

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: CONCESSION AGREEMENT - HOWARTH PARK PONY
RIDE CONCESSION
STAFF PRESENTER: AMY ROCKLEWITZ
AGENDA ACTION: RESOLUTION

ISSUE(S)

Shall the City of Santa Rosa approve a two year Concession Agreement with The Pony Express Equine Assisted Skills for Youth (Pony Express) for the pony ride concession at Howarth Park?

BACKGROUND

1. The pony ride concession has been an integral part of the attractions at Howarth Park for almost 50 years. Thousands of children each year visit the park to ride the ponies, have birthday parties and/or participate in special events and classes.
2. The pony ride concession, located in the Howarth Park pony corral, is open weekends beginning in February and through October, and additionally Monday through Thursday during the summer months.
3. Pony Express has been in contract with the City of Santa Rosa to provide pony ride concessions at Howarth Park for over 30 years. In that time, the pony rides, riding lessons and pony camps offered by Pony Express have become a prominent attraction at Howarth Park.
4. This Concession Agreement is for a two-year term with the City's option for three, one-year extensions.

ANALYSIS

1. The City's Finance Department has handled the bid process for the pony concession in the past. In the last 15 years, the bid for the pony ride concession has been awarded to Pony Express due to the fact that there has not been any comparable service available. Pony Express is able to meet the specific needs of the Howarth Park pony concession, has proven to be dependable and has kept her prices reasonable.

Council Meeting of: February 5, 2013

Concession Agreement – Howarth Park Pony Ride Concession

2. The pony ride concession has become an integral part of the Howarth Park experience by offering pony rides, classes for youth, and being included in birthday party and special event packages.
3. In 2012, the pony ride concession provided over 19,000 pony rides and taught introductory equestrian lessons to 46 youth.

RECOMMENDATION

It is recommended by the Recreation & Parks Department that Council, by resolution, approve the agreement and authorize the Mayor to execute the Concession Agreement for the pony rides at Howarth Park between the City of Santa Rosa and The Pony Express Equine Assisted Skills for Youth.

Author: Jeff Tibbetts, Recreation Coordinator

Attachment:

- Concession Agreement

Concession Agreement

This Concession Agreement ("Agreement") is made as of this ____ day of _____, 2013, by and between the City of Santa Rosa, a municipal corporation ("City"), and The Pony Express Equine Assisted Skills for Youth ("Concessionaire") a 501(c)(3) Corporation.

RECITALS

- A. City desires to retain Concessionaire to operate a Pony Ride Concession in the Howarth Park Pony Ride Area (the "Concession").
- B. Concessionaire represents to City that it is fully qualified to operate the Concession.
- C. The parties have negotiated upon the terms pursuant to which Concessionaire will provide such services and have herein reduced such terms to writing.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

Section 1. GRANT OF LICENSE

The City grants a license to Concessionaire to operate the Concession and conduct classes on a portion of Howarth Park located at 630 Summerfield Road, City of Santa Rosa more specifically described as the Pony Ride Corral Area. The City also designates a parking space in Howarth Park for the use by Concessionaire in connection with her operation of the concession. The corral area and parking space are identified on Exhibit "A" and are collectively referred to herein as the "Premises".

Section 2. TERM OF LICENSE

This license shall begin the first weekend in February and end the last weekend of October during the years 2013 and 2014. This license shall be for a two-year term with the City's option for three one-year extensions.

Section 3. CONCESSIONAIRE DUTIES AND RESPONSIBILITIES

Concessionaire agrees to operate the Concession on the Premises in accordance with the terms and conditions herein.

- a. Concessionaire and all employees and volunteers shall carry proper identification on their persons at all times. All of Concessionaire's employees and volunteers shall be neat, courteous and polite.
- b. All of Concessionaire's employees and volunteers shall be experienced in working with ponies/horses in a similar setting and well trained in customer service and operation procedures.

- c. Concessionaire agrees to furnish all qualified labor, equipment and transportation necessary to operate the Concession for the dates/times outlined in attached Exhibit B.
- d. Concessionaire shall remove concession staff or volunteers upon request by City.
- e. Concessionaire shall:
 - 1. Provide gentle ponies suitable for riding by small children;
 - 2. Feed and care for such ponies in a lawful and humane manner;
 - 3. Maintain the Premises in a clean and healthful condition, free from manure, garbage, and debris;
 - 4. Each day, collect and deposit all garbage, debris and manure from the operation, placing manure in plastic bag containers and placing garbage and debris in City garbage dumpsters;
 - 5. Train pony ride staff and volunteers in accident procedures and customer service procedures that are consistent with City procedures;
 - 6. Comply with all laws, rules and regulations, including but not limited to the rules and regulations of City's Recreation and Parks Department and all orders of the Director of the Recreation and Parks Department;
 - 7. Not make any alterations to the Premises or erect or maintain any signs thereon without City's written consent;
 - 8. Pay for all damages incurred by City in connection with the operation of the Concessions;
 - 9. Park in designated parking space and is responsible for putting parking bollards in place and locking them after use; ensure that employees and volunteers park in the public lot. Concessionaire is responsible for all issued keys and the cost of replacement if lost;
 - 10. Not use the Premises in any manner that will constitute waste, a nuisance, or unreasonable annoyance to park users and/or owners or occupants of adjacent properties;
 - 11. Not use loudspeakers, sound or light apparatus which can be heard or seen outside the Premises;
 - 12. Be responsible for emptying water tubs daily.

f. Operation:

1. Concessionaire shall employ its best efforts to operate in a manner which will produce the maximum gross receipts, consistent with serving the needs of Howarth Park patrons and providing quality customer service at all times.
2. Concessionaire shall continuously utilize the Premises for the uses specified in this Agreement, maintain adequate personnel for efficient service of its customers and not lower or change the quality of its business without City's consent.
3. Concessionaire and its employees and volunteers shall work directly with City staff to ensure smooth operations, quality customer service and maintain effective working relationships.
4. Concessionaire shall provide clean staff shirts and/or name tags to identify its employees/volunteers and maintain quality service.
5. Concessionaire shall have one responsible adult (18 years or older) on the premises **at all times**. **At no time** will the pony ride concession be operated if no one 18 years of age or older is in attendance as the operator of the Concession. The responsible adult must be identified upon the commencement of the license and scheduled ahead of time with the City.
6. Pony ride volunteers are not employees or volunteers of the City. The City is not responsible for Concessionaire's employees or volunteers.
7. Concessionaire shall turn in lost and found articles to the Howarth Park Train Station ticket booth daily.
8. Concessionaire is responsible for its own equipment and telephone for daily operations. This includes a first aid kit and supplies needed for staff/volunteers and ponies and garbage bags needed for daily garbage/manure removal.
9. In November of 2013, City will notify Concessionaire of the exact dates/times for the operation of the operation for the upcoming season and will revise Exhibit "B" and provide it to Concessionaire. The revised Exhibit B shall automatically become part of this Agreement.
10. The City will notify the Concessionaire by 9 a.m. if Howarth Park Concessions will be closed for the day due to rain/weather or other events beyond the control of City.
11. Prices and rates:
 - i. Concessionaire shall not sell any merchandise on or about the Premises without the prior written approval from City. City reserves the right to prohibit the sale of any item which it deems objectionable, beyond the scope of proper service, or that does not meet minimum safety standards.

- ii. The City will charge the fees shown in the Fee Schedule attached hereto as “Exhibit C.”

12. Ticket Sales

- i. Concessionaire, staff or volunteers shall not take cash or gratuities and shall direct all persons to the K-Land ticket booth to purchase pony ride tickets.
 - ii. Concessionaire shall honor unused tickets after the day of sale for the current year of operation. Pony ride tickets will be refunded at City’s discretion.
- e. City shall:
- 1. Provide a designated parking space for Concessionaire to park, load and unload ponies. This designated area may not be used by Concessionaire’s staff or volunteers. Concessionaire must park behind the yellow line, away from the snack bar, and poles must be put back and locked each night.
 - 2. Furnish annual facility preparation including but not limited to general cleaning inside the corral, trail preparation, distribution of saw dust, fence repair, and tree or shrub trimming.
 - 3. Furnish water access to Concessionaire. Concessionaire shall conserve water by not letting water run and not by misusing access. Water tubs shall be emptied each night.
 - 4. Program - Publish hours of operation and special events or classes through City’s Activity Guide, signage and website: howarthpark.com.

Section 4. COLLECTION & DISTRIBUTION OF PROCEEDS

City will pay Concessionaire as described in the Fee Schedule attached as Exhibit C. Payment will be made on a calendar-month basis in arrears. A monthly report will be run at the end of each month and City will issue a payment based on the monthly report. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Concessionaire shall be prorated by day.

Section 5. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

CITY

City of Santa Rosa
Amy Rocklewitz, Recreation Supervisor
415 Steele Lane
Santa Rosa, CA 95401
(707) 543-3278
Fax (707) 543-3288

CONCESSIONAIRE

Linda Lee Aldrich
dba The Pony Express Equine Assisted
Skills for Youth
6413 Sonoma Hwy
Santa Rosa, CA 95409
(707) 538-9323
Fax (707) 539-1036

Section 6. TERMINATION OF AGREEMENT FOR DEFAULT

The following events shall be “Events of Default”

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

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

SECTION 7. TERMINATION FOR CONVENIENCE

This Agreement may be terminated by either party by giving sixty (60) days notice to the other in writing of its intent to terminate the Agreement.

SECTION 8. ASSIGNMENT AND SUBCONTRACTING

Concessionaire shall not assign this Agreement or any part thereof, without the previous written consent of the City, nor shall he assign, by power of attorney or otherwise, any of the money payable under this Agreement unless written consent of the City has been obtained. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the

City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Concessionaire hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Concessionaire obtains the prior written consent of City to assign monies due or to become due under this Agreement, Concessionaire shall provide City a copy of the instrument of assignment duly executed by Concessionaire, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied in connection with the Concession.

SECTION 9. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Concessionaire shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where same arises out of the performance of this Agreement by Concessionaire, its officers, employees, agents, and volunteers, excepting only that resulting from the sole active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Concessionaire or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

SECTION 10. INSURANCE REQUIREMENTS

Concessionaire shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated and made part of this Agreement by this reference. Maintenance of the insurance coverage as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by City in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Concessionaire to (i) maintain or renew coverage, (ii) provide the Concessionaire notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Concessionaire, whereas the City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Concessionaire to maintain required insurance coverage shall not excuse or alleviate Concessionaire from any of its other duties or obligations under this Agreement. In the event Concessionaire, with approval of the City pursuant to Section 8 above, retains or utilizes any subcontractors in the provision of any services to the City under this Agreement, Concessionaire shall assure that any such has first obtained, and shall maintain, all of the insurance coverage requirements set forth in the Insurance Requirements at Attachment One.

SECTION 11. INDEPENDENT CONTRACTOR

The parties intend that Concessionaire, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with City. Concessionaire is not to be considered an agent or employee of City and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by City for its employees.

SECTION 12. SUCCESSORS AND ASSIGNS

City and Concessionaire each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein. This Agreement shall not create between the Parties a joint venture, partnership, or any other relationship of association other than landlord and tenant and licensor and licensee.

SECTION 13. LEGAL REQUIREMENTS AND PERMITS

Concessionaire shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; and (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.. It shall be the sole obligation hereunder of Concessionaire to obtain any and all licenses, permits and/or clearances necessary and appropriate the lawful operation of the Concession.

SECTION 14. BACKGROUND CHECK

Concessionaire agrees that the City shall have the right to conduct a background investigation of Concessionaire and to request and receive summary criminal history information regarding Concessionaire from the State of California Department of Justice. Upon request by City, Concessionaire agrees to provide all information needed to obtain this information, including Concessionaire's fingerprints. Concessionaire agrees that he/she shall pay the cost of fingerprinting and the processing of the request for summary criminal information.

Concessionaire agrees to comply with all provisions of Public Resources Code 5164 and Penal Code 11105.3. Concessionaire further agrees that every independent contractor, agent, employee and volunteer of Concessionaire who may have direct contact with minors in a supervisory or disciplinary capacity shall successfully undergo a background investigation pursuant to Penal Code session 11105.3 before providing any services to the City.

SECTION 15. SIGNATURES REQUIRED FOR CORPORATIONS

Concessionaire hereby represents and warrants to the City that it is (a) is a duly organized and validly existing 501(c)(3), formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Concessionaire hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Concessionaire in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-

president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

SECTION 16. MISCELLANEOUS

- a. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.
- b. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.
- c. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.
- d. Incorporation of attachments and exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

CITY OF SANTA ROSA

By _____
Mayor

Attest _____
Assistant City Clerk

Date _____

APPROVED AS TO FORM

City Attorney

CONCESSIONAIRE

By _____

Name _____

Title _____

Date _____

Taxpayer ID# _____

- a. Exhibit A - Map
- b. Exhibit B - Hours of Operation
- c. Exhibit C - Fee Schedule
- d. Attachment One – Insurance Requirements

EXHIBIT "A"

Map



EXHIBIT “B”

2013 HOURS OF OPERATION

February 2, 2013 – October 27, 2013
Weekends, 11am-5:30pm

March 18, 2013 – March 21, 2013
Monday-Thursday, 11am-5:30pm (Spring Break)

June 8, 2013 – August 8, 2013
Monday-Thursday, 11am-5:30pm

Holidays:

Sunday, March 31, 2013, 1pm-5:30pm (Easter)
Monday, May 27, 2013, 11am-5:30pm (Memorial Day)
Thursday, July 4, 2013, 11am-5:30pm (Fourth of July)
Monday, September 2, 2013, 11am-5:30pm (Labor Day)

Events:

Saturday, October 26, 2013 11-5:30 – Halloween in Howarth

EXHIBIT “C”

Fee Schedule

The City will charge \$4 for a one lap pony ride ticket or \$7 for a two lap pony ride ticket with the understanding that the Concessionaire will receive 84% of each ride ticket as payment for the services performed under the agreement. The City will keep the remaining 16%.

The charge for party package or pre-sale group tickets will be \$3.75 for a one lap pony ride ticket. The charge for a 10 ride discount punch pass will be \$35. The charge for park events (i.e. Halloween) will be \$3.50 per one lap ride ticket. For each of these special rates, the Concessionaire will receive 84% of each ticket/pass sold. The City will keep the remaining 16%.

The Concessionaire may submit proposal to the City each November for fee changes. The City will approve or deny in writing.

ATTACHMENT ONE INSURANCE REQUIREMENTS FOR GENERAL SERVICES AGREEMENTS

- A. Insurance Policies:** Concessionaire shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

	Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1.	Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2.	Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Concessionaire has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3.	Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Concessionaire, its employees, agents and subcontractors.
4.	Pollution Liability	(contact Risk Mgmt for limits and whether pollution insurance required – if not required, remove this requirement)	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions, and that if canceled for non-payment, then ten (10) days notice shall be given.
2. Liability policies shall provide or be endorsed to provide the following:

- a. For any claims related to this project, Concessionaire's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Concessionaire's insurance and shall not contribute with it; and,
- b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Concessionaire's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Concessionaire shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

- 1. No policy required by this Agreement shall prohibit Concessionaire from waiving any right of recovery prior to loss. Concessionaire hereby waives such right with regard to the indemnitees.
- 2. All insurance coverage amounts provided by Concessionaire and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
- 3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Concessionaire may be required to provide financial guarantees.
- 4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
- 5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.