on the Concession Premises in a businesslike manner, and will not permit any acts or conduct on the part of the Concessionaire's employees that would be detrimental to the City's operation of the Concession Premises.

A-14 INDEMNIFICATION.

The Concessionaire shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, and expenses arising out of or resulting from the Concessionaire's performance or lack of performance under this Agreement. In the event that any suit based upon such losses, claims, actions, damages, or expenses is brought against the City, the Concessionaire, upon notice of the commencement thereof, shall defend the same at its sole cost and expense; and if final judgment be adverse to the City, or the City and the Concessionaire jointly, the Concessionaire shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by the negligence of the City, its officers, employees, or agents; provided, that nothing contained in this subsection shall be construed as requiring the Concessionaire to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its employees, officers, or agents.

PART B: GENERAL TERMS AND CONDITIONS

B-1 CLOSURE OF CONCESSION PREMISES.

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Attachment 1: Green Lake Boat Rental Concession Agreement



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The Department reserves the right to close the Concessionaire's operation or any portion thereof for the convenience of the Department upon seven (7) days' notice to the Concessionaire and to close the Concession Premises or any portion thereof without notice to meet any emergency as determined by the Superintendent. In the event of any such closure, the Department may post a sign notifying the public of the impending or effective closure.

B-2 DEMOLITION OF CONCESSION PREMISES.

The Department reserves the power to terminate this Agreement in order to demolish the Concession Premises. The Department will attempt to notify the Concessionaire of such intent in advance.

B-3 SURRENDER OF PREMISES AND REMOVAL OF PROPERTY.

a. AT TERMINATION.

Upon termination or expiration of this Agreement, the Concessionaire shall surrender the Concession Premises to the Department and promptly surrender and deliver to the Department all keys that it may have to any and all parts of the Concession Premises.

b. CONDITION OF PREMISES.

The Concession Premises shall be surrendered to the Department in as good a condition as at the date of execution of this Agreement, except for the effects of reasonable wear and tear, alterations, and repairs made with concurrence of the Department, and property damaged or destroyed by an uninsured peril or an insured peril where insurance proceeds are paid to the Department.

c. REMOVAL OF EQUIPMENT.

Prior to the expiration of the term of this Agreement, the Concessionaire shall remove from the Concession Premises, at its sole expense, all trade equipment, trade furnishings and other personal property owned and placed in or on the Concession Premises by the Concessionaire. In removing its personal property the Concessionaire shall take due care to not damage or injure the Concession Premises. Structural and capital improvements shall not be removed. In the event of earlier termination, the Concessionaire shall have ten (10) days to complete

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removal of its property from the Concession Premises. In no event shall the Concessionaire make any claim or demand upon the City, nor shall the City be liable, for any inconvenience, annoyance, disturbance or loss of business or any other damage suffered by the Concessionaire arising out of such removal operation or the required relinquishment of capital improvements in or to the Concession Premises.

d. FAILURE TO PERFORM.

In the event that after termination or expiration of this Agreement the Concessionaire has not removed its property and fixtures within the time allowed, the Department may, but need not, remove Concessionaire's personal property and hold it for the Concessionaire, or place the same in storage, all at the expense and risk of the Concessionaire. The Concessionaire shall reimburse the Department for any expense incurred by the Department in connection with such removal and storage. The Department shall have the right to sell such stored property, without notice to Concessionaire, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first, to the cost of sale; second, to the payment of the charges for storage; and third, to the payment of any other amounts that may then be due from the Concessionaire to the Department; the balance, if any, shall be paid to the Concessionaire.

B-4 LIENS AND ENCUMBRANCES.

The Concessionaire shall keep the Concession Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Concession Premises. At the Department's request, the Concessionaire shall furnish the Department written proof of payment of any item which would or might constitute the basis for such a lien on the Concession Premises if not paid.

B-5 PHOTOGRAPHS.

Each party hereto may make photographs and motion pictures of the Concession Premises and the activity, people, displays, and exhibits thereon; provided, that in the event such material is to be used for a commercial purpose, prior to making the same the Concessionaire shall obtain the approval of the Superintendent and shall pay to the Department a fee therefore in an amount agreed upon by the Concessionaire and the Superintendent in accordance with applicable

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provisions of the Department's then-current Fees and Charges Schedule; and prior to using the same, the Concessionaire shall obtain the necessary written releases from every individual affected.

B-6 WAIVER.

No action other than a written document from the Department so stating shall constitute a waiver by the Department of any breach or default by Concessionaire nor shall such a document waive the Concessionaire's full compliance with the terms and conditions of the Agreement, irrespective of any knowledge the Department may have of such breach, default, or non-compliance. The Department's failure to insist upon full performance or any provision of this Agreement shall not be deemed as consent to or acceptance of such incomplete performance in the future.

B-7 CAPTIONS.

Captions are for convenient reference only, and do not limit or amplify the language of the paragraph(s) following.

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B-8 CHANGES AND MODIFICATIONS.

The parties hereto reserve the right to amend this Agreement from time to time by mutual agreement in writing. No amendment hereto shall be effective unless in writing and signed by an authorized representative of each of the parties.

B-9 APPROVALS BY THE DEPARTMENT OR SUPERINTENDENT.

The granting of approval, consent, or permission or the taking of any other action by the Superintendent pursuant to or in connection with this Agreement does not constitute the taking of any official action, including the granting of approval, by any other City department or official where such action is required by law, ordinance, resolution or rule or regulation, before Concessionaire may rightfully commence, maintain, or terminate any particular undertaking under this Agreement.

B-10 SEVERABILITY.

Should any term, provision, condition or other portion of this Agreement or any provision of any document incorporated by reference be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, and to this end, the remainder shall continue in full force and effect.

B-11 SUCCESSORS IN INTEREST.

Unless otherwise provided, the terms, covenants, and conditions in this Agreement shall apply to and bind any and all heirs, successors, executors, administrators and assigns of the parties, all of who shall be jointly and severally liable with the original contracting party.

B-12 NO RELATIONSHIP ESTABLISHED.

The Department shall in no event be construed to be a partner, associate, joint venturer of the Concessionaire or any party associated with the Concessionaire. The Concessionaire shall not create any obligation or responsibility on behalf of the Department or bind the Department in any manner.

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B-13 ENTIRE AGREEMENT.

This Agreement and Exhibits contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are attached. No other understandings, oral or otherwise may modify the text or any attachment to this Agreement.

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Concession Agreement to be executed by their respective representative(s):

CONCESSIONAIRE, FIFTH AVENUE SPORTS, LLC

By: _____

Signature: _____, 2004

Title Date

THE CITY OF SEATTLE

_____, 2004
Kenneth R. Bounds, Superintendent Date
The City of Seattle Department of Parks and Recreation

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STATE OF WASHINGTON - KING COUNTY

--SS.

172016
CITY OF SEATTLE, CLERKS OFFICE

No. ORDINANCE TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

QT:121451,452,455-457

was published on

5/13/2004



Affidavit of Publication

McLendon

Subscribed and sworn to before me on

5/13/2004

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-CLERK PUBLICATION
The full text of the following ordinances, passed by the City Council on April 28, 2004, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 624-8344.

ORDINANCE NO. 121457

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121458

AN ORDINANCE relating to redevelopment in the Pioneer Square neighborhood; authorizing a loan of federal Section 108 loan proceeds to finance acquisition of the Cadillac Hotel Building at 319 Second Avenue South; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce or subsidize interest on the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; amending Ordinance 120878; and authorizing amendments to the City's 2001-2004 Consolidated Plan to reflect the transactions contemplated by this ordinance.

ORDINANCE NO. 121455

AN ORDINANCE amending the 2003 Adopted Budget; changing appropriations for a department in the 2003 Budget; and making cash transfers between various City funds and subfunds.

ORDINANCE NO. 121452

AN ORDINANCE relating to the sale of surplus property located north of 2120 12th Avenue S.; authorizing the sale of real property to an abutting property owner and execution of a Quitclaim Deed in connection therewith; and designating the disposition of sales proceeds.

ORDINANCE NO. 121451

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the execution of a five (5) year concession agreement with two five (5) year options, with Fifth Avenue Sports, LLC to manage, maintain, and provide boat rental services at the Department's facility at Green Lake Park.

Publication ordered by JUDITH PIPPIN,
City Clerk.
Date of publication in the Seattle Daily
Journal of Commerce, May 18, 2004.
S13(172016)

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