



# AGENDA REPORT

**To:** FRED GLOVER-BLACKWELL  
CITY ADMINISTRATOR

**From:** Audree V. Jones-Taylor

**SUBJECT:** Concessionaire Agreement  
for City Stables

**Date:** April 7, 2014

City Administrator  
Approval

Date

4-14-14

**COUNCIL DISTRICT:** District 6

## RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Administrator or his designee to negotiate and execute a concessionaire agreement between the City of Oakland and Diamond Equine Services to operate equestrian programs and provide facility improvements to Oakland City Stables, located at 13560 Skyline Blvd. Oakland, California for a three-year term with two consecutive five-year options to renew.

## EXECUTIVE SUMMARY

Staff has prepared a resolution authorizing the City Administrator to negotiate and execute a concessionaire agreement between the City of Oakland and Diamond Equine Services to operate equestrian programs and provide facility improvements to Oakland City Stables (*Attachment A*). This agreement is for a three-year term with two consecutive five-year options for the City to renew, provided that the City's terms and conditions are satisfied.

The City has been engaged in a search for an appropriate concessionaire for City Stables since the site was shut down in September 2004. The first Request for Proposal (RFP) was issued in November 2005, but all the groups were eventually disqualified. In February 2012 a new RFP was issued. In order to be successful, the responder must 1) be committed to providing programs to Oakland youth (with a focus on the under-served and at-risk); 2) have the financial resources to make improvements at the site; and 3) demonstrate the operational capacity to effectively operate an equestrian facility.

With its roots in the Oakland Community and members who have a strong history of stewardship of the site and high standards of horsemanship, community service and youth programming, Diamond Equine Services emerged as the strongest candidate for the concession at City Stables. The proposal

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submitted by Diamond Equine Services demonstrated a commitment to the City's goals for the site, namely to offer programs to the City's youth while operating stable rentals and addressing the need for capital improvements in order to make City Stables a self-sustaining operation.

### **OUTCOME**

Passage of this resolution will allow the City Administrator or his designates to enter into negotiations and execute an agreement with Diamond Equine Services to operate and manage the Oakland City Stables for a term of three years. Oakland Parks and Recreation (OPR) will supervise this agreement.

### **BACKGROUND/LEGISLATIVE HISTORY**

The City of Oakland acquired the 7.2-acre property at City Stables in 1994 with Measure K (Park and Open Space) funding. The management and operation of City Stables was governed by a License and Master Concession Agreement with a local nonprofit group from October 1, 1995 through April 30, 2004. That Agreement was terminated as a result of the group's inability to maintain the necessary insurance coverage required for the safe and legal operation of City Stables. All youth programs were halted by the termination of the Agreement and from May 1 to August 31, 2004, the Office of Parks and Recreation provided for boarding services at the Stables. Operations of the City Stables were shut down entirely on September 1, 2004. All horses were removed and the Stables were closed.

In 2006, two groups applied for the opportunity to become the concessionaire. Metropolitan Equestrian Preservation Society (MEPS) was determined to be the best group and their proposal supported the goals of the City. In July 2006, OPR went to City Council to authorize a contract with MEPS. Unfortunately, due to continued difficulty with confirming MEPS' funding, budget, and programs, OPR withdrew its support for the MEPS proposal on August 31, 2006.

The City has engaged in extensive searches for a concessionaire since the Stables' closure in 2004. The latest search was initiated in February 2012. Four responses to the RFP were received by OPR. Staff convened a review panel consisting of a City Stables Advisory Council member, an Oakland Black Cowboy Association member, an East Bay Regional Parks District manager, a local architect, and an OPR Recreation Supervisor. This group thoroughly reviewed each proposal for completeness, relevant experience, qualifications, organization, approach, and fiscal plan. Each group was then interviewed by the panel in which they had an opportunity to present their plan and then answer a series of questions. The interviews yielded a point rating which resulted in Diamond Equine Services and Heritage Riders as the top two candidates.

Upon further discussion and interviews with OPR Director Audree Jones-Taylor, Parks and Recreation Advisory Commission (PRAC) members and OPR staff, it became clear that Diamond Equine Services and Heritage Riders Association might have been able to work together in a co-management capacity. Although Diamond Equine Services was clearly more suited for overall management, it was felt that Heritage Riders could contribute in youth programming. OPR then

proposed to both groups that they meet and discuss if they could develop a co-management plan. After their deadline had passed, both groups reported that they were unable to come together, citing concerns and difficulty in working together. Diamond Equine Services demonstrated an overall superior ability and the commitment and passion to successfully take on sole management responsibilities. It was with those factors in mind that OPR determined Diamond Equine Services would best fit the needs of the City of Oakland as concessionaire for Oakland City Stables.

## ANALYSIS

Re-opening City Stables with a concessionaire operating the facility will accomplish two major goals for Oakland Parks and Recreation (OPR) and the City of Oakland. First, there will be opportunities for the community to be exposed to equestrian programs, horses and the "ranch" experience, and secondly, it will create an opportunity for additional revenue for the City.

The concessionaire is expected to accomplish the following:

- Provide an array of recreation programs and equestrian services to meet the need of the general public. Provide youth camps and horsemanship training for inner-city youth that include Horseback Riding & Horse Care Camps.
- Develop a Horsemanship training program offered in collaboration with community-based organizations and the Oakland Unified School District and other programs that are geared toward education.
- Community Gardening & Interpretive Programs.
- Horse Management and Sustainable Agricultural Programs: The focus should include horse riding skills, health care, feeding, physiology and anatomy, as well as ecology, water conservation, integrated pest management and gardening techniques.
- Private Riding Instruction/Classes.
- Horse Shows and Clinics.
- Horse Boarding: The monthly fees pursuant to the City's Master Fee Schedule currently range from \$485 to \$650 per month. Potential space capacity will allow for up to 38 horses to board on a month-to-month basis.
- Facility Maintenance: Concessionaire shall ensure that the buildings, grounds, fences and arenas are kept in good maintenance and repair, dust is controlled, soiled bedding and manure is properly stored and disposed of to minimize odors, and that flies and other pests are controlled and abated. Concessionaire shall be required to provide its own equipment (tractors, trucks, etc.) for the operation of the facility.
- Concessionaire shall provide for 24-hour per day presence on the property.
- Complete capital improvements with proper permits and city approval to property including Hacienda, care-taker apartment adjacent to Hacienda, stables, and barns.

### *Benefits of Equestrian Programs at City Stables*

1. The City Stables offer a unique opportunity to present highly specialized equestrian programs and boarding services for the Oakland community. Currently there are several

other stables operating in Oakland; however, none offer the comprehensive riding and horsemanship programs for under-served and at-risk youth.

2. Facility upgrade grant funds received from State of California and Measure WW and Proposition 12 in 2006 require that the City Stables run and operate equestrian programs.
3. Addresses the concerns of neighboring residents regarding under-utilization of City Stables.

### **PUBLIC OUTREACH/INTEREST**

Oakland Parks and Recreation has been very active in soliciting and advertising for proposed concessionaires. Numerous ads were placed in in local newspapers, internet and trade publications to cover as wide a base as possible. In 2011, an RFP was published and groups were invited to participate for consideration.

In addition to solicitation, several programs have been offered under the supervision of OPR, most notably used by OPR Summer Explosion Day Camps from 2008 to 2010, Summer Horsemanship day camps in 2011 and 2012, and several community "Fiesta Days". Additionally the City Stables have been used since 2008 by the Oakland Black Cowboys Association for their annual trail ride, Montclair 4H for animal training and group meetings, and the Oakland Police for K-9 training.

The City Stables Advisory Council has provided valuable input, ideas and feedback. They have helped OPR staff understand the community needs and wants pertaining to programs and public use of the stables. The proposed agreement requires the participation of the Concessionaire in the City Stables Advisory Council. The City Stables Advisory Council is made up of neighbors, boarders, volunteers, participants, Oakland Parks and Recreation, and the Parks and Recreation Advisory Commission (PRAC).

### **COORDINATION**

OPR has coordinated with the following agencies and groups in developing this report and the License and Master Concessionaire Agreement for Oakland City Stables:

1. Oakland Office of City Attorney
2. Oakland Office of Real Estate
3. Oakland Public Works
4. East Bay Regional Parks District
5. Oakland Contracts and Compliance
6. Oakland Budget Office
7. Oakland Planning and Permits
8. City Stables Advisory Council
9. Neighbors of Oakland City Stables

## **COST SUMMARY/IMPLICATIONS**

### *Revenue*

The concessionaire Agreement requires that the concessionaire pay the City a fee equal to seven percent (7%) of the monthly gross receipts from all operating activities including boarding fees, program fees, lessons, and arena fees. Donations and grants for program operations and capital improvements shall be specifically excluded from fee assessment. The payments will be due and payable each month. Revenues will be deposited into Self Sustaining Fund (1820), City Stables Organization to be created, Parks and Recreation Fee Miscellaneous Account (45239), Recreation/Cultural Civic Program (NBO3).

The City recognizes that start-up efforts will be costly and operations will be limited until some improvements have been made to the site. OPR is prepared to waive the concession fee for the first six months of operation. Based on the projected income and budget from Diamond Equine Services, the City's revenue would yield small returns for the first three-year term (\$340-\$670 per month) equaling \$4,080 - \$8,040 per year.

### *Capital Improvements*

The City of Oakland and the State of California have put in considerable funding (over \$600,000) for improvements and upgrades. Although many of the maintenance items have been addressed and repaired or replaced in the past few years, it is expected the Diamond Equine Services will bear the costs for future repairs and maintenance during the contract period. It is expected that in the first three year contract, Diamond Equine Services will make substantial repairs and upgrades to the 22 horse stalls in the old barn, make liveable the care-taker apartment and start restoration of the Hacienda. Under the terms of the agreement, Diamond Equine Services shall independently raise the funds necessary to make new capital improvements. The City shall maintain responsibility only for main sewer line, underground water lines, and underground electrical systems.

### *Costs to City*

The only major expense to the City will be staff costs of one Recreation Supervisor who will monitor the concessionaire to ensure the terms of the contract are fulfilled. The Recreation Supervisor is expected to spend approximately five percent (5% ) of his time on this project at an estimated cost of \$4,000 per year. Minor expenses could include maintenance to electrical, plumbing and sewer systems, but is not expected during the first three-year term.

## **SUSTAINABLE OPPORTUNITIES**

### *Economic*

Adoption of this Resolution will provide for economic opportunities for local equestrian trainers and teachers who will offer riding lessons and other horse riding and horse training programs.

*Environmental*

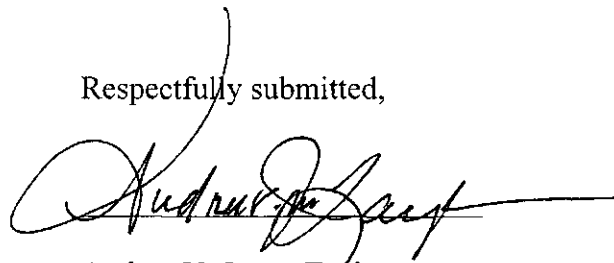
Recycling is accomplished through the composting of manure generated by the horses and other animals at City Stables. The facility will also have community gardening that will focus on sustainable, organically grown produce.

*Social Equity*

Free and low cost youth programs targeted to underserved Oakland youth will make horsemanship programs accessible to young people who may otherwise not be exposed to programs of this type.

For questions regarding this report, please contact Mark Zinns, Recreation Supervisor, at 510-482-7812.

Respectfully submitted,



Audree V. Jones-Taylor  
Director, Oakland Parks and Recreation

Prepared by:  
Mark Zinns, Recreation Supervisor  
Oakland Parks and Recreation

*Attachment A – Draft License and Master Concessionaire Agreement*

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Life Enrichment Committee  
April 29, 2014

**LICENSE AND MASTER CONCESSION OPERATION AGREEMENT  
FOR THE OAKLAND CITY STABLES  
BETWEEN THE CITY OF OAKLAND AND  
DIAMOND EQUINE SERVICES**

**THIS LICENSE AND MASTER CONCESSION AGREEMENT** is entered into this day of \_\_\_\_\_, by and between the CITY OF OAKLAND, a municipal corporation ("City") and the Diamond Equine Services, ("Concessionaire") for the use and operation of the City Stables in the City of Oakland.

1. **Grant of license.** Concessionaire agrees to undertake and assume as master concessionaire certain concession obligations to operate an Equestrian Center for the City. On the condition of the faithful performance by Concessionaire of its concession obligations and other terms, conditions and covenants below, City hereby assigns to Concessionaire and Concessionaire accepts the license, concession and privilege to use, solely for the purposes set forth herein, those premises, including all buildings and improvements thereon, located at 13560 Skyline Boulevard in the City of Oakland, County of Alameda, State of California, commonly known as Oakland City Stables, more particularly described in the attached Exhibit A ("Property", or "City Stables").

2. **Term.** The term of this License and Master Concession Agreement shall be for three years with two consecutive five-year options of City to renew. The initial three-year term of this Agreement commences on \_\_\_\_\_ and terminates on \_\_\_\_\_. Upon the expiration of the term, Concessionaire's license and all of its rights under this agreement shall automatically terminate with or without notice by City, unless in its sole discretion City expressly renews the Agreement for an additional five years. City shall notify, in writing, Concessionaire at least 120 days prior to the end of the three-year term whether it intends to extend the Agreement, and at least 120 days prior to the end of the first option period whether it intends to exercise the second option.

3. **Permissible uses of the Property.** Except with the prior written consent of City, the use of the Property by concessionaire and its sub-concessionaires shall be restricted to the following: (1) boarding of horses, (2) operation of adult and youth horse riding programs, (3) horse program and stable related business activities, (4) provision of equestrian instruction and training, (5) horse shows and clinics, horse demonstrations, and related equestrian activities, (6) community outreach and educational activities, (7) gardening and horticultural programs, (8) family and gatherings, (9) housing for concessionaire employees and members of the employees' immediate family not to exceed four persons in the care-taker apartment only, and (10) operation of concessionaire's business office; as well as uses incidental to the above uses. Permissible uses shall be subject to the conditions and limitations set forth below. The hacienda, care-taker apartment, classroom/office, store, tack room and old barns shall not be occupied by the general public until the City's Office of Planning and Building has certified that the buildings comply with City codes and are suitable for occupancy. Concessionaire shall maintain 24-hour round the clock presence on the property. Concessionaire shall be allowed to place temporary RV trailer on property during construction of caretaker apartment.

Any use inconsistent with the above uses shall render this License and Master Concession Agreement immediately revocable at the will of City. Concessionaire shall not occupy, use or appropriate any space, premises or land of City not specifically assigned to Concessionaire by this Agreement except with the prior written consent of City; and if without such consent Concessionaire shall occupy, use or appropriate any such space, premises or land, it shall pay to City the reasonable rental value thereof and on failure to do so, City may, at its option, immediately declare a forfeiture of this Agreement and of any rights that Concessionaire may have with respect to the Property.

4. **Concession Operations: Horse Boarding.** Concessionaire shall, at no cost to City except as expressly provided for herein, operate a horse boarding facility open to the general public and available for the boarding of horses. Concessionaire shall be solely responsible for marketing and outreach to recruit boarders. Concessionaire shall charge boarding fees in accordance with the current City of Oakland Master Fee Schedule attached as Exhibit B, incorporated herein by reference. City and Concessionaire may revise the horse boarding fees in Exhibit B by subsequent mutual written agreement and by following the City's process for Master Fee Schedule changes. Concessionaire shall ensure that all boarders sign a Horse Boarding Agreement and Liability Waiver Form approved by City, which among other things obligates the boarder to comply with City ordinances and all applicable laws, rules and regulations and adequately releases City from liability associated with the boarding operations. Concessionaire shall at all times provide City with copies of standard forms being used. Concessionaire shall keep all signed and executed forms on file for at least five years following the term of this Agreement, and shall make copies of all such executed forms available to City within 10 workdays of the date of such a request from City.

5. **Concession Operations: Youth Riding Programs.** Concessionaire shall, at no cost to City except as expressly provided for herein, operate group youth riding and associated equestrian programs on the property. Concessionaire shall specifically target Oakland youth for participation, with a goal of 80% of youth participants at the site residing in Oakland. Concessionaire agrees to perform outreach and to collaborate with other organizations in order to provide equestrian programs to at-risk Oakland youth. Concessionaire shall provide a minimum of two program sessions per quarter for inner city youth participating in programs of the Oakland Parks and Recreation with a goal of 15 OPR youth participants each session. Concessionaire may operate other group riding programs for youth or adults on the property in compliance with the terms and conditions of this Agreement.

Each instructor employed by Concessionaire or Concessionaire's sub-contractor for any riding programs must be qualified to provide such instruction, must be certified when appropriate, and must supply adequate documentation of his or her qualifications and certification. Concessionaire shall keep all such documentation of instructors' qualifications on file for at least five years following the term of this agreement and shall make copies of all such documents available to City within 10 workdays of the date of such a request from City. All staff working with the public must have a background check and fingerprinting done through Oakland Police Department prior to having contact with the public.



Concessionaire shall ensure that each participant in all riding programs sign a Riding Instruction Agreement And Liability Waiver Form approved by City, which among other things obligates the participant to comply with City ordinances and all applicable laws, rules and regulations, and adequately releases City from liability associated with said participation. Concessionaire shall keep all such executed forms on file for at least five years following the term of this Agreement, and shall make copies of all executed forms available to City within 10 workdays of the date of such a request from City.

Concessionaire shall ensure that all appropriate safety precautions are taken and all participants in youth programs are equipped with the appropriate safety equipment prior to their participation.

6. **Concession Operations: Private Riding Instruction.**

Concessionaire may provide individual riding instruction on the property and may subcontract the right to provide such instruction to private contractors. Concessionaire must require as part of any subcontract that each private contractor pay an arena fee to Concessionaire.

Each contractor using the property, whether the contractor is employed by Concessionaire or a sub-concessionaire or is otherwise providing instruction through subcontract, must be qualified to provide such instruction, must be certified if appropriate, and must supply adequate documentation of his or her qualifications and certification to Concessionaire. Each contractor who is not an employee of Concessionaire must be insured up to the liability limits imposed on Concessionaire by this agreement, must provide workers' compensation insurance for any employees, and must agree to defend, indemnify, and hold harmless City for any claims, damages or losses sustained by City arising from the contractor's actions on the property consistent with the indemnification contained in this agreement. Each contractor must also possess a valid City of Oakland Business Tax License. Concessionaire shall be responsible for forwarding proof of said insurance coverage, indemnification agreement, and Business License to City.

Concessionaire shall ensure that each student of any instructor using the property sign a riding instruction agreement and liability release form approved by City, which among other things obligates the participant to comply with all applicable rules and regulations and adequately releases City from liability associated with said participation. Concessionaire shall keep all such forms on file for at least five years following the term of this agreement and shall make copies of all executed forms available to City upon City's request.

7. **Concession payments and late payment fees.** Concessionaire shall pay to City as concession revenues an amount equal to seven percent (7%) of the monthly gross receipts from all operating activities under this Agreement including, but not limited to, boarding operations, program fees, lessons, and arena fees. Donations, contributions and grants for program operations and/or capital improvements will be specifically excluded from fee assessment. Payments shall be due and payable each month and shall be delivered to the Oakland Parks and Recreation within 15 days following the last day of each month. Concession fees paid to the City shall be used for citywide youth programs operated by Oakland Parks and Recreation and will be deposited into a restricted 1820 fund. A late payment penalty fee shall be assessed to Concessionaire for late payments. The late payment penalty fee for payments received 1-10 days

late is 5%, 11-20 days late is 10%, and 21-30 days late is 15% of the monthly amount due to City. Late fees shall be held by City in a maintenance fund under the exclusive control of City, which City will use for unusual or non-recurring maintenance and repair costs to the Property, which may arise during the term of this Agreement. In consideration of the contribution by Concessionaire in improving the Property, this fee shall be waived for the first six months of the initial three-year term.

8. **Licenses and permits.** Concessionaire shall be responsible for obtaining, at its own expense, all permits and licenses necessary to conduct its concession operations on the Property, and shall maintain all necessary permits and licenses during the term of this Agreement. Concessionaire shall obtain and keep current a valid City of Oakland Business Tax License. Additionally, Concessionaire shall be responsible for obtaining, at its own expense all construction permits for any repairs, capital improvements or construction on site.

9. **Subcontracts.** Concessionaire may subcontract any of the above authorized horse boarding, riding program, riding instruction, and other equestrian operations to sub-contractors approved by City pursuant to written sub-concessionaire agreements approved by City, after having been submitted by Concessionaire to City for approval at least 30 days in advance. Each sub-contractor at any tier must agree in writing to abide by the terms and conditions of this Agreement applicable to Concessionaire, including the insurance requirements herein. Each sub-contractor agreement must state that the sub-concession shall terminate automatically upon expiration or termination, with or without cause, of this Master Concession Agreement. Sub-contractors must obtain and keep current a valid City of Oakland Business Tax License. All revenue generated by sub-contract must be included in the Concessionaire's annual financial reports submitted to City in accordance with Section 44.

10. **Rules and regulations.** Concessionaire must submit to City no later than four weeks before the start of horse boarding for City's review and approval a set of "barn rules" and other rules and regulations governing the equestrian operations on the Property. Concessionaire shall comply with the rules, and shall ensure that all boarders, instructors, students, riders and sub-concessionaires comply with the rules.

11. **City operations.** Concessionaire understands and agrees that City, with prior notice, may enter on and operate its own equestrian and related programs on the Property without obtaining the permission of Concessionaire. Concessionaire and City agree to cooperate in good faith to coordinate their respective activities on the property. City may also enter property without prior notice for emergencies, general maintenance and inspections. City must give at least 24 hours notice for inspection of caretaker apartment.

Concessionaire understands and agrees that in the event of a natural disaster when an immediate response is required and local capacity is insufficient to address and manage traumatic events caused by such disaster such as, but not limited to, deaths, injuries, displacement of people, disease, disability, food insecurity, damage or loss of infrastructure, weakened or destroyed public administration and reduced public safety and security, City may enter on and take temporary possession of all or part of the Property without obtaining the permission of Concessionaire.

12. **Utilities.** Concessionaire agrees to pay utilities including gas, electricity, telephone, water, sewer and garbage (including manure removal). Concessionaire agrees to initiate and establish all utility services in Concessionaire's name for the duration of the term this agreement and any subsequent agreement.

13. **Taxes and assessments.** This agreement may create a possessory interest subject to property taxation, and Concessionaire acknowledges and agrees that it may be subject to payment of property taxes levied on such interest. Concessionaire agrees to pay all taxes, assessments or charges which may become a lien or be levied by the state, county, city or any other tax or assessment levying body upon any interest in this agreement or any possessory right which Concessionaire may have in or to said land and the improvements thereon by reason of its use or occupation thereof, as well as all taxes, assessments and charges on any activity conducted by Concessionaire on the Property, and on goods, merchandise, fixtures, appliances, equipment and property owned by it in and about the Property.

14. **Condition of the Property.** Concessionaire warrants and represents that it has inspected the Property and agrees to occupy the Property and operate its concession on the Property "as is," in the Property's current condition. Concessionaire acknowledges that City makes no representation or warranty as to the present or future condition of the Property. With the exception of the items listed in the attached Exhibit C, incorporated herein by reference, the taking of possession of the Property by Concessionaire shall, in itself, constitute acknowledgment by Concessionaire that the Property is in acceptable condition and that City has not agreed to undertake any modifications, alterations or improvements to the Property except as specifically provided in this Agreement.

15. **Title to improvements.** Concessionaire shall not make any improvements or alterations to the Property without first obtaining written consent from City. If Concessionaire makes any improvements or alterations to the Property, City shall have the option to require Concessionaire to remove any such improvements or alterations made by Concessionaire prior to the end of this License at no cost to City. If any improvements or alterations are not removed, such improvements or alterations shall become part of the Property and Concessionaire shall not have any claim or interest in such improvements or alterations.

Concessionaire agrees that all permanent structures, fixtures, locks, bolts, repairs, alterations, installed equipment and/or improvements affixed to the Property by either of the parties hereto, shall be the property of City, and shall remain upon and be surrendered with the Property upon termination of this Agreement.

16. **Maintenance and repairs.** City shall, at its own cost and expense, keep and maintain in good order the infra-structure mechanical elements of the following 1. Underground water pipes up to the water meter. 2. Underground electrical systems. 3. Underground sewer main and sewer lateral.

The City shall reserve the right to make repairs, at Concessionaire's expense, resulting from misuse by or primary negligence of Concessionaire, any of Concessionaire's agents, employees,

contractors, invitees, or residents and users of the Property. However, City shall not be obligated at any time during the term of this Agreement to maintain the interior surfaces of exterior walls, windows, doors, or plate glass. Concessionaire shall immediately notify City of any incident or condition within its knowledge that is or may lead to a hazard to the Property or its occupants, or that may otherwise indicate the need for repairs to the Property. City shall have no obligation to make repairs until a reasonable time after notice from Concessionaire of the need for such repairs.

Except for structural and mechanical elements as provided above and except for any maintenance or repairs resulting from misuse by or negligence of City or any of City's agents, employees, or contractors other than Concessionaire, Concessionaire shall, at its own cost and expense, keep and maintain all portions of the Property and all improvements located on the Property in good order and repair consistent with the uses of the buildings contemplated by this Agreement and in as safe and clean a condition as they were when received from City, reasonable wear and tear excepted. Concessionaire's obligation to repair shall specifically include but is not limited to: necessary repairs and maintenance to the interior walls, interior and exterior surfaces of exterior walls, exposed and hidden interior components of the plumbing and electrical systems (including plumbing fixtures, lighting fixtures, light switches, and electrical outlets), heating and ventilation systems, doors, window glass, including plate glass, skylights, signs located within or attached to the Property, floor coverings, sub-flooring, ceilings, and interior and exterior painting for the buildings on the Property; all routine repairs to fencing, arenas, corrals, lighting, dust control sprinklers and paddocks on the Property and the Property landscaping.

At its own expense, Concessionaire shall prevent all nuisance conditions that could arise out of the operations of City Stables site. Such prevention must include the regular removal of manure, the control of dust, and effective pest management. Failure to control any of these elements is a violation of this agreement and could result in its termination.

Concessionaire and City shall maintain the elements of the Property within their respective areas of responsibility as provided for above in full compliance with all applicable governmental laws, ordinances, and codes governing the uses of the Property as contemplated by this Agreement, including any applicable provisions of the Americans with Disabilities Act and other laws governing disabled access.

Concessionaire waives the provisions of California Civil Code section 1941 with respect to City's obligations for tenant ability of the Property, in favor of the provisions of this Agreement governing maintenance and repair. However, City acknowledges that under the uses permitted by this Agreement, certain portions of the Property are intended for occupation by human beings, and City shall perform its maintenance and repair obligations above consistent with the existing conditions of the Property.

Concessionaire shall be responsible, at its own expense, for securing, maintaining, and repairing all furnishings, appliances, and other personal property located on the Property. Concessionaire shall promptly inform City of any loss, theft, or destruction of any of City's furnishings, appliances, or personal property located on the Property, and shall pay to City the fair market

value of any such lost, stolen, or destroyed property to the extent that any such losses are not covered by insurance proceeds, except for any loss, theft or destruction resulting from misuse by or negligence of City, its employees, agents, or contractors.

17. **Right to inspect property.** City shall not be required to provide any advance notice prior to inspection, except for care-taker's apartment, of which the City will provide 24 hours notice for inspection. To the extent that City exercises its right to enter the Property at any time, Concessionaire shall not be entitled to any abatement in the payment of the License Fee to City. City reserves the right to enter the Property at any time to inspect the Property and to make any repairs that it may consider necessary to the preservation of the Property. If any of those repairs should have been made by Concessionaire, Concessionaire shall reimburse City for the cost of such repairs within 30 days. City shall provide documentation of repairs. However, the making of such repairs by City shall not be construed as a waiver of City's right to require Concessionaire to keep the Property in repair as required by this Agreement.

18. **Property to be kept clean.** Concessionaire at all times shall keep the Property in a neat, clean and orderly condition, and shall prevent the accumulation of weeds, refuse or waste materials which present an unattractive appearance or which might be or constitute a health or safety hazard. Concessionaire understands that because the Property is situated in the Oakland Hills and is vulnerable to wildfires, ground vegetation must be kept to less than 6 inches in height, low-hanging tree branches must be trimmed, and excess plant debris must be picked up. Concessionaire will establish and implement prudent control measures to correct any fly, dust and manure odor problems. The control measures are subject to approval by City prior to implementation. If Concessionaire fails to maintain the Property free of weeds, refuse or waste materials, City shall have the option to remove the same at Concessionaire's expense. The performance of such removal by City shall in no event be construed as a waiver of the duty of Concessionaire to keep the Property neat, clean and orderly as herein provided.

19. **Capital Improvements.** The Concessionaire will be expected to make significant improvements towards the project during the duration of this agreement. Suggested repairs and up-grades include: Repair, upgrade and make useable the old indoor horse stalls (lower sections of old barn). Stabilize the clay tile roofs on barns (all the tiles should be removed, new roofing installed and then tiles reinstalled, each individual tile should be secured with a copper wire). Make live-able caretaker apartment. The apartment interior should be gutted floor to ceiling, wall to wall. Once the interiors are cleaned up, these structures should be analyzed by an engineer for stability. Apartment also needs repairs and upgrades on residence electrical and plumbing (with proper permits and city approval). The exterior wood siding needs to be repaired and painted to offer a presentable-looking façade. Damaged siding and trim should be replaced. Historic elements should be preserved if possible or new should replicate historic appearance. Repair and make useable the class room/tack store. Repair hacienda upstairs office area, bathroom and kitchen (to include wheelchair access). Historical elements should be preserved. Replace windows as necessary. Repair main and side entrances and porch to Hacienda. Restore or replace 10 horse stalls adjacent to Hacienda and caretaker apartment.

Although the above repairs are not mandated, a significant portion of this list should be completed towards the ultimate goal of all repairs made within seven years.

20. **Waste, nuisance, and unlawful acts.** Concessionaire shall not commit, or permit the commission by others (including, but not limited to, sub-contractor, boarders, and program participants) of any waste or nuisance on the Property. Concessionaire shall not use or permit others (including, but not limited to, sub-contractor, boarders, and program participants) to use the Property for any unlawful purpose, and shall comply with all local, state, and federal laws in connection with the use and occupancy of the Property. Concessionaire agrees to indemnify and hold harmless City and its officers, council members, employees and agents from any penalties, damages and charges (including, without limitation, attorneys' fees and legal expenses incurred by City in connection with such penalties, damages or charges) imposed for violation of laws, ordinances and regulations applicable to Concessionaire's use of the Property or applicable to the acts or omissions by Concessionaire or by Concessionaire's sub-Concessionaires or invitees in relation to Concessionaire's use of the Property.

21. **Fire extinguishers.** Concessionaire agrees to maintain on the Property, at its own expense, fire extinguishers and other portable firefighting and emergency equipment as may be prescribed from time to time by the regulations of a competent authority. The obligation to provide portable firefighting and emergency equipment will be conditioned on City providing appropriate water supply and pressure for such equipment, as needed.

22. **Hazardous substances.** No material shall be kept, stored, used or disposed of on the Property, which is explosive or hazardous. However, Concessionaire shall not be precluded from bringing, keeping or using on the Property such materials or supplies as are necessary or customary in carrying out the uses expressly authorized by this Agreement. In the event such uses include the keeping or storage of inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or disposed of in the manner prescribed by the public body having authority in the matter, and in any event, in the safest possible manner.

23. **Alterations and additions.** Concessionaire shall not make or permit to be made any alterations or additions to the Property during the term of this license without the prior written consent of City. Any City consent to an alteration or addition shall be deemed conditioned upon Concessionaire acquiring all necessary permits to do such work and complying with the terms of such permits and all applicable rules, regulations and laws. Concessionaire shall supply City with copies of such permits prior to the commencement of such work. Concessionaire shall keep the Property free and clear from any liens, claims, demands, and encumbrances, for work performed, materials furnished, or operations conducted on the Property. Unless otherwise agreed by the parties, any alterations, additions, improvements, and fixtures, except furniture, made or placed in or on the Property by Concessionaire shall on expiration or termination of this Agreement become the property of City and remain on the Property. City shall have the option, however, on expiration or termination of this Agreement, of requiring Concessionaire, at Concessionaire's expense, to remove any such alterations, additions, improvements, or fixtures from the Property.

24. **Indemnification**. Notwithstanding any limits of liability set forth in the insurance requirements herein, Concessionaire hereby agrees to defend, hold harmless and indemnify City (including its respective Council members, officers, agents and employees) of and from any and all claims, losses, damage, injury, actions, causes of action and liability of every kind, nature and description, directly or indirectly arising out of Concessionaire's performance or failure to perform any of its obligations as and when required by this Agreement, any act or omission reasonably under the control or responsibility of Concessionaire or any subcontractor or agent of Concessionaire or any occupant, resident, or user of the Property, or Concessionaire's occupancy or use of the Property or Concessionaire's activities related thereto. The duty of Concessionaire to indemnify includes the duty to defend City in any court action, administrative action, or other proceeding brought by any third party arising from the Property or this Agreement. The duty to indemnify and defend shall survive after the termination of this agreement. Defense counsel retained under this section shall be subject to the City Attorney's reasonable approval.

25. **Non-liability of officials, employees and agents**. No Councilmember, official, employee, or agent of City shall be personally liable to any party for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

26. **Insurance requirements**. At all times during the term of this Agreement, Concessionaire shall maintain or cause to be maintained in full force and affect at its own cost the following policies of insurance with companies doing business in California and acceptable to City. Concessionaire shall provide City with copies of all certificates of insurance for the required coverage, or, upon the request of City, copies of all insurance policies.

The insurance requirements are detailed in Schedule Q attached hereto and incorporated herein by this reference. Additionally, insurance must include liability coverage (\$2,000,000) for care, boarding and use of saddled animals.

27. **No agency**. The relationship of City and Concessionaire is solely that of a licensor and Concessionaire, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. City neither undertakes nor assumes any responsibility or duty to Concessionaire (except as provided for herein) or to any third party with respect to the Property or the concession. Except as City may specify in writing, Concessionaire shall have no authority to act as an agent of City or to bind City to any obligation.

28. **Non-Discrimination/Equal Employment Practices**. In carrying out the obligations of this Agreement, Concessionaire shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial, and academic interest in the community, provided that Concessionaire's goal of financial self-sufficiency is not thereby endangered. Concessionaire shall not discriminate against any employee or applicant for employment on the basis of race, creed, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis.

29. **No fault termination.** Either party hereto shall have the right to cancel and terminate this Agreement by giving to the other party at least ninety (90) days' prior written notice of such proposed cancellation and termination.

30. **Default.** The occurrence of any of the following shall constitute a material default and breach of this agreement by Concessionaire:

- A. Failure by Concessionaire to make any payment required to be made under this Agreement; or
- B. Failure to maintain the required insurance coverage or make insurance payments to City required by this Agreement; or
- C. Assignment of this Agreement or encumbering the Property without the prior written consent of City; or
- D. Use of the Property for purposes not specified in this Agreement; or
- E. Failure by Concessionaire to perform its obligations to operate the concession up to the standards specified in this Agreement; or
- F. Failure of the Concessionaire to maintain the Property as required by this Agreement; or
- G. Damaging the Property or permitting others to damage the Property; or
- H. Failure to comply with all applicable laws; or
- I. The abandonment or vacation of the Property by Concessionaire during the term of this Agreement for a period in excess of 30 consecutive calendar days; or
- J. Concessionaire's (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due; or
- K. Substantial failure by Concessionaire to observe and perform other provisions of this Agreement.

City shall give written notice to Concessionaire or Concessionaire's agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than fifteen (15) calendar days from the mailing of the notice, by which such action to cure, if a cure is possible, must be taken. Concessionaire shall not be in default if Concessionaire cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, Concessionaire begins to cure the default within the cure period and thereafter diligently prosecutes the cure to completion, or if the default is *de minimis* or otherwise not material to accomplish the purposes of this Agreement.

31. **Termination of License for cause.** In the event of any default by Concessionaire under this Agreement that has not been cured within the specified time or that is not capable of cure, in addition to any other remedies available to City at law or in equity or under this Agreement, City shall have the right to terminate this license and all rights of Concessionaire under this



Agreement by giving written notice of the termination. No act of City shall be construed as terminating this Agreement except such written notice. Upon termination, City may recover from Concessionaire any amount due under this Agreement to the date of termination. All sub-concessionaire agreements with respect to the Property or the operations thereon shall automatically terminate upon any termination of this Master Concession Agreement by City, whether such termination is with or without cause. City and Concessionaire shall make reasonable efforts to resolve any differences prior to termination for cause.

32. **City's right to cure defaults.** If Concessionaire breaches or fails to perform any of its obligations under this Agreement, and the notice and opportunity to cure has been given to Concessionaire as provided above, City may, but shall be under no obligation to, cure Concessionaire's breach. Prior to effecting such cure, City shall give Concessionaire notice of its intent to cure. Any amount expended by City to cure Concessionaire's breach, along with the maximum legal rate of interest not to exceed 10% per annum, shall be reimbursable by Concessionaire to City.

33. **City's default and Concessionaire's remedies.** Any substantial failure by City to observe and perform its obligations under this Agreement shall constitute a material default and breach of this Agreement by City. Concessionaire shall give written notice to City or City's agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than fifteen (15) calendar days from the mailing of the notice, by which such action to cure, if a cure is possible, must be taken. City shall not be in default if it cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, City begins to cure the default within the cure period and thereafter diligently prosecutes the cure to completion. In the event of any default by City under this Agreement that has not been cured within the specified time or that is not capable of cure, in addition to any other remedies available to Concessionaire at law or in equity or under this Agreement, Concessionaire shall have the right to terminate this Agreement by giving written notice of the termination. Concessionaire also may, but shall be under no obligation to, cure City's breach. Prior to effecting such cure, Concessionaire shall give City written notice of its intent to cure. Any amount expended by Concessionaire to cure City's breach, along with the maximum legal rate of interest not to exceed 10% per annum, shall be reimbursable by City to Concessionaire. City and Concessionaire shall make reasonable efforts to resolve any differences prior to termination for cause.

34. **Remedies cumulative.** The remedies granted to the parties to this Agreement shall not be exclusive, but shall be cumulative and in addition to all remedies allowed by law or this agreement, except as expressly provided herein.

35. **Waiver.** The waiver by either party of any breach or default by the other party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by a party of the same or another provision.

36. **Surrender of the Property.** At the expiration of the term of this License or earlier termination, Concessionaire shall surrender its occupancy of the Property and deliver the

Property, including any personal property of City that is located on the Property, to City in as good a condition as it is on the date of this Agreement, excluding reasonable wear and tear, reasonably clean and free of debris. Upon expiration or termination of this License, Concessionaire shall have terminated and removed any sub-contractor, residents, and other occupants of the Property, unless permission for continued occupancy is expressly granted by City to such persons prior to termination. Concessionaire shall repair any damage to the Property caused by the installation or removal of its trade fixtures, furnishings, and equipment.

If Concessionaire, with City's consent, holds-over the use of the Property after the term of this Agreement has terminated in any manner, such holding-over shall be deemed merely a holding from month to month and at a monthly rate to be fixed from time to time by City, payable monthly in advance, but otherwise on the same terms and conditions as provided in this Agreement.

37. **Destruction of the Property.** If the Property, or any essential part thereof, is destroyed by fire or other casualty, this Agreement shall in case of total destruction terminate, and in case of partial destruction or injury, shall terminate at the option of City, upon giving at least thirty (30) days' notice to Concessionaire after such fire or injury. Should City elect, in such event, not to terminate such agreement, it will, with reasonable diligence, restore the Property as nearly as practicable to its former condition.

38. **Condemnation.** If at any time during the term of this Agreement, title and possession of all of the Property is taken under the power of eminent domain by any public or quasi-public agency or entity, this Agreement shall terminate as of the date actual physical possession of the Property is taken by the agency or entity exercising the power of eminent domain, and both City and Concessionaire shall thereafter be released from all obligations under this Agreement. If at any time during the term of this Agreement, title and possession of only a portion of the Property is taken under the power of eminent domain by any public or quasi-public agency or entity, City may, at City's option, terminate this Agreement if more than twenty-five percent (25%) of the Property is taken under the power of eminent domain. If at any time during the term of this Agreement, title and possession of all or any portion of the Property is taken under the power of eminent domain by any public or quasi-public agency or entity, the compensation or damages for the taking shall be awarded to and be the sole property of City; provided, however, that Concessionaire shall keep any separate award for relocation expenses, loss of its personal property or fixtures, or similar damages.

39. **Relocation.** Concessionaire understands and agrees that upon termination or expiration of its use of the Property pursuant to the terms of this Agreement, City may use the Property for any purpose it deems appropriate. As a precondition to its use, Concessionaire hereby agrees to waive any rights or claims to relocation benefits or assistance it may have under local, state, or federal law upon termination or expiration of this Agreement or any holdover term, and agrees to obtain a written waiver of such benefits from all sub-concessionaires, residents, and occupants of the Property as a precondition to such parties' use.

40. **Unavoidable delays.** If the performance of any act required by this Agreement to be performed by either City or Concessionaire is prevented or delayed by reason of an act of God,

strike, lockout, labor troubles, inability to secure materials, or any other cause, except financial inability, that is not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused, but only if an extension of time is requested as provided for below. An extension of time for any cause will be deemed granted only if notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause. Times of performance under this agreement may also be extended in writing by the mutual agreement of City and Concessionaire.

41. **Attorneys' fees and costs.** If any legal or administrative action is commenced between the parties to this Agreement concerning the Property, this Agreement, or the rights and duties of either in relation to the Property or to this Agreement, the party prevailing in that action shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum for its attorneys' fees and costs in that action.

42. **Consents and approvals.** Any consent or approval required under this Agreement shall not be unreasonably withheld.

43. **Governing law.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law.

44. **Notices, demands and communications.** Formal notices, demands and communications between the parties hereto, shall be effective upon delivery, and shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to the principal offices of the parties as follows:

City: City Administrator  
One Frank H. Ogawa Plaza, 3rd Floor  
Oakland, California 94612

Copies to: Oakland Parks and Recreation  
Attn: Director  
250 Frank H. Ogawa Plaza Ste 3330  
Oakland, California 94612

Concessionaire: Diamond Equine Services

45. **Annual Reporting and Accounting Records.** At the end of each year of the License Period and for any Extended License Period, Concessionaire shall deliver to City on or before October 1 of that year current statements for fiscal year beginning July 1 and ending June 30 of that year the following documents:

45.1 Certified Annual Reports prepared in accordance with Generally Accepted Accounting Principles including but not limited to an income and expense statement, a balance sheet showing all assets and liabilities and other related reports prepared by a Certified Public Accountant and retained by Concessionaire at no cost to City.

- 45.2 Certified Statement signed by a duly authorized director or officer of Concessionaire confirming the number of participants, the number of activities undertaken, an operating budget for the current year, and the names and telephone numbers of the current Principal or President and Directors of Concessionaire.
- 45.3 Accounting Records, including up-to-date general ledger accounts on the accrual basis in accordance with Generally Accepted Accounting Principles. Concessionaire shall make all books and records open to audit and inspection by City or any assigned designee, with five (5) days notice, during normal business hours at Concessionaire's business office for the period of this License and any extended period. All books and records of Concessionaire shall be retained for a period of four (4) years after the close of each Concessionaire fiscal year.
- a. Concessionaire shall maintain financial and operational records until the later of five (5) years after the termination of this License or two (2) years after the closure of any disputed matter. Concessionaire shall retain such records in good order.
- 45.4 Tax reports and payments currently filed and paid.
- 45.5 All other documents requested by the City Auditor relating to the Property.

46 **Program Reports.** Concessionaire shall submit quarterly reports and an annual report for each program. The report will indicate the type of program; participation statistics including age, gender, ethnicity and geographic location of participants; collaborative agencies involved and equipment or horses used. The reporting form will be developed mutually by Oakland Parks and Recreation (OPR) and Concessionaire. Program reports are due to OPR 30 days after the end of the reporting period. Quarterly reporting periods are July 1 – Sep. 30, and Oct. 1 – Dec. 31, Jan. 1 – March 31, and April 1 – June 30. Annual reporting period is July 1 to June 30. Concessionaire shall maintain an accurate and detailed record system for attendance and programs.

47. **Advisory Council.** Concessionaire shall work closely with the City Stables Advisory Council in addressing issues related to the program, maintenance and boarding operation. Concessionaire is required to take a participatory role in the City Stables Advisory Council by attending or having representation at the scheduled monthly meetings. Advisory Council is under the sponsorship of Oakland Parks and Recreation, follows guidelines established by Parks and Recreation Commission and operates separately from Concessionaire. The Advisory Council shall include at least one member from each of the following categories: A. City Stable neighbor B. Local horse owner C. Parent of child involved in horse related program D. Member of local community based organization. E. Teen interested in horses

48. **Binding on heirs and successors.** This agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of City and Concessionaire.

49. **Restriction against encumbrance or assignment.** Concessionaire shall not encumber, assign, or otherwise transfer this agreement, or any right or interest in this Agreement, without first obtaining the express written consent of City. Concessionaire shall not allow any other person, other than Concessionaire's agents, employees, and authorized sub-concessionaires, to

occupy the property or any part of the Property without the prior written consent of City, except with respect to authorized concession uses and as otherwise authorized herein. Any assignment without the prior written consent of City, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of City, terminate this Agreement.

50. **Partial invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

51. **Sole and only Agreement.** This instrument constitutes the sole and only Agreement between City and Concessionaire regarding the Property and the concession, and correctly sets forth the obligations of City and Concessionaire to each other as of its date.

Any agreements or representations regarding the Property or the concession not expressly set forth in this instrument are null and void.

52. **Time of essence.** Time is expressly declared to be of the essence in this Agreement.

53. **No interest in land created.** Concessionaire understands and agrees that this Agreement establishes only a license and concession and not a lease with respect to the Property, and that no interest or estate in real property or any improvements thereon is created hereby. Concessionaire understands and agrees that it shall not have exclusive possession of the Property by virtue of this Agreement, and that City retains possessory rights over the Property and may freely enter and use the Property as it chooses, so long as any City uses are consistent with this Agreement.

54. **Easement.** Concessionaire agrees City shall retain all rights and duties with respect to the granting and issuance of any and all easements on the Property to third parties, provided such easements do not interfere with the operations of Concessionaire. The City shall retain all monies, profits, and fees collected pursuant to the granting of such easement rights to any and all third parties. As a courtesy to Concessionaire, the City shall notify the County of the granting of any such easements prior to the effective date of said easement.

55. **Modification.** Any modification of this Agreement will be effective only if it is in writing signed by both parties to this Agreement.

56. **Interpretation.** This Agreement shall be deemed to have been prepared equally by all of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

57. **Multiple copies and signatories authorized.** This Agreement may be executed in counterpart. This Agreement is executed in multiple copies, and each executed copy shall be deemed an original. This Agreement will have been executed by the respective parties hereto through their respective authorized officers to be effective on the date first above written.

**IN WITNESS WHEREOF**, the parties hereto have executed, this License and Master Concession Agreement as of the date first above written, the City Administrator of the City of Oakland being authorized to do so pursuant to City Council Resolution No. 72073 C.M.S.

**Diamond Equine Services**  
(Concessionaire)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Melanie Diamond

Business Tax Certificate No. \_\_\_\_\_

Date of Expiration of Certificate \_\_\_\_\_

**City of Oakland**  
(Licensor)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Fred Blackwell  
City Administrator

**Oakland Parks and Recreation**  
(Licensor)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Audree V. Jones-Taylor  
Director, OPR

**Approved as to form and legality:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Office of the City Attorney

**ATTACHMENTS:**

EXHIBIT A - City of Oakland Master Fee Schedule (Boarding Fees)

SCHEDULE Q – Insurance Requirements



**City of Oakland**  
**Master Fee Schedule**  
*Effective July 17, 2013*

**PARKS & RECREATION**

**FEE DESCRIPTION**

**FEE UNIT**

**RECREATION SERVICES**

**H. EAST OAKLAND SPORTS CENTER**

12 Other Services & Fees	
b. Pass Cancellation Fee (Monthly Auto-Payment)	One Month Dues
c. Pass Hold Fee	0.00 - 10.00 Pass
d. Health, Wellness, & Fitness Contracted Services	25.00-225.00 Session

**I. OAKLAND CITY STABLES**

1 Horse Stall Rental	485.00-650.00 Month
2 Riding Lessons (Group)	25.00-85.00 Hour
3 Riding Lessons (Private)	60.00-100.00 Hour
4 Equestrian Day Camp	200.00-500.00 Week
4 Equestrian Clinics (all ages)	100.00-1000.00 Clinic
5 Arena Rental	
a. Arena Rental (Monday-Friday)	15.00 Hour
b. Arena Rental (Saturday-Sunday)	20.00 Hour
6 Stable Grounds Rental (Area A)	65.00 Hour
6 Stable Grounds Rental (Area B)	40.00 Hour
7 Facility Rental Deposit	300.00 Event
8 Sur-charge For Feed	5.00-100.00 Month

## Schedule Q

### INSURANCE REQUIREMENTS

(Revised 01/01/14)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.



- iv. **Professional Liability/Errors and Omissions insurance** appropriate to the contractor's profession with limits not less than \$2,000,000 each claim and \$2,000,000 aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
  - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
  - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured):** Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement).
- iii. **Cancellation Notice:** Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity;
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors.

- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.

FILE  
OFFICE OF THE CITY CLERK  
OAKLAND  
**OAKLAND CITY COUNCIL**

*Joel Freed*  
City Attorney

2014 APR 16 AM 11:04  
**RESOLUTION No. \_\_\_\_\_ C.M.S.**  
Introduced by Councilmember \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR AND/OR HIS DESIGNEE TO NEGOTIATE AND EXECUTE A CONCESSIONAIRE AGREEMENT BETWEEN THE CITY OF OAKLAND AND DIAMOND EQUINE SERVICES TO OPERATE EQUESTRIAN PROGRAMS AND PROVIDE FACILITY IMPROVEMENTS TO OAKLAND CITY STABLES, LOCATED AT 13560 SKYLINE BLVD. OAKLAND, CALIFORNIA FOR A THREE YEAR TERM WITH TWO CONSECUTIVE FIVE YEAR OPTIONS TO RENEW**

**WHEREAS**, the City is the fee simple owner and Oakland Parks and Recreation is the custodial agency of the real property located at 13560 Skyline Boulevard, Oakland, California known as "City Stables"; and

**WHEREAS**, City Stables offer a unique opportunity to provide specialized programs to underserved youth in Oakland; and

**WHEREAS**, the City wishes to preserve City Stables' natural beauty and utilize the property as an equestrian center; and

**WHEREAS**, the City has been engaged in a search for an appropriate concessionaire since 2004; and;

**WHEREAS**, Diamond Equine Services has as its vision to revitalize City Stables and bring back the joy of horses and equestrian arts to the people of Oakland; and

**WHEREAS**, Diamond Equine Services has demonstrated a commitment to the City's goals for equestrian programs while addressing the need for necessary capital improvements; and

**WHEREAS**, Diamond Equine Services will be authorized to make capital improvements, repairs and alterations on site providing all guidelines are followed and the City of Oakland has reviewed and approved all plans prior to the start of work; and

**WHEREAS**, Diamond Equine Services under the terms of the agreement will be required to pay to the City seven percent (7%) of monthly gross receipts; and

**WHEREAS**, fee assessment revenues will be deposited into the Self Sustaining Fund (1820), City Stables Organization to be created, Parks and Recreation Fee Miscellaneous Account (45239), and Recreation/Cultural Civic Program (NBO3); and

**WHEREAS**, donations and grants for programs and capital improvements will be excluded from fee assessment; and

**WHEREAS**, Diamond Equine Services under the terms of the agreement will be authorized to charge in a range of \$25 to \$100 per hour for equestrian lessons, programs and activities; and \$200 to \$500 per week for youth day camps; and \$100 to \$1000 for clinics; and

**WHEREAS**, Diamond Equine Services under the terms of the agreement will be authorized to charge in a range of \$485 to \$650 per month for horse boarding, with a feed surcharge of \$5 to \$100 per horse; and

**WHEREAS**, Diamond Equine Services under the terms of the agreement will be required to restrict the use of the property to horse boarding, horsemanship programs, shows, clinics and demonstration, related equestrian activities, community outreach, gardening and outdoor education, family gatherings, housing for concessionaire or caretaker and operation of business office; and

**WHEREAS**, that Oakland Parks and Recreation conducted a competitive process in its search for a concessionaire and has determined that it is appropriate to recommend Diamond Equine Services as the concessionaire for City Stables; now, therefore be it

**RESOLVED:** that the City Council hereby authorizes the City Administrator and/or his designee to negotiate and execute a concessionaire agreement between the City of Oakland and Diamond Equine Services to operate equestrian programs and provide facility improvements to Oakland City Stables, located at 13560 Skyline Blvd. Oakland, California for a three-year term with two consecutive five-year options to renew; and be it

**FURTHER RESOLVED:** That the Oakland City Attorney has approved this resolution as to form and legality, and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID,  
SCHAAF AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California