CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Engineering – Traffic Division**

AGENDA DATE: **Introduction: August 31, 2010, Public Hearing: September 14, 2010**

CONTACT PERSON NAME AND PHONE NUMBER: Kimberly Forsyth, Senior Planner, 541-4165

DISTRICT(S) AFFECTED: **District 8**

SUBJECT:

An ordinance granting a special privilege permitting Big Boy Ice Cream, Inc. to encroach onto a portion of various public rights-of-way with food-vending concessions in the downtown area.

BACKGROUND / DISCUSSION:

The special privilege license for food vending concessions on designated rights-of-way in the downtown area was established in 1993. A lottery process was previously used to allot spaces to independent vendors. In 2010, a bid process was developed to award the concession. The bid award was approved by City Council on July 27, 2010. The special privilege license has a term of five (5) years. Annual payments begin at $21,200 and increase 2% each year. Twenty locations are approved (19 carts and one kiosk); provisions allow for substitution of locations upon agreement of the City and licensee. The licensee will obtain and maintain the food carts and kiosk in accordance with City codes, and will provide all required licenses, permits and insurance. The effective date is December 6, 2010 to allow for notification of current licensees, termination of the existing special privilege license, and an orderly transition.

PRIOR COUNCIL ACTION:

Approval of ordinance #16013 on March 8, 2005; and renewal ordinances #16850 (March 9, 2008), #16996 (Sept. 9, 2008), #17184 (Sept. 1, 2009), and #017277 (February 16, 2010). Approval of bid award for food- vending concession on July 27, 2010.

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
N/A

**********REQUIRED AUTHORIZATION**********

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE PERMITTING BIG BOY ICE CREAM, INC. TO ENCROACH ONTO A PORTION OF VARIOUS PUBLIC RIGHTS-OF-WAY WITH FOOD-VENDING CONCESSIONS IN THE DOWNTOWN AREA.

WHEREAS, the El Paso City Council desires to enhance the appeal of the downtown El Paso area to tourists, while encouraging business opportunities; and

WHEREAS, the El Paso City Council also desires to support downtown businesses and adopt every reasonable measure to increase the attractiveness and cleanliness of the downtown area; and

WHEREAS, Section 3.18 (Lease; Franchise; Conveyance and Special Privilege) of the El Paso City Charter provides that the right of control, ownership and use of streets, alleys, parks and public places of the City is inalienable except by duly enacted ordinance; and

WHEREAS, a Request for Proposals (RFP) was advertised and proposals were received and evaluated and the proposer listed herein were received the highest score and are recommended to City Council for approval as the Licensees under this Special Privilege. The RFP and proposal are attached hereto and incorporated herein as Exhibits 1 and 2. If there are conflicting provisions among this ordinance, the RFP and/or the proposal, the ordinance shall govern first, followed by the RFP, then the proposal.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That, BIG BOY ICE CREAM, INC, a Texas corporation, hereinafter referred to as the "Licensee" is hereby granted by the City of El Paso (the "City") a Special Privilege License (the "License") to use specific portions of public rights-of-way within the City for purposes of operating a licensed Downtown Area food vending concession.

The grant of this Special Privilege is subject to the following conditions:

SECTION 1. <u>Description</u>

The licensed area for food vending concession within the Downtown Area is for the areas identified in Exhibit "A", "Approved Locations and Dimensions", attached hereto and made a part hereof for all purposes, and which are hereinafter referred to

individually and collectively as "Licensed area". Food sales are limited to the categories described in Exhibit 2, and non-food products shall not be sold.

SECTION 2. Term

The term of this License shall be for five (5) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege License upon the request of the Licensee for one additional five-year term. If the Licensee desires that the City renew this License for the additional five (5) year term, Licensee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this License. Renewal of this License shall be subject to approval of the City Council.

This License shall expire without notice at the end of the term unless a request for renewal is submitted in writing to the City by the Licensee as herein required and the City approves the renewal. Licensee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege License be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this License.

SECTION 3. Consideration

As consideration for this Licensee shall pay to the City the annual License payments in the amounts listed hereafter. The first annual payment shall be due prior to the effective date of this License. The effective date of this License is December 6, 2010. The payment shall be in the form of a business or cashier's check payable to the "City of El Paso" and delivered to the Capitol Assets Division of the Financial Services Department. Beginning on the twelve-month anniversary date after the payment for the first year and for each twelve-month period thereafter, Licensee shall make the annual payment on or before December 6.

No extensions of time for payment of this consideration shall be authorized under this License. All payments shall be made to the Capitol Assets Division of the Financial Services Department.

Annual license payment:

FIVE YEAR TERM

Carts 1-19		**Kiosk**	
Year one:	$ 20,000	Year one:	$ 1,200
Year two:	$ 20,400	Year two:	$ 1,224
Year three:	$ 20,808	Year three:	$ 1,248
Year four:	$ 21,224	Year four:	$ 1,273
Year five:	$ 21,648	Year five:	$ 1,298

OPTION YEARS

Carts 1-19		**Kiosk**	
Option year one:	$20,000	Option year one:	$1,200
Option year two:	$20,400	Option year two:	$1,224
Option year three:	$20,808	Option year three:	$1,248
Option year four:	$21,224	Option year four:	$1,273
Option year five:	$21,648	Option year five:	$1,298

SECTION 4. <u>Use of Licensed Area</u>

This License is granted solely for the operation of a food-vending concession, and such other sales as provided herein, hereinafter referred to as "Use", on the Licensed Area. The Use shall be conducted in accordance with the requirements outlined herein. Licensee shall commence operation of the Use under this License only when all permits and licenses shall have been obtained from the City in accordance with all applicable City ordinances and additionally only pursuant to the terms of this License, all of which shall be maintained by Licensee throughout the term. This License shall not be construed to waive any City permit requirements.

As an express condition of this License, the following requirements shall be met. Failure to comply with any of these requirements shall be grounds for cancellation as provided herein:

a. The Use shall be strictly limited to the sale of commercially packaged food items and foods prepared at the Licensed Area as described in Exhibit "B" attached hereto and incorporated herein as though set forth in full. No alcoholic beverage sales are allowed at or on the Licensed Area.

b. Licensee shall be responsible for and shall be required to obtain any and all licenses and permits as required by law for the legal operation of the food vending concession. Licensee shall be required to display visibly upon the self-contained mobile food unit (hereinafter referred to as "Unit") at all times the food establishment license, concessionaire's food handler's card, state sales tax permit and any other permit or license required by law including, but not limited to, U.S. issued work permits for non-U.S. citizens and non-U.S. residents. The Licensee shall provide copies of all required permits and licenses as herein provided to the Traffic Engineer prior to the effective date of this License and shall provide the Traffic Engineer with all renewed or amended licenses and permits to establish Licensee's continued compliance with licensing and permit requirements throughout the term of this License.

c. The standard hours of operation of the Carts #1-19 shall be limited from 8:00 a.m. to 8:00 p.m., seven days a week. The standard hours of operation of the Kiosk shall be limited from 7:00 p.m. to 2:00 a.m., seven days a week. The hours are subject to change for special events throughout the calendar year. The Unit used for vending shall be removed from the Licensed Area during non-operating hours, except for the kiosk (Exhibit A, item 20).

d. The Unit shall satisfy the specifications provided in Chapter 9.12 (Food and Food Handling Establishments) of the El Paso Municipal Code, hereinafter referred to as "Requirements". Each Unit shall be provided at the sole cost of the Licensee. Units used by Licensee shall comply with specifications for Units provided by Licensee in its proposal and any alteration or substitution of such Units must be approved in advance in writing by the Traffic Engineer and the Public Health Department. Upon receipt of notice by Licensee from the Traffic Engineer that an alteration or substitution is not acceptable, Licensee shall have ten (10) calendar days in which to bring the Unit into compliance. Failure to do so, and failure to maintain the

Unit in conformance with the provisions of this License, shall be grounds for termination of this License.

e. The Use shall be valid only on Licensed Area; provided, however, that the Unit operator may use a chair within a two (2) foot area around each Unit. The use of a chair shall be in such a manner as not to interfere with pedestrian traffic on the sidewalk between the Licensed Area and the abutting properties or between the Licensed Area and the abutting streets(s). Operation outside of the Licensed Area is expressly prohibited, including but not limited to signage, product displays, or attachments or fixtures to the Unit that project beyond the Licensed Area.

f. No advertising, whether on or off the Licensed Area, "On or off Premises", as defined by the El Paso sign ordinance, shall be permitted on the Unit or within any portion of the Licensed Area, providing that product display units contained within the Unit are permitted.

g. Access to any entrance, exit or driveway of an adjacent business shall not be impeded by the placement of the Unit or operation of the Unit.

h. The Licensee shall not use or operate any sound devices including, but not limited to loudspeakers, public address systems, radios, televisions and sound amplifier devices nor any strobe lights or other similar devices at or on the Unit or the Licensed Area.

i. The Unit and all other equipment of Licensee shall be subject to inspection by the City or other appropriate regulatory or law enforcement officials at the time of execution and at any time during the term of this License.

j. No portion of a Unit shall be anchored or tied onto or upon any portion of the public right-of-way, including but not limited to, the sidewalk, City light standards, traffic control signs, utility boxes, or other such appurtenances, except for the Kiosk location (location 20 on Exhibit "A").

k. While in operation the Licensee shall require its Unit operators to maintain a sanitary and well-groomed appearance. A high degree of personal cleanliness and good hygienic practices shall be maintained while working on the Licensed Area.

l. More than one cart may be allowed within a Licensed Area, provided neither cart exceeds the limits of the Licensed Area.

SECTION 5. Improper Use

This License shall not permit or be construed to permit use of the City's right-of-way, which is not specifically granted herein. The Licensee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

SECTION 6. Repairs

The Licensee shall keep each Unit and the Licensed Area in good condition and repair and in a clean, orderly and attractive condition during the term of this License. Licensee shall be responsible for all maintenance of the respective Units and Licensed Area and shall repair any damage to the Units and Licensed Area regardless of the cause of such damage, at Licensee's sole expense.

SECTION 7. Indemnity

As a condition of this License, THE LICENSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, its officers, agents, servants and employees HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPESE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Licensee every demand, notice, summons, or other process received by the City in any claim or legal proceeding

contemplated herein. The Licensee shall 1). Investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2). Negotiate or cause to be negotiated the claim as the Licensee may deem expedient; and 3). Defend or cause to be defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought on because of such injuries or damages. The Licensee shall pay all judgments in actions defended by the Licensee pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of the payment by the Licensee, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss or of damage to the Licensee's property from any cause.

SECTION 8. <u>Liability Insurance</u>

Licensee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one accident or other cause. Licensee shall obtain all workers' compensation insurance as required by law. These amounts are not a limitation upon the Licensee's agreement to indemnify and hold the City harmless.

Licensee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Licensee, his officers, agents, servants or employees. All policies shall name the City

of El Paso, its officers, agents, servants, and employees as additional insureds to the full amount of the policy limits.

No special privilege license shall be granted by El Paso City Council until Licensee files a copy of the policy or certificate of liability insurance as herein set forth with the Traffic Engineer and Financial Services – Capital Assets Division. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) days prior written notice to the City Clerk and ten (10) days notice for non-payment of premiums. Failure to keep the policy in full force and effect throughout the term of this License shall be grounds for cancellation of this License.

SECTION 9. Termination

A. Termination by City for public need: Should the City at any time or for any reason decide that the right-of-way onto which a respective Unit is encroaching is needed for public use, the City may upon thirty (30) calendar days' written notice, cancel this License as to each Unit location at no cost to the City and take possession of the public right-of-way. Licensee may request the City to assign a replacement location and licensee may accept or reject the replacement location, subject to the provisions of Section 9C, below. Such termination shall not affect the remaining Units.

If the City cancels the License, the Licensee may receive a refund of the paid annual consideration for the months remaining in the special privilege license year (the twelve month period beginning on the effective date of the License) one-twelfth of the annual license fee times the number of whole months remaining in the license year. If the City cancels the License due to Licensee's failure to cure any default under this License or if Licensee abandons the Licensed Area or any portion thereof as described hereafter, Licensee shall not be entitled to any refund of its annual consideration it has paid to the City. The provisions concerning the refund of the annual fee shall not apply to cancellation of individual cart locations.

B. Termination by Licensee. Licensee may cancel this License, for any reason, upon one hundred eighty (180) calendar-days prior written notice to the City, and all rights of the Licensee shall then be terminated. If the License is cancelled by the

Licensee, Licensee shall not be entitled to any refund of the annual consideration for the License year.

C. Partial termination. Licensee may terminate this License as to a particular Unit location. Such termination shall not reduce the annual license fee. No fewer than fifteen (15) locations shall remain in operation, regardless of partial terminations by licensee or City. If cancellation of a cart location results in less than fifteen cart locations and Licensee and City do not agree on alternate locations that will result in at least fifteen cart locations, the City shall be entitled to make the final determination of such alternate locations.

D. Termination for abandonment and default. If, for a period of thirty (30) consecutive days, Licensee ceases to use or occupy the Licensed Area for the purposes herein contemplated, or if Licensee defaults in any of his obligations under this License and fail to correct such defaults within fifteen (15) calendar days after written notice to do so; the City may cancel this License and take possession. All rights of the Licensee on the City right-of-way shall then terminate.

E. Termination for failure to pay. The failure to make a scheduled payment by the payment due date shall result in automatic termination of this License at the option of the Traffic Engineer and the City shall not be required to provide notice of non payment or a grace period for payment.

F. Other Causes for Termination.

1) Gratuities. The City may, by written notice to the Licensee, cancel this License without liability to Licensee if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Licensee, or any agent or representative of the Licensee, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of this License. In the event this License is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Licensee in providing such gratuities.

2) **Contingent fees/commissions**. The Licensee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this License without liability and to recover the full amount of such commission, percentage, brokerage or contingent fee.

3) **Right to Assurance**. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

G. Effect of Termination. Upon termination of this License for any reason, all encroachments shall become the property of the City and shall, at the option of the City, be removed by Licensee without cost to the City.

SECTION 10. Restrictions and Reservations

This License is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the term of this License, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with a Licensee's use of the Licensed Area, each Licensee shall have the right to terminate this License by giving the notice required in section 9 B.

SECTION 11. Liens and Encumbrances

The licensee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the Licensed Area that arises or is alleged to

have arisen from the Licensee's use of the Licensed Area or its operations under this License.

SECTION 12. Assignment

This License shall not be assignable or transferable. Any attempt by the Licensee to assign or transfer this License shall constitute a material breach for which the City may terminate this License.

SECTION 13. Signs. Only signs approved in writing in advance of installation by the Traffic Engineer shall be affixed to the Unit by Licensee. Each Unit shall have at least one approved sign that shall provide the following information: The name and telephone number of the Licensee and the name and telephone number of the business under which the cart is operating if different from name of Licensee. Signs must be affixed on a surface of the Unit and shall not protrude from the Unit or be movable.

SECTION 14. Right of Entry and Inspection The City's representative shall have the right to enter upon the Licensed Area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

SECTION 15. General Contract Provisions

A. Laws and Ordinances: Licensee shall comply with all statutes, laws, codes and ordinances applicable to Licensee's operation and maintenance of each Unit of the Licensed Area. Licensee shall obtain all required permits and inspections and pay the necessary permit fees.

B. Notices: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, TX 79901

with copies to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 2nd Floor
El Paso, TX 79901

and: Licensee:

Address
Contact person
Phone
e-mail
Local address and phone number if different from above

or to such other address as the parties may designate to each other in writing from time to time. It shall be the responsibility of the Licensee to provide the City Clerk and the Traffic Engineer with its most current mailing addresses. Notice sent to the last known address of record with the City Clerk shall be deemed legally valid, proper and sufficient notice to the party to whom the notice is sent.

C. Entire Agreement: This document contains the entire agreement between the parties and may not be modified, except by an agreement in writing signed by all of the parties.

D. Severability: Every provision of this License is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the License.

E. Law Governing: The laws of the State of Texas shall govern the validity, performances and enforcement of this License and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

F. Real Property Interest: Nothing contained herein shall grant or be construed to grant any real property interest to the Licensee, nor shall it give rise to any vested right in the Licensee who shall not have a cause of action for damages upon revocation of this license.

G Construction of Unit: Nothing contained herein shall be construed or imply that the City is involved in the construction, maintenance or repair of any Unit or that the City has any financial obligation concerning the construction, maintenance or repair of any Unit.

H. Successors and assigns: All of the terms, provisions, covenants and conditions of this License shall inure to the benefit and be binding upon the parties, their successors and assigns.

I. Administration. The Traffic Engineer is the principal City official responsible for the administration of this License and Licensee agrees that questions regarding the interpretation or application of this ordinance shall be referred to the Traffic Engineer.

J. No Waiver. Any waiver by the City of any breach of any of Licensee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breech of the same or another obligation of the Licensee.

K. Contractual Relationship. Nothing herein will be construed as creating the relationship of employer and employee between the City and the Licensee or between the City and the Licensee's employees. The City will not be subject to any obligations or liabilities of the Licensee or its employees incurred in the performance of the License unless otherwise herein authorized. The Licensee is an independent contractor and nothing contained herein will constitute or designate the Licensee or any of his employees as employees of the City. Neither the Licensee nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

L. Force Majeure. If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

SECTION 16. Authorization to Relocate

A. Required by City: Should the Traffic Engineer at any time determine that the right-of-way onto which the Unit is encroaching is temporarily needed for other uses, the City may allow the Licensee to relocate its Unit to a temporary alternative site during such time period. Notice shall be provided to the Licensee at least twenty-four (24) hours in advance of a temporary relocation. A relocation as provided in this Section shall be on a sidewalk area within the immediate vicinity of the authorized food

vending location, and where the pedestrian traffic is proposed to be re-routed in that area when adequate space is available for safe pedestrian traffic.

B. Requested by Licensee: The Licensee may request that a Unit be relocated. The request shall be made to the Traffic Engineer in write at least thirty (30) days prior to the date of the proposed relocation. The Traffic Engineer may accept or reject the request after conducting a feasibility study, and shall notify Licensee of its decision in writing.

SECTION 17. Warranty of Capacity to Execute Contract If Licensee accepts the terms and conditions of this License, each of the persons accepting on behalf of such Licensee warrant to the City that the Licensee is [a duly authorized and existing corporation, if applicable,] that the Licensee is qualified to do business in the State of Texas, that the Licensee has full right and authority to accept the terms and conditions of this License and each and every person signing on behalf of the Licensee is authorized to do so. Upon the City's request, the Licensee shall provide evidence satisfactory to the City confirming these representations.

SECTION 18. Effective Date This License shall not take effect unless Licensee files its written acceptance with the Traffic Engineer prior to its passage and approval by the El Paso City Council. The effective date of this License shall be December 6, 2010.

PASSED AND APPROVED this _____ day of _____ **2010.**

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Momsen, City Clerk

APPROVED AS TO FORM:

Mark Shoesmith, Assistant City Attorney

APPROVED AS TO CONTENT:

Ted Marquez, P.E., Traffic Engineer

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this 23rd day of August 2010.

LICENSEE: Big Boy Ice Cream Inc.

By

DANIEL MORALES
President

(Printed Name and Title)

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument is acknowledged before me on this 23 day of August 2010, by Mr. Daniel Morales as Big Boy Ice Cream Inc. (president) on behalf of Big Boy Ice Cream, Inc.

LUCY LAURA GUERRERO
Notary Public, State of Texas
My Commission Expires
January 22, 2011

Notary Public, State of Texas

Lucy Laura Guerrero
Notary's Printed or Typed Name:

Jan. 22, 2011
My Commission Expires:

EXHIBIT "A"
Table 1
Approved Food Vending Locations and Dimensions

Location		Dimensions	
		Width (FT)	Length (FT)
1	Southwest corner of Block 88, Campbell Addition on Sixth Avenue	4	5
2	Northeast corner of Block 89, Campbell Addition on Father Rahm Avenue	4	5
3	Northwest corner of Block 88, Campbell Addition on Father Rahm Avenue	8	10
4	Southwest corner of Block 101, Campbell Addition on Father Rahm Avenue	4	5
5	Southeast corner of Block 100,Campbell Addition on Father Rahm Avenue	4	5
6	Northwest corner of Block 101, Campbell Addition on Fourth Avenue	4	5
7	Southwest corner of Block 118, Campbell Addition on Fourth Avenue	4	5
8	Northeast corner of Block 119, Campbell Addition on Third Avenue	4	5
9	Southeast corner of Block 133, Campbell Addition on Third Avenue	4	5
10	Northwest corner of Block 34, Mills Addition on Overland Avenue	8	10
11	Northeast corner of Block 34, Mills Addition on Oregon Street	8	10
12	Southwest corner of Block 14, Mills Addition on Overland Avenue	8	10
13	Northwest corner of Block 13, Mills Addition on Oregon Street	8	10
14	Northeast corner of Block 13, Mills Addition on Mesa Street	8	10

15	Northwest corner of Block 24, Mills Addition on Mesa Street	8	10
16	Northwest corner of Block 36, Mills Addition on Mesa Street	4	5
17	Northeast corner of Block 24, Mills Addition on Stanton Street	8	10
18	Southeast corner of Block 24, Mills Addition on Overland Avenue	8	10
19	Southeast corner of Block 136, Campbell Addition on Third Avenue	8	10
20	Northern portion of Block 50, Mills Addition on San Francisco Street	18	20

EXHIBIT "1"

City of El Paso
Downtown Food Cart Vending
Request for Proposals

EXHIBIT "2"

Big Boy Ice Cream
Downtown Food Cart Vending Proposal

SOLICITATION OF OFFERS

ISSUED BY

THE CITY OF EL PASO

ENGINEERING DEPARTMENT

SOLICITATION NO: 2010-190R **DATE ISSUED: March 23, 2010**

TITLE: DOWNTOWN FOOD CART VENDING
CITY OF EL PASO

An original, signed, sealed, OFFER to furnish the goods and/or services set forth in the SCHEDULE will be received at the place indicated below, until:
2:00 PM, local time, Wednesday, April 14, 2010

NOTICE When used in formal bid solicitations, the terms 'offer' and 'bid', and 'offeror' and 'bidder' are interchangeable.

ADDRESS OFFERS TO:
PURCHASING MANAGER
FINANCIAL SERVICES / PURCHASING DIVISION
CITY OF EL PASO

MAIL TO:

CITY OF EL PASO
FINANCIAL SERVICES DEPARTMENT/PURCHASING DIVISION
2 CIVIC CENTER PLAZA, 7TH FLOOR
EL PASO, TX 79901-1196

OR

HAND DELIVER TO:

CITY HALL, 7TH FLOOR
2 CIVIC CENTER PLAZA
FRANKLIN & SANTA FE ST.
EL PASO, TX 79901

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
Michelle LePage, Contracts Development Coordinator
Telephone: [915] 541-4854 FAX: [915] 541-4016 Email: lepagemk@elpasotexas.gov

EXPIRATION OF OFFERS

Offeror agrees to begin vending cart operations within ninety (90) days after the Notice of award of the special privilege license.

AMENDMENTS TO SOLICITATION

Receipt of all numbered amendments to Solicitations must be acknowledged:

AMENDMENT	DATED	AMENDMENT	DATED	AMENDMENT	DATED	AMENDMENT	DATED
A001	4/16 DM	A002		A003		A004	
A005		A006		A007		A008	

OFFER SUBMITTED BY

BIG BOY ICE CREAM
COMPANY NAME AS IT APPEARS ON ORGANIZATION CERTIFICATE ISSUED BY STATE IN WHICH COMPANY WAS ORGANIZED)

2309 BASSETT AVE ☐ N/A ☐
STREET ADDRESS P.O. BOX NUMBER

EL PASO ; TEXAS 79901
CITY, STATE AND ZIP CODE

(915) 532-7534 FAX (915) 532-4178/532-8130 ☐
TELEPHONE NUMBER FAX NUMBER

danielmorales@fruitiki ☐ PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.
E-Mail address fruitbas.com

OFFER EXECUTED BY [PLEASE PRINT]

DANIEL MORALES OWNER/PRESIDENT
NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE COMPANY

David Morales 4/21/2010
SIGNATURE AND DATE OF OFFER

WITHOUT AN *ORIGINAL* SIGNATURE ON THIS OR OTHER DOCUMENT BINDING THE OFFEROR, THE OFFER WILL BE REJECTED

NOTE: AWARD OF THE CONTRACT RESULTING FROM THIS SOLICITATION WILL BE MADE TO THE SUCCESSFUL OFFEROR BY AN AUTHORIZED WRITTEN NOTICE, WHICH MAY BE IN THE FORM OF A LETTER NOTICE OF AWARD OR A PURCHASE ORDER ISSUED BY THE CITY OF EL PASO. THIS IS A ONE TIME CONTRACT ☐

55093 3/10 MSHO

EXHIBIT 1

AMENDMENT OF SOLICITATION

1. AMENDMENT No. 01	2. EFFECTIVE DATE **April 16, 2010**	3. SOLICITATION NUMBER **2010-190R**

4. ISSUED BY

CITY OF EL PASO
ENGINEERING DEPARTMENT
2 CIVIC CENTER PLAZA, 4TH FLOOR
EL PASO, TEXAS 79901- 1196

5A. SOLICITATION TITLE **Downtown Food Cart Vending**	5B. BID DATE **SEE 7 BELOW**

6. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 7.
(XX) is extended, ( ) is not extended. All amendments must be acknowledged on the "PROPOSAL" page I-C-1; failure to do so may be cause for rejection of bid.

7. DESCRIPTION OF AMENDMENT

Bid Opening is Hereby Extended to: Wednesday, April 21, 2010 at 2:00 P.M.

Except as provided herein, all terms and conditions of the document referenced in Item 5A, as amended, remains in full force and effect.

8. CITY OF EL PASO

Michelle LePage

Michelle LePage
Construction Bidding Office

DM.

TABLE OF CONTENTS

Section A	Schedule of Items [Goods or Services]
Section B	Specifications
Section C	Contract Clauses
Section D	Representations and Certifications
Section E	Notices and Instructions to Offerors
Section F	Selection Criteria
Section G	Example Table
Appendix 1	Map of Approved Vending Locations
Appendix 2	Special privilege license

NOTICE: PUBLIC DISCLOSURE OF BID INFORMATION

Offerors are cautioned that once a bid is opened, all information contained therein will be available to the **PUBLIC** unless the information is excepted from the requirements of Government Code Section 552.021 pertaining to Open Records. The exception that allows the City to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. *Trade secrets, commercial or financial background data and privileged or confidential information* may be excepted from public inspection. If any information contained in your offer qualifies for an exception because it falls into one of the categories above it should be clearly marked "CONFIDENTIAL" and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a bid should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General. [Rev. 04-03-98]

IMPORTANT NOTICE

If you received your copy of this solicitation from the ***BID NET***, or any source other than directly from the City of El Paso, and you plan to respond to it, please notify the City immediately. You will be placed on the active bidders list and will be directly sent all amendments and notices pertaining to the solicitation. It would also be helpful if you would supply a contact person's name along with their telephone number, fax number, and E-mail address.

NOTE: ANY CHANGES IN DUE DATE OR MATERIAL CHANGES FOR ANY RFP'S/SOLICITATIONS WILL BE POSTED ON THE SOLICITATIONS PAGE OF THE CITY OF EL PASO PURCHASING DEPARTMENT'S WEBSITE: http://www.elpasotexas.gov/financial_services/invitations.asp

It is the bidder's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their offer. Please check the website, even after submitting a bid, to ensure that you have all amendments as they may be posted at any time, up to and including the day of bid opening.

SECTION A

REQUEST FOR PROPOSALS SUMMARY

DOWNTOWN FOOD CART VENDING, Solicitation No. 2010-190R

BID NUMBER: 2010-190R
BID OPENING DATE: April 14, 2010

The City of El Paso, invites the submission of proposals to for the issuance of a special privilege permit to operate Food, Beverage, & Retail Concession Street Carts at various locations within the downtown area in accordance with the terms, conditions, requirements, and specifications set forth in this Request for Proposals (RFP). Approved sites are listed in Section B of this RFP. The prospective vendors will have the opportunity to propose additional sites within the downtown area as part of their response to this RFP. All sites that have not been approved by the City of El Paso will be subject to review and possible denial. A scope of work is included within Section B.

The City of El Paso reserves the right to make separate and multiple awards for different concession sites, **however, no more than two awards shall be made, one for sites 1-19, Table 1, Section B and a second award for the kiosk, site 20, table 1, Section B. The city may make an award for all sites to a single offeror.**

Vendor selection may be a one-phased process. The review will qualify proposers based on the Evaluation Criteria stated in Section F, and a best value determination will be made.

This is a **REQUEST FOR PROPOSALS.**

SCHEDULE OF EVENTS

Listed below are important specific and estimated dates by which actions related to this RFP must be completed. The actions with specific dates must be completed as indicated unless otherwise changed by the City. The City expects to adhere to the tentative procurement schedule shown below.

March 31, 2010	Pre-Proposal Open house from 9 AM to 11 AM
April 7, 2010	Deadline for written questions
April 9, 2010	Issuance of RFP addendum, in response to questions
April 14, 2010	Due Date for Submittal of RFP Responses
April 21, 2010	Award notification
May 18, 2010	City Council Award

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

Pre-Proposal Open House Conference

A Pre-Proposal Conference will be held at the date and time identified in the Schedule of Events above at the following location:

City Hall
2nd Civic Center Plaza-4th Floor Conference Room
2nd Civic Center Plaza, TX 79901

A walking tour of selected sites will commence from this location.

Please RSVP by telephone (915) 541-4482 or e-mail: SpencerMD2@elpasotexas.gov

The purpose of the open house will be to: (1) briefly discuss the concessions program; (2) accept questions from prospective Respondents and other interested parties; and (3) representatives from the City will be available to address such questions. However, presentations, discussions, announcements and verbal answers to questions offered at the Pre-Proposal Open House are not considered authoritative and, therefore, should not be relied upon in the preparation of responses to this RFP. Generally available presentation material and a listing of all questions asked at the Open House, as well as those submitted prior to the Open House, and the answers thereto, will be compiled and reduced to official written responses in the form of amendment(s) to this RFP. All interested parties are strongly encouraged to attend the open house.

The Pre-Proposal Conference will include a tour of some of the approved concession locations. **Please note this will be the only opportunity for prospective Respondents to inspect the locations with City staff.**

RESPONSE FORMAT

One original and seven copies of the proposal shall be submitted on or before the Proposal Due Date and time, as further described below in Section B submittal formant and instructions.

Responses shall be submitted in the following format:

Paper Size, Text, and Length. No more than THIRTY (30) 8 ½ " x 11" pages, including all illustrations, tables, appendices, etc. Front and back of sheets (double sided) may not be used. Font size must be not less than 12 point (the font size of 12-point applies to your written response). Your cover letter should include a brief summary of the institutions proven ability and experience to provide all the required services described in the RFP.

In addition, the cover letter must delineate any exceptions taken to the RFP's Terms and Conditions. However, providers submitting solicitations are cautioned that any noncompliance with the Terms and Conditions of the RFP may cause their response to be determined unacceptable. If none, so state.

OFFEROR MUST SUBMIT WITH HIS OFFER A COPY OF THE COMPANY'S ORGANIZATION CERTIFICATE ISSUED BY THE SECRETARY OF STATE OF THE STATE IN WHICH THE OFFEROR WAS ORGANIZED. THE OFFEROR MUST FILL OUT THE AFFIDAVIT IN SECTION D STATING WHAT NAMES THE COMPANY USES AND HAS USED IN THE PAST AND ATTEST THAT ALL SUCH NAMES DESCRIBE THE COMPANY CURRENTLY SUBMITTING A BID OR PROPOSAL.

CONE OF SILENCE

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

"Cone of Silence" is imposed upon each RFP, RFQ or Bid after advertising and terminates at the time the Purchasing Manager places a written recommendation on City Council Agenda. The Cone of Silence prohibits any communication regarding RFPs, RFQs or Bids between, among others:

- Potential vendors, service providers, bidders, lobbyists or consultants and City's professional staff.
- Potential vendors, service providers, bidders, lobbyists or consultants, any member of the City's professional staff, the Mayor, Council Representatives or their respective staff and members of the respective selection committee.

The provisions do not apply to, among other communications:

- Oral communications with the Purchasing Manager or Contract Administrator, provided the communications is limited strictly to matters of process or procedure already contained in the solicitation document;
- The provisions of the Cone of Silence do not apply to oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations during duly notice public meeting, public presentations made to the Mayor and Council Representatives during a duly noticed public meeting; or
- Communications in writing at any time unless specifically prohibited by the applicable RFP, RFQ or bid document.

In addition to any other penalties provided by law, violation of the Cone of Silence by any proposer or bidder shall render that proposer's or bidder's RFP, RFQ or bid award voidable. Any person having personal knowledge of a violation of these provisions shall report such violations to the City Attorney.

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

SECTION B
SPECIFICATIONS

DOWNTOWN FOOD CART VENDING

BID NUMBER: 2010-190R
BID OPENING DATE: April 14, 2010

The City of El Paso, is offering the issuance of a special privilege License that will allow the operation of Food, Beverage, & Retail Concession Street Carts (to include newspapers and magazines or similar items as proposed by Offeror and accepted by City) at approximately 20 locations within the City of El Paso downtown area.

The selected respondent will have the right to operate street cart vending stations at the locations identified within the response to this RFP during the term of the agreement. However, the City reserves the right to make separate awards to Offerors. One award will be for carts 1-19 or such other street locations accepted by the City (see Table 1, Section B) and the other will be for the Kiosk (Table 1, Section B, item 20). The City may make an award of all locations to one offeror. Offerors shall designate in their offers that they propose to operate (1) carts 1-19 or (2) or the Kiosk or (3) both carts 1-19 and the Kiosk by filling in the fee that is being offered for such locations as follows:

Annual license payment:

FIVE YEAR TERM

Carts 1-19 (1)		**Kiosk** (2)		(3)
Year one:	$ 20,000	Year one:	$ 1,200	$21,000.00
Year two:	$ 20,400	Year two:	$ 1,224	$21,624.00
Year three:	$ 20,808	Year three:	$ 1,248	$22,056.00
Year four:	$ 21,224	Year four:	$ 1,273	$22,497.00
Year five:	$ 21,648	Year five:	$ 1,298	$22,946.00
			TOTAL	$110,323.00

OPTION YEARS

Carts 1-19		**Kiosk**		
Option year one:	$20,000	Option year one:	$ 1,200	
Option year two:	$20,400	Option year two:	$ 1,224	SAME
Option year three:	$20,808	Option year three:	$ 1,248	AS
Option year four:	$21,224	Option year four:	$ 1,273	ABOVE
Option year five:	$21,648	Option year five:	$ 1,298	

Specifications and pictures of the proposed street carts to be operated must be included with the response to this RFP. Specifications must list size of units and utilities (sinks, grills, water tanks, refrigeration units, etc.). If the respondent is proposing existing units they must be clean, in good operating condition, readily moveable, and all compartments and utilities must be fully functional. All

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

existing units are subject to inspection during the proposal review period. Photographs of existing carts shall be provided and manufacturer's photographs of carts the offeror proposes to purchase must be provided as part of the proposal.

The approved street cart locations can accommodate three sizes of street carts. A listing of the approved locations is included below within this RFP in Table 1, Section B. A map of the approved locations is included as Appendix 1. The following cart sizes can be accommodated on the following space area:

Small Carts- Width: Four Feet, Length: Five Feet (Maximum Space)
Large Carts- Width: Eight Feet, Length: Ten Feet (Maximum Space)
Kiosk- Width: Eighteen Feet, Length: Twenty Feet (Maximum Space)

The response to this RFP must include a proposed menu and listing of other items being proposed for sale from the street cart for each site. Both pre-packaged and prepared foods will be considered. All prepared food must meet all applicable State and City codes for sale.

All Offerors selected for a special privilege license will be subject to compliance with all applicable State and City codes including, but not limited to, the following:

- *Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter K, Rule §229.169;*
  Health Services, Department of State Health Services, Food and Drug, Texas Food Establishments, Mobile Food Establishments

- *Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter K, Rule §229.166;*
  Health Services, Department of State Health Services, Food and Drug, Texas Food Establishments, Water, Plumbing, and Waste

- *City of El Paso Department of Public Health, Food Inspection Program.*
  Special Privilege Food Establishment Requirements

- *City of El Paso Municipal Code, Chapter 9.12*
  Food and Food Handling Establishments

- *City of El Paso Municipal Code, Chapter 15.08.120*
  Special Privilege Licenses and Permits

Respondents to this RFP must identify the locations where they wish to operate street cart vending stations. The respondent will be required to submit a location map, site dimensions, and site pictures if locations other than those listed below are being proposed. All proposed locations must be in City ROW (not on private property) and must comply with all city codes and ordnances.

The initial Term of the Special Privilege License for the downtown food vending will be for five (5) years with an option to extend for one (1) additional five (5) year term and will commence on the effective date of the Special Privilege License in Appendix 2.

SCOPE OF WORK

The City of El Paso proposes to issue Special Privilege License(s) to one or more Offerors in order to operate concession stands at various locations within the El Paso downtown area. The specific activities to be carried out by the Special Privilege Licensees are as follows:

- Develop a network of Food and Concession Vending carts at City of El Paso approved locations
- The cart design shall comply with the culture and history of Downtown El Paso
- The cart design shall comply with state and local health requirements
- Continuously stock carts with inventory
- Maintain area free of tripping hazards
- Maintain a clean vending area
- Manage day to day activities of the vending locations
- Pay the City of El Paso an annual fixed concession fee
- Provide reports or information and compensation to the City of El Paso as required

CONDITIONS OF THE OFFERED CONCESSIONS

1. Overview

The following summarizes some of the key terms and conditions of the offered concessions. This RFP, and all exhibits, attachments and addenda thereto, does not constitute a contract between the City of El Paso and any entity or individual, nor a commitment by the City of El Paso to accept concession services from any entity or individual, nor a commitment by any entity or individual to provide concession services to. The concessions shall be performed only under the terms and conditions of the fully executed and delivered agreement by and between the City of El Paso and the selected Offerors to this RFP (Offeror shall also mean "Concessionaire").

2. Premises and Facilities

The concession locations to be leased to the selected Respondent comprise a total of 20 sites throughout the downtown area. Table 1 summarizes the approved locations and their sizes.

Table 1
Summary of Approved Locations

Location		Dimensions	
		Width (FT)	Length (FT)
1	Southwest corner of Block 88, Campbell Addition on Sixth Avenue	4	5
2	Northeast corner of Block 89, Campbell Addition on Father Rahm Avenue	4	5
3	Northwest corner of Block 88, Campbell Addition on Father Rahm Avenue	8	10
4	Southwest corner of Block 101, Campbell Addition on Father Rahm Avenue	4	5
5	Southeast corner of Block 100,Campbell Addition on Father Rahm Avenue	4	5
6	Northwest corner of Block 101, Campbell Addition on Fourth Avenue	4	5

7	Southwest corner of Block 118, Campbell Addition on Fourth Avenue	4	5
8	Northeast corner of Block 119, Campbell Addition on Third Avenue	4	5
9	Southeast corner of Block 133, Campbell Addition on Third Avenue	4	5
10	Northwest corner of Block 34, Mills Addition on Overland Avenue	8	10
11	Northeast corner of Block 34, Mills Addition on Oregon Street	8	10
12	Southwest corner of Block 14, Mills Addition on Overland Avenue	8	10
13	Northwest corner of Block 13, Mills Addition on Oregon Street	8	10
14	Northeast corner of Block 13, Mills Addition on Mesa Street	8	10
15	Northwest corner of Block 24, Mills Addition on Mesa Street	8	10
16	Northwest corner of Block 36, Mills Addition on Mesa Street	4	5
17	Northeast corner of Block 24, Mills Addition on Stanton Street	8	10
18	Southeast corner of Block 24, Mills Addition on Overland Avenue	8	10
19	Southeast corner of Block 136, Campbell Addition on Third Avenue	8	10
20	Northern portion of Block 50, Mills Addition on San Francisco Street **(Kiosk)**	18	20

3. Condition of License Area

The right-of-way shall be used by the Licensee for sidewalk food vending purposes and such other sales as allowed in the Special Privilege License.

The proposal shall include provisions for management, operation, and maintenance of food-vending concessions within the Downtown Improvement Area, hereinafter referred to as "Use", of the License Area. The Use shall be in accordance with the requirements outlined herein. The Licensee shall commence management, operation, and maintenance of the program when all permits and licenses have been obtained from the City in accordance with all applicable City ordinances. The proposal shall not be construed to waive any City permit requirements.

1. Applicants shall be responsible for and required to obtain all licenses and permits required by law for the legal operation of the food vending concession program. Applicant shall be required to display visibly upon each self-contained mobile food unit (hereinafter referred to as "Unit") at all times the food establishment license, concessionaire's food handler's card, state sales tax

permit and any other permit or license required by law including, but not limited to, U.S. issued work permits for non-U.S. citizens and non-U.S. residents.

2. The applicants shall propose hours and days of operation subject to approval of the City.

3. The Use shall be valid only on that portion of the license area. Only a chair utilized by the applicant will be allowed on a two (2) foot sales area providing the Applicant does not obstruct accessibility and create a safety hazard. Operation outside of the license area except as herein provided is expressly prohibited.

4. No advertising, whether "on license area" or "off license area", as defined by the El Paso sign ordinance, shall be permitted on the Unit or within any portion of the license area.

5. Business name with telephone number will be allowed on front of cart and/or kiosk. Applicant will submit business information on design theme.

6. Access to any entrance, exit, or driveway of an adjacent business shall not be impeded.

7. Applicant shall not use or operate any sound devices or any strobe lights or other similar devices at or on the Unit or Licensed Area.

8. The Units and all other equipment of the Licensee shall be subject to inspection by the City or other appropriate regulatory or law enforcement officials at the time of execution and at any time during the term of the agreement. Failure to comply with contract requirements will result in the Applicant(s) removing cart(s) from the license area(s).

9. No portion of a Unit shall be anchored or tied onto or upon any portion of the city right-of-way, including but not limited to, the sidewalk, City light standards, traffic control signs, utility boxes, or other such appurtenances except for the Kiosk (Section B, Table 1, Location 20).

10. While in operation, each the Licensee shall require its unit operators to maintain a sanitary and well-groomed appearance. A high degree of personal cleanliness and good hygienic practices shall be maintained while working on the Licensed Area.

The Special Privilege License shall not allow or be construed to allow use of the City's right-of-way that is not specifically granted herein. No Licensee shall construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City of El Paso.

4. Compensation

In consideration of the rights and privileges to be granted to the Licensee by the City of El Paso, the Licensee will pay to the City of El Paso an annual fixed fee.

Concession Annual Fixed Fee

Advance payment of the Annual Fixed Fee begins on the effective date of the special privilege license for the first year and prior to the beginning of each twelve-month period of the License thereafter, including any option that is awarded.

The payment for the first year of the license fee shall be made to the Traffic Engineering Division, 2nd Civic Center Plaza, El Paso, Texas 79901. Thereafter, payments shall be made to the City of El Paso at the City of El Paso Financial Services Department-Capital Assets Division, 2nd Civic Center Plaza, El Paso, Texas 79901. Failure to make payment shall result in the violation of this contract and termination of the contract at the City of El Paso's discretion.

5. Title VI Civil Rights Act of 1964 Requirements

In accordance with Title VI of the Civil Rights Act of 1964, it is the policy of City of El Paso not to discriminate on the basis of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities Licensee, by execution of the Special Privilege License, agrees to comply with Title VI Civil Rights Act of 1964 by not discriminating on the basis of age, sex, race, color, national origin or disability in its hiring and employment practices, or in admission to access to, or operation of its programs, services and activities.

6. Required Compliance

Licensee must comply with the applicable provisions of the federal and/or State Occupational Safety and Health Act(s), the electrical and building codes of the City of El Paso, County and State, and all other applicable laws, regulations, ordinances, codes, and rules of any governmental entities that have jurisdiction. All licenses and permits required to operate the concession shall be obtained by the Licensee at its own expense, and shall be maintained in full force and effect throughout the Term of the Concession Agreement. The Licensee agrees to defend and indemnify the City of El Paso against all losses, expenses and damages arising from violation of any of the above laws, regulations, ordinances, codes and rules.

Americans with Disabilities Act The Licensee will be responsible for meeting all requirements of the 1990 Americans with Disabilities Act ("ADA"), as amended. The Licensee is required to work closely with the City of El Paso and other government agencies to comply with City of El Paso's ADA commitments and procedures. It is understood that the requirements of the federal government, State, City, County or City regarding ADA may change from time to time and Licensee shall comply with all such requirements.

7. Hours of Operation

Licensee shall propose hours of operations for each cart location in its offer which shall be subject to acceptance by the City.

8. Insurance Coverage and Indemnification

The Licensee shall comply with insurance requirements required in special privilege license, see Appendix 2.

MINIMUM QUALIFICATIONS

City has established the following qualifications that an Offeror shall meet in order to be considered a qualified Offeror. City, in its sole discretion, will determine if an Offeror is qualified and will base its decision on the information included in the submittal as well as its own investigations.

Financial Capability

Offeror – for itself including joint venture partners as appropriate shall must provide evidence of its ability to finance and undertake the monetary commitments required to successfully develop, construct and operate the proposed concession. This means that the Offeror must have a) total capitalization greater than the sum of proposed investment and a working capital allowance equal to three months of projected sales, and b) a

capital structure for the proposed concession generally comparable to the Respondent's overall capital structure.

Experience of the Offeror

Offeror including a majority interest of joint venture partners, as appropriate, shall provide evidence that it has the necessary experience and capacity to fulfill the scope of the concession operation. At a minimum, Offeror should have at least three years of continuous experience, within the last five years, in the ownership, management and/or operation of a business that is similar to that which is contemplated under this RFP.

Experience – On-Site Management

Respondent shall provide evidence that its on-site management has the necessary experience to operate the proposed concession. At a minimum, proposed on-site management personnel should have at least three years of continuous experience, within the last five years, in the management and operation of a concession business that is acceptable to City and similar to that which is contemplated under this RFP. Generally, this means that the businesses by which experience is claimed should be in the case of food & beverage or a similar foodservice business. Further, in the case of on-site general management of the concession, the experience of proposed on-site management personnel should include at least three years in the on-site management of similar operations.

SUBMITTAL FORMAT AND INSTRUCTIONS

The offer submitted must include all of the following items and documents organized and tabulated in the requested order. Submittals are to be prepared in such a way as to provide a straight forward, concise statement of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, and promotional materials are not necessary or encouraged (except as requested in the Submittal instructions). Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements and on completeness and clarity of content.

One original (marked "Original") and seven copies of the submittal shall be submitted on or before the submittal Due Date and time. Submittals shall be organized and tabulated in the following order.

1) Transmittal Letter
2) Business and Financial References
3) Experience and Qualifications Statement
4) Financial Statements
5) Food, Beverage & Retail Merchandise Concept Plan which includes cart design and quality
6) Methods of Management and Operation
7) Annual Concession Fixed Fee for every year including every option year
8) Other Information

Each of the above is more fully described below.

Tab 1) Transmittal Letter

Each Respondent must indicate a return mailing address, contact person, telephone/fax numbers and email address as well as any pertinent facts or details of the submittal that the Respondent desires to emphasize, but not more than five pages in length. The transmittal letter must by signed by an officer or other individual who has authority to bind the responding entity.

Tab 2) Business and Financial References

Offeror must list at least four current references, including at least two landlords and two food and beverage business operations contacts. These references must be the Offeror's primary contacts for day-to-day issues at the pertinent location/business. The facilities and/or food and beverage businesses operated by the Offeror at these locations must be similar to those being proposed for this offering. If Offeror does not have four current landlord and food and beverage business contacts, then financial and/or related business references should be provided.

For all references, the Respondent shall provide the following information: Name, Title, Firm, Address, Telephone, Email address and the Nature and magnitude of association (including years).

Tab 3) Experience and Qualifications Statement

Offeror must provide all information related to experience and qualifications of the Offeror. The information in the proposal submitted by Offeror shall respond to the, following questions:

1. Is the Respondent currently engaged in operating a similar street cart business? If so, for how long?
2. Are the principal owner(s) and/or manager(s) of the Respondent currently engaged in operating a similar business?
3. Furnish the names of food and beverage businesses operated in the past five years; a description of each operation and the number of total employees for each facility.
4. Attach photographs of the interior and exterior of any existing or proposed street carts that respondent will utilize for this proposal. If available attach manufacturer specifications on proposed carts.
5. Provide resumes of the principal owner(s) and manager(s) of the Offeror including, specifically, the individual who will be the primary contact to City for contract and concession matters and the individual(s) who will be primarily responsible for the day-to-day operations of the concession(s).
6. Furnish any other additional information that will indicate your food, and beverage experience as it pertains to the proposed concession operation.
7. Disclose whether any agreement with the Offeror (or related entity) or any principal owner(s) of the Offeror (or related entity) for the operation of a food and beverage business ever been terminated or canceled with or without cause? Describe all such contract terminations or cancellations including, but not limited to, date of cancellation, contracting parties, contract value and term, and reason for cancellation.

Tab 4) Financial Statements

Offeror must provide all financial information for the Respondent, and all other related entities and individuals.

1. Attach financial statements of the Offeror as follows:

Current Fiscal-Year-to-Date Balance Sheet, Income Statement, and Statement of Cash Flow prepared in accordance with generally accepted accounting principles. If the year-to-date financial statements are not audited by an independent Certified Public Accountant, a notarized statement, certifying the accuracy of the financial information, signed by the Chief Financial Officer of the Offeror, must accompany the financial information.

Three (3) most recent Fiscal Year Balance Sheets, Income Statements, and Statements of Cash Flow for each full year of operations, prepared in accordance with generally accepted accounting principles and audited by an independent Certified Public Accountant.

If the Offeror is relying on an affiliated entity's financial resources to meet the financial requirements of this RFP, provide the financial statements described above for the affiliated entity. Offeror should describe the relationship between affiliated entity and the Respondent including, but not limited to, the percentage of ownership and management structure. A resolution of the affiliated entity authorizing the Offeror to rely on its financial resources should also be included.

B. If the proposed Offeror does not have the requested financial statements audited by an independent Certified Public Accountant, then a notarized statement, certifying the accuracy of the financial information, signed by the Chief Executive Officer of the Offeror may be substituted for audited statements.

C. If the Offeror is an individual, attach the three most recent personal tax returns (including all business-related schedules) and a current statement of net worth.

D. Subsequent Events. If the Offeror has entered into any substantial contracts and/or contingent liabilities subsequent to the date of the most recent audited financial statements, attach a statement describing the nature of the contracts and/or contingent liabilities including, but not limited to, the monetary amounts of any commitments or liabilities assumed and the source(s) of funding to meet these obligations.

City reserves the right to obtain, at no cost to the Offeror, a Dun and Bradstreet financial report, or other credit report, on Offeror and/or any other entity or individual which has submitted a financial statement in connection with this RFP to facilitate its financial evaluation of the submittal.

2. Surety Information. Disclose whether the Offeror or any entity in which Offeror's principal owner(s) have had an ownership interest, ever had a bond or surety canceled or forfeited. Provide the name of bonding company, date, amount of bond and reason for such cancellation or forfeiture for each such cancellation or forfeiture.

3. Bankruptcy Information. Disclose whether any entity in which Offeror's principal owner(s) have had an ownership interest been declared bankrupt. Provide the date of filing, court of jurisdiction, amount of assets and liabilities, bankruptcy type and resolution or current status for each such filing.

4. Bank References. Provide the names, addresses and phone numbers of the Offeror's primary bank and a contact person.

Tab 5) Food, Beverage & Retail Merchandise and Concept Plan

Offeror shall submit the following information for each facility in sufficient detail to clearly define the proposed concession. This information should be presented in the format provided below and include the following detailed descriptions:

1) Food, beverage & retail concept and cart design and quality including, as appropriate, a discussion of its relation to the culture and history of Downtown El Paso area.

Tab 6) Methods of Management and Operation

Describe the specific plan for operation and the services that will be provided. Include the following:

1) Plan to include the number of management and non-management employees and the shifts to cover the proposed operating hours.
2) Customer Service Philosophy and Programs

a) A description of the Offeror's goals with regard to customer service including examples of customer service surveys and the proposed customer service survey program's frequency of use, data analysis methodology, and sample summary reports.

b) Marketing programs

c) Employee Policy Manual

3) Food cart and/or Kiosk Maintenance Plan

a) Policy for maintenance and repairs

b) Frequency of cleaning and trash disposal

c) Amount of trash receptacles on license areas

d) Replacement of equipment, and fixtures

4) Other Policies and Practices

a) Inventory and cash controls including a description of proposed cash control system and make and model of cash register or point of sale equipment

b) Security programs

Tab 7) Annual Concession Fixed Fee for every year including every option year

Offeror shall submit the annual concession fixed fee for every year including every option year. The submittal shall be in form of a table showing each individual contract term year with annual concession fixed fee and each individual option contract term year with annual concession fixed fee.

Tab 8) Other Information

Offeror should provide any other information that it believes would be helpful in evaluating its ability to successfully develop and operate the described facilities.

EXCEPTION TO SPECIFICATIONS

Except as set forth below, the Offeror agrees it will perform the services under this Solicitation to the minimum standards set forth in Paragraph 1 of these Specifications (Section B).

OFFEROR TAKES THE FOLLOWING EXCEPTIONS TO THE SPECIFICATIONS SET FORTH ABOVE:

N/A

(Attach additional pages if needed)

N/A

SIGNATURE OF COMPANY REPRESENTATIVE (ONLY NEEDED IF TAKING EXCEPTION)

REQUESTS FOR CLARIFICATION

In order to meet the City's schedule for awarding this requirement it is extremely important that requests for clarification or additional information, or requests for a change in the specifications, be submitted in writing no later than April 7, 2010. Each vendor submitting questions shall clearly address each question by reference to a specific section, page and item of this solicitation. Questions submitted after this date may not elicit a response.

CONTRACT ADMINISTRATOR CONTACT INFORMATION

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

Michelle LePage
Contracts Development Coordinator
Fax: (915) 541-4016
Email: lepagemk@elpasotexas.gov

City of El Paso
Engineering Department
2 Civic Center Plaza, 4th Floor
El Paso, TX 79901-1196
Attn: Michelle LePage

Please refer to Bid Number/Contract Number and Title in all correspondence.

It is the Offeror's responsibility to follow up and make certain that the City of El Paso Purchasing Division received the request. Offerors shall promptly notify the City of El Paso Purchasing Division of any ambiguity or inconsistency that they may discover upon examination of a solicitation document. During the bid process, Offerors shall not contact any City staff except those designated in the text of this solicitation or in subsequent documentation. Non-compliance with this provision may result in rejection of the offer involved.

SECTION C
CONTRACT CLAUSES

Contract Clauses are found in the Special Privilege License attached hereto as Appendix 2. By submitting a Proposal, Offeror agrees that it will enter into the conditions of the Special Privilege License.

SECTION D
REPRESENTATIONS AND CERTIFICATIONS

1. REPRESENTATIONS, CERTIFICATIONS AND ACKNOWLEDGMENT:

   By submitting this offer, the offeror:

   a. Represents that to the best of its knowledge they are not indebted to the City of El Paso. **The City will consider any outstanding indebtedness to the City, including delinquent property taxes, a factor in evaluating the responsibility of the low responsive offeror;** and

   b. Certifies that it does not and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, political belief or affiliation.

   c. Acknowledges that it has read and understands the requirements of the specifications and all other provisions of this solicitation.

2. NOTICE TO OFFERORS

   The City of El Paso Financial Services Department/Purchasing Division does not maintain an automated list of current vendors. However, every reasonable effort is made to assure that interested parties are made aware of appropriate solicitations; however, we cannot guarantee 100% accuracy.

   All City Formal Solicitations are advertised in The El Paso Times with the advertisements

appearing every Tuesday. All solicitations are advertised twice with the first advertisement appearing at least two weeks prior to the due date for the offers. It is recommended that interested parties check The El Paso Times every Tuesday morning, sign up for website notifications, and/or check the web site frequently for solicitation information and updates. Registration to receive weekly website notifications is free and available at http://www.elpasotexas.gov/financial_services/register.asp.

3. REQUIRED FORMS:

All offerors are required to complete the following forms:

FORMS APPEAR ON THE FOLLOWING PAGES

The City of El Paso Financial Services Department/Purchasing Division is requesting information to update vendor records and to fulfill IRS requirement that taxpayer identification numbers (EID or Social Security) and certification be on file with the City. Failure to provide this information may require the City to withhold 20% of payments due you or your firm and pay that amount directly to the IRS.

CITY OF EL PASO
Engineering Department
2 CIVIC CENTER PLAZA, 4TH FLOOR
EL PASO, TEXAS 79901-1196
Tel. No. (915) 541-4854; Fax No. (915) 541-4016

BUSINESS ORDERING ADDRESS	BUSINESS BILLING ADDRESS
FIRM NAME: BIG BOY ICE CREAM INC.	FIRM NAME: DANIEL H MORALES
ADDRESS: 2309 BASSETT AVE	ADDRESS: SAME
CITY / STATE / ZIP CODE	CITY / STATE / ZIP CODE:
TELEPHONE: 915-532-7534	FAX: 915-532-4178/532-8130
E-MAIL ADDRESS danielmorales@fruitikifruitbars.com	

EIN OR SSN: 74-2495323 INCORPORATED IN STATE OF:

PARTNERSHIP: GENERAL ☐ OR LTD. ☐;
SOLE PROPRIETORSHIP ☐; JOINT VENTURE ☐;

OTHER: CORPORATION.

1. I certify under penalty of perjury that the tax identification number is correct.
2. I certify under penalty of perjury that I am not subject to backup withholding.

AUTHORIZED SIGNATURE: Dan Morales DATE 4/21/10

PRINT NAME & TITLE DANIEL H MORALES OWNER/PRESIDENT

CERTIFICATION OF NON-COLLUSION

SOLICITATION TITLE: NO: 2010-190R DOWNTOWN FOOD CART VENDING
CITY OF EL PASO

The, Offeror being sworn, deposes and states that DANIEL MORALES, the Offeror, submitting this offer and its agents, officers or employers have not directly or indirectly entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of free competitive selection in connection with this proposal or with any City official.

BIG BOY ICE CREAM
Company Name

Daniel Morales
Signature

DANIEL MORALES
Printed Name

OWNER / president
Title

4/21/2010
Date

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

FINANCIAL SERVICES
PURCHASING DIVISION
BUSINESS NAME AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared DANIEL H MORALES, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

1. My name is DANIEL H MORALES. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.

2. I am an authorized representative of the following company or firm:

   BIG BOY ICE CREAM

3. Listed below are all the names the company/firm uses and has used in the past and I attest that all such names describe the company currently submitting a response to Solicitation No. 2010-190R.

   BIG BOY ICE CREAM , BIG BOY CONCESSIONS

4. In addition to completing this Affidavit, I have included a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized

Note: This bidder understands that by providing false information on this Affidavit, it may be considered a non-responsible bidder on this and future solicitations and may result in discontinuation of any/all business with the City of El Paso.

SIGNATURE

SUBSCRIBED AND SWORN to before me on this 13th day of April, 2010.

NOTARY PUBLIC

Norma Tena

PRINT NAME

2011

MY COMMISSION EXPIRES

NORMA TENA
Notary Public, State of Texas
My Commission Expires
SEPT. 13, 2011

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

City Of El Paso
Financial Services Department – Purchasing Division

INDEBTEDNESS AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned authority, on this day personally appeared DANIEL H MORALES [FULL NAME] (hereafter "*Affiant*"), a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed stated as follows:

1. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
2. Affiant is an authorized representative of the following company or firm: BIG BOY ICE CREAM [*Contracting Entity's Corporate or Legal Name*] (hereafter, "*Contracting Entity*").
3. Affiant is submitting this affidavit in response to the following bid: *Solicitation No* 2010-190R
4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

☐ Sole Proprietorship
XIX Corporation
☐ Partnership
☐ Limited Partnership
☐ Joint Venture
☐ Limited Liability Company
☐ Other (Specify type in space provided below):

_____

For Non-Profit Entity (select below):

☐ Non-Profit Corporation
☐ Unincorporated Association

5. The information shown below is true and correct for the Contracting Entity and all owners of 5% or more of the Contracting Entity and, where the Contracting Entity is a non-profit entity, the required information has been shown for each officer. [Note: In all cases, use FULL name, business and residence addresses and telephone numbers.]

Contracting Entity:

Name	BIG BOY ICE CREAM INC
Business Address [No./Street]	2309 BASSETT AVE
City/State/Zip Code	EL PASO, TX 79901
Telephone Number	915-532-7534 fax 915-532-4178
Resident Address (if applicable)	N/A
City/State/Zip Code	EL PASO, TX 79901
Telephone Number CELL	915-820-7282
Federal Tax ID Number	74-2495323
Texas Sales Tax Number	32014454089

5% Owner(s) ** (If none, state "None"):

Name	NONE
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	N/A
City/State/Zip Code	
Telephone Number	

**Attach additional pages if necessary to supply the required names and addresses.

6. Affiant understands that in accordance with Ordinance No. 016529 of the City of El Paso (the "*City*"), the City may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the City.

7. Affiant understands that the term "*Debt*" shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars ($100.00) and that has become Delinquent, as defined hereinafter. Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.

8. Affiant understands that the term "*Delinquent*" shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.

9. Affiant represents that to the best of its knowledge, the Contracting Entity is not indebted to the City in any amounts as described in Item No. 7 above, as of the date of the submittal. If the Contracting Entity is indebted to the City, the following represents the type and estimated amount of indebtedness:

   N/A

10. If the Contracting Entity is indebted to the City, describe any payment arrangements that have been entered into to settle the Debt.

    N/A

11. In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

Affiant certifies that he is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein; and that the information provided herein is true and correct to the best of Affiant's knowledge and belief. Affiant understands that providing false information on this form shall be grounds for debarment and discontinuation of any/all business with the City of El Paso.

Signature

SUBSCRIBED AND SWORN to before me on this 13th day of April, 2010.

Norma Tena

Notary Public

Norma Tena

Printed Name

2011

Commission Expires

NORMA TENA
Notary Public, State of Texas
My Commission Expires
SEPT. 13, 2011

Offeror's [COMPANY] NAME BIG BOY ICE CREAM DM

RESPONDENT QUALIFICATION
GENERAL QUESTIONNAIRE

Complete the following form or, if submitting a separate document, restate each question and heading, as written, and provide response.

1. Name/Name of Agency/Company: BIG BOY ICE CREAM

2. Address: 2309 BASSETT AVE , EL PASO, TX 79901

3. Telephone/FAX: 915-532-7534 fax 915-532-4178 / 532-8130

4. E-Mail Address: danielmorales@fruitikifruitbars.com

5. Federal Identification No: 74-2495323

6. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its contract?

   Yes _____ No XX

7. Is your Company authorized and/or licensed to do business in Texas?

   Yes XX No _____

8. Where is the Company's corporate headquarters located?

   2309 BASSETT AVE , EL PASO , TEXAS 79901

a. Does the Company have an office located in El Paso, Texas?

   Yes XX No _____ Address: 2309 BASSETT AVE, 79901

b. If the answer to the previous question is "yes", how long has the Company conducted business from its El Paso office?

   50+ (years) _____ (months)

c. State the number of full-time employees at the El Paso office. 7

9. a. Has the Company or any of its principals been debarred or suspended from contracting with any public entity?

Yes _____ No XX

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

N/A

b. Has your company ever been terminated from a contract? Yes _____ No XX
If yes, please explain:

N/A

c. Has your company ever been terminated for default? Yes _____ No XX
If yes, please explain:

N/A

SECTION E
NOTICES AND INSTRUCTIONS TO OFFERORS

In section E, "Bidder" means "offeror", "Bid" means "offer", "Solicitation" and "Proposal"

1. SIGNATURE OF OFFER BY PERSON AUTHORIZED TO SIGN

All offers shall bear an original signature, in ink, of a responsible officer or agent of the company. Failure to sign the OFFER portion of the SOLICITATION, OFFER AND AWARD form, or to include a substitute signed document binding the offeror, will be the basis for declaring a bid non-responsive.

2. REQUIRED NUMBER OF COPIES

Offer (bid or proposal) must be submitted in original form with one additional copy, unless otherwise stated in Section B.

3. OFFER SUBMISSION INSTRUCTIONS

OFFER MUST BE SEALED WHEN PRESENTED TO THE PURCHASING DIVISION. Offers will be received by the City of El Paso until **2:00 P.M., local time, on WEDNESDAY, APRIL 14, 2010. Bids will be publicly opened and read; proposals will be announced.**

THE CITY DOES NOT PROVIDE ENVELOPES FOR THE PURPOSE OF SUBMITTING OFFERS.

4. ADDRESSING INSTRUCTIONS

The envelope containing the offer must be addressed as follows:

CITY OF EL PASO
FINANCIAL SERVICES DEPT/PURCHASING DIVISION
2 CIVIC CENTER PLAZA, 7TH FLOOR
EL PASO, TEXAS 79901-1196
ATTN: PURCHASING MANAGER

Also, write the bid **NUMBER, BID TITLE,** and **BID OPENING DATE** clearly on a visible section of the envelope.

5. LABELING OF BIDS [Rev 6/15/05]

The Due Date and Solicitation Number must be written on the outside of the package containing the offer. The City Purchasing Division may open any unlabeled submittal to identify it properly. Offerors are required to identify their package to protect the integrity of their sealed bids and to fully avail themselves of the sealed bid process.

6. OFFERER DELIVERY RESPONSIBILITY

Bids received at the Purchasing Office after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Purchasing Manager directly to the Purchasing Division. U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City Hall and may or may not be delivered by the Mail Room to the Purchasing Division by the time and place bids are opened. The offeror accepts all responsibility for delivering its offer to address stated above within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

7. DESCRIPTIVE LITERATURE

Descriptive literature, where applicable, containing complete specifications or other information sufficient for the City to determine compliance with the specifications must accompany each bid, in DUPLICATE. If an offeror wishes to furnish additional information more sheets may be added.

8. OFFER DOCUMENTS, SUPPORTING LITERATURE AND RELATED DATA

Related data, where applicable, will be made part of the bid. All documents, literature and related data submitted as an offer become the property of the City of El Paso.

9. ALTERNATE OFFERS

Alternate offers may be submitted if they meet the minimum requirements of the specifications. For full consideration all necessary technical data will be furnished with such alternate bids so proper evaluations can be made.

10. SOLICITATION CHANGES OR CLARIFICATIONS

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing Division for its consideration, provided the requests are made in writing and received at least ten calendar days before the bid opening date. Requests received after that time may not elicit a response. Refer to REQUESTS FOR CLARIFICATION in Section B for more details.

11. ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

All Amendments will be acknowledged on the *Solicitation of Offers* form (first page of this bid). Failure to do so may cause the bid to be rejected.

12. BID PREPARATION COSTS

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting the proposal or to contract for the services specified.

13. DEFINITION OF COMPLETE

The word "complete" means that each proposed unit of equipment will include all appurtenances, fasteners, parts, accessories and services ordinarily catalogued.

14. ADDITIONAL INFORMATION

For further procedural information concerning this Request for Proposals contact the point of contact for contract administration (refer to CONTRACT ADMINISTRATION in Section C for contact details).

15. ACCEPTANCE OR REJECTION OF BIDS

BIDDER'S [COMPANY] NAME BIG BOY ICE CREAM DM

The City reserves the right to accept or reject any or all bids, to waive all minor technicalities, and to accept the bid or bids determined to be the most favorable to the City. Additionally, the City may accept a bid subject to an exception if, in the sole judgment of the City, the bid meets or exceeds the City's specifications.

16. TIME AND PLACE OF OPENING

Offers will be opened and read in Council Chambers, Second Floor, City Hall, shortly after 2:00 p.m. on opening day. However, you are cautioned that offers must be received in the Purchasing Division, before the time stated in item #3 above.

17. NOTICE TO NONRESIDENTS

Offers received from nonresidents (bidders whose principal place of business is not in the State of Texas) must be lower than offers from Texas bidders by the same amount that a Texas bidder would be required to underbid a resident bidder, to obtain a comparable contract, in the state in which a nonresident bidder's business is located. This paragraph does not apply to contracts involving federal funds.

18. TIE BIDS

In case of a tie, the successful bid will be determined by lot unless the principal place of business of one, but not more than one, of the parties to the tie is located in the City of El Paso in which case the award will be made to the local vendor.

18. BID RESULTS

Any questions concerning bid results should be directed to the point of contact for contract administration.

19. BID TABULATIONS

The point of contact for contract administration will accept requests for a copy of the completed tabulated report of bid results after 1:00 P.M., Friday of the week of bid opening (refer to CONTRACT ADMINISTRATION in Section C for contact details). The bid tab results will also be made available on the City web site at http://www.elpasotexas.gov/financial_services/bid_tabs.asp No results will be given over the phone.

20. FAILURE TO RESPOND TO SOLICITATIONS

Any offeror who fails to respond to three consecutive solicitations will be purged from the mailing list. It is the offeror's responsibility to remain on the mailing list under his requested commodity classes.

21. TIME

Time of delivery is of the essence.

22. DEBRIEFING REQUESTS

A written request for a debriefing should be directed to the Analyst identified in CONTRACT ADMINISTRATION in Section C within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

23. PROTEST/DISPUTE PROCEDURE

Only a bidder who has actually submitted a bid response/proposal may appeal an award decision.

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights.

Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made. The bidder must write a letter to the Purchasing Manager using the phrase "Bid Protest" to the address listed above. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the bid number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Bidder alleges has been violated and the provisions entitling the Protesting Bidder to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Bidder alleges to be a violation of the statutory or regulatory provision that the Protesting Bidder has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

Only the information provided within the protest period will be considered in making a recommendation to Council.

BIDDER'S [COMPANY] NAME BIG BOY ICE CREAM DM

SECTION F
SELECTION CRITERIA

In Section F "Respondent" shall mean "offeror"

Vendors responding to this RFP must provide all information requested in the RESPONSE FORMAT of Section A AND SUBMITTAL FORMAT AND INSTRUCTIONS of Section B. The City of El Paso will evaluate submittals using the Selection Criteria below, may request a Best and Final Offer from each Respondent, and will then negotiate a Contract with the highest rated Respondent(s).

Award and Execution of Concession Agreement

It is City of El Paso's intent to award the concessions offered by this RFP to the qualified and responsive Respondent who offers the best overall proposal for each package in consideration of the Selection Criteria (Section F), consistent with the terms and conditions of this RFP.

No later than 30 business days following "Notice of Award" by City of El Paso, a selected Respondent must execute and deliver to City of El Paso a Special Privilege License as negotiated by City of El Paso and the selected Respondent. The License shall incorporate provisions of this RFP, the selected Respondent's proposal, other terms and conditions to be negotiated. The selected Respondent must deliver evidence of the required insurance. Upon receipt of the required items, the Director shall forward the License to the City Council for review, approval, and execution by the City Manager.

If a selected Respondent fails to execute and deliver the Special Privilege License, or fails to deliver evidence of insurance, within 30 business days after said Notice of Award, City of El Paso reserves the right to withdraw the selection and reject the proposal as non-responsive. In such event, all rights and/or claims purported to arise from said selection will be forfeited.

Downtown Food Vending Evaluation

Evaluation Factor	Score
Management plan (Max. 25 pts.) Did the Offeror submit a management plan? Is there a manager(s) that oversee and supervise cart vendors? Please rate efficiency of management plan	
Cart Design and Quality (Max. 25 pts.) Did the Offeror provide the design, manufacturer specifications, and/or photographs of the existing or new food vending carts and kiosks that will be utilized? Does the design theme comply with the culture, and history of downtown El Paso? Please rate cart design and quality	
Annual Concession Fee (Max. 50 pts.) Did the Offeror provide the annual concession fee? for each contract term year and each contract option year? The City of El Paso shall evaluate the total annual concession fee for five years and will have option to include if formula a combination of the option years for maximum points. The higher the fees the higher the points. Please rate annual concession fee	

BIDDER'S [COMPANY] NAME BIG BOY ICE CREAM DM

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE PERMITTING _____ TO ENCROACH ONTO A PORTION OF VARIOUS PUBLIC RIGHTS-OF-WAY WITH A FOOD-VENDING CONCESSION IN THE DOWNTOWN AREA.

WHEREAS, the El Paso El Paso City Council desires to enhance the appeal of the downtown El Paso area to tourists, while encouraging business opportunities; and

WHEREAS, the El Paso City Council also desires to support downtown businesses and adopt every reasonable measure to increase the attractiveness and cleanliness of the downtown area; and

WHEREAS, Section 3.18 (Lease; Franchise; Conveyance and Special Privilege) of the El Paso City Charter provides that the right of control, ownership and use of streets, alleys, parks and public places of the City is inalienable except by duly enacted ordinance; and

WHEREAS, A request for proposals was advertised and proposals were received and evaluated and the proposer listed herein were received the highest score and are recommended to City Council for approval as the Licensees under this Special Privilege.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That, _____, _____ *(type of business entity)* hereinafter referred to as the "Licensee" is hereby granted by the City of El Paso (the "City") a Special Privilege License (the "License") to use specific portions of public rights-of-way within the City for purposes of operating a licensed Downtown Area food vending concession.

The grant of this Special Privilege is subject to the following conditions:

SECTION 1. <u>Description</u>

The licensed area for food vending concession within the Downtown Area is for the areas identified in Exhibit "A", "Approved Locations and Dimensions", attached hereto and made a part hereof for all purposes, and which are hereinafter referred to individually and collectively as "Licensed area".

SECTION 2. Term

The term of this Special Privilege License shall be for five (5) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege License upon the request of the Licensee for one additional five year term. If the Licensee desires that the City re-new this License for an additional one (1) year term, Licensee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this License or any previously granted extension thereto.

This License shall expire without notice at the end of the term unless a request for renewal is submitted in writing to the City by the Licensee as herein required. Licensee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege License be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege.

SECTION 3. Consideration

As consideration for this Special Privilege, Licensee shall pay to the City the annual License payments in the amounts listed hereafter. The first annual payment shall be due prior to execution of this License by the El Paso City Council. The advance payment shall be in the form of a business or cashier's check payable to the "City of El Paso" and delivered to Engineering Traffic Division. If the Special Privilege License is disapproved by the El Paso City Council, the City shall make full refund of the advance payment within fifteen (15) days of the denial action. Beginning on the twelve-month anniversary date after the payment for the first year and for each twelve-month period thereafter, Licensee shall make the annual payment required below.

No extensions of time for payment of this consideration shall be authorized under this License. The payment for the first year of the License shall be made to the Traffic Engineering Division. Thereafter payments shall be made to the Capitol Assets Division of the Financial Services Department.

Annual license payment:

FIVE YEAR TERM

Carts 1-19		Kiosk	
Year one:	$ _____	Year one:	$ _____
Year two:	$ _____	Year two:	$ _____
Year three:	$ _____	Year three:	$ _____
Year four:	$ _____	Year four:	$ _____
Year five:	$ _____	Year five:	$ _____

OPTION YEARS

Carts 1-19		Kiosk	
Option year one:	$_____	Option year one:	$_____
Option year two:	$_____	Option year two:	$_____
Option year three:	$_____	Option year three:	$_____
Option year four:	$_____	Option year four:	$_____
Option year five:	$_____	Option year five:	$_____

SECTION 4. Use of Licensed Area

This License is granted solely for the operation of a food-vending concession, and such other sales as provided herein, hereinafter referred to as "Use", on the Licensed Area. The Use shall be conducted in accordance with the requirements outlined herein. Licensee shall commence operation of the Use under this License only when all permits and licenses shall have been obtained from the City in accordance with all applicable City ordinances and additionally only pursuant to the terms of this License, all of which shall be maintained by Licensee throughout the term. This License shall not be construed to waive any City permit requirements.

As an express condition of this License, the following requirements shall be met. Failure to comply with any of these requirements shall be grounds for cancellation as provided herein:

a. The Use shall be strictly limited to the sale of commercially packaged food items, foods prepared at the Licensed Area, and such non-food items provided that non-food items shall be limited to those items identified in Exhibit B,

attached hereto and incorporated herein. No alcoholic beverage sales are allowed at or on the Licensed Area.

b. Licensee shall be responsible for and shall be required to obtain any and all licenses and permits as required by law for the legal operation of the food vending concession. Licensee shall be required to display visibly upon the self-contained mobile food unit (hereinafter referred to as "Unit") at all times the food establishment license, concessionaire's food handler's card, state sales tax permit and any other permit or license required by law including, but not limited to, U.S. issued work permits for non-U.S. citizens and non-U.S. residents. The Licensee shall provide copies of all required permits and licenses as herein provided to the Traffic Engineering Division prior to execution of this License and shall provide Traffic Engineering with all renewed or amended licenses and permits to establish Licensee's continued compliance with licensing and permit requirements throughout the term of this License.

c. The hours of operation of the Use shall be limited from _____ a.m. to _____ p.m., seven days a week. The Unit used for vending shall be removed from the Licensed Area during non-operating hours, except for the kiosk (exhibit A, item 20).

d. The Unit shall satisfy the specifications provided in Chapter 9.12 (Food and Food Handling Establishments) of the El Paso Municipal Code, hereinafter referred to as "Requirements". Each Unit shall be provided at the sole cost of the Licensee. Units used by Licensee shall comply with specifications for Units provided by Licensee in its proposal and any alteration or substitution of such Units must be approved in advance in writing by the Traffic Engineering Division and the Public Health Department. Upon receipt of notice by Licensee from Traffic Engineering that an alteration or substitution is not acceptable, Licensee shall have ten (10) calendar days in which to bring the Unit into compliance. Failure to do so, and failure to maintain the Unit in conformance with the provisions of this License, shall be grounds for termination of this License.

e. The Use shall be valid only on Licensed Area; provided, however, that the Unit operator may use a chair within a two (2) foot area around each Unit. The use of a chair shall be in such a manner as not to interfere with pedestrian traffic on the

sidewalk between the Licensed Area and the abutting properties or between the Licensed Area and the abutting streets(s). Operation outside of the Licensed Area is expressly prohibited, including but not limited to signage, product displays, or attachments or fixtures to the Unit that project beyond the Licensed Area.

f. No advertising, whether on or off the Licensed Area, "On or off Premises", as defined by the El Paso sign ordinance, shall be permitted on the Unit or within any portion of the Licensed Area, providing that product display units contained within the Unit are permitted.

g. Access to any entrance, exit or driveway of an adjacent business shall not be impeded by the placement of the Unit or operation of the Unit.

h. The Licensee shall not use or operate any sound devices including, but not limited to loudspeakers, public address systems, radios, televisions and sound amplifier devices nor any strobe lights or other similar devices at or on the Unit or the Licensed Area.

i. The Unit and all other equipment of Licensee shall be subject to inspection by the City or other appropriate regulatory or law enforcement officials at the time of execution and at any time during the term of this License.

j. No portion of a Unit shall be anchored or tied onto or upon any portion of the public right-of-way, including but not limited to, the sidewalk, City light standards, traffic control signs, utility boxes, or other such appurtenances, except for the Kiosk location (location 20 on Exhibit "A").

k. While in operation the Licensee shall require its Unit operators to maintain a sanitary and well-groomed appearance. A high degree of personal cleanliness and good hygienic practices shall be maintained while working on the Licensed Area.

l. More than one cart may be allowed within a Licensed Area, provided neither cart exceeds the limits of the Licensed Area.

SECTION 5. <u>Improper Use</u>

This License shall not permit or be construed to permit use of the City's right-of-way, which is not specifically granted herein. The Licensee shall not construct any

additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

SECTION 6. Repairs

The Licensee shall keep each Unit and the Licensed Area in good condition and repair and in a clean, orderly and attractive condition during the term of this License. Licensee shall be responsible for all maintenance of the respective Units and Licensed Area and shall repair any damage to the Units and Licensed Area regardless of the cause of such damage, at Licensee's sole expense.

SECTION 7. Indemnity

As a condition of this License, THE LICENSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, its officers, agents, servants and employees HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPESE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Licensee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. The Licensee shall 1). Investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2). Negotiate or cause to be negotiated the claim as the Licensee may deem expedient; and 3). Defend or cause to be

defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought on because of such injuries or damages. The Licensee shall pay all judgments in actions defended by the Licensee pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of the payment by the Licensee, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss or of damage to the Licensee's property from any cause.

SECTION 8. Liability Insurance

Licensee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one accident or other cause. Licensee shall obtain all workers' compensation insurance as required by law. These amounts are not a limitation upon the Licensee's agreement to indemnify and hold the City harmless.

Licensee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Licensee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants, and employees as additional insureds to the full amount of the policy limits.

No special privilege license shall be granted by El Paso City Council until Licensee files a copy of the policy or certificate of liability insurance as herein set forth

with the Engineering – Traffic Division and Financial Services – Capital Assets Division. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of this License shall be grounds for cancellation of this License.

SECTION 9. Termination

A. Termination by City for public need: Should the City at any time or for any reason decide that the right-of-way onto which a respective Unit is encroaching is needed for public use, the City may upon thirty (30) calendar days' written notice, cancel this License as to each Unit location at no cost to the City and take possession of the public right-of-way. Such termination shall not affect the remaining Units. If the City cancels the License, the Licensee may receive a refund of the paid annual consideration for the months remaining in the special privilege license year (the twelve month period beginning on the effective date of the License) one-twelfth of the annual license fee times the number of whole months remaining in the license year. If the City cancels the License due to Licensee's failure to cure any default under this License or if Licensee abandons the Licensed Area or any portion thereof as described hereafter, Licensee shall not be entitled to any refund of its annual consideration it has paid to the City.

B.Termination by Licensee. Licensee may cancel this License, for any reason, upon one hundred eighty (180) calendar-days prior written notice to the City, and all rights of the Licensee shall then be terminated. If the License is cancelled by the Licensee, Licensee shall not be entitled to any refund of the annual consideration for the License year.

C. Partial termination by Licensee. Licensee may terminate termination of this License as to a particular Unit location. Such termination shall not reduce the annual license fee.

D. Termination for abandonment and default. If, for a period of thirty (30) consecutive days, Licensee ceases to use or occupy the Licensed Area for the purposes herein contemplated, or if Licensee defaults in any of his obligations under this License and fail to correct such defaults within fifteen (15) calendar days after

written notice to do so; the City may cancel this License and take possession. All rights of the Licensee on the City right-of-way shall then terminate.

E. Termination for failure to pay. The failure to make a scheduled payment by the payment due date shall result in automatic termination of this License at the option of the Traffic Engineering Division and the City shall not be required to provide notice of non payment or a grace period for payment.

F. Other Causes for Termination.

1) **Gratuities.** The City may, by written notice to the Licensee, cancel this License without liability to Licensee if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Licensee, or any agent or representative of the Licensee, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of this License. In the event this License is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Licensee in providing such gratuities.

2) **Contingent fees/commissions.** The Licensee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this License without liability and to recover the full amount of such commission, percentage, brokerage or contingent fee.

3) **Right to Assurance.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the

demanding party may treat this failure as an anticipatory repudiation of the contract.

G. Effect of Termination. Upon termination of this License for any reason, all encroachments shall become t he property of the City and shall, at the option of the City, be removed by Licensee without cost to the City.

SECTION 10. Restrictions and Reservations

This License is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the term of this License, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with a Licensee's use of the Licensed Area, each Licensee shall have the right to terminate this License by giving the notice required in section 9 B.

SECTION 11. Liens and Encumbrances

The licensee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the Licensed Area that arises or is alleged to have arisen from the Licensee's use of the Licensed Area or its operations under this License.

SECTION 12. Assignment

This License shall not be assignable or transferable. Any attempt by the Licensee to assign or transfer this License shall constitute a material breach for which the City may terminate this License.

SECTION 13. Signs. Only signs approved in writing in advance of installation by the Traffic Engineering Division shall be affixed to the Unit by Licensee. Each Unit shall have at least one approved sign that shall provide the following information: The name and telephone number of the Licensee and the name and telephone number of the business under which the cart is operating if different from name of Licensee. Signs must be affixed on a surface of the Unit and shall not protrude from the Unit or be movable.

SECTION 14. Right of Entry and Inspection The City's representative shall have the right to enter upon the Licensed Area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

SECTION 15. General Contract Provisions

A. Laws and Ordinances: Licensee shall comply with all statutes, laws, codes and ordinances applicable to Licensee's operation and maintenance of each Unit of the Licensed Area. Licensee shall obtain all required permits and inspections and pay the necessary permit fees.

B. Notices: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, TX 79901

with copies to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 2nd Floor
El Paso, TX 79901

and:

Licensee:

Address
Contact person
Phone
e-mail
Local address and phone number if different from above

or to such other address as the parties may designate to each other in writing from time to time. It shall be the responsibility of the Licensee to provide the City Clerk and the Traffic Engineering Division with its most current mailing addresses. Notice sent to the last known address of record with the City Clerk shall be deemed legally valid, proper and sufficient notice to the party to whom the notice is sent.

C. Entire Agreement: This document contains the entire agreement between the parties and may not be modified, except by an agreement in writing signed by all of the parties.

D. Severability: Every provision of this License is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the License.

E. Law Governing: The laws of the State of Texas shall govern the validity, performances and enforcement of this License and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

F. Real Property Interest: Nothing contained herein shall grant or be construed to grant any real property interest to the Licensee, nor shall it give rise to any vested right in the Licensee who shall not have a cause of action for damages upon revocation of this license.

G Construction of Unit: Nothing contained herein shall be construed or imply that the City is involved in the construction, maintenance or repair of any Unit or that the City has any financial obligation concerning the construction, maintenance or repair of any Unit.

H. Successors and assigns: All of the terms, provisions, covenants and conditions of this License shall inure to the benefit and be binding upon the parties, their successors and assigns.

I. Administration. The City Engineer is the principal City official responsible for the administration of this License and Licensee agrees that questions regarding the interpretation or application of this ordinance shall be referred to the City Engineer.

J. No Waiver. Any waiver by the City of any breach of any of Licensee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breech of the same or another obligation of the Licensee.

K. Contractual Relationship. Nothing herein will be construed as creating the relationship of employer and employee between the City and the Licensee or between the City and the Licensee's employees. The City will not be subject to any obligations or liabilities of the Licensee or its employees incurred in the performance of the License unless otherwise herein authorized. The Licensee is an independent contractor and nothing contained herein will constitute or designate the Licensee or any of his employees as employees of the City. Neither the Licensee nor his employees will be

entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

L. Force Majeure. If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

SECTION 16. Authorization to Relocate

A. Required by City: Should the Traffic Engineering Division at any time determine that the right-of-way onto which the Unit is encroaching is temporarily needed for other uses, the City may allow the Licensee to relocate its Unit to a temporary alternative site during such time period. Notice shall be provided to the Licensee at least twenty-four (24) hours in advance of a temporary relocation. A relocation as provided in this Section shall be on a sidewalk area within the immediate vicinity of the authorized food vending location, and where the pedestrian traffic is proposed to be re-routed in that area when adequate space is available for safe pedestrian traffic.

B. Requested by Licensee: The Licensee may request that a Unit be relocated. The request shall be made to the Traffic Engineering Division in write at least thirty (30) days prior to the date of the proposed relocation. The Traffic Engineering Divisions may accept or reject the request after conducting a feasibility study, and shall notify Licensee of its decision in writing.

SECTION 17. Warranty of Capacity to Execute Contract If Licensee accepts the terms and conditions of this License, each of the persons accepting on behalf of such Licensee warrant to the City that the Licensee is [a duly authorized and existing corporation, if applicable,] that the Licensee is qualified to do business in the State of Texas, that the Licensee has full right and authority to accept the terms and conditions of this License and each and every person signing on behalf of the Licensee is

authorized to do so. Upon the City's request, the Licensee shall provide evidence satisfactory to the City confirming these representations.

SECTION 18. Effective Date This License shall not take effect unless Licensee files its written acceptance with the Engineering Traffic Division prior to its passage and approval by the El Paso City Council. The effective date shall be the date last entered below.

PASSED AND APPROVED this _____ day of _____ **2010.**

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Momsen, City Clerk

APPROVED AS TO FORM:

_____
Mark Shoesmith, Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Ted Marquez, P.E.
Assistant City Engineer

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this _____ day of _____ 2010.

LICENSEE: _____.

By: _____

_____
(Printed Name and Title)

	Rahm Avenue		
6	Northwest corner of Block 101, Campbell Addition on Fourth Avenue	4	5
7	Southwest corner of Block 118, Campbell Addition on Fourth Avenue	4	5
8	Northeast corner of Block 119, Campbell Addition on Third Avenue	4	5
9	Southeast corner of Block 133, Campbell Addition on Third Avenue	4	5
10	Northwest corner of Block 34, Mills Addition on Overland Avenue	8	10
11	Northeast corner of Block 34, Mills Addition on Oregon Street	8	10
12	Southwest corner of Block 14, Mills Addition on Overland Avenue	8	10
13	Northwest corner of Block 13, Mills Addition on Oregon Street	8	10
14	Northeast corner of Block 13, Mills Addition on Mesa Street	8	10
15	Northwest corner of Block 24, Mills Addition on Mesa Street	8	10
16	Northwest corner of Block 36, Mills Addition on Mesa Street	4	5
17	Northeast corner of Block 24, Mills Addition on Stanton Street	8	10
18	Southeast corner of Block 24, Mills Addition on Overland Avenue	8	10
19	Southeast corner of Block 136, Campbell Addition on Third Avenue	8	10
20	Northern portion of Block 50, Mills Addition on San Francisco Street	18	20

If a license is awarded for item 20 to a Licensee other than the Licensee who is awarded # 1-19, Exhibit A will be changed to reflect that situation.

EXHIBIT "B"

List of non-food items that may be sold

BIG BOY ICE CREAM DM

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____day of _____ 2010, by _____as _____, on behalf of _____.

_____
Notary Public, State of Texas

_____
Notary's Printed or Typed Name:

_____
My Commission Expires:

EXHIBIT "A"
Table 1
Approved Food Vending Locations and Dimensions

Location		Dimensions	
		Width (FT)	Length (FT)
1	Southwest corner of Block 88, Campbell Addition on Sixth Avenue	4	5
2	Northeast corner of Block 89, Campbell Addition on Father Rahm Avenue	4	5
3	Northwest corner of Block 88, Campbell Addition on Father Rahm Avenue	8	10
4	Southwest corner of Block 101, Campbell Addition on Father Rahm Avenue	4	5
5	Southeast corner of Block 100,Campbell Addition on Father	4	5

Big Boy Ice Cream

Downtown Food Cart Vending
City of El Paso
4/21/10

Solicitation #: 2010-190R

COPY

EXHIBIT 2

Tab 1 - Transmittal Letter

April 13, 2010

Respondent:
Daniel H. Morales
Big Boy Ice Cream
2309 Bassett Ave
El Paso, Texas 79901
(915) 532-7534
Cell (915) 820-7282
Fax (915) 532-4178 / 532-8130
danielmorales@fruitikifruitbars.com

Big Boy Ice Cream has been an established business in central El Paso for over 50 years. As a third generation family business, the value of customer satisfaction has been perfecting throughout the years.

Big Boy Ice Cream has contributed in El Paso's Downtown tradition since 1967, providing employment opportunities to our community. Catering to El Pasoans has been a priority to our business. Providing convenience, service, and satisfaction is the heart of the downtown vending service we provide. Maintaining El Paso's tradition has been the focus and importance in developing and designing the new downtown street vending cart management criterion.

Giving us the opportunity to participate in the future downtown development project has truly been a pleasure. Big Boy Ice Cream is requesting for your confidence and trust in our business and in what we do best.

Sincerely,

Daniel Morales
Big Boy Ice Cream
Owner / President

Tab 2 - References

Financial References

3 YEARS
Wells' Dairy, Inc. aka
Blue Bunny Ice Cream
Contact: Randy Markley
1 Blue Bunny Drive
Po Box 1310
Le Mars, IA 51031
1-800-942-3800 Ext. 6829
Office (949) 713-9277
Fax (929) 713-9278

15 YEARS
Pepsico Food Service
Aka Frito Lay
Contact: Tom Zwiner
Email: Tom.Zwirner@fritolay.com
4921 Calle de Tierra, NE
Alburquerque, NM 87111
Office (505) 298-7336
Cell (505) 301-0216
Fax (505) 299-2315

40 YEARS
Coca-Cola
Contact: Rudy Armendariz
Email: rarmendariz@cokecce.com
11001 Gateway Blvd. W.
El Paso, Texas 79935
1-800-647-2653
(915) 593-2653
Fax (915) 594-6977

30 YEARS
Sam's Club
Contact: Danny Martinez
Cielo Vista Location
7001 Gateway Blvd. W
El Paso, Texas 79925
(915) 771-0004

Associated Business

50 YEARS
Park and Recreation
Contact: Paula Powell
Email: powellpj@elpasotexas.gov
911 S. Ochoa, Ste. B
El Paso, Texas 79901
(915) 351-1098
Cell (915) 240-3315
Fax (915) 542-2656

30 YEARS
Sun Bowl Association
Contact: Joe Daubach
4150 Pinnacle St. #100
El Paso, Texas 79902
(915) 533-4416

8 YEARS
UTEP Concessions aka
Sodexo
Contact: Saul Chee
500 W University St
#207A
Union Building
El Paso, TX 79968
(915) 449-2757

5 YEARS
Convention Center
Contact: Mike Paterson
1 Civic Center Plz
El Paso, Texas 79901
Office (915) 534-0601
Cell (915) 541-5156

30 YEARS
Central Business
Association
Contact: Alonso Flores
201 E Main Dr, #1603
El Paso, TX 79901
(915) 532-4749
(915) 533-2656

Bank Reference

40 YEARS
Chase Bank
Contact: Jorge Munoz
201 E Main Dr
El Paso, TX 79901
(915) 546-6639

40 YEARS
Chase Bank
Contact: David LoPiccolo
2829 Montana Ave
El Paso, TX 79903
(915) 680-5307

Tab 3 - Experience and Qualification Statement

1. Is the Respondent currently engaged in operating a similar street cart business? If so, for how long?

   Big Boy Concessions is currently engaged and in operation of street vending carts in the downtown area. Some of our locations are but not limited to San Antonio and Stanton; Overland and Stanton. We have proudly served the El Paso downtown district in vending in the right-a-way since the 80's. Big Boy was evolved in the development of the current design of the downtown push-carts. Servicing and catering to the downtown market has been our business nature for twenty years.

2. Are the principal owner (s) and/or manager(s) of the respondent currently engaged in operating a similar business

   Daniel Morales is currently the owner of Big Boy Concessions and manages the downtown carts. Please refer to Exhibit A

3. Furnish the names of food and beverage businesses operated in the past five years; and description of each operation and the number of total employees for each facility.

   Big Boy Concessions currently has catered to El Paso through special events throughout the city such as: Park and Recreations sport games and tournaments, Chalk Fest, 16 de Septiembre, Poppy Festival, Thanksgiving Parade, Christmas Light Parade, and any contracted event such as car show, concerts, festivals, holidays and sport events. Every weekend we prepare for food vending at the Fox Plaza Swap Meet and the Woolco Swap Meet.

   Our largest and most proud event is:

   First Light, Brut Sun Bowl Thanksgiving Parade

   The Thanksgiving Parade has an expected turnout of 250,000 to 300,000 people within a 3 hour period. This parade has a three mile stretch on one of El Paso's main streets. Big Boy Concessions has been hosting this event for 15 years.

   The preparation of this event is a two week process; we manufacture all our product fresh for this event such as cotton candy, candy apples, pop corn, Chicharrines and so much more other goods. An average of 150 push carts are decorated with concession goods for this grand event. Big Boy joins with high school organizations for an opportunity to fundraise during the event by contracting volunteers to work a push cart. Any carts not used for fundraising purposes will be offered to other local vendors.

Over 25 exposed food vendors are contracted to work certain approved locations along Montana Ave. These locations are all prepared at Big Boy Concessions, then are taken to the designated locations the morning of the event.

Big Boy Concessions works around the clock to acquire all necessary licenses and permits for this one day event, then organizes the vendors by posting a notice and a map of the Thanksgiving Parade route. Any interested vendors must follow the requirements of the Health Department and meet all Big Boy Concession Deadlines.
Big Boy Concessions partners with the Department of Public Health by hosting a pre-inspection meeting about the event, questions are answered by the venders during this meeting.

4. Attach photographs of the interior and exterior of any existing or proposed street carts that respondent will utilize for this proposal. If available attached the manufacturer specification s on proposed carts.

   Please see Exhibit B

5. Provide resumes of the principal owner(s) and manager (s) of the Offeror including , specifically, the individual who will be the primary contact to the City for contract and concession matters and the individual(s) who will be primarily responsible for the day – to – day operations of the concessions(s).

   Please refer to Exhibit A

6. Furnish any other additional information that will indicate your food and beverage experience as it pertains to the proposed concession operation.

   Please refer to Exhibit A

7. Disclose whether any agreement with Offeror (or related entity) or any principal owner(s) of the Offeror (or related entity) for the operation of a food and beverage business ever been terminated or canceled with or without cause? Describe all such contract terminations or cancellations including, but not limited, to , date of cancellation, contracting parties, contract value and term, and reason for cancellation.

   Big Boy Concessions has never been terminated on any contracts or agreements, this question is not applicable.

Exhibit A

Principal Owner and Manager

Resume

Experience

Daniel Morales

Cell *(915) 820 -7282*
Office (915) 532-7534
Fax (915) 532-4178

HOME: 3315 Killarney, El Paso Texas 79925
BUSINESS: 2309 BASSETT AVE, EL PASO TX 79901
danielmorales@fruitikifruitbars.com

Professional Profile

Owner

- Business Owner
- Bilingual
- Operational Manager
- Team Development
- Team Planning
- Supply Operation
- Receiving
- Product Order Management
- Safety Prevention Leader

Demonstrated success in identifying opportunities, developing and executing business and merchandising plans, exceeding sales goals and business growth.

Extensive background in virtually all concessions and warehouse service and industrial manufacturing operations, with hands-on production supervisory responsibilities in customer-driven.

Work History

Business Owner	Big Boy Concession, El Paso, Texas	Present
Restaurant Owner	Big Boy Restaurant, El Paso Texas	1997- Present
Manufacture Owner	Fruitiki Inc. , El Paso Texas	1986 – Present

Second generation in the business, has been raised in the nature of the business and has life time experience in the concessions business, food industry, catering to the community, and providing goods and service to El Paso for more than 50 years. Has expanded similar business into New Mexico, Arizona, and Juarez, Chiihuahua. Manufacture of Fruitiki Fruit bars since 1989 and has expanded the marketing and distribution of products nationwide.

Big Boy Concessions Inc.
2309 Bassett Ave. El Paso, Tx. 79901
Ph. (915) 532-7534 Fax (915) 532-4178

BIG BOY CONSECION INC
FINANCIAL STATEMENT
2309 BASSETT AVE
EL PASO, TEXAS 79901 EIN#74-2495323

AS DECEMBER 31,2009

ASSETS:

Cash on hand and in Bank		$ 75,000.00	
Inventory		300,000.00	
Real Estate (attached statement)		950,000.00	
Equipment (less depreciation)	$350,000.00 (98,000.00)	252,000.00	
TOTAL ASSETS			$ 1,577,000.00

LIABILITIES AND OWNER EQUITY

LIABILITITES	
NOTES PAYABLE	$ 45,000.00
OWNERS EQUITY	1,532,000.00
TOTAL LIABITIES AND OWNER EQUITY	$ 1,577,000.00

QUEZADA'S
BOOKEEPING SERVICES
ROSA QUEZADA
2027 Magoffin Ave. El Paso, TX 79901
74-2522822

FORM 95.04 (REV. 2-68)

LIMITED SALES TAX PERMIT

PERMIT NUMBER		EFF. DATE	
TAXPAYER NUMBER	OUTLET NUMBER	MO.	YR.
2-723-03-1302-8	00001	07	63

THIS IS TO CERTIFY THAT THE TAXPAYER NAMED HEREON, HAVING COMPLIED WITH THE RULES OF CHAPTER 20, TITLE 122A, TAXATION-GENERAL, R.C.S., 1925, AS AMENDED, IS AUTHORIZED TO ENGAGE IN RETAIL BUSINESS SUBJECT TO THE PROVISIONS OF THE AFORESAID ACT. THIS PERMIT IS SUBJECT TO REVOCATION OR SUSPENSION FOR ANY VIOLATION OF ANY PROVISION OF THE ACT OR ANY RULE OR REGULATION ADOPTED BY THE COMPTROLLER TO ADMINISTER THE ACT.

Robert S. Calvert

COMPTROLLER OF PUBLIC ACCOUNTS

TAXPAYER NAME AND MAILING ADDRESS

CRISTINO MORALES
PO BOX 9735
EL PASO TX 79989

TRADE NAME AND LOCATION ADDRESS

BIG BOY ICE CREAM
2905 N PIEDRAS
EL PASO TX 79930

THIS PERMIT IS NOT TRANSFERABLE AND SHALL AT ALL TIMES BE PUBLICLY DISPLAYED BY THE RETAILER IN HIS PLACE OF BUSINESS AT THE LOCATION ADDRESS SHOWN HEREON. A NEW PERMIT MUST BE OBTAINED IN THE EVENT OF OWNERSHIP CHANGE OR A LOCATION MOVE. SHOULD A CHANGE IN THE TRADE NAME OCCUR, THE PERMIT MUST BE RETURNED FOR CORRECTION.

Comptroller of Public Accounts FORM 01-300 (Rev.1-07/17)

TEXAS SALES AND USE TAX PERMIT

This permit is not transferable, and this side must be prominently displayed in your place of business.

Merchants: A copy of this permit does not replace a resale or exemption certificate. You will be responsible for sales tax unless you have a valid resale/exemption certificate on file.

You must obtain a new permit if there is a change of ownership, location, or business location name.

TAXPAYER NAME, BUSINESS LOCATION NAME, and PHYSICAL LOCATION

DANIEL H MORALES

BIG BOY ICE CREAM INC
2309 BASSETT AVE
EL PASO TX 79901-2126

Type of permit	SALES AND USE TAX
Taxpayer number	3-20144-5408-9
Location number	00002
First business date	08/01/2004

NAICS CODE: 445299 DESCRIPTION ON NEXT LINE:
All Other Specialty Food Stores

WE SHOW THIS BUSINESS IN THE FOLLOWING LOCAL SALES TAX AUTHORITIES:

CITY:	EL PASO	EFF: 08/01/2004
TRANSIT:	EL PASO CTD	EFF: 08/01/2004
COUNTY:	EL PASO	EFF: 08/01/2004

Susan Combs
SUSAN COMBS
Comptroller of Public Accounts

YOU MAY NEED TO COLLECT SALES AND/OR USE TAX FOR OTHER LOCAL TAXING AUTHORITIES DEPENDING ON YOUR TYPE OF BUSINESS.
If you have any questions regarding sales tax, you may contact the Texas State Comptroller's field office in your area or call 1-800-252-5555, toll free, nationwide. The Austin number is 512/463-4600.

DETACH HERE AND PROMINENTLY DISPLAY YOUR PERMIT ONLY

IS THE INFORMATION PRINTED ON THIS PERMIT INCORRECT?

The information printed on your permit must be accurate and current. To make corrections, you may detach and complete ONLY the information in the form below which is incorrect, and mail it to COMPTROLLER OF PUBLIC ACCOUNTS
111 E. 17th Street
Austin, TX 78774-0100

01-300-P4

MAKING CHANGES TO LOCAL TAXING AUTHORITIES OR BUSINESS DESCRIPTION LISTED ON THIS PERMIT

- You will need to contact us to correct the local taxing authorities for this business location. Contact your city/transit authority/county/special purpose district if you are unsure if your business is located within that taxing jurisdiction. We can assist you in determining your local sales and use tax responsibilities, and the appropriate rate for each local taxing authority. Publication 94-105, "Guidelines for Collecting Local Sales and Use Tax" and Publication 96-132, "Texas Sales and Use Tax Rates" are available on the Comptroller's web site at www.window.state.tx.us/taxinfo/local/.
- Visit us online at www.window.state.tx.us/taxinfo/sales/naics_coding.html if you need to correct the description of your business printed on the front of this permit.

MORE INFORMATION ABOUT YOUR PERMIT

- You must prominently display this permit in your place of business.
- The information on your permit is public information.
- You cannot use this permit or a copy of it as a resale or exemption certificate.
- If the location specified on this permit is closed, return this permit to the Comptroller of Public Accounts and indicate the date of the last business transaction.
- Depending on your type of business, you may need to collect sales and/or use tax for other local taxing authorities not listed on this permit.

TEXAS SALES AND USE TAX PERMIT

Taxpayer name shown on the permit
DANIEL H MORALES

Taxpayer number shown on the permit: 32014454089

Location number shown on the permit: 00002

Correct business location name

Correct business location (no P.O. Box or directions accepted)

City | State | ZIP code

Change your mailing address and phone number, add a business location, change a business address, or close one or more business locations online at ***https://www.window.state.tx.us/accmaint/changeaddress.html***

Correct taxpayer name

Daytime phone *(Area code and number)*

Correct mailing address

City | State | ZIP code | Federal Employer Identification number

If you are **no longer in business**, enter the date of your last business transaction. _ _ _

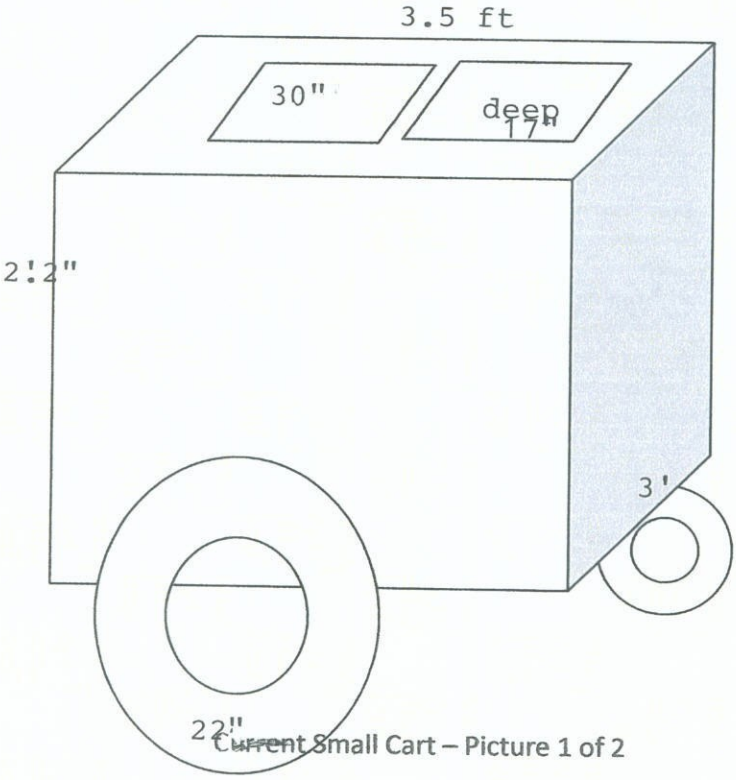
sign here Taxpayer or authorized agent | Date

OFFICE OF THE COMPTROLLER TEXAS

00000830

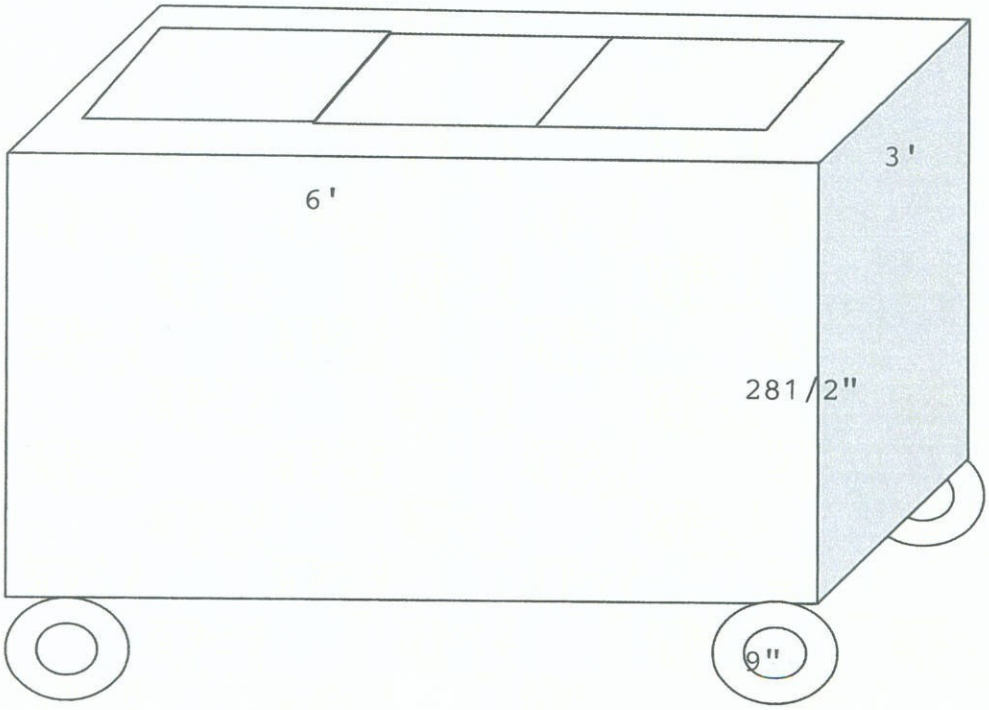
Exhibit B

Push-carts
Current Pictures
and
Possible Models



Current Small Cart – Picture 1 of 2

Current Small Cart – Picture 2 of 2



Current Large Cart – Picture 1 of 2

Current Large Cart – Picture 2 of 2

ALL STAR Foremost VENDING EQUIPMENT INNOVATIONS

MODEL 32 HC
N.Y. STYLE FRANKFURTER CART

FEATURES: Full size steam table, display cabinet (storage). Excellent for: caterers, bars, restaurants and party rentals. Sterno heat source/elec. optional. Extra storage in body.
DIMENSIONS: 36"L x 24"W x 48"H

MODEL 75
STAINLESS STEEL SINK CART

FEATURES: All stainless steel construction, self contained. Available in 1, 2, 3 or 4 compts. Includes standard 6 gal. fresh and 9 gal. waste water tanks, demand pump and hot water heater. All electric. Available in propane. Paper towel and soap dispenser optional.

MODEL 612
FRANKFURTER AND COLD DRINK CART

FEATURES: Frankfurter roller grill with sneeze guard, 3 flavor post-mix or premix soda system, cup dispenser, ice bin, canopy with light, custom graphics.
DIMENSIONS: 72"L x 30"W x 93"H

MODEL 100
HOT DOG PUSH CART

- 1 stainless steel construction
- 1 full-size steam table pan (includes 2-1/3 pans & 2-1/6 pans)
- 1 large capacity ice bin (holds up to 6 cases of soda with ice and other cold products)
- 1 large display storage cabinet
- 1 two large serving shelves
- 1 propane hook up
- 1 bicycle wheels & front swivel casters
- 1 extra storage in cart body

DIMENSIONS: 48"L x 34"W x 52"H

MODEL 100S
HOT DOG PUSHCART

- 1 stainless steel construction
- 1 full-size steam table pan; large capacity ice bin (holds up to 6 cases of soda w/ ice & other cold products)
- 1 large display storage cabinet
- 1 two large serving shelves
- 1 propane hook-up
- 1 extra storage in cart body
- 1 bicycle wheels & front swivel casters
- 1 dual- compartment sinks w/ hot & cold water
- 1 5 gal. fresh - 6.5 waste

DIMENSIONS: 64"L x 34"W x 58"H
Also available as electric.

MODEL 569

FEATURES: Refrigerator, pull out 3 compt. sink, 2 steam tables, fryer, stainless steel counter, illuminated sign, large canopy with flourescent lights.
DIMENSIONS: 96"L x 48"W x 96"H

PLEASE CHECK ALL BUILDING, VENDING AND LOCAL HEALTH CODES BEFORE ORDERING
ALL CARTS ARE SHOWN WITH

MODEL HT 100S
HOT DOG TRAILER WITH SINKS

FEATURES: Same as 100S with added steel frame trailer. Heavy duty chassis, independent wheel suspension, removable hitch, 2 front swivel wheels, trailer lighting package.
DIMENSIONS: 94"L x 38"W x 58"H

MODEL HT 100
HOT DOG TRAILER

FEATURES: Same as model 100. Heavy duty chassis, full independent suspension, removable hitch, 2 front swivel wheels, trailer lighting package.
DIMENSIONS: 75"L x 38"W x 58"H

MODEL 101
HOT FOOD PUSH CART

FEATURES: Full steam table as on Model 100S, charbroil grill with splash guard, dual compartment sink with hot and cold running water, fresh water and waste tanks, storage area and insulated box for soda etc.
DIMENSIONS: 60"L x 32"W x 63"H

MODEL 102
HOT FOOD PUSH CART

FEATURES: Same as model 100S plus a display oven for pizza, pretzels and knishes.
DIMENSIONS: 65"L x 27"W x 63"H

MODEL 610
ELECTRIC HOT FOOD CART

FEATURES: 2 full size electric steam table pans, 1 dome cover, large ice bin for beverages, storage area in base, canopy, drop shelf, sneeze guard.
DIMENSIONS: 57"L x 28"W x 96"H

MODEL 105 S
HOT DOG CART

FEATURES: Same features as model 100 and 100S with the addition of a condiment bottle rack. Operator works from one side of cart.
DIMENSIONS: 63"L x 35"W x 63"H

PLEASE CHECK ALL BUILDING, VENDING AND LOCAL HEALTH CODES BEFORE ORDERING.

ALL CARTS ARE SHOWN WITH OPTIONAL GRAPHICS

WE SPECIALIZE IN CUSTOM DESIGNS

MODEL 525
ENCLOSED ICE CREAM VENDING TRAILER

FEATURES: Two sides that fold up exposing two freezers, each with its own dipperwell with continuous running water. Each freezer holds 18 three-gallon tubs. A third freezer has a built-in toppings rail, a double boiler hot fudge unit and chocolate syrup pump holder, mounted on a stainless steel counter with dual compartment sink with hot and cold running water. Trailer is constructed of tubular steel frame with a white baked aluminum interior and exterior, full independent suspension with a serving height from the stainless steel counter to ground of 42". Interior fluorescent lights, lockable sides and door, storage above serving area. Tanks for fresh and waste water. All freezers have holding plate systems with mechanical refrigeration that eliminates the need for dry ice.
DIMENSIONS: 100"L x 96"W x 94"H

MODEL 528
ENCLOSED MOBILE KIOSK

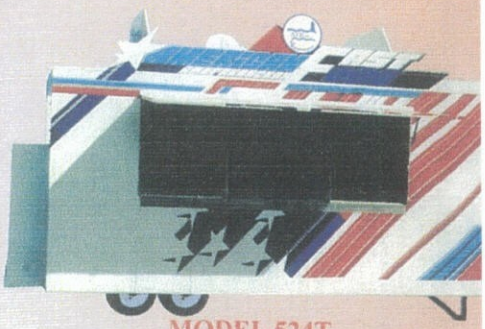
FEATURES: Tubular steel frame, white aluminum body, fold up awning side serving area. Entrance door with screen door, dual compartment sinks with hot & cold water, ice cream freezer, 150 can capacity ice bin, frankfurter roller grill, popcorn machine and stainless steel serving counter.
DIMENSIONS: 8'L x 6'W x 8'H

MODEL 526T
ENCLOSED SNACK TRAILER

FEATURES: 2 serving windows, outside illuminated signs, inside fluorescent lights, dual compartment sinks with hot and cold water. Frankfurter roller grill, popcorn machine, cotton candy machine, soda system, electric panel, stainless steel counters, ice cream freezer.
DIMENSIONS: 192"L x 96"W x 124"H

MODEL 527T
ENCLOSED HOT DOG TRAILER

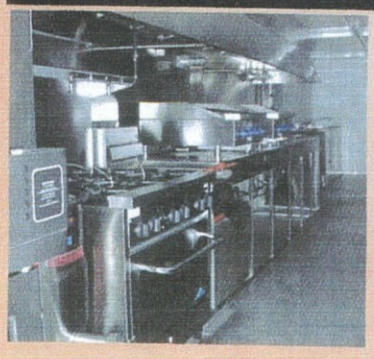
FEATURES: Fold up side awning, stainless steel counters, 2 full size steam table pans, triple compartment sinks with hot and cold water. Large insulated soda bin and spacious work area. Welded tubular steel frame, aluminum body, front caster wheels, independent suspension and removable tow bar.
DIMENSIONS: 79"L x 64"W x 82"H



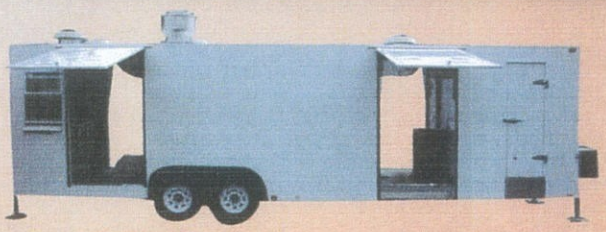
MODEL 524T
FAST FOOD CONCESSION TRAILER

FEATURES: Includes coffee urn, pizza over griddle, fryer, exhaust hood, 3 compartmen sinks, ice machine, refrigerators and freezer Graphics and signage are additional.
DIMENSIONS: 17.5' L x 7.5' W x 9' H closed

CUSTOM MOBILE KITCHENS FOR BOT



CUSTOM INTERIOR DESIGNS



MODEL 110 TPC OPEN TRAILER

Mobile kitchens are fabricated to your specific needs. They can be walk up, pass thru or drive up service. Features can include walk in refrigeration, combo ovens, griddles, fryers, steam tables, sinks, Soda systems, kettles or any other equipment you may require. Call for pricing on your design requirements.

PLEASE CHECK ALL BUILDING, VENDING AND LOCAL HEALTH CODES BEFORE ORDERING.

Exhibit C
Tab 5 -FOOD, BEBERAGE & RETAIL MERCHANDISE AND CONCEPT PLAN

City of El Paso
2011 Downtown Vending Carts Proposal

April 21, 2010

Created By
Daniel Morales
Big Boy Ice Cream, Inc.

Designed by
Daniel Morales Jr.
Big Boy Ice Cream, LLC

Importance of the Food Vendor in the Downtown Area

Convenience

- Curbside locations
- On the go service
- Affordable customer pricing

Opportunities

- Independent business opportunity
- Management
- Generating employment
- Local business trade
- Visitor attraction

Services

- One-on-one customer service
- Fast Food
    - Sanitary
    - Cleanliness
    - Safe

Food Varieties

Goods

- Unexposed Foods: Prepackaged
    - Chips
    - Candy
    - Popcorn
    - Ice Cream
    - Chicharrines
    - Cotton Candy
    - Candy Apples
    - Cookies/Donuts
    - Can/Bottle Beverages

- Exposed Foods
    - Corn (Elote)
    - Nachos
    - Hot Dogs
    - Chilindrinas
    - Snow Cones

Special Events

- Special Occasions/ City Events and Functions
    - Coffee
    - Churros
    - Burritos
    - Gorditas
    - Tamales
    - Bratwurst
    - Champurrado
    - Hot Chocolate
    - Special Requested Foods

2010 Vending Cart Design
Unexposed Food

Design

- Light weight material
- Stainless steel interior
- Wood appearance framing
- Panel external
- Original trolley Colors (red, green, bronze)
- Complete overhang canopy shade
- Pull down printed screen (4 sides)
- Two cooler compartments w/ drain control
- 360 Degree caster wheel
- Incorporate into the Downtown Environment
- Heath Department Approved

Features

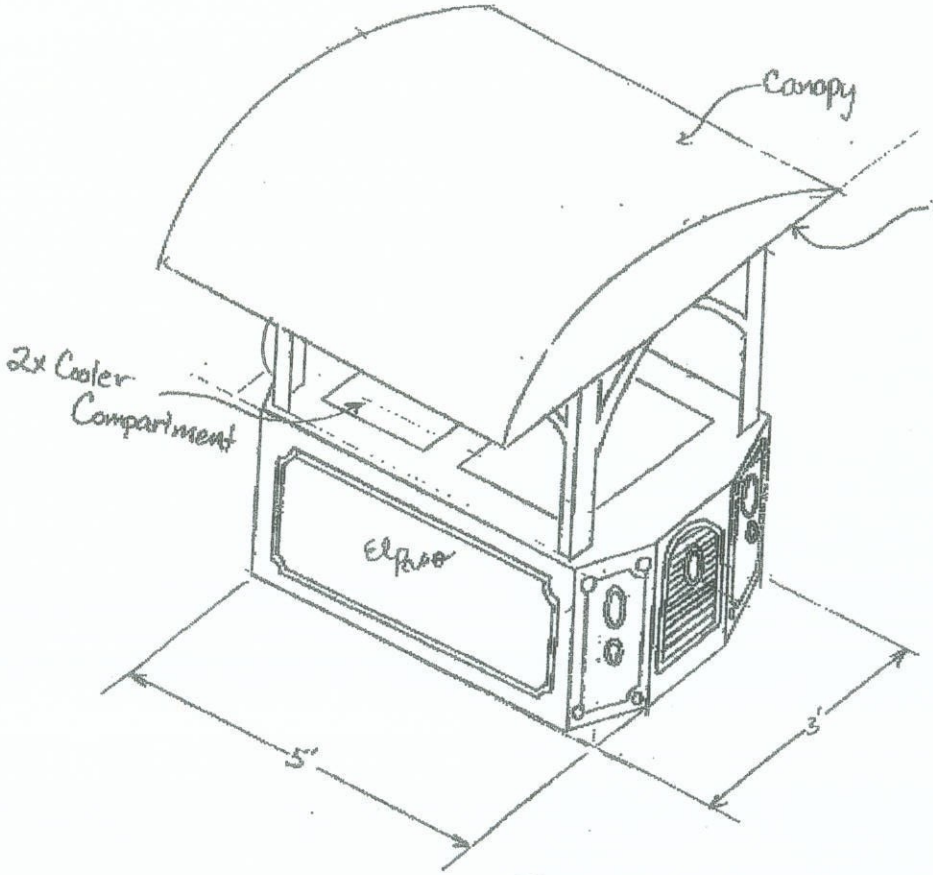
- Trolley Design
- Pull down screens with lock
    - Sun protection
    - Transport protector
- Drain control with water retainer
- 360 Degree vendor access
- Display clips
- Display trays
- Security lock wheels
- El Paso branded

Optional Features

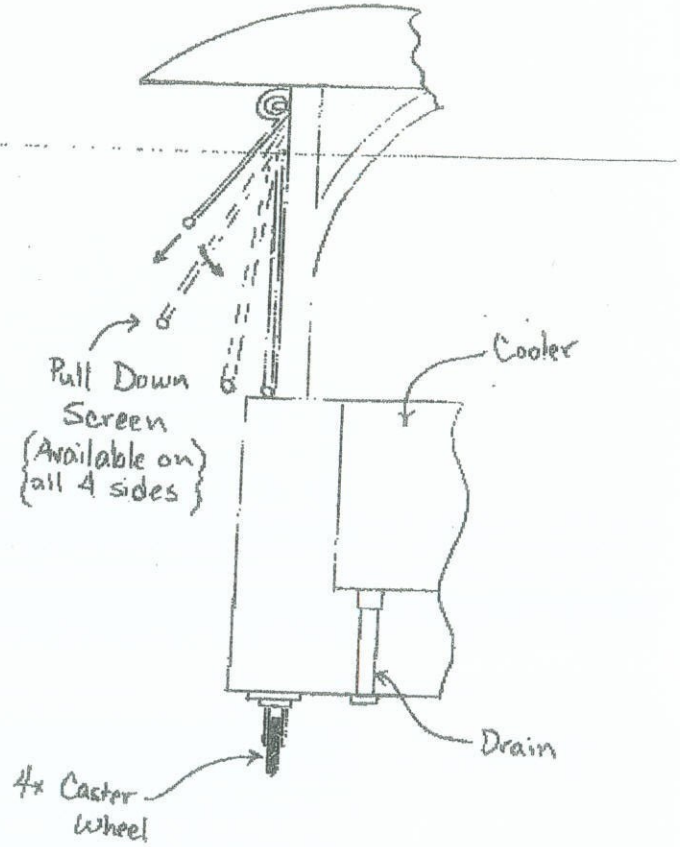
- Battery powered light fixture
- Exterior lighting (Christmas lights)

93 dd D.

3rd Cont D.



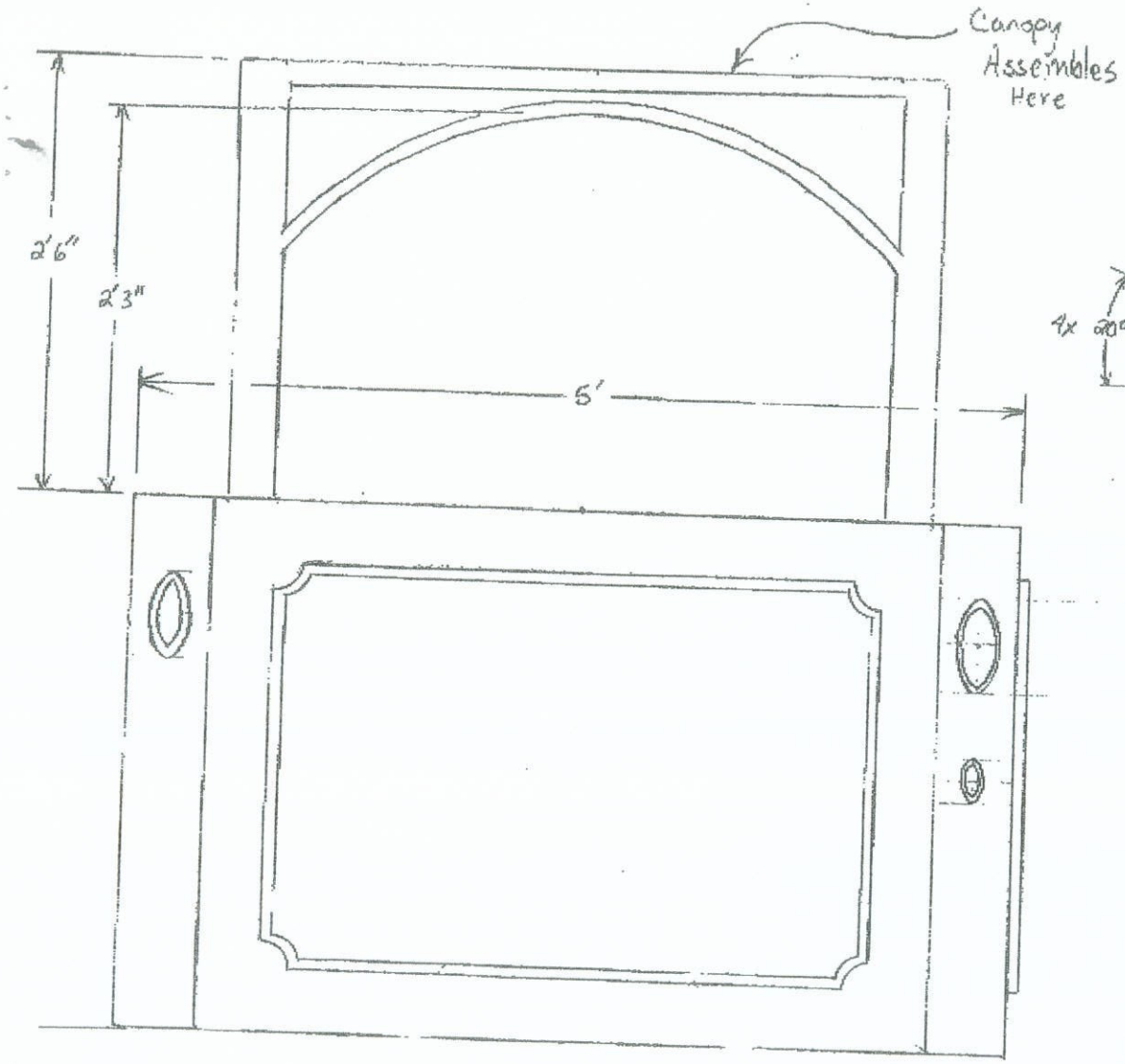
Trolley Push Cart



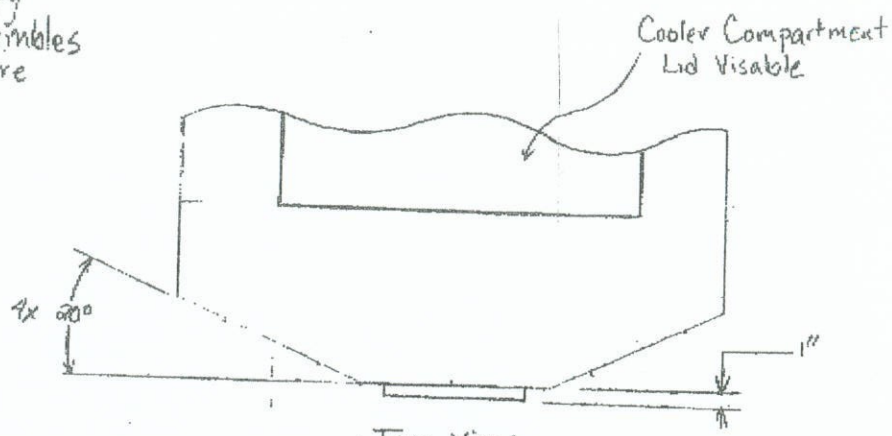
Front View Cut Out

Big Bay ICE CREAM

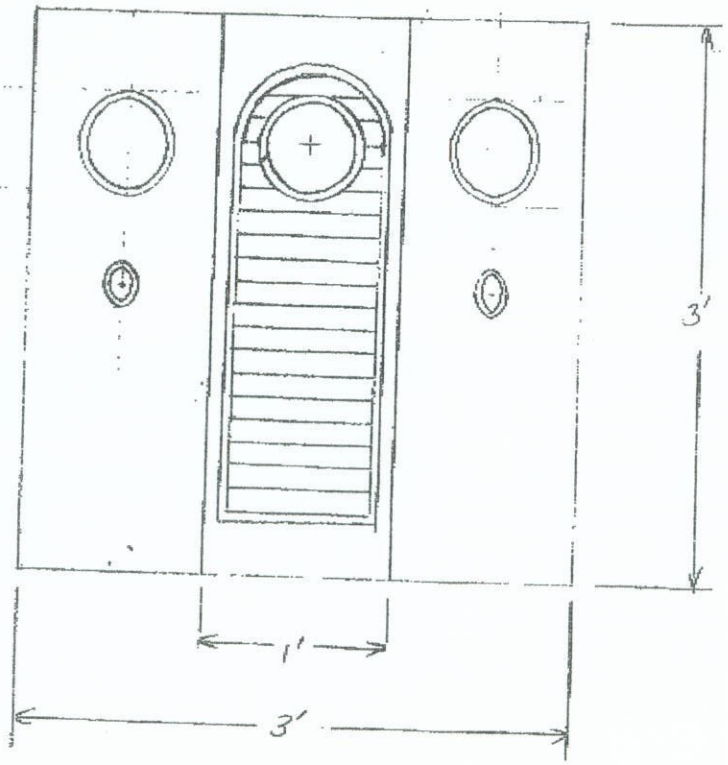
Dan Martin Jr 2/20/2010



Side View



Top View



Front View

Big Boy ICE CREAM

Daniel Morales Jr 2/19/2010

2010 Vending Cart Design
Exposed Food

Design

- Single axle trailer
- Trailer haul wiring
- Trolley exterior (El Paso Themed)
- 360 degree window view
- Traditional colors (red, green, brass)
- Removable trailer hitch
- Sky light side view
- Removable vinyl (velcro) skirt
- Front door access
- Incorporate into the Downtown Environment
- Heath Department Approved

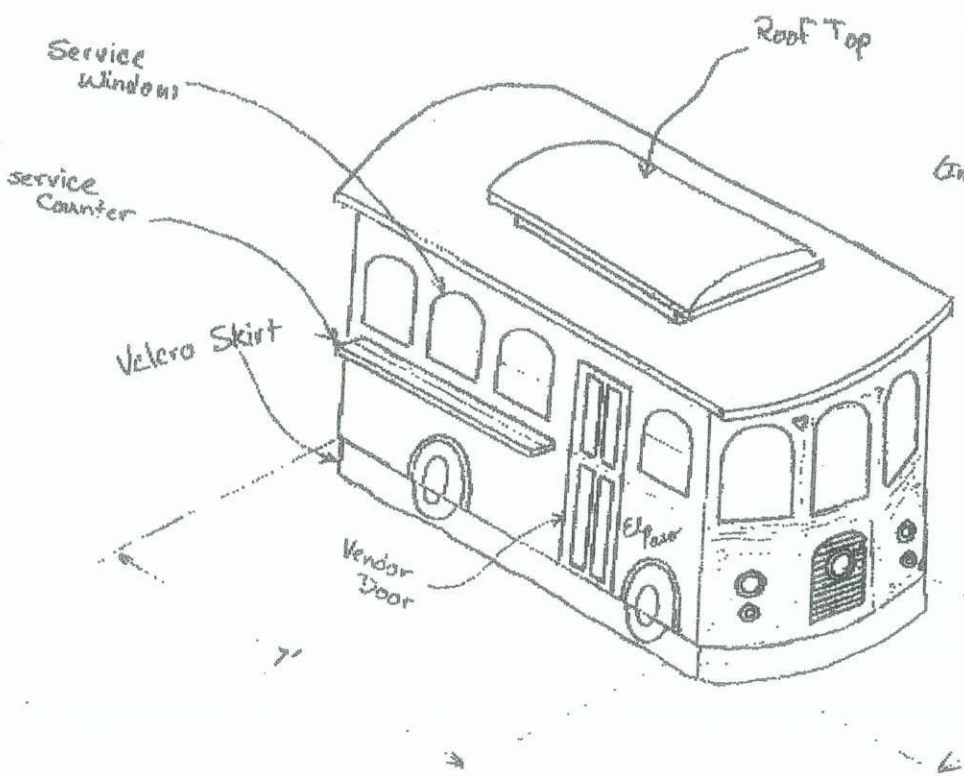
Features

- Service window
- Service counter
- Register drawer
- Three compartment steam table
- Designated Corn (Elote) compartment (steam table)
- Large propane burner
- Preparation counter space
- Hidden trash can
- Three compartment sink
- Hand washing sink
- Hot/ cold water ready
- Snow ice cooler
- Beverage cooler
- Ice cream freezer
- Fire extinguisher

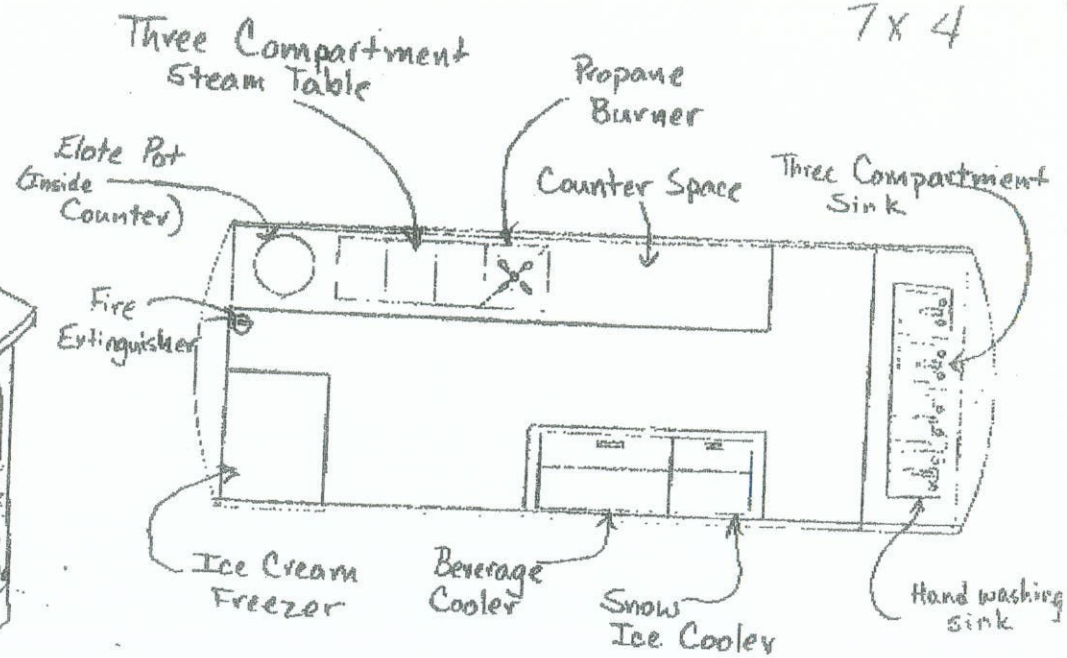
Optional Features

- Interior security lock
- Interior lighting
- Exterior lighting

7 x 4

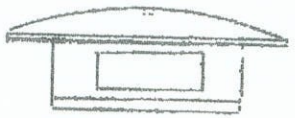


Trolley Vending Cart/Trailer

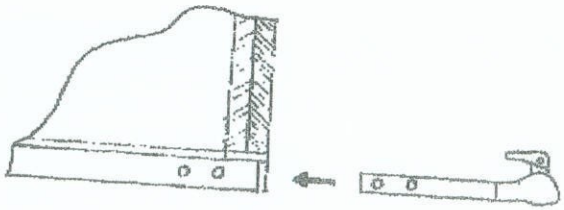


Floor Plan

Roof Top
Side View



Roof Top
Front/Rear View



Removable Trailer
Hitch

Big Boy ICE CREAM

Juan Morales Jr. 2/1/2010

Air Cooler

Tab 6 – Methods of Management and Operation

1. Plan to include the number of management and non management employees and the shifts to cover the proposed operating hours.

   Proposed Number of Managers Two (2)

   Daniel Morales – Director of project; Overseer; licensing, permits, health permits
   Norma Tena – Duties include but not limited to: manager of program; sustain licensing, permits, health inspections/permits; maintaining
   track of employees, contracting interested vendors, cash-flow, inventory tracking, control service calls for maintenance/repair, record of equipment and location, provide necessary training for vendors

   Proposed Number of Possible Non-management Twenty-six (26)

   (2) Attendance- Duties include but not limited to: drop-off/pick-up of carts, delivery runners, trash collectors, minor maintenance and/or repair
   (1) Maintenance Technician – Duties include but not limited to: daily wear and tear touch-ups, major maintenance and repair of carts, maintaining carts to standard
   (19) Vendors- Duties include: vend of cart/kiosk goods, ordering and inventory of goods, cleanliness of cart and surroundings, organization of cart goods and appearance of cart, communication with headquarters on daily inventory, ice, cleanliness, customer flow, and weather. (Possible Outside contract vendors, for the interested)
   (4) Substitute Vendors- Duties include (same as Vendor): Part-time vending, these vendors would be used to cover shifts, breaks, call-ins, and/or customer rush periods.

   Hours of Operation – Subject to change due to special events throughout the calendar year
   Carts 1-19
   Monday to Friday 8am to 5pm
   Saturday 8am to 5pm
   Sunday (optional) 8am to 5pm

   Kiosk
   Monday to Wednesday Closed
   Thursday to Friday 7pm to 2am
   Saturday 7pm to 2am
   Sunday (optional) 7am to 11pm

2. Customer Service Philosophy and Programs
   a. Description of the Offertory goals with regard to customer service including examples of customer service surveys and the proposed customer service survey

program's frequency of use, data analysis methodology, and samples summary reports.

Goals- Catering to El Pasoans have been a priority to our business, providing convenience, service, and customer service and product satisfaction is the heart of the downtown vending service we provide.

Customer Service Program – This year is the first time El Paso will allow exposed foods in downtown street push-cart vending business; we plan to launch the program with customer satisfaction in mind, evaluate in a quarterly basis and adjust accordingly. Provide every cart with a customer satisfaction notice with headquarters main number. Vendors are expected to be bilingual, groomed, and uniformed.

Frequency of use – Customer service will be practice on a daily basis, satisfaction of the customer is a high priority, customer suggestions and comments will be recorded, and practiced if applicable.

Customer Service Survey/Evaluation and Sample Summary
Example: Refer to Exhibit D

Data Analysis Mythology – Yearly analysis of data will be statistically analyzed and recorded during the five year period and provided upon request to the City of El Paso.

b. Marketing programs -

c. Employee policy manual – Our employee handbook is a 48 page manual; please refer to Exhibit E for appropriate page for Vendors.

3. Food cart and/or Kiosk Maintenance Plan
   a. Policy for maintenance and repairs
      i. Maintenance and repairs will be evaluated by the vendors on a daily basis; vendor must report any necessary wear and tear, damage to headquarters. Headquarters will create a work order, process of repair will be taken care same day or next, any maintenance and/or repair that require more than a 2 day delay, will be replaced by a back-up cart until service has been completed. Kiosk maintenance and repair will be conducted before or after business hours.
   b. Frequency of cleaning and trash disposal
      i. Trash will be picked up by attendant frequently on a daily basis or as needed; Vendor will be responsible of keeping his/her area clean and organized at all times. Trash pick-up will be on service call; vendor is responsible to report sudden trash buildup.
   c. Amount of trash receptacles on license areas

i. Push-cart and Kiosk will have one trash receptacle on or near the push-cart. Or as many as the city will allow. The city has a trash receptacle restriction.

d. Replacement of equipment, and fixtures

i. Maintenance and repairs will be evaluated frequently, any replacements of fixtures or equipment will determent the extent of the damage, if the equipment cannot be repaired by our maintenance technician the work order will then be turned over by a professional and determine if the cart or Kiosk will need a replacement. Once determined the replacement will be made.

4. Other Policies

a. Inventory and cash controls including a description of proposed cash control system and make and model of cash register or point of sale equipment

i. Pushcarts will not have the required space for a point of sale register; however each pushcart will have an assigned cashbox with change. Kiosk may or may not need a point of sale system, this will be determined by the amount of daily sales, if sales are over $2,000 daily, then a POS system will be considered. Inventory is tracked daily by inventory counts at the beginning of the day and at the end of the day. Calculations will then determine the sale of the day; this daily report will be recorded daily.

Example:

	AM	Noon	PM	END OF DAY	TOTAL SALE
$1 Bottle Waters	13	24	42	3	$76.00

Example explanation: AM number (13) indicate the number of bottle waters in inventory the vendor begins with that day, Noon (24) is a delivery of 1 case of water taken to the vendor, PM (42) indicates an additional 2 cases delivered to the vendor upon request. END OF DAY (3) indicates the inventory at the end of the day at closed. 13+24+42= 79 total bottle waters 79-3 = 76x$1 = $73 total on water sales.

This method will be recorded for each item sold and totaled for total sale.

b. Security programs

i. Vendors are to keep cash box out of public view, cash must be put away after each transaction. Big Boy Ice Cream has never had a problem or incident of theft in the past, due the City Police being in the area at all times, if further security is needed, Big Boy will take further measures.

ii. Mobile Watch Program- Big Boy Ice Cream is a member of the Mobile Watch Program with the Police department; all of our vendors will be required to attend these training workshops taught by Officer Slack and Officer Gomez bi-yearly. This program allows our vendors to be aware of their surroundings and report any suspicious activity to the Police.

Exhibit D – Customer Service Survey

Grading Scale 1 2 3 4 5 1- Poor 2-Needs Improvement 3-Fair 4-Great 5-Excellent

1. How would you rate customer service? 1 2 3 4 5
2. How do you rate vendor personal cleanliness? 1 2 3 4 5
3. How would you rate surrounding cleanliness? 1 2 3 4 5
4. How would you rate food good variety? 1 2 3 4 5
5. How would you rate coldness of drinks? 1 2 3 4 5
6. How would you rate food freshness? 1 2 3 4 5
7. How would you rate overall presentation? 1 2 3 4 5
8. How would you rate temperature of hot food? 1 2 3 4 5

Please feel free to add your personal comments and suggestions.

_____
_____
_____
_____
_____
_____
_____
_____

Other information you would like to share.

_____
_____
_____
_____

Thank you for participation in our customer satisfaction survey, please feel free to contact us for any question or concerns you may have about our downtown push-carts. 915-532-7534

Exhibit E – Vendor Employee Handbook Manual

Guidelines for Appropriate Conduct

As an integral member of Big Boy's team, you are expected to accept certain responsibilities, adhere to acceptable business principles in matters of personal conduct, and exhibit a high degree of personal integrity at all times. This not only involves sincere respect for the rights and feelings of others but also demands that both in your business and your personal life you refrain from any behavior that might be harmful to you, your co-workers, and/or Big Boy, or that might be viewed unfavorably by current or potential customers or by the public at large.

Whether you are on or off duty, your conduct reflects on Big Boy. Consequently, you are encouraged to observe the highest standards of professionalism at all times.

Listed below are some of the rules and regulations of Big Boy. This list should not be viewed as being all-inclusive. Types of behavior and conduct that Big Boy considers inappropriate and which could lead to disciplinary action up to and including termination of employment without prior warning, at the sole discretion of the company, include, but are not limited to, the following:

- Any acts of theft, fraud, embezzlement, or dishonest activities.
- Bringing or using alcoholic beverages on Big Boy property or using alcoholic beverages while engaged in Big Boy business off-premises, except when and where authorized.
- Disregarding safety or security regulations.
- Engaging in excessive, unnecessary, or unauthorized use of Big Boy supplies, particularly for personal purposes.
- Engaging in unauthorized employment elsewhere while on an absence from Big Boy.
- Establishing a pattern of excessive absenteeism or tardiness.
- Failure to follow instructions or established operating procedures, insubordination, or the general disregard for authority.
- Falsification, omission, or misrepresentation of information, whether verbally or in writing, or the unauthorized release of or failure to maintain confidential information in any form or manner.
- Falsifying employment or other records, or obtaining employment or promotion on the basis of false or misleading information.

- Fighting or using obscene, abusive, or threatening language or gestures, or engaging in horseplay.
- Having firearms or weapons on Big Boy premises or while on Company business.
- Illegally manufacturing, possessing, using, selling, distributing, or transporting drugs.
- Mishandling, misappropriation, or unauthorized removal or possession of the funds and/or property of Big Boy and/or any co-worker.
- Physical-abuse, verbal-abuse, or any conduct that may be offensive or harmful to other employees, customers, or other persons who have contact with , or any personal conduct that may degrade the public image of Big Boy.
- Reporting to work intoxicated or under the influence of non-prescribed drugs.
- Soliciting or accepting gratuities or gifts from vendors or customers with the intention of influencing or affecting performance.
- Theft of any kind, including stealing property from co-workers, customers, visitors, suppliers, clients, or Big Boy.
- Unauthorized or personal use of company equipment, information, supplies, or computer time.
- Unauthorized reproduction or copying of customer, client, employee, or company records or reports.
- Violating Big Boy's nondiscrimination and/or sexual harassment policy.
- Violating the company's sexual or other unlawful harassment policy.
- Working unauthorized overtime or failing to work assigned overtime.

If your performance, work habits, overall behavior, conduct, or demeanor becomes unsatisfactory in the judgment of Big Boy, based on violations either of the above, or any other Big Boy policies, procedures, rules, or regulations, you will be subject to disciplinary action, up to and including termination.

Tab 7 – Annual Concession Fixed Fee for every year including every option year

CARTS 1-19	
YEAR 1	$ 20,000.00
YEAR 2	$ 20,400.00
YEAR 3	$ 20,808.00
YEAR 4	$ 21,224.00
YEAR 5	$ 21,648.00

KIOSK	
YEAR 1	$ 1,200.00
YEAR 2	$ 1,224.00
YEAR 3	$ 1,248.00
YEAR 4	$ 1,273.00
YEAR 5	$ 1,298.00

CARTS 1-19	
Option year one	$ 20,000.00
Option year one	$ 20,400.00
Option year one	$ 20,808.00
Option year one	$ 21,224.00
Option year one	$ 21,648.00

KIOSK	
Option year one	$ 1,200.00
Option year one	$ 1,224.00
Option year one	$ 1,248.00
Option year one	$ 1,273.00
Option year one	$ 1,298.00

Carts 1-19 + Kiosk	
YEAR 1	$ 21,200.00
YEAR 2	$ 21,624.00
YEAR 3	$ 22,056.00
YEAR 4	$ 22,497.00
YEAR 5	$ 22,946.00
	$ 110,323.00

Tab 8 – Other Information

Thank You!!

We look forward to your opinions, ideas, comments, and concerns. Our goal is to continue to serve the needs of the community.

We thank you for the opportunity to participate in El Paso's future downtown development, together we can successful accomplish a positive change in the community.

Mule Car #5 in El Paso's "Little Plaza" 1905

Big Boy Ice Cream
2309 Bassett Ave.
El Paso, Texas 79901
(915) 532-7534
Fax (915) 532-4178
Daniel Morales
President

All pictures obtained by Google El Paso Trolley Search Jan. 2010

Special Privilege License for Downtown Sidewalk Food Vendors

September 14, 2010 City Council Meeting

HISTORY

•May 1993: City Council approved designation of various locations within the “Downtown Area” (bounded by Yandell, Kansas, Border Highway and Sante Fe) for sidewalk food vending.

•March 2005: Ordinance 016013 granted the special privilege license to the respective lottery winners. The special privilege term was for three years and expired March 2008. Term has been renewed and currently expires March 2011.

•September 2009: Special Privilege function transferred to Engineering.

•Request for proposals issued on March 23, 2010.

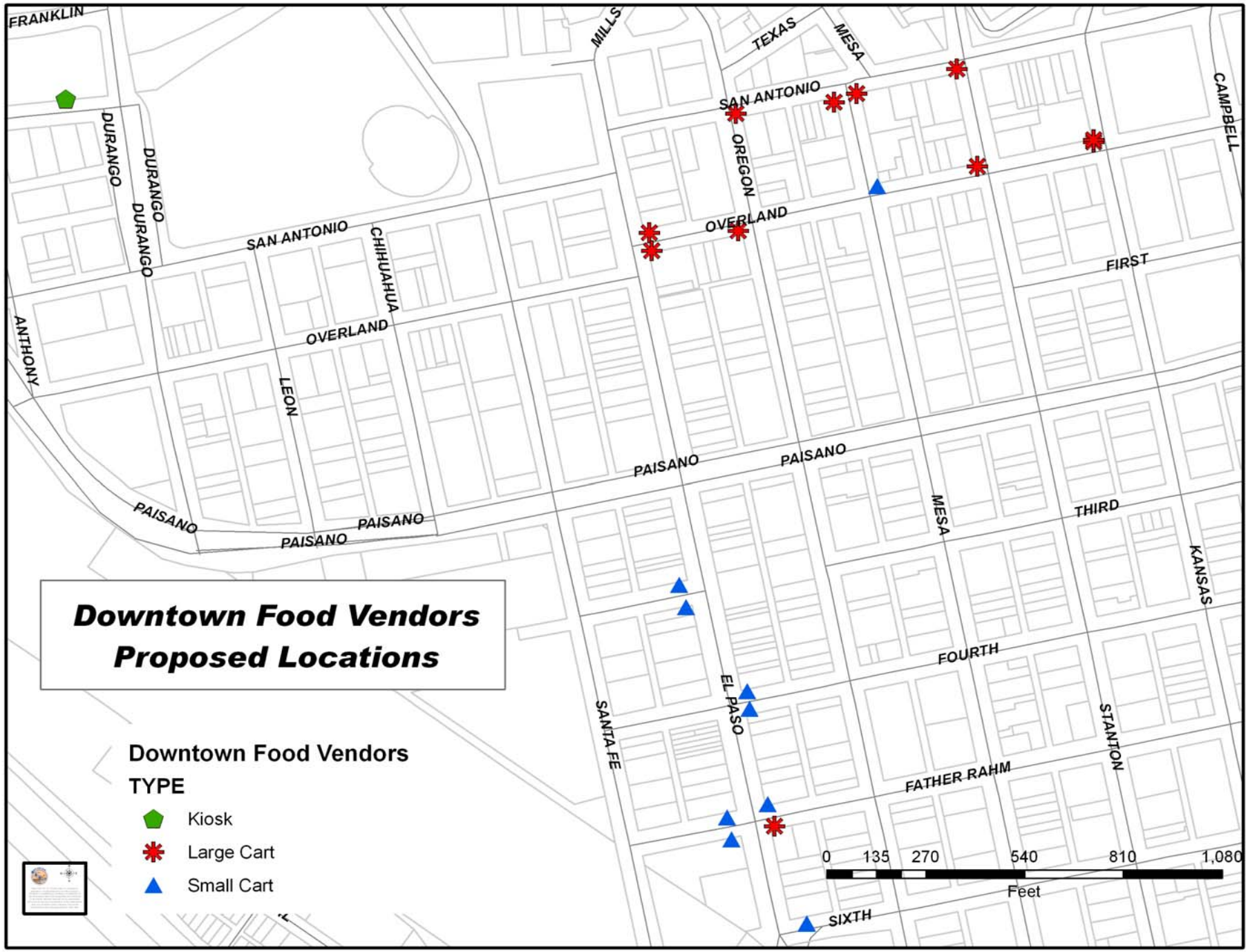
•Bids opened on April 21, 2010.

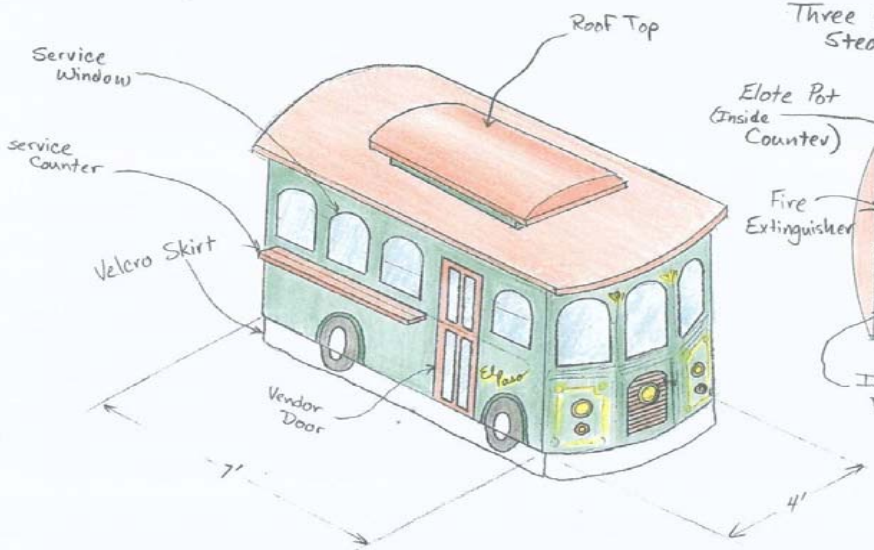
•Bid award by City Council on July 27, 2010

•Approval of new special privilege license and initiate termination of existing license on September 14, 2010.

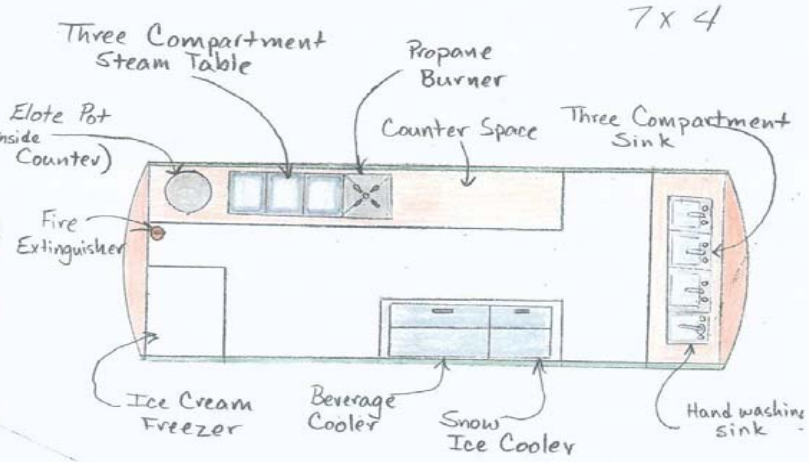
BID PROPOSAL

- Five year term, annual payments beginning at $21,200.
- Twenty locations, 19 carts and one kiosk.
- Wider variety of food items.
- Licensee is responsible for obtaining and maintaining the food carts.
- Approval and regular inspection of the carts by Health Department.
- Licensee is required to display the vendor permit and license, food vendor and food handler ID Cards.
- Standard hours of operation between the hours of 8 am - 8 pm (carts) and 7 pm - 2 am (kiosk).
- Insurance is required.

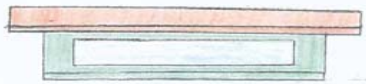

Downtown Food Vendors
Proposed Locations
Downtown Food Vendors
TYPE
Kiosk
Large Cart
Small Cart
0 135 270 540 810 1,080
Feet
FRANKLIN
DURANGO
DURANGO
DURANGO
ANTHONY
SAN ANTONIO
CHIHUAHUA
LEON
OVERLAND
MILLS
TEXAS
MESA
SAN ANTONIO
OREGON
OVERLAND
CAMPBELL
FIRST
PAISANO
PAISANO
PAISANO
PAISANO
PAISANO
MESA
THIRD
KANSAS
FOURTH
SANTA FE
EL PASO
STANTON
FATHER RAHM
SIXTH



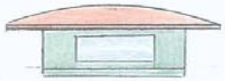
Trolley Vending Cart/Trailer



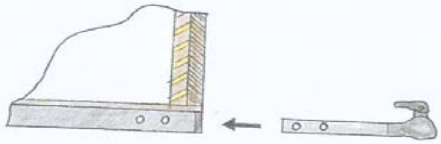
Floor Plan



Roof Top
Side View



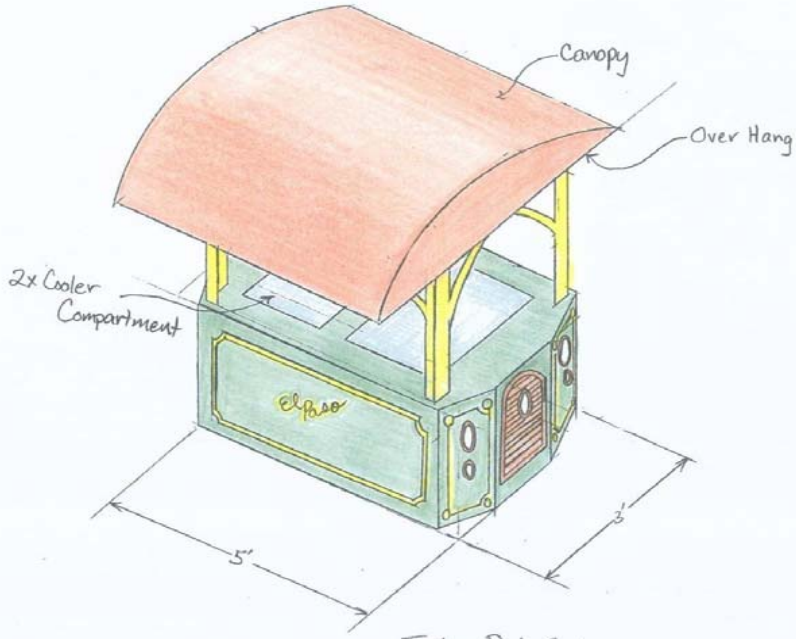
Roof Top
Front/Rear View



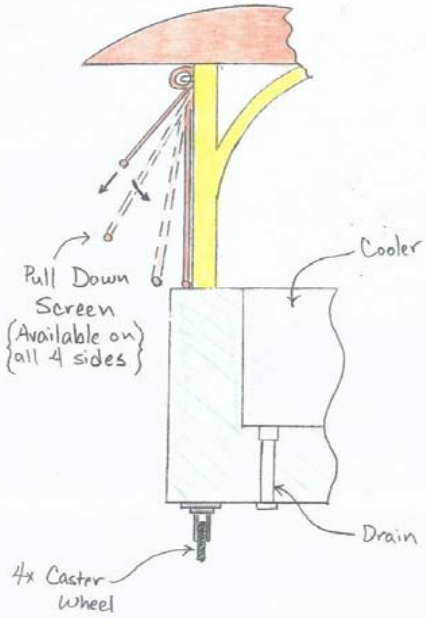
Removable Trailer Hitch

Big Boy ICE CREAM

Dann Morales Jr. 2/1/2010



Trolley Push Cart



Front View Cut Out

Big Boy ICE CREAM

Daniel Morales Jr 2/20/2010