

ADDENDUM
to the
AGREEMENT FOR GOLDEN EAGLE REGIONAL PARK CONCESSION SERVICES

WHEREAS, on July 13, 2009, City of Sparks (City) and SBAL, LLC (Contractor), entered into an Agreement for Golden Eagle Regional Park Concession Services (Agreement);

WHEREAS, the Agreement was reached between City and Contractor regarding RFP 08/09-022 for the provision of a food concession business at Golden Eagle Regional Park (Park); and

WHEREAS, Contractor has successfully operated the food concession business known as Red's Golden Eagle Grill at the Park and timely paid its rent obligations to City since approval of the Agreement; and

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and

WHEREAS, on March 12, 2020, the Governor of the State of Nevada declared an emergency due to the impacts and risks of person-to-person transmission of COVID-19 in order to coordinate state and local resources to save lives, protect property, and protect the health and safety of persons in the State of Nevada; and

WHEREAS, on March 15, 2020, the Governor of the State of Nevada ordered that all kindergarten through twelfth grade schools in the State of Nevada be closed beginning on March 16, 2020, in order to slow the person-to-person transmission of COVID-19; and

WHEREAS, on March 15, 2020, the City of Sparks declared a local state of emergency due to the extreme risk of person-to-person transmission of COVID-19 and the resulting impacts to the health, safety, welfare, and property of inhabitants of and visitors to the City; and

WHEREAS, in order to slow the person-to-person transmission of COVID-19, on March 15, 2020, the City of Sparks cancelled all tournaments at the Park through at least April 30, 2020; and

WHEREAS, on March 24, 2020, the Governor of the State of Nevada ordered local governments, including the City, to limit the public's use of recreational equipment including baseball and football fields such as those available in the Park; and

WHEREAS, on May 7, 2020, the Governor of the State of Nevada extended the declaration of emergency and related directives to May 30, 2020, and directed Nevadans not to congregate in groups and to stay in their residences, subject to certain limited exceptions; and

WHEREAS, neither the City nor Contractor knows when the State of Nevada will terminate the emergency or lift all related directives; and

WHEREAS, the cancellation of tournaments, leagues, and other events at the Park has a significant negative financial impact on Contractor's business at the Park; and

WHEREAS, it is in the best interests of City, Contractor, and the public that Contractor be able to continue its food concession business at the Park once the state of emergency is terminated and tournaments and events at the Park may safely resume;

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained and for other valuable consideration, the receipt of which is hereby specifically acknowledged, the Parties agree as follows:

A. Monthly Payments

1. This Addendum shall have no effect on the calculation or timing of Contractor's percentage rent based on Contractor's annual sales.
2. City agrees to waive Contractor's monthly rent obligations for each month that the Park's fields are closed pursuant to directives from the State of Nevada or City, provided, however, this waiver shall not extend beyond December 31, 2020. This waiver shall apply retroactively to April 1, 2020.
3. Contractor's monthly rent obligation shall be reduced to FOUR THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS (\$4,167.00) per month that the Park's fields are open in any form through December 31, 2020. In the event the Park's fields reopen in the middle of any month, this reduced monthly rent obligation shall be prorated based on the remaining number of days in the month. The Park's fields shall be considered "open" regardless of any limitations on capacity or attendance, applicability of social distancing guidelines, or other requirements if the State of Nevada and the City allow use of the Park's fields for practices and/or games.
4. Contractor paid its monthly rent obligation for the month of March 2020 in full. FOUR THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS (\$4,167.00) of Contractor's March 2020 payment shall be applied as a credit toward monthly rent obligations when the Park's fields reopen.

B. Small Business Administration Loans or Grants

Contractor shall notify City, in writing, within ten (10) business days of receiving any loan or grant through the United States Small Business Administration, including but not limited to the Paycheck Protection Program. Such notice shall include, at a minimum, the amount and type of the loan or grant.

C. Term of Addendum

This Addendum shall take effect immediately upon execution by both Parties and shall remain in effect through December 31, 2020. Except as specifically stated in this Addendum, all provisions of the Agreement remain in full force and effect during the term

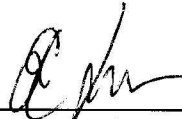
of this Addendum. All provisions of the Agreement shall resume in full force and effect on January 1, 2021.

D. Termination

Either Party may terminate this Addendum for any reason upon thirty (30) days' written notice to the other Party. Termination of this Addendum shall not terminate the Agreement, but termination of the Agreement according to its terms shall have the effect of terminating this Addendum. Any obligation accrued under either the Agreement or this Addendum at the time of termination or expiration of this Addendum shall survive the termination or expiration, as the case may be.

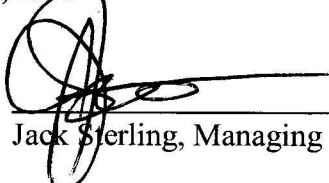
IN WITNESS WHEREOF, the City of Sparks and SBAL, LLC, have caused this Addendum to be duly executed by their representatives this 8th day of June, 2020.

CITY OF SPARKS




FOR RON SMITH
Ronald Smith, Mayor

SBAL, LLC

By: 


Jack Sterling, Managing Member

Attest:



Lisa Hunderman, City Clerk

Approved as to Form:



Chester H. Adams, City Attorney

AGREEMENT FOR GOLDEN EAGLE REGIONAL PARK CONCESSION SERVICES

THIS AGREEMENT is made between the City of Sparks, hereinafter referred to as the "City", and SES Nevada, LLC, hereinafter referred to as "Contractor".

WITNESSETH

1. **RECITALS:** The City requires certain concession services be performed, and the Contractor represents that they are qualified, equipped, staffed, ready, willing and able to perform and render such services as shall be necessary, required or desired, for and on behalf of the City. Further, the contractor represents they have read and understand RFP Number 08/09 - 022 for the provision of such services and that the original RFP and the contractor's response to the RFP are included as components to this contract.

2. **SCOPE OF SERVICES:** During the term of this Agreement, Contractor shall operate from the Premises (as shown in Exhibit _____) a food concession business, serving food, alcoholic and nonalcoholic beverages to all patrons of Golden Eagle Regional Park ("Park") as well as the general public. Further, Contractor shall have the exclusive right to offer food, beverage and catering business throughout the Park. This Agreement is contingent on Contractor obtaining a City of Sparks business license and liquor license and comply with all applicable federal, state and city laws, ordinances and regulations.

- 2.1. Contractor shall apply for a business, liquor, and gaming license (if applicable) within thirty (30) days of the effective date of this agreement.
- 2.2. **HOURS OF OPERATION SHALL BE AS NEGOTIATED AND IN COMPLIANCE WITH THE REQUIRED AND ALLOWABLE HOURS OF OPERATION AS DEFINED IN THE RFP (SECTION 5).**
- 2.3. Contractor shall operate and maintain the concession area in a first-class manner and shall keep the premises in a safe, sanitary, clean, orderly and inviting condition at all times, in accordance with current policies and practices as regulated by the Washoe County District Health Department and to the satisfaction of the city. Daily and complete housekeeping activities shall be performed by the contractor in all areas under its control and operation. All concessions shall be operated as a convenience to the general public, therefore all food, beverages, confections and other items sold or kept for sale under the concession shall be of high quality, wholesome and conform in all respects to federal, state and Washoe County district health department laws, ordinances and regulations. Service shall be prompt, clean, courteous and efficient.
- 2.4. Contractor shall fully cooperate with the city in providing food and beverage services for scheduled events at Golden Eagle Regional Park.
- 2.5. Contractor shall have the right to conduct additional services after the required hours of operations. Private parties may be conducted provided, however, that any event or activity does not interfere with normal park operations.
- 2.6. Retail prices for all food, beverages, and confections at the concession stand shall be evident to the general public either by a "reader board", a printed menu, or both.

ORIGINAL SENT

JUL 15 2009
Jack Sterling

2.7 Contractor shall retain an active, qualified, competent and experienced manager.

2.8 All staff shall be instructed by contractor's management for proper:

* preparation methods and timing;

* dress (uniform);

* personal hygiene;

* cleaning and sanitary procedures;

* responsibilities and duties

2.9. Contractor's employees shall be polite and courteous at all times, providing exceptional customer service.

2.10. Housekeeping and sanitation programs shall meet and be maintained within the highest standards of cleanliness.

2.11. All of contractor's employees shall be instructed in, and shall practice, proper hygiene.

2.12. All employees shall be clean, courteous, efficient, and neat in appearance.

3. BUSINESS LICENSE: Contractor shall be required to obtain a City of Sparks business license, prior to commencing performance.

4. LIQUOR LICENSE: Contractor shall be required to promptly apply for a liquor license from the appropriate governmental entity authorized to issue licenses for selling, dispensing and consuming alcoholic beverages on the premises.

4.1 Failure to obtain said liquor license within 120 days of full execution of this Agreement, or such additional time as may be mutually agreed, shall result in cancellation of this Agreement unless otherwise agreed to in writing by the city.

4.1.1 Notwithstanding anything to the contrary in this Agreement, Contractor shall not be obligated to perform any of the other requirements in this Agreement until the liquor license for the Contractor is obtained. City shall cooperate with Contractor in applying for and obtaining the liquor license.

5. **TERM OF AGREEMENT:** This Agreement shall be for Five (5) years. At the expiration of the initial term, the agreement may be extended by Contractor for up to two (2) option periods of five (5) years, each. Contractor shall provide written notice to City at least 120 days prior to the end of Term or first option period, as applicable, of its exercise of this option to extend. Rent during the option periods shall be on the same terms and conditions as during the initial term.

6. **INVESTMENT BY CONTRACTOR:** Contractor shall provide, at his own expense, all required tenant improvements, decorations, fixtures, equipment, supplies, utensils, furniture, chairs, tables, cooking equipment, furnishings, and appliances which may be necessary to the operation of concession other than existing improvements already provided by the City. The City represents the existing plumbing is in good working order and repair.

6.1 Intended furniture and decoration shall be inspected and approved, which approval shall not be unreasonably withheld, by the city prior to installation by the contractor.

7. **COST OF OPERATION:** Contractor shall bear, at his own expense, all costs of operating all concessions, and shall pay, in addition to the compensation to the City, all other costs connected with the use of the premises and facilities, including, maintenance, (except the building structures and outside walls and roofs), insurance, any and all taxes, janitorial services and supplies, and all permits and licenses required by law. The Contractor shall not pay for water, sewer, electricity, gas, and garbage costs.

8. **RENT/SECURITY DEPOSIT:** On the date this Agreement is executed, Contractor shall pay the City the sum of \$1,000.00 as security for the faithful performance by the Contractor of the Terms, Conditions and Covenants of this Agreement. In the event the Contractor defaults pursuant to Section 29, the City is entitled to retain the rent/security deposit as liquidated damages.

9. **COMPENSATION AND TIME OF PAYMENT:** The amount/rate of compensation shall be \$ 8,333 monthly (\$100,000 annually) and 6% of annual sales in excess of the natural breakpoint (\$1,666,667). For illustration purposes only, if annual sales were \$2,000,000 then percentage rent would be \$20,000 (\$2,000,000 less breakpoint of \$1,666,667 equals \$333,333 times 6% equals \$20,000). Such percentage rent, if any, shall be paid within 60 days of the end of each contract year. City shall receive the monthly payment within fifteen (15) days after the end of each month of the term hereof. The annual report of gross receipts per section 10 below shall be submitted within 60 days of the end of each contract year. The Parties agree that the amount of compensation from the date of execution of this Agreement until April 1, 2010 shall be \$4,000 per month in recognition of the extensive improvements to the premises being undertaken by Contractor.

10. **GROSS RECEIPTS:** The term "gross receipts" as used herein shall include all receipts net of taxes, whether collected or accrued, derived by Contractor or any licensee, concessionaire, or tenant of Contractor, from all business conducted upon or from the premises, including but not limited to receipts from sale of food, beverages, alcoholic beverages, merchandise, and rental of space, or from any source whatsoever derived from operation and occupation of the concession.

11. **RECORDS, ACCOUNTS, AND STATEMENTS:** Contractor shall keep on the premises, or such other place within Washoe County, Nevada approved by the City, true, accurate, and complete records and accounts of all sales, rentals, and business being transacted

upon or from the premises and shall give the City or the City's representative access during reasonable business hours to examine and audit such records and accounts. Within fifteen (15) days after each month of the term hereof, Contractor shall deliver to the City a written monthly statement of the gross receipts for such month certified as true and complete by Contractor or its Certified Public Accountant, to be true, accurate, and complete.

- 11.1 Within sixty (60) days after the end of each contract year of this agreement, contractor shall deliver to the city a written statement of the gross receipts for that contract year. Said statement shall be certified as true, accurate, and complete by contractor.
- 11.2 Contractor shall obtain and install cash registers or other accounting equipment acceptable to the city, to be used in all operations at which cash and payments are received for the proper control and account of revenue. Contractor shall record all sales from the concession operations in this equipment. Such machines shall be non-resettable and shall supply an accurate recording of all sales on tape and a receipt of each transaction.
- 11.3 The City shall have the right at any reasonable time to examine and audit said records and accounts.

12. **LICENSES AND PERMITS:** Contractor shall pay for all licenses, permits, and fees necessary for Contractor to construct improvements, if any, and conduct Contractor's business on the premises.

13. **SALES AND USE TAX:** It is also agreed and understood that the applicable Nevada State Sales and Use Tax on concession fees shall be paid by Contractor.

14. **LATE CHARGES:** In the event Contractor fails to pay any payment due hereunder within (10) days of the due date, there shall be added to such payment a late charge of one hundred fifty dollars (\$150.00).

15. **INSPECTIONS:** The City shall reserve the right, but shall have no affirmative obligation, to have designated representatives for the City review, inspect, and evaluate the operation and condition of the food service facilities with respect to the safety, sanitation and maintenance of the facilities and equipment, all of which shall be maintained at levels satisfactory to the Washoe county health department.

- 15.1 Contractor shall comply with all current federal, state, and Washoe county, health and sanitation regulations, including any which may become effective during the effective period of this agreement.

16. **HAZARDOUS SUBSTANCES AND MATERIALS:** Contractor shall maintain on-site, Material Safety Data Sheets (MSDS), as defined and prescribed in 29 C.F.R. Section 1910.1200, or from time to time as amended, for all hazardous substances purchased by Contractor for use under this Agreement.

- 16.1 Contractor shall appraise personnel of the hazards to which they may be exposed in using, handling, transporting, or disposing of hazardous substances, and to obtain medical treatment for those who may be affected by the substance.
- 16.2 Contractor shall immediately report all spills of hazardous substances to the Washoe County District Health Department; the parks and recreation department; and the City of Sparks Risk Manager.

17. **CITY RESPONSIBILITIES:** The City shall be responsible for the following:
- 17.1 Provide, as mutually agreed, the space/facilities as mutually agreed to by the parties commonly known as the downstairs concession area, all of which shall be and remain the sole property of the city.
 - 17.2 Outside maintenance and repair of the building structure and city equipment resulting from negligence of the contractor.
 - 17.3 **The City will not be responsible nor shall the City guarantee the following services:**

The City does not guarantee an uninterrupted supply of water, natural gas or electric current; nor does the City guarantee uninterrupted service in providing any utilities. The City shall not be liable to Contractor or to others for any loss, damage, cost or expense which may result from the interruption or failure of any utility services.

The City does not guarantee uninterrupted access to the facility in the event of snow or other significant weather, natural or man-made events that may block the street or service road(s) to the facility. The City shall not be liable to Contractor or to others for any loss, damage, cost or expense which may result from the interruption or access.
 - 17.4 The City shall continue to enforce the following rule at all times throughout the term and extended term, if exercised, of this Agreement on all playing fields irrespective of the use of such fields: "No alcoholic beverages or ice chests may be brought into the Park. Any person not abiding will be removed from the Park. 2nd offense and the person will be suspended for the year from the Park. The consumption of alcoholic beverages in the Park parking lot is prohibited."
18. **CONTRACTOR RESPONSIBILITIES:** Contractor shall be responsible for the following items for the duration of this Agreement:
- 18.1 Provide laundry, paper, kitchen and janitorial supplies, uniforms, linen, and grease removal services associated with kitchen, food service, and bar areas.
 - 18.2 Provide daily cleaning of food preparation and service areas.
 - 18.3 Promptly pay any and all taxes imposed by the local, state or federal government with respect to its operation of the food service program at a city facility.
 - 18.4 Promptly pay all food and beverage costs to all vendors.
 - 18.5 Promptly pay all laundry service costs to all vendors.
 - 18.6 Comply with all applicable ordinances, laws, rules, and regulations of the county, city, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws,

ordinances, or make and enforce rules or regulations with respect to the operations of the food service program, including but without limiting the generality of the foregoing, such rules and regulations of the city as are consistent with the rights herein granted contractor.

- 18.7 Maintain sanitary conditions in compliance with Washoe county district health department standards. Premises shall be maintained by contractor at an "a" rating of the Washoe county district health department. Failure to maintain this rating will result in the city of sparks hiring a company of their choice to restore facility to an "a" rating and charging the successful proposer for all related costs
- 18.8 Contractor shall also clean areas around the loading docks, dumpsters, grease traps, vent hoods, decks, and outdoor BBQ areas.
- 18.9 Upon termination of this agreement, contractor shall surrender city's property in as good condition as when received, ordinary wear and tear excepted.
- 18.10 Operate all food service facilities on contractor's own credit and shall hold harmless the city from any and all claims, demands or liability on account thereof. The city shall not be responsible for any debts incurred by contractor in the performance of any resulting agreement.
- 18.11 Outside maintenance and repair of all building structures and equipment damaged due to negligence on the part of the Contractor.
- 18.12 Contractor shall be responsible for snow removal from entrances and outdoor upper-level patio areas.

19. CONTRACTOR'S USE AND POSSESSION OF PREMISES: The premises (as shown in Exhibit _____) shall be used by Contractor as a walk-up concession stand, restaurant and bar. Further, Contractor shall have the exclusive right to offer food, beverage and catering business throughout the Park. It is understood and agreed that the premises shall be used by Contractor during the term of this Agreement only for the above purpose, for directly ancillary uses, with the prior written approval of the City, and for no other purposes or uses whatsoever.

- 19.1 Contractor will not make or permit any use of the premises which, directly or indirectly, is forbidden by public law, ordinance or government regulation which may be dangerous to life, limb or property. Contractor may not commit waste on the premises, use the premises for any illegal purpose, or permit a nuisance on the premises.
- 19.2 In the event that contractor uses the premises for any purposes not expressly permitted herein, the city may terminate this agreement, subject to the curative periods set forth herein, and with prior written notice to contractor, and restrain such improper use by injunction or other legal action.

20. IMPROVEMENTS BY CONTRACTOR: Contractor has inspected the premises and hereby accepts the premises in its present "as is" condition.

20.1 Contractor improvements to said real property will be at its own expense after the written approval of the city, satisfying all code requirements of applicable governmental entities.

20.2 All improvements of contractor shall be solely at contractor's cost and expense and shall be performed in a good workmanlike manner in accordance with sound construction practices. Contractor shall keep the premises and said improvements free and clear of liens for labor and materials and shall hold the city harmless from any responsibility in respect thereto.

21. OWNERSHIP OF IMPROVEMENTS: All improvements, furnishings, and equipment constructed or installed on the premises by the Contractor, shall be personal property and Contractor shall have legal title thereto during the term of this Agreement. Upon the expiration or termination of this Agreement, title to all permanent improvements constructed or installed on the premises shall vest in the City.

21.1. Title to all supplies, furnishings, inventories, and removable equipment not originally provided by the City, shall remain the contractor's, and contractor shall have the right to remove such items, including licenses, from the premises without damaging the premises unless the contractor is in default hereunder.

21.1.1 Contractor shall consider an offer to buy the above items from the City, at Contractor's sole discretion, upon expiration or termination of this Agreement.

22. MAINTENANCE AND REPAIRS: During the term hereof, Contractor, at Contractor's expense, shall keep and maintain the premises and all improvements thereon in good and sanitary order, condition, and repair, consistent with the operation of a quality restaurant in the Washoe County area.

22.1 Upon expiration or termination hereof, contractor shall surrender and deliver to the city the premises and all permanent improvements thereon in good and usable condition, ordinary wear and tear excepted. Permanent improvements shall be defined to include: all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or around the premises. Generally, fixtures may not be removed that would cause material damage to the facility.

23. SIGNS: In accordance with and subject to applicable zoning regulations, the Contractor may cause the placement or display of signs, plaques, lettering or advertising material on the premises subject to the consent of the City, which may not be unreasonably withheld or denied. Contractor agrees that all signs, plaques, lettering or advertising material placed or displayed by it on the premises shall be of an appearance complimentary to the facility and Golden Eagle Regional Park and shall be subject to the written consent of the City.

24. LIENS: Contractor will not permit any mechanics, laborers or material man's liens to stand against the premises or improvements for any labor or materials to the Contractor or claimed to have been furnished to Contractor's agents or subcontractors, in connection with work of any character performed or claimed to have been performed on the premises, or improvements by or

at the direction or sufferance of the Contractor; provided, however, Contractor shall have the right to contest the validity or amount of any such lien or claimed lien.

In the event of such contest, Contractor shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure or forfeiture of the premises or improvements by reason of such non-payment.

Such security shall be posted by the Contractor within fifteen (15) days of written notice from the City, or Contractor may "bond off" the lien according to statutory procedures.

24.1 CONTRACTOR WILL IMMEDIATELY PAY ANY JUDGMENT RENDERED WITH ALL PROPER COSTS AND CHARGES AND SHALL HAVE SUCH LIEN RELEASED OR JUDGMENT SATISFIED AT CONTRACTOR'S OWN EXPENSE.

25. RIGHT OF CANCELLATION: The City shall reserve the right to cancel this Agreement for any of the following reasons:

25.1 If either party breaches a material provision hereof ('cause'), the non-breaching party shall give the other party notice of such cause. If the cause is remedied within ten (10) days in the case of failure to make payment when due or if such failure is remedied within a period of thirty (30) days after written notice thereof from City to Contractor, provided, however, that if the nature of Contractor's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Contractor shall not be deemed to be in default if contractor commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion, then such notice shall be null and void. If such cause is not remedied within the specified period, the party giving notice shall have the right to terminate the agreement upon expiration of such remedy period.

25.2 In addition to all other rights herein, either party may terminate this agreement without prior written notice should the other party become insolvent, voluntarily file for bankruptcy or receivership, or make any assignment for the benefit of creditors, or should the other party have commenced against it any proceeding, suit or action in bankruptcy or receivership provided such proceeding, suit or action is not dismissed within thirty (30) days.

25.3 Failure to maintain sanitary conditions acceptable to the Washoe County District Health Department.

26. DEFAULT: Termination for default shall result in proceedings against the Contractor, which may result in their being debarred from providing future services to City for a period not less than two (2) years after the expiration date of the defaulted Agreement.

27. THIRD PARTY RIGHTS: This Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person not a party hereto.

28. EXCLUSIVE: This Agreement has been entered into as a result of a competitive bidding process through which Contractor was selected to provide the services stated herein to City on an exclusive basis during the term of this Agreement.

29. **NOTICES:** Except as otherwise specified, all notices under this Agreement shall be in writing.

Notice to Contractor shall be addressed to:
SES Nevada, LLC

Notice to City shall be addressed to:

City of Sparks
Purchasing Division
P.O. Box 857
Sparks, NV 89432-0857

31. **NOTICE TO PROCEED:** Execution by both parties to this Agreement shall constitute Notice to Proceed. Contractor shall not perform on any portion this Agreement without providing satisfactory insurance certificates.

32. **GOVERNING LAW:** This Agreement shall be governed, interpreted and construed in accordance with the laws of Nevada.

33. **SEVERABILITY:** If any provision of this Agreement shall be held or declared to be void or illegal for any reason, all other provisions of this Agreement which can given effect without such illegal provision shall nevertheless remain in full force and effect.

34. **HEADINGS:** The section headings of this Agreement are intended solely for convenience; they are not part of this Agreement and shall not affect its construction.

35. **ASSIGNMENT:** Assignment of this Agreement by the Contractor is prohibited without the prior written approval of the City.

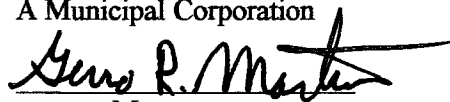
36. **INSURANCE, INDEMNIFICATION AND HOLD HARMLESS:** The City has established specific insurance requirements for agreements with contractors to help ensure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to ensure that contractors are aware of and accept the responsibility for losses or liabilities related to their activities. Exhibit A, is attached and included by reference. All conditions and requirements identified in this Exhibit shall be completed prior to the commencement of any work under this agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year in this Contract first above written.

CONCESSIONAIRE:


Authorized Representative

CITY OF SPARKS
A Municipal Corporation



Mayor

APPROVED AS TO LEGAL FORM: ATTEST:



CITY ATTORNEY



CITY CLERKS





Office of the
CITY CLERK

July 14, 2009

Mr. Jack Sterling
SBA, LLC
2032 Palm Avenue
Chico, CA 95926

Reference: Contract for Golden Eagle Regional Park Concessions (Sparks #A-3762)

Dear Mr. Sterling:

On July 13, 2009, the Sparks City Council approved a Contract for Golden Eagle Regional Park Concessions. Please sign both original agreements; retain one original for your records and return the other original to our office in the enclosed envelope. Thank you for your assistance in this matter.

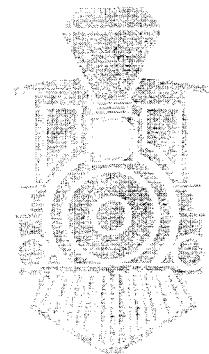
If you have any questions or concerns, please call me at 353-2350 or e-mail me at lpatterson@cityofsparks.us.

Sincerely,

A handwritten signature in cursive script that reads "Linda K. Patterson".

Linda K. Patterson
City Clerk and
Clerk of the City Council

Copy:
Stan Sherer, Parks and Recreation Director
A.I. 5.5
A-3762



City of Sparks
City Council Agenda Item

5.5

Meeting Date: July 13, 2009

Subject: Consideration and possible award of contract for Golden Eagle Regional Park Concessions RFP #08/09-022 to SBAL, LLC.

Petitioner: Stan Sherer, Parks and Recreation Director

Recommendation: The City Council award the contract for concession services at the Golden Eagle Regional Park to SBAL, LLC..

Financial Impact: Annual revenue to the City in the amount of a \$100,000 lease and 6% of annual sales in excess of natural breakpoint after April 1, 2010 and \$4,000 monthly during the construction of the tenant improvements.

Business Impact (per NRS Chapter 237):

- A Business Impact Statement is attached.
- A Business Impact Statement is not required because:
- this is not a rule;
 - this is a rule but does not impose a direct and significant economic burden on a business, or directly restrict the formation, operation or expansion of a business
 - this is a rule but we do not have the authority under federal or state law or under a contract into which we have entered to consider less stringent measures;
 - this is a rule but emergency action is necessary to protect the public health and safety *(requires unanimous vote of Council and cannot be in effect more than six months)*

Agenda Item Brief: Staff prepared and distributed a Request for Proposal for Concession Services at Golden Eagle Regional Park. There were two respondents, Bully's and SBAL, LLC. Staff is recommending a contract be executed between the City of Sparks and SBAL to provide the concession services at Golden Eagle Park. The council approved the item on April 13th. In an effort to expedite the approval process, staff failed to notice some duplication in the agreement and areas of the agreement that were in need of clarification.

Background/Analysis/Alternatives

BACKGROUND: The City contracted with Bully's for the operation of the concessions for the 2008 season. The tenant improvements for the upstairs

restaurant have not been completed so the concessions were operated from the smaller downstairs concession area. Bully's submitted a plan for future concession that included remodeling the entire ground floor of the building to accommodate the restaurant for future years. It is their opinion that the tenant improvements were cost prohibitive in the area designed for the restaurant on the upper level. It is staff's desire to operate the concessions on the upper level and keep the other building amenities in place on the lower level. The RFP was distributed in an effort to determine interest from other potential contractors to operate the concessions on both the upper and lower levels.

SBAL, LLC has been operating well established restaurants in our community for over 10 years at Red's Old 395 in Carson City and the Little Waldorf Saloon in Reno as well as numerous locations throughout California.

This is a new contract for Golden Eagle Regional Park and staff is looking to fill a five year contract, with the option of two five year extensions.

ANALYSIS: Requests for proposals, RFP #: 08/09-022, were sent to numerous businesses and also advertised locally. The bid opening was held on March 4, 2009 and two responses were received. The other response was from Bully's Sports Bar, inc., who is the current concessionaire at Golden Eagle Regional Park. Bully's performed well during 2008 but their bid was less than half of what SBAL, LLC bid. SBAL is willing to invest approximately 1.5 million dollars in the tenant improvements necessary to turn upstairs of the building into a quality restaurant.

The amount/rate of compensation shall be \$8,333 monthly (\$100,000 annually) and 6% of annual sales in excess of the natural breakpoint (\$1,666,667). For illustration purposes, if annual sales were \$2,000,000 then percentage rent would be \$20,000 (\$2,000,000 less breakpoint of \$1,666,667 equals \$333,333 times 6% equals \$20,000). The percentage of annual sales will be protection for the City in regards to any inflationary concerns during the term of the contract. The amount of compensation will be \$4,000 per month from the date of execution of this agreement until April 1, 2010 in recognition of the extensive improvements to the building being undertaken by the contractor.

SBAL will operate the downstairs concession until the upstairs tenant improvements can be completed. The lease amount will be in lieu of City of Sparks business license fees.

SBAL will begin the tenant improvements to the upstairs restaurant shell as soon as the permit and design review for the improvements can be completed. It is likely that the improvements will not be done before the current season ends. The contractor will pay for all the improvements with no repayment from the City.

ALTERNATIVES:

The City Council could direct staff to reopen the process and solicit new responses.

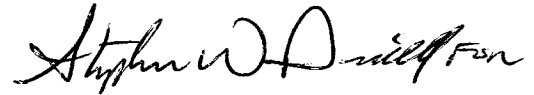
RECOMMENDED MOTION: I move to approve the contract, 08/09-022, with SBAL, LLC for concession operations at the Golden Eagle Regional Park.

Respectfully Submitted,



**Stan Sherer
Parks and Recreation Director**

Approved,



**Shaun D. Carey
City Manager**

AGREEMENT FOR GOLDEN EAGLE REGIONAL PARK CONCESSION SERVICES

THIS AGREEMENT is made between the City of Sparks, hereinafter referred to as the "City", and SES Nevada, LLC, hereinafter referred to as "Contractor".

WITNESSETH

1. **RECITALS:** The City requires certain concession services be performed, and the Contractor represents that they are qualified, equipped, staffed, ready, willing and able to perform and render such services as shall be necessary, required or desired, for and on behalf of the City. Further, the contractor represents they have read and understand RFP Number 08/09 - 022 for the provision of such services and that the original RFP and the contractor's response to the RFP are included as components to this contract.

2. **SCOPE OF SERVICES:** During the term of this Agreement, Contractor shall operate from the Premises (as shown in Exhibit _____) a food concession business, serving food, alcoholic and nonalcoholic beverages to all patrons of Golden Eagle Regional Park ("Park") as well as the general public. Further, Contractor shall have the exclusive right to offer food, beverage and catering business throughout the Park. This Agreement is contingent on Contractor obtaining a City of Sparks business license and liquor license and comply with all applicable federal, state and city laws, ordinances and regulations.

- 2.1. Contractor shall apply for a business, liquor, and gaming license (if applicable) within thirty (30) days of the effective date of this agreement.
- 2.2. **HOURS OF OPERATION SHALL BE AS NEGOTIATED AND IN COMPLIANCE WITH THE REQUIRED AND ALLOWABLE HOURS OF OPERATION AS DEFINED IN THE RFP (SECTION 5).**
- 2.3. Contractor shall operate and maintain the concession area in a first-class manner and shall keep the premises in a safe, sanitary, clean, orderly and inviting condition at all times, in accordance with current policies and practices as regulated by the Washoe County District Health Department and to the satisfaction of the city. Daily and complete housekeeping activities shall be performed by the contractor in all areas under its control and operation. All concessions shall be operated as a convenience to the general public, therefore all food, beverages, confections and other items sold or kept for sale under the concession shall be of high quality, wholesome and conform in all respects to federal, state and Washoe County district health department laws, ordinances and regulations. Service shall be prompt, clean, courteous and efficient.
- 2.4. Contractor shall fully cooperate with the city in providing food and beverage services for scheduled events at Golden Eagle Regional Park.
- 2.5. Contractor shall have the right to conduct additional services after the required hours of operations. Private parties may be conducted provided, however, that any event or activity does not interfere with normal park operations.
- 2.6. Retail prices for all food, beverages, and confections at the concession stand shall be evident to the general public either by a "reader board", a printed menu, or both.

2.7 Contractor shall retain an active, qualified, competent and experienced manager.

2.8 All staff shall be instructed by contractor's management for proper:

* preparation methods and timing;

* dress (uniform);

* personal hygiene;

* cleaning and sanitary procedures;

* responsibilities and duties

2.9. Contractor's employees shall be polite and courteous at all times, providing exceptional customer service.

2.10. Housekeeping and sanitation programs shall meet and be maintained within the highest standards of cleanliness.

2.11. All of contractor's employees shall be instructed in, and shall practice, proper hygiene.

2.12. All employees shall be clean, courteous, efficient, and neat in appearance.

3. BUSINESS LICENSE: Contractor shall be required to obtain a City of Sparks business license, prior to commencing performance.

4. LIQUOR LICENSE: Contractor shall be required to promptly apply for a liquor license from the appropriate governmental entity authorized to issue licenses for selling, dispensing and consuming alcoholic beverages on the premises.

4.1 Failure to obtain said liquor license within 120 days of full execution of this Agreement, or such additional time as may be mutually agreed, shall result in cancellation of this Agreement unless otherwise agreed to in writing by the city.

4.1.1 Notwithstanding anything to the contrary in this Agreement, Contractor shall not be obligated to perform any of the other requirements in this Agreement until the liquor license for the Contractor is obtained. City shall cooperate with Contractor in applying for and obtaining the liquor license.

5. **TERM OF AGREEMENT:** This Agreement shall be for Five (5) years. At the expiration of the initial term, the agreement may be extended by Contractor for up to two (2) option periods of five (5) years, each. Contractor shall provide written notice to City at least 120 days prior to the end of Term or first option period, as applicable, of its exercise of this option to extend. Rent during the option periods shall be on the same terms and conditions as during the initial term.

6. **INVESTMENT BY CONTRACTOR:** Contractor shall provide, at his own expense, all required tenant improvements, decorations, fixtures, equipment, supplies, utensils, furniture, chairs, tables, cooking equipment, furnishings, and appliances which may be necessary to the operation of concession other than existing improvements already provided by the City. The City represents the existing plumbing is in good working order and repair.

6.1 Intended furniture and decoration shall be inspected and approved, which approval shall not be unreasonably withheld, by the city prior to installation by the contractor.

7. **COST OF OPERATION:** Contractor shall bear, at his own expense, all costs of operating all concessions, and shall pay, in addition to the compensation to the City, all other costs connected with the use of the premises and facilities, including, maintenance, (except the building structures and outside walls and roofs), insurance, any and all taxes, janitorial services and supplies, and all permits and licenses required by law. The Contractor shall not pay for water, sewer, electricity, gas, and garbage costs.

8. **RENT/SECURITY DEPOSIT:** On the date this Agreement is executed, Contractor shall pay the City the sum of \$1,000.00 as security for the faithful performance by the Contractor of the Terms, Conditions and Covenants of this Agreement. In the event the Contractor defaults pursuant to Section 29, the City is entitled to retain the rent/security deposit as liquidated damages.

9. **COMPENSATION AND TIME OF PAYMENT:** The amount/rate of compensation shall be \$ 8,333 monthly (\$100,000 annually) and 6% of annual sales in excess of the natural breakpoint (\$1,666,667). For illustration purposes only, if annual sales were \$2,000,000 then percentage rent would be \$20,000 (\$2,000,000 less breakpoint of \$1,666,667 equals \$333,333 times 6% equals \$20,000). Such percentage rent, if any, shall be paid within 60 days of the end of each contract year. City shall receive the monthly payment within fifteen (15) days after the end of each month of the term hereof. The annual report of gross receipts per section 10 below shall be submitted within 60 days of the end of each contract year. The Parties agree that the amount of compensation from the date of execution of this Agreement until April 1, 2010 shall be \$4,000 per month in recognition of the extensive improvements to the premises being undertaken by Contractor.

10. **GROSS RECEIPTS:** The term "gross receipts" as used herein shall include all receipts net of taxes, whether collected or accrued, derived by Contractor or any licensee, concessionaire, or tenant of Contractor, from all business conducted upon or from the premises, including but not limited to receipts from sale of food, beverages, alcoholic beverages, merchandise, and rental of space, or from any source whatsoever derived from operation and occupation of the concession.

11. **RECORDS, ACCOUNTS, AND STATEMENTS:** Contractor shall keep on the premises, or such other place within Washoe County, Nevada approved by the City, true, accurate, and complete records and accounts of all sales, rentals, and business being transacted

upon or from the premises and shall give the City or the City's representative access during reasonable business hours to examine and audit such records and accounts. Within fifteen (15) days after each month of the term hereof, Contractor shall deliver to the City a written monthly statement of the gross receipts for such month certified as true and complete by Contractor or its Certified Public Accountant, to be true, accurate, and complete.

11.1 Within sixty (60) days after the end of each contract year of this agreement, contractor shall deliver to the city a written statement of the gross receipts for that contract year. Said statement shall be certified as true, accurate, and complete by contractor.

11.2 Contractor shall obtain and install cash registers or other accounting equipment acceptable to the city, to be used in all operations at which cash and payments are received for the proper control and account of revenue. Contractor shall record all sales from the concession operations in this equipment. Such machines shall be non-resetable and shall supply an accurate recording of all sales on tape and a receipt of each transaction.

11.3 The City shall have the right at any reasonable time to examine and audit said records and accounts.

12. **LICENSES AND PERMITS:** Contractor shall pay for all licenses, permits, and fees necessary for Contractor to construct improvements, if any, and conduct Contractor's business on the premises.

13. **SALES AND USE TAX:** It is also agreed and understood that the applicable Nevada State Sales and Use Tax on concession fees shall be paid by Contractor.

14. **LATE CHARGES:** In the event Contractor fails to pay any payment due hereunder within (10) days of the due date, there shall be added to such payment a late charge of one hundred fifty dollars (\$150.00).

15. **INSPECTIONS:** The City shall reserve the right, but shall have no affirmative obligation, to have designated representatives for the City review, inspect, and evaluate the operation and condition of the food service facilities with respect to the safety, sanitation and maintenance of the facilities and equipment, all of which shall be maintained at levels satisfactory to the Washoe county health department.

15.1 Contractor shall comply with all current federal, state, and Washoe county, health and sanitation regulations, including any which may become effective during the effective period of this agreement.

16. **HAZARDOUS SUBSTANCES AND MATERIALS:** Contractor shall maintain on-site, Material Safety Data Sheets (MSDS), as defined and prescribed in 29 C.F.R. Section 1910.1200, or from time to time as amended, for all hazardous substances purchased by Contractor for use under this Agreement.

16.1 Contractor shall appraise personnel of the hazards to which they may be exposed in using, handling, transporting, or disposing of hazardous substances, and to obtain medical treatment for those who may be affected by the substance.

16.2 Contractor shall immediately report all spills of hazardous substances to the Washoe County District Health Department; the parks and recreation department; and the City of Sparks Risk Manager.

17. **CITY RESPONSIBILITIES:** The City shall be responsible for the following:
- 17.1 Provide, as mutually agreed, the space/facilities as mutually agreed to by the parties commonly known as the downstairs concession area, all of which shall be and remain the sole property of the city.
 - 17.2 Outside maintenance and repair of the building structure and city equipment resulting from negligence of the contractor.
 - 17.3 **The City will not be responsible nor shall the City guarantee the following services:**

The City does not guarantee an uninterrupted supply of water, natural gas or electric current; nor does the City guarantee uninterrupted service in providing any utilities. The City shall not be liable to Contractor or to others for any loss, damage, cost or expense which may result from the interruption or failure of any utility services.

The City does not guarantee uninterrupted access to the facility in the event of snow or other significant weather, natural or man-made events that may block the street or service road(s) to the facility. The City shall not be liable to Contractor or to others for any loss, damage, cost or expense which may result from the interruption or access.
 - 17.4 The City shall continue to enforce the following rule at all times throughout the term and extended term, if exercised, of this Agreement on all playing fields irrespective of the use of such fields: "No alcoholic beverages or ice chests may be brought into the Park. Any person not abiding will be removed from the Park. 2nd offense and the person will be suspended for the year from the Park. The consumption of alcoholic beverages in the Park parking lot is prohibited."
18. **CONTRACTOR RESPONSIBILITIES:** Contractor shall be responsible for the following items for the duration of this Agreement:
- 18.1 Provide laundry, paper, kitchen and janitorial supplies, uniforms, linen, and grease removal services associated with kitchen, food service, and bar areas.
 - 18.2 Provide daily cleaning of food preparation and service areas.
 - 18.3 Promptly pay any and all taxes imposed by the local, state or federal government with respect to its operation of the food service program at a city facility.
 - 18.4 Promptly pay all food and beverage costs to all vendors.
 - 18.5 Promptly pay all laundry service costs to all vendors.
 - 18.6 Comply with all applicable ordinances, laws, rules, and regulations of the county, city, state, and federal government; and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws,

ordinances, or make and enforce rules or regulations with respect to the operations of the food service program, including but without limiting the generality of the foregoing, such rules and regulations of the city as are consistent with the rights herein granted contractor.

- 18.7 Maintain sanitary conditions in compliance with Washoe county district health department standards. Premises shall be maintained by contractor at an "a" rating of the Washoe county district health department. Failure to maintain this rating will result in the city of sparks hiring a company of their choice to restore facility to an "a" rating and charging the successful proposer for all related costs
- 18.8 Contractor shall also clean areas around the loading docks, dumpsters, grease traps, vent hoods, decks, and outdoor BBQ areas.
- 18.9 Upon termination of this agreement, contractor shall surrender city's property in as good condition as when received, ordinary wear and tear excepted.
- 18.10 Operate all food service facilities on contractor's own credit and shall hold harmless the city from any and all claims, demands or liability on account thereof. The city shall not be responsible for any debts incurred by contractor in the performance of any resulting agreement.
- 18.11 Outside maintenance and repair of all building structures and equipment damaged due to negligence on the part of the Contractor.
- 18.12 Contractor shall be responsible for snow removal from entrances and outdoor upper-level patio areas.

19. CONTRACTOR'S USE AND POSSESSION OF PREMISES: The premises (as shown in Exhibit _____) shall be used by Contractor as a walk-up concession stand, restaurant and bar. Further, Contractor shall have the exclusive right to offer food, beverage and catering business throughout the Park. It is understood and agreed that the premises shall be used by Contractor during the term of this Agreement only for the above purpose, for directly ancillary uses, with the prior written approval of the City, and for no other purposes or uses whatsoever.

- 19.1 Contractor will not make or permit any use of the premises which, directly or indirectly, is forbidden by public law, ordinance or government regulation which may be dangerous to life, limb or property. Contractor may not commit waste on the premises, use the premises for any illegal purpose, or permit a nuisance on the premises.
- 19.2 In the event that contractor uses the premises for any purposes not expressly permitted herein, the city may terminate this agreement, subject to the curative periods set forth herein, and with prior written notice to contractor, and restrain such improper use by injunction or other legal action.

20. **IMPROVEMENTS BY CONTRACTOR:** Contractor has inspected the premises and hereby accepts the premises in its present "as is" condition.

20.1 Contractor improvements to said real property will be at its own expense after the written approval of the city, satisfying all code requirements of applicable governmental entities.

20.2 All improvements of contractor shall be solely at contractor's cost and expense and shall be performed in a good workmanlike manner in accordance with sound construction practices. Contractor shall keep the premises and said improvements free and clear of liens for labor and materials and shall hold the city harmless from any responsibility in respect thereto.

21. **OWNERSHIP OF IMPROVEMENTS:** All improvements, furnishings, and equipment constructed or installed on the premises by the Contractor, shall be personal property and Contractor shall have legal title thereto during the term of this Agreement. Upon the expiration or termination of this Agreement, title to all permanent improvements constructed or installed on the premises shall vest in the City.

21.1. Title to all supplies, furnishings, inventories, and removable equipment not originally provided by the City, shall remain the contractor's, and contractor shall have the right to remove such items, including licenses, from the premises without damaging the premises unless the contractor is in default hereunder.

21.1.1 Contractor shall consider an offer to buy the above items from the City, at Contractor's sole discretion, upon expiration or termination of this Agreement.

22. **MAINTENANCE AND REPAIRS:** During the term hereof, Contractor, at Contractor's expense, shall keep and maintain the premises and all improvements thereon in good and sanitary order, condition, and repair, consistent with the operation of a quality restaurant in the Washoe County area.

22.1 Upon expiration or termination hereof, contractor shall surrender and deliver to the city the premises and all permanent improvements thereon in good and usable condition, ordinary wear and tear excepted. Permanent improvements shall be defined to include: all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or around the premises. Generally, fixtures may not be removed that would cause material damage to the facility.

23. **SIGNS:** In accordance with and subject to applicable zoning regulations, the Contractor may cause the placement or display of signs, plaques, lettering or advertising material on the premises subject to the consent of the City, which may not be unreasonably withheld or denied. Contractor agrees that all signs, plaques, lettering or advertising material placed or displayed by it on the premises shall be of an appearance complimentary to the facility and Golden Eagle Regional Park and shall be subject to the written consent of the City.

24. **LIENS:** Contractor will not permit any mechanics, laborers or material man's liens to stand against the premises or improvements for any labor or materials to the Contractor or claimed to have been furnished to Contractor's agents or subcontractors, in connection with work of any character performed or claimed to have been performed on the premises, or improvements by or

at the direction or sufferance of the Contractor; provided, however, Contractor shall have the right to contest the validity or amount of any such lien or claimed lien.

In the event of such contest, Contractor shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure or forfeiture of the premises or improvements by reason of such non-payment.

Such security shall be posted by the Contractor within fifteen (15) days of written notice from the City, or Contractor may "bond off" the lien according to statutory procedures.

24.1 CONTRACTOR WILL IMMEDIATELY PAY ANY JUDGMENT RENDERED WITH ALL PROPER COSTS AND CHARGES AND SHALL HAVE SUCH LIEN RELEASED OR JUDGMENT SATISFIED AT CONTRACTOR'S OWN EXPENSE.

25. RIGHT OF CANCELLATION: The City shall reserve the right to cancel this Agreement for any of the following reasons:

25.1 If either party breaches a material provision hereof ('cause'), the non-breaching party shall give the other party notice of such cause. If the cause is remedied within ten (10) days in the case of failure to make payment when due or if such failure is remedied within a period of thirty (30) days after written notice thereof from City to Contractor, provided, however, that if the nature of Contractor's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Contractor shall not be deemed to be in default if contractor commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion, then such notice shall be null and void. If such cause is not remedied within the specified period, the party giving notice shall have the right to terminate the agreement upon expiration of such remedy period.

25.2 In addition to all other rights herein, either party may terminate this agreement without prior written notice should the other party become insolvent, voluntarily file for bankruptcy or receivership, or make any assignment for the benefit of creditors, or should the other party have commenced against it any proceeding, suit or action in bankruptcy or receivership provided such proceeding, suit or action is not dismissed within thirty (30) days.

25.3 Failure to maintain sanitary conditions acceptable to the Washoe County District Health Department.

26. DEFAULT: Termination for default shall result in proceedings against the Contractor, which may result in their being debarred from providing future services to City for a period not less than two (2) years after the expiration date of the defaulted Agreement.

27. THIRD PARTY RIGHTS: This Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person not a party hereto.

28. EXCLUSIVE: This Agreement has been entered into as a result of a competitive bidding process through which Contractor was selected to provide the services stated herein to City on an exclusive basis during the term of this Agreement.

29. **NOTICES:** Except as otherwise specified, all notices under this Agreement shall be in writing.

Notice to Contractor shall be addressed to:
SES Nevada, LLC

Notice to City shall be addressed to:

City of Sparks
Purchasing Division
P.O. Box 857
Sparks, NV 89432-0857

31. **NOTICE TO PROCEED:** Execution by both parties to this Agreement shall constitute Notice to Proceed. Contractor shall not perform on any portion this Agreement without providing satisfactory insurance certificates.

32. **GOVERNING LAW:** This Agreement shall be governed, interpreted and construed in accordance with the laws of Nevada.

33. **SEVERABILITY:** If any provision of this Agreement shall be held or declared to be void or illegal for any reason, all other provisions of this Agreement which can given effect without such illegal provision shall nevertheless remain in full force and effect.

34. **HEADINGS:** The section headings of this Agreement are intended solely for convenience; they are not part of this Agreement and shall not affect its construction.

35. **ASSIGNMENT:** Assignment of this Agreement by the Contractor is prohibited without the prior written approval of the City.

36. **INSURANCE, INDEMNIFICATION AND HOLD HARMLESS:** The City has established specific insurance requirements for agreements with contractors to help ensure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to ensure that contractors are aware of and accept the responsibility for losses or liabilities related to their activities. Exhibit A, is attached and included by reference. All conditions and requirements identified in this Exhibit shall be completed prior to the commencement of any work under this agreement.

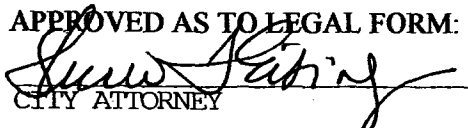
IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year in this Contract first above written.

CONCESSIONAIRE:

CITY OF SPARKS
A Municipal Corporation

Authorized Representative

Mayor

APPROVED AS TO LEGAL FORM:

CITY ATTORNEY

ATTEST:

CITY CLERKS

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/30/2009

| | | |
|--|---|---------------|
| PRODUCER Julie Ward HUB Int'l Insurance Serv. Inc. 6101 W Centinela Ave, #210 Culver City, CA 90230 | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | |
| | INSURERS AFFORDING COVERAGE | NAIC # |
| INSURED SES Nevada, LLC, DBA Red's Old 395 Grill Jack Sterling c/o Madison Bear Garden 316 W.2nd St Chico, CA 95928 | INSURER A: Firemans Fund Insurance Compani | 999999 |
| | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |


COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | ADD'L INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|----------|-------------|---|---------------|----------------------------------|-----------------------------------|---|-------------|
| A | X | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | MZX80909075 | 08/01/09 | 08/01/10 | EACH OCCURRENCE | \$1,000,000 |
| | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$100,000 |
| | | | | | | MED EXP (Any one person) | \$1,000 |
| | | | | | | PERSONAL & ADV INJURY | \$1,000,000 |
| | | | | | | GENERAL AGGREGATE | \$2,000,000 |
| | | | | | | PRODUCTS - COMP/OP AGG | \$2,000,000 |
| | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (Ea accident) | \$ |
| | | | | | | BODILY INJURY (Per person) | \$ |
| | | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | | | | | | OTHER THAN EA ACC | \$ |
| | | | | | | AUTO ONLY: AGG | \$ |
| A | | EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE _____ <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ | XAU70576624 | 08/01/09 | 08/01/10 | EACH OCCURRENCE | \$3,000,000 |
| | | | | | | AGGREGATE | \$3,000,000 |
| | | | | | | | \$ |
| | | | | | | | \$ |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER | | | | WC STATU-TORY LIMITS | OTH-ER |
| | | | | | | E.L. EACH ACCIDENT | \$ |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | \$ |
| | | | | | | E.L. DISEASE - POLICY LIMIT | \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 The City, its officers, agents, employees & volunteers are named as Additional Insureds as respects liability arising out of activities performed by or on behalf of Insured. Coverage is Primary and Non Contributory.

CITY OF SPARKS
OFFICE OF THE CITY CLERK
AUG 13 2009

| | |
|--|--|
| CERTIFICATE HOLDER City of Sparks Purchasing Division PO Box 857 Sparks, NV 89432 | CANCELLATION 10 Days for Non-Payment SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE  |
|--|--|

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Domingues, Tracy

From: Domingues, Tracy
Sent: Monday, June 30, 2014 3:56 PM
To: Driscoll, Steve; Fiting, Shirle; Liles, Shawna
Subject: FW: Golden Eagle Regional Park

Hello Steve: I have pasted Jack's response to my question below...

Tracy, Please reread my Tuesday 6/24/14 e-mail to you (forwarded with this transmission) for the answer to your question. Regards, Jack Sterling, Member. SBAL, LLC.

Sent from my iPhone

Begin forwarded message:

From: Jack Sterling <jgsterling@sbcglobal.net>
Date: June 24, 2014 at 10:25:07 AM PDT
To: "Domingues, Tracy" <tdomingues@cityofsparks.us>
Subject: Re: Council meeting

Tracy, SBAL will agree to solely renegotiate the financial terms of the contract at the end of its 2nd term with the renegotiated rent/lease amount not to exceed the \$8,333/mo we are paying for our 3rd successive term/option granted us in our contract (Sparks A 3762). Thanks, Jack Sterling, Member SBAL, LLC.

Sent from my iPhone

Honestly, I don't know what his response on 6/24 means. New rumor is that they may be sending the current restaurant manager, Jeremy, to Las Vegas. Just rumor. Shirle is back next week.

Tracy L. Domingues, Parks and Recreation Director
City of Sparks Parks and Recreation Department
98 Richards Way
Sparks, NV 89431

- Office 775.353.7835
- Fax 775.353.2401
- Office hours are Monday – Thursday 7:30 a.m. – 5:30 p.m.

From: Domingues, Tracy
Sent: Monday, June 30, 2014 1:58 PM
To: 'Jack Sterling'
Subject: RE: Golden Eagle Regional Park

Jack: Just to confirm, you would NOT agree to the following verbiage (or something similar) being added to the agreement? "The option periods shall be negotiated (including compensation) and mutually agreed upon by both parties."

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98 Richards Way
Sparks, NV 89431

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From: Jack Sterling [<mailto:jgsterling@sbcglobal.net>]
Sent: Friday, June 27, 2014 2:29 PM
To: Domingues, Tracy
Subject: Golden Eagle Regional Park

Tracy,

We will not be signing the "Amended" Agreement for Golden Eagle Regional Park Concessions Services. SBAL, LLC provided written notice to the City (within the 120 day notice period) of its intent to exercise the first of two (2) five (5) year options to extend the term of its contract (Sparks #A-3762). The City of Sparks will continue to be compensated in the amount/rate of \$8,333/monthly (\$100,000 annually) and 6% of annual sales in excess of the natural breakpoint (\$1,666,667). Per the terms of our contract, we will begin exploring the option of assigning our exclusive rights to offer food, beverage and catering business throughout the park with the sale of the Restaurant and three (3) Concession Stands.

Regards,

Jack Sterling, Member
SBAL, LLC.

7/10/14

Item 21

can take what's removable



July 10, 2014

SBAL, LLC
Attn: Jack Sterling
c/o Red's Old 495 Grill
1055 S Carson Street
Carson City, NV 89701

Dear Jack:

On behalf of the City of Sparks Parks and Recreation Department, this letter serves as acknowledgment that SBAL, LLC has opted not to sign the amended lease as proposed to the Sparks City Council on June 23, 2014. Per your email dated June 27, 2014, the original agreement #A-3762 will remain in place with the City of Sparks continuing to be compensated in the amount of \$8,333/monthly (\$100,000 annually) and 6% of annual sales in excess of the natural breakpoint (\$1,666,667).

I look forward to continuing our working relationship.

Sincerely,

A handwritten signature in cursive script that reads "Tracy L. Domingues".

Tracy L. Domingues
Parks and Recreation Director

