

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: July 22, 2014

SUBJECT: EXTENSION OF CONTRACT AND LEASE AGREEMENT WITH PIXIELAND AMUSEMENT PARK, INC., THE AMUSEMENT RIDE CONCESSIONNAIRE LOCATED AT 2740 E. OLIVERA ROAD (A PORTION OF APN 111-010-015)

Report in Brief

Cynthia Brumley and Debby Hull are the current operators of Pixieland Amusement Park, Inc., located in Willow Pass Park. While the current contract and lease agreement is scheduled to expire on July 31, 2014, it gives them the right to exercise up to two, five-year renewal options, contingent upon City approval, and on the agreement containing the same terms as the current agreement. Ms. Brumley and Ms. Hull have notified the City of their desire to exercise the first renewal option; however, they have some concerns with the terms of the 2004 agreement. Consequently, Ms. Brumley and Ms. Hull have requested to renegotiate the contract terms. Staff has been working with Ms. Brumley, Ms. Hull and their attorney, Xavier Gutierrez, and is optimistic that the City and Pixieland's representatives can reach mutually agreeable terms and enter into a new Contract and Lease Agreement that will be beneficial for both the City and Pixieland Amusement Park, Inc.. Although progress is being made, staff is seeking a three (3) month extension of the current term to allow time to further negotiate any potential changes to the terms of the original 10 year Agreement.

Staff recommends that the City Council approve the requested three month extension, which would expire on October 31, 2014.

Background

The amusement ride concession in Willow Pass Community Park has been a City tradition for nearly 40 years. At one point, City personnel operated the concession. In 1990, the City entered into a lease agreement with the Midway of Fun, Inc., to operate the amusement park. The leased property included the amusement park with buildings and picnic area, adjacent park restrooms, and two City-owned amusement rides. In 1994, the Midway of Fun formed a subordinate corporation, Pixieland, Inc., to operate the concession. In March 2000, Pixieland, Inc. changed ownership when Jeff Warrenberg purchased the business from Sam Johnson. The original lease was modified to facilitate transfer of the operation to Mr. Warrenberg. In July of 2004 upon request of Mr. Warrenberg, the City Council approved the sale of Pixieland assets and entered into a new 10 year Contract and Lease Agreement (Attachment 1) with Cynthia Brumley and Debby

EXTENSION OF LEASE AGREEMENT WITH PIXIELAND AMUSEMENT PARK, INC., FOR THE AMUSEMENT RIDE CONCESSION AT PIXIELAND PARK LOCATED AT 2740 E. OLIVERA ROAD (A PORTION OF APN 111-010-015).

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Hull under the corporate name, Pixieland Amusement Park, Inc.. Ms. Brumley and Ms. Hull have successfully operated Pixieland since that time.

Discussion

Ms. Brumley and Ms. Hull notified the City that they wish to renegotiate the Contract and Lease Agreement terms to address various concerns and provisions within the current agreement. Staff is amenable to such negotiations, as this will provide the opportunity to further clarify the provisions of the agreement and address areas of current ambiguity and conflict between the parties. The main areas of concern for Ms. Brumley and Ms. Hull are the provision of dedicated parking for Pixieland patrons, clarification of maintenance responsibilities for both the concessionaire and the City, and financial terms.

Staff have had ongoing meetings and communications with Ms. Brumley and her attorney to begin discussions on changes to terms and conditions of the Contract and Lease Agreement. Staff is confident that the parties can reach mutually agreed upon terms and enter into a new Contract and Lease Agreement that will be beneficial for both the City and Pixieland Amusement Park, Inc.. While progress is being made, staff is seeking a three (3) month extension of the current term to allow time to further negotiate any potential changes to the terms of the original 10 year Agreement.

Fiscal Impact

There is no fiscal impact to extending the first term of the agreement by three months.

Public Contact

Posting of the City Council Agenda. Copies of the agenda and staff report have been sent to Cynthia Brumley, Debby Hull and Xavier Gutierrez.

Alternative Courses of Action

1. Approve a three (3) month extension to the current Contract and Lease Agreement to allow sufficient time to negotiate new terms.
2. Deny an extension of the current Contract and Lease Agreement and direct staff to offer the first of two five-year renewal options under the existing terms and conditions as provided for in the original Contract and Lease Agreement.

**EXTENSION OF LEASE AGREEMENT WITH PIXIELAND AMUSEMENT PARK,
INC., FOR THE AMUSEMENT RIDE CONCESSION AT PIXIELAND PARK
LOCATED AT 2740 E. OLIVERA ROAD (A PORTION OF APN 111-010-015).**

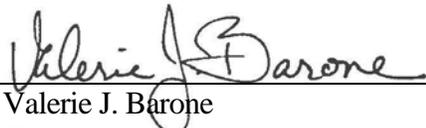
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Recommendation for Action

Staff recommends that the City Council approve alternative number 1, a three (3) month extension to the current term of the Pixieland Amusement Park, Inc. Contract and Lease Agreement, authorize the City Manager to execute the Amendment to the Agreement (Attachment 2) and direct staff to continue to negotiate terms and return to City Council with a new Contract and Lease Agreement for Council consideration prior to October 31, 2014.

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Attachment 1 – Contract and Lease Agreement dated August 1, 2004

Attachment 2 – Amendment to agreement authorizing a three (3) month extension

ORIGINAL

**Contract and Lease Agreement
between
City of Concord and Pixieland Amusement Park, Inc.**

August 1, 2004

4599

8/13/04 cc: .

, Pixieland, P&R, Finance

**CONTRACT AND LEASE
FOR THE AMUSEMENT RIDES CONCESSION
IN THE
WILLOW PASS PARK IN THE CITY OF CONCORD**

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**CONTRACT AND LEASE
FOR THE AMUSEMENT RIDES CONCESSION
IN THE
WILLOW PASS PARK IN THE CITY OF CONCORD**

RECITALS

WHEREAS, The City of Concord and Pixieland, Inc. entered into a Contract and Lease dated February 1, 1994.

WHEREAS, Cynthia L. Brumley and Debby L. Hull are the new owners and operators of Pixieland Amusement Park, Inc., the new corporate title for Pixieland, Inc., and

WHEREAS, the City of Concord consented to said assignment, and

NOW THEREFORE, in consideration of the terms, conditions, and covenants as set forth herein, the parties agree as follows:

Section 1. Grant of Lease:

A. There is hereby granted by the CITY OF CONCORD (hereinafter referred to as "CITY") a California Municipal Corporation, to PIXIELAND AMUSEMENT PARK, INC., a California Corporation, (hereinafter referred to as "LESSEE"), a Lease to operate an Amusement Rides Concession (the "CONCESSION") in the Willow Pass Park facilities provided by CITY. A description of said facilities and their location are set forth in **Exhibit "A"** attached hereto. This Lease shall be subject to all the terms, conditions, and limitations specified hereinafter.

Section 2. Use of Demised Premises:

A. For the purpose of the operation of the above described facility, CITY hereby leases to LESSEE the demised premises as shown on **Exhibit "A"** attached

hereto and made a part hereof during the term of this Lease.

B. LESSEE will install all tenant improvements and any additional improvements to equipment as necessary so as to provide quality and safe amusement ride service to park patrons.

Section 3. Term:

A. This Lease shall be for a term of ten (10) years commencing on August 1, 2004, and terminating on July 31, 2014, subject to prior termination by CITY in the event of breach of any of the terms or conditions of the Lease. It is understood and agreed that any re-negotiation of fees and equipment use may include, but is not limited to, continued leasing by LESSEE, of all or part of the equipment owned by the City of Concord and will provide the CITY with the option to purchase, for cash and at fair market value, all or part of the rides installed and owned by the LESSEE. If the LESSEE shall for any reason hold over beyond such term with the consent, express or implied, of CITY, such holding over shall be month-to-month only, subject to the terms and conditions of this Lease but shall not be a renewal hereof; and the consideration to be paid shall be at 100% of the rates then prevailing under the terms of this Lease.

B. Provided LESSEE is not in default under the Agreement, LESSEE shall have the right to exercise two five-year options to renew this Agreement on the existing terms and conditions for the period August 1, 2014 through July 31, 2019, and August 1, 2019 through July 31, 2024. LESSEE must exercise the option not less than 90 days and not more than 180 days prior to July 31, 2014 and July 31, 2019 respectively, and options must be exercised by LESSEE in writing to the

attention of the City of Concord Director of Parks and Recreation. The Director's consent shall be required for renewal, however, if LESSEE is not in default under the Agreement, the Director's consent will not be unreasonably withheld or delayed.

Section 4. Lease Rent:

A. LESSEE shall pay to the City of Concord, by means of direct deposit to an institution specified by the CITY, as a Lease rent, the following amount:

The total annual guaranteed rent is \$40,000 due and payable in eight equal payments of \$5,000 during the months of April through November. LESSEE shall make the payment thereof to the CITY on or before the tenth (10th) day of each month described.

B. A late charge of five percent (5%) of the amount due shall be added to any amount, which is not received by the CITY on or before the date due.

C. The annual rent shall be adjusted by a minimum of two percent (2%) and maximum of five percent (5%) at the end of each two (2) year period and any extended term thereof on the anniversary date of this Agreement. This increase shall be mutually agreed upon, based on the LESSEE's increase in gross receipts for the previous two (2) years, and determined as described in **Exhibit B** attached hereto and by incorporation is made a part hereof. If the parties are unable to agree upon a mutually acceptable adjustment, the default rent increase will be fixed at three percent (3%).

Section 5. Waiver:

The waiver by CITY of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any sum due hereunder by CITY shall not be deemed to be a waiver of any prior breach by the LESSEE of any term, covenant or condition of the Lease other than the failure of LESSEE to pay the particular sum so accepted regardless of CITY's knowledge of such prior existing breach at the time of acceptance of such sum.

Section 6. Taxes and Assessments:

LESSEE shall pay before delinquency all lawful taxes, assessments, fee or charges which at any time may be levied by an agency of the Federal Government, State of California, County of Contra Costa, City or tax or assessment levying body upon any interest in this Lease or any possessory right which LESSEE may have in or to the premises covered hereby or improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances and equipment owned or used by LESSEE in or about said premises. The possessory interest created under this Lease is subject to property taxation and LESSEE shall be subject to payment of property taxes levied on the possessory interest by the County of Contra Costa.

Section 7. Indemnity and Hold Harmless:

LESSEE shall assume the defense of and indemnify and save harmless CITY, its officers, employees and agents and each and every one of them from and against all

actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected by reason of or resulting from, directly or indirectly, during the term of this Lease by LESSEE whether within or without the scope of this Lease, except for damages caused as a result of City's sole negligence or sole willful misconduct. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by CITY.

Section 8. Insurance:

During the term of this Lease, LESSEE shall maintain in full force and effect at its own cost and expense the following insurance coverage:

A. Workers' Compensation

Full Workers' Compensation Insurance and Employer's Liability policy or provide evidence of ability to undertake self-insurance. Workers' Compensation in compliance with California statutes and Employer's Liability coverage of at least \$1,000,000 per occurrence. In the event the LESSEE is self-insured, it shall furnish a Certificate of Permission to Self-Insured by the Department of Industrial Relations Administration of Self-Insurance, Sacramento and evidence of at least one million dollars (\$1,000,000) per occurrence excess Workers' Compensation limit combined with Self-Insurance Retention.

B. General Liability Insurance

The LESSEE must provide sufficient broad coverage to include:

- 1) Comprehensive Auto and General Liability Insurance
- 2) Broad Form Property Damage Liability
- 3) Personal Injury Liability

- 4) **Products and Completed Operation Liability**
- 5) **Contractual Liability**

The amount of the policy shall not be less than one million dollars (\$1,000,000) single limit per occurrence, issued by an admitted insurer of insurers as defined by the California Insurance Code and having a BEST's rating of A-7 or better, providing that the City of Concord, its officers, employees, and agents are to be named as "additional insured" under the policy, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by CITY or other named insured will be called on to contribute to a loss covered thereunder.

C. Certificate of Insurance

In lieu of actual delivery of Insurance Policies, LESSEE may provide a standard Certificate of Insurance completed and filed with CITY's City Attorney, 1950 Parkside Drive, Concord, CA 94519 within fifteen (15) days of the execution of this Lease and prior to engaging in any operation or activity set forth in this Lease. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of this Lease without thirty (30) days written notice to CITY prior to the effective date of such cancellation or change in coverage.

It is understood and agreed that approval of said policies shall in no way affect the terms and conditions of the indemnity and hold harmless clause in this Lease which shall remain in full force and effect.

Section 9. Performance Bonds:

LESSEE shall obtain, upon the effective date of this Contract and Lease, and continue in full force and effect during the term thereof a Letter of Credit or Certificate of Deposit issued by a corporation or corporations authorized to transact business in the State of California and in a form satisfactory to CITY's City Attorney in an amount of not less than \$10,000 or shall deposit with CITY, in a non-interest bearing cash deposit in the amount of \$10,000 receipt of which is hereby acknowledged, which Letter of Credit, Certificate of Deposit, or cash deposit shall guarantee and be conditioned upon the faithful performance of this Lease by LESSEE and its agents, contractors, and employees and shall guarantee full and complete reimbursement to CITY in the event of criminal or tortuous appropriation by LESSEE or any of its agents, contractors, or employees of monies or property belonging to CITY and collected by or under the control of LESSEE or monies or property for which LESSEE is accountable to CITY. The LESSEE shall provide CITY's City Attorney with a copy of said Letter of Credit or Certificate of Deposit within ten (10) days of the execution of this Amendment and prior to engaging in any concession set forth in this Lease.

Section 10. Performance:

A. LESSEE shall abide by and remain in compliance with all applicable standards associated with working with children including the requirements of the State of California. LESSEE shall train and supervise such personnel as may be necessary to insure all are qualified and competent to work with children.

B. LESSEE's entire staff shall endeavor to meet all requirements for services in a good and workmanlike manner including dress and appearance, and shall maintain themselves in such matters as to sobriety and moral character that they shall, at all times, be able to deal effectively and properly with the public.

C. LESSEE shall specifically name a Manager on Duty and provide CITY with names of those qualified for this position. One of the so named persons shall be capable of handling the effective management of the facilities and on duty at all times of operation.

D. The CITY expects the services provided by the LESSEE to achieve an overall customer satisfaction rating of 90% good or excellent as determined by an annual random sample of approximately 150 amusement park customers, including food patrons surveyed by a mutually agreed upon consultant retained by CITY.

Section 11. Maintenance:

A. LESSEE shall at all times during the term of this Lease keep true, accurate, and complete weekly maintenance and inspection logs for each and every ride or piece of equipment. These logs shall be made available to CITY or its representative upon request and shall identify any unsafe condition or inoperative equipment and actions taken to correct those condition(s). City shall be notified of any unsafe condition immediately and any ride that is out of use, in part or in whole, for more than three (3) days.

It is further understood that at no time shall any ride or piece of equipment be allowed to operate if any unsafe condition exists and that the City reserves the right to have any or all ride equipment inspected by an Inspector from the California

Department of Industrial Safety and Health, Elevator Unit and Amusement Rides and Trams.

Should any ride or piece of equipment be deemed by the CITY unsafe for performance or to be operating at less than full capacity, LESSEE shall cause said ride or piece of equipment to be repaired immediately, (or at Lessee's option replace said ride with a comparable ride) and shall not be allowed to operate again until re-inspected by the CITY. Additionally, should any multiple rides or pieces of equipment be deemed to have safety infractions, the City reserves the right to consider same as a material breach of this Lease and may elect to cancel this agreement effective immediately.

B. LESSEE shall have all amusement rides and equipment inspected annually in accordance with Federal, State, and local regulations. A report, prepared by the authorized inspectors, will be provided after each inspection and will be maintained by the LESSEE for the term of the Lease. In addition to State inspections, LESSEE shall have, at the LESSEE's expense, all equipment inspected for material condition and safe operation by a private firm immediately before each operating season. The LESSEE will provide a copy of each inspection report to the CITY promptly upon receipt.

Section 12. Financial Record Inspection:

A. LESSEE shall at all times during the term of this Agreement and for a period of four years thereafter, keep true, accurate and complete financial records and accounts of its operations under this Agreement and such other financial or business records as may be required by authorized CITY representatives. LESSEE shall

keep records in accordance with fiscal procedures established by CITY consistent with Generally Accepted Accounting Principles. Authorized CITY representatives shall have the right at all times to examine and audit said records and accounts upon thirty (30) days' notice. Said audit shall be performed at City's expense. LESSEE agrees to pay the CITY expense for the audit if the audit reveals discrepancies of more than five percent (5%) of concession fees payable for any one calendar year period. Failure of LESSEE to keep and maintain such records consistent with Generally Accepted Accounting Principles is cause for CITY to terminate this Agreement pursuant to Section 22 of this Agreement.

B. LESSEE shall also furnish to CITY an annual statement of the gross receipts of the total operation. The statement must detail the gross amount realized from each and every activity under the Lease. The annual statement of gross receipts shall be submitted on or before the twentieth (20th) of June for the previous calendar year. All statements must be approved by a Certified Public Accountant of the State of California.

C. LESSEE further agrees to furnish to CITY's Finance Department, on or before the twentieth (20th) of June, an annual financial statement for the previous calendar year. This statement must consist of a balance sheet and income statement covering the calendar year of the LESSEE, which shall be the Lease anniversary date. The statement must be prepared by a Certified Public Accountant or a Public Accountant on his/her/its stationary for the LESSEE.

Section 13. CITY Provided Facilities and Services:

A. CITY shall provide the premises indicated on **Exhibit A**, which exhibit is attached hereto and by incorporation is made a part hereof.

B. CITY will furnish water and sewer services.

C. CITY shall provide the rides and equipment as shown on **Exhibit C** attached hereto and by incorporation is made a part hereof.

The CITY makes no warranty, express or implied, as to the condition of the equipment and that is the LESSEE's responsibility to make sure the equipment operates satisfactory. LESSEE takes said equipment in an "as is" condition and is responsible for making all equipment and rides safe for use by the public.

Section 14. LESSEE Provided Facilities and Services:

A. LESSEE shall maintain the amusement rides concession staffed and opened for business to the general public in accordance with the schedule set forth in **Exhibit D** attached hereto and by incorporation is made a part hereof, weather permitting. CITY recognizes LESSEE's need for flexibility to adjust hours of operation based on prudent business decisions. The amusement park operating hours, with the agreement of LESSEE and CITY, may change from time to time.

B. LESSEE shall, in addition to City provided rides listed in 12. C above, provides each and every amusement ride set forth in **Exhibit C**. CITY must approve any changes in the number or type of amusement rides and/or prices, in advance in writing.

C. LESSEE prices for rides, souvenir and food concessions shall be consistent with market pricing for amusement parks with similar attractions. LESSEE shall

submit a list and market comparison of prices annually prior to opening for the season.

D. All ride and support structures must comply with all applicable Codes and any and all non-compliance must be corrected in accordance with any governmental directive(s).

E. LESSEE shall, at its expense, assure that the premises and the areas immediately adjacent there to be kept safe, clean, wholesome and sanitary condition and shall operate the facility in such way as to prevent the escape of debris from these activities.

F. LESSEE shall assume the responsibility and expense for all telephone service, electrical service, and disposal of garbage, refuse and rubbish in connection with the activities incident to the LESSEE operations and deposited on the demised premise.

G. LESSEE shall furnish at his own expense all supplies, equipment and fixtures necessary for the operation of the CONCESSION.

H. LESSEE shall promptly comply with written reasonable orders that may be issued from time to time by CITY as to matters concerning the operation of the CONCESSION including, but not limited to, water conservation, recycling and the cleanliness of the area.

I. LESSEE shall pay or cause to be paid the total cost and expense of all maintenance and works of improvement. No such payment shall be construed as rent.

J. LESSEE will not, in the operation of said CONCESSION, interfere in any way with the general or specific use or enjoyment of said facility by the public.

K. It is understood and agreed that LESSEE is an independent contractor and neither it nor any of its agents or employees shall be considered for any purpose whatever to be employees of CITY. LESSEE shall not engage in any other business or activity at the said premises not authorized under the Lease.

L. LESSEE, or its designated representative(s) shall, to the extent of its authority, maintain law and order around the demised premises at all times.

M. LESSEE shall, within the scope of the law, require future employees to submit a completed employment application, which shall be verified by LESSEE, and interview all applicants including a background check before employment is granted.

N. LESSEE shall provide to the CITY one thousand (1,000) free ride tickets at the beginning of each year and any extended term of this Agreement to distribute to CITY sponsored programs. These tickets shall be free of cost to the CITY, transferable from one year to the next, and shall not expire.

Section 15. Optional Services:

LESSEE may provide limited refreshment services to amusement rides CONCESSION patrons. Provision of said services, including, but not limited to, the design of the Birthday Party Area and the type of refreshments which may be sold shall be subject to the prior written approval of CITY, shall be provided in sufficient quantities to meet the customer's demands therefore. Any changes to the

amusement stands or type of refreshments shall not occur until receipt of explicit written approval from CITY.

Section 16. Alterations and Repair:

A. LESSEE acknowledges that is has fully inspected the premises and accepts the improvements and equipment thereon in their existing or planned condition and agrees that no demands for any alterations, additions, or repairs are to be made upon City.

B. LESSEE shall not make, or suffer to be made, any alterations of the facilities or any part thereof, except movable furniture and trade fixtures, without first obtaining the written consent of CITY. Any additions to or alterations of said facilities shall be at LESSEE's expense and shall become at once a part of the realty and belong to CITY. LESSEE shall keep all improvements of any kind and the demised premises in which they are situated free from any liens arising out of any work performed, material furnished, or obligations incurred.

C. LESSEE acknowledges that the area discussed within the context of this Lease is often referred to as "Pixieland Park" but is in fact located within "Willow Pass Park" and under a Master Plan development.

Section 17. Planned Improvements:

Not later than five (5) years from the date of this Agreement, LESSEE shall submit to the CITY a list of conceptual long-range improvement plans. In the event that any future construction and/or renovation projects that enhance the park are contemplated or planned, the parties agree to negotiate reasonable adjustments to the financial terms of this Agreement. If the parties are unable to agree upon

mutually acceptable adjustments, LESSEE may terminate this Agreement upon ninety (90) days written notice to CITY.

Section 18. Security Devices:

LESSEE may provide at its own expense any legal devices, installations, or equipment designed for the purpose of protecting the demised premises from theft, burglary, or vandalism provided, however, that written approval for any such installation be first obtained from CITY.

Section 19. Compliance:

A. Any violation of any rules, regulations, or instructions of CITY, or its authorized representative, which has not been corrected by LESSEE within thirty (30) days or such lesser time as may be reasonable, after the mailing by CITY of a written notice of such violation shall be sufficient cause for the cancellation of this Lease and termination thereof without compensation or the payment of damages to LESSEE.

B. LESSEE and its agents or employees shall at all times comply with and abide by all pertinent or applicable regulations and ordinances of the CITY, the County of Contra Costa, and the laws of the State of California and the United States insofar as the same or any of them are applicable and to obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.

C. In the event LESSEE fails, refuses, or neglects to perform any of the duties required to be performed by it by virtue of the provisions of this Lease, CITY may enter upon the subject premises and perform such services; but this right shall not

be construed to be a duty on the part of CITY to provide said services. LESSEE shall reimburse CITY for all costs for such services on the first day of the month next succeeding the month in which the service was performed.

Section 20. Right of Entry:

LESSEE's demised premises shall at all times be open to the inspection of authorized CITY representatives and other proper governmental authorities.

Section 21. Assignment and Subleasing:

LESSEE shall not, without the written consent of CITY, assign, hypothecate, mortgage, or grant control of this Lease or of the business conducted pursuant thereto or sublease any portion of the demised premises. Any such attempted assignment, hypothecation, mortgaging, or granting of control, or subletting of the premise without the prior written consent of CITY shall, at the election of CITY, and without notice, render this Lease null and void and of no further force and effect.

Section 22. Damage and Destruction of Premises:

In the event of the total destruction or damage of the demised premises by fire, earthquake, storm, or other casualty beyond the control of LESSEE, this Lease and any and all rights of the parties thereunder shall terminate in the event CITY so elects. If CITY elects to rebuild the structures on the premises, this Lease shall continue in full force and effect; provided, however, that the rent to be paid by LESSEE herein shall be abated during the time of reconstruction and shall be reinstated commencing upon the date that any or all of the premises again become tenantable. The applicable rent when the premises are partially reconstructed and useable shall be calculated in the same manner as provided herein for partial

destruction. In the event of partial destruction, this Lease shall continue in force and effect; provided, however, that the annual rent to be paid by LESSEE herein shall be during the time of such reconstruction in the proportionate amount that the damaged area bears to the total structure and said annual rent shall be reinstated in full upon the completion of said reconstruction.

Section 23. Default and Termination:

A. The following events are hereinafter called "Events of Default":

- 1) The failure of LESSEE to punctually pay the rentals or make any other payments required hereunder when due within fifteen (15) days after written notice from CITY.
- 2) The failure of LESSEE to maintain the quality and number of services as required in this Lease where such failure continues for more than ten (10) days after written notice from CITY to correct the condition therein specified.
- 3) The failure of LESSEE to keep, perform, and observe any and all of its promises, covenants, conditions, and agreements set forth in this Lease within thirty (30) days or such lesser time as may be reasonable after written notice of default thereunder from CITY. However, where the fulfillment of LESSEE's obligation requires performance over a period of time and LESSEE commenced whatever work may be required to cure the particular fault within ten (10) days after the aforementioned notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by CITY.

- 4) The filing of a voluntary petition in bankruptcy by LESSEE; the adjudication of LESSEE's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of LESSEE under the Federal Reorganization Act; the occurrence of any act which operates to deprive LESSEE permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the CONCESSION granted herein; the levy of any attachment or execution which substantially interferes with LESSEE's operations under this Lease and which attachment or execution is not vacated, dismissed, stayed, or set aside within a period of sixty (60) days.
- 5) The abandonment, vacation, or discontinuance of LESSEE's operations on the demised premises without the written consent of CITY.
- 6) The dissolution of LESSEE.

B. Upon the occurrence of any one or more of the "Events of Default", CITY shall have the right to terminate this Lease. Upon such termination, LESSEE's right to possession of the demised premises shall terminate and LESSEE shall surrender possession thereof immediately. In such event, LESSEE hereby authorizes CITY to enter upon the demised premises, or any part thereof, immediately and to take possession of said premises and all improvements, equipment, and inventory belonging to CITY. The election by CITY to terminate this Lease shall not prejudice any rights or claims CITY may have for sums remaining due to it, for damages for

pursuing such other remedies as may be available to CITY by law or equity, and all remedies of CITY shall be cumulative and not in the alternative.

Section 24. Surrender and Disposition of Furniture, Furnishings, Equipment and Trade Fixtures:

Upon the expiration of the term thereof, or sooner termination of the Lease as provided for, LESSEE shall peaceably vacate the demised premises and any and all improvements located thereon and deliver up the same to CITY in a reasonably good condition, ordinary wear and tear excepted.

Within thirty (30) days of any cancellation or other termination, LESSEE, or LESSEE's representatives, shall remove at its own expense, its own furniture, furnishings, equipment, inventory, and trade fixtures. Said removal shall be conducted in an expeditious and orderly manner and shall be accomplished in such a way as to minimize the nature and the extent of any disruption of service to the public contracted for herein and the premises shall be restored to their original condition, ordinary wear and tear excepted. It is agreed that CITY, or CITY's assignee, during said thirty day period, shall have the first right to purchase the furniture, furnishings, equipment, and trade fixtures of LESSEE for the same price that LESSEE would be willing to sell said goods to any other person. Should LESSEE fail to remove said items within said thirty day period, CITY shall have the right to commence standard abandonment proceedings provided by law. In the event of such sale, removal, or demolition, LESSEE shall reimburse CITY for any cost in excess of any consideration received by CITY as a result of said sale, removal, or demolition.

Section 25. Mechanics' Liens:

LESSEE shall pay all costs for construction and/or maintenance done by it or caused to be done by it on the premises as permitted by this lease. LESSEE shall keep premises, all buildings, other improvements, and land of which the premises are a part free and clear of all mechanics' lines resulting from construction and/or maintenance done by or for Lessee.

LESSEE shall have the right to contest the correctness or the validity of any such lien, immediately on demand by City, LESSEE procures and records a lien release bond issued by a corporation authorized to issue any surety bonds in California in an amount equal to one and one-half times the amount of the claim of the lien. The bond shall meet the requirements of Civil Code 3134 and shall provide for the payment of any sum that the claimant may recover on the claim (together with the costs of suit, if it recovers in the action).

Section 26. CITY's Remedies on Default:

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

B. In the event of breach of this Lease by LESSEE, or LESSEE filing for bankruptcy or insolvency, or any abandonment of the premises, or the Lease is terminated at LESSEE's request or by CITY, then the buyout provisions contained herein are void and CITY is not bound by them.

Section 27. Notices:

All notices and orders that may be given under this Lease may be served by first class mail or in person to CITY at the Parks and Recreation Department, Facilities Maintenance, 1455 Gasoline Alley, Concord, California 94520, and to LESSEE at 1512 Davis Avenue, Concord, California 94519, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

Section 28. Attorney's Fees:

In the event either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this agreement by it to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to the relief as may be granted in such litigation and its court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal.

Section 29. Entire Lease; Amendment in Writing:

This Lease contains the entire agreement between the parties. This Lease supersedes in its entirety the Contract/Lease entered into by the parties dated May

2, 1990. Any agreements or representations not contained herein are null and void.

This Lease may be amended only by a writing signed by both parties.

Section 30. Time of Essence:

Time is expressly declared to be of the essence in the performance of this Lease.

Section 31. Guaranty and Performance of Lease:

Cynthia Brumley (Guarantor) agrees in her individual capacity to act as guarantor for satisfactory performance of all terms of this Lease. It is expressly agreed by the parties hereto that guarantor is the operator of Pixieland. Operations of Pixieland shall be performed solely by LESSEE.

**City of Concord
A Municipal Corporation**

BY:

City Manager

**Pixieland Amusement Park, Inc.
A California Corporation**

BY:

Cynthia L. Brumley, President

BY:

Debby L. Hull, Vice President

APPROVED AS TO FORM

BY:

Assistant City Attorney

BY:

Cynthia L. Brumley, Guarantor

ATTEST:

BY:

City Clerk

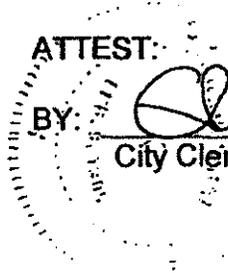
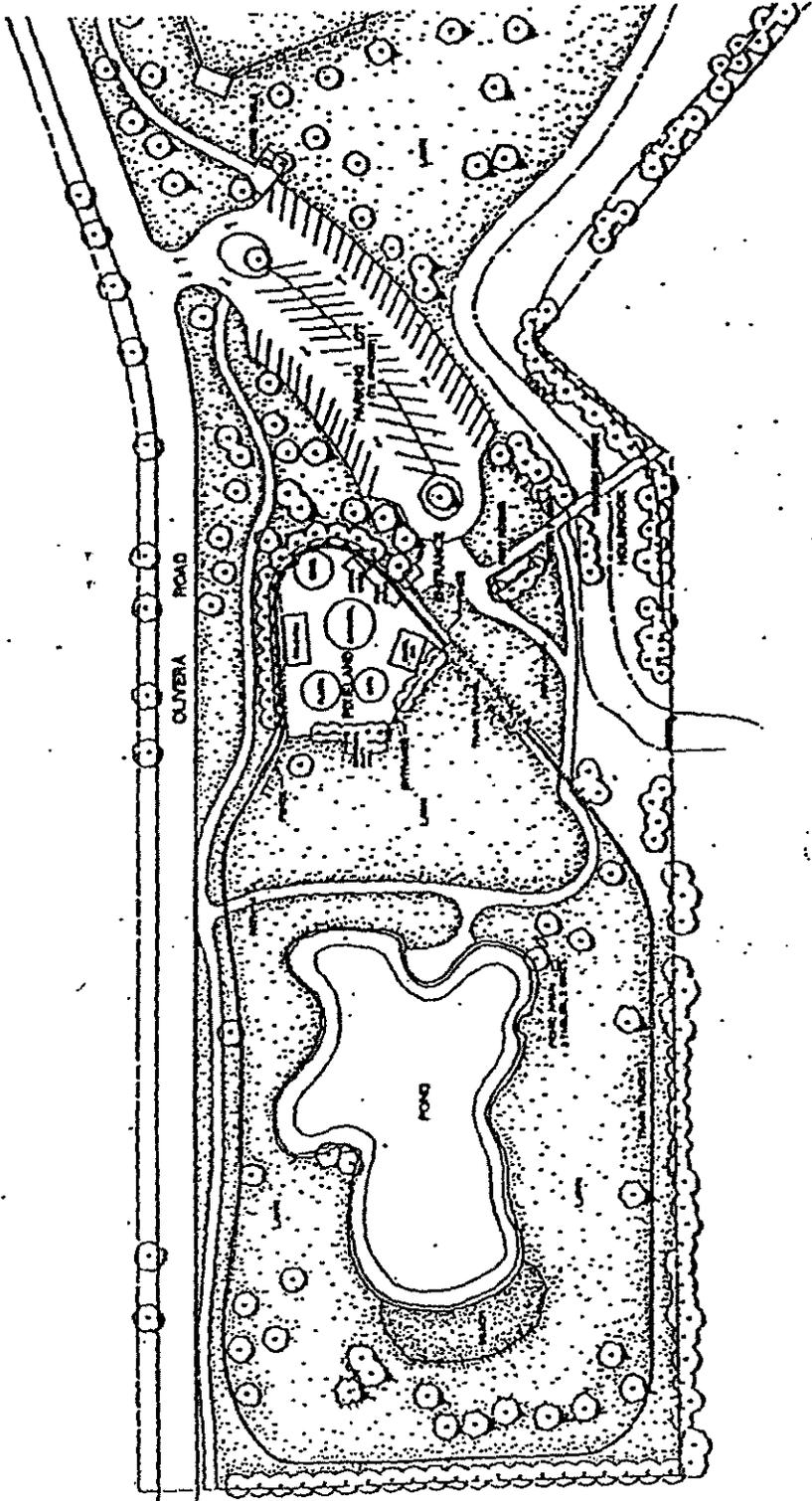


Exhibit A Premises

(existing)



PIXIELAND PARK

WILLOW PASS PARK CONCORD, CA
CITY OF CONCORD, CALIFORNIA
PLANNING DEPARTMENT
1000 WILLOW PASS PARK
CONCORD, CA 94520



Exhibit B
Rent Adjustment Schedule

Percent Increase in Gross Receipts	2%-3%	3%-4%	4%-5%	5%+
Percent Increase in Annual Rent	2%	3%	4%	5%

Exhibit C
Rides and Equipment

CITY PROVIDED RIDES

1. Miniature Train
(Allen Hershell G16)
2. Carousel
(Arrow)

LESSEE PROVIDED RIDES

1. Dragon Wagon
(Wisdom)
2. Spinning Teacups
(Kid Power)
3. Frog Hopper
4. Red Barron Airplane
(Midway)
5. Antique Car Ride

Exhibit D

Schedule of Days Open

January	Closed	
February	Open Saturday and Sunday Closed Monday through Friday	10a.m. to 4 p.m.
March	Open Saturday and Sunday Closed Monday through Friday	10a.m. to 4 p.m.
April	3 rd to 18 th Open Daily 19 th to 30 th Open Saturday and Sunday	10 a.m. to 4 p.m. 10 a.m. to 4 p.m.
May	Closed Monday and Tuesday Open Wednesday through Friday Open Saturday and Sunday	10 a.m. to 4 p.m. 10 a.m. to 5 p.m.
June	Closed Monday and Tuesday Open Wednesday through Friday Open Saturday and Sunday	10 a.m. to 4 p.m. 10 a.m. to 6 p.m.
July	Open Daily	10 a.m. to 6 p.m.
August	Open Daily	10 a.m. to 6 p.m.
September	Closed Monday through Thursday Open Friday through Sunday Open Labor Day	10 a.m. to 5 p.m. 10 a.m. to 5 p.m.
October	1 st through 12 th Open Friday through Sunday 13 th through 31 st Open Saturday and Sunday	10 a.m. to 4 p.m. 10 a.m. to 4 p.m.
November	Open Saturday and Sunday Closed Monday through Friday	10 a.m. to 4p.m.
December	1 st through 5 th Open Saturday and Sunday 6 th through 31 st Closed	10 a.m. to 4 p.m.

AMENDMENT TO AGREEMENT

This Amendment to Agreement is entered into this _____ day of July, 2014.

WHEREAS, on July 27, 2004 the City of Concord, a municipal corporation, (hereinafter “CITY”) and Cindy Brumley and Debby Hull, dba Pixieland Amusement Park, Inc., (hereinafter referred to as “LESSEE”) entered into an exclusive agreement (Attachment A) to manage and operate an Amusement Rides Concession (the “CONCESSION”) in the Willow Pass Park facilities provided by CITY.

WHEREAS, the first ten-year term of that Agreement will expire on July 31, 2014; and

WHEREAS, CITY and LESSEE hereby agree to extend the first ten-year term of the Agreement by three (3) months, up to and including October 31, 2014.

NOW, THEREFORE, based upon the mutual promises and understandings of the parties, the Agreement is amended as follows:

Section 1. – Term

a. The term of this Agreement, which commenced on August 1, 2004, shall terminate on October 31, 2014. Provided LESSEE is not in default under the Agreement, LESSEE shall have the right to exercise two (2) five-year options, respectively for the periods November 1, 2014 through October 31, 2019, and November 1, 2019 through October 31, 2024, under such terms and conditions as are mutually agreed upon by the parties to this Agreement. LESSEE must exercise the options ninety (90) days prior to the Agreement termination dates, in writing to the attention of the City of Concord Director of Parks and Recreation. The Director’s consent shall be required for a renewal, which consent shall not be unreasonably withheld.

//

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IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year set forth below.

Dated: _____

CYNTHIA BRUMLEY, DBA Pixieland
Amusement Park, Inc.

Dated: _____

CITY OF CONCORD, a municipal corporation

Valerie J. Barone
City Manager

APPROVED AS TO FORM:

Mark S. Coon
City Attorney

ATTEST:

Mary Rae Lehman, CMC
City Clerk

Finance Director's Certification
City of Concord

Date: _____

Account Code: _____

Amount: \$ _____

I hereby certify that adequate funds exist or will be received during the current fiscal year 2014/2015 to pay the anticipated expenses to be incurred pursuant to this contract.

Director of Finance
