

BEFORE THE METRO COUNCIL

FOR AUTHORITY TO RELEASE AN) RESOLUTION NO. 96-2324
RFP FOR THE MUSIC BY BLUE LAKE)
FOOD SERVICES CONTRACTOR AND) Introduced by
TO EXECUTE A CONTRACT) Mike Burton, Executive Officer

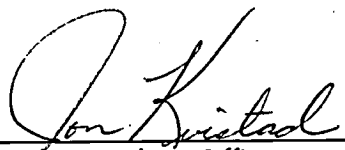
WHEREAS, Music by Blue Lake community concerts have been hosted by Metro and Multnomah County at Blue Lake Park for the past eleven years; and

WHEREAS, a food services contractor is necessary to provide food & beverage services to concert patrons and to raise revenue for the series; and

NOW, THEREFORE, BE IT RESOLVED

- 1) The Metro Council authorizes release of an RFP for a food services contractor for the Music by Blue Lake concert series.
- 2) The Metro Council authorizes the Executive Officer to execute a multi-year contract with the most qualified bidder for Music by Blue Lake food services.

ADOPTED by the Metro Council on this 16th day of May, 1996.



Jon Kvistad, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 96-2324 FOR AUTHORITY TO RELEASE AN RFP FOR THE MUSIC BY BLUE LAKE FOOD CONTRACTOR AND TO EXECUTE A CONTRACT.

Date: April 17, 1996

Presented by: Charles Ciecko
Julie Weatherby

BACKGROUND AND ANALYSIS

Music by Blue Lake is a community summer concert series that has been hosted by Multnomah County Parks and Metro Parks & Greenspaces for the past eleven years. The Music by Blue Lake series consists of six weekly concerts, which run on Thursday evenings, July through Mid-August.

This RFP allows a contractor to be hired on a multi-year basis (one year contract with provisions for two annual renewals) to provide comprehensive food & beverage services to Metro Parks & Greenspaces for the concert series.

FISCAL IMPACT

The RFP is for a revenue contract. The contractor selected will propose a gross percentage split of revenues from the concert food concession business. Traditional percentages have been 18% of gross revenues. The estimated revenue impact from the contract, based on traditional revenues, is approximately \$1,000 for FY 96-97:

**MUSIC BY BLUE LAKE
FOOD SERVICES CONTRACTOR
REQUEST FOR PROPOSALS**

I. INTRODUCTION

The Parks & Greenspaces Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for an independent food services contractor for the Music by Blue Lake concert series. The food services contract will run for a one-year period, renewable for two (2) additional one (1) year options by mutual agreement. Each extension is subject to future appropriations by the Metro Council to fund the contract and may be canceled by Metro upon written notice to the Contractor of any such failure. Proposals will be due no later than Friday, June 7, 1996, at 3:00 p.m. in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposal are contained in this document.

II. BACKGROUND/HISTORY OF PROJECT

1996 will be the twelfth season of the Music by Blue Lake concerts at Blue Lake Park in Fairview. The six-week concert series takes place Thursday evenings, July 11 through August 15, 1996. Music by Blue Lake concerts averages about 1,000 to 1,500 people per concert. Concert times are from 6:30 to 8:30 p.m. and concert gates open at 4:30 p.m. Concerts feature national and regional touring groups. Concerts are held at the Park's bandstand, with seating on the lawn.

Contractor's primary responsibility is to provide healthy, quality food and beverages services to the Music by Blue Lake concert series. This food service will take place outdoors adjacent to the bandstand concert area. Patrons are allowed to bring in food and beverages to the concerts. In previous years, the concert food services have been provided by the main food concessionaire at Blue Lake Park. However, the concert food services will be run independently of the general park food services.

The concerts are provided through the Planning & Development Division of Metro's Parks & Greenspaces Department. The contractor will work under the direction of the Marketing Coordinator and will work closely with the Park's facilities management, as well as other staff and agencies as listed in the scope of work.

III. PROPOSED SCOPE OF WORK/SCHEDULE

Metro is seeking proposals from qualified firms to perform the following services described in the attached scope of work.

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following qualifications and experience:

1. Experience/expertise managing food and beverage concessions for large public groups.
2. Experience/expertise in special event food services marketing and management.
3. Experience/expertise in business and financial management.
4. Experience/expertise managing and supervising employees
5. Experience/expertise working with event sponsors

V. PROPOSAL INSTRUCTIONS

- A. Submission of Proposals. Four (4) copies of the proposal shall be furnished to Metro, addressed to:

Julie Weatherby, Marketing Coordinator
Metro Regional Parks & Greenspaces
600 Northeast Grand Avenue
Portland, OR 97232-2736

- B. Deadline. Proposals will not be considered if received after Friday, June 7, 1996, at 3:00 p.m. Postmarks are not acceptable.
- C. RFP as Basis for Proposal. This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Julie Weatherby at (503) 797-1850. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after Wednesday, June 5, 1996.
- D. Information Release. All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission

of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

- E. Minority and Women-Owned Business Program. In the event that any subcontracts are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Code provisions 2.04.100 & 200. Copies of that document are available from the Risk and Contracts Management Division of Administrative Services, Metro Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1717.

VI. PROPOSAL CONTENTS & FORMAT

The proposal should describe the ability of the contractor to perform the work requested, as outlined below. Metro considers proposal content and completeness to be important. Well organized and designed presentations are preferred, with extraneous materials discouraged. Proposals should be submitted in 8-1/2" x 11' format and covers must contain the RFP title and bidder's name. The proposal should be submitted on recyclable or recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

Proposals shall be prepared using the following format in order to facilitate evaluation

- A. Transmittal Letter. Shall state proposers name, address, phone number, contact person, date of proposal, and that the proposal will be valid for ninety (90) days.
- B. Contractor Services and Administration. This section must list the full range of services that Contractor will provide in managing the food Concession contract.

Contractor must specify the means of accomplishing the services to be provided and organizational approach to operating and overseeing the food concession. Please explain your plans for scheduling and staffing along with operational techniques for minimizing long lines.

1. Describe the type and quality of food and beverage items to be sold. Include prices and estimated portion sizes along with style of service and delivery to customers.
2. List all equipment to be used at the concession facility for food preparation, sale and storage.

3. Provide a description (size, coverage, etc.) of the concert food services booth set-up, and describe the availability and type of mobile concession stands that could be utilized in conjunction with the main concert food services booth.
4. Specify the nature of Contractor's business and employee supervision, accounting, record keeping and cash management techniques. Proposers should demonstrate a clear understanding of Metro's objectives in managing a successful and professional operation and provide a sample of your audit control.

- C. Staffing & Contract Management. Identify key personnel assigned to major service components and tasks, their roles in relation to the work required, and qualifications they bring to the project. Include resumes of individuals proposed for this contract with references including contact persons and telephone numbers. Specify any services to be subcontracted and the name of the subcontractor(s).

Metro intends to award this contract to a single firm to provide the services required. Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any sub-consultant work and shall be responsible for the day-to-day direction and internal management of the consultant effort.

- D. Experience. Indicate how your firm meets the experience/expertise requirements listed in Section IV and the Scope of Services of this RFP. Relevant experience and training in operating a food and beverage concession business must be thoroughly and concisely described. Particular emphasis must be placed on recent experience as it relates to the food service industry. The proposer should have at least three (3) years prior experience in operating concessions of at least 1,000 customers of similar operations with large events.

The information provided must demonstrate that the proposer has the appropriate knowledge and background to successfully operate a food and beverage operation. Names, addresses, and telephone numbers of at least five references (agencies and individuals) who are familiar with your operations must be provided. At least one of those references must be from a financial institutions familiar with your business operations.

Any innovations utilized by the proposer in similar operations and applicable to Blue Lake Park should be described.

- E. Finances. Proposer must show itemized revenue and expense forecasts resulting from food concession. A spreadsheet format should be used. Include fee schedule, staff levels and personnel costs, utilities, materials, and total gross receipts from food and beverage services. (This estimate will not be binding.)

Bidder must specify the proposed rate of return to Metro from: a) gross receipts from food and non-alcoholic beverage sales, b) gross receipts from alcohol sales, and c) other services proposed.

In this part, Metro is seeking assurance that proposer has the financial capacity to operate a food concession on a profitable basis. Proposer may comment on the applicability of the fee structure proposed in this RFP. List any start up costs, working capital reserved for unanticipated needs, and other cash available. Include a statement regarding applicant's ability to obtain liability insurance as required.

- F. Marketing. Include a draft marketing plan which includes strategies on food concession promotions and advertising for the first year of operations. These expenses would be paid for and implemented by the Contractor.
- G. Exceptions and Comments. To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized.

VII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Validity Period and Authority. The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

- C. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

VIII. EVALUATION OF PROPOSALS

- A. Evaluation Procedure. Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.
- B. Evaluation Criteria. This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

General Approach & Compliance – 10 points

Demonstrated understanding of the scope of services
Commitment to project
Compliance with RFP format and content

Contractor Services and Administration – 25 points

Comprehensive nature of services
Menu, quality, prices and portions
Business organization and management techniques
Equipment capabilities
Supervisory skills and techniques
Scheduling and Staffing
Accounting and cash management systems
Understanding Metro's objectives

Personnel – 20 points

Level of qualified staffing
References

Experience – 25 points

Relevant experience in food and beverage industry
Relevant experience with special event food services
Experience in business and financial management
Experience in training, managing and supervising employees
Experience in food services marketing

Finances & Budget – 20 points

Percentage level of gross income specified
Potential profitability based on financial projections

IX. NOTICE TO ALL PROPOSERS – STANDARD AGREEMENT

The attached personal services agreement is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro. It is included for your review prior to submitting a proposal. Consider the language carefully.

Any changes in the adopted language must be requested and resolved as part of this process or as a condition attached to the proposal.

Metro reserves the right to: 1) selectively declare any conditioned proposal non-responsive and reject it without further consideration, 2) reject any or all subsequent requests for modification, and 3) interpret insistence upon a contract modification as a refusal to honor the original proposal and reinstitute the evaluation process.

**Scope of Work
Music by Blue Lake
Food Concessions RFP**

I. CONTRACTOR SERVICES

A. General Scope

1. Contractor's primary responsibility is to provide healthy, quality food and desserts, and non-alcoholic and alcoholic beverages to the Music by Blue Lake concert series at Blue Lake Park. This food service will take place outdoors adjacent to the bandstand concert area. The six-week Music by Blue Lake concert series takes place Thursday evenings, July 11 through August 15, 1996. Music by Blue lake averages about 1,000 to 1,500 people per concert. Patrons are allowed to bring in food and beverages to the concerts.

Contractor will provide a range of food and beverage items to include fresh, healthy and popular foods appropriate to an outdoor evening music series. Food items in the past have included ethnic theme foods such as Mexican, Italian, and Asian selections encompassing bento, burritos, fajitas, and pastas. Other food selections have included chicken sandwiches, gourmet hot-dogs, fruit salads, strawberry shortcake and gourmet ice cream products. Beverages have included Italian sodas, soda pop, mineral and flavored waters. Contractor is encouraged to provide single item and full-meal options.

2. Alcohol sales are limited to beer and wine. Contractor will provide a variety of alcoholic beverages, including but not limited to dark beers, micro-brews, and local/northwest wines. Based on existing sponsorship commitments, beer pours, signage, etc. may be regulated. Contractor shall provide alcohol under the following conditions:
 - a) Provide/post "proof of age" or "identification required" signs where alcoholic beverages are sold.
 - b) Refuse service to anyone visibly intoxicated.

If Contractor chooses not to provide alcohol at this event, then Metro reserves the right to seek an outside vendor to provide said service.

3. Contractor is responsible for set-up, stocking, maintenance and take down of the concert food services area. Contractor will provide all equipment and servicing aperture necessary, including booths,

canopies, signage and cooking tables and equipment. Contractor will have attractive food service booth(s). Booths or canopies may be left in place through the six weeks or taken down each week. Food or beverage carts may be used in conjunction to the main food service booth(s).

4. The food concession is to be operated on a seasonal and "for-profit" basis, with a three-year potential term. This contract awards exclusive use of the food services area on Thursday evenings during the concert series. Food & beverage sales for the concert series is not exclusive to the Contractor. Event sponsors may be allowed to provide food sampling on-site during the series. Additionally, sponsor contracts may require contractor to serve certain brands of beverages and foods. Proposed subcontracting by Contractor will only be allowed by written request to and approval of the Parks Director. The Contractor is expected to provide creativity and professionalism in the marketing, management and delivery of food service concessions for the concert series.
5. Contractor is responsible for maintaining the food concession service area to maximize the health and safety of employees and patrons. Specifically, this includes, but is not limited to picking up litter and keeping the surrounding area tidy; cleaning counters, equipment, utensils; sweeping/mopping floors free of any litter, foodstuffs and spillage that might contribute to slips and falls; and any other requirements specified by state and/or local Health Department. The exterior of the food services booth(s) shall be wiped or hosed as necessary to maintain a clean and attractive appearance.

B. Facilities and Fulfillment.

1. The Contractor will provide all equipment to operate the food concession area and any other support services. Equipment may include but not be limited to grills, ice machines, warming ovens, fryers, cash registers, soft drink dispenser(s) and coffee maker(s). Servicing of said equipment is the responsibility of Contractor.
2. Contractor shall furnish all janitorial and kitchen supplies.
3. Contractor is granted use of the central food concession building storage refrigerators and freezers, which will remain the property of Metro. The central food concession building is managed by an independent food contractor on behalf of Metro and has priority use of the refrigeration and freezer space. The concert series contractor will

work with the central food concession contractor to determine storage space availability, needs and placement for food items.

4. Contractor will utilize recycled and environmentally friendly food service products (recycled paper and plastics) in the performance of the work set forth in this contract document. No polystyrene foam (PSF) or virgin plastic food and beverage serving products will be allowed.
5. The Contractor will display all signage within the facility in a professionally displayed manner subject to Metro approval.

C. Employees:

1. Contractor's employees shall be knowledgeable in State and local rules regarding food handling, sanitation, etc., plus park regulations. Metro will provide a staff-orientation session and/or handouts upon request regarding park regulations.
2. Contractor shall designate a lead person who shall be qualified by virtue of previous training and experience, and approved by the Regional Park Supervisor, to be responsible for concession operations and notify park personnel of any emergencies.
3. Contractor's employees shall be polite and courteous to park patrons and park employees. Concession staff must be neat and clean in appearance. To enhance public relations and professional appearance, Contractor will select/provide uniform shirts consistent in style, color and fabric (no 'Tank Tops'). Employees shall not disturb or offend customers or interfere with events in progress, or use improper language or act in a loud or boisterous manner. Contractor shall appropriately discipline any employee when deemed necessary or when requested by a park supervisor.
4. Contractor shall hire and compensate all persons employed by Contractor, and shall assume total responsibility for negotiations with, and requirements of labor or organizations relative to concession operations.
5. Contractor shall maintain Worker's Compensation insurance coverage for all non-exempt workers, employees, and subcontractors either as a carrier-insured employer or a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes. Attach a completed certificate showing current Workers' Compensation insurance, or copy thereof, to your proposal.

D. Security and Safekeeping

1. The safekeeping of Contractor property shall be solely at Contractor's risk and expense. Contractor assumes full liability of loss by any cause for all Contractor property and waives any claims or potential claims against Metro, its Councilors, departments, employees and agents.
2. All contractor employees shall have and at all times display proper identification, and shall not encourage, condone, or engage in any behavior or practice which compromises the safety and security of Blue Lake Park, the food concession activities or Metro's desire to provide a safe and healthy recreational environment.
3. Contractor acknowledges full and complete responsibility for liability arising out of the performance of this Agreement and shall hold Metro, its Councilors, departments, employees and agents harmless from and indemnify same for any and all liability, settlements, losses, costs and expenses in connection with any actions, suits or claims resulting or allegedly resulting from activities under or services provided pursuant to this Agreement.

E. Licenses and Code Compliance. Contractor shall obtain and maintain all required licenses for operation of a food and alcohol concession service facility as described herein. Contractor shall comply and take full responsibility for all codes, laws and ordinances pertaining to the operation of the food and alcohol concession including but not limited to:

1. Contractor shall be knowledgeable of and enforce all aspects Metro Parks & Greenspaces Ordinances.
2. Contractor shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations and policies concerning worker's compensation and minimum wage requirements.
3. Contractor shall adhere to all applicable laws, regulations and policies relating to equal employment opportunity, non-discrimination in services and affirmative action, including all regulations implementing Executive Order No. 11246 of the President of the United States, Section 402 to the Vietnam Readjustment Assistance Act of 1974, and Section 503 of the Rehabilitation Act of 1973. Metro shall maintain copies of said laws and regulations on file with its duly appointed Affirmative Action Office.

F. Insurance. Contractor shall purchase and maintain at its expense the following types of insurance covering the Contractor, its employees and agents:

1. Broad form comprehensive general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for premises operations and product liability. Insurance coverage shall be a minimum of \$1,000,000 per occurrence.

Metro, its Councilors, departments, employees, and agents shall be named as an additional insured. Notice of material change or cancellation shall be provided to Metro thirty (30) days prior to the change. In addition, a copy of the policy must be provided to the Parks Department.

2. Automobile bodily injury and property damage liability insurance in the minimum amount of \$500,000. Evidence of such insurance shall be provided to the Metro Regional Parks and Greenspaces Department.
3. Contractor shall comply with the Oregon Workers' Compensation law (ORS 656.017) for all subject employees. Evidence of such insurance shall be provided to the Metro Regional Parks and Greenspaces Department.
4. Contractor shall carry an 'all risk' property insurance on Contractor's property and hereby waives all rights of subrogation against Metro for any loss of Contractor's property, however caused. Metro hereby waives its subrogation rights against the Contractor except for claims under \$100,000 caused by the negligence of Contractor and/or users.
5. If Contractor serves alcohol, a liquor liability policy must be purchased in the minimum amount of \$1,000,000 and Metro listed as an additional insured as stated above.

G. Records, Reports, and Payments to Metro

1. Contractor shall pay Metro a to-be-determined percentage of monthly gross receipts from concert food concession services. Potential Contractor must propose and specify the percentage return to Metro. Metro has collected 18.5% of gross revenues since 1990.
2. Contractor shall pay a to-be-determined percentage of monthly gross receipts, from alcoholic beverage sales at the 'Music By Blue Lake' Summer Concert series. Metro believes 25% is reasonable for this service. (In the past, alcoholic beverage sales were not separated from other services).

NOTE: Upon implementation of contract, Metro Council will impose a 7.5% excise tax on all gross product sales. Proposer should take this into consideration. For purposes of application of vendor and Metro percentages, gross receipts is defined as gross sales less Metro excise tax.

3. Contractor shall keep complete and accurate records of all business transactions. Monthly Reports and payments must be submitted to the Park Director by the tenth (10th) of each month for the preceding month's operations.

The specific type(s) of reports will be determined during actual contract negotiations. If payment is later than the designated 10 days, a 1-1/2% monthly interest rate will be charged for late payment. Payments are to be made payable to 'Metro Regional Parks,' and submitted to Metro Regional Parks and Greenspaces, 600 NE Grand Avenue, Portland, Oregon 97232-2736.

4. Metro shall have access to such books, documents, papers, and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts. At the discretion of Metro, an audit of Contractor's records may be performed.
5. Contractor shall supply to Metro annual certified financial statements of concession profits and losses, and a copy of Contractor's federal income tax filing covering income as a result of the food concession contract.

H. Telephone. Contractor shall be accessible by telephone during regular business hours and by cellular telephone or pager during concert nights. Contractor will supply cellular or pager service at no expense to Metro.

I. Promotions. Contractor will actively market and promote concert food services through signage, flyers and other appropriate mediums with Metro approval, and at no cost to Metro.

J. Performance Bond.

1. For the faithful and punctual performance of the contract, including the payment of money to Metro, Contractor shall furnish to Metro a Performance and Payment Bond when the contract is signed in the penal sum of Five Thousand and no/100 Dollars (\$5,000.00), to be approved by Metro. The Performance and Payment Bond condition that Contractor faithfully, punctually and truly observe the terms, provisions, conditions,

stipulations, and requirements of the contract incorporating these specifications in all respects, and shall faithfully observe all laws, ordinances, regulations, and orders of the State of Oregon and Metro and the agencies and bureaus thereof directly governing or applicable to Contractor's performance under said contract, and shall make payment promptly as due all persons supplying to Contractor equipment, supplies, labor, or materials for the concession operations under said contract.-

2. Such Performance and Payment Bond shall also provide that no change in the terms or provisions of said contract, without notice to the surety, shall impair the obligation of the bond; and that this obligation shall continue to bind the said Contractor as principal and the surety notwithstanding waiver by Metro of a breach or successive breaches of said contract by Contractor. Said Performance and Payment Bond shall further provide that no termination or cancellation of said Performance and Payment Bond shall relieve the surety from his or its obligation for the performance by Contractor as principal of any and/or all provisions of said contract as to concession operations by Contractor prior to the termination or cancellation.

II. METRO RESPONSIBILITIES

A. Operations

1. Metro shall grant to Contractor the food and beverage concession service for the Blue Lake Park concerts as outlined in the terms of this contract.
2. Metro will provide a concession area of approximately 2,000 sq. ft. adjacent to the bandstand area from which Contractor shall conduct business.
3. Metro shall provide normal Park security services and monthly business reporting forms.
4. Metro shall review, and approve if satisfactory, the hours of concession operation, the nature and price of goods and services available through Contractor, and personnel training and safety qualifications.
5. No Metro employees, except the Regional Park Supervisor and authorized Park staff are allowed inside the concession service booths. All Metro employees are expected to pay for food at the time of purchase, versus establishing any kind of a food tab.

B. Maintenance

1. Metro shall perform routine grounds maintenance of concession area.
2. Metro shall provide electrical power and water services to the concession area at no cost to the Contractor.
3. Metro shall provide garbage pickup. All trash must be placed in pre-designated service areas for removal by Metro. Corrugated cardboard boxes will be flattened and placed in pre-designated service areas for removal by Metro.

C. Promotions. Metro shall review and approve all promotional strategies prior to implementation. Such approval shall not be unreasonably withheld.

III. CONTRACT TERMS AND OPERATING SCHEDULE

- A. Contract starting date is July 1, 1996, and shall extend through June 30, 1997. Contract may be renewed annually with a maximum of two (2) renewals upon mutual written consent of Metro and Contractor.
- B. Contract may be terminated either by Metro or Contractor upon thirty (30) days written notice by either party. However, contract may also be terminated at anytime upon 24 hours notice for material breach of any of Contractor's obligations under this Agreement. (This immediate termination may be limited to certain breaches, e.g., dishonesty, failure to protect Metro property, failure to account for absence over a stated time.) Termination under any provision of this paragraph shall not affect any right, obligation or liability of Contractor or Metro which accrued prior to such termination.
- C. Metro certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract through June 30, 1997. Funding for the Music by Blue Lake concert series after June 30, 1997 is dependent upon future funds being approved by Metro Council. If such approval is not forthcoming, Metro will provide 30 calendar days written notice to terminate this Agreement.
- D. Concessionaire shall operate a minimum of six Thursday evenings from July through August. Required hours are from 5:00 p.m. to 8:30 p.m. Deliveries must be scheduled during regular park operating hours and when the Contractor's staff is on-site to receive deliveries.

- E. Contractor shall be required to conspicuously post food menus and prices with Contractor name included. All signage must be approved by Metro.

IV. RELATIONSHIP OF CONTRACTOR TO METRO

A. Independent Contractor

1. Contractor's relationship to Metro shall be that of an independent contractor for all purposes and shall be entitled to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise control in achieving the results specified. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified.
2. Metro is not, by virtue of this Agreement, a partner or joint venture with Contractor in connection with the operations or activities of Contractor under this Contract, and Metro shall have no obligation with respect to Contractor's debts or other liabilities.
3. All premises and facilities and equipment to which the Contractor is granted exclusive, temporary, or rental use will at all times remain the property of Metro.

B. Subcontracts or Assignment

There are no subcontractors involved in this service. If there were, these businesses would be subcontractors of Contractor and will not be employees of Metro, and Metro shall have no responsibility for payment of any fees to the subcontractors. Except as above set forth, Contractor shall neither subcontract with others for any of the work prescribed herein, nor assign any of Contractor's rights acquired hereunder without obtaining prior written approval from Metro; Metro by this Agreement incurs no liability to third persons for payment of any compensation provided herein to Contractor.

V. BANKRUPTCY/INSOLVENCY

It is understood and agreed by the Contractor and Metro that, in the event that Contractor shall be adjudged as bankrupt, either voluntarily or involuntarily, this Agreement, at the option of Metro, shall at once cease and terminate. Furthermore, if Contractor shall become insolvent or fail in business, or make any assignment for the benefit of creditors, Metro may, at its option, terminate this Agreement. In no event is this Agreement to be treated as an asset in any insolvent or bankrupt estate.