File No. 101416

Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date:** January 26, 2011

Board of Supervisors Meeting **Date** _____

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Completed by: Victor Young **Date:** January 21, 2011
Completed by: Victor Young **Date:** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

[Management Agreement/Lease - Stow Lake Boathouse, LLC, for the Operation of the Stow Lake Boathouse Concession Management]

Resolution authorizing the Recreation and Park Department General Manager to enter into a lease with Stow Lake Boathouse, LLC, for the operation of the Stow Lake Boathouse Concession in Golden Gate Park ("Lease").

WHEREAS, The City owns the land and improvements commonly known as Golden Gate Park, including the Stow Lake Boathouse located within the Park; and

WHEREAS, The City desires to contract with Ortega Family Enterprises, doing business as, Stow Lake Boathouse, LLC ("Ortega") for the lease and operation of the Stow Lake Boathouse concession including the provision of boat rentals and the sale of food and beverages and Ortega desires to lease the premises from the City; and

WHEREAS, The Recreation and Park Commission ("Commission') authorized the Recreation and Park Department (the "Department") on December 17, 2009 to issue a Request for Qualifications ("RFQ") to solicit responses from qualified entities for the lease and operation of the Stow Lake Boathouse Concession, and on August 19, 2010, the Commission authorized staff to begin negotiations with Stow Lake Boathouse, LLC; and

WHEREAS, On December 2, 2010, by Resolution No. 1012-008 , on file with the Clerk of the Board of Supervisors in File No. 101416, the Commission recommended that the Board of Supervisors approve the Lease, on file with the Clerk of the Board of Supervisors in File No. 101416, between the City and Ortega for the lease and operation of the Stow Lake Boathouse Concession, from March 1, 2011, through February 28, 2026, with one (1) potential five (5)-year extension, which has an anticipated revenue of more than one million dollars, and potential term, including extensions, of over ten years; and

WHEREAS, Pursuant to San Francisco Charter, Article IX, Section 9.118, Subsections (a) and (b), the Board of Supervisors must approve the Lease by resolution; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves the lease dated March 1, 2011, for the lease and operation of the Stow Lake Boathouse Concession, commencing on March 1, 2011, through February 28, 2026; and for a potential extension period of five years commencing on March 1, 2026, through February 28, 2031, subject to the approval of the Commission; and be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the General Manager to enter into additions, amendments, or other modifications to the Lease (including, without limitation, preparation and attachment of, or charges to, any or all of the exhibits) that the General Manager, in consultation with the City Attorney, determines are in the best interest of the City, do not materially decrease the benefits of the Lease to the City, do not materially increase the obligations or liabilities of the City, do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuate the purpose and interest of this resolution, such determination to be conclusively evidenced by the executions and delivery by the General Manager of the Lease and any such additions, amendments, or other modifications that that document; and be it

FURTHER RESOLVED, That the Board of Supervisors approves, confirms, and ratifies all prior actions taken by the officials, employees, and agents of the City with respect to the Lease.

Item 1 File 10-1416	Department: Recreation and Parks Department (RPD)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize a new 15-year lease with one five-year option between the City, through the Recreation and Park Department (RPD) and Ortega Family Enterprises, doing business as Stow Lake Boathouse, LLC, for the operation and management of the Stow Lake Boathouse in Golden Gate Park, effective March 1, 2011 through February 28, 2026.

Key Points

- Under the terms of the proposed lease, Stow Lake Boathouse, LLC, would operate and manage the Stow Lake Boathouse (Boathouse), including (a) operating boat rentals, food and beverage, and retail concessions at the Boathouse; (b) implementing capital improvements and maintaining the Boathouse; and (c) establishing a Maintenance Fund and a Personal Property Fund.
- The proposed lease would also require Stow Lake Boathouse, LLC, to (1) replace the aging fleet of rental boats with no less than 50 boats, estimated by RPD to cost $152,000, and (2) make an estimated $233,000 in capital improvements to the Boathouse, including renovations to the exterior snack bar area and the creation of a new indoor café, within the first year of the lease. Although the proposed lease requires replacement boats and specific capital improvements, the proposed lease does not require a specified amount for the minimum investment to be made by Stow Lake Boathouse, LLC for these items.
- RPD selected Stow Lake Boathouse, LLC to operate and manage the Boathouse based on a competitive request for qualifications (RFQ) process. The RFQ evaluated respondents based upon their qualifications and experience, financial capability and their proposed capital improvements and business concept. RPD did not require respondents to propose a Minimum Annual Guarantee (MAG) rent or percentage rental rates as part of the RFQ. Therefore estimated rental revenues were not evaluated by the RPD as part of the competitive selection process. Instead, the MAG and the percent rental rates in the proposed lease were negotiated between RPD and Stow Lake Boathouse, LLC only after the RFQ selection process had been completed.
- RPD deemed capital improvements, deferred maintenance, maintenance of rental boats, and food and beverage concession quality to be higher priorities than the amount of rental income that would be paid to RPD under the proposed lease.

Fiscal Impacts

- The proposed lease would require Stow Lake Boathouse, LLC, to pay rent to RPD at the greater of either (a) the negotiated $140,000 MAG, increased annually for inflation, or (b) the negotiated percentage rent of 33 percent of gross boat rentals, 10 percent of gross food and beverage sales, and 7.5 percent of gross concession sales. RPD estimates that under the percentage rent provisions of the proposed lease, Stow Lake Boathouse, LLC would pay percentage rent of $200,254 in the first year of the lease, and that percentage rent would increase annually. In addition, the agreement would require Stow Lake Boathouse, LLC to make capital improvements to the Boathouse estimated to cost $233,000, and to purchase no less than 50 boats, estimated to cost $152,000, with

additional ongoing investments in maintenance and equipment.

Recommendations

- Request RPD to amend the proposed agreement to require that the lessee makes an investment of at least $233,000 in capital improvements and at least $152,000 in new boat purchases.
- Continue the proposed resolution pending the RPD implementation of the Budget and Legislative Analyst's requested amendment above.
- Because (a) RPD's competitive selection process did not either require or give any consideration to the MAG or the percentage rental rates in evaluating the RFQ respondents and (b) both the MAG and the percentage rental rates under the proposed lease were negotiated between Stow Lake Boathouse, LLC and RPD only after Stow Lake Boathouse, LLC was selected as the proposed lessee and (c) the MAG rent amount of $140,000 is low as compared to several measures (see Policy Considerations section of this report), the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy decision for the Board of Supervisors.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

In accordance with City Charter Section 9.118(c), any lease for a period of ten or more years or that has anticipated revenue greater than $1,000,000 is subject to Board of Supervisors approval.

Background

Stow Lake is a public water recreation area located at 50 Stow Lake Drive within Golden Gate Park. Boat rental, maintenance facilities, and a snack bar are currently located at the Stow Lake Boathouse. The Stow Lake Boathouse is open to the public seven days each week during the summer months and at least six days each week during the winter months.

In November 1991, the Recreation and Park Department (RPD) entered into a 15-year lease for operation of the Stow Lake Boathouse with the Stow Lake Corporation. According to that 15-year lease, Stow Lake Corporation paid RPD the greater of either (1) a Minimum Annual Guarantee (MAG) rent of $110,000, without annual adjustments for inflation, or (2) percentage rent of (a) 31 percent of boat rentals and (b) 21 percent of snack bar sales.[1] Although the lease period ended in November 2006, Stow Lake Corporation has continued to operate the Stow Lake Boathouse under the terms of the 1991 lease on a month-to-month basis. The RPD could not confirm whether the 1991 lease was subject to a competitive process.

Over the past five fiscal years, Stow Lake Corporation has paid an average annual percentage rent of $149,369 to the City, with actual percentage rent payments ranging from $121,750 in FY 2005-2006 to $170,366 in FY 2008-2009. In FY 2009-2010, the most recent year available, Stow Lake Corporation paid $153,936 in percentage rent to the City.

Competitive Process for Proposed Lease

According to Mr. Nicholas Kinsey, RPD Assistant Director of Property and Concession Management, RPD issued four competitive Requests for Proposals (RFPs) to operate the Stow Lake Boathouse, two in 2006, one in 2008, and one in 2009. According to RPD, "On each occasion the Department either received no responsive bidders or was otherwise unable to successfully select a respondent on each of those occasions."

Instead of issuing a fifth RFP, on February 4, 2010, RPD issued a Request for Qualifications (RFQ) soliciting an operator for the Stow Lake Boathouse. According to Mr. Kinsey, "the deterioration of the Boathouse and the presence of 60 year old boats at the Lake have led to a significant decline in revenue. Recognizing, that the condition of the Boathouse was decreasing the Department's revenue from the site, the Recreation and Park Commission directed staff to issue an RFQ that prioritized capital investment in the Concession." Respondents to the RFQ were asked to demonstrate (1) experience in managing businesses containing boat rental operations and food and beverage services, (2) experience in managing capital improvement

[1] Historic rent figures presented in this report exclude rent paid on the Boathouse bicycle rental concession. The proposed lease does not include a bicycle rental concession.

projects in historic buildings, and (3) a plan to create an informal, indoor café within the Stow Lake Boathouse. According to Mr. Kinsey, "The (Recreation and Park) Commission specifically directed staff to solicit an operator willing to perform capital improvements on the building because the condition of the facility was impacting revenue generation at the site as well as the overall customer experience."

As shown in a list provided to the Budget and Legislative Analyst, RPD distributed the RFQ to 944 individuals and firms.

Respondents to the RFQ were neither requested nor required to propose either a MAG or percentage rental rates.

RPD received timely responses to the RFQ from the following three entities: (a) Herrick, Liu and Torrest; (b) Ortega Family Enterprises, doing business as Stow Lake Boathouse, LLC; and (c) the Stow Lake Corporation (the current leaseholder).

A five member RPD selection panel consisted of Ms. Andrea Jadwin, Co-President of the Inner Sunset Park Neighbors; Ms. Meagan Levitan, a member of the Recreation and Park Commission; Mr. Gary Rulli, the proprietor of Emporio Rulli, Inc., a local café chain; Ms. Tara Sullivan, Legislative Liaison for the San Francisco Planning Department; and Mr. Jim Wheeler, Neighborhood Service Area Manager for the Recreation and Park Department who previously oversaw boating operations at the Lake Merritt Boat House.

The selection panel scored the responses according to the following three criteria:

1. Qualifications and experience (35 points);
2. Financial capability (30 points); and
3. Capital improvements and business concept, including food and beverage quality (35 points).

As shown in Table 1 below, based on these scoring criteria, the selection panel awarded the highest score, 91.75 points out of a total of 100 points, to the Stow Lake Boathouse, LLC's response. An expanded description of the evaluation criteria and scoring summary can be found in Attachment I to this document, provided by RPD.

Table 1: Scored Responses to the Stow Lake Boathouse RFQ

Respondent	Score
Stow Lake Boathouse, LLC	91.75
Stow Lake Corporation	74.65
Herrick, Liu, and Torrest	66.25

As shown in Table 2 below, the total value of the capital improvements proposed by the three firms, not including maintenance fund payments, were $233,000 from Stow Lake Boathouse, LLC, $23,000 from Stow Lake Corporation, and $310,000 from Herrick, Liu and Torrest.

Two of the respondents, Stow Lake Corporation and Herrick, Liu and Torrest, proposed MAG and percentage rental rates, although those amounts were not required, requested, or considered by the RPD under the competitive RFQ process to evaluate the respondents. Table 2, below, shows the values of the unsolicited MAG and percentage rents, as well as the values of the solicited capital improvement and maintenance submissions.

Table 2: Minimum Annual Guarantee (MAG) and Percentage Rental Rates, Capital Improvements, and Maintenance Amounts

Firm	MAG*	Boat Rent*	Food and Beverage Rent*	Retail Rent*	Initial Capital Investment	Maintenance Fund Payments*	15-year Annualized Capital Investments & Maintenance Fund Payments
Stow Lake Boathouse, LLC**	$140,000	33%	10%	7.5%	$233,000	$262,004	$33,000
Stow Lake Corporation***	$215,000	36%	27%	None offered	$23,000	$0	$1,533
Herrick, Liu, and Torrest***	$150,000	28%	6%	20.0%	$310,000	$0	$20,666

* As noted in the report, respondents to the RFQ were not required to submit MAG or percentage rental rates, nor were they required to include a maintenance fund as part of their submission.

** Stow Lake Boathouse, LLC's MAG and percentage rental rates were negotiated with RPD after the competitive selection process.

*** Stow Lake Corporation and Herrick, Liu, and Torrest submitted MAG and percentage rental rates to the RPD although they were not required to do so under the competitive RFQ process.

On August 19, 2010, the Recreation and Park Commission selected Stow Lake Boathouse, LLC as the winning respondent to the RFQ and authorized RPD staff to begin negotiating a lease with Stow Lake Boathouse, LLC for the operation of the Stow Lake Boathouse.

While the Budget and Legislative Analyst defers to the RPD's determination that (a) capital improvements, (b) deferred maintenance, (c) maintenance of rental boats, and (d) food and beverage quality are important considerations, since the RPD's competitive process neither required nor considered the MAG or the percentage rental rates, in selecting the proposed lessee, the RPD has no way of determining whether RPD could have achieved the same amount of capital improvements, deferred maintenance, maintenance of rental boats, and the same high-quality food and beverage options for the Stow Lake facilities, while at the same time also receiving higher rental revenues under from the proposed lease to operate and manage the Stow Lake Boathouse.

The MAG rent and percentage rental rates under the proposed lease were negotiated between RPD and Stow Lake Boathouse, LLC, after Stow Lake Boathouse, LLC had been selected as the proposed lessee.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize a new 15-year lease, with one 5-year option, between RPD as lessor and Stow Lake Boathouse, LLC, doing business as Stow Lake Boathouse, LLC, as lessee, for the operation and management of the Stow Lake Boathouse Concession in Golden Gate Park. Responsibilities include (a) operating a boat rental concession, food and beverage concession, and retail concession[2] at the Stow Lake Boathouse, (b) making various capital improvements and maintaining the Boathouse, and (c) establishing maintenance and personal property funds.

The term of the proposed lease would be 15 years, commencing on March 1, 2011 and extending through February 28, 2026, with one five-year option to extend through February 28, 2031. According to Mr. Kinsey, "The 15 and 5 year lease lengths were negotiated to allow the Lessee to recover the costs of their investment into the property."

Section 8 of the proposed lease agreement requires the capital improvements specified in Exhibit D of the proposed lease, which is a three page list of proposed capital improvements, identifying the total estimated cost of the capital improvements at $233,000. This $233,000 amount is an estimate, not an amount required under the proposed lease. Exhibit D specifies that capital improvements would include upgrades to the Boathouse kitchen, expanding the food options, and creating an indoor seating area to accommodate approximately 32-36 visitors. Attachment II, provided by RPD, is a breakdown of the capital improvement costs. Attachment II shows a revised estimated cost of $233,045.

The estimated amount of the capital improvement investments total $385,000, including the $233,000 for capital improvements and the provision of 50 boats, required under Section 7.1(a) of the proposed lease, at an estimated cost of $152,000, shown in Table 3 below. The Budget and Legislative Analyst notes that the boats are an asset of the lessee and would not become the property of the City at the end of the lease. The Budget and Legislative Analyst notes that the lease does not require either (a) that the 50 boats provided be new, although RPD has stated that the boats will be new, or (b) a requirement that at least $152,000 will be invested for the new boats.

Table 3 below summarizes the primary financial terms of the proposed Stow Lake Boathouse Lease with Stow Lake Boathouse, LLC.

[2] The retail concession is a new provision of the Boathouse lease and was not included under the existing lease. According to the Management Plan attached to the proposed lease, retail items would consist of "a limited offering of select thematic retail goods developed to convey the importance, significance, and history of Stow Lake and Golden Gate Park" The Management Plan attached to the proposed lease suggests that "thematic retail goods" would be goods based on the themes of Stow Lake and Golden Gate Park, and may include such memorabilia related to Golden Gate Park bird species, vintage Stow Lake postcards and photographs, and Stow Lake logo merchandise. According to the proposed lease, retail offerings would also be subject to RPD's approval.

Table 3: Summary of Financial Terms of the Proposed Stow Lake Boathouse Lease

Lease Requirement	Description	15-Year Lease Total Estimated Value, at 3% inflation	Average Annual Estimated Value
Minimum Annual Guaranteed Rent	$140,000 per year, adjusted annually for inflation.	$2,603,848	$173,590
Percentage Rent	33% of gross boat rental sales; 10% of gross food and beverage sales; and 7.5% of gross retail sales.	$3,724,518	$248,301
Capital Improvements	Stow Lake Boathouse, LLC would be required to make an estimated $233,000 in Capital Improvements to the Boathouse.	$233,000	$15,533
Rental Boat Fleet	Stow Lake Boathouse, LLC would be required to purchase an all-new fleet of rental boats consisting of no less than 50 boats at an estimated cost of $152,000. The City would have the right to require Stow Lake Boathouse, LLC to purchase up to 35 additional boats to meet demand. The boats would remain the property of Stow Lake Boathouse, LLC.	$152,000	$10,133
Maintenance Fund	Beginning in year 5 of the lease, Stow Lake Boathouse, LLC would be required to deposit 2 percent of gross revenues into a Maintenance Fund dedicated to the maintenance and improvement of the Boathouse. The expenditures would be subject to Department approval.	$262,004	$17,467
Personal Property Fund	Beginning in year 4 of the lease, Stow Lake Boathouse, LLC would be required to deposit 1.5 percent of gross revenues into a Personal Property Fund, which would be utilized for the purchase, maintenance, and improvement of Stow Lake Boathouse, LLC's personal property and assets, including rental boats, boat maintenance equipment, and kitchen equipment.	$211,399	$14,093

FISCAL IMPACTS

As summarized in Table 3 above, the proposed lease would generate rental revenue for the RPD based on the greater of either (1) the Minimum Annual Guarantee (MAG) rent of $140,000, adjusted annually for inflation, or (2) the cumulative of 33 percent of gross boat rental sales, 10 percent of gross food and beverage sales, and 7.5 percent of gross retail sales. RPD projects that in years one through five of the proposed lease, percentage rent would be greater than the MAG rent, such that Stow Lake Boathouse, LLC would make increasing annual percentage rent payments to RPD, estimated to range from $200,254 to $225,322 per year, as shown in Table 4 below.

Table 4: MAG versus Percentage Rent Payment Estimates for the First Five Years of the Lease

Lease Year	MAG rent, Assuming 3% Inflation	Percentage Rent Payment, Projected by RPD
1	$140,000	$200,254
2	144,200	206,235
3	148,526	212,450
4	152,982	218,824
5	157,571	225,322

In addition to such annual rent payments to RPD, Section 8 of the proposed lease requires Stow Lake Boathouse, LLC to implement the capital improvements described in Exhibit D of the proposed lease as having an estimated cost of $233,000 in one-time capital improvements to the Stow Lake Boathouse and Section 5.7 of the proposed lease requires that, beginning in the fifth year of the lease, Stow Lake Boathouse, LLC invest 2 percent of gross sales into a new Maintenance Fund in order to continue to maintain the Boathouse. The Budget and Legislative Analyst estimates that based on RPD's projection of gross sales totaling $13,100,207 in lease years five through fifteen, Stow Lake Boathouse, LLC will deposit an estimated total of $262,004 ($13,100,207 x.02) into the Maintenance Fund, to be used to maintain the property at Stow Lake. Therefore, the total projected investment into the City's Stow Lake Boathouse property under the subject lease is $495,004 ($233,000 in one-time capital improvements plus $262,004 in Maintenance Fund contributions), or an average of $33,000 per year for 15 years.

Additionally, Section 7.1(a) of the proposed lease requires that Stow Lake Boathouse, LLC provide 50 boats, at a cost estimated to be at least $152,000, and potentially up to an additional 35 new boats depending on demand. The boats would remain the property of Stow Lake Boathouse, LLC. Section 5.8 of the lease requires that, beginning in the fourth year of the lease, Stow Lake Boathouse, LLC invest 1.5 percent of gross sales into a Personal Property Fund to continue to maintain the Stow Lake Boathouse, LLC equipment and assets. The Budget and Legislative Analyst estimates that based on projected gross sales totaling $14,093,246 in lease years four through fifteen, Stow Lake Boathouse, LLC will deposit an estimated total of $211,399 ($14,093,246 x .015) into the Personal Property Fund for the maintenance of its own boats, kitchen equipment, and other property and assets. Therefore, the proposed lease requires that Stow Lake Boathouse, LLC invest at least $363,399 ($152,000 for the purchase of 50 boats plus $211,399 in Personal Property Fund Contributions) for the purchase and maintenance of the lessee's own assets.

In summary, as shown in Table 5 below, over the course of the 15 year lease, Stow Lake Boathouse, LLC would invest an estimated total of $858,403, including (a) $495,004, or an average of $33,000 per year, for 15 years, for capital improvements and maintenance of the City's Boathouse property and (b) $363,399, or an average of $24,226 per year for boats (Stow Lake Boathouse, LLC's own personal property) and for the Personal Property Fund. A summary of these required investments is shown in Table 5 below.

Table 5: Summary of Lease Requirements for Investments in City Property and Lessee's Personal Property

Lease Requirement	15-Year Total Estimated Value	Average Annual Estimated Value
Capital Improvements	$233,000	$15,533
Maintenance Fund Contribution	$262,004	$17,467
Subtotal: Investments in City Property	***$495,004***	***$33,000***
Purchase of 50 Rental Boats	$152,000	$10,133
Personal Property Fund Contribution	$211,399	$14,093
Subtotal: Investments for New Boats and for Lessee's Personal Property and Assets	***$363,399***	***$24,226***
Total Investments in City Property and Lessee's Personal Property	**$858,403**	**$57,226**

POLICY CONSIDERATIONS

The Proposed Lease Does Not Specify the Amount Required as a Minimum Investment for the Required Capital Improvements or for the 50 New Boats

As noted in the "Fiscal Impact" section above, Exhibit D of the proposed lease estimates that capital improvements would cost at least $233,000. Attachment II, provided by the Department, shows the breakdown of anticipated capital improvement costs, at a revised total estimated cost of $233,045. However, the proposed lease does not require a minimum expenditure on such capital improvements. The Budget and Legislative Analyst recommends that the proposed lease be amended to require that the proposed lessee make a minimum investment of $233,000 for capital improvements.

As is also noted in the "Fiscal Impact" section above, Section 7.1(a) of the proposed lease requires that the lessee provide 50 boats. RPD has stated that the 50 boats would be new, at an estimated total cost of $152,000. However, the proposed lease does not require that the 50 boats be new, nor does the proposed lease require a minimum investment amount to acquire the 50 boats. The Budget and Legislative Analyst recommends that the proposed lease be amended to require that the proposed lessee provide new boats, at a minimum investment of $152,000.

The RPD's Competitive RFQ Selection Process Neither Required Nor Considered the MAG or the Percentage Rental Rates in Selecting the Proposed Lessee. Both the MAG and the Percentage Rental Rates Were Negotiated Between Stow Lake Boathouse, LLC and RPD After Stow Lake Boathouse, LLC Was Selected to be the RPD's Proposed Lessee.

As noted in the "Background" section above, the Department used the following three criteria to score the responses to the Stow Lake Boathouse RFQ: (1) qualifications and experience; (2) financial capability; and (3) capital improvements and business concept. According to Mr.

Kinsey, "In drafting the RFQ, selecting a respondent and negotiating the contract the Department's primary objective has been the improvement of the boathouse and the completion of deferred maintenance at the site." According to Mr. Kinsey, RPD also emphasized food options that the lessee would offer. Mr. Kinsey advises that the Department did not require respondents to propose MAG or percentage rental rates.

As noted above, the proposed lease requires an estimated $233,000 in capital improvements, which is $198,000 more than the $35,000 required under the 1991 lease. Under the proposed lease, Stow Lake Boathouse, LLC would invest an average estimated amount of $33,000 per year in capital improvements and other maintenance of City property and an estimated amount of $24,226 per year in personal property and assets, as shown in Table 5 above.

RPD did give priority to food and beverage quality under the competitive selection process to select the proposed lessee. Mr. Kinsey notes, "at Stow Lake, the RFQ required respondents to submit proposed menus featuring fresh, healthy, and sustainably sourced foods.... While this necessitates a lower percentage rent due to the higher cost of goods and labor expenses, it meets the Department's policy objective of offering healthy food at our concessions and, according to projections, will result in an increase in Food and Beverage revenues due not only to the higher average per person expenditure as customers go from purchasing snacks to light meals, but also an increase in customers due to the improved concession."

The Budget and Legislative Analyst notes that the negotiated percentage rent amount of 10 percent of gross sales from food and beverage sales under the proposed lease is 52.4 percent lower than the existing lease amount of 21 percent. In contrast, the percentage rent for gross boat rental sales would increase by 6.5 percent, from 31 percent of gross boat rental sales under the existing lease to 33 percent of gross boat rental sales under the proposed lease.

RPD is projecting that food and beverage sales would increase over the actual FY 2009-2010 food and beverage sales of $187,649 to an estimated $403,206 in the first year of the proposed lease, an increase of $215,557 or 114.9 percent. However, the Budget and Legislative Analyst notes that due to the reduced percentage rent of food and beverage sales of 10 percent under the proposed lease, from 21 percent under the existing lease, the percentage rent paid on food and beverage sales would only increase $915 or 2.3 percent in the first year of the lease, from the actual $39,406 percentage rent paid in FY 2009-2010 to the RPD projected $40,321 to be paid in the first year of the proposed lease. Therefore, a 114.9 percent increase in food and beverage sales revenue under the proposed lease would only yield a 2.3 percent increase in percentage rent being paid to the RPD under the proposed lease for food and beverage items.

The Proposed MAG Rent is Low Compared to Several Measures

The RPD has projected that under the proposed lease, percentage rents would be greater than $200,000 per year in each year of the lease, as shown in Table 4 above. Therefore, the MAG rent amount of $140,000 in the proposed lease is $60,000, or 30 percent less than the RPD's projected percentage rents of more than $200,000. Additionally, the MAG amount of $140,000 in the proposed lease is low compared to (1) actual payments paid under the existing lease; (2) the MAG under the existing lease, adjusted for inflation; and (3) the MAG rent standards set for food concessions at the San Francisco International Airport (Airport).

The proposed MAG rent amount of $140,000 is $9,369 or 6.3 percent less than the average annual percentage rent amount of $149,369 paid by the current lessee for the past five years. In FY 2009-2010, the most recent year available, the current lessee paid $153,936 percentage rent to the City, or 10.0 percent more than the proposed MAG rent amount of $140,000 under the subject lease. It should be stated that the existing lease does not include retail sales, which are an added source of revenue under the proposed lease.

The existing Stow Lake Boathouse lease MAG rent amount of $110,000 was established in 1991 and has not been increased in 19 years.[3] According to the US Bureau of Labor Statistics' Consumer Price Index, adjusted for inflation, the 1991 MAG rent of $110,000 would be equivalent to $176,639 in 2010 dollars, which is $36,639, or 26.2 percent more than the proposed MAG rent amount of $140,000 to be paid to the RPD under the proposed lease.

The Airport, which handles numerous food concessions leases, does not discount MAG rent so far below the anticipated percentage rent. According to Ms. Cheryl Nashir, Associate Deputy Director of Revenue Development and Management for the Airport, the Airport's practice with its concession tenants is to set MAG rental rates at 10 to 15 percent below the anticipated percentage rent. Applied to the Stow Lake Boathouse lease, a 10 to 15 percent standard would result in a MAG set between $170,000 and $180,000, which represents an increase of $30,000 to $40,000 more than the $140,000 MAG to be paid to RPD under the proposed lease.

Mr. Kinsey stated that RPD and Stow Lake Boathouse, LLC jointly developed projections for the Stow Lake Boathouse concession. The projections anticipate percentage rents above $200,000 per year (see Table 4 above). Should those sales projections not be realized, Stow Lake Boathouse, LLC would pay up to $60,000 less rent than the RPD projects, based on the $140,000 MAG rent amount required under the proposed lease.

According to Mr. Kinsey, RPD set the MAG rent amount at $140,000 in the proposed lease as an acknowledgment of the risk that RPD and Stow Lake Boathouse, LLC perceived was inherent in the lease and the planned capital improvements. In the professional opinion of the Budget and Legislative Analyst, while RPD has an interest in protecting the lessee from undue economic hardship, the City also has an interest in guaranteeing a level of rental income to the City through a MAG that is set to be more proximate to the projected percentage rent income.

Again, the Budget and Legislative Analyst emphasizes that RPD's competitive selection process neither required nor considered the MAG and the percentage rental rates in evaluating the RFQ respondents, and that such MAG and percentage rental rates were not requested from RFQ respondents. The Budget and Legislative Analyst further notes that both the MAG and the percentage rental rates were negotiated between the proposed lessee Stow Lake Boathouse, LLC and RPD only after Stow Lake Boathouse, LLC was selected as the proposed lessee.

The Budget and Legislative Analyst notes that the RPD made a policy decision to prioritize capital improvements, deferred maintenance, maintenance of rental boats, and food and beverage quality over rental income in the RPD evaluation of the lease proposals. The Budget and

[3] The current lease set the MAG at $110,000 if there was no bicycle rental service. There is no bicycle rental service in the proposed lease.

Legislative Analyst agrees with the RPD that the RPD priorities are very important considerations.

However, since the RPD's competitive process neither requested, nor required, nor considered the MAG and the percentage rental rates, the RPD has no way of determining whether RPD could have still achieved the same amount of capital improvements, deferred maintenance, maintenance of rental boats, and the same high-quality food and beverage options for the Stow Lake facilities, while at the same time also receiving higher rental revenues from the lease to operate and manage the Stow Lake Boathouse. Instead, the rental revenues were negotiated with the proposed lessee after the competitive selection process was completed.

RECOMMENDATIONS

1. Request RPD to amend the proposed agreement to require that the lessee makes an investment of at least $233,000 in capital improvements and at least $152,000 in new boat purchases.
2. Continue the proposed resolution pending the RPD implementation of the Budget and Legislative Analyst's requested amendment in Recommendation No. 1 above.
3. Because (a) RPD's competitive selection process did not either require or give any consideration to the Minimum Annual Guarantee (MAG) or to the percentage rental rates in evaluating the respondents to RPD's Request for Qualifications (RFQ) process and (b) both the MAG and the percentage rental rates under the proposed lease were negotiated between Stow Lake Boathouse, LLC and RPD only after Stow Lake Boathouse, LLC was selected as the proposed lessee and (c) the MAG rent amount of $140,000 is low as compared to several measures (see Policy Considerations section of this report), the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy decision for the Board of Supervisors.

Exhibit C-Evaluation Criteria

	Evaluation Criteria	Points
a.	**Qualifications and Experience:** • Experience in managing and operating capital projects of comparable size, visibility and expense, including experience in capital projects on historic buildings. • Qualifications and experience of respondent and key personnel related to consistent quality management, maintenance, and operation of other business enterprises of a similar nature. • The extent to which key personnel will participate in the daily operation of the Project. • Demonstrated experience, history, or relationships in providing goods and services.	35
b.	**Financial Capability:** • The respondent's ability to finance the proposed project. • The respondent's overall financial track record.	30
c.	**Capital Improvements and Business Concept** • Consistency of the proposed project with the goals and objectives of the Recreation and Park Department, as outlined in the RFQ. • Viability of proposed use plan. • Quality and innovation of respondent's plan. • Appropriateness of the project for the RPD facility. • Project's ability to enhance the experience of park users. • Quality, value and nature of Respondent's plans for construction of the proposed improvements. • Quality, type and size of boat rental fleet proposed.	35
	Total points	100

Exhibit D- Scoring Summary

Herrick, Liu and Torrest

	Qualifications and Experience	Financial Capability	Capital Improvements and Business Concept	TOTAL
Panelists				
Andrea Jadwin	16	15	30	61
Meagan Levitan	18	20	23	61
Gary Rulli	25	25	22	72
Tara Sullivan	18.75	6	31.5	56.25
Jim Wheeler	28	25	28	81
Average	21.15	18.2	26.9	**66.25**

Ortega Family Enterprises

	Qualifications and Experience	Financial Capability	Capital Improvements and Business Concept	TOTAL
Panelists				
Andrea Jadwin	30	30	31	91
Meagan Levitan	33	29	34	96
Gary Rulli	30	30	30	90
Tara Sullivan	28.25	30	30.5	88.75
Jim Wheeler	32	28	33	93
Average	30.65	29.4	31.7	**91.75**

Stow Lake Corporation

	Qualifications and Experience	Financial Capability	Capital Improvements and Business Concept	TOTAL
Panelists				
Andrea Jadwin	25	20	22	67
Meagan Levitan	26	26	30	82
Gary Rulli	25	25	25	75
Tara Sullivan	30.75	13	19.5	63.25
Jim Wheeler	30	26	30	86
Average	27.35	22	25.3	**74.65**

Stow Lake Boathouse, San Francisco

Construction Costs

Item	Quantity (Labor and Materials)	Unit	Unit Price	Total
Mobilization	1	LS	$ 2,000	$2,000
Temp Facilities	1	LS	$ 1,500	$1,500
Install protective barriers/hoarding	1	LS	$ 1,750	$1,750
Demo. Interior Walls, Fixtures & Piping and wiring	1070	SF	$ 3	$3,210
Abate Exterior Paint	620	SF	$ 4.5	$2,790
Wood and Framing				
Frame New Walls - Upper Level	840	SF	$ 5	$4,200
Doors, Frames & Hardware				
New Interior Door, Frame & Hardware	4	EA	$ 650	$2,600
New Ext Door, Frame & Hdwr (match existing)	2	EA	$ 1,500	$3,000
Interior Finishes				
Refinish Wood Floors	660	SF	$ 8	$5,280
Install Flooring/WP in Kitchen and Concession Sales Area (Altro)	220	SF	$ 15	$3,300
Install Flooring in RR & Storage (Sheet)	90	SF	$ 15	$1,350
FRP @ Kitchen & Concession Walls	450	SF	$ 5	$2,250
SS Wall Panels @ Kitchen - behind Range	72	SF	$ 22	$1,584
New FRP @ Kitchen & Concession Ceiling	90	SF	$ 24	$2,160
Paint Interior Walls & Ceiling	1280	SF	$ 3	$3,840
Sand and Seal Wood Trusses	16	EA	$ 175	$2,800
Accessories				
Install Storage Room Shelving Units	24	LF	$ 8	$192
New RR Grab Bar, Handdryer & Dispensers	5	EA	$ 225	$1,125
Millwork				
New Condiment Station	1	EA	$ 1,500	$1,500
Install Millwork @ Concession Counter	18	LF	$ 800	$14,400
Exterior Finishes				
Replace small damaged Roof area over RR	40	SF	$ 20	$800
Repaint Exterior Shutters (match diamond pattern)	18	EA	200	$3,600
Repair Exterior Shutter Hardware	18	EA	150	$2,700
Repaint Building Exterior (Use Same Historic Colors)	620	SF	$ 7	$4,340
Paint contrasting striping at stairs	1	LS	$ 200	$200
Paint Exterior benches & tables	10	EA	$ 150	$1,500
New wood siding patch at windows	60	SF	$ 13	$780
Plumbing & Mechanical				
New WC - dual flush	1	EA	$ 1,800	$1,800
New wall-mounted Lav w/elect faucet	1	EA	$ 950	$950
New Floor Drain @ Kitchen	2	EA	$ 1,500	$3,000
New Floor Drain @ RR	1	EA	$ 1,500	$1,500
New handsink @ Kitchen	1	EA	$ 700	$700
New 3-comp sink @ Kitchen	1	EA	$ 1,500	$1,500
New MUA for Hood	1	EA	$ 1,500	$1,500
Install new EF @ RR	1	EA	$ 750	$750
Install ANSUL System	1	LS	$ 12,000	$12,000
Install Furnace and Ductwork	1	LS	$ 7,000	$7,000
Repair louvers at Roof Exhaust Penthouse	1	LS	$ 500	$500
Permanent Equipment (e.g. affixed, plumbed, hardwired...)	1	LS	$ 32,240	$ 32,240
Electrical				
New Pendant Light Fixtures	25 (6 mini pendants, 10 Main pendants)	EA	$ 125	$3,125
New Recessed Fluor Fixtures	8 (4 @ kit, 2 @ concession, 1 @ RR, 1 @ Stor)	EA	$ 125	$1,000
New Fluor uplights at trusses	24 (3 ea truss x 8 trusses)	EA	$ 80	$1,920
New Power/Data throughout	1070	SF	$ 150	$3,600
New Smoke Detection & Exit Signs (Life Safety)	6	EA	$ 175	$4,200
Other Miscellaneous				
Install All Signage, Displays and Thematic Elements	1	LS	$ 4,000	$4,000
New Security Alarm System	1	LS	$ 3,200	$3,200
		Subtotal		**$ 159,236**
Construction Contingency				
	10% of construction costs	EA	1270000.0%	$ 12,700
		Subtotal		**$ 12,700**
General Contractor				
General Conditions and OH&P	8% of construction costs	EA	$10,160	$10,160
		Subtotal		**$ 10,160**
Personal Property				
Personal Property		LS	$15,450	$15,450
		Subtotal		**$ 15,450**
Construction Cost Estimate (Soft Costs)				
Architect / Engineer Fees	RIM Architects	EA	1	$25,000
Building Permit	N/A	EA	1	$3,800
Health Permit (Food Service)	N/A	EA	1	$1,200
Construction Management	(Managed Internally with salaried personnel)	EA	1	$0
Food Cart	For use when kitchen and concession sales area can not be used	1	$5,500	$5,500
		Subtotal		**$35,500**
		TOTAL		**$233,045**
		Square Feet[1]		1070
		Cost / SF		**$217.8**

Note 1: Total Square Footage of Upper Level

File No. 101416

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: Stow Lake Boathouse LLC	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. Armand Ortega - Owner; Shane Ortega - President	
Contractor address: 25 Evergreen, Suite 6, Mill Valley, CA 94941	
Date that contract was approved:	Amount of contract: $140,000 plus % of revenue
Describe the nature of the contract that was approved: Concession Operations at Stow Lake	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: bos.legislation@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

RECREATION AND PARK COMMISSION
City and County of San Francisco
Resolution No. 1012-008

STOW LAKE - APPROVAL OF LEASE WITH ORTEGA FAMILY ENTERPRISES, DBA STOW LAKE BOATHOUSE, LLC

RESOLVED, That this Commission does recommend that the Board of Supervisors approve a Lease with Ortega Family Enterprises, doing business as Stow Lake Boathouse, LLC. for the operation of the Stow Lake Boathouse Concession in Golden Gate Park.

Adopted by the following vote:

Ayes	5
Noes	1
Absent	0

I hereby certify that the foregoing resolution was adopted at the Special Meeting of the Recreation and Park Commission held on December 2, 2010.

Margaret A. McArthur, Commission Liaison

Mayor Gavin Newsom
Philip A. Ginsburg, General Manager

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

Ortega Family Enterprises

dba

Stow Lake Boathouse, LLC. Lessee

For the Lease and Management of

the Stow Lake Boathouse

in

Golden Gate Park
San Francisco, California

November 22, 2010

CITY AND COUNTY OF SAN FRANCISCO
Gavin Newsom, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION
Mark Buell, President
Tom Harrison, Vice President
Gloria Bonilla, Commissioner
David E. Lee, Commissioner
Meagan Levitan, Commissioner
Lawrence Martin, Commissioner

Philip A. Ginsburg, General Manager

**Complete copy of document located in File NO. 101416

B+F clerk
Sup. Avalos, Mukarumi
Alsberns
cpage

STOW LAKE CORPORATION

Post Office Box 29565
San Francisco, CA 94129-0565
(415) 393-9920

December 8, 2010 File # 101416

Recreation and Park Commission
c/o Virginia Dario Elizondo,City Attorney
#1 Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Protest of Contract Award for the Stow Lake Concession

To Whom It May Concern:

As per the terms and conditions contained in section N (Protests) on pages 23 and 24 of the RFQ issued by the Recreation and Park Department dated December 7, 2009, we hereby file this official protest of the award for a new contract to operate the concession at the Stow Lake Boathouse to Stow Lake Boathouse, LLC. Following are the RFP provisions which protest is based and the facts and evidence sufficient to determine validity of the protest.

Section IV (RFQ Schedule and Selection Process) C (Submittal Contents) 1 (Cover Letter) of the RFQ states, "A cover letter should be provided describing the respondent, the name and address of the entity submitting the proposal, the date the entity was established, and the name, address, and telephone number of the person or persons who will serve as the entity's principal contact...". Furthermore, Staff's original write up to the Recreation and Park Commission indicated that Ortega Family Enterprises had 22 years of management experience managing Carlsbad Cruise Lines. This was exposed as a gross misrepresentation and four days later the "Friendly" Balzano Family who had actually owned and been managing Carlsbad Cruise Lines became a "legal" partner in Cloudless Skies Park Company LLC.

SUBSTITUTION OF ENTITY THAT SUBMITTED BID: The response to the Stow Lake RFQ was from Ortega Family Enterprises, (does not appear to be a legal entity) DBA Cloudless Skies Park Company-LLC. (which appears to be a stand alone LLC, not a DBA). Now a new entity which was not part of the response to the RFQ or evaluated by the evaluation committee named Stow Lake Boathouse, LLC has become the lessee. The Commission approval on August 19, 2010 was for Cloudless Skies Park Company LLC. No authority was given to negotiate with Stow Lake Boathouse, LLC. In fact, Stow Lake Boathouse LLC did not exist when the proposals were due in April, when the

responses to the RFQ were submitted. Therefore, how could the evaluators evaluate an entity that did not exist? There was no indication in the evaluation sheets that the evaluators ever checked on the boating experience of Ortega Family Enterprises, DBA Cloudless Skies Park Company LLC which was a key prerequisite of the RFQ specifications.

The RFQ required as part of the response to the RFQ due April 5, 2010 proof of experience, the date responding entity was established, financial capacity, identification of potential partners together with various other requirements. It went on to say that no revisions are allowed after the deadline for submission. Stow Lake Boathouse LLC, the new proposed lessee, does not meet any of these requirements. They were not a respondent to the RFQ in April.

Section V (Evaluation of Proposals and Award) B (Selection Criteria) states, each respondent must have "Adequate experience in fully managing a business of the nature of this opportunity, with a background in food and beverage management, and operation of boating facilities, either directly or through a partnership with a qualified operator" and it goes on to state, "Any proposal that does not demonstrate that the proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract".

Cloudless Skies Park Company LLC is a California Corporation formed on 4/3/08 so it could not have had the experience listed in their response to the RFQ and relied on by the evaluation committee. Ortega/Cloudless Skies also claimed to have..."22 years of accident and incident free experience managing Carlsbad Cruise Lines, a boat rental and charter operation". When it was pointed out that this was false information and neither Ortega nor Cloudless had any boat rental experience, Ortega then said the Balzano Family (who did in fact operate Carlsbad Cruise Lines) would manage the Stow Lake boats and be a "legal" partner in Cloudless Skies Park Company, LLC. Ortega Family Enterprises DBA Cloudless Skies Park Company LLC, Carlsbad Cruise Lines and/or the Balzano Family are not part of this lease.

The rent proposed is less that the minimum as called for at the pre-bid conference. Section IV (RFQ Schedule and Selection Process) B (Pre-Submittal Conference and Questions) addresses the handling of any new information that comes up at the pre-submittal conference. It states "...Only written responses will be deemed final". In Staffs undated written response(s) to questions submitted at the pre-submittal conference as well as submitted in writing, a question was asked, "Can you provide any rental rate or minimum rental guidelines for bidders to follow?" The written answer from the Recreation and Park Department was "As we are not requesting financial proposals at this point, bidders need not submit proposed rents. In general

the Department does not want the rent received pursuant to this contract to decrease from the $192,000 received last year".

These were the instructions that bidders received. The bidders were expected to put cash projections together based on a rental rate. The lease that the Recreation and Park Commission has approved includes guaranteed annual minimum rent of $140,000. Therefore, this lease is non-responsive to the terms and conditions as outlined in the RFQ as modified in writing by the Recreation and Park Department. The lease and economic terms do not meet the minimum terms as called for in the RFQ as officially modified and are cause for and part of this protest.

Section III (Key Lease Terms) of the RFQ describes "key lease terms required by the Recreation and Park Department. In the submittal, Respondents will be required to indicate acceptance of these key lease terms, and to make a lease proposal that is consistent with these terms". In Paragraph A (Term) of this section the RFQ states, "The City will agree to a lease term appropriate to the proposed capital improvement investment, rental schedule and structure, not to exceed 10 years in length. The City will also consider two option periods of five (5) years."

TERM OF LEASE EXCEEDS APPROVED LEASE TERM: The lease before you is for 15 years with a 5 year option, thus deviating from the specific provision as stipulated in the RFQ. If bidders knew that the Recreation and Park Department would consider a 15-year lease rather than a 10-year term the bids would have been different.

Throughout the RFQ the stated objective of the Recreation and Park Department was to find a concessionaire with experience dealing with the historical preservation of historical buildings such as the Stow Lake Boathouse. Bidders were instructed that the intent was to preserve this heritage. Now, it appears this original intent has been changed after the bids were submitted.

The change in the main function of the boathouse from a boat repair facility to a café/gift shop is clearly a departure from the historical character that the RFQ and Recreation and Park Department said was critical to the bid. As the Stow Lake Boathouse LLC Plan deviates from the historic preservation of the boathouse, the Historic Preservation Commission is reviewing this matter. The Commission requested in writing that the Recreation and Park Commission delay its vote on the lease to allow time for their review of the issues relating to the boathouse. In defiance of this request, the Recreation and Park Commission ignored their wishes and voted to approve the lease.

Section V (RFQ Evaluation of Proposals and Award) C (Selection Committee) states that "A selection committee consisting of City staff and other appropriate parties will evaluate the submittals of each respondent based on the minimum qualifications and selection criteria outlined above". This was later modified and clarified by the Staff of the Recreation and Park Department at numerous public forums that there would be "a community representative" on the panel. At the Recreation and Park Commission meeting on December 17, 2009 Phil Ginsburg made comments regarding the selection panel "and there will be lots of community input. We volunteer to actually have community participation on the selection panel...".

Despite these assurances, all of the evaluators had direct ties to the Recreation and Park Department. There was no independence and all evaluators had conflicts. This was not an independent body as called for and promised by RPD. This perpetuated the flawed process. Many of the evaluators had questions and the bidders were not called to clarify these questions. How could final decisions be made when there was a lack of information available? This is being protested at this time because (as you will see below) new information has just come to our attention regarding the biased (and lack of community representation) make-up of this panel.

Following is the evaluation panel:

Jim Wheeler: Jim is described as "the boating expert" due to his experience at Lake Merritt. He has been on the staff of RPD since December 24, 2008, was recently promoted into a new position heading RPD's new Leisure Program, so is not community based. **He cannot be considered objective because his income/job security is directly based on his employment with RPD.**

Tara Sullivan: Tara is a member of the planning staff & Historic Planning Commission liason. As a city employee, she works with RPD on a variety of projects. **She cannot be considered objective because her income/job security is directly based on her relationship to RPD and other city agencies/government officials and staff.**

Commissioner Levitan: The Save the Stow Lake Boathouse Coalition expressly called for her removal from the panel due to conflict of interest. She is not considered a representative of the community, due to her 5-years of commission work, working closely with RPD management on this issue and many others, and has too much influence approving the selection at the commission level. **At the time she became an evaluator she and the commission decided that she would be conflicted out from casting a vote on the selection of the next concession operator. When it came time for the vote, she cast her vote anyway in direct conflict with the earlier commission discussion.**

Andrea Jadwin: She is a founder of SFGRO, an organization managing community gardens in conjunction with RPD. She was picked by RPD management, not by the Stow Lake Community to be an evaluator. **She was present at the December 2, 2010 RPD**

Commission meeting in which the Stow Lake Concession was to be voted on and was wearing an Ortega support badge on her coat. When this lack of impartiality was pointed out, she immediately conferred with members of RPD Staff and quickly left the meeting.

Gary Rulli: Gary is a current RPD tenant with a current restaurant contract with RPD at Union Square. **He cannot be objective when his business and income are directly based upon his relationship with RPD.**

Failure of the Recreation and Park Department to produce and distribute a copy of the response to the RFQ by Ortega Family Enterprises DBA Cloudless Skies Park Company within 48 hours per emergency request under Sunshine Ordinance. Section VI (Terms and Conditions for Receipt of RFQ) Section J (Sunshine Ordinance) the RFQ states, "In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFQs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded".

As the lease was awarded by the Recreation and Park Commission on December 2, 2010, the Ortega Family Enterprises, DBA Cloudless Skies Park Company LLC response to the RFQ is needed for background information regarding this protest. This protest cannot be complete without an ability to review the original bid as submitted April 5, 2010. Therefore, until we have had a chance to fully review the original bid, we reserve the right to expand upon the items identified in this bid protest. We are also protesting this bid on the grounds that the Recreation and Park Department is in violation of its own rules and the rules covering governmental agencies in the City.

Section IV (RFQ Schedule and Selection Process) D (Submittal Deadline) states that all submittals must be submitted electronically to nicholas.kinsey@sfgov.org.

Under a Sunshine Ordinance Request, we have been provided with a schedule of all emails related to the Stow Lake Concession Lease. A review of this schedule indicates that no response to the RFQ was submitted by Stow Lake Boathouse LLC. Therefore, they did not submit a bid and cannot become the lessee.

Section IV (RFQ Schedule and Selection Process) E (Lease Negotiations) states, the exclusive negotiation period will be 60 days and further states after the Commission authorizes negotiations, the selected bidder was to submit a $10,000 bond.

It needs to be determined if the $10,000 bond was posted in a timely manner. If not, this is a violation of the RFQ terms. If the bond was not in place prior to the commencement of negotiations, we protest this award.

Protest based on general terms and conditions in the lease that are at odds with instructions given at pre-bid conference. Section IV (RFQ Schedule and Selection Process) B (Pre-Submittal Conference and Questions) of the RFQ states "...only written responses will be deemed final".

Staff indicated that there was no additional ADA bathroom needed in the boathouse. Paragraph II B on page 10 of the RFQ lists several capital projects at Stow Lake. One of these recent capital projects at Stow Lake was "Building a new restroom facility". At the pre-bid conference, Staff indicated that these new facilities would be sufficient for this venue and Staff would work with the concessionaire to gain the necessary approvals to forgo an additional ADA bathroom requirement. Ortega Family Enterprises, DBA Cloudless Skies Park Company LLC was given credit by the evaluators in the capital improvement portion of the bid for adding a new ADA restroom which we were all told was unnecessary.

Bidders were also told that no funds were available from Recreation and Park Department for improvements and in this lease has now obligated the Recreation and Park Department to pay for an ADA bathroom in the boathouse and other ADA related requirements triggered by the extensive conversion of the boathouse by Stow Lake Boathouse LLC. Paragraph I on page 8 of the RFQ states, "...Secure a Lessee with sufficient resources, capital, and operating experience to implement and operate a self-sustaining program (including building upgrades and maintenance) **without any City investment**". Paragraph II C on page 11 of the RFQ states, "The Recreation and Park Department has no capital funds available for this facility. The City is only seeking respondents that are able to fully fund the capital improvements, as well as the operating costs of the proposed project". If the bidders knew all of these references were not applicable and the City actually had money to invest, that would have impacted the bids. We are protesting this change.

It was absolutely clear that this was not to be a restaurant. Nick Kinsey used the word restaurant two times in his testimony before the Recreation and Park Commission on December 2, 2010. Bidders were not told that this could be a restaurant which might have influenced the bid process.

Staff has made misrepresentations to the Park Commission regarding the comparisons between the proposals as submitted by the respondents to the RFQ to solicit a specific outcome. Competing bids must be presented in a fair/unbiased manner.

Staff's power-point presentation compared pictures of incumbent's work boat (it was identified as part of the current rental fleet) with a new boat offered by Stow Lake Boathouse LLC to create the perception that Stow Lake Boathouse LLC would be offering far superior equipment than the other bidder(s). Staff had pictures of the new

fleet being offered by all respondents and made the decision not to include these. This did not portray an accurate side by side comparison of the bids. We would like to verify that this was not the case when the evaluators looked at the proposals.

Rather than comparing/evaluating the competing bids in their presentation, Staff compared the 20-year-old Stow Lake lease terms (rather than new terms proposed by Stow Lake Corporation) with new terms as proposed by Stow Lake Boathouse LLC. We are protesting that the members of the Recreation and Park Commission (the ultimate decision-makers) were not presented with all of the terms and conditions included in our response to the RFQ. Therefore, they were not able to make an informed decision regarding the award.

In view of this protest, the lease award to Stow Lake Boathouse LLC needs to be vacated.

Respectfully submitted,

Bruce McLellan
President Stow Lake Corporation

C: San Francisco Board of Supervisors (File # 101416)
Budget & Legislative Analyst

B&F
C-Page
cc: BA

CALVIN B. TILDEN
Post Office Box 29545
San Francisco, CA 94129
Phone: (415) 221-7773
Email: cbtmail@earthlink.net

December 7, 2010

San Francisco Board of Supervisors
San Francisco City Hall
#1 Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Legislative File # 101416 (STOW LAKE CONCESSION LEASE)

Dear Supervisors:

This letter is to request that you vote NO when item #101416 comes before you. There are many serious problems with the lease you are being asked to approve.

In my capacity as a taxpayer in the City and County of San Francisco, I have filed a protest with the Recreation and Park Commission relating to their decision at their meeting on December 2, 2010 to award a 15 year lease with a 5 year option for the Stow Lake Concession in Golden Gate Park to Stow Lake Boathouse LLC (Boathouse LLC). As I protested as a taxpayer, I had to restrict my points to matters relating to fiscal issues.

As a native of San Francisco, let me express to you that not only are you leaving significant sums of rent revenue on the table, you are embracing an out-of-town (New Mexico) multi state chain operator to replace a local family run business that has paid the City without fail rent each and every month for 67 years.

My formal protest contained the following:

The lease only requires Boathouse LLC to pay $140,000 guaranteed minimum annual rent. The Stow Lake Corporation (Stow Inc.), the present Lessee, offered in their response to the RFQ to pay a minimum $215,000 annual guaranteed rent. Boathouse LLC projects they will pay rent exceeding the $140,000 but unwilling to increase the $140,000 guaranteed annual minimum to back up their projections. See the bottom of the next page for a twist on this guarantee.

The lease only requires Boathouse LLC to pay 10% of gross food sales. Stow Inc. offered 27%
The lease only requires Boathouse LLC to pay 33% of gross boat rentals. Stow Inc. Inc. offered 36%

The lease only requires Boathouse LLC to pay 7.5% of merchandise sales. Stow Inc. offered 27%

The lease requires the City to pay for the new ADA bathroom as proposed by Boathouse LLC and any other ADA upgrades that will be triggered by Boathouse LLC's extensive interior remodeling of the main floor. This is a waste of San Francisco taxpayer funds considering the City recently built ADA bathrooms adjacent to the boathouse in the parking lot.

The lease only requires Boathouse LLC to have 50 boats which can be used if "attractively kept"; a term not included in the Definition section of the lease. Stow Inc. offered 85 new boats thus generating more revenue.

Please note that as provide for in the RFQ, the term of the lease would be set to allow for the recovery of capital expenses. Accordingly, there was no reduction in rent allowed to recover capital improvements. Rent revenue stands on its own and is independent of any capital considerations.

As Boathouse LLC is a new company without any credit history, the lease requirement to allow City audits is insufficient. The City does not have the resources to audit every year. The Boathouse LLC lease should require a certified audit in any year the City does not audit. Taxpayers need to know they are getting all the rent due them.

As the boathouse is owned by the Citizens of San Francisco, you should know that Stow Inc. was ready, willing and able to fully refurbish the building five years ago. Being on month to month lease, such expenditure of significant funds was not feasible. Both Boathouse LLC and Stow Inc. in their current bids for the new lease agreed to refurbish the boathouse and upgrade the kitchen.

Finally, at the December 2, 2010 Commission meeting, Mr. Ortega, speaking on behalf of Stow Lake Boathouse LLC, said he would increase his guaranteed annual minimum to $315,000 and would meet all the terms contained in the response to the RFQ by the Stow Lake Corporation. This is of such overwhelming superior economic benefit to the City clearly the Commission did not exercise their fiduciary responsibility when voting approval of the lease I am protesting. Such vote of approval took place **after** Mr. Ortega made the $315,000 guaranteed annual rent offer.

Considering the difficult economic times the City is now facing, the approval of the lease to Stow Lake Boathouse LLC is unsupportable.

Sincerely,

Cal Tilden

Cal Tilden