

C O U N C I L      C O M M U N I C A T I O N

TO:        THE CITY COUNCIL  
FROM:     THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE  
OCTOBER 5, 1988

SUBJECT:   APPROVE AGREEMENT WITH DAVE SMITH FOR WINE COUNTRY CARRIAGE TO OPERATE A  
             HORSE-DRAWN WAGON-CARRIAGE CONCESSION AT LODI LAKE PARK

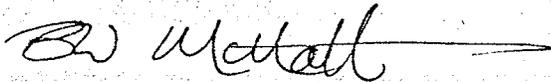
PREPARED BY:                      City Attorney

BACKGROUND INFORMATION:    The Council has previously directed that staff prepare an agreement with David Smith, dba Wine Country Carriage, to establish an exclusive agreement whereby Mr. Smith would provide carriage rides in Lodi Lake Park.

The attached Agreement is the result of meetings between Mr. Smith and City staff and addresses all the concerns expressed by the Council. The Agreement is for an initial period of one year, and is renewable thereafter on a year-to-year basis by mutual consent. In exchange for the exclusive right to haul passengers in the Park, Mr. Smith will pay to the City 10% of his gross revenues.

It is recommended that the Council consider authorizing the City Manager and City Clerk to execute the Agreement.

Respectfully submitted,



BOB McNATT  
City Attorney

BM:vc

CCSMITH/TXTA.01V

CITY COUNCIL

JAMES W PINKERTON, Jr. Mayor  
JOHN R (Randy) SNIDER  
Mayor Pro Tempore  
DAVID M HINCHMAN  
EVELYN M OLSON  
FRED M REID

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
CALL BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209)334-5634  
TELECOPIER (209) 333-6795

THOMAS A. PETERSON  
City Manager  
ALICE M REIMCHE  
City Clerk  
BOB McNATT  
City Attorney

October 12, 1988

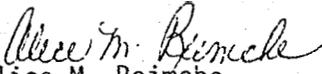
Mr. David Smith  
Wine Country Carriage  
2505 Turner Road  
Lodi, CA 95242

Dear Mr. Smith:

Enclosed herewith please find fully executed copy of Agreement dated October 3, 1988 providing authorization for you to operate a horse-drawn wagon-carriage concession at Lodi Lake Park. This Agreement was approved by the Lodi City Council at its meeting of October 5, 1988.

Should you have any questions regarding this matter, please do not hesitate to call this office.

Very truly yours,

  
Alice M. Reimche  
City Clerk

AMR:jj

cc: Ron Williamson  
Parks and Recreation Director

Robert Holm  
Finance Director

A G R E E M E N T

THIS AGREEMENT, made and entered into this 5 day of Oct., 1988, by and between the CITY OF LODI ("City") and WINE COUNTRY CARRIAGE ("Contractor").

KITNESSETH:

WHEREAS, the City of Lodi is the owner and operator of Lodi Lake Park; and

WHEREAS, Contractor wishes to operate within said Park a concession offering to the general public, rides in horse-drawn carriages or wagons; and

WHEREAS, the Lodi City Council hereby finds it appropriate to allow users of Lodi Lake Park access to such entertainment and recreational opportunity;

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. This Agreement shall expire on November 1, 1989. Thereafter, the Agreement shall be subject to renewal on a year-to-year basis by mutual consent. To renew, Contractor shall give notice of his intent to do so no later than thirty (30) days prior to the expiration of the then-current term. During the pendency of this Agreement, Contractor shall have the exclusive right to operate in Lodi Lake Park a concession offering to the public, rides in horse-drawn carriages and wagons.

2. contractor shall furnish, at his sole expense, all necessary animals and vehicles, as well as all necessary maintenance, upkeep, veterinarian services, insurance and incidentals required or proper for operation of such concession.
3. The City shall designate and appropriately sign an exclusive area inside the Park for the loading and unloading of passengers by Contractor, as shown on the attached map (Exhibit A). No loading or unloading of passengers shall occur at any other location inside the Park, nor shall Contractor bring passengers into the Park from a location outside.
4. The City shall not be required to provide any additional building or storage inside the Park, nor shall Contractor erect or cause to be installed any additional structures inside the Park. However, by mutual consent and as space is available, Contractor and City may agree to the storage or utilization of space inside the Park by Contractor.
5. At the end of each day of operation, Contractor shall clean all manure, litter or other debris resulting from such operations. In addition, all horses shall be fitted with and shall wear manure bags at all times while inside the Park.
6. Horses utilized for such rides shall be in good health and suitable for the contemplated purposes. Contractor shall provide on the 1st day of May of each year of operation, a certificate by

a veterinarian that such animals are in good health. The City of Lodi, its authorized representative or any other person authorized by law may inspect; at any time an animal suspected of being unfit for service, and may order such animal removed from service if it appears diseased, injured, or in any way unfit to perform its tasks under this Agreement. Animals shall not be stabled overnight in the Park.

7. Vehicles, wagons or carriages shall be equipped with steel or hard rubber tires, appropriate safety equipment, and shall be marked or signed as a slow-moving vehicle pursuant to the requirements of the California Vehicle Code. Such wagons shall have a turning radius allowing them to be maneuvered inside the Park without leaving designated roadways. Carriages and/or wagons shall be checked monthly for safety and mechanical fitness by City's equipment mechanic or designee. Should any carriage, wagon or vehicle be deemed by such City inspector to be unsafe, it shall not be utilized inside the Park until such condition is remedied.

8. No more than two horse-drawn carriages, wagons or vehicles shall be operated inside the Park by Contractor at any time unless agreed upon and approved by the Parks and Recreation Director prior to such operation.

9. All drivers of such horse-drawn carriages, wagons or vehicles shall be appropriately trained and skilled in the operation of

such vehicles. Contractor shall, in advance to utilizing any driver, furnish the names, ages and addresses of such drivers, and verification of past experience or qualifications to operate such carriage or wagon.

10. The hours of operation of such concession shall be established by agreement between Contractor and the Parks and Recreation Director at the commencement of each year's operation. Prior to the commencement of operation each year, Contractor and the Parks and Recreation Director shall establish dates and hours for such operation.
11. The route taken shall be restricted to the concrete or asphalt path as shown on the map attached. No operation shall be permitted in the Wilderness Area of the Park or in any unpaved or undesignated area.
12. Contractor shall maintain liability insurance in the sum of one million dollars (\$1,000,000), with the City of Lodi as an additional named insured. Failure to maintain such insurance shall result in a suspension of the right to operate. Contractor further agrees to indemnify, save and hold harmless from any damages or liability of any nature whatsoever arising from Contractor's operation of the concession as described in this Agreement, save and except those injuries caused or liabilities incurred exclusively and solely as a result of the direct negligence of the City or its employees.

13. Contractor shall pay to City in exchange for the exclusive right to operate in Lodi Lake Park, ten percent (10%) of gross receipts. Contractor shall, on the first business day of each month in which Contractor has operated, provide and deliver to the City:

- a) An accounting showing the number of passengers hauled on each day of operation, separated by type of passenger such as adult, senior, student, etc.;
- b) An accounting of gross receipts;
- c) Amounts due hereunder

All payments due the City shall be paid on the first business day of each month, and shall be delinquent five (5) days thereafter. Delinquency of more than fifteen (15) days, in either the monthly accounting or payment of amounts due, shall result in the suspension of rights to operate.

14. All rates charged by Contractor shall be approved in advance by the City Council, and shall be subject to renegotiation on the anniversary date of this Agreement, should it be extended by mutual consent.

15. Operator of the concession described herein is an independent contractor, and no agency is created hereunder. It is agreed and stipulated that, subject to the terms contained herein, Contractor shall have discretion to operate such concession in a

manner appropriate to facilitate the goals and aims of this Agreement.

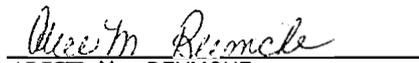
16. This Agreement may not be assigned without the prior written consent of the City, which shall not be unreasonably withheld.

Executed in Lodi, California on the date first written above.

CITY OF LODI

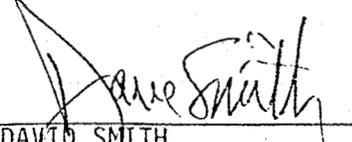
  
THOMAS A. PETERSON  
City Manager

ATTEST:

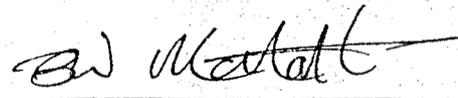
  
ALICE M. REYMICHE  
City Clerk

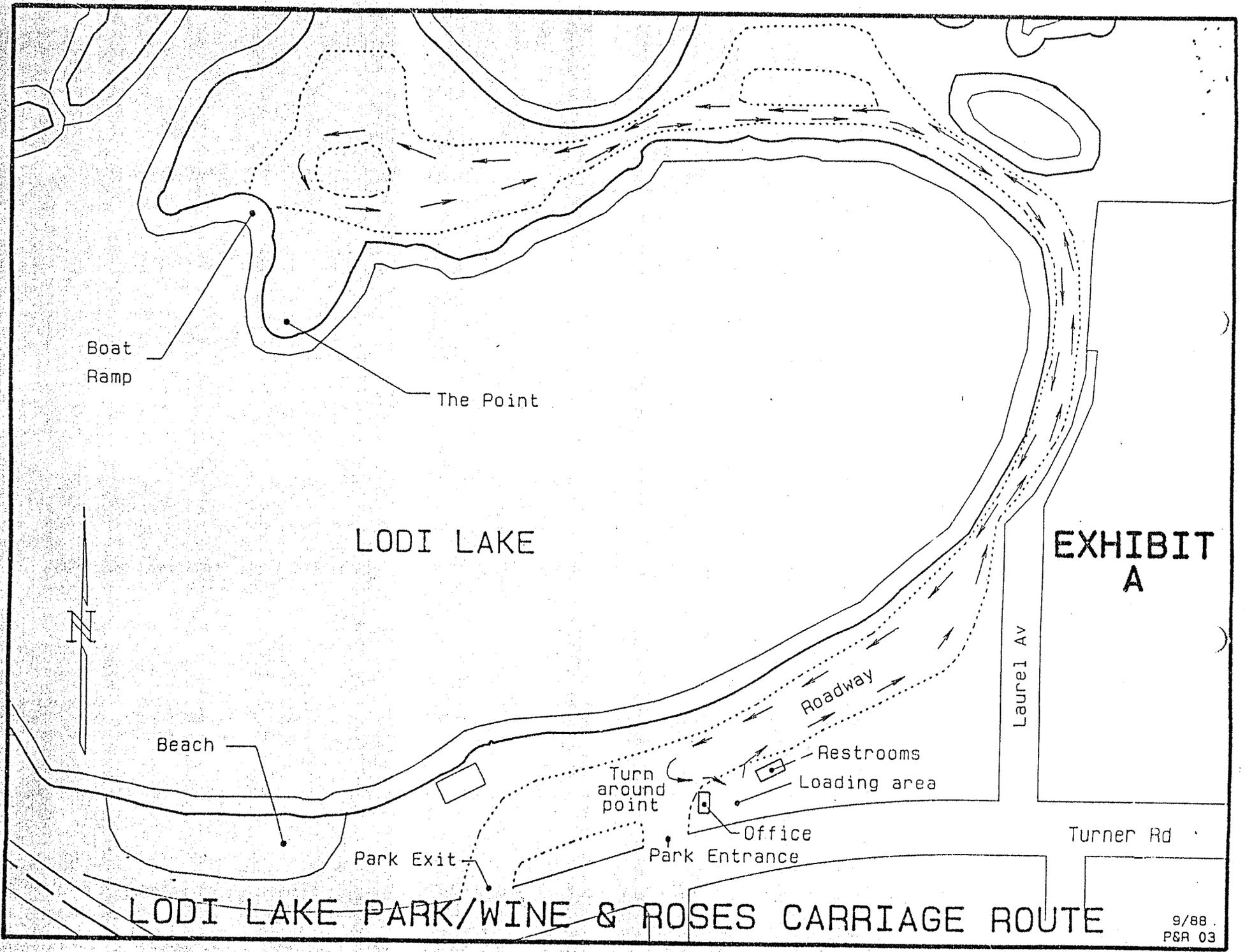
AGRSMITH/TXTA.01V

CONTRACTOR  
WINE COUNTRY CARRIAGE

By   
DAVID SMITH

Approved As To Form:

  
BOBBY W. McNATT  
City Attorney



Boat Ramp

The Point

LODI LAKE

EXHIBIT  
A

Beach

Roadway

Laurel Av

Restrooms  
Loading area

Turn  
around  
point

Office

Turner Rd

Park Entrance

Park Exit

LODI LAKE PARK/WINE & ROSES CARRIAGE ROUTE

9/88  
P&R 03