



SEATTLE CITY COUNCIL

Legislative Summary

CB 118699

Record No.: CB 118699

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125066

In Control: City Clerk

File Created: 05/02/2016

Final Action: 06/24/2016

Title: AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute a five-year concession agreement with Gary Warhaftig, d/b/a Point of View Telescopes, to manage, maintain, and provide coin-operated telescopes at various City-owned park facilities.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Juarez

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: Charles Ng

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: Yes No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	05/17/2016	Mayor's leg transmitted to Council	City Clerk			
	Action Text:		The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk				
	Notes:						
1	City Clerk	05/17/2016	sent for review	Council President's Office			
	Action Text:		The Council Bill (CB) was sent for review. to the Council President's Office				
	Notes:						
1	Council President's Office	05/20/2016	sent for review	Parks, Seattle Center, Libraries, and Waterfront Committee			
	Action Text:		The Council Bill (CB) was sent for review. to the Parks, Seattle Center, Libraries, and Waterfront Committee				
	Notes:						

- 1 Full Council 05/31/2016 referred Parks, Seattle Center, Libraries, and Waterfront Committee
Action Text: The Council Bill (CB) was referred. to the Parks, Seattle Center, Libraries, and Waterfront Committee
Notes:
- 1 Parks, Seattle Center, Libraries, and Waterfront Committee 06/16/2016 pass Pass
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:
In Favor: 2 Chair Juarez, Vice Chair Bagshaw
Opposed: 0
- 1 Full Council 06/20/2016 passed Pass
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
Notes:
In Favor: 8 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant
Opposed: 0
- 1 City Clerk 06/23/2016 submitted for Mayor's signature Mayor
Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:
- 1 Mayor 06/24/2016 Signed
Action Text: The Council Bill (CB) was Signed.
Notes:
- 1 Mayor 06/24/2016 returned City Clerk
Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:
- 1 City Clerk 06/24/2016 attested by City Clerk
Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:
-

CITY OF SEATTLE

ORDINANCE 125066

COUNCIL BILL 118699

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute a five-year concession agreement with Gary Warhaftig, d/b/a Point of View Telescopes, to manage, maintain, and provide coin-operated telescopes at various City-owned park facilities.

WHEREAS, coin-operated telescopes have been a popular feature in parks for many years; and

WHEREAS, The City of Seattle Department of Parks and Recreation (“Department”) publicly advertised and completed a Request for Proposals in 2015 for a coin-operated telescope concessionaire; and

WHEREAS, Gary Warhaftig, d/b/a Point of View Telescopes, submitted the only proposal to the Department, which was evaluated and determined to be fully responsive to the Department RFP questionnaire; and

WHEREAS, Point of View Telescopes has past experience and satisfactory success in providing coin-operated telescopes for the Department and other similar clients; and

WHEREAS, the Superintendent of Parks and Recreation requests authority from City Council to execute and finalize a Concession Agreement with Point of View Telescopes; NOW,

THEREFORE,

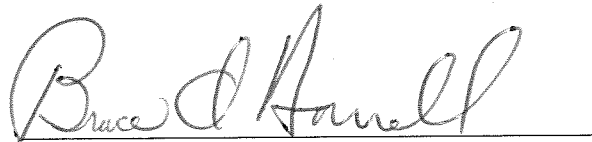
BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (“Superintendent”), or the Superintendent’s designee, is hereby authorized to execute, deliver, and perform for and on behalf of The City of Seattle a five-year Concession Agreement, substantially in the form of Attachment 1 to this ordinance, with Gary Warhaftig, d/b/a Point of View Telescopes.

1 Section 2. The Superintendent is authorized to extend the Concession Agreement with
2 Gary Warhaftig, d/b/a Point of View Telescopes, for a total of up to two five-year extension
3 terms at the discretion of the Superintendent.

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

4 Passed by the City Council the 20th day of JUNE, 2016,
5 and signed by me in open session in authentication of its passage this 20th day of
6 JUNE, 2016.

7 
8 _____

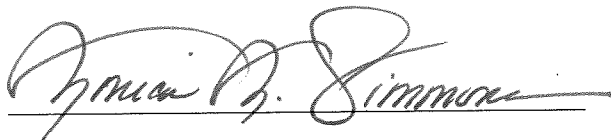
9 President _____ of the City Council

10
11 Approved by me this 24th day of JUNE, 2016.

12 
13 _____

14 Edward B. Murray, Mayor

15
16 Filed by me this 24th day of JUNE, 2016.

17 
18 _____

19 Monica Martinez Simmons, City Clerk

20
21 (Seal)

22 Attachments:

23 Attachment 1 - Coin-Operated Telescope Concession Agreement between The City of Seattle
24 Department of Parks and Recreation and Gary Warhaftig, d/b/a Point of View Telescopes
25

COIN-OPERATED TELESCOPE CONCESSION AGREEMENT
between
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
and
GARY WARHAFTIG d/b/a POINT OF VIEW PUBLIC TELESCOPES

THIS COIN-OPERATED TELESCOPE CONCESSION AGREEMENT ("Agreement") is entered into between The City of Seattle (hereinafter referred to as the "City"), operating through Department of Parks and Recreation (hereinafter referred to as the "Department") and its Superintendent (hereinafter referred to as the "Superintendent"), and Gary Warhaftig, d/b/a Point of View Telescopes (hereinafter referred to as the "Concessionaire").

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

PART A: SPECIAL CONDITIONS AND COVENANTS OF AGREEMENT

A-1 GRANT OF CONCESSION.

The Department hereby grants to the Concessionaire for the full term of this Agreement upon the conditions, limitations, reservations, and provisions herein, the concession right and privilege to conduct a business consisting of installation, maintenance, and operation of coin-operated telescopes at approved park locations that include, but are not limited to, the sites shown in Exhibit A (the "Telescope Sites"). Additional locations may be added from time to time with the Superintendent's approval, and in such event a new Exhibit A shall be appended hereto without the need for formal amendment of this Agreement, to reflect the additional locations.

A-2 TERM OF AGREEMENT.

This Agreement shall commence when fully executed by both parties and shall expire at 11:59 P.M. five years from the execution date, unless terminated earlier under the terms herein. This Agreement may be extended for two additional five (5) year terms by mutual agreement of the parties.

A-3 TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement for convenience by giving the other party at least sixty (60) days written notice prior to the effective termination date. Each party acknowledges that in case of termination for convenience, both parties require ample time to prepare for the busy summer season; therefore, in order to be effective, any 60-day notice must be given to the other party between the months of August and December. This provision shall not be interpreted to limit either party's right to terminate for cause under Section B-6.

A-4 CONCESSION FEE.

The Concession granted herein for the term as specified, is given in exchange for the Concessionaire's performance of each of the following:

- a. **Concession Fee.**
Pay the Department a monthly fee for each complete telescope installation on Department property equal to \$30.00 or twenty-five percent (25%) of total monthly sales for each telescope, whichever is greater (the "Concession Fee") for the month of May through October. Monthly rental payment to the Department from November through April per telescope located on the property shall be the greater of \$5.00 or twenty-five percent (25%) of total monthly sales. With each Concession Fee payment, Concessionaire shall submit a Monthly Gross Receipt Report, as more fully described in A-5.f, below. For the purposes of calculating the monthly Concession Fee payment, a telescope placed on a Department-approved site for any portion of a calendar month shall be considered to have been on that location for that entire calendar month. With the Superintendent's approval, telescopes may be removed from their bases during the off-season, and in such event and for such telescopes, no Concession Fee will be charged.
- b. **Paying Leasehold Excise Taxes.**
In addition to the Concession Fee, Concessionaire shall pay the applicable Washington State Leasehold Excise Tax. Payments for Washington State Leasehold Excise Tax shall be listed as a separate item on all accounting, statements and check stubs.

The Concessionaire shall remit to the Department with each Concession Fee payment the appropriate payment for Washington State Leasehold Excise Taxes. The Leasehold Excise Tax rate at the time of this Agreement was executed is 12.84% of the Concession Fee payable to the Department, but such rate is subject to change by state legislative action.
- c. **Providing Concession Equipment.**
The Concessionaire shall provide coin-operated telescopes, together with mounting bases and related maintenance services sufficient to reasonably satisfy needs. Concessionaire shall not place or store on Department property any equipment unrelated to the installation, operation, and maintenance of the telescopes.
- d. **Rendering Satisfactory Concessionaire Performance.**
Satisfying all other conditions and requirements imposed on the Concessionaire by this Agreement.

A-5 FINANCES, PAYMENTS AND REPORTING.

- a. **Payment Due Dates.**
On or before the tenth (10th) day of each month Concessionaire shall pay the Department: (i) the monthly Concession Fee and (ii) applicable Washington State Leasehold Excise Tax due under A-4.b and A-5.d. The first payment shall be due on the 10th day of the second calendar month following commencement of the Term. The last payment will be due no later than the 10th day of the calendar month following expiration of the Term. The provisions of this paragraph shall survive the termination or expiration of this Agreement.
- b. **Payment Locations.**
All Concession Fee and Leasehold Excise Tax payments to the Department shall be paid (by mail or delivery) to:

The City of Seattle
Dept. of Parks and Recreation
Contract Administration & Support Office
Attention: Concessions Coordinator
800 Maynard Ave. S., Suite 300
Seattle, WA 98134
- c. **Administrative Charges Due to Late Payment.**
If any payment is not paid to the Department within ten (10) days after the date due, an administrative late charge of twenty-five Dollars (\$25.00) plus 1% (one percent) interest shall be added to the payment due and the total sum shall become immediately due and payable. Additional interest charges of 1% (one percent) shall be added each month that the Concession Fee or applicable Leasehold Excise Tax remains unpaid.
- d. **Taxes, Levies and Assessments.**
The Concessionaire shall be responsible for, and shall pay before delinquency, all taxes, levies, and assessments of any nature and kind whatsoever that at any time hereafter may be levied, assessed, or otherwise imposed upon the Concessionaire's activities, including its use or occupancy of the Telescope Sites. Such taxes may include but are not limited to taxes arising out of the activity or business conducted on park property such as the rental or sale of goods or services; taxes levied on Concessionaire's property, equipment, and improvements on park property; and taxes on the Concessionaire's interest in this Agreement and any leasehold interest deemed to have been created thereby under Chapter 82.29A RCW.
- e. **Reporting Requirements**
Monthly Concessions Report – The Concessionaire shall complete and send to the Department a Concessions Report in accordance with operating periods and due

dates as specified herein. The Concessions Reports shall be on a form provided by the Department and shall contain concession fee calculations and Washington State Leasehold Excise Taxes. The Department may modify the Concessions Report from time to time.

Annual Financial Reporting – By February 28th of each year, the Concessionaire shall complete and submit an annual report on a form approved by the Department, detailing Concessionaire's Income and Expense Report for the preceding calendar year.

A-6 CONCESSIONAIRE OPERATION AND SERVICES.

a. Equipment.

The Concessionaire shall install and maintain sufficient telescopes to meet the public need as determined by the Superintendent. The Concessionaire shall maintain the telescopes in good working condition at no cost to the Department. All equipment needed to maintain and operate the Concession Telescope Sites shall remain the property of the Concessionaire.

b. Painting Telescopes.

The Department may require the Concessionaire to paint periodically, at no expense to the City, some or all telescopes according to a color schedule developed by the Department.

c. Installation and Removal of Equipment.

Installation of equipment - All equipment shall be installed only in locations previously approved by the Department. All installations shall be done in an appropriate manner consistent with Department standards and so as to pose no threat of injury. The Concessionaire shall repair all mounting holes or other damage caused by the installation of the equipment to the Department's satisfaction.

Interim installations and removals of potential new park locations – In order to assess and pilot potential new park locations for telescopes installations, the Department may authorize the Concessionaire to either install telescopes for a portion of a month prior to the start of a season or allow existing telescopes to remain in place for a portion of a month after the end of a season. If the Department agrees to these interim installations, then the Department may also waive Concession Fees for these interim months. The Concessionaire, with the Superintendent's approval, may also remove telescopes that are not generating revenues or are not heavily used under certain circumstances, including low use periods during the off-peak season, such as the fall and winter months (from October through March), or unpopular park locations, throughout the Term of the Agreement.

Removal of equipment at end of term - At least ten (10) days prior to the expiration of the Term of this Agreement, the Concessionaire shall remove, at its sole expense, all telescope equipment, mounting bases, and other related personal

property owned and placed in or on approved park locations by the Concessionaire. When removing its personal property the Concessionaire shall take due care not to damage the park location and shall repair any and all damage to the site as necessary to return the site to its condition immediately prior to the installation. In the event of earlier termination, the Concessionaire shall have ten (10) days from notice of termination to completely remove its property from the Telescope Sites. In no event shall the Concessionaire make any claim or demand upon the Department, nor shall the Department be liable, for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by the Concessionaire arising from such removal.

d. Compliance with the Law.

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

e. Nondiscrimination.

Without limiting the generality of Section A-7 g., Concessionaire agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers. Failure to comply with any of the terms of these provisions shall be a material breach of this Agreement.

A-7 BINDING EFFECT.

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

A-8 LICENSES.

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

A-9 INSURANCE.

Concessionaire shall maintain during the full term of this Agreement, at its own expense, insurance as specified below.

Prior to the commencement of use of the Telescope Sites and pursuant to this Agreement, the Concessionaire shall secure and maintain, at no expense to the Department, policy or policies of insurance as enumerated below. Evidence of such insurance shall be delivered to the address shown in this Agreement. Said policy(ies) (1) shall be subject to approval by the City's Risk Manager as to company, form, and coverage, and primary to all other insurance the City may secure, and (2) must protect the City from any and all claims and

risks in connection with any activity performed by the Concessionaire by virtue of this Agreement or any use and occupancy of the Telescope Sites authorized by this Agreement.

a. **Liability Insurance**

Commercial General Liability (CGL) written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$2,000,000 per Occurrence

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$2,000,000 Personal/Advertising Injury Liability

Employers Liability / Washington Stop

\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Concessionaire, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Concessionaire as respects this Agreement, nor (2) construed as limiting the liability of any of Concessionaire's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

Automobile Liability Insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

Worker's Compensation Insurance in compliance Title 51 Revised Code of Washington (RCW) and Federal Maritime statutes.

In the event that the Superintendent deems insurance to be inadequate to protect Concessionaire and the City, Concessionaire shall increase coverages and/or liability limits as the Superintendent annually shall deem reasonably adequate within sixty (60) days after the date of written notice.

b. GENERAL CONDITIONS (Not Applicable To Washington State Worker's Compensation):

- 1 The City of Seattle, its officers, officials, employees, agents and volunteers shall be included as an additional insured under CGL, Auto Liability and, if applicable, Federal Maritime Worker's Compensation insurance policies. Concessionaire's insurance shall be primary and non-contributory to any insurance maintained by or available to the City.

REQUIRED SEPARATION OF INSURED PROVISION; CROSS-LIABILITY EXCLUSION AND OTHER ENDORSEMENTS

PROHIBITED: Concessionaire's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except regarding the limits of the insurer's liability. Concessionaire's insurance policy shall contain no provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Concessionaire's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Concessionaire's CGL policy or other policies shall include none of the following Endorsements (or their equivalent endorsement or exclusions):

(a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Concessionaire's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Concessionaire or reduced and/or offset against the Agreement.

- 2 Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer). The City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290 (1)(e), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

- 3 Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A-: VIII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).
- 4 Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by the City. Concessionaire shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Concessionaire to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Concessionaire. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Concessionaire or a contracted third party claims administrator, Concessionaire agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

c. Evidence Of Insurance:

On Or Before The Commencement Date, And Thereafter Not Later Than The Last Business Day Prior To The Expiration Date Of Each Such Policy, The Following Documents Must Be Delivered To City At Its Notice Address As Evidence Of The Insurance Coverage Required To Be Maintained By Concessionaire:

1. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and
2. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
3. A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;
4. Pending receipt of the documentation specified in this Section A 9 (B), Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

5. Original certification of insurance shall be issued to: EVIDENCE OF INSURANCE: The Concessionaire shall cause its authorized insurance representative to deliver to the Superintendent certification of insurance documenting compliance with the minimum requirements in this agreement, including an actual copy of the CGL insurance blanket additional insured policy provision. Such certification, satisfactory to the City Risk Manager, that the Concessionaire has secured or renewed and is maintaining insurance as required by this Agreement, shall be issued and delivered to "The City of Seattle Department of Parks and Recreation, Contract And Business Resources Office, P.O. Box 3443, Seattle, WA 98114

If at any time during the term of this agreement, should the City tender a claim or lawsuit for defense and indemnity to any Concessionaire insurer(s) and invoke rights as an additional insured, and such insurer(s) shall either defend claim only under a Reservation of Rights, or if such insurer(s) decline(s) to accept such tender, then Concessionaire shall cause its authorized insurance representative to deliver, as soon as reasonably practical, a true and complete certified copy of the relevant insurance policy(ies)

- d. Termination Upon Failure To Insure:
Notwithstanding Any Other Provision Of This Agreement, The Failure Of The Concessionaire To Comply With The Above Provisions Of This Section Shall Subject This Agreement To Immediate Termination At The Discretion Of The Superintendent Without Notice To Any Party, If It Is Necessary To Protect The Public Interest.

A-10 ASSIGNMENT OF AGREEMENT PROHIBITED.

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

A-11 INDEMNIFICATION.

The Concessionaire shall defend, indemnify, and hold the City, its elected officials, and employees harmless from any and all liabilities, claims, demands, losses, and costs (including reasonable attorney's fees) arising from (i) Concessionaire's operation of the Concession, including operation of Concession services by any sub concessionaire, or (ii) any breach of this Agreement by the Concessionaire or any sub concessionaire. If any suit is brought against the City, Concessionaire shall appear and defend the same, and shall satisfy any judgment that may be rendered against the City. Notwithstanding the foregoing, the City reserves the right to appear and defend any action without impairing the City's right to indemnification under this Section where the City determines that it is in the best interest of the City. Concessionaire's obligation to defend and indemnify shall not include any claims arising as a result of the sole negligence of the City, its employees and agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Concessionaire's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a

full and complete indemnity from claims made by Concessionaire's employees. Concessionaire shall promptly notify City of casualties or accidents occurring in or about the Concession Premises. Concessionaire's obligations under Section A-11 shall survive termination or expiration of this Agreement for the statute of limitations applicable to any claim or liability to which this section applies.

THE CITY'S WILLINGNESS TO GRANT CONCESSIONAIRE THE RIGHTS AND PRIVILEGES UNDER THIS AGREEMENT IS CONDITIONED IN PART ON CONCESSIONAIRE'S OBLIGATIONS UNDER THIS SECTION A-11, AND CONCESSIONAIRE EXPRESSLY ACKNOWLEDGES THAT ITS WILLINGNESS TO ENTER THIS AGREEMENT TAKES INTO CONSIDERATION THE OBLIGATIONS UNDER THIS SECTION.

PART B: GENERAL TERMS AND CONDITIONS

B-1 CLOSURE OF CONCESSION PREMISES.

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

B-2 DEMOLITION OF CONCESSION PREMISES.

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

B-3 SURRENDER OF PREMISES AND REMOVAL OF PROPERTY.

a. At Termination.

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

b. Condition of Premises.

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

c. Removal of Equipment.

Prior to the expiration of the term of this Agreement, the Concessionaire shall remove from the Concession Premises, at its sole expense, all trade equipment, trade furnishings and other personal property owned and placed in or on the Concession Premises by the Concessionaire. In removing its personal property the

Concessionaire shall take due care to not damage or injure the Concession Premises.

Alterations, structural and capital improvements as mentioned in Section A-5 b. shall not be removed. In the event of earlier termination, the Concessionaire shall have ten (10) days to complete removal of its property from the Concession Premises. In no event shall the Concessionaire make any claim or demand upon the City, nor shall the City be liable, for any inconvenience, annoyance, disturbance or loss of business or any other damage suffered by the Concessionaire arising out of such removal operation or the required relinquishment of capital improvements in or to the Concession Premises.

d. Failure to Perform.

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

B-4 LIENS AND ENCUMBRANCES.

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

B-5 PHOTOGRAPHS.

Subject to any legal limitations, including rights of third parties, each party hereto may make photographs and motion pictures of the Concession Premises and the activity, people, displays, and exhibits thereon; provided, that in the event such material is to be used for a commercial purpose, the Concessionaire shall obtain the prior written approval of the Superintendent and shall pay to the Department a fee therefore in an amount agreed upon by the Concessionaire and the Superintendent in accordance with applicable provisions of the Department's then-current Fees and Charges Schedule; and prior to using the same, the Concessionaire shall obtain the necessary written releases from every individual affected.

B-6 DEFAULT AND TERMINATION.

- a. If Concessionaire violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; or if Concessionaire files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Concessionaire's assets or if Concessionaire makes an assignment for the benefit of creditors, or if Concessionaire is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Concessionaire shall be deemed in default ("Default").
- b. If Concessionaire has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within fifteen (15) days after written notice to Concessionaire of any monetary default or thirty (30) days after written notice to Concessionaire of any other default, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Concessionaire's behalf and at Concessionaire's sole expense and to charge Concessionaire for all actual and reasonable costs and expenses incurred by City in effecting such cure; (2) to terminate this Agreement. Notwithstanding the foregoing, if the nature of Concessionaire's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Concessionaire shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.
- c. Upon the termination of this Agreement, City may reenter the Concession Premises, take possession thereof, and remove all persons therefrom, for which actions Concessionaire shall have no claim thereon or hereunder. Concessionaire shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Concession Premises. The remedies provided herein are not intended to be exclusive and are cumulative, and the City reserves the right to pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.
- d. City shall be in default if City fails to perform its obligations under this Agreement within thirty (30) days after its receipt of notice of nonperformance from Concessionaire; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Concessionaire may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.

B-7 WAIVER.

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

B-8 CAPTIONS.

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

B-9 CHANGES AND MODIFICATIONS.

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

B-10 APPROVALS BY THE DEPARTMENT OR SUPERINTENDENT.

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

B-11 SEVERABILITY.

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

B-12 SUCCESSORS IN INTEREST.

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

B-13 NO RELATIONSHIP ESTABLISHED.

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

B-14 RECYCLING, GARBAGE AND COMPOSTING.

The Concessionaire is required to following the City's rules and regulations for garbage, recycling, and composting as described in Exhibit 3.

B-15 ENTIRE AGREEMENT.

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

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

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

CONCESSIONAIRE, GARY WARHFTIG
D/B/A POINT OF VIEW PUBLIC TELESCOPES

Gary Warhaftig, President

_____, 2016
Date

THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION

Jesús Aguirre
Superintendent, Seattle Parks and Recreation

_____, 2016
Date

Exhibits:
Exhibit A - Approved Park Sites for Telescopes

EXHIBIT A TO THE COIN-OPERATED TELESCOPE CONCESSION AGREEMENT

APPROVED PARK SITES FOR TELESCOPES

Admiral Viewpoint

Alki Beach

Green Lake Park

Hamilton Park

Harbor Avenue SW (West Seattle near Don Armeni Boat Ramp)

Kerry Park

Pier 61/62

Seattle Aquarium

Waterfront Park